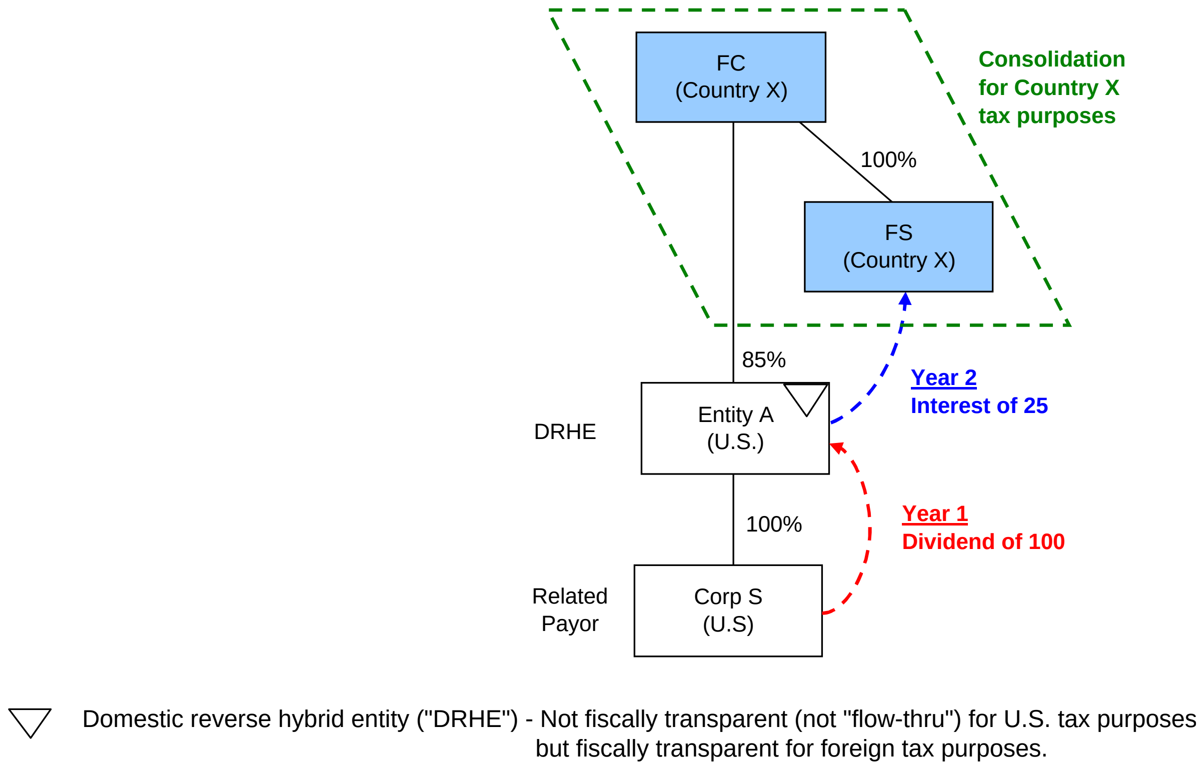
Reg. 1.894-1(d)(2)(iii), Example 6

Copyright © 2006 Andrew Mitchel LLC
International Tax Services
www.andrewmitchel.com

Payment to Related Tax-Consolidated Entity



The facts are the same as Example 3, except that in year 2, A makes the interest payment of $25 to FS, a subsidiary of FC also organized in Country X. Under the laws of Country X, FS is not fiscally transparent. In addition, for Country X tax purposes the income and losses of FS may be used to offset the income and losses of FC.

The analysis is the same as in Example 1 with respect to the $100 dividend payment from S to A. Because FC and FS are effectively consolidated for Country X tax law purposes (FS income & losses offset FC income & losses), the $25 interest payment by A to FS is treated as a dividend to the extent the $25 payment does not exceed FC's share of the $100 dividend payment made by S to A ($85). Since FS is not fiscally transparent, FS is entitled to obtain the rate applicable to dividends under the U.S.-Country X income tax treaty with respect to the $25 payment. A is not entitled to an interest deduction with respect to the payment.

HUNDREDS of additional charts at www.andrewmitchel.com