PENN STATE LAW

CENTER FOR THE STUDY OF MERGERS AND ACQUISITIONS

SLIDES ILLUSTRATING (1) A PROTOTYPICAL INVERSION TRANSACTION, AND (2) THE IMPACT OF TREASURY'S 2016 INVERSION AND SECTION 385 REGULATIONS

Accompanying Thompson, *A Basic Guide to the Treasury's April 2016 Regulations in Inversions and Inter-Company Debt*

Professor Samuel C. Thompson, Jr.

Draft April 26, 2016

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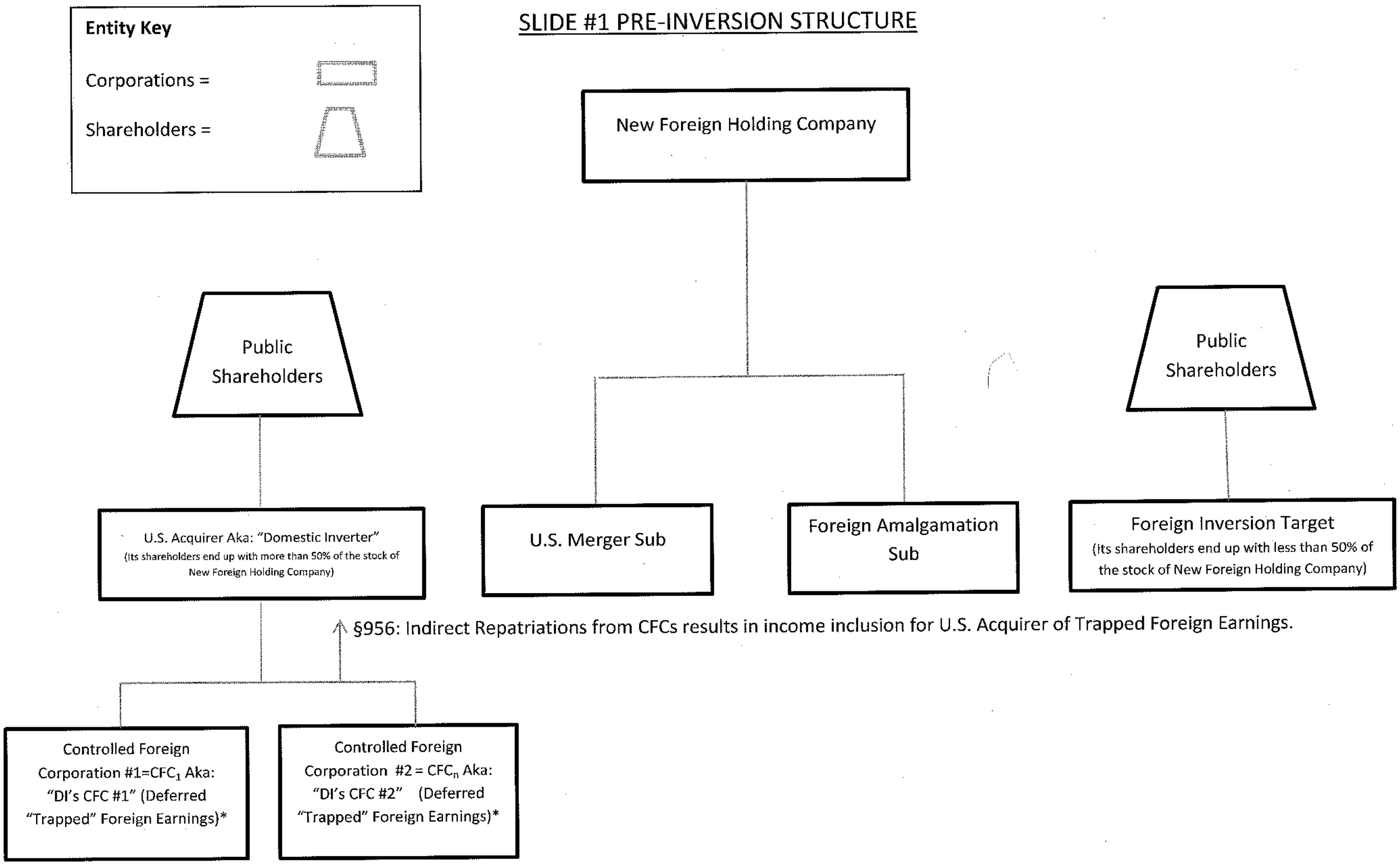
- SLIDE #16 POTENTIAL POST-INVERSION INTEREST STRIPPING

PROTOTYPICAL INVERSION TRANSACTION

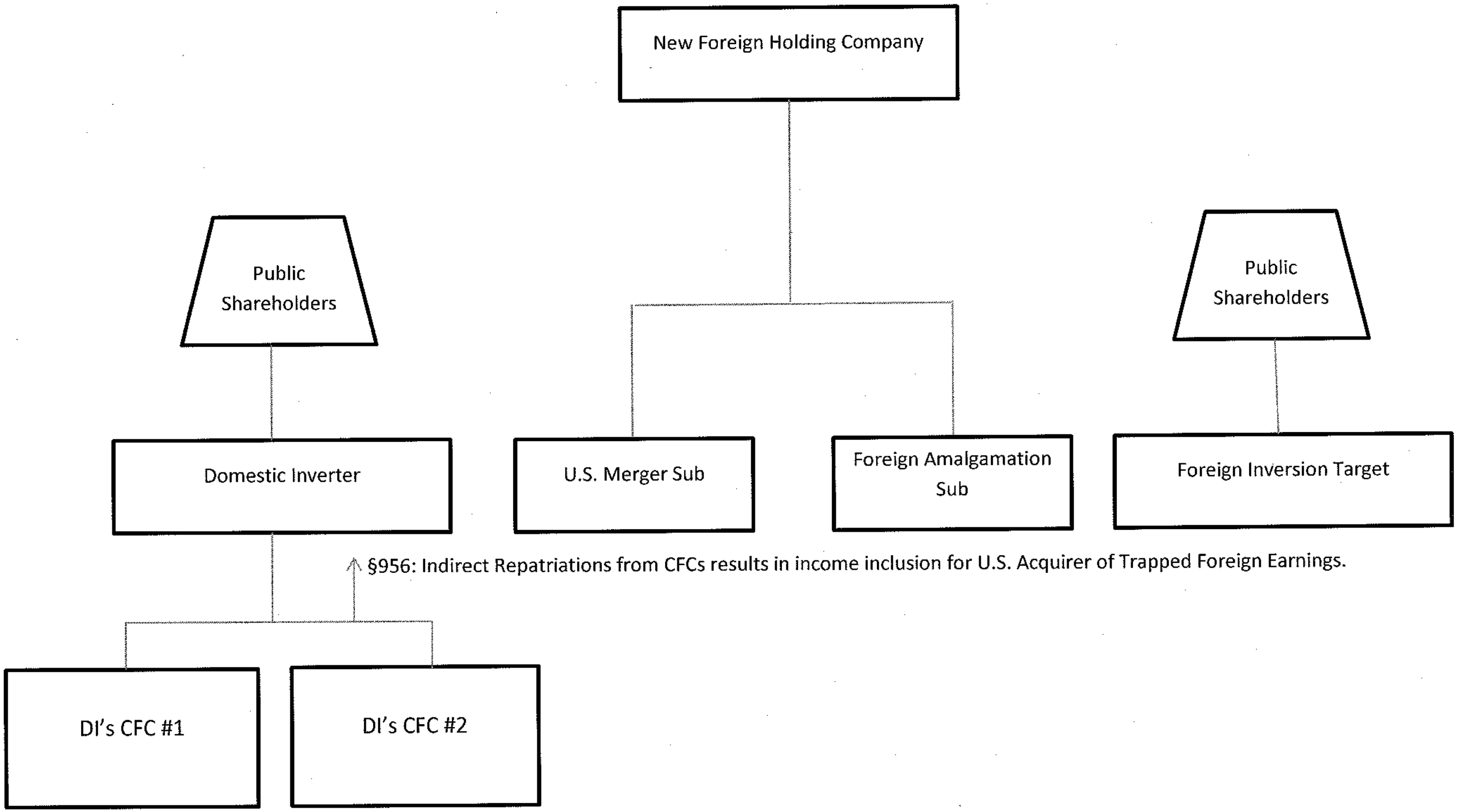
SLIDE #1 PRE-INVERSION STRUCTURE



*Total Deferred "Trapped" Foreign Earnings of all CFCs = $2 trillion ($1 trillion in cash)

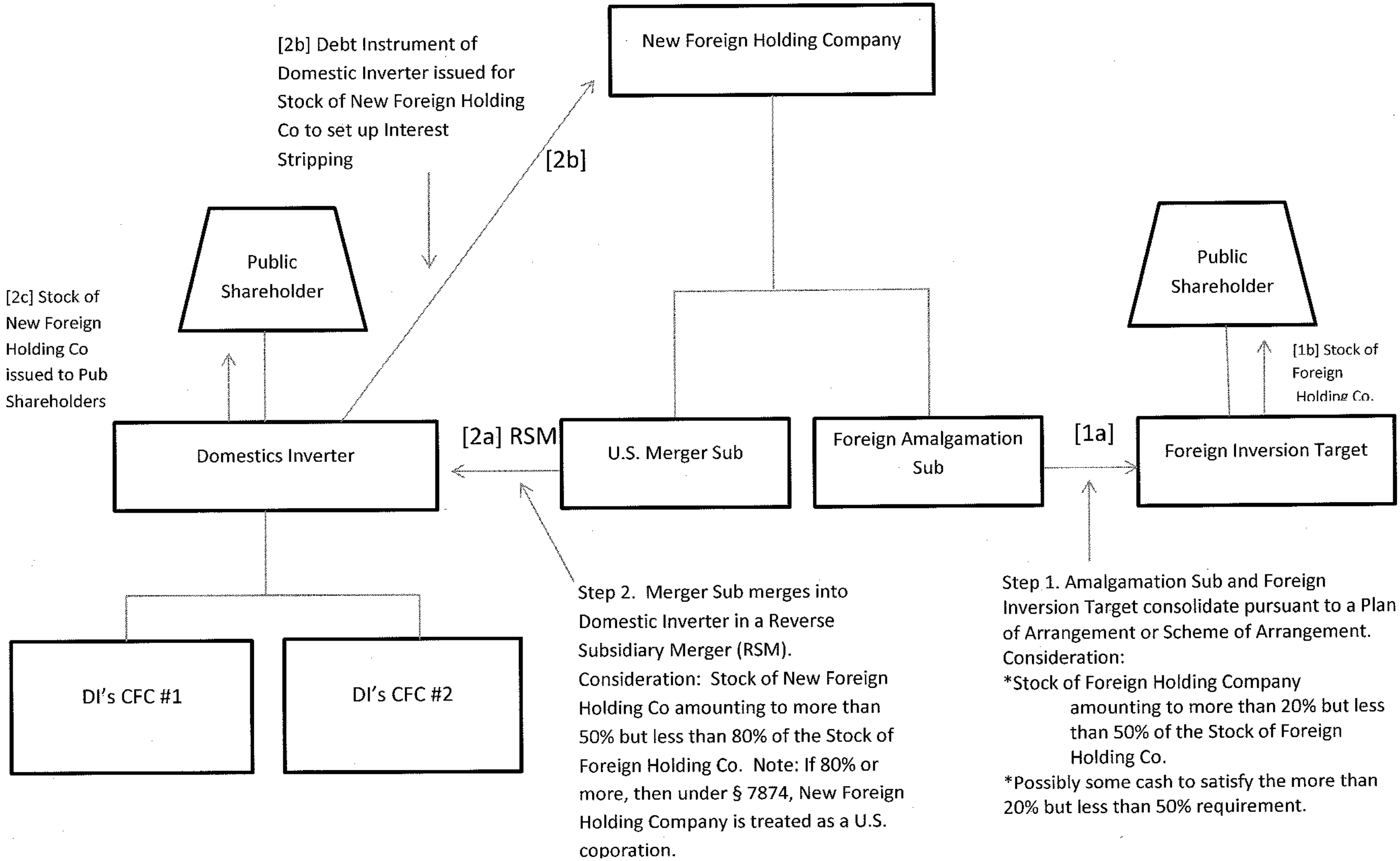
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #2 SUMMARY OF THE PRE-INVERSION STRUCTURE



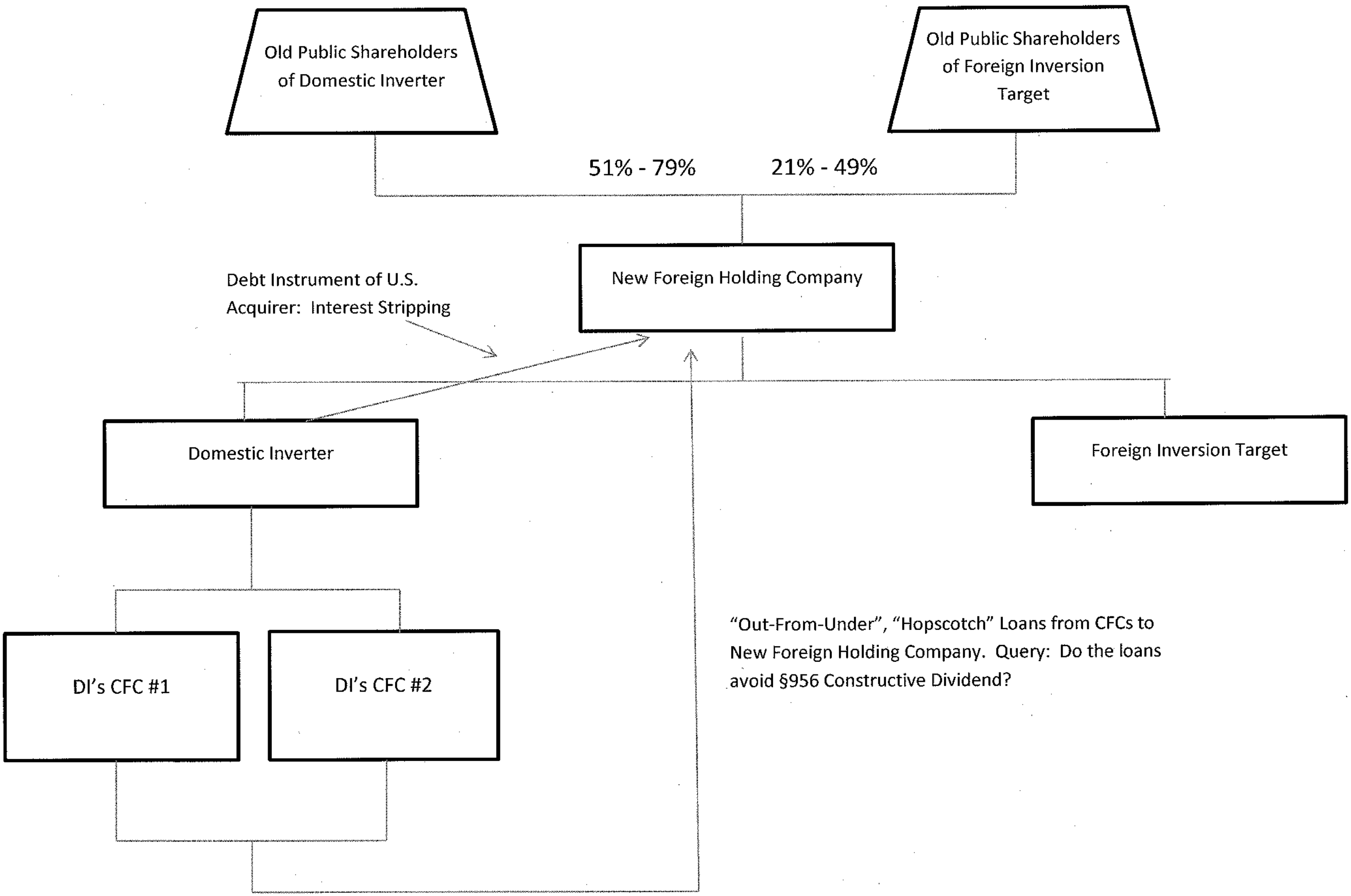
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #3 THE INVERSION TRANSACTION



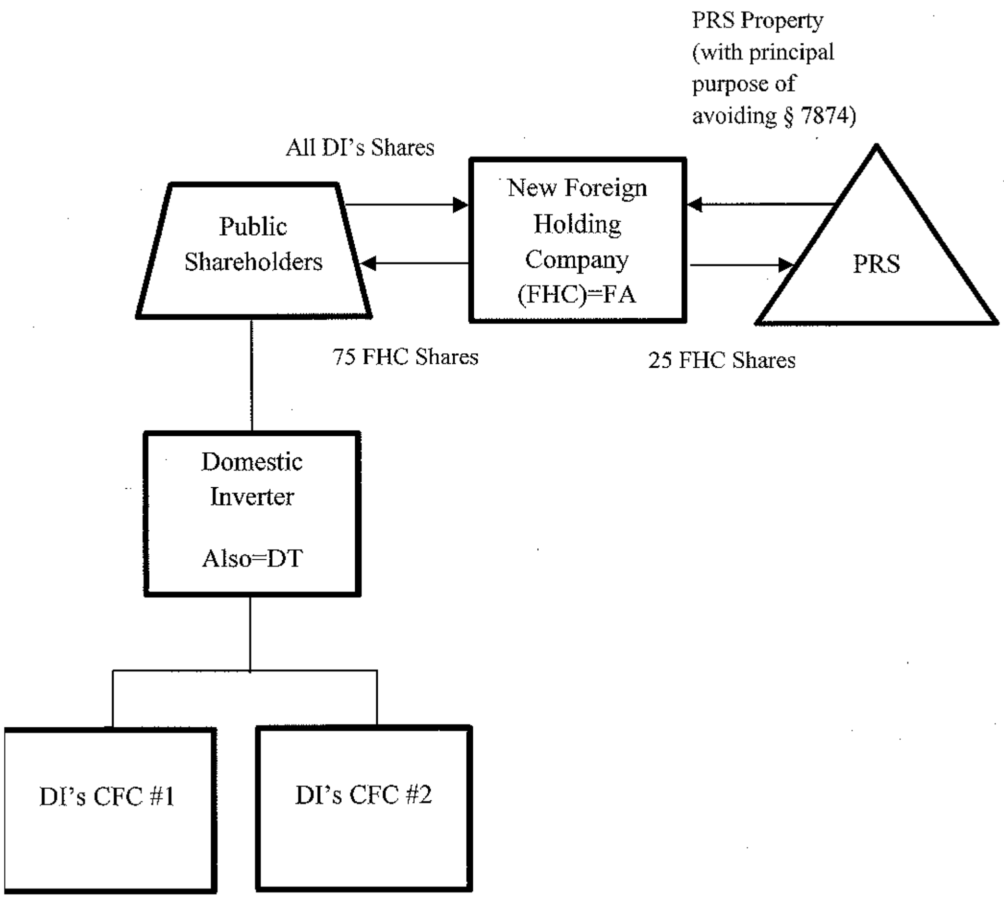
PROTOTYPICAL INVERSION TRANSACTION

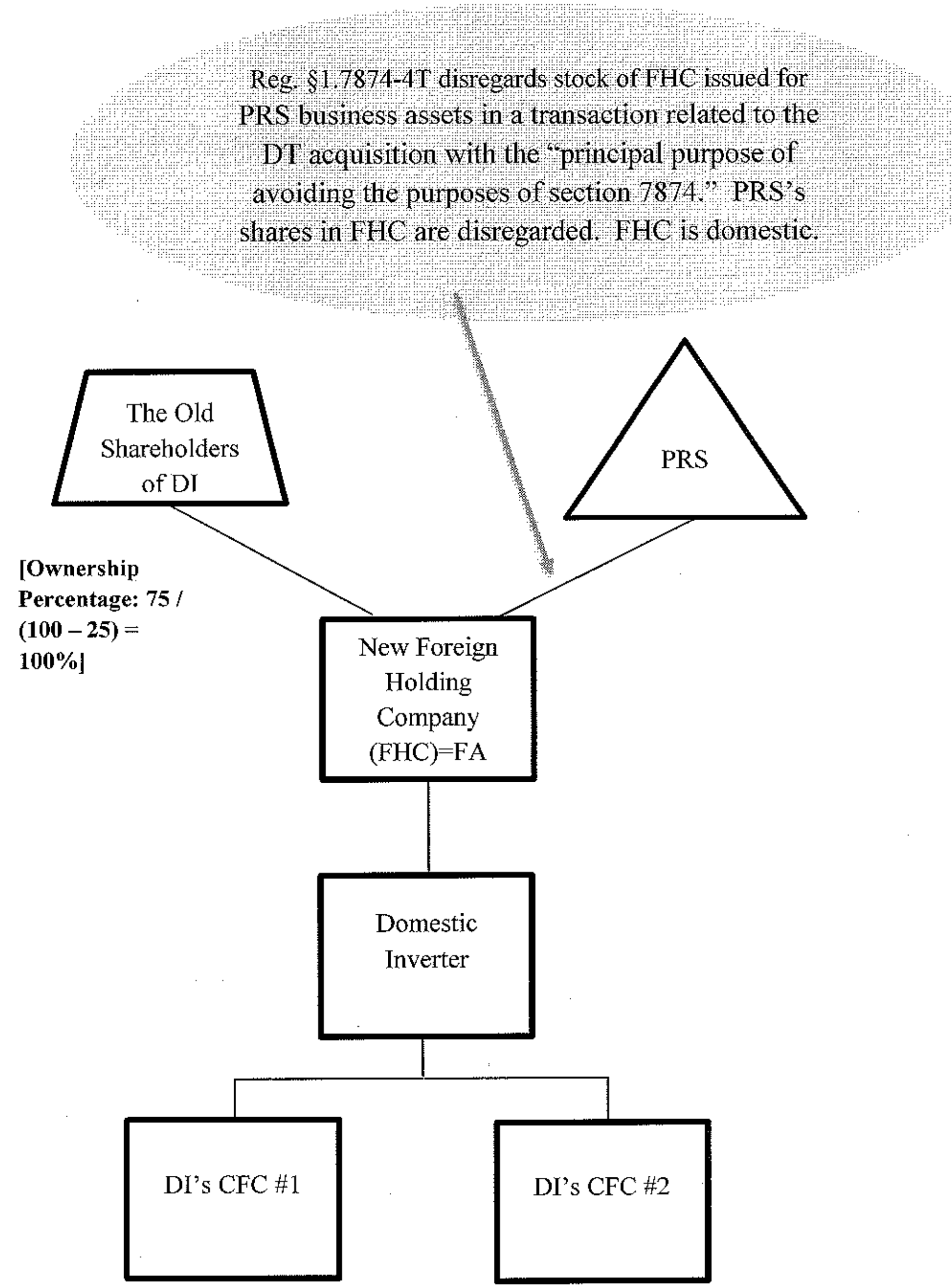
SLIDE #4 POST INVERSION STRUCTURE



2016 TREASURY INVERSION REGS: IMPACT ON INVERSION STRUCTURE

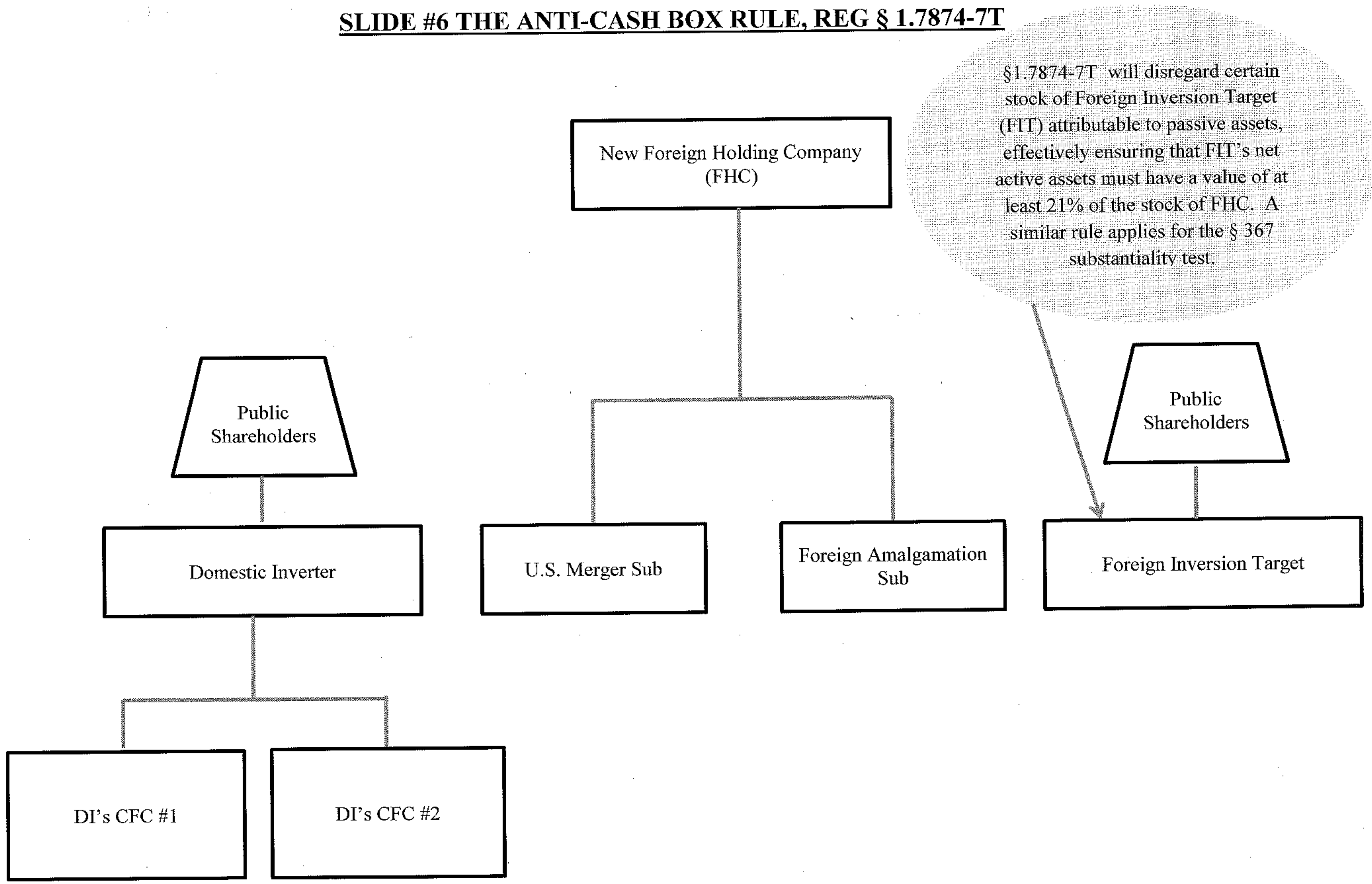
SLIDE # 5 ANTI-STUFFING RULES REG. §1.7874-4T, EXAMPLE 3



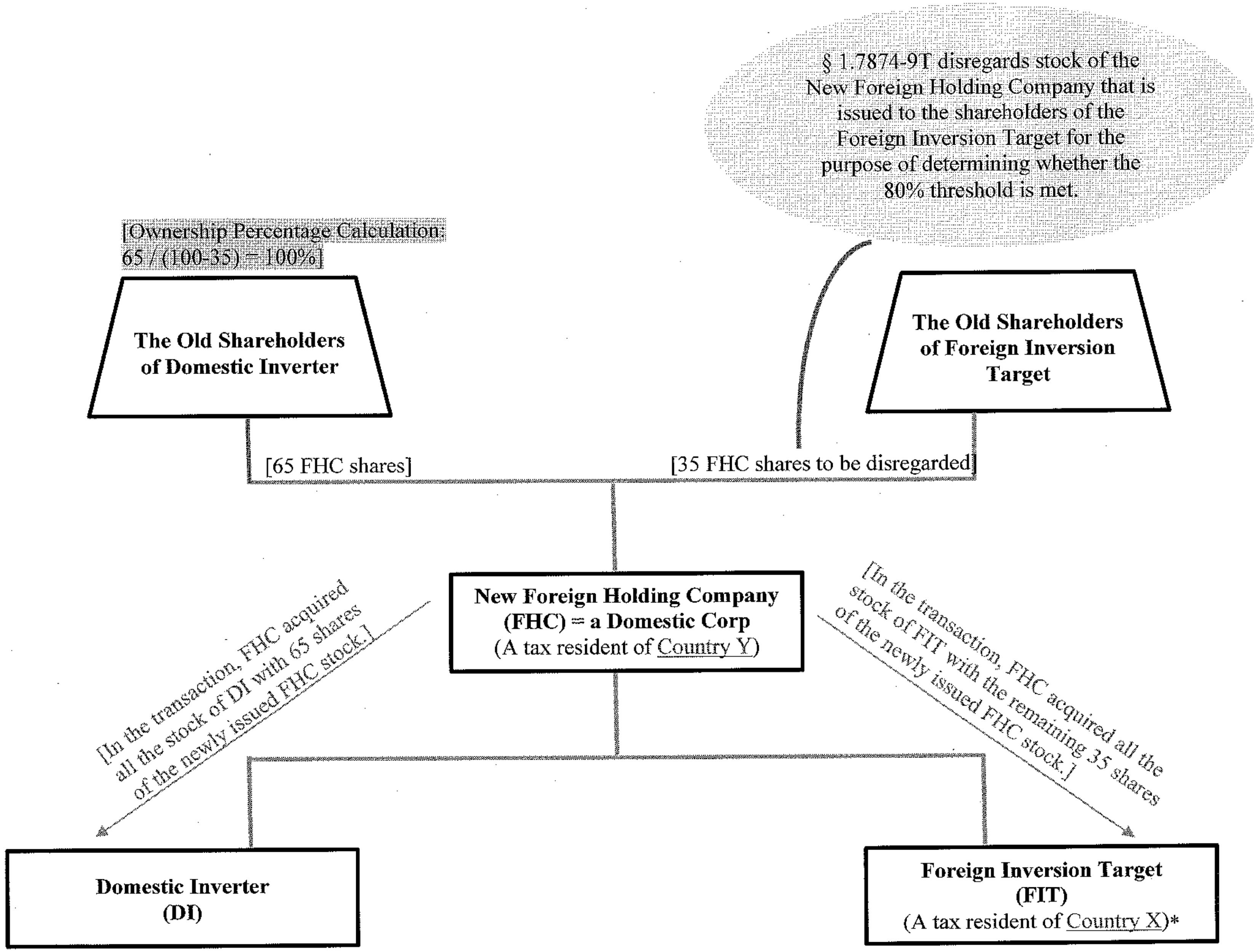


2016 TREASURY INVERSION REGS: IMPACT ON INVERSION STRUCTURE

SLIDE #6 THE ANTI-CASH BOX RULE, REG § 1.7874-7T



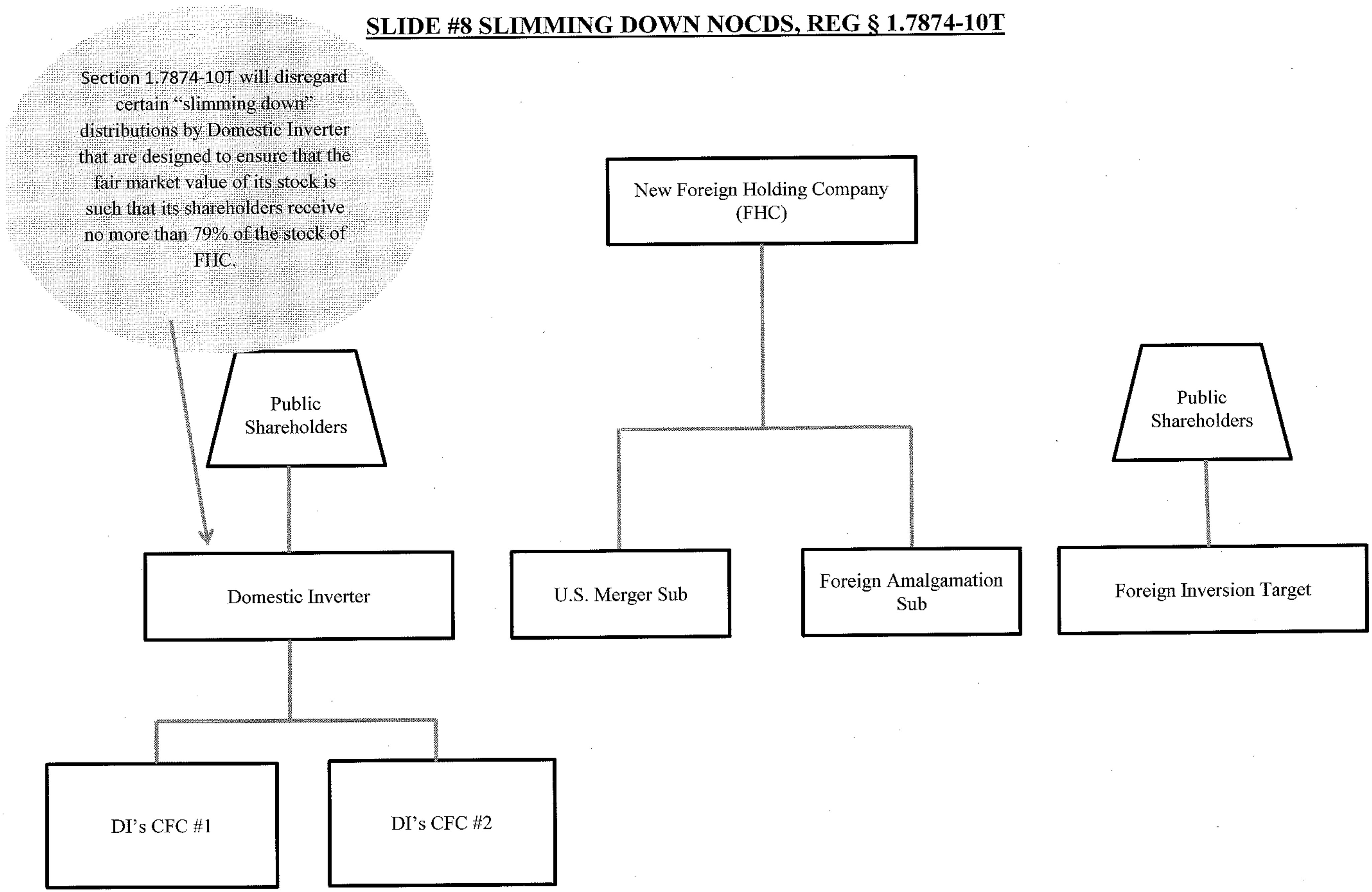
2016 TREASURY INVERSION REGS: IMPACT ON INVERSION STRUCTURE
SLIDE # 7 THIRD-COUNTRY TRANSACTION, REG § 1.7874-9T



* Note: FIT is a resident of a Cty X, and FHC is a resident of Cty Y, a third country. *See* the Example in § 1.7874-9T(f).

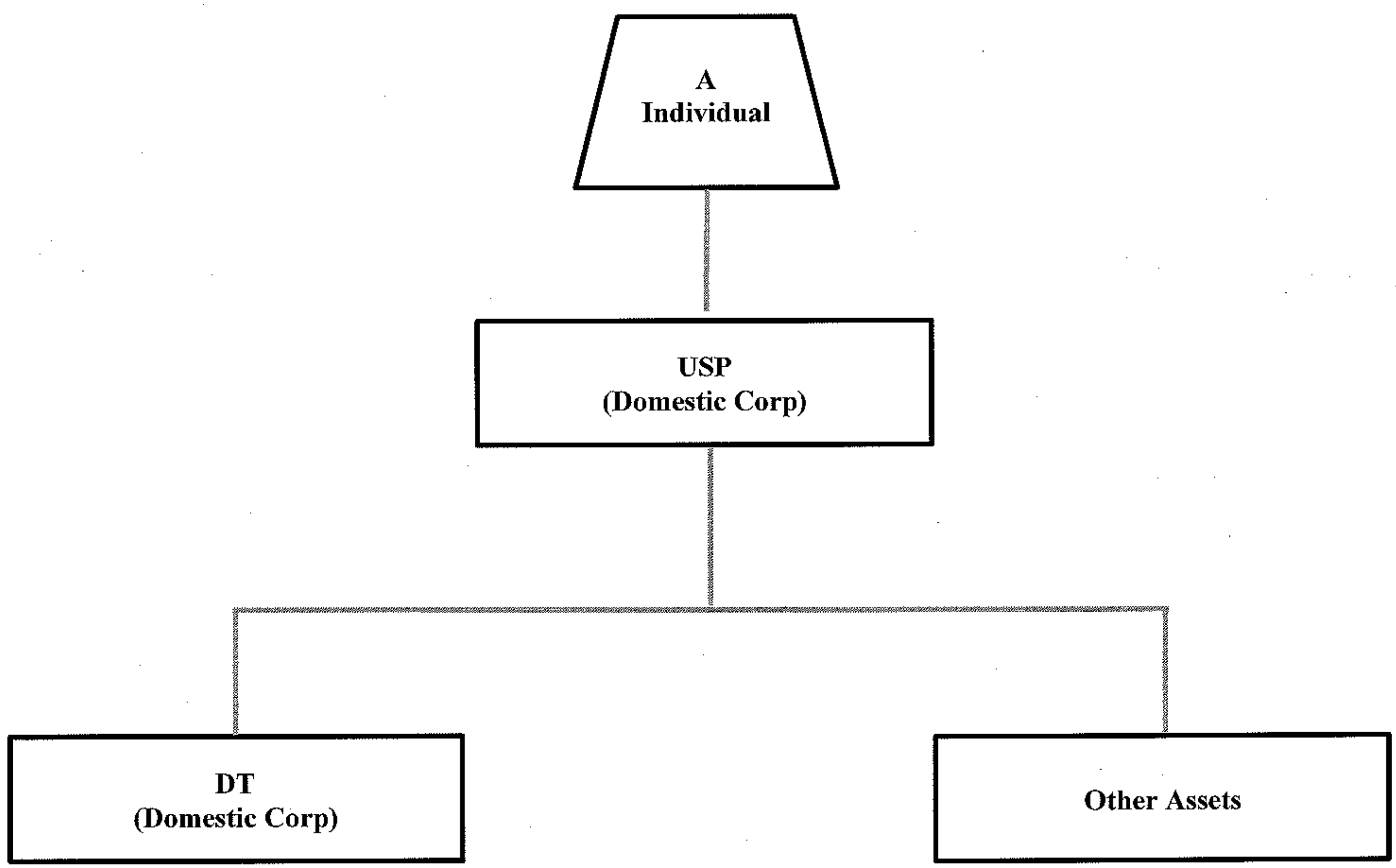
2016 TREASURY INVERSION REGULATIONS: IMPACT ON INVERSION STRUCTURE

SLIDE #8 SLIMMING DOWN NOCDS, REG § 1.7874-10T



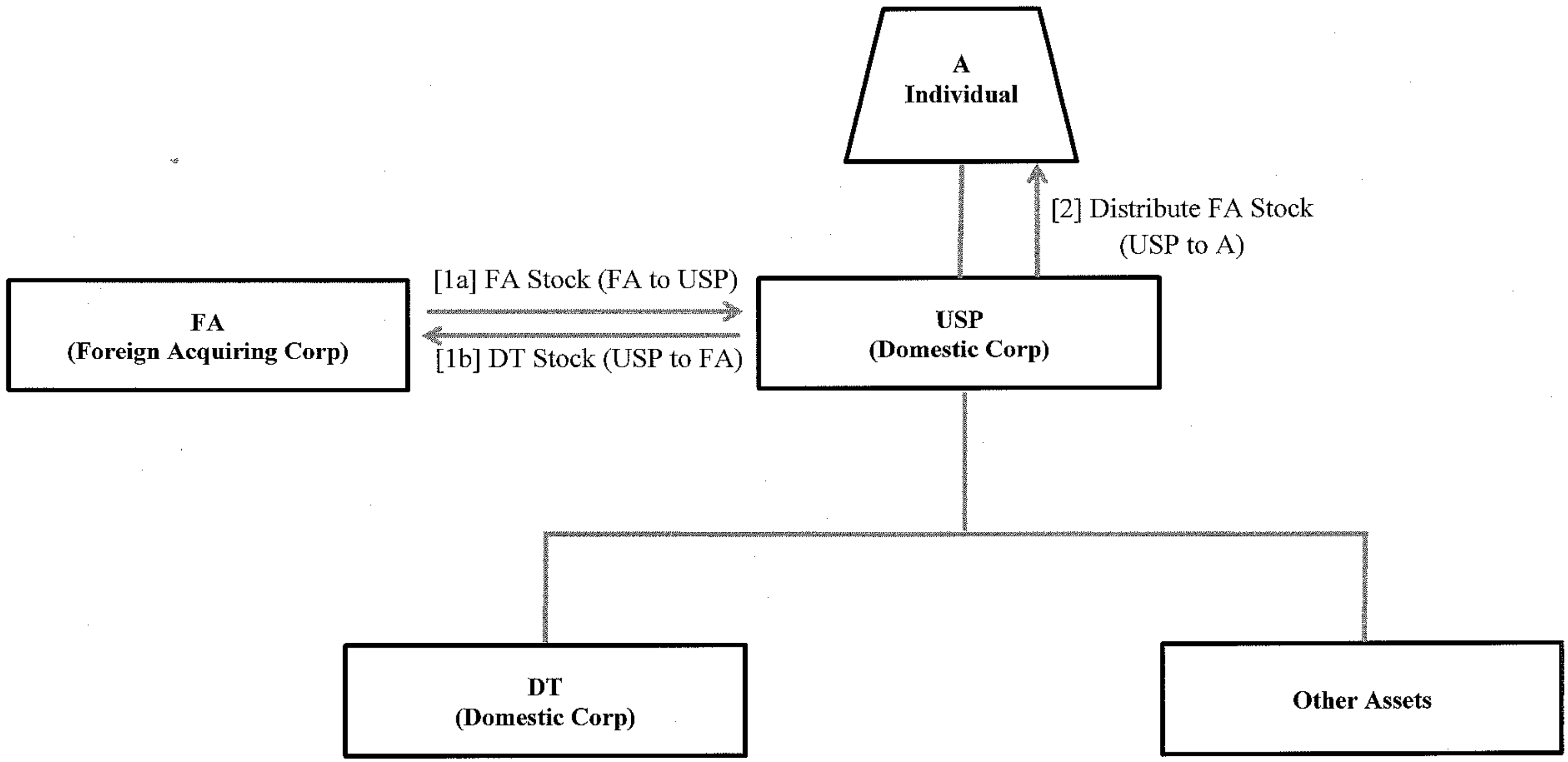
2016 TREASURY INVERSION REGULATIONS: IMPACT ON INVERSION STRUCTURE

SLIDE #9 SPINVERSION, BEFORE, REG § 1.7874-6T(g), EXAMPLE 1



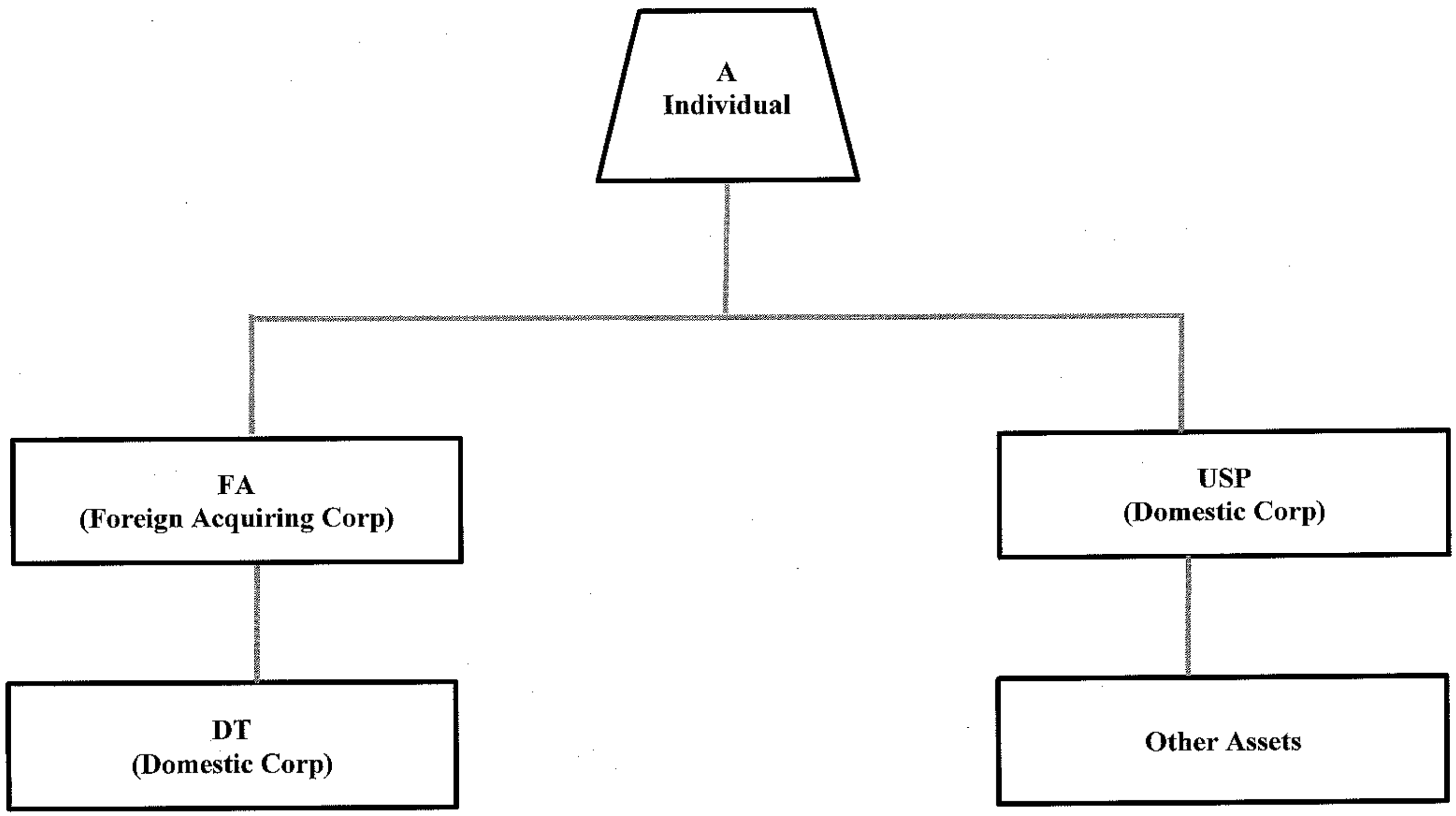
2016 TREASURY INVERSION REGULATIONS: IMPACT ON INVERSION STRUCTURE

SLIDE #10 SPINVERSION, THE SPIN, REG § 1.7874-6T(g), EXP 1, USP SPINS OFF DT TO FA

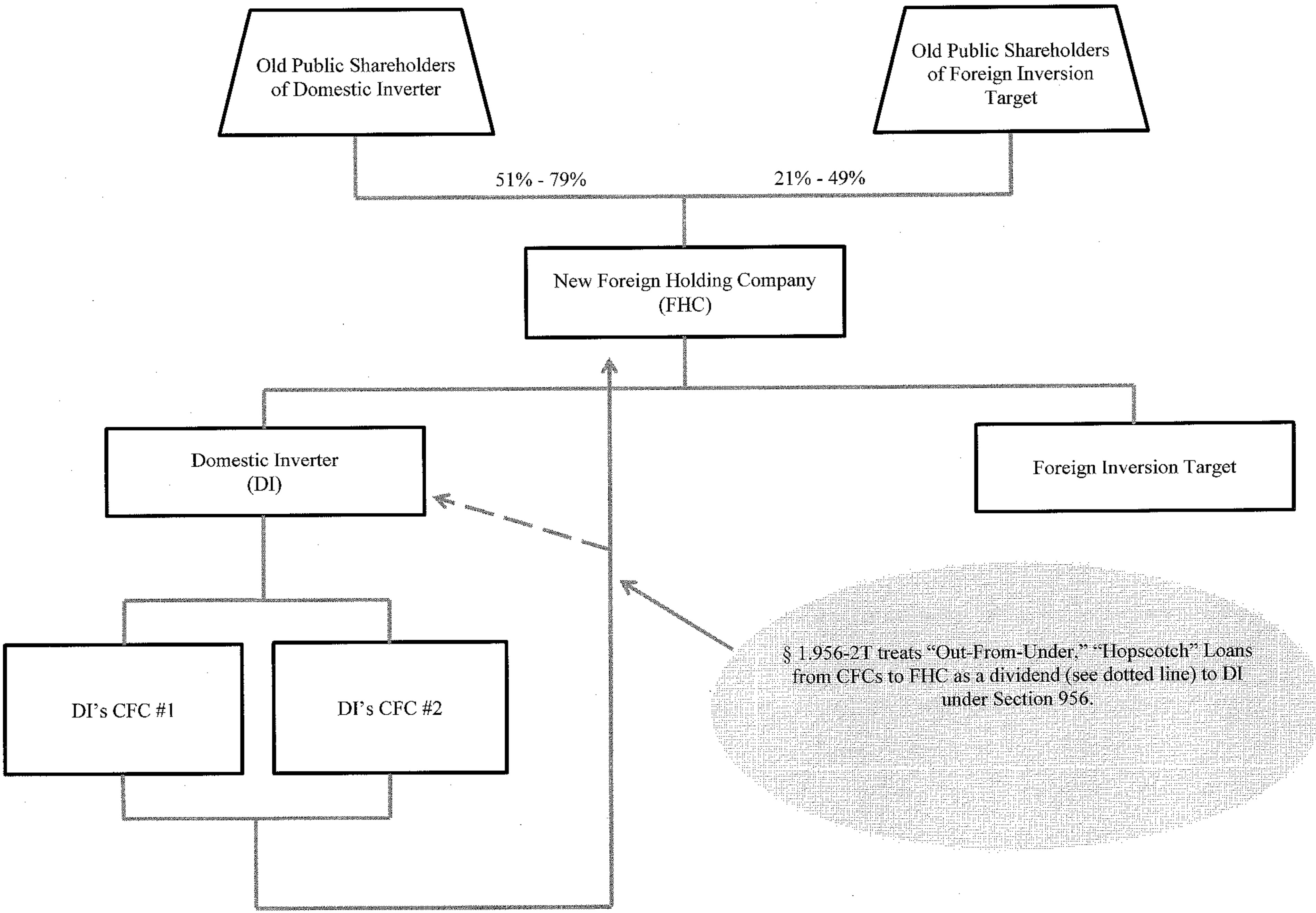


2016 TREASURY INVERSION REGULATIONS: IMPACT ON INVERSION STRUCTURE

SLIDE #11 SPINVERSION, AFTER, REG § 1.7874-6T(g), EXP 1: DT HAS INVERTED AS SUB OF FA

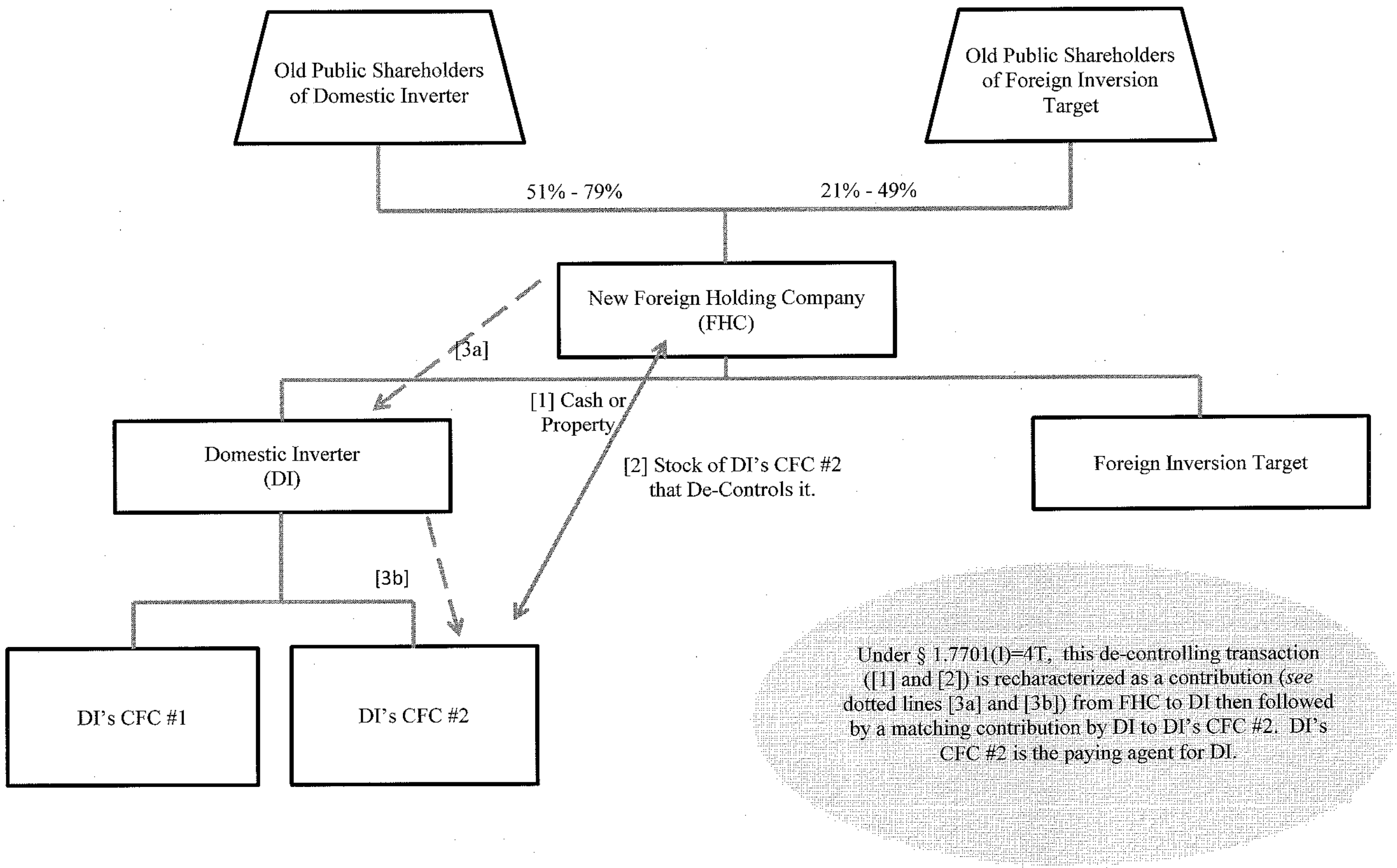


2016 TREASURY INVERSION REGULATIONSE: POST-INVERSION TAX AVOIDANCE
<u>SLIDE #12 ANTI-HOPSCOTCH LOAN RULE, REG § 1.956-2T(a)(4)</u>

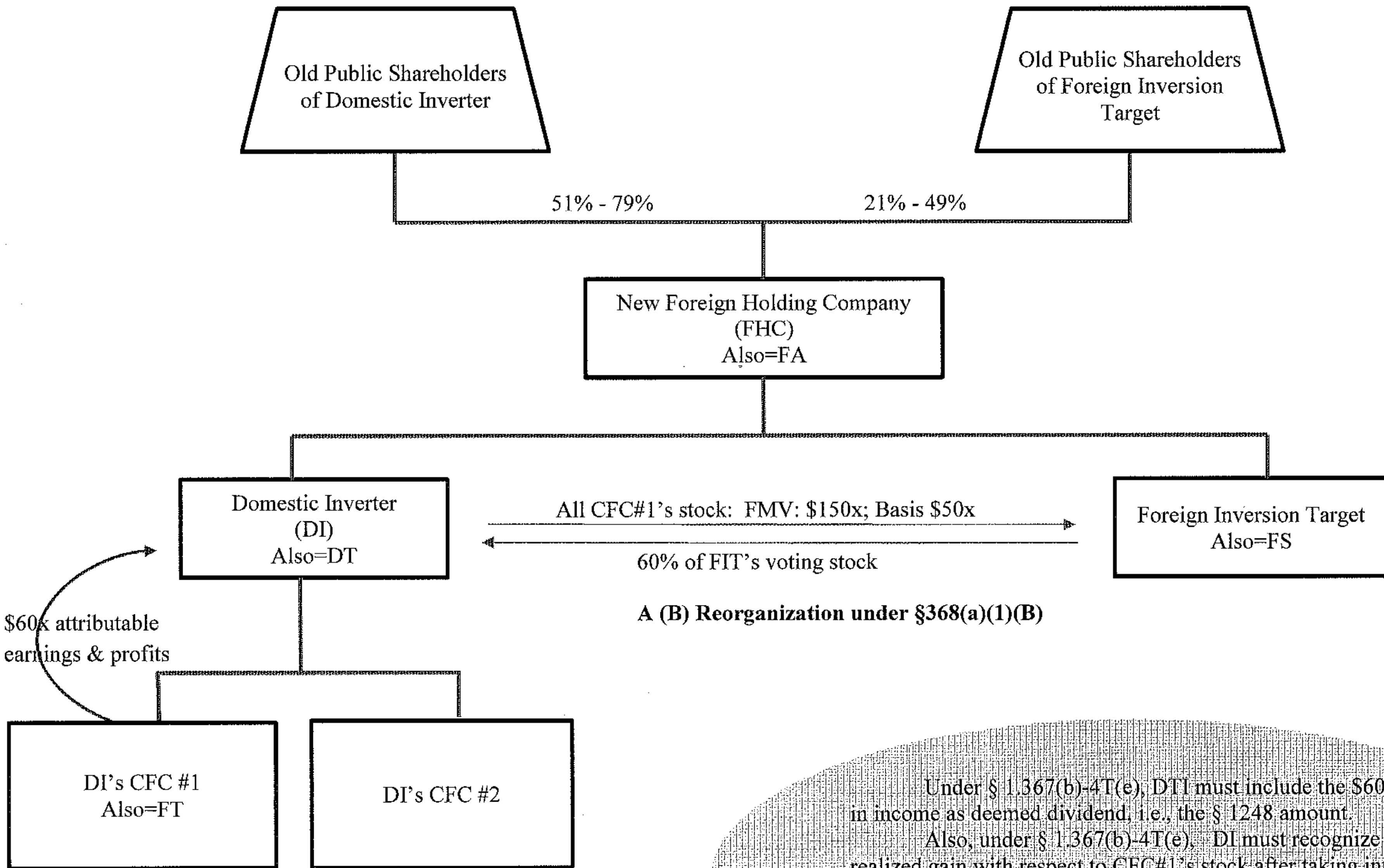


2016 TREASURY INVERSION REGULATIONSE:POST-INVERSION TAX AVOIDANCE

SLIDE #13 ANTI-DECONTROL OF CFC RULE, REG § 1.7701-1(l)



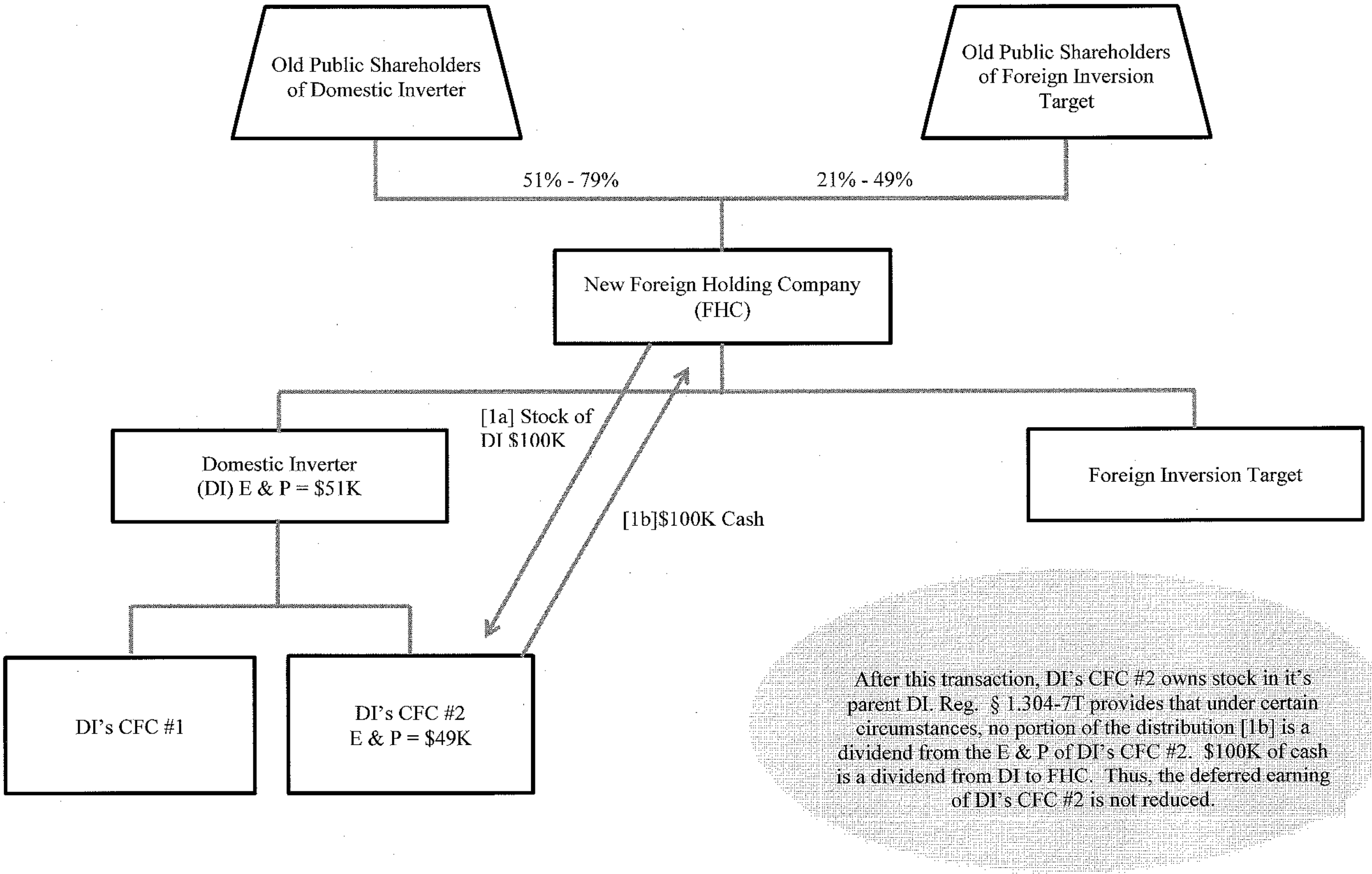
TREASURY INVERSION REGULATION: POST-INVERSION TAX AVOIDANCE
SLIDE # 14 CFC STOCK DILUTION RULE, REG. § 1.367(b)-4T(e)



Under § 1.367(b)-4T(e), DTI must include the $60x in income as deemed dividend, i.e., the § 1248 amount.

Also, under § 1.367(b)-4T(e), DI must recognize all realized gain with respect to CFC#1's stock after taking into account any increase in basis resulting from the deemed dividend. In this example, DI must recognize: $150x – ($50x + $60x) = $ 40x. If CFC#1 had no E&P, DI would recognize $100x of rerealized gain.

TREASURY INVERSION REGULATIONS: POST-INVERSION TAX AVOIDANCE
SLIDE #15 ANTI-SECTION 304 AVOIDANCE RULE, REG. §1 304-7T



TREASURY SECTION 385 REGULATIONS: POST-INVERSION TAX AVOIDANCE
SLIDE #16 POTENTIAL POST INVERSION INTEREST STRIPPING