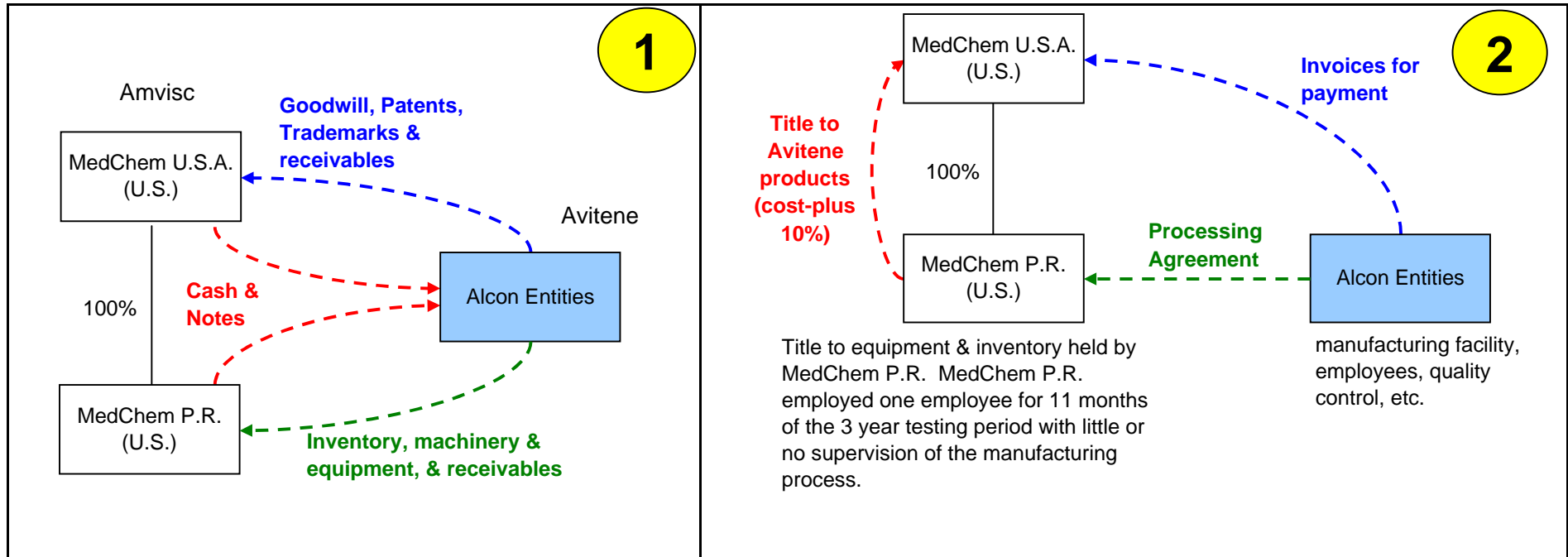


Section 936 - Active Conduct of Trade or Business Within a Possession

Acquisition of Avitene Business

Post-Acquisition Operation of Avitene Business



The issue in the case was whether MedChem P.R. met the "active conduct of a trade or business within a possession" requirement of section 936(a)(2)(B). The Tax Court held that it did not. As a result, the Court did not need to address whether whether MedChem P.R. manufactures or produces a product in the possession as required by sec. 954(d)(1)(A) [Section 936(h)(5)(B)(ii)[flush]]. In analyzing whether MedChem P.R. met the active conduct of a trade or business, the Court looked at whether MedChem P.R. had participated regularly, continually, extensively, and actively in the management and operation of Avitene's manufacturing in Puerto Rico throughout the requisite 3-year period and concluded that it had not. The Tax Court concluded that MedChem P.R. did not even have "any meaningful business activity in Puerto Rico during that period. The mere fact that a taxpayer owns property used in a trade or business is simply not enough to characterize the taxpayer as an active conductor of that trade or business."