**U.S. Corporate Seller of CFC - 338(g) Election**

### Initial Structure

- **Seller (U.S. Corporation)**
  - 100%
  - FMV = 1,100
  - Basis = 100

- **Target CFC (Foreign)**
  - FMV of Target assets = 1,100
  - Tax basis of Target assets = 450
  - E&P = 350
  - Sec. 1248 amount = 200
  - (Pre-CFC E&P of 150)
  - Taxes = 150 (30% effective tax rate)

- **Buyer (U.S. or foreign)**

### Sale of Target

- **Cash of 1,100**
- **100% of Target Stock**

- **Seller (U.S. Corporation)**
- **Buyer (U.S. or foreign)**

### 338 Election / Ending Point

- **Cash**

- **Seller (U.S. Corporation)**
  - Corporate-level gain = 650
  - Shareholder-level gain = 1,000
  - 1248 Dividend = 850
  - Capital Gain = 150

- **Buyer (U.S. or foreign)**
  - FMV = 1,100
  - Basis = 1,100

- **Target CFC (Foreign)**

### Assumptions

1. All amounts in U.S. dollars
2. All income (ordinary and capital gains) taxed at 35%
3. All foreign source income is in the general limitation basket
4. Seller has no other income
5. All E&P and taxes are in post-1986 pools
6. No AMT tax is due
7. Seller elects to claim foreign tax credits
8. No subpart F income triggered on 338 election
9. No foreign taxes are paid on the sale

### Section 902 Deemed Paid Foreign Taxes

\[
\text{Section 902 deemed paid foreign taxes} = \frac{\text{Dividend}}{\text{Pool of E&P}} \times \frac{\text{Tax Pool}}{1,000} \times 150 = 128
\]

### Foreign Tax Credit Limitation

\[
\text{Foreign Tax Credit limitation} = \frac{\text{Foreign Source Income}}{\text{Worldwide Income}} \times \frac{\text{Tentative U.S. Tax}}{1,128} \times 395 = 115
\]

### Calculations

- Worldwide Income Excluding Gross-up = 1,000
- Tentative U.S. tax = 395
- Sec. 78 Gross-up = 128
- Worldwide Income Including Gross-up = 1,128
- Foreign source income = 328 (200 + 128, see Sec. 338(h)(16))
- Foreign Source Income = 328
- Tentative U.S. tax = 395 (1,128 x 35%)
- Net U.S. tax due = 280

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*HUNDREDS of additional charts at www.andrewmitchel.com*