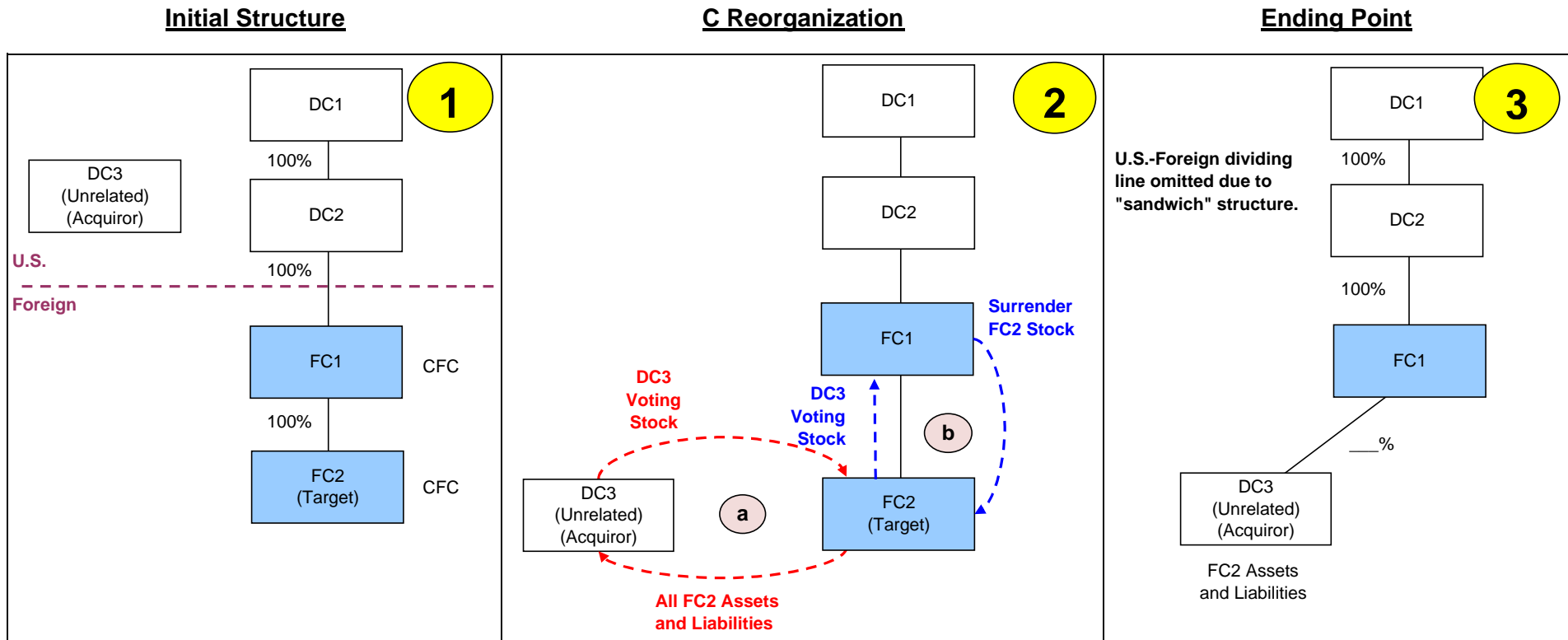


Inbound C Reorganization - Lower Tier Target

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There were no U.S. transferors. Therefore, the exchanges are not subject to section 367(a). The exchanges are subject to section 367(b) because they are described in sections 354 (FC1) and 361 (FC2), and the status of a foreign corporation (FC2) as a corporation is relevant in determining tax attributes. The general rule of section 367(b) is that a foreign corporation is considered to be a corporation except to the extent provided in the regulations.

Reg. 1.367(b)-3(a) provides that special rules apply "to an acquisition by a domestic corporation . . . of the assets of a foreign corporation . . . in . . . an asset acquisition described in section 368(a)(1)." Reg. 1.367(b)-3(b)(3)(i) requires that "[a]n exchanging shareholder . . . include in income as a deemed dividend the all earnings and profits amount with respect to its stock in the foreign acquired corporation."

FC1 must include in income as a deemed dividend the all E&P amount of FC2. The deemed dividend is treated as a dividend for purposes of the Code. However, the deemed dividend cannot qualify for the same country exception [section 954(c)(3)(A)(i)], even if the same country exception would have applied in the case of an actual dividend.