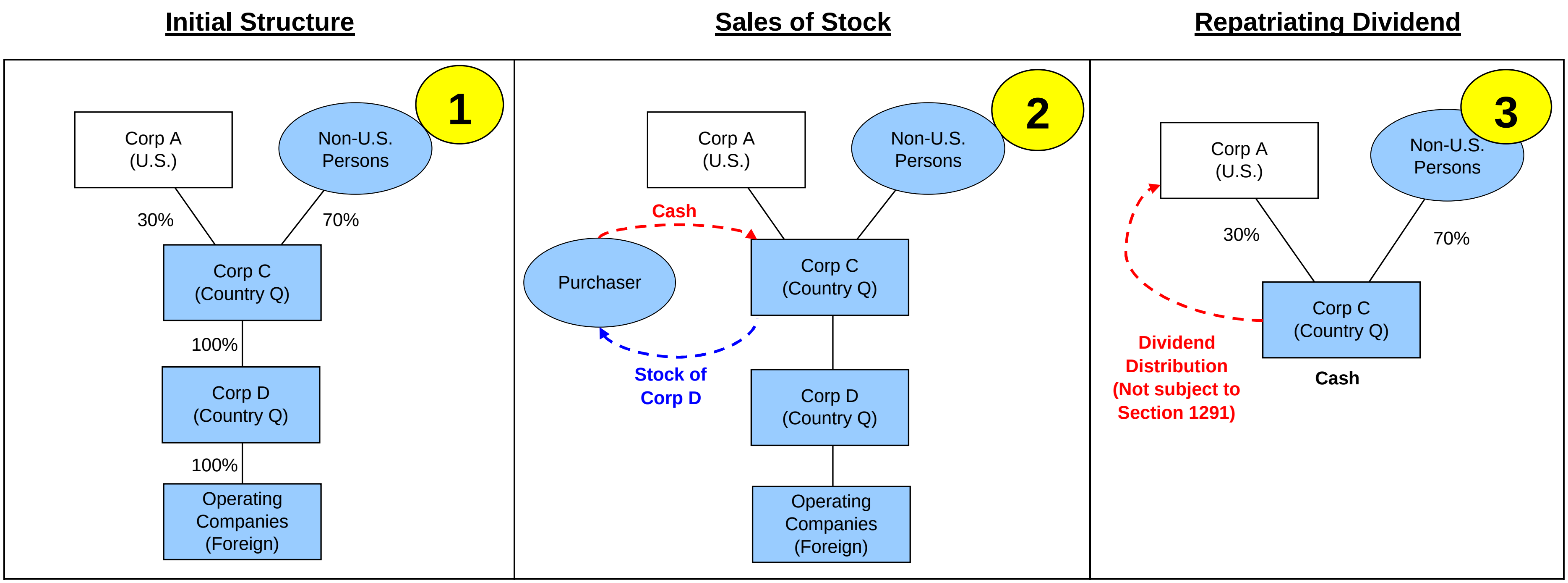
PLR 200604020

PFIC Look-Thru For Gain on 25% Owned Subsidiary



A, a U.S. corporation. A owns 100% of the stock of C, a Country Q corporation. On Date X, C sold all the stock of its wholly-owned subsidiary, D, a Country Q corporation that directly or indirectly owned the stock of several European operating companies. At the time of the sale, C had both U.S. and foreign owners and was not a CFC. A plans to repatriate C's earnings and profits on or before Date Y and reinvest them in the United States in accordance with section 965. Section 965 provides a temporary 85% dividends-received deduction for cash dividends from CFCs that are reinvested in the United States.

To determine whether the repatriation will trigger the application of section 1291, Taxpayer must know whether C is a passive foreign investment company ("PFIC"). Section 1298(b)(1) provides that stock of a corporation held by a taxpayer is stock in a PFIC if, at any time during the taxpayer's holding period, the corporation was a PFIC that was not a QEF. To determine whether C was a PFIC in the year of the sale of D stock, Taxpayer must know whether C's gain from selling D was "passive income" under section 1297(b).

Section 1297(c) provides that if a foreign corporation directly or indirectly owns at least 25 percent of the stock of another corporation (a "25%-owned subsidiary"), for purposes of determining whether the foreign corporation is a PFIC, the foreign corporation is treated as holding its proportionate share of the assets, and receiving directly its proportionate share of the income, of the 25%-owned subsidiary. Correspondingly, to determine whether gain from the sale of stock of a 25%-owned subsidiary is "passive income" under section 1297(b)(1), the sale of stock should be treated as a sale of the foreign corporation's proportionate share of the assets of the 25%-owned subsidiary (and lower-tier 25%-owned subsidiaries) that are treated as held by the foreign corporation under section 1297(c). For purposes of determining whether C is a PFIC under section 1297(a), whether C's gain from selling the stock of D is "passive income," under section 1297(b)(1), is determined by treating C as if it sold its proportionate share of the underlying assets of D and of those subsidiaries of D of which C indirectly owns (by value) at least 25%.