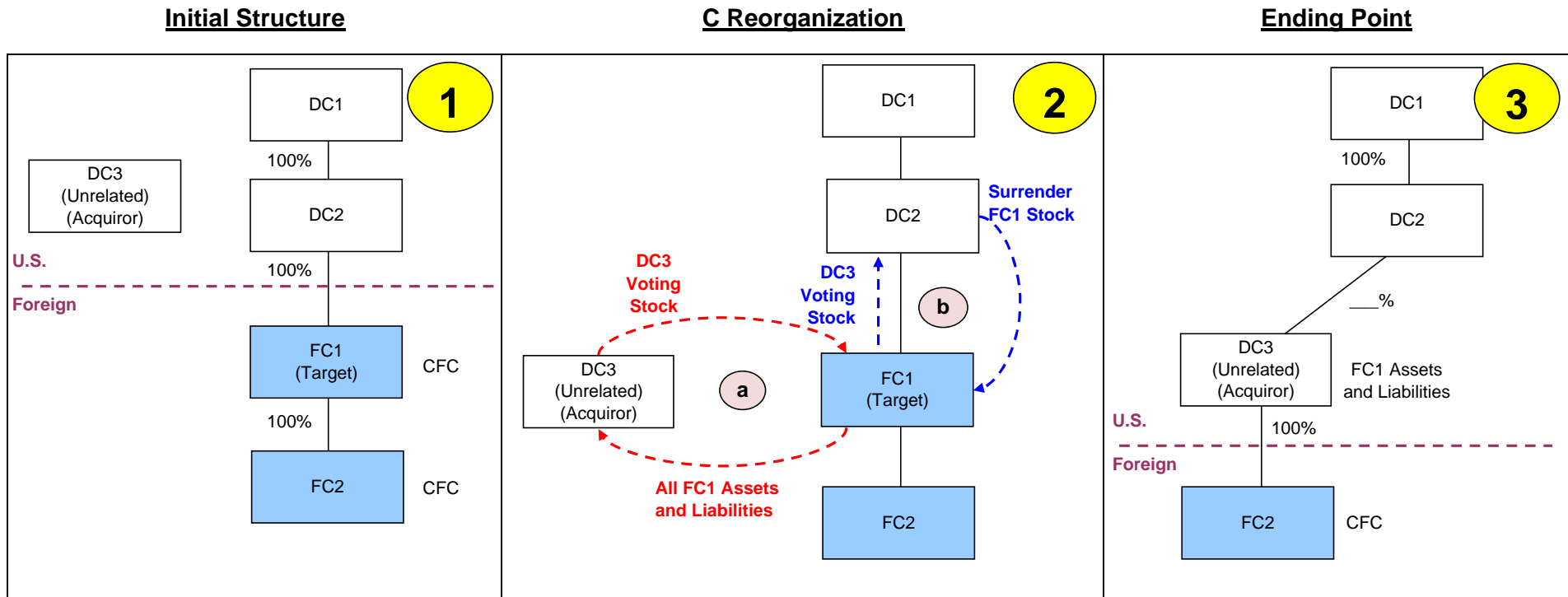


Inbound C Reorganization - First Tier Target

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Reg. 1.367(a)-3(a) provides that "if, in an exchange described in section 354 . . . a U.S. person exchanges stock . . . of a . . . foreign corporation for stock of a foreign corporation pursuant to an asset reorganization that is not treated as an indirect stock transfer . . . such section 354 . . . exchange is not a transfer to a foreign corporation subject to section 367(a)." DC2 was the only U.S. transferor. DC2's exchange was a section 354 exchange in an asset reorganization. DC2's exchange was not subject to section 367(a). FC1's exchanges were not subject to section 367(a) because FC1 is not a U.S. person.

The FC1 exchanges are subject to section 367(b) because they are described in section 361, and the status of a foreign corporation (FC1) 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." As a result, DC2 must include in income as a deemed dividend the all E&P amount of FC1.