PENN STATE LAW

CENTER FOR THE STUDY OF MERGERS AND ACQUISITIONS

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

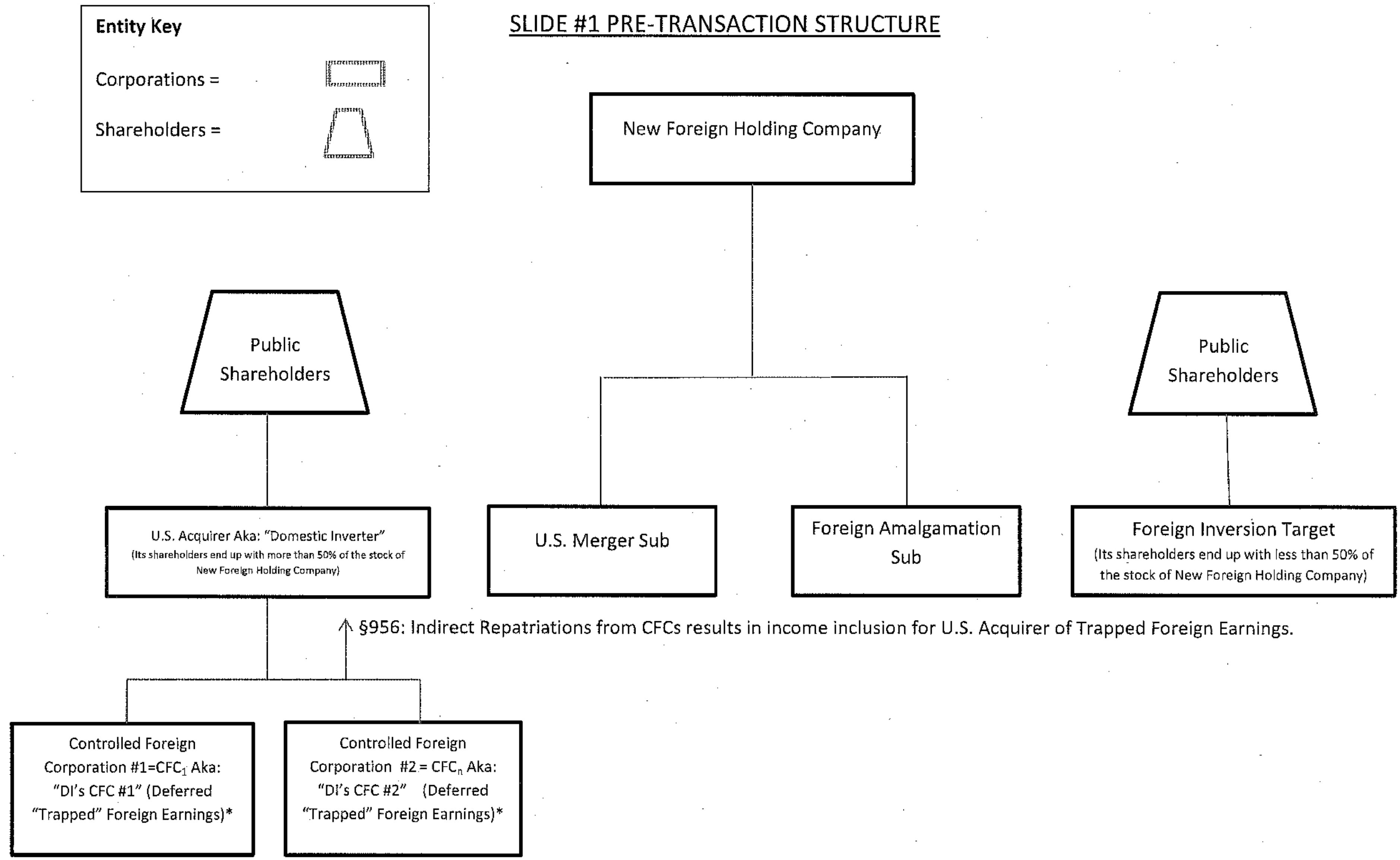
Professor Samuel C. Thompson, Jr.

Draft December 9, 2015

- SLIDE #1 PRE-TRANSACTION STRUCTURE
- SLIDE #2 SUMMARY OF THE PRE-TRANSACTION STRUCTURE
- SLIDE #3 THE TRANSACTION
- SLIDE #4 POST TRANSACTION STRUCTURE
- SLIDE # 5 THIRD-COUNTRY TRANSACTION, § 2.02(b), EXAMPLES 1 AND 2
- SLIDE # 6 ANTI-STUFFING RULES STRENGTHENED, §2.03
- SLIDE # 7 THE "TAX RESIDENT" RULE, § 2.02(a)
- SLIDE # 8 DEFINING INVERSION GAIN, § 3.01
- SLIDE # 9 EXCHANGES OF STOCK OF EXPATRIATED FOREIGN SUBSIDIARY, § 3.02
- SLIDE #10 ANTI-CASH BOX RULE, § 2.01 OF 2014 NOTICE
- SLIDE #11 PASSIVE ASSETS CLARIFICATION, § 4.01
- SLIDE #12 SLIMMING DOWN. § 2.02 2014 NOTICE
- SLIDE # 13 DE MINIMIS EXCEPTION, § 4.02
- SLIDE #14 ANTI-DECONTROL OF CFC RULE, § 3.02 (e) (i) OF 2014 INVERSION NOTICE
- SLIDE # 15, SMALL DILUTION EXCEPTION CLARIFICATION RULE, § 4.03

PROTOTYPICAL INVERSION TRANSACTION

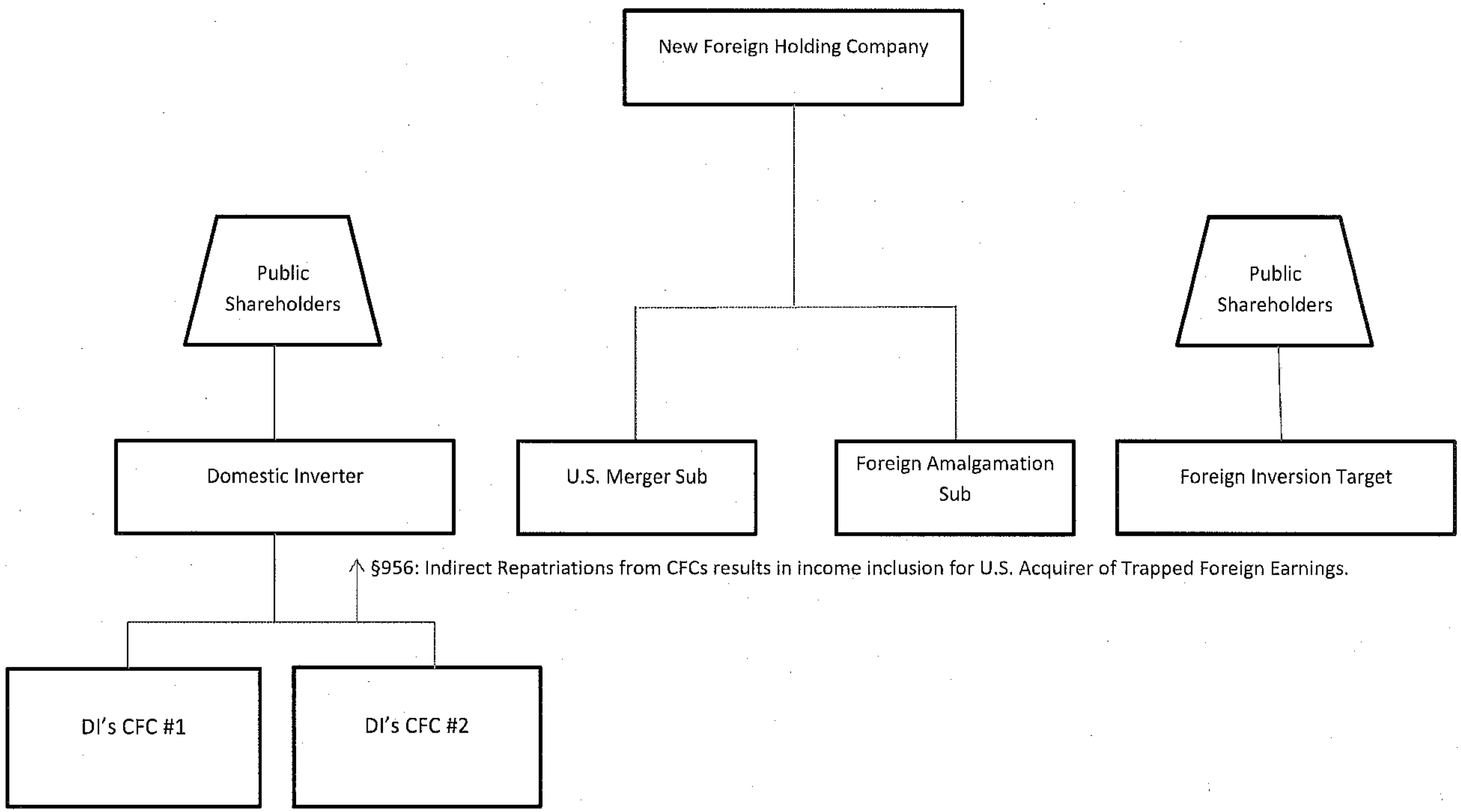
SLIDE #1 PRE-TRANSACTION STRUCTURE



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

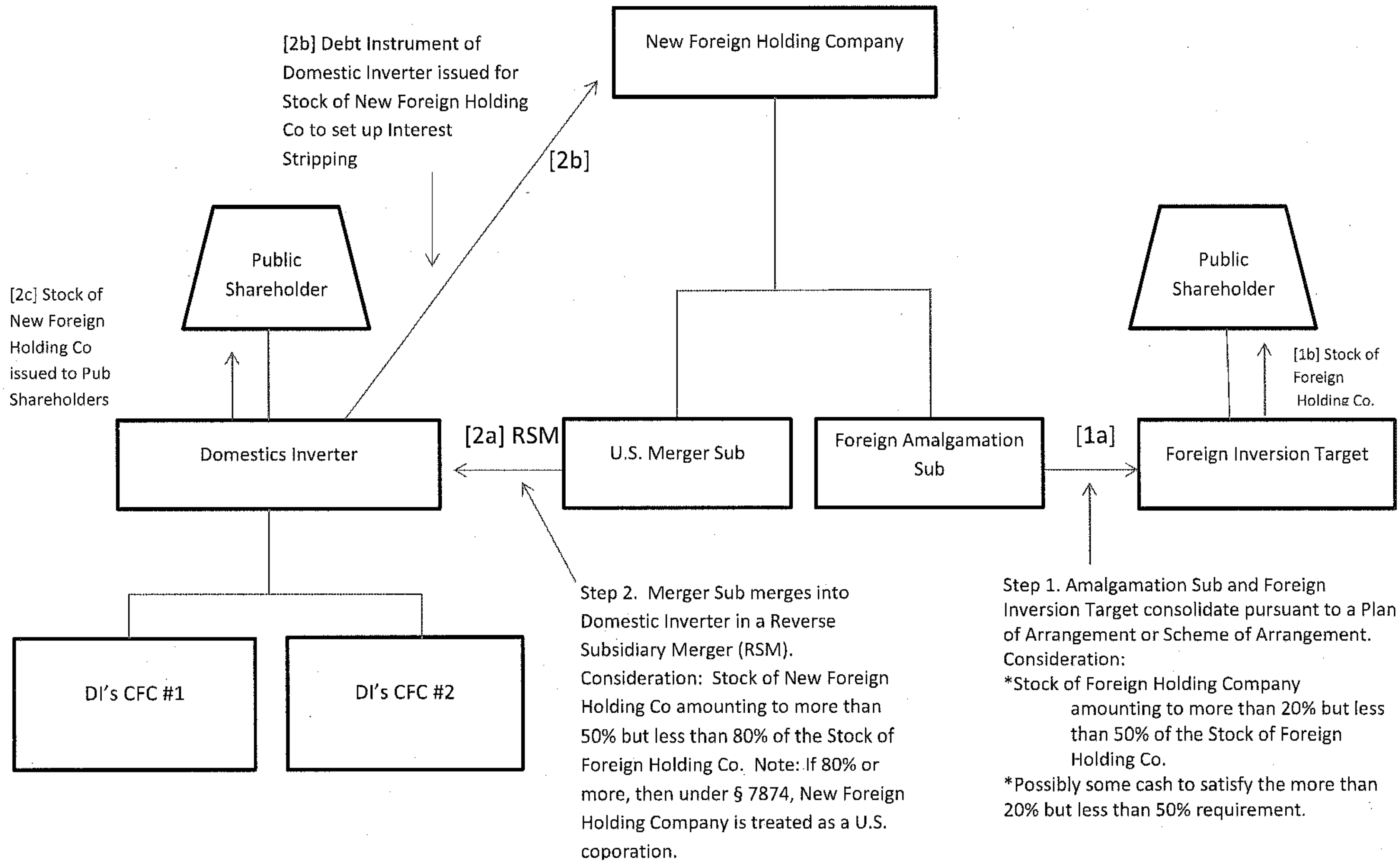
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #2 SUMMARY OF THE PRE-TRANSACTION STRUCTURE



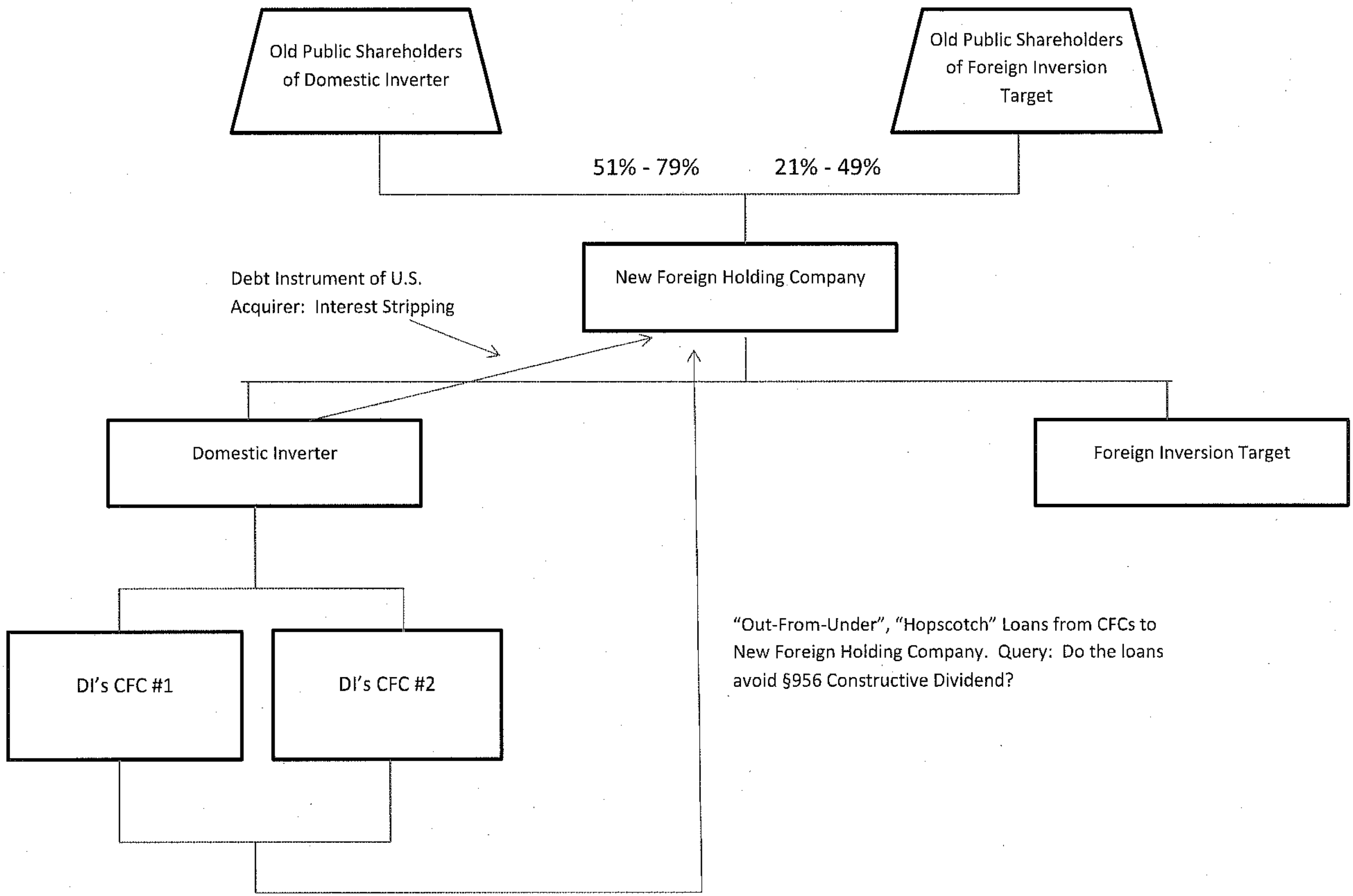
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #3 THE INVERSION TRANSACTION



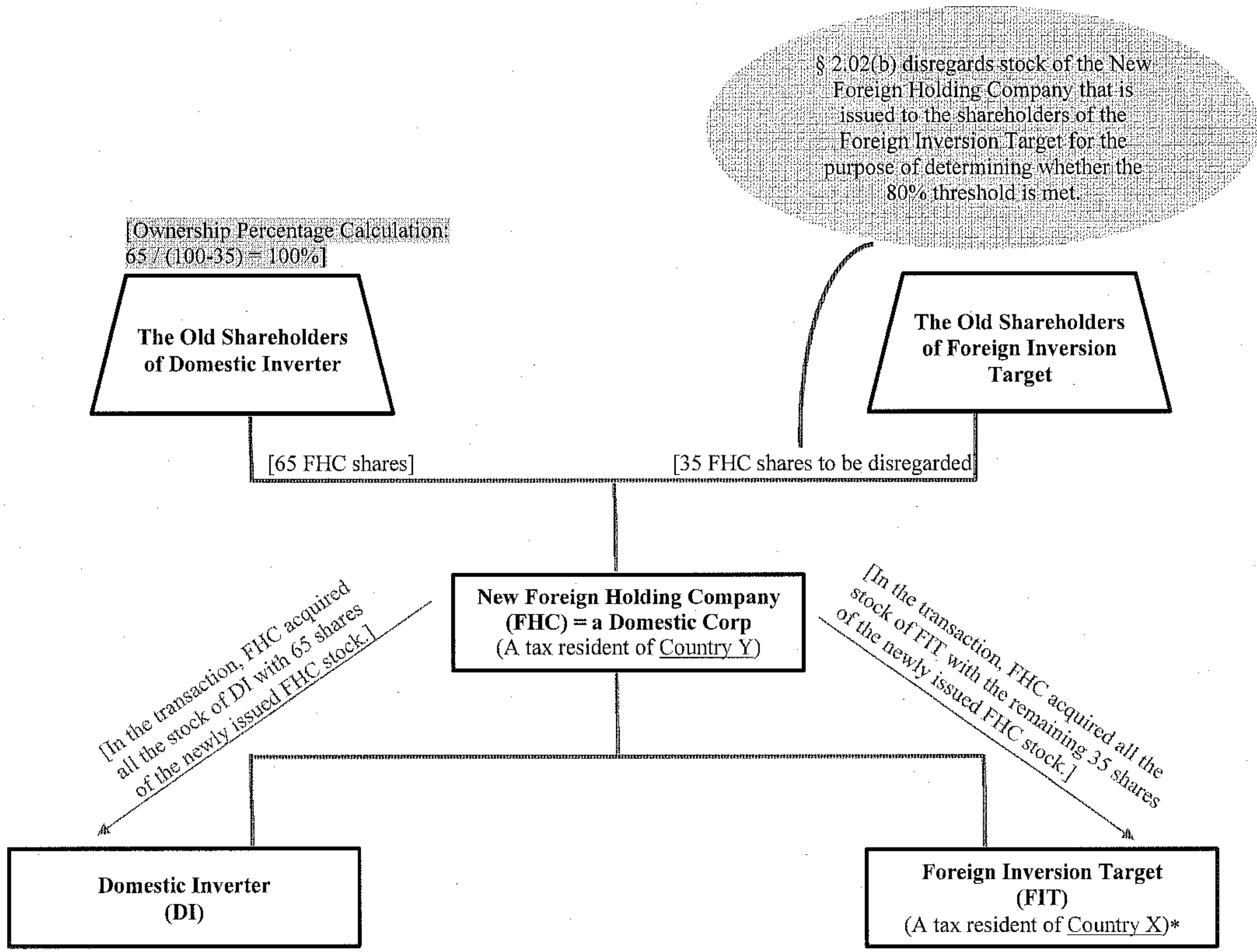
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #4 POST INVERSION STRUCTURE



TREASURY NOTICE 2015-79: IMPACT ON INVERSION STRUCTURE

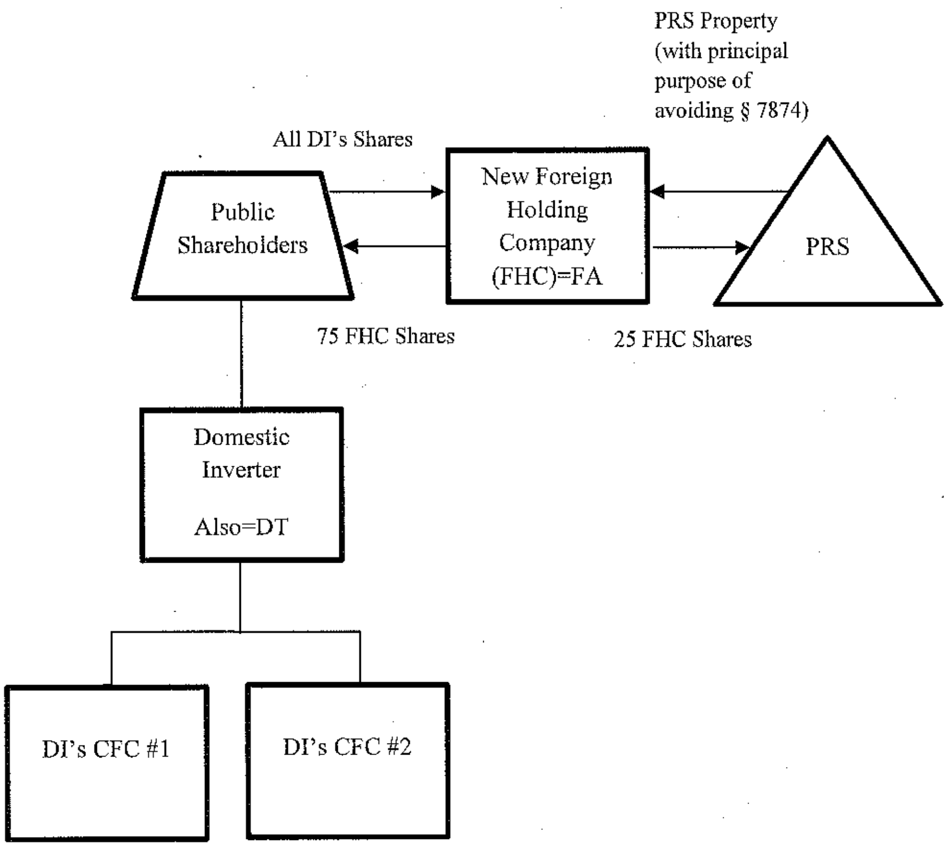
SLIDE # 5 THIRD-COUNTRY TRANSACTION, § 2.02(b), EXAMPLES 1 AND 2

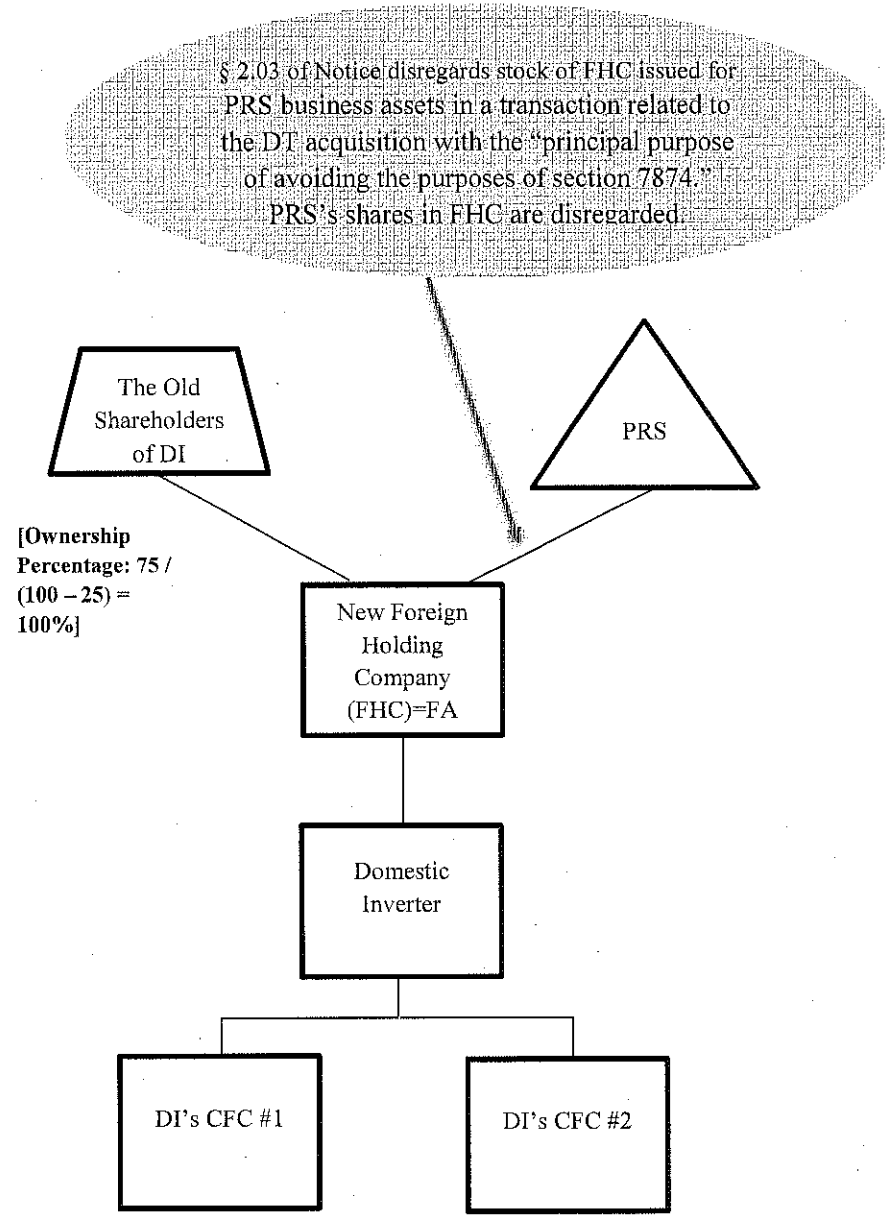


* Note: Even if FIT, before it is acquired by FHC, reincorporates in Cty Y and becomes a tax resident of Cty Y, § 2.02(b) still applies. *See* Exp 2.

TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

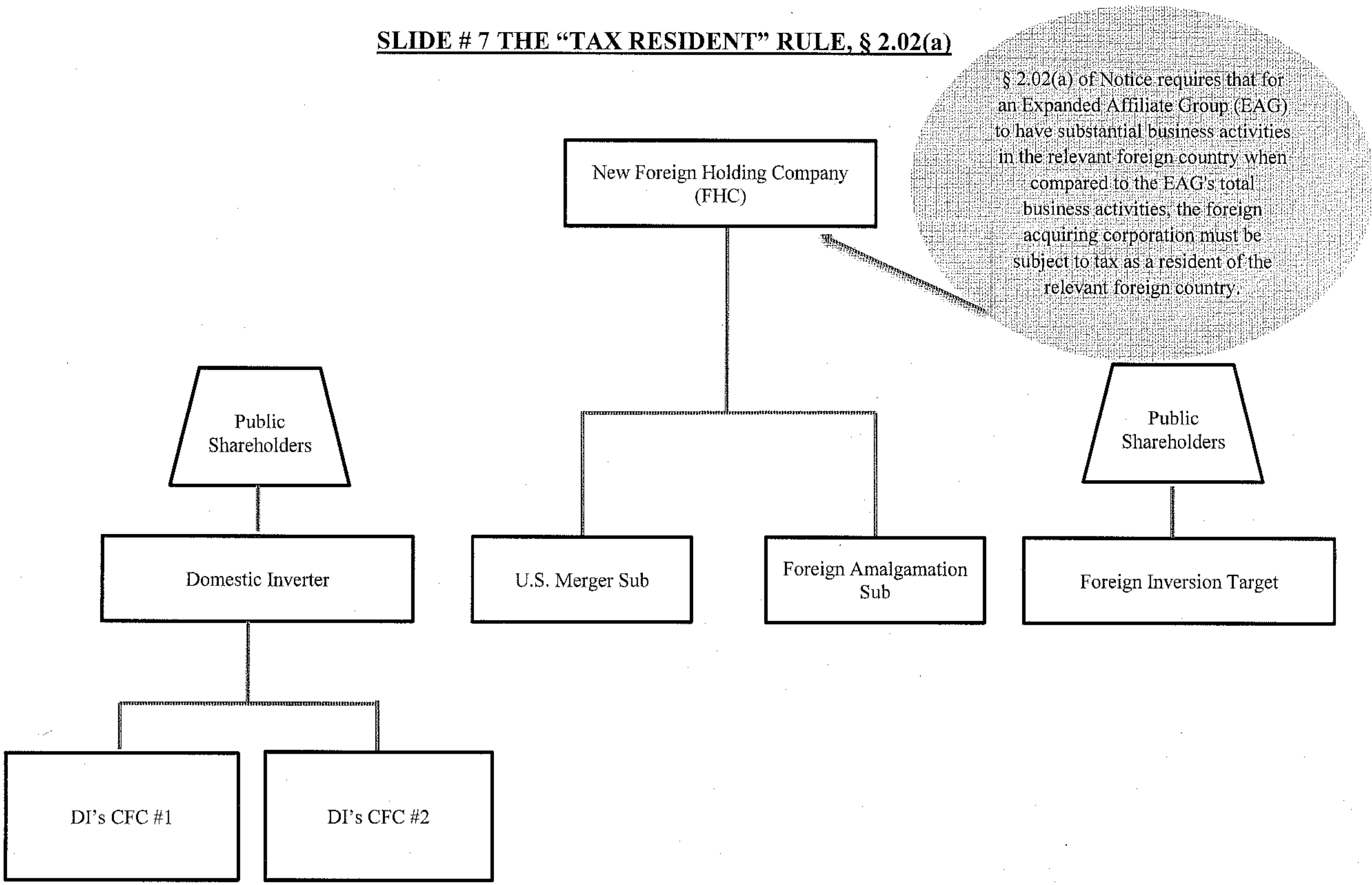
SLIDE # 6 ANTI-STUFFING RULES STRENGTHENED, §2.03



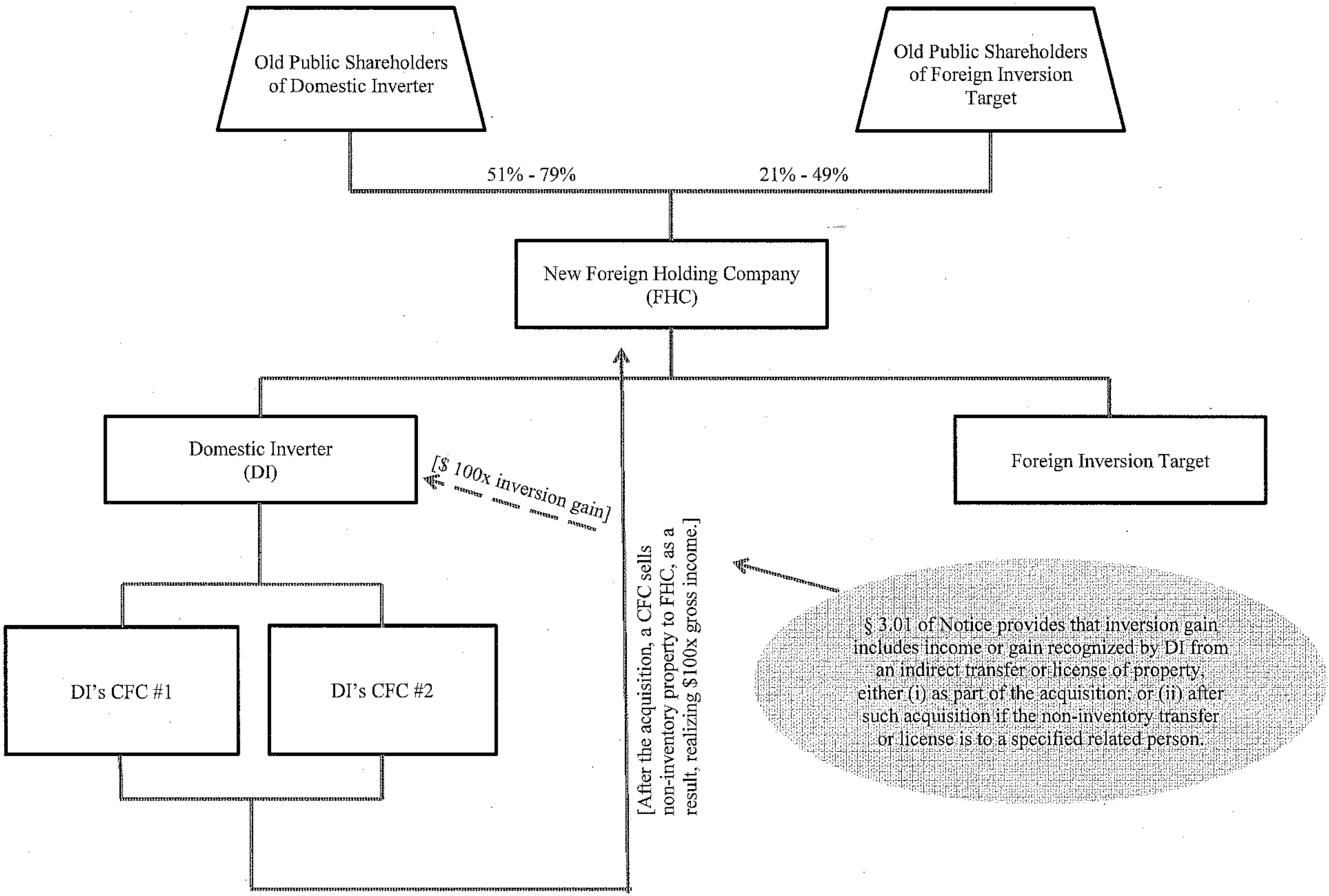


TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

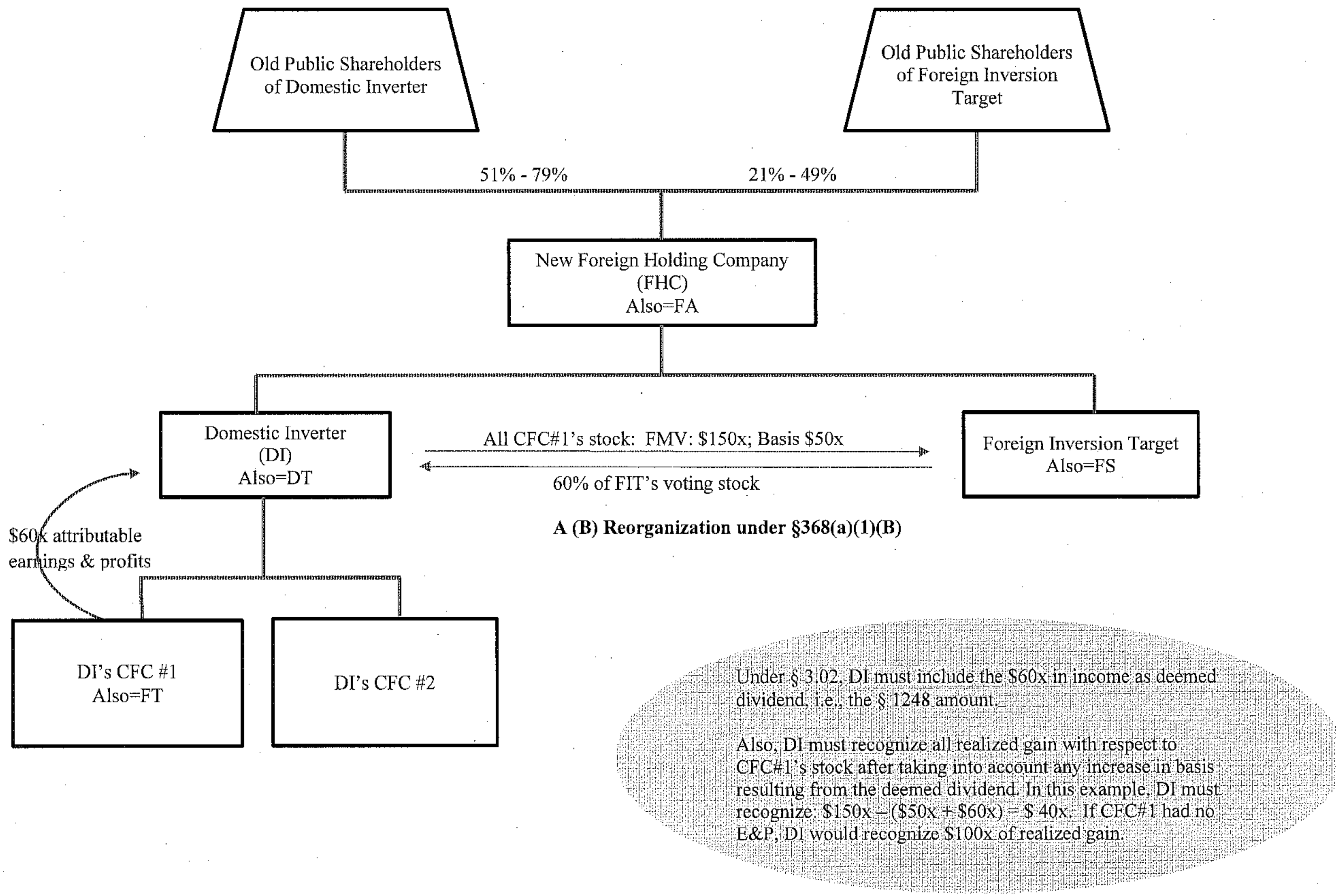
SLIDE # 7 THE "TAX RESIDENT" RULE, § 2.02(a)



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

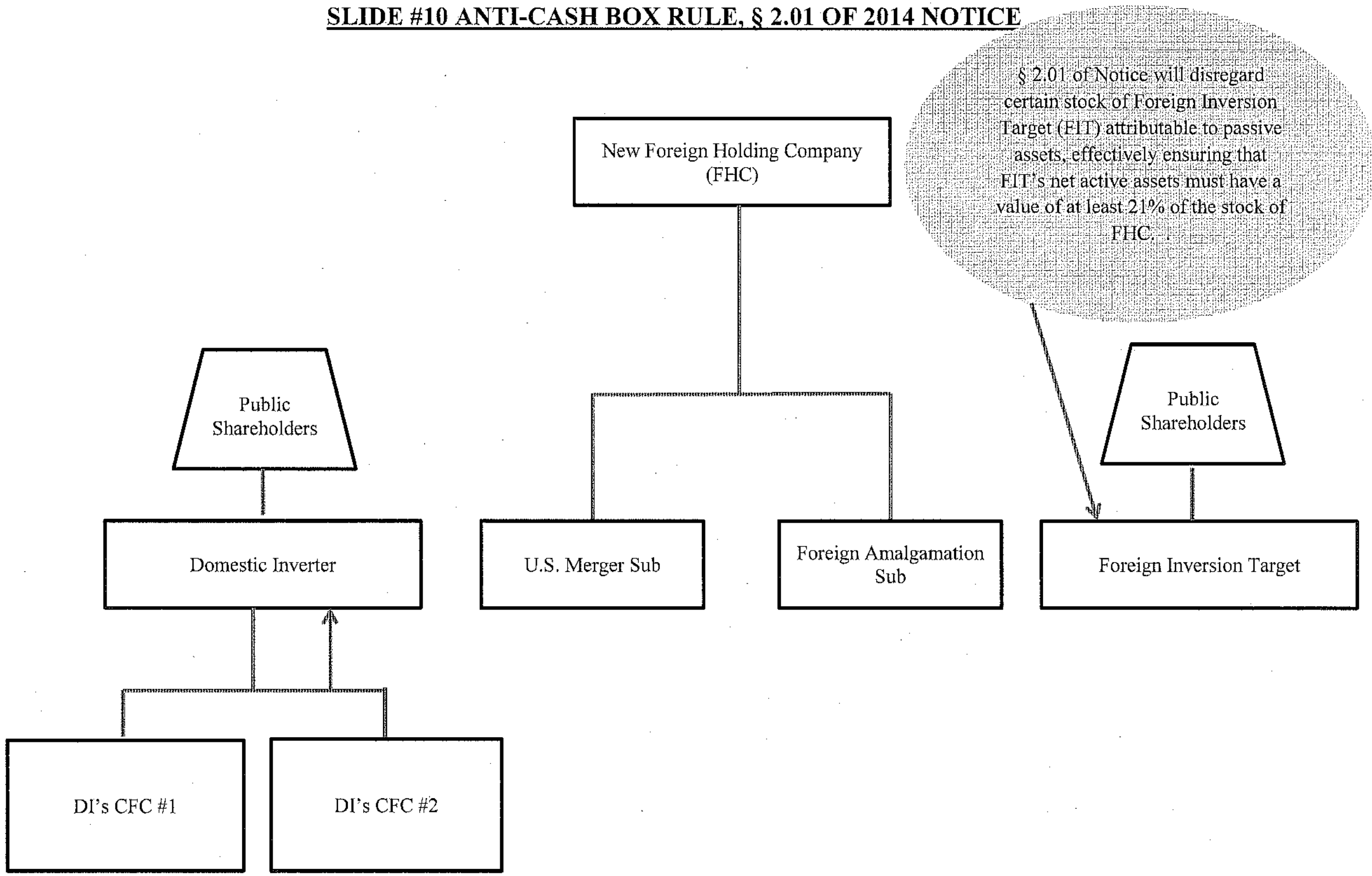


TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE # 9 EXCHANGES OF STOCK OF EXPATRIATED FOREIGN SUBSIDIARY, § 3.02



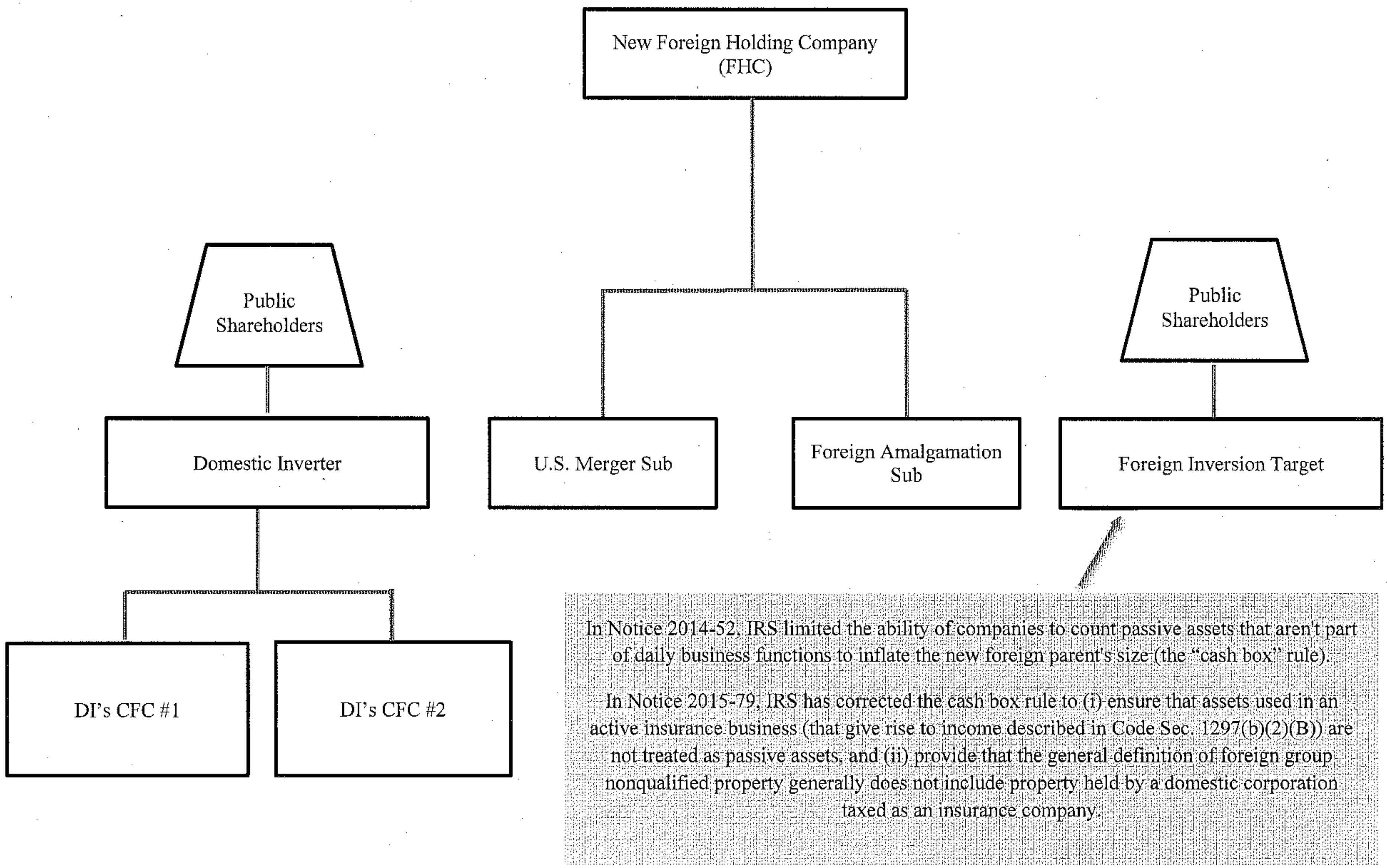
TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

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



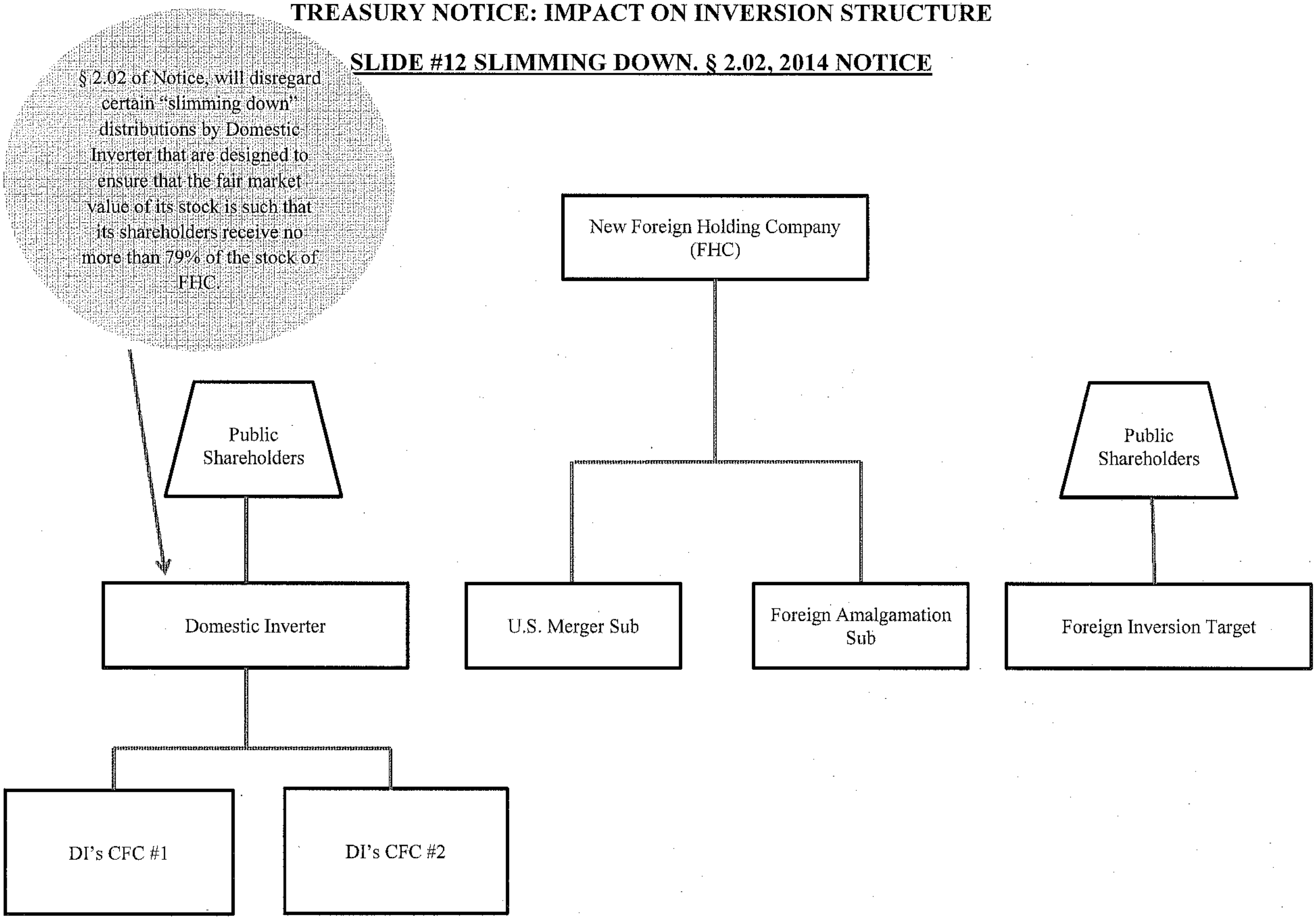
TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE #11 PASSIVE ASSETS CLARIFICATION, § 4.01



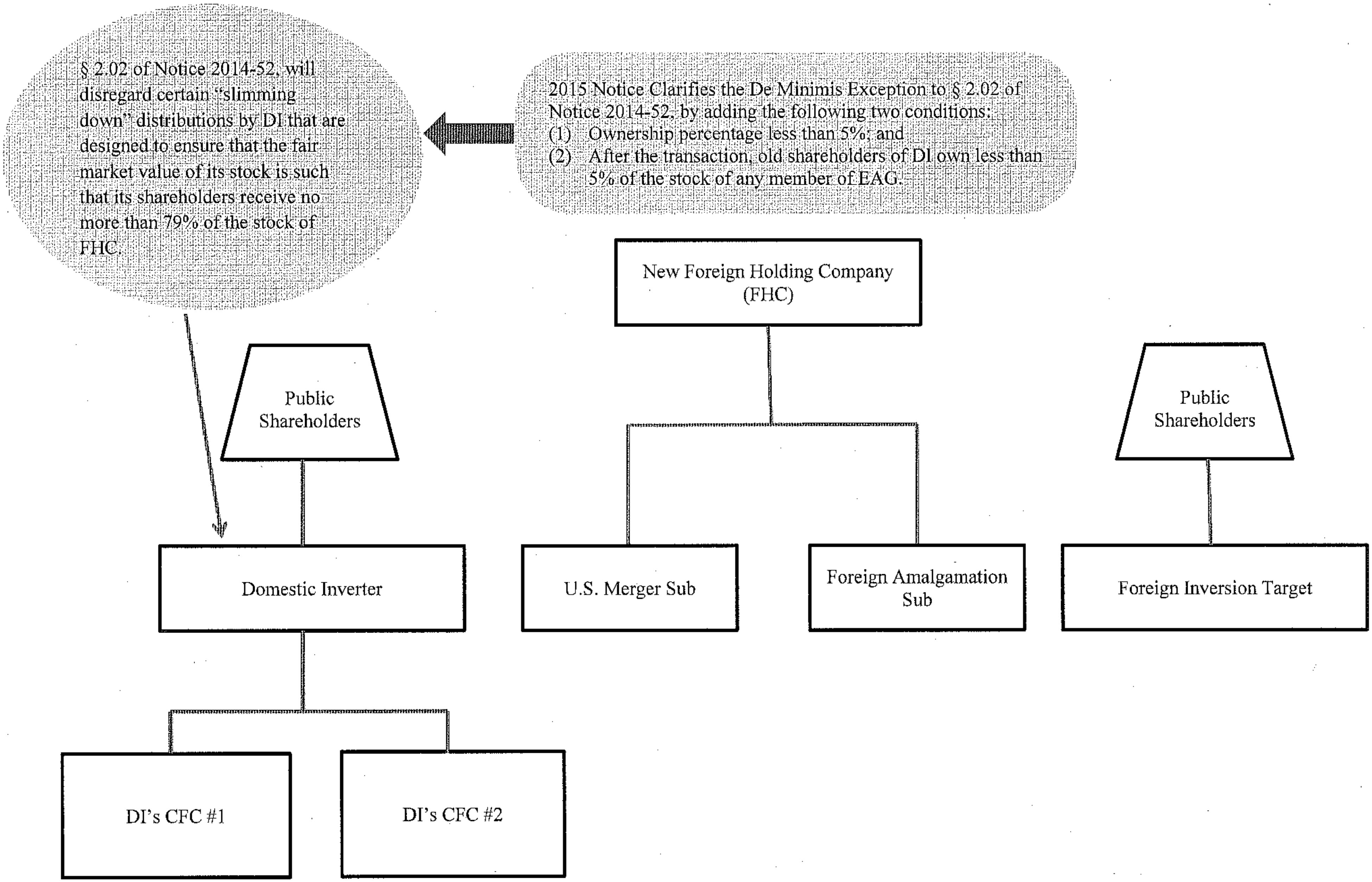
TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE #12 SLIMMING DOWN. § 2.02, 2014 NOTICE



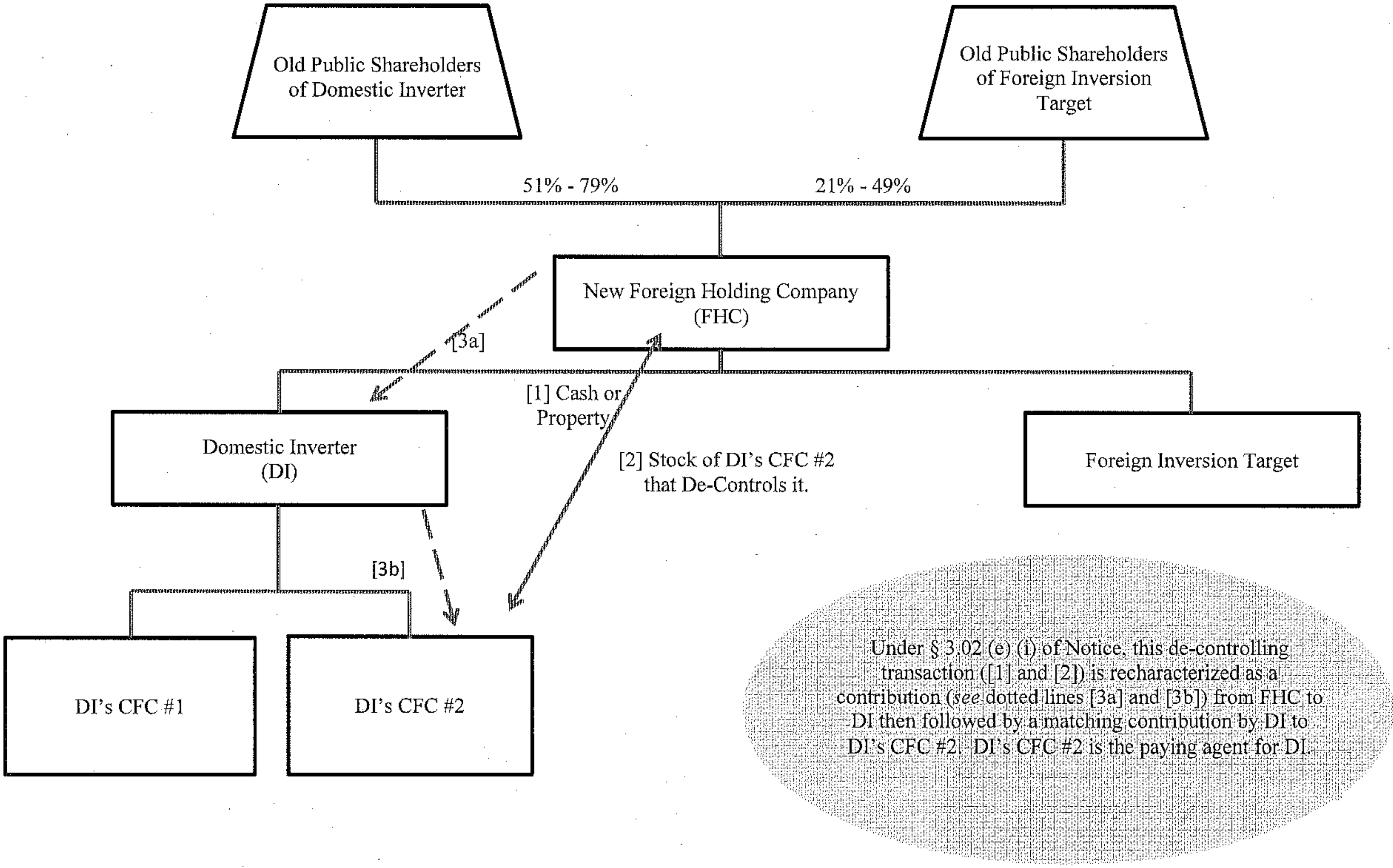
TREASURY NOTICE: CLARIFYING CHANGES TO NOTICE 2014-52

SLIDE # 13 DE MINIMIS EXCEPTION, § 4.02

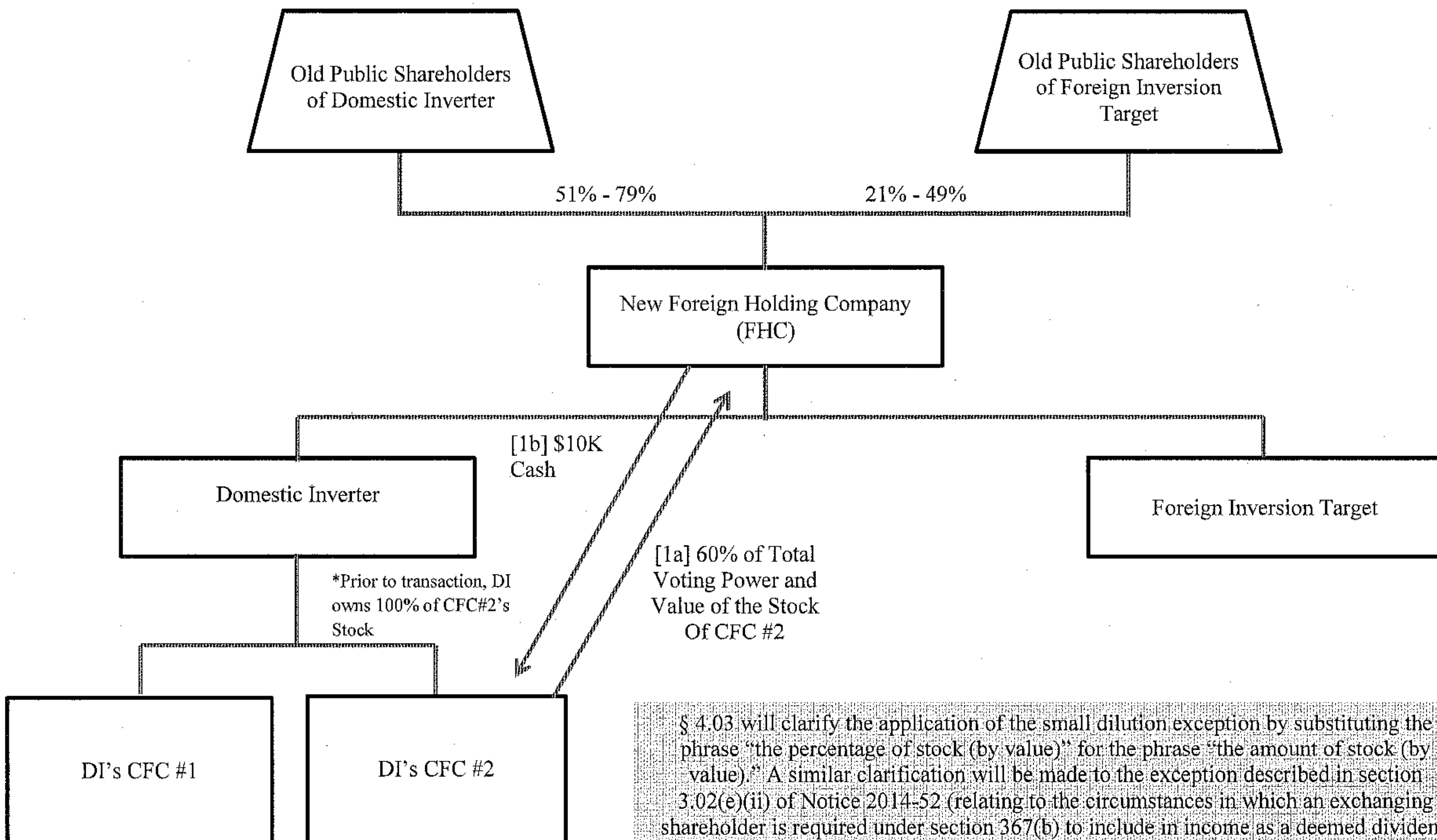


TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE

SLIDE #14 ANTI-DECONTROL OF CFC RULE, § 3.02 (e) (i) OF 2014 INVERSION NOTICE



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.