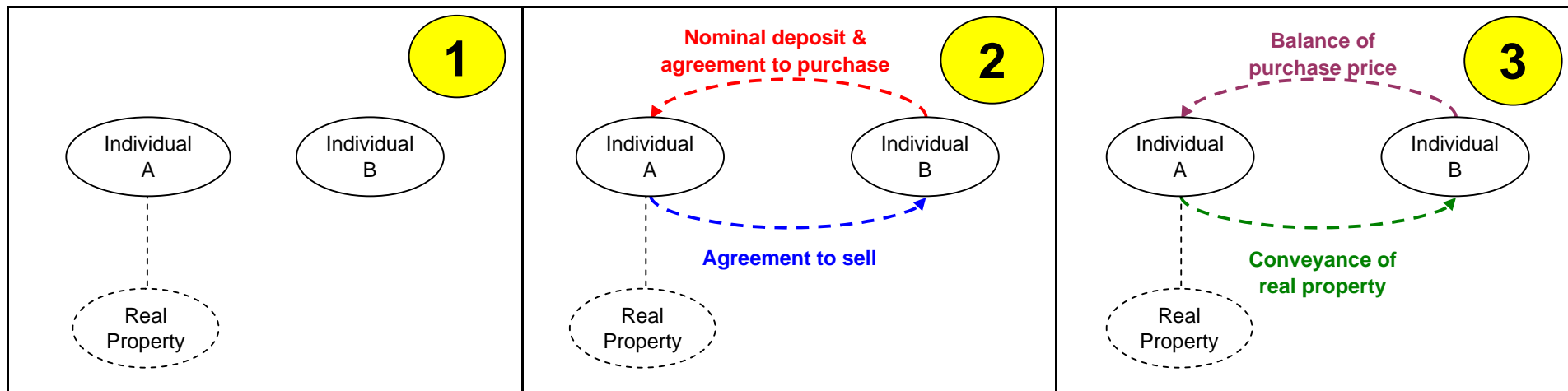


**Nominal Real Estate Deposit
Not Taxable Until Closing**

Initial Structure

Contract & Deposit (October 1967)

Closing (March 1, 1968)



In October 1967 A entered into an agreement with B for the conveyance of real estate on March 1, 1968. A payment of a nominal amount was made when the contract was signed. The balance of the purchase price was paid at the date of conveyance (March 1, 1968), at which time B took possession of the property. During the period between October 1967 and March 1, 1968, A, the vendor, had the legal title, the right of possession, and the right to the rents and profits that might arise out of this property.

Held, A did not realize gain or loss in October 1967 since on that date there was a mere execution of the contract to sell real estate in the future. The sale occurred at the time the deed passed or at the time possession and the burdens and benefits of ownership were, from a practical standpoint, transferred to the buyer. Since these events all took place on March 1, 1968, that is the date on which the sale occurred. The payment made prior to the sale is deemed to be in the nature of a deposit on the purchase price of the property and is to be taken into account in determining the character and amount of income or gain or loss, in the year of sale.

For a discussion of the timing of when a sale occurs, see *Commissioner v. North Texas Lumber Co.*, 281 U.S. 11 (1930) and *Tennessee Natural Gas Lines, Inc. v. Commissioner*, 71 T.C. 74, 83 (1978).