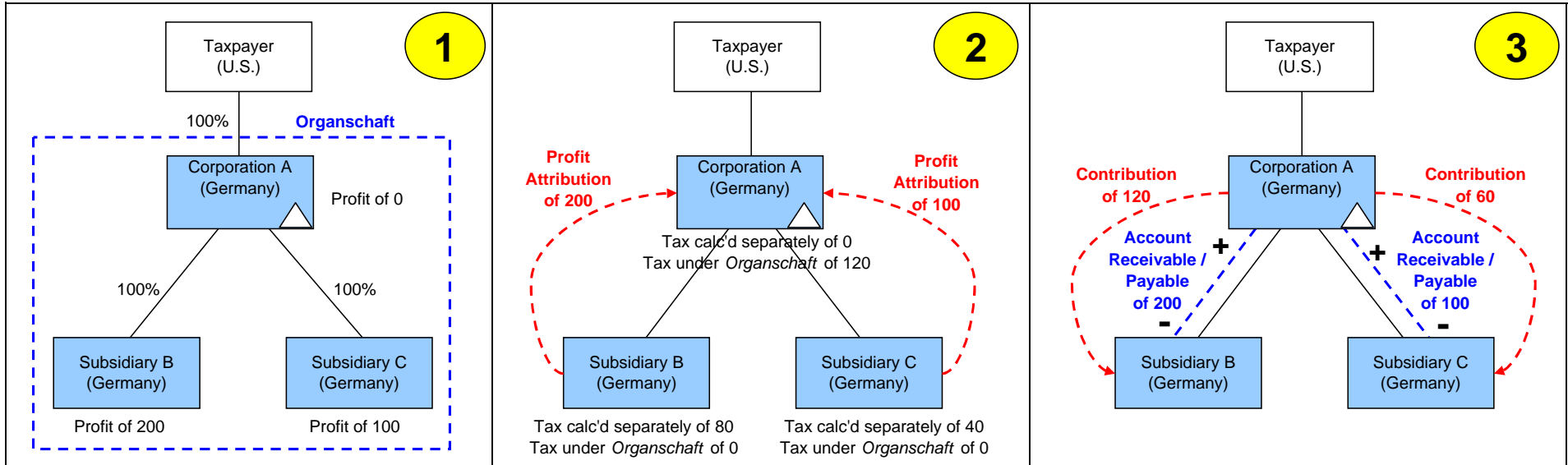


**U.S. Tax Treatment of German *Organschaft***

**Initial Structure**

**Attribution of Profits Under *Organschaft***

**Contributions Pursuant to Corporate Resolution**



The PLR did not include any numbers for profits or taxes. The amounts included in the charts above were created for illustrative purposes. A German tax rate of 40% is assumed.

Corporation A is treated as a disregarded entity for U.S. tax purposes. For German tax purposes, Corporation A, Subsidiary B, and Subsidiary C have elected to be included in an *Organschaft*. As a condition of filing the *Organschaft*, the German subsidiaries are required to transfer their pre-tax profits and losses to Corporation A, and Corporation A is obligated to compensate the subsidiaries for any losses they incur.

Corporation A is liable for German taxes on its own profits, as well as taxes on the profits of its subsidiaries. Pursuant to a corporate resolution, any payment by Subsidiary B or C to Corporation A in satisfaction of its payable under the *Organschaft* agreement will be contributed to such corporation's capital to the extent such payment exceeds its allocable share of the *Organschaft's* tax liability.

The PLR held that 1) Corporation A's share of the *Organschaft's* tax liability [zero in the example above] is a creditable tax under section 901, 2) a payment from each of the subsidiaries to Corporation A up to the amount of such subsidiary's share of the *Organschaft's* taxes [80 for Sub. B & 40 for Sub. C in the example above] will not be treated as a dividend, 3) payment from the subsidiaries to Corporation A in excess of such subsidiary's share of the *Organschaft's* taxes will be treated as a 301 distribution, except to the extent the corporate resolution is in existence. Note that if the corporate resolution were not in existence, then the *Organschaft* would create deemed distributions from the subsidiaries to Corporation A for U.S. tax purposes.

△ Means "flow-thru" for U.S. tax purposes

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**Intercompany Payments & Payment of Tax**

