

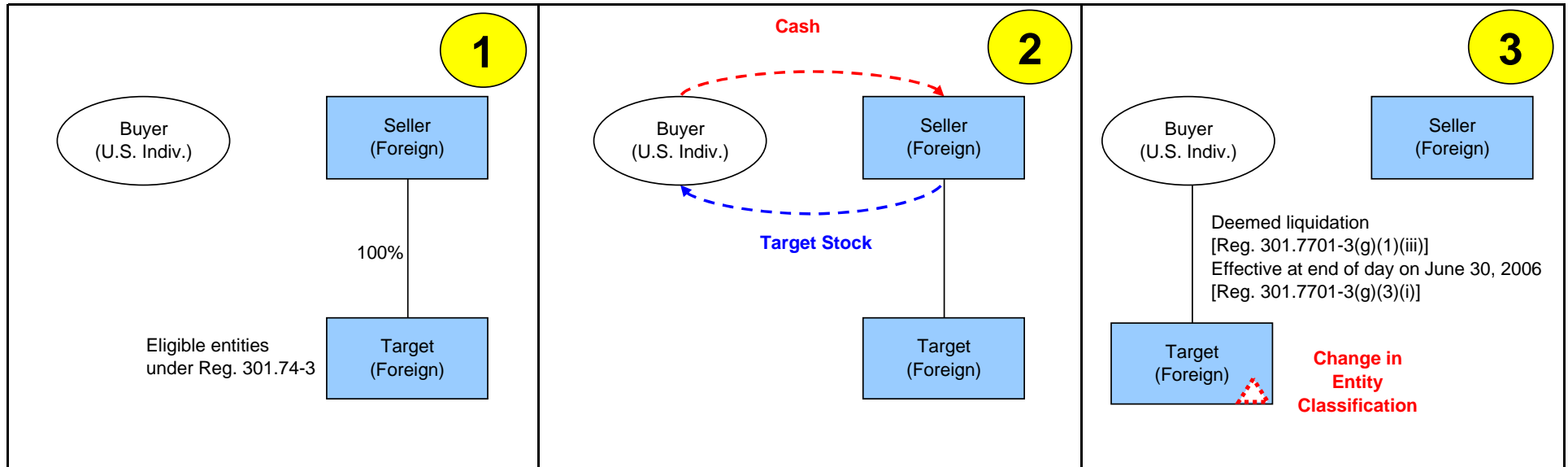
**Non-Corporate Purchaser:
De Facto 338 Election**

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Initial Structure (Jan. 1, 2006)

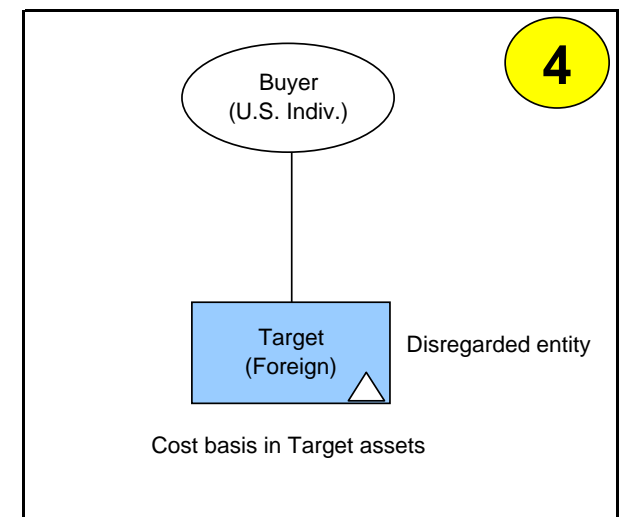
Stock Purchase (July 1, 2006)

**Target Check-the-box
Election (July 1, 2006)**



Only corporate purchasers can made section 338 elections. However, a non-corporate purchaser can make an election to treat an eligible entity as a disregarded entity on the date of the acquisition. Such an election is treated as a deemed liquidation of the target at the end of the previous day. The deemed liquidation on the previous day causes the buyer to be treated as purchasing assets rather than stock. This strategy gives the non-corporate buyer the opportunity to obtain a step up in basis of the entity-level assets, similar to a section 338 election. However, such an election may have unexpected consequences to the seller if the seller is a U.S. person or is owned by U.S. persons. For the buyer to make the election effective on the date of the acquisition, the seller must also sign the election. Treas. Reg. §301.7701-3(c)(2)(iii).

Ending Point



△ Flow-thru for U.S. tax purposes

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