Post-Acquisition Tax Optimization and Consolidation of ACQ and TARGET

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Circular 230 Disclosure

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An Interdisciplinary Approach Is Necessary

Tax optimization cannot proceed in a vacuum; a coordinated interdisciplinary approach is a best practice for realizing the full anticipated benefits of any business combination:

- Legal: Successor and contingent liabilities must be evaluated and mitigated; customer and supply contracts migrated; lease and other supporting agreements analyzed for necessary consents; impact of governmental approvals or notices evaluated; merger laws used where possible, rather than cumbersome specific transfers (but balanced with successor/transferee liability analysis)
- Human Resources: Retention and, if necessary, reduction of personnel as required by the business objectives of the acquisition. Assess impact of local labor rules on sequence and timing of step plans.
- IT and FP&A Systems: What must happen the day after closing (Day 1)? Email; accounts payable/accounts receivable. What must happen by Day 30/60/90?: enterprise software platforms (Oracle v. SAP?); any other systems that control the supply chain and distribution channel must be analyzed
- Finance: Cash management; credit risk assessment; cost of capital hurdle rates and performance metrics merged; foreign currency hedging policies must be put into one model
- Investor Relations: What metrics will the street use to evaluate the success of the transaction? Over what time frame? Are those metrics being managed in the integration process with appropriate speed?

Tax Overview

Integration after closing begins with identifying potential costs, mitigation strategies and hidden benefits in due diligence. After closing, the acquiring corporation will need to:

- Rationalize the Corporate Entity Organizational Structure to Lower Cost and Decrease Duplicative Effort
  - US Tax Perspective
  - Foreign Tax Perspective
- Harmonize Intercompany Transfer Pricing Strategies
- Harmonize Approaches to Deferral of Foreign Income from US Taxation
- Harmonize Systems and Procedures To Reduce Risks of Taxable Nexus in Countries other than the Jurisdiction of Incorporation for All Affiliates

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General US Tax Considerations in Eliminating Duplicative Entities within One Jurisdiction

Preserve and Integrate Tax Characteristics of the Business

- Preserve Favorable US Tax Attributes (e.g. E&P and FTCs)
- Affirmatively Use Bad Debt/Worthless Stock Loss Rules Where Possible
- Integrate the Streamlined Entities
  - Earnings Repatriation
  - US Tax Deferral
  - Foreign Tax Credit Maximization

General Foreign Tax Considerations in Eliminating Duplicative Entities within One Jurisdiction

Preserve and Integrate Tax Characteristics of the Non-US Operations

- Preserve Foreign Tax Attributes (e.g. NOLs)
  - Which entity (Target or Acquiring) survives often dictates whether tax attributes will be preserved
- Minimize Corporate-Level and Shareholder-Level Income Taxes
- Minimize (Often non-creditable) Transfer Taxes on Stock or Assets
- Group Relief or Consolidation as Alternative to Mergers
- Maximize Deductions for Restructuring Costs
- Look for Basis Increase/Preservation

Harmonize Intercompany Transfer Pricing Strategies

Rationalize, Harmonize & Optimize Transfer Pricing with respect to:

- R&D cost sharing allocation methods and benefit period
- Buy-In royalty methods
- Amortization methodologies and phase-out Schedules
- Correction methods adopted
- Funding and financing positions adopted
- Intangibles components (marketing, process and product) analysis
- Cost inclusion, aggregation, and basic functional returns on intercompany services
- Documentation representations with respect to structure business purpose
- Resolution on/position adopted in specific technical areas such and stock based compensation, accounting methods adopted, discount rates applied, etc.
- Related international tax positions surrounding cost share such as source, character, basis issues, FSC/Extraterritorial Income Exclusion, substance, etc.
- Reporting compliance issues and risk exposure
- Pricing controls and system integration issues
- Overall transaction information consolidation and reporting requirements
- Overall transaction risk assessment

US Tax Deferral

Acquiring and Target May Have Different Strategies for Deferral of US Tax on Foreign Earnings

- Repatriation and Foreign Tax Credit Utilization Strategies and Models
- Contract Manufacturing Relationships and Supply Chain Management
- Cash-Sweep Programs and Section 956 Considerations
- Commissionaire/Commission Agent Structures Mixed with Buy-Sell Distributor Structures Can Alter Deferral Posture
- Income Characterization Consistency? (Sales of goods, rents, royalties?)
- Intangible Development Structures

Taxable Nexus and Permanent Establishment

Renewed focus on discipline around key drivers for limiting tax exposures outside known filing jurisdictions

- Are agents or employees exercising contracting authority outside their entity's country of incorporation?
- Are activities being analyzed with respect to evolving US State-level standards for filing and nexus with respect to income, sales, use and excise taxes?

Critical Success Factors

We must work with our client's team

- Open, Interactive Process
- Substantive Expertise and Experience
- Structured Reconciliation of Tax and Business Concerns
- Diligent and Efficient Implementation

No One Pattern Applies without Customization

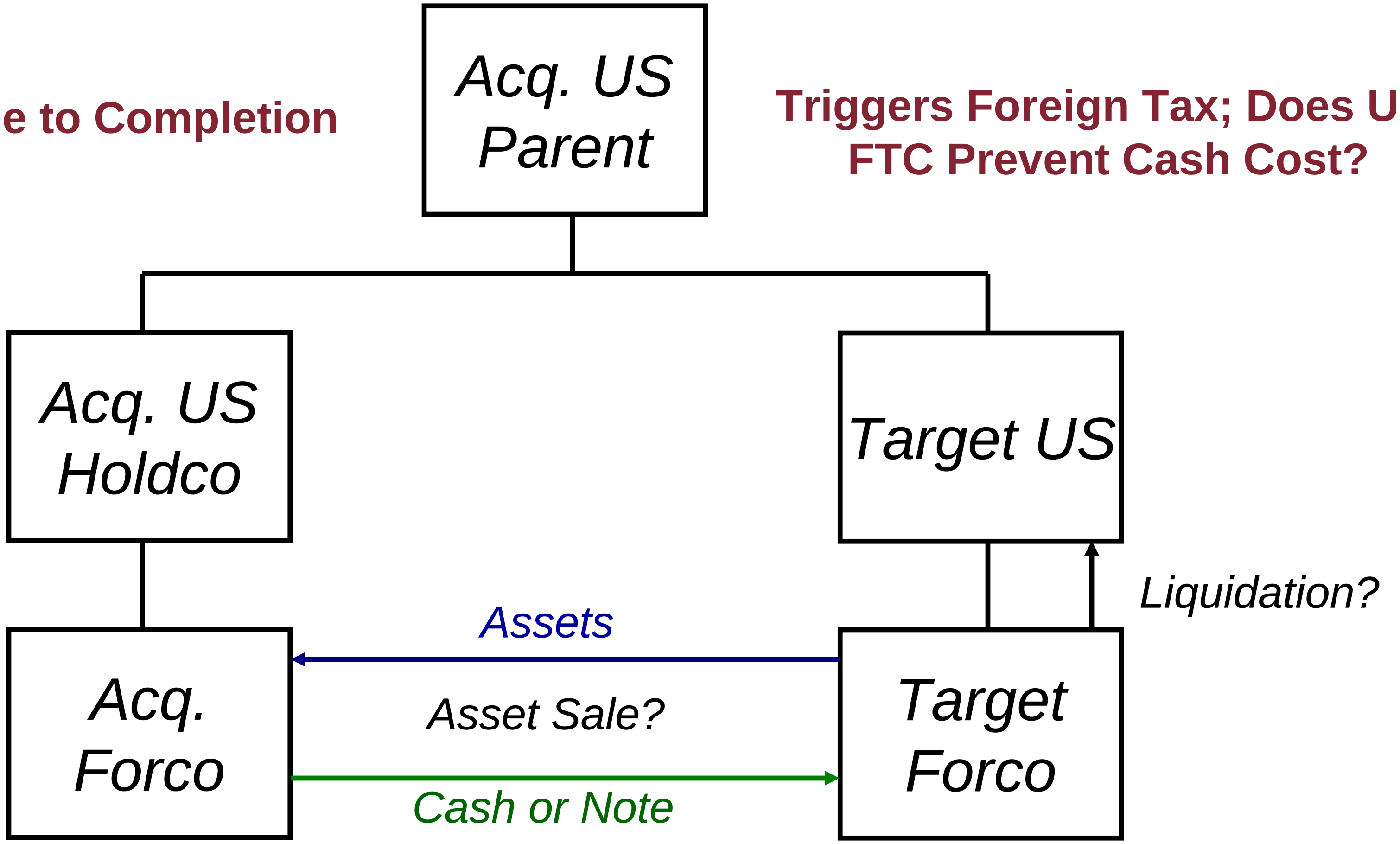
Create a “Default” Pattern, Then Localize It

- US Tax Substance-Over-Form Rules Provide Flexibility If Well-Planned in Advance
- Local Country Tax Rules Will Also Vary
- Watch Out for Non-Creditable, Indirect Taxes on Transfers
- Be Prepared for an Interactive, Iterative Process
  - Build in opportunities for mid-course correction
  - Build in opportunities for local buy-in

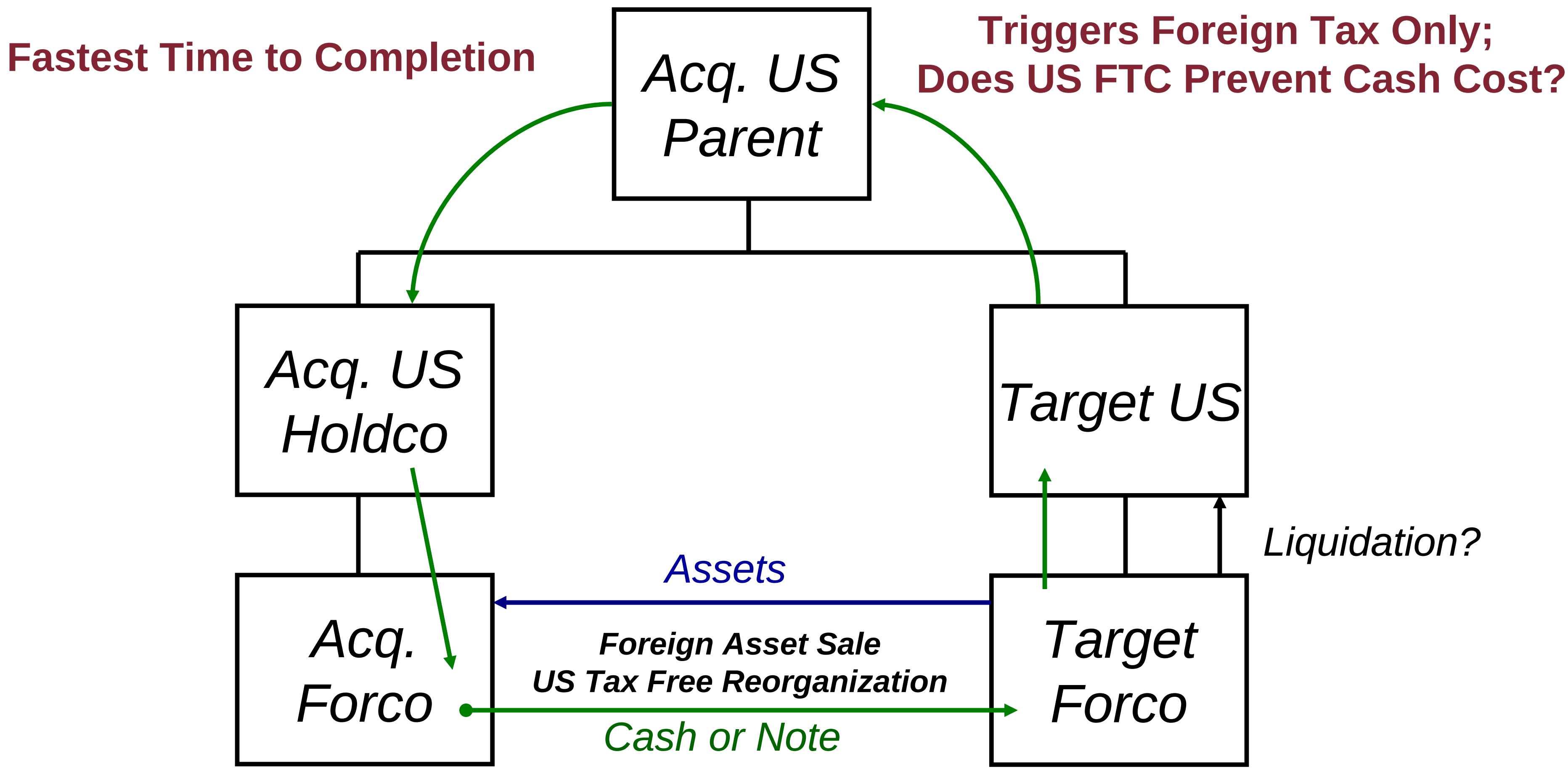
Alternative 1a: Speed Is Primary

Fastest Time to Completion

Triggers Foreign Tax; Does US FTC Prevent Cash Cost?



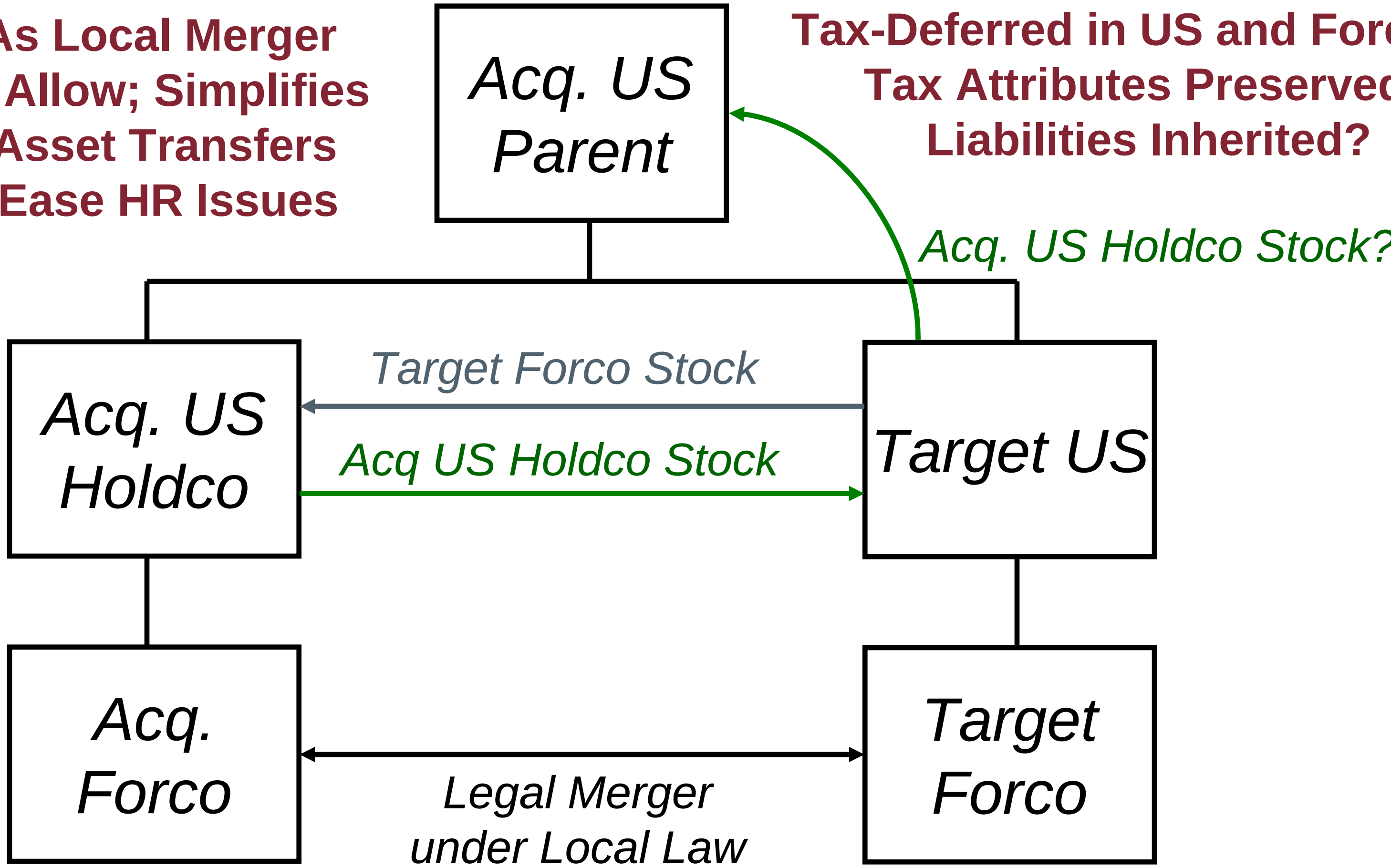
Alternative 1b: Speed Is Primary (w/circular cash)



Alternative 2: Merger to Simplify Transfers of Assets

As Fast As Local Merger Laws Will Allow; Simplifies Specific Asset Transfers and May Ease HR Issues

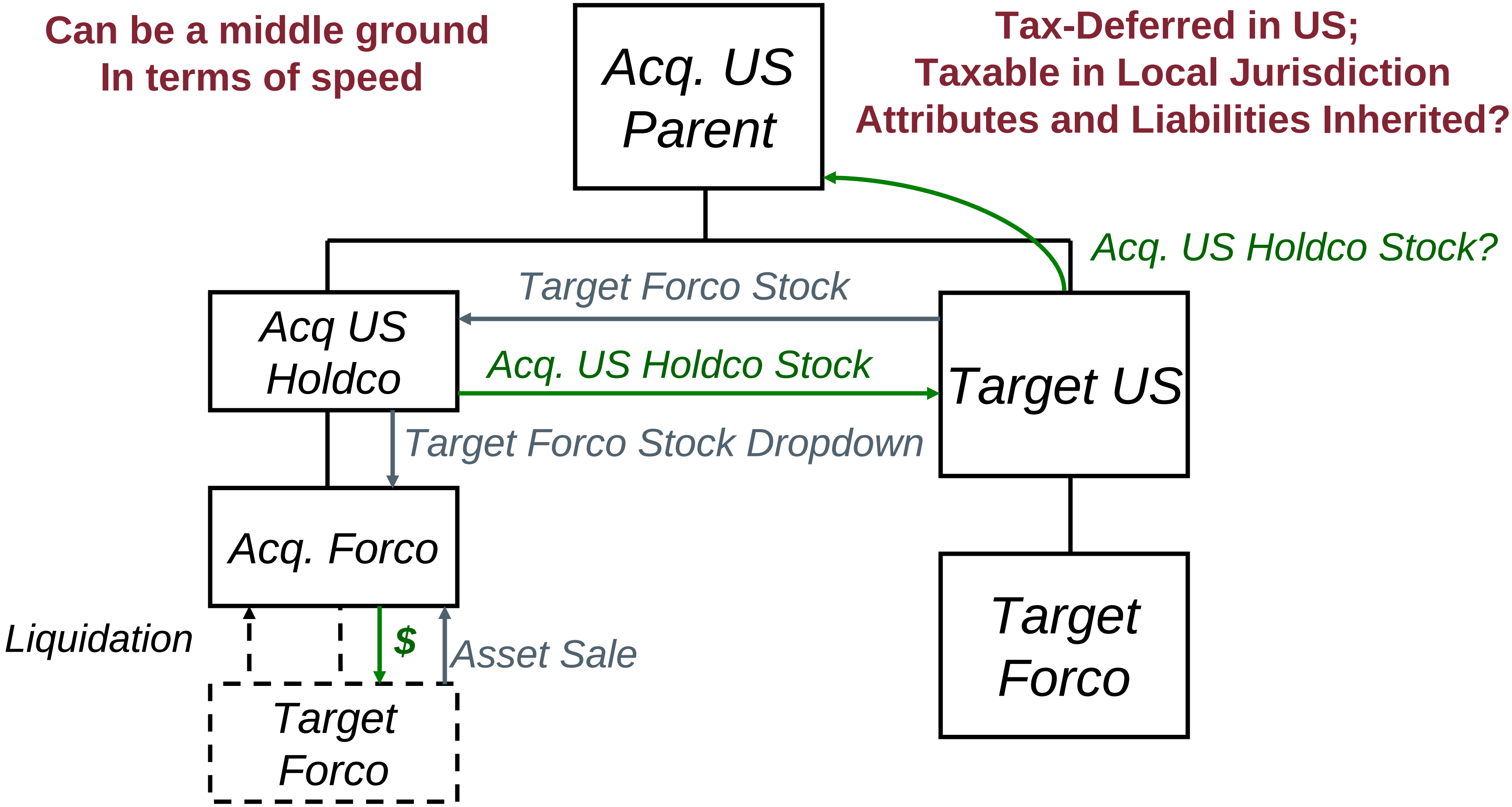
Tax-Deferred in US and Foreign; Tax Attributes Preserved? Liabilities Inherited?



Alternative 3: Tax Free Reorgs in US; Taxable Asset Sales Abroad

Can be a middle ground
In terms of speed

Tax-Deferred in US;
Taxable in Local Jurisdiction
Attributes and Liabilities Inherited?



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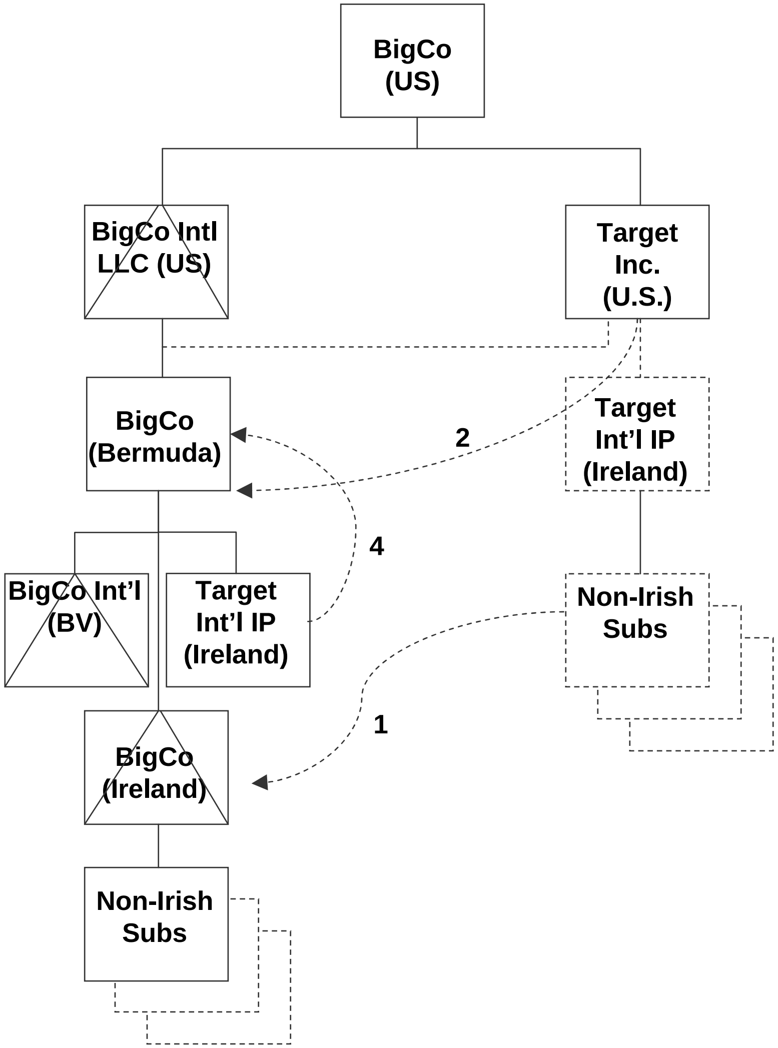
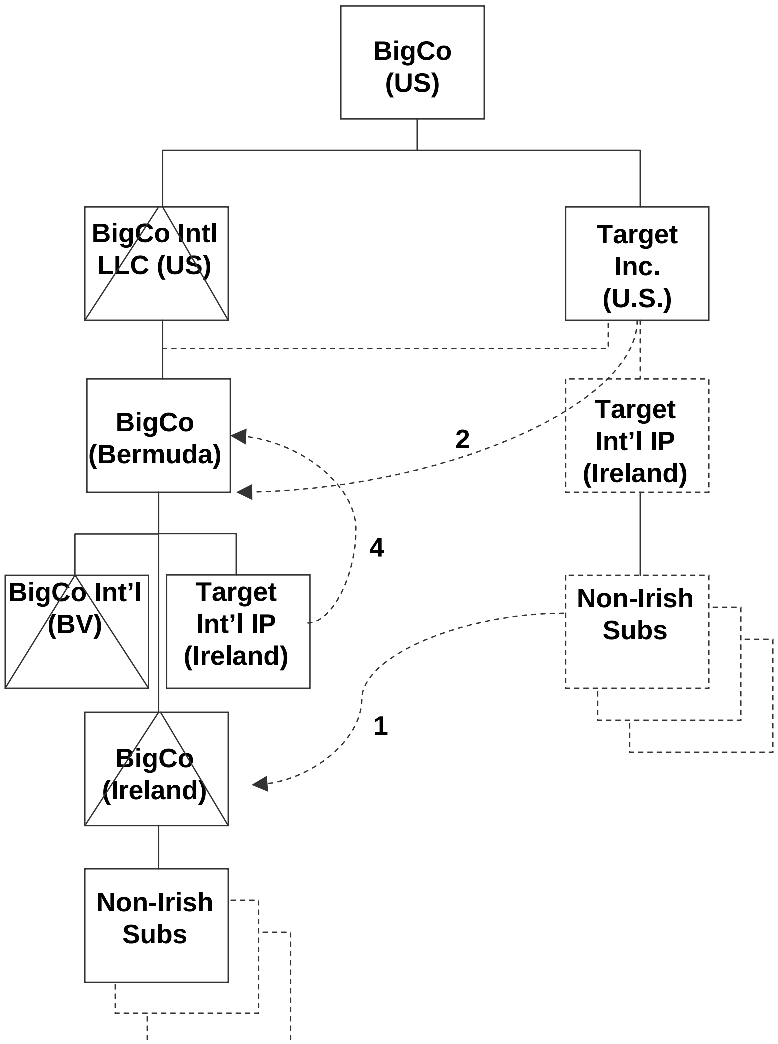
Real World Example for BigCo



Target Int'l IP (Ireland) Post-Acquisition Steps

1. Target Int'l IP (Ireland) transfers its non-Irish subsidiaries and its trade or business to BigCo (Ireland)
2. Target Inc. US contributes the stock of Target Int'l IP (Ireland) to BigCo (Bermuda) and files a check the box election to treat Target Int'l IP (Ireland) as a disregarded entity in US
3. The Irish companies then emigrate their tax residence from Ireland to Bermuda
4. Target Int'l IP (Ireland) sell IP and transfer cost sharing agreements to BigCo (Bermuda) in exchange for note
5. Target Int'l IP (Ireland) will transfer stock of non-Irish entities to BigCo (Ireland)
6. BigCo (Bermuda) will retain the IP and cost sharing agreements acquired from Target Int'l IP (Ireland)
7. BigCo (Ireland) will retain the trade or business (other than IP) as well as the stock of the non-Irish entities
8. There should be no plan to liquidate Target Int'l IP (Ireland) until two years after their last asset transfer

Real World Example for BigCo



US Tax Consequences

- The contribution of Target Int'l IP (Ireland) stock to BigCo (Bermuda) followed by the deemed liquidation of Target Int'l IP (Ireland) should be characterized as a tax free foreign to foreign Internal Revenue Code ("IRC") section 368(a)(1)(D) reorganization
- Subsequent to the contribution and liquidation, Target Inc. (US) should be deemed to own stock of BigCo (Bermuda) (*See* Treas. Reg. section 1.368-2T(l)); if Target Inc. (US) owns less than 10 percent of BigCo (Bermuda) then it may be necessary to transfer the shares within the U.S. consolidated group
  - Transfers within the US consolidated group could crystallize or trigger deferred intercompany gain under Treas. Reg. section 1.1502-13.
  - Transfers may nonetheless be necessary to maintain US foreign tax credit efficiency under section 902 ownership rules

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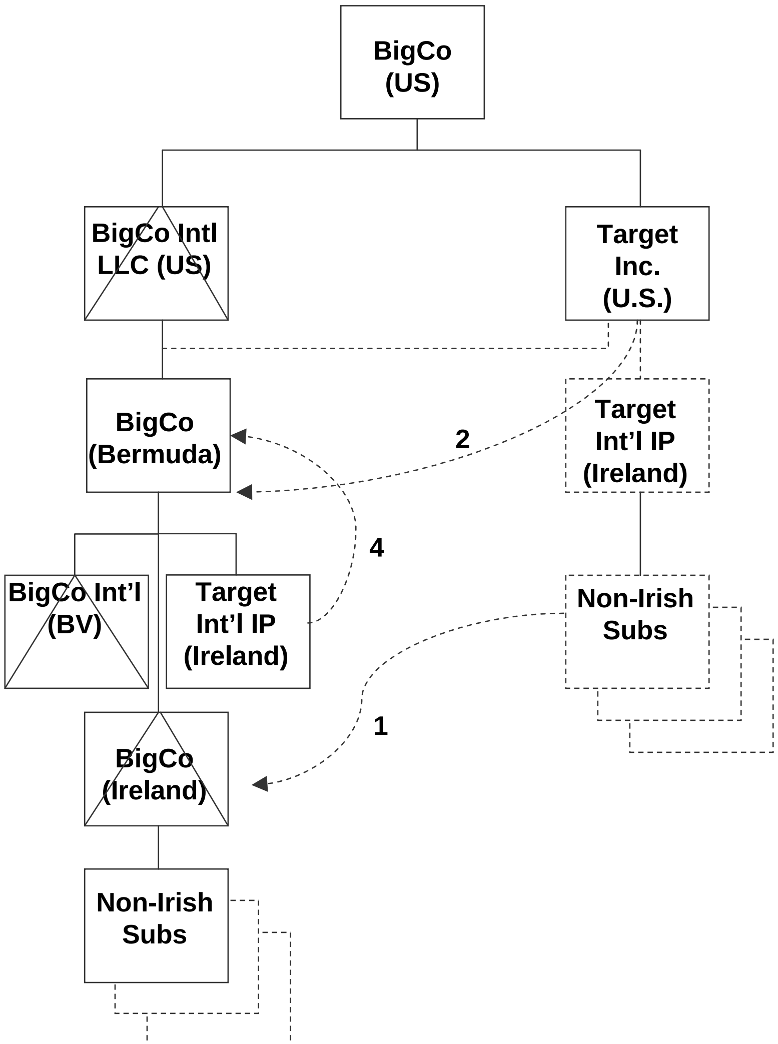
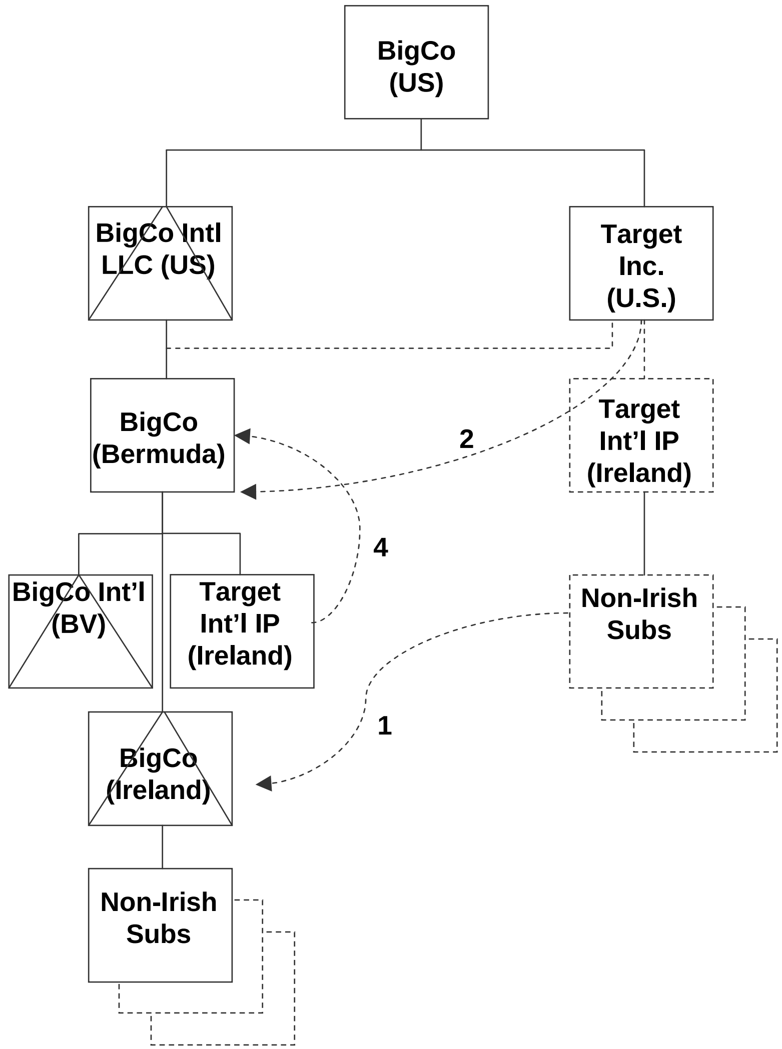
Real World Example for BigCo



Ireland Tax Consequences

- The transfer of the Irish trade or business, apart from the IP, to BigCo (Ireland) ordinarily gives rise to potential Irish capital gains tax at 20%
- However, an advance Irish Revenue concession would be sought to confirm that no tax would apply provided certain conditions are satisfied (e.g. retention within group for 10 years)
- Transfer of Target Int'l IP (Ireland) stock to BigCo Bermuda ordinarily gives rise to one percent Irish Stamp Duty (but not Irish corporation tax assuming non Irish tax residence of transferor and/or Irish participation exemption applicable); however, relief can be claimed, subject to certain conditions being satisfied (*e.g.* transferor and transferee remain in group for two years after transfer)
- Subsequent to the Target Int'l IP (Ireland) stock transfer, it will be necessary to migrate any Irish resident companies to Bermuda in order to avoid an Irish tax charge on any subsequently sold IP
- Irish Stamp Duty should not apply on the IP transfer to BigCo Bermuda based on either the nature of the IP (there is an exemption for certain categories) or alternative relief available to associated companies

Real World Example for BigCo



Ireland Tax Consequences (continued)

- The transfer of stock of the commissionaire entities from Target Int'l IP to BigCo (Ireland) is ordinarily subject to a one percent Stamp Duty (but not Irish corporation tax assuming non Irish tax residence of transferor and/or Irish participation exemption applicable); however, Associated Companies Relief is available, to the extent that the transferor and transferee remain within the group for two years. In addition there is also a potential further exemption for the transfer of foreign securities (foreign transfer and other taxes would also need to be considered)