

PENN STATE LAW

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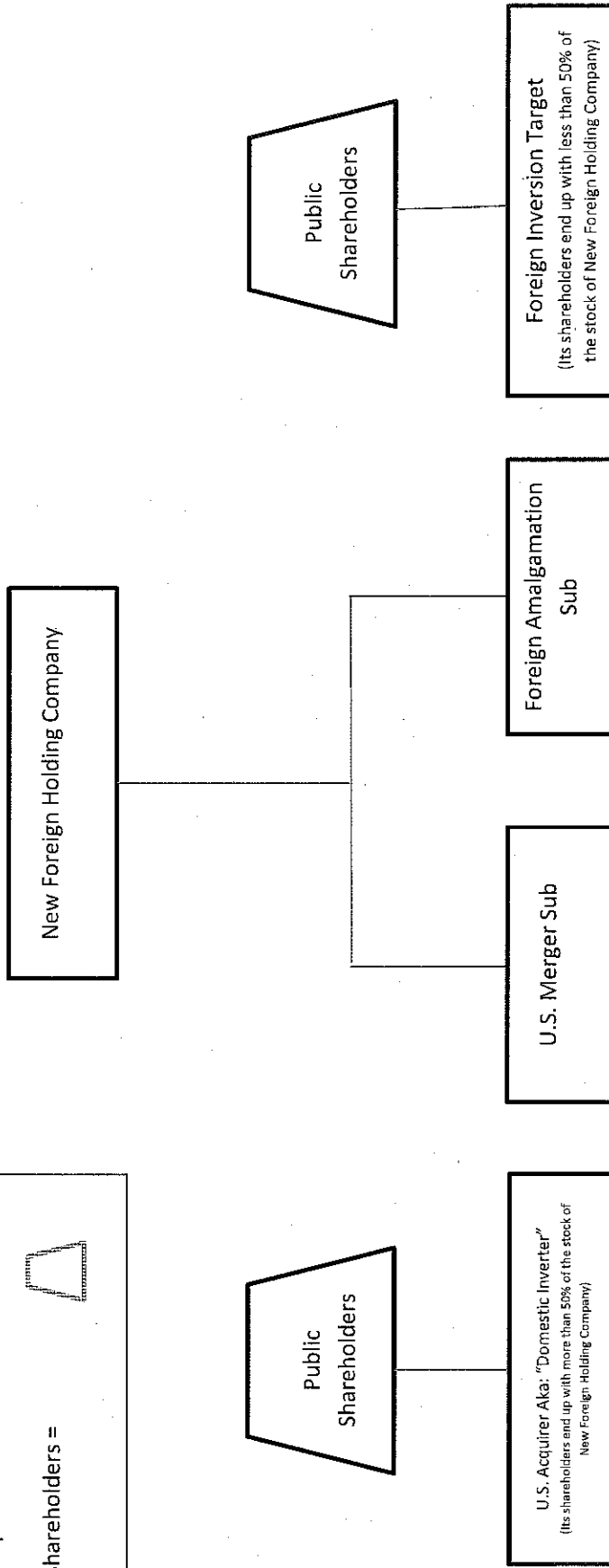
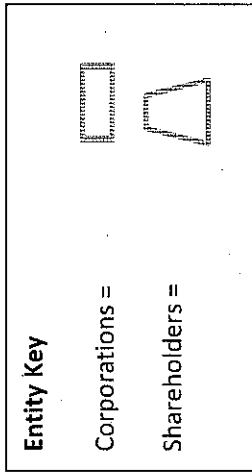
SLIDES ILLUSTRATING (1) A PROTOTYPICAL INVERSION TRANSACTION, AND (2) THE IMPACT OF TREASURY AND IRS NOTICE 2015-79

Professor Samuel C. Thompson, Jr.
Draft December 9, 2015

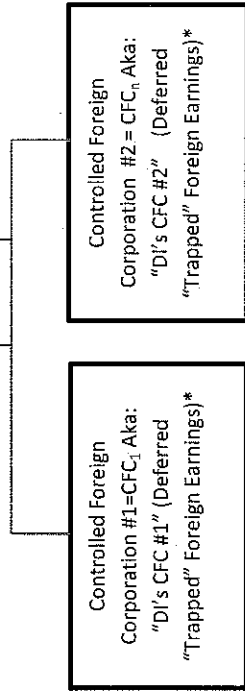
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PROTOTYPICAL INVERSION TRANSACTION

SLIDE #1 PRE-TRANSACTION STRUCTURE



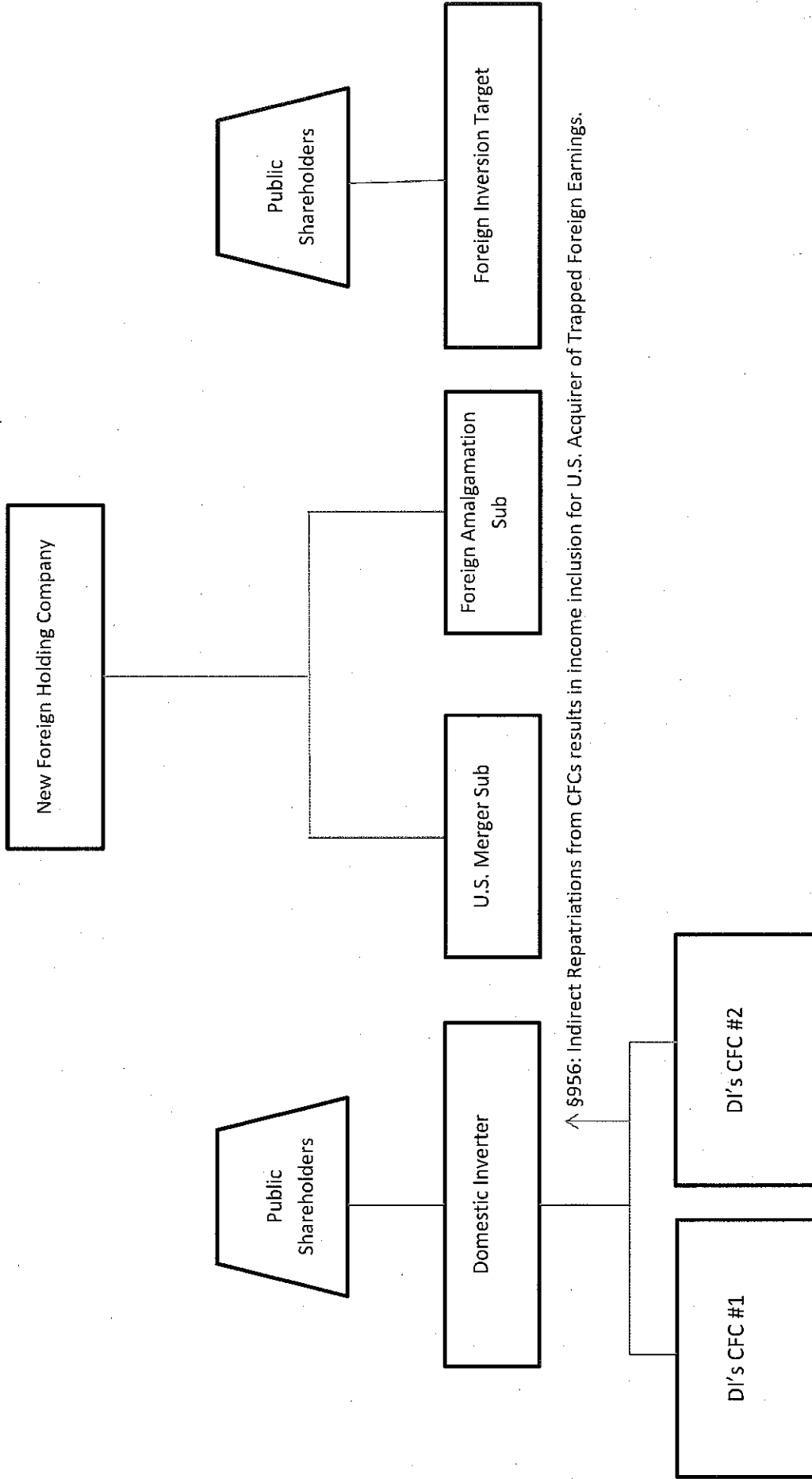
↑ \$956: Indirect Repatriations from CFCs results in income inclusion for U.S. Acquirer of Trapped Foreign Earnings.



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

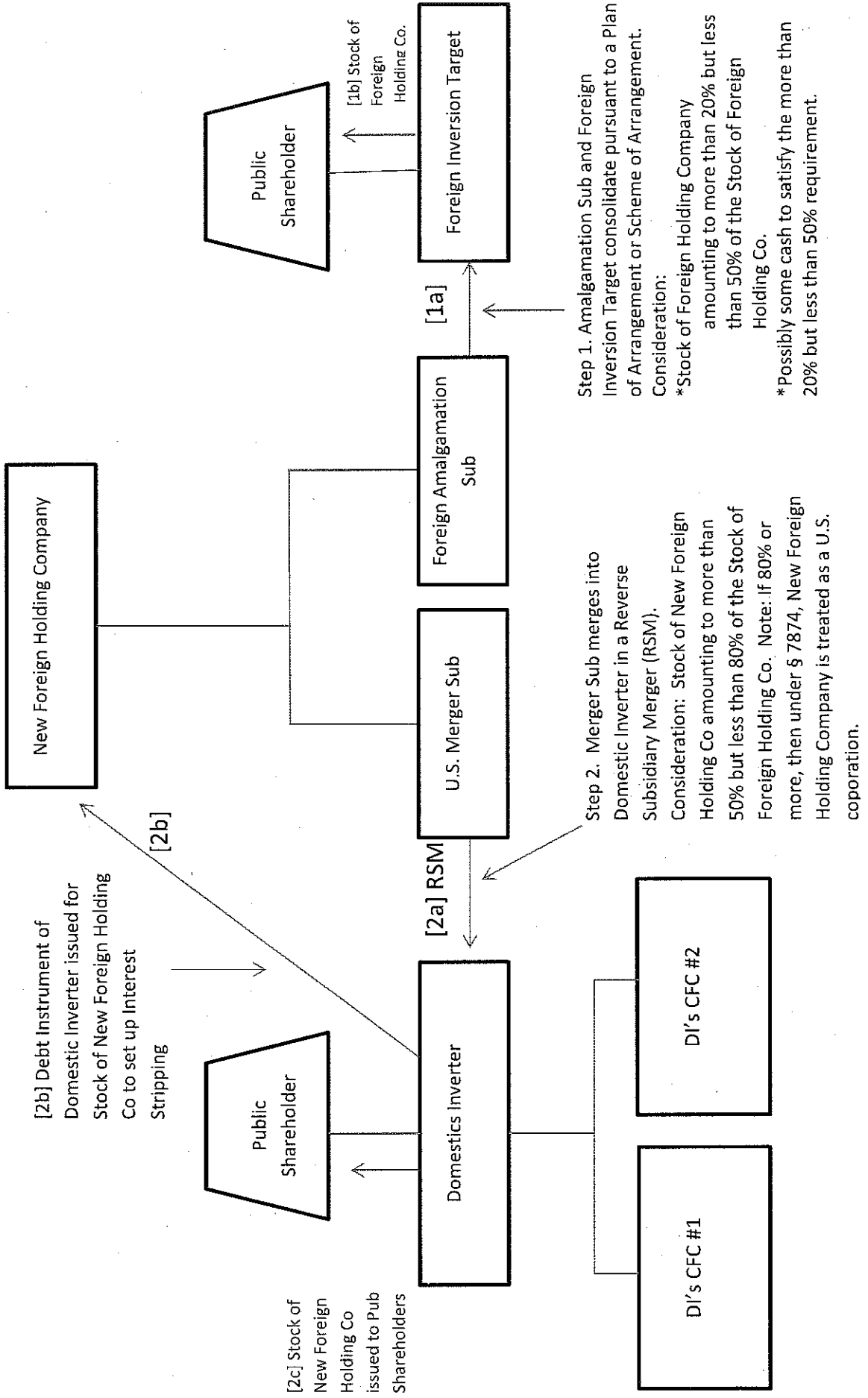
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #2 SUMMARY OF THE PRE-TRANSACTION STRUCTURE



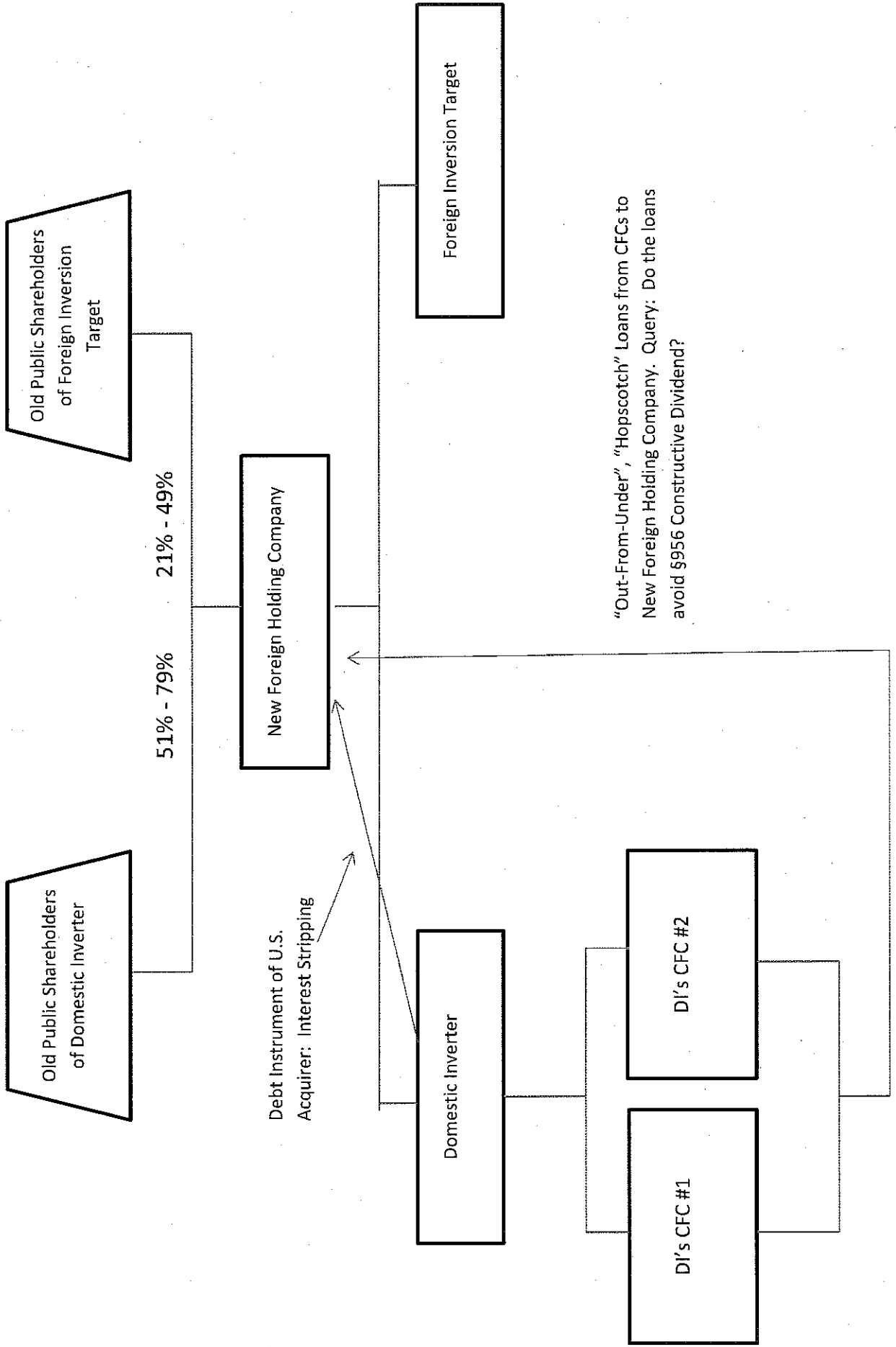
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #3 THE INVERSION TRANSACTION



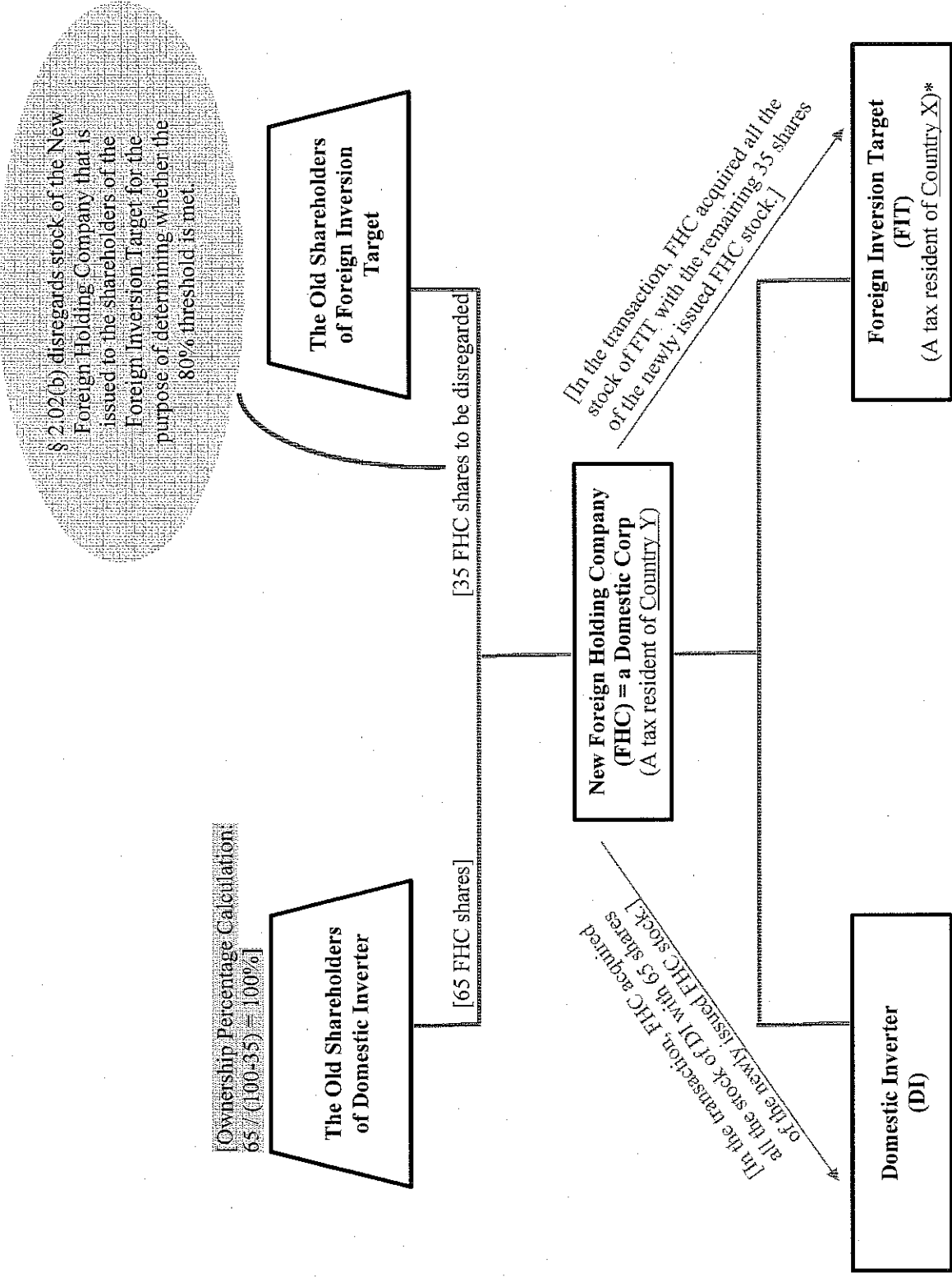
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #4 POST INVERSION STRUCTURE



"Out-From-Under", "Hopscotch" Loans from CFCs to New Foreign Holding Company. Query: Do the loans avoid §956 Constructive Dividend?

**TREASURY NOTICE 2015-79: IMPACT ON INVERSION STRUCTURE
SLIDE # 5 THIRD-COUNTRY TRANSACTION, § 2.02(b), EXAMPLES 1 AND 2**

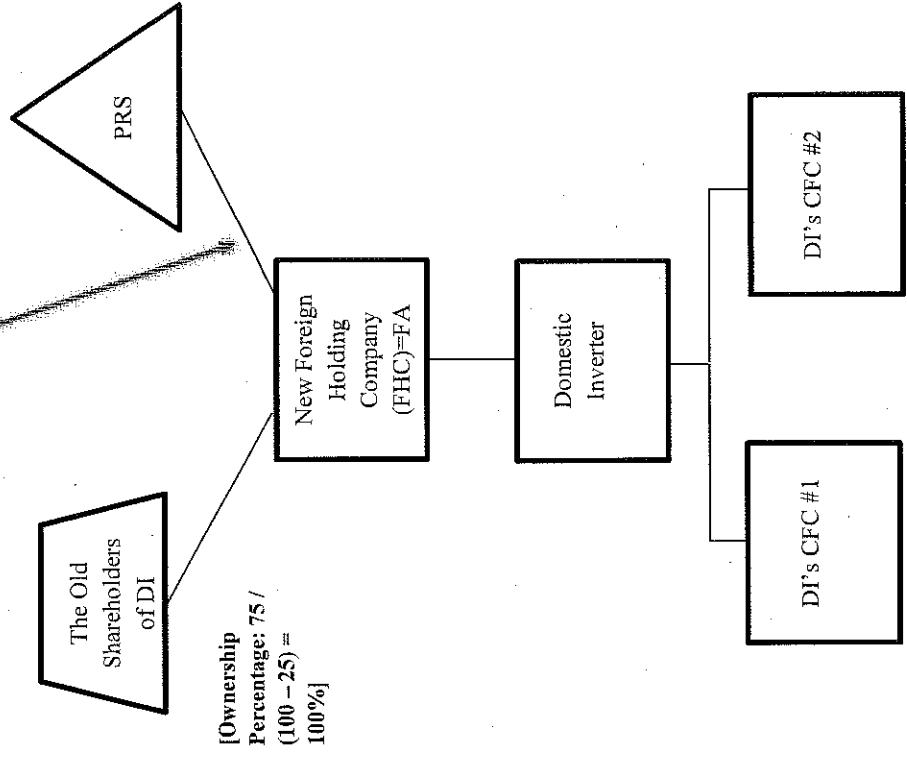
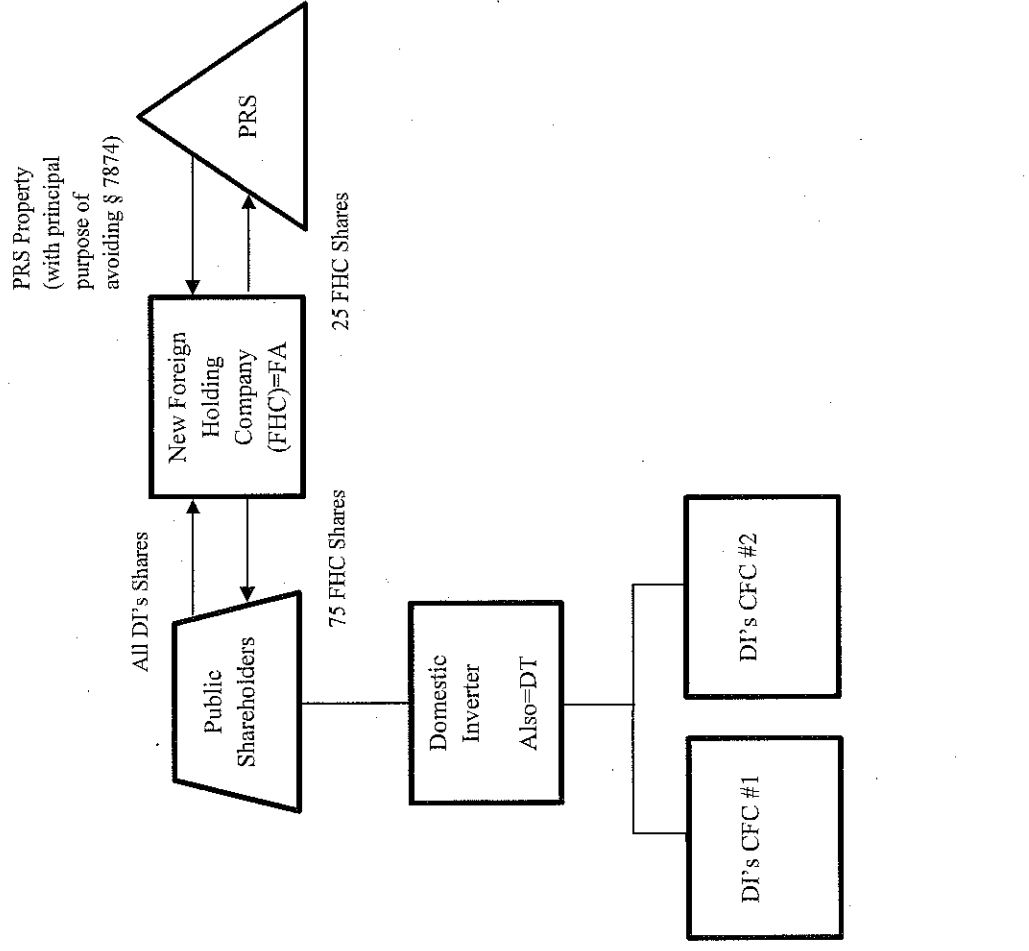


* Note: Even if FIT, before it is acquired by FHC, reincorporates in Cty Y and becomes a tax resident of Cty Y, § 2.02(b) still applies. See Exp 2.

TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE # 6 ANTI-STUFFING RULES STRENGTHENED, §2.03

§ 2.03 of Notice disregards stock of FHC issued for PRS business assets in a transaction related to the DI acquisition with the "principal purpose of avoiding the purposes of section 7874." PRS's shares in FHC are disregarded.

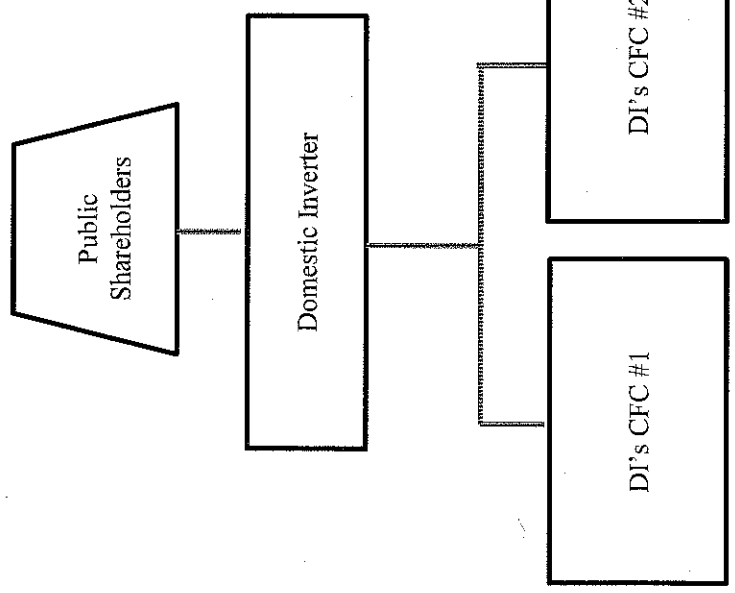
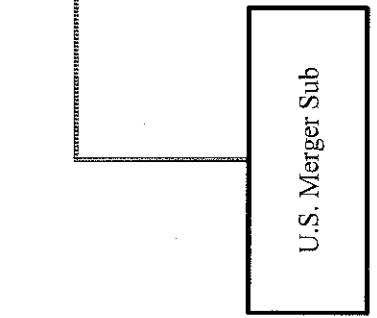
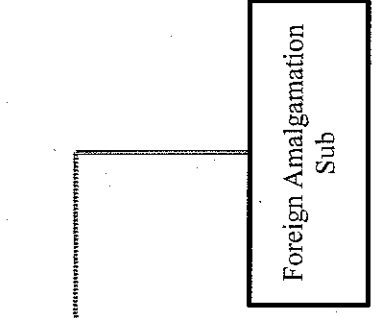
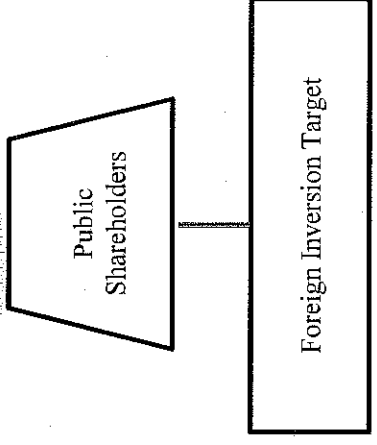


TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

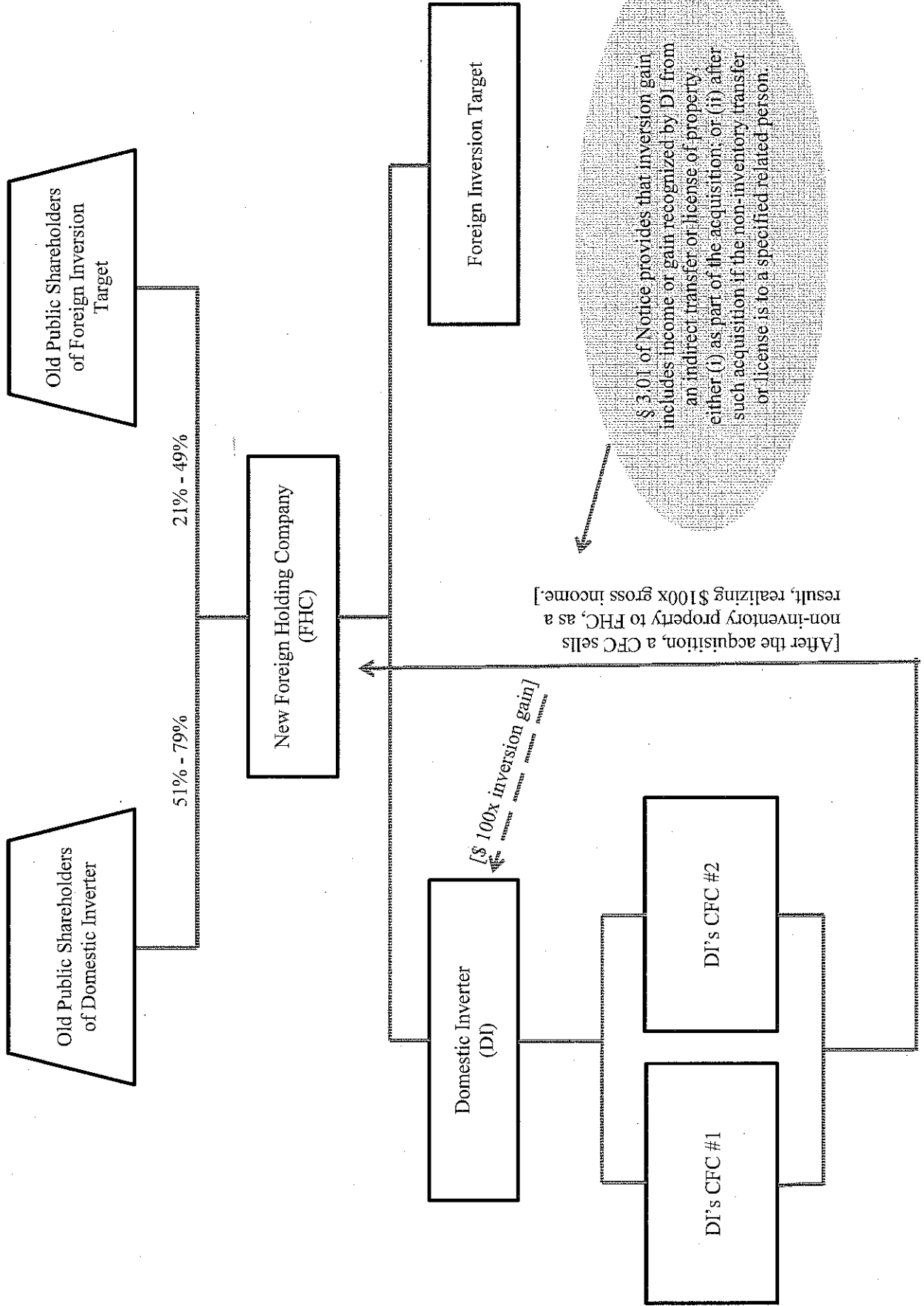
SLIDE # 7 THE "TAX RESIDENT" RULE, § 2.02(a)

§ 2.02(a) of Notice requires that for an Expanded Affiliate Group (EAG) to have substantial business activities in the relevant foreign country when compared to the EAG's total business activities, the foreign acquiring corporation must be subject to tax as a resident of the relevant foreign country.

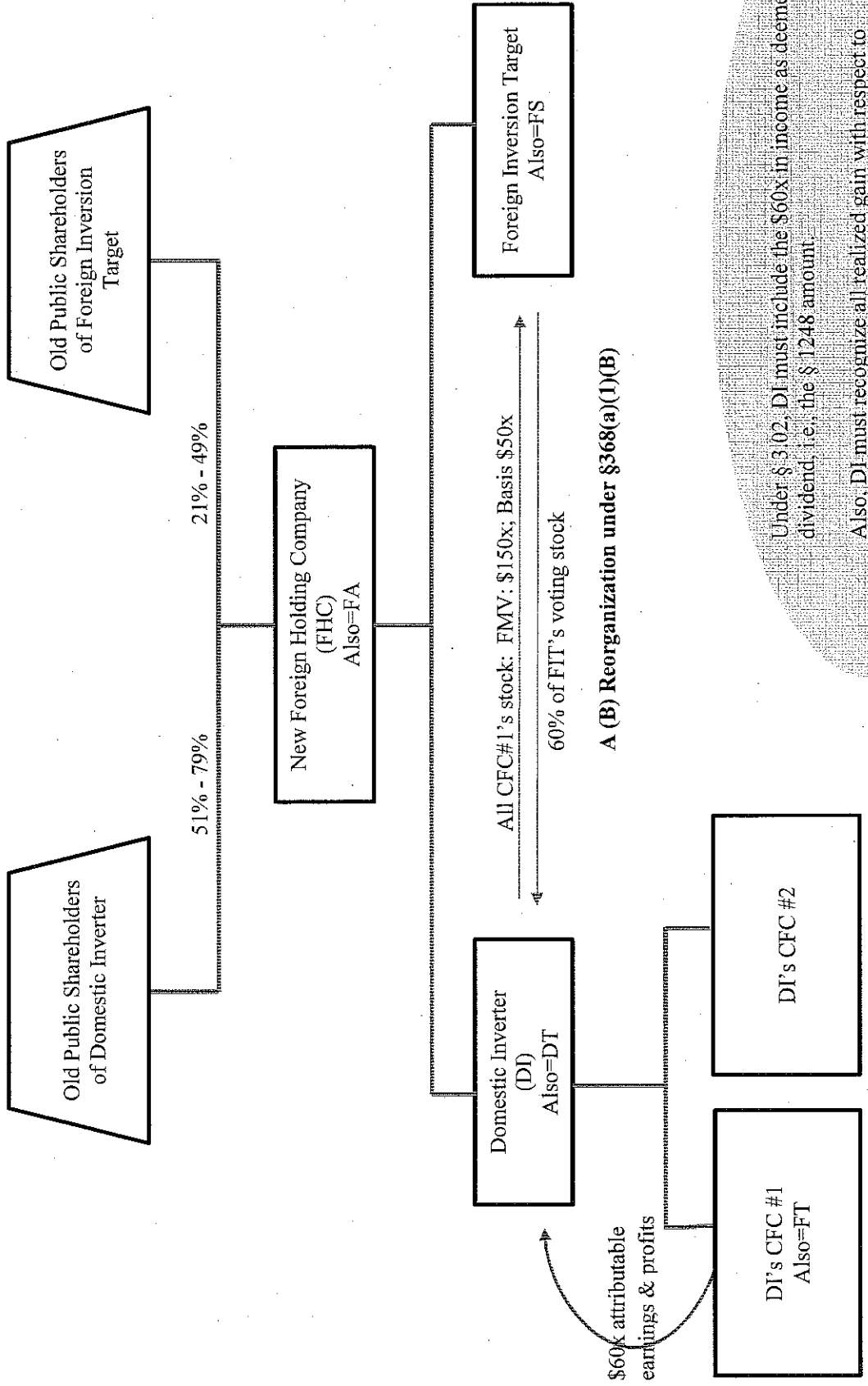
New Foreign Holding Company (FHC)



TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE # 8 DEFINING INVERSION GAIN, § 3.01



TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE # 9 EXCHANGES OF STOCK OF EXPATRIATED FOREIGN SUBSIDIARY, § 3.02



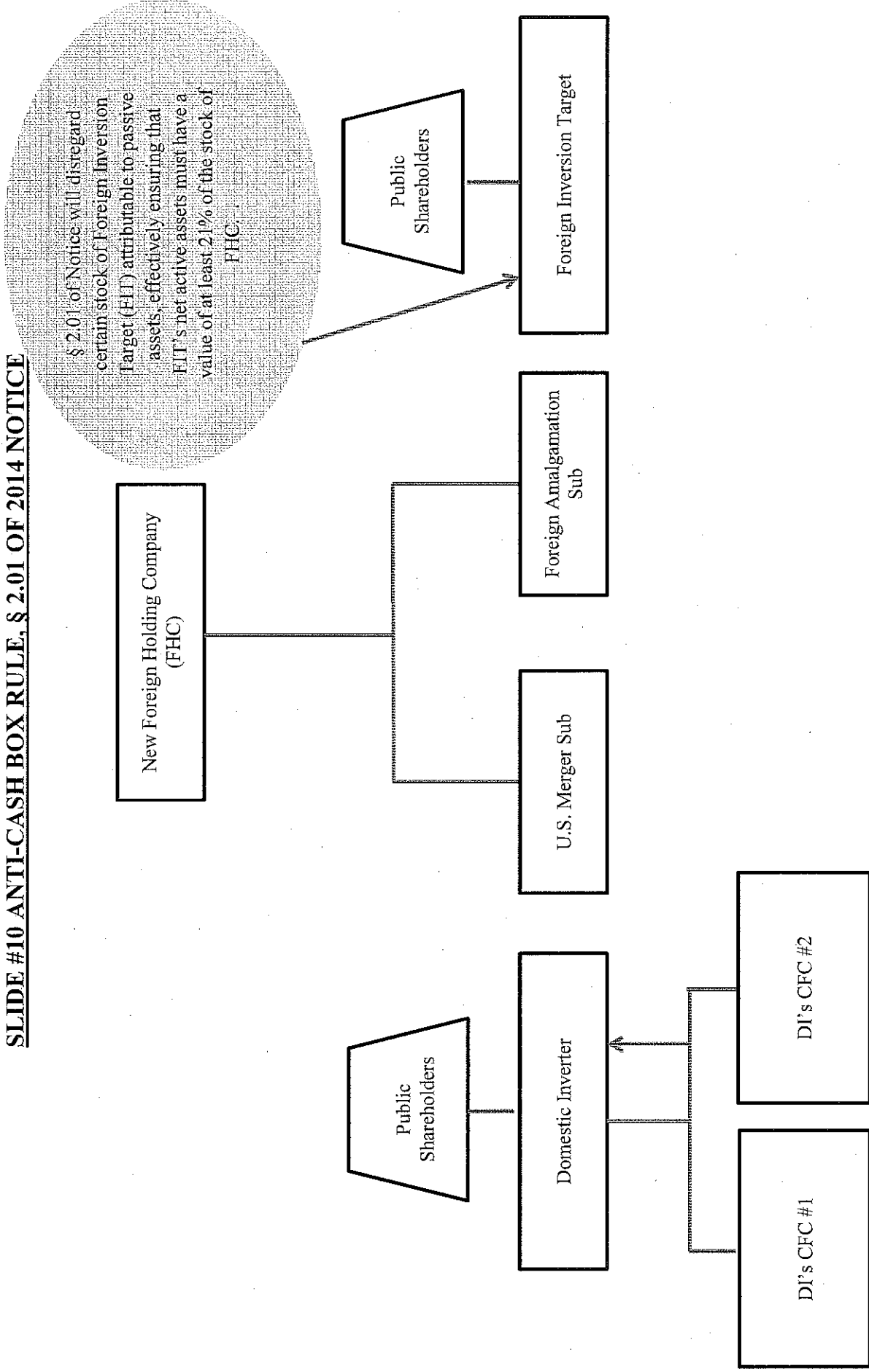
A (B) Reorganization under §368(a)(1)(B)

Under § 3.02, DI must include the \$60x in income as deemed dividend, i.e., the \$ 1248 amount.

Also, 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 realized gain.

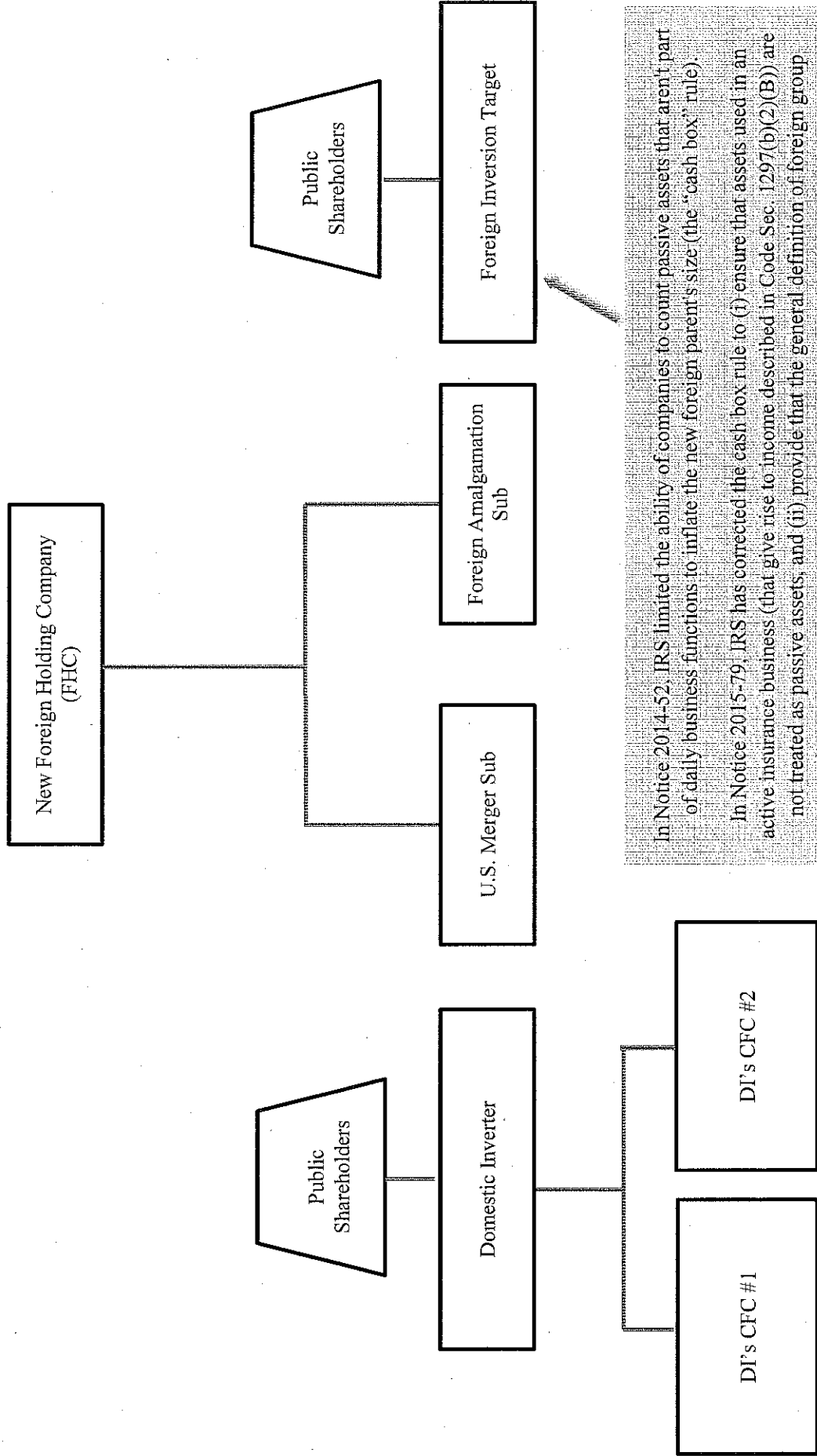
TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE #10 ANTI-CASH BOX RULE, § 2.01 OF 2014 NOTICE



TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE #11 PASSIVE ASSETS CLARIFICATION, § 4.01



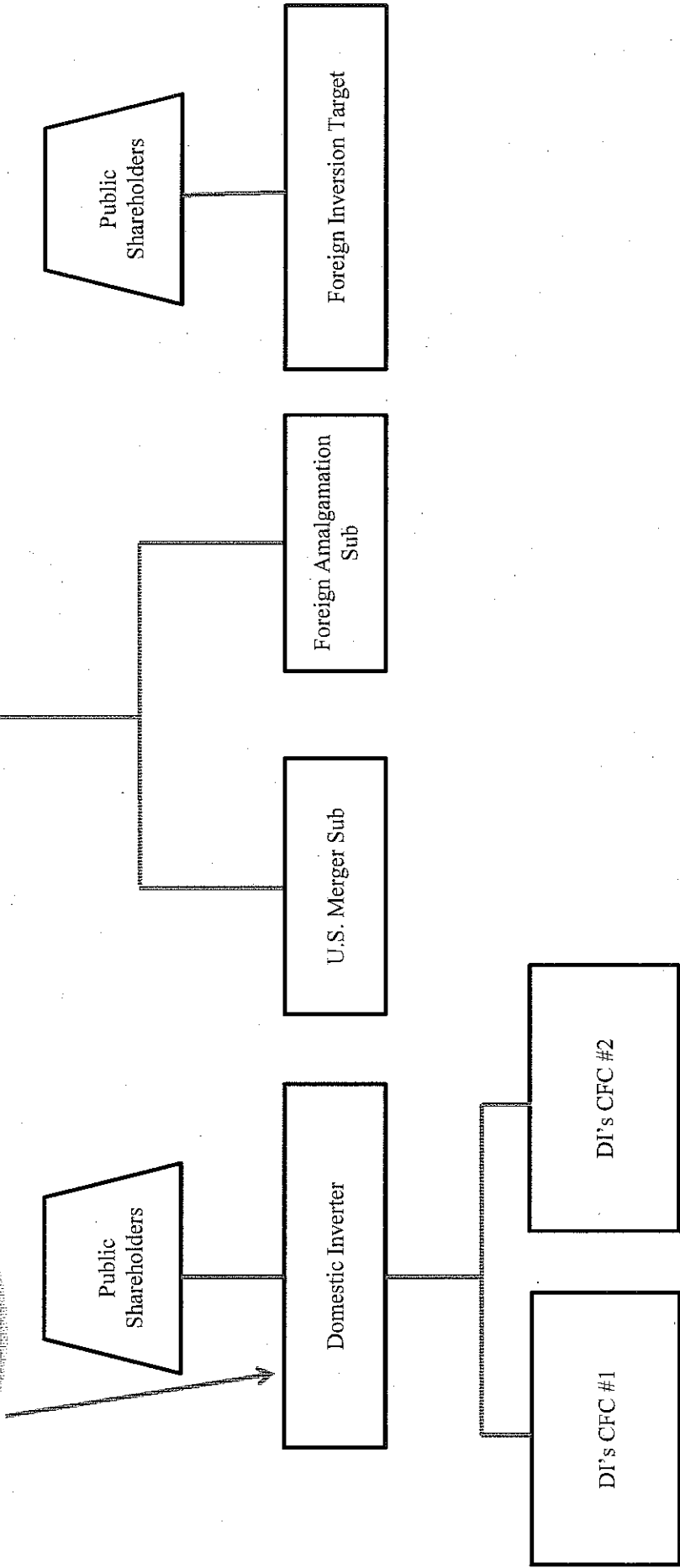
In Notice 2014-52, IRS limited the ability of companies to count passive assets that aren't part of daily business functions to inflate the new foreign parent's size (the "cash box" rule).

In Notice 2015-79, IRS has corrected the cash box rule to (i) ensure that assets used in an active insurance business (that give rise to income described in Code Sec. 1297(b)(2)(B)) are not treated as passive assets, and (ii) provide that the general definition of foreign group nonqualified property generally does not include property held by a domestic corporation taxed as an insurance company.

TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE #12 SLIMMING DOWN. § 2.02, 2014 NOTICE

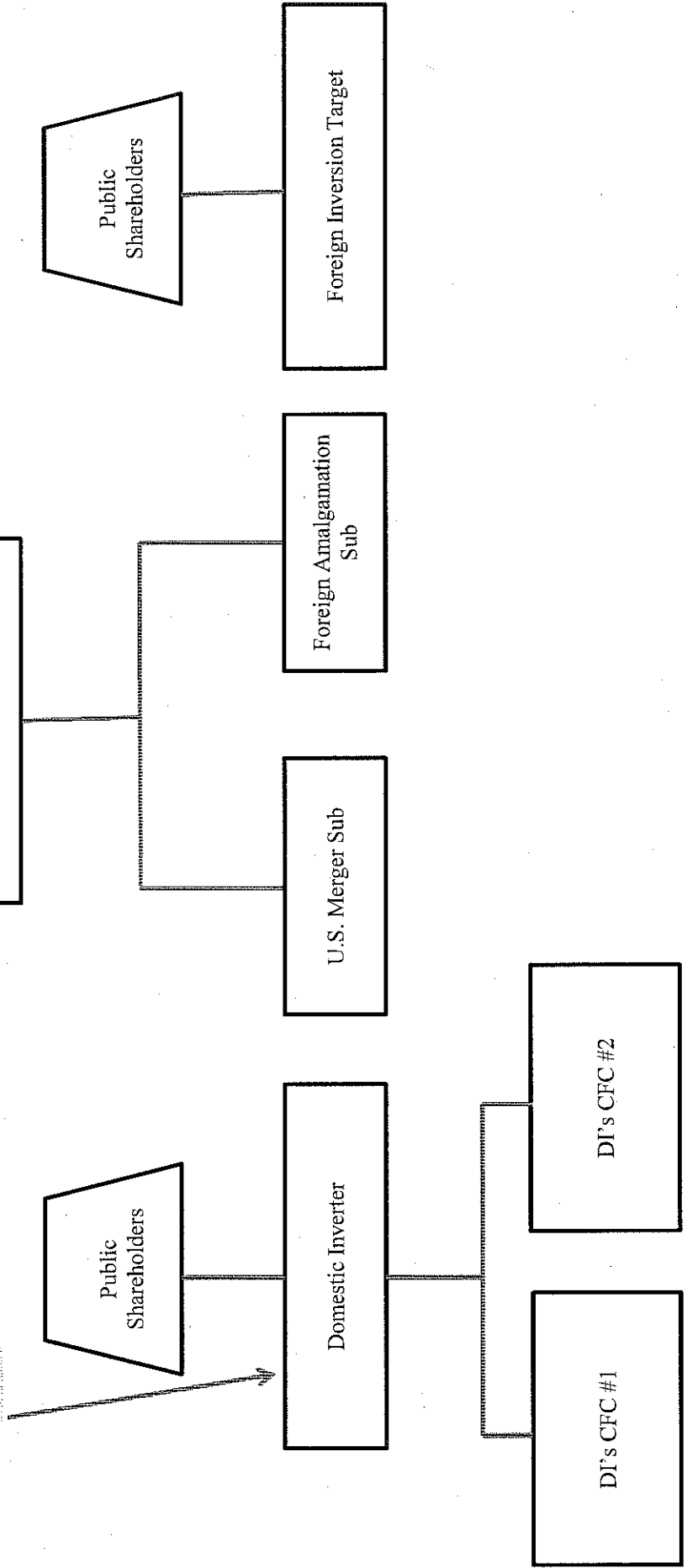
§ 2.02 of Notice, will disregard certain "slimming down" distributions by Domestic Inverter that are designed to ensure that the fair market value of its stock is such that its shareholders receive no more than 79% of the stock of FHC.



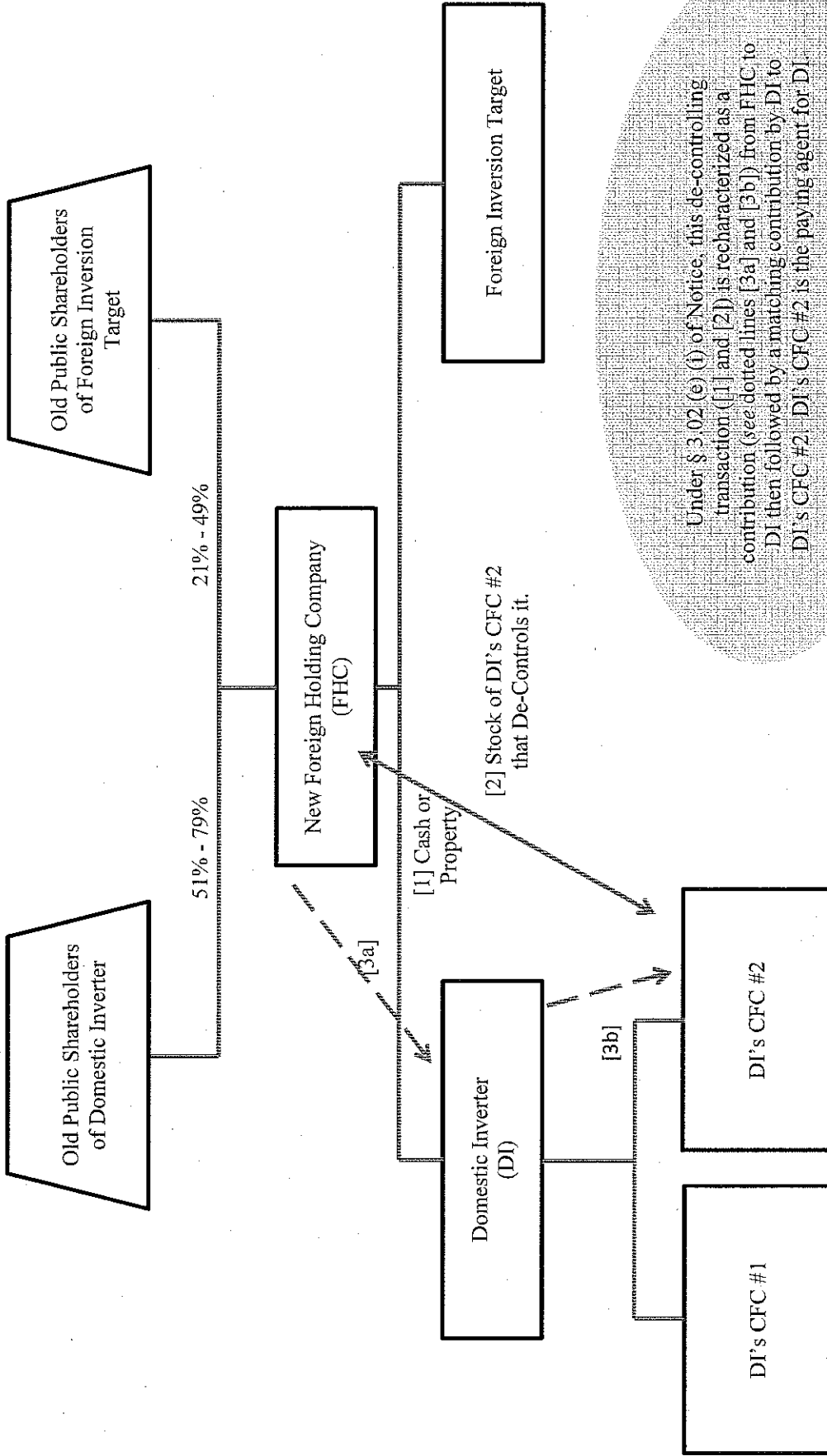
**TREASURY NOTICE: CLARIFYING CHANGES TO NOTICE 2014-52
 SLIDE # 13 DE MINIMIS EXCEPTION, § 4.02**

§ 2.02 of Notice 2014-52 will disregard certain "slimming down" distributions by DI that are designed to ensure that the fair market value of its stock is such that its shareholders receive no more than 79% of the stock of FHC.

2015 Notice Clarifies the De Minimis Exception to § 2.02 of Notice 2014-52 by adding the following two conditions:
 (1) Ownership percentage less than 5%; and
 (2) After the transaction, old shareholders of DI own less than 5% of the stock of any member of EAG.

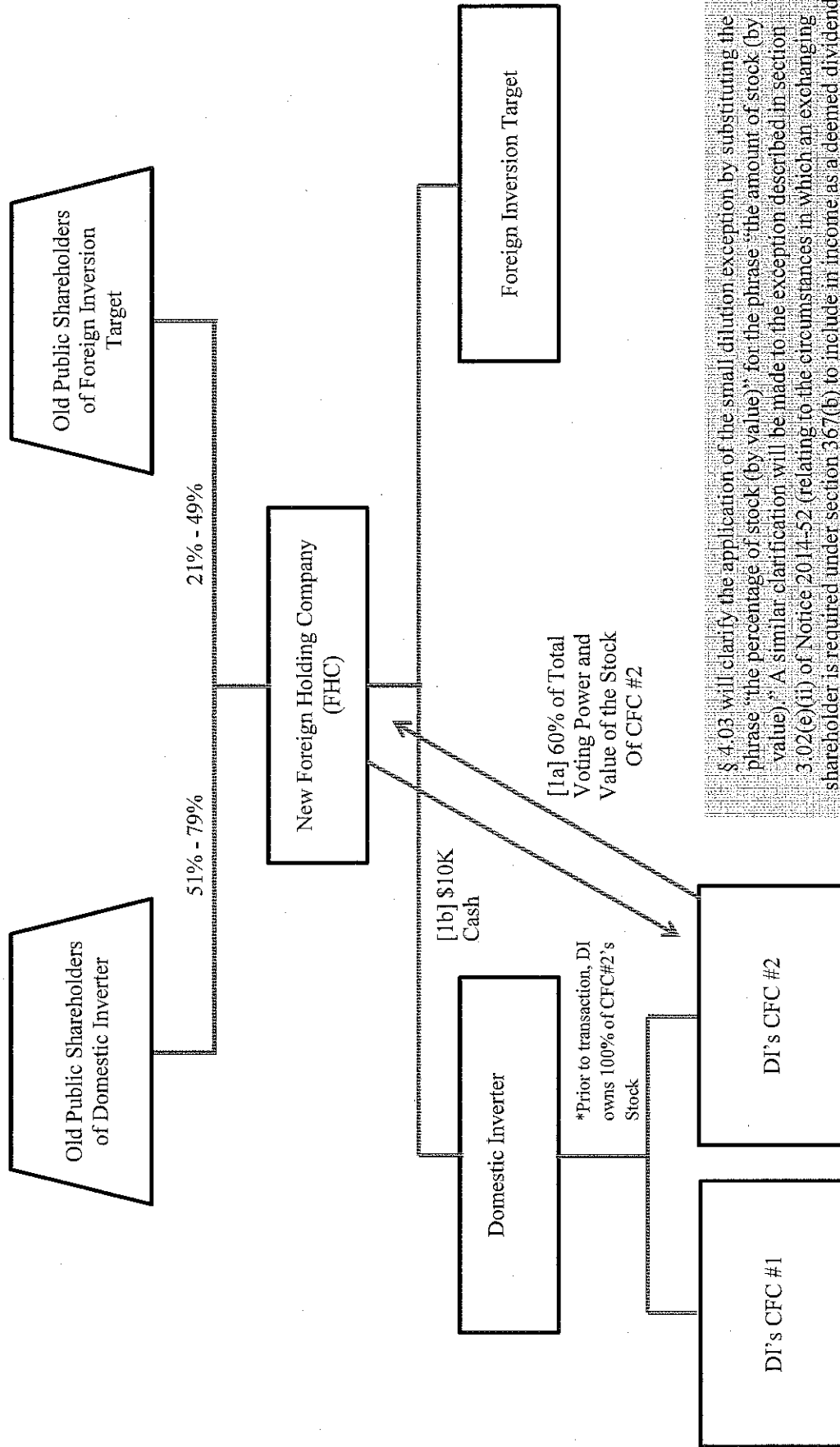


**TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE #14 ANTI-DECONTROL OF CFC RULE, § 3.02 (e) (I) OF 2014 INVERSION NOTICE**



Under § 3.02 (e) (I) of Notice, this de-controlling transaction ([1] and [2]) is recharacterized as a contribution (see dotted lines [3a] and [3b]) from FHC to DI then followed by a matching contribution by DI to DI's CFC #2. DI's CFC #2 is the paying agent for DI.

**TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE # 15, SMALL DILUTION EXCEPTION CLARIFICATION RULE, § 4.03**



§ 4.03 will clarify the application of the small dilution exception by substituting the phrase "the percentage of stock (by value)" for the phrase "the amount of stock (by value)". A similar clarification will be made to the exception described in section 3.02(e)(ii) of Notice 2014-52 (relating to the circumstances in which an exchanging shareholder is required under section 367(b) to include in income as a deemed dividend the section 1248 amount with respect to stock exchanged in a specified exchange).

The small dilution exception is not applicable because the amount of CFC #2's stock (by value) that is owned (within the meaning of section 958(a)), in the aggregate, by DI before the specified transaction, decreases by more than 10 percent (in fact, by 60 percent, from 100 percent to 40 percent) as a result of the specified transaction.