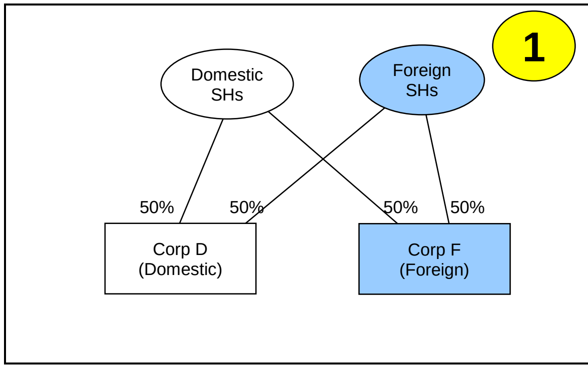
Revenue Ruling 89-103

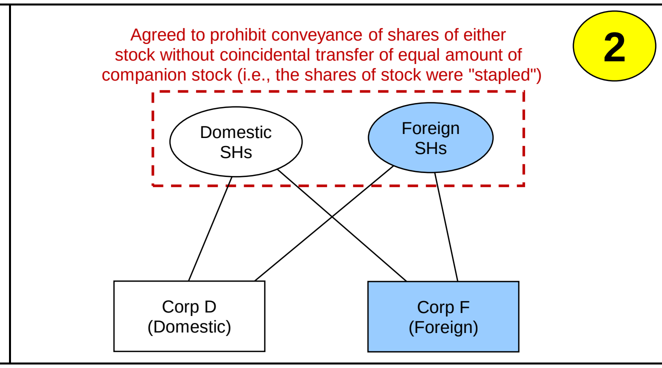
Stapling of Interests Triggers a Deemed Inbound F Reorganization

International Tax Services
www.andrewmitchel.com

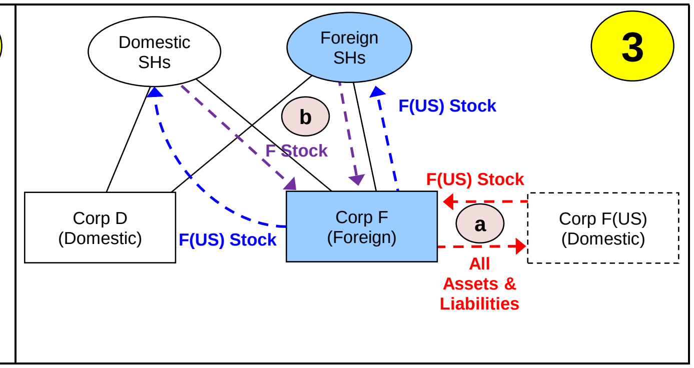
Initial Structure



Stapling of Interests



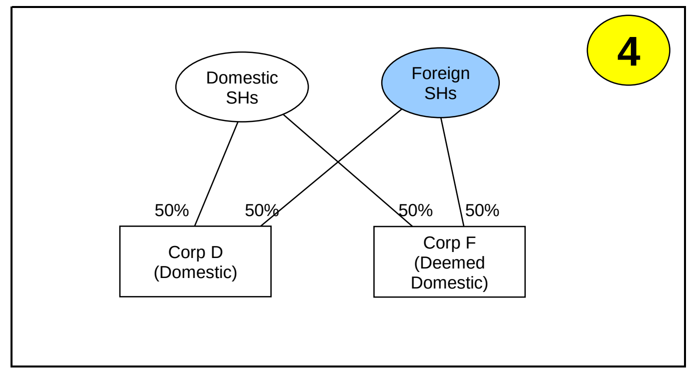
Deemed F Inbound Reorganization



D is a domestic corporation that is engaged in a U.S. trade or business. The outstanding stock of D is owned by domestic and foreign shareholders. D, however, has established that it is not "foreign owned" for purposes of section 269B(e)(2). F is a foreign corporation that is engaged in a U.S. trade or business. The outstanding stock of F is owned by the same domestic and foreign shareholders that own D. Further, the domestic and foreign shareholders of D and F each own equal amounts of both the D and F stock. F, therefore, has also established that it is not "foreign owned" for purposes of section 269B(e)(2). Finally, there is no income tax convention in force between the United States and F's country of residence. In 1988, the shareholders of D and F entered into an agreement prohibiting the conveyance of shares of either stock without a coincidental transfer of an equal number of shares of the companion stock, i.e., the shares of D and F must be conveyed together.

Section 269B(c)(3) defines the term "stapled interests" as interests which, by reason of form of ownership, restrictions on transfer, or other terms or conditions, are required to be conveyed together. Section 269B(c)(2) defined the term "stapled entities" as any group of two or more entities if more than 50 percent in value of the beneficial ownership in each such entity consists of stapled interest. As a result of the transfer restrictions, the entire outstanding stock of D and F constitutes stapled interest for purposes of section 269B(c)(3); thus D and F are stapled entities within the meaning of section 269B(c)(2).

Ending Point



Section 269B(a)(1) provides that, if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation is treated as a domestic corporation. Because D, a domestic corporation, and F, a foreign corporation are stapled entities, F is treated as a domestic corporation.

For federal income tax purposes, the deemed conversion of F from a foreign to a domestic corporation by reason of section 269B(a)(1), which occurs upon stapling the stock interests of F and D, is treated as: (1) a transfer by F under section 361(a) of all of its assets and liabilities to a new domestic corporation, F(US), in exchange for F(US) stock; and (2) a distribution by F under section 361(c) of the F(US) stock to its shareholders in exchange for the shareholders' F stock. There is no change in the shareholders of F or in the shareholders' proprietary interests in F. Furthermore, F(US) possesses the same assets and liabilities and continues the same business activities before and after the stock stapling transaction. Because there is continuity of ownership, assets and business enterprise, the deemed conversion effects a mere change in the place of organization of F. Therefore, the conversion qualifies as a reorganization under section 368(a)(1)(F), which provides that the term "reorganization" includes a mere change in identity, form or place of organization of one corporation, however effected. See Rev. Rul. 88-25.