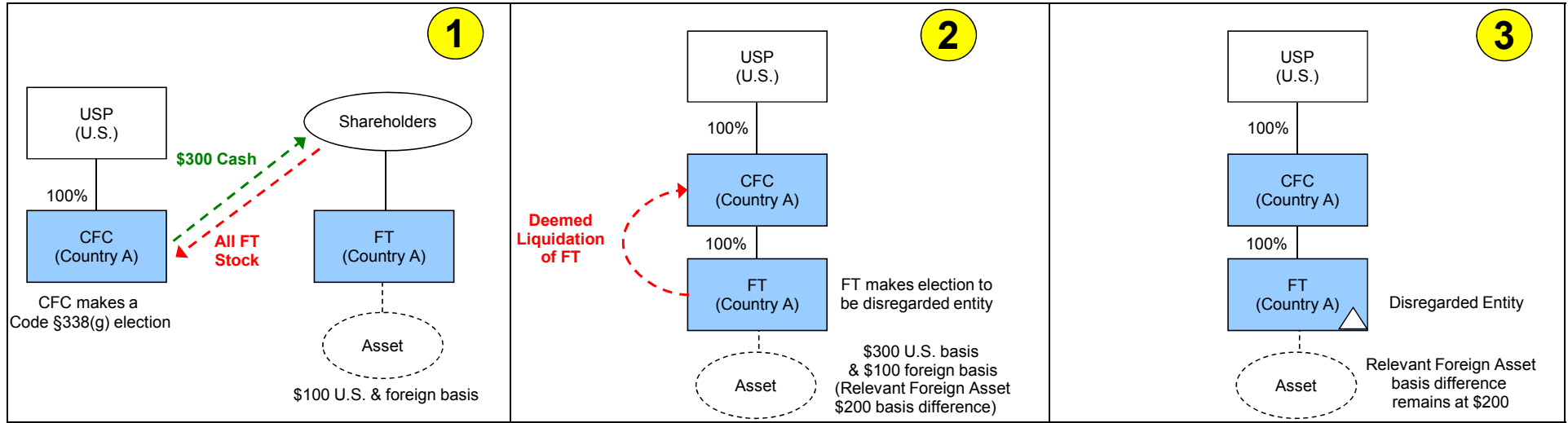


Impact of Code §901(m) on a Qualified Stock Purchase with a 338(g) Election, Followed by a Check-the-Box Election of the Target

Qualified Stock Purchase

Check-the-box Election

Ending Point



USP, a domestic corporation, wholly owns CFC, a foreign corporation organized under the laws of Country A. FT is an unrelated foreign corporation organized under the laws of Country A and subject to Country A income tax. FT owns one asset (Asset), a parcel of land. On January 1, Year 1, CFC acquires all the stock of FT in exchange for \$300 (Acquisition) in a qualified stock purchase for which an election under Code §338(g) is made. The Acquisition is treated as an asset acquisition for U.S. income tax purposes and as a stock acquisition for Country A income tax purposes. Immediately before the Acquisition, Asset had a U.S. Basis and Foreign Basis of \$100. Effective on February 1, Year 1, FT elects to be disregarded as an entity separate from its owner pursuant to Treas. Reg. §301.7701-3. As a result of the election, FT is deemed, solely for U.S. tax purposes, to distribute Asset to CFC in liquidation (Deemed Liquidation) immediately before the closing of the day before the election is effective pursuant to Treas. Reg. §§301.7701-3(g)(1)(iii) and -3(g)(3)(ii). No gain or loss is recognized on the Deemed Liquidation for purposes of either U.S. income tax or Country A income tax.

The Acquisition is a Section 338 "covered asset acquisition" ("CAA") because Code §338(a) applies to the qualified stock purchase of FT stock with respect to which the Code §338(g) election is made. Immediately after the Acquisition, Asset is a "relevant foreign asset" ("RFA") owned by CFC with a basis difference of \$200 (\$300 – \$100). Because the Deemed Liquidation does not result in gain or loss being recognized with respect to Asset for purposes of U.S. income tax or Country A income tax, there is no disposition of Asset for purposes of Code §901(m). Accordingly no basis difference with respect to Asset is taken into account by FT as a result of the Deemed Liquidation. Furthermore, Code §901(m) will continue to apply to the basis difference with respect to Asset, as held by CFC for U.S. income tax purposes, until the entire \$200 basis difference has been taken into account under Code §901(m)(3)(B).