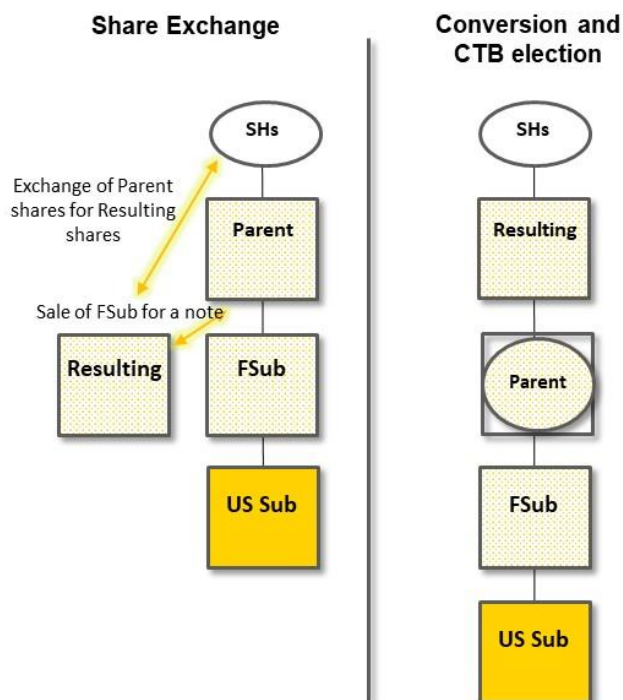


Technical Developments and Musings

Slow-motion F reorganization of a publicly traded corporation. [PLR 202339009](#) involves a reorganization of a foreign corporation under §368(a)(1)(F) (an F reorganization). Like many asset reorganizations, there were two key steps. First, the “target” corporation (Parent) organized a new corporation (Resulting), with Parent subscribing for Resulting shares for nominal consideration, “on behalf” of its shareholders. (Parent also sold all the stock of its subsidiary FSub to Resulting before its shareholders exchanged their shares for Resulting shares.) Second, Parent converted into an eligible entity, concurrent with making a check-the-box election to be disregarded as separate from its sole owner Resulting for US tax purposes. The IRS did not specifically rule that the series of steps would qualify as an F reorganization; but it did conclude that the steps would be treated as if 100% of Parent stock had been contributed to Resulting, followed by a CTB election by Parent. Moreover, the IRS added that the “period of time” between the two key steps would not prevent the proposed transaction from qualifying as an F reorganization. Finally, apparently to address potential interim period trading of Resulting stock, the IRS also ruled that any such sales or exchanges of Resulting stock would not prevent the proposed transaction from qualifying as an F reorganization, perhaps relying in part on a taxpayer representation that such sales or exchanges were not included in the plan of reorganization.



Economic substance doctrine applied to CFC incorporation. A federal district judge granted the government’s motion for summary judgment in a Colorado case, concluding that the economic substance doctrine, codified at §7701(o), applied to a multi-step transaction. As a result, the earnings and profits claimed by the corporate taxpayer from §351(b) incorporation gain involving a CFC transferor “are not recognized and cannot be used to support the §245A deduction” from a subsequent upstream sale of the CFC stock. For further info, see [Tax Alert 2023-1857](#).

Proposed regulations addressing cross-border triangular reorganizations. The government released proposed §367(b) regulations, which incorporate, with modifications, guidance from two notices issued in 2014 and 2016. Notably, while earlier guidance was generally intended to tighten the rules for certain cross border triangular reorganizations, since the enactment of §245A in 2017 the deemed distributions of untaxed foreign corporation earnings and profits—one consequence prescribed by the regulations—now often involve minimal US tax cost. In addition, the proposed regulations also introduce a taxpayer-friendly modification to the guidance described in Notice 2016-73 by limiting the scope of the “excess asset basis” rules. For further info, see [Tax Alert 2023-1683](#).