U.S. Individual Seller of CFC - QFC and 338(g) Election

**Initial Structure**

- **Seller (U.S. Individual)**
  - 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)

**Sale of Target**

- **Cash of 1,100**
- **Cash**
- **Cash**
- **Cash**

**Ending Point**

- **Buyer unilaterally makes 338(g) election for Target**
  - **Corporate-level gain** = 650
  - **Shareholder-level gain** = 1,000
  - **1248 Dividend** = 850
  - **Capital Gain** = 150

**Assumptions**

1. All amounts in U.S. dollars
2. Capital gains taxed at 15%
3. Foreign dividend is taxed at 15% [Target CFC is a qualified foreign corp. - see Sec. 1(h)(11)(C) and Notice 2003-69]
4. Seller has no other income
5. No foreign taxes are paid on the sale
6. No subpart F income triggered on 338 election

**Section 902 deemed paid foreign taxes**
- Not applicable to individual shareholders

**Foreign Tax Credit limitation**
- Not applicable (no foreign taxes paid or deemed paid)

**Worldwide Income Excluding Gross-up** = 1,000
- **Tentative U.S. tax** = 150
- **Sec. 78 Gross-up** = N/A
- **Less: Lesser of foreign taxes deemed paid or FTC limitation** = --
- **Worldwide Income Including Gross-up** = 1,000
- **Foreign source income** = 200 [Sec. 338(h)(16)]
- **Tentative U.S. tax** = 150 (1,000 X 15%)
- **Net U.S. tax due** = 150

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