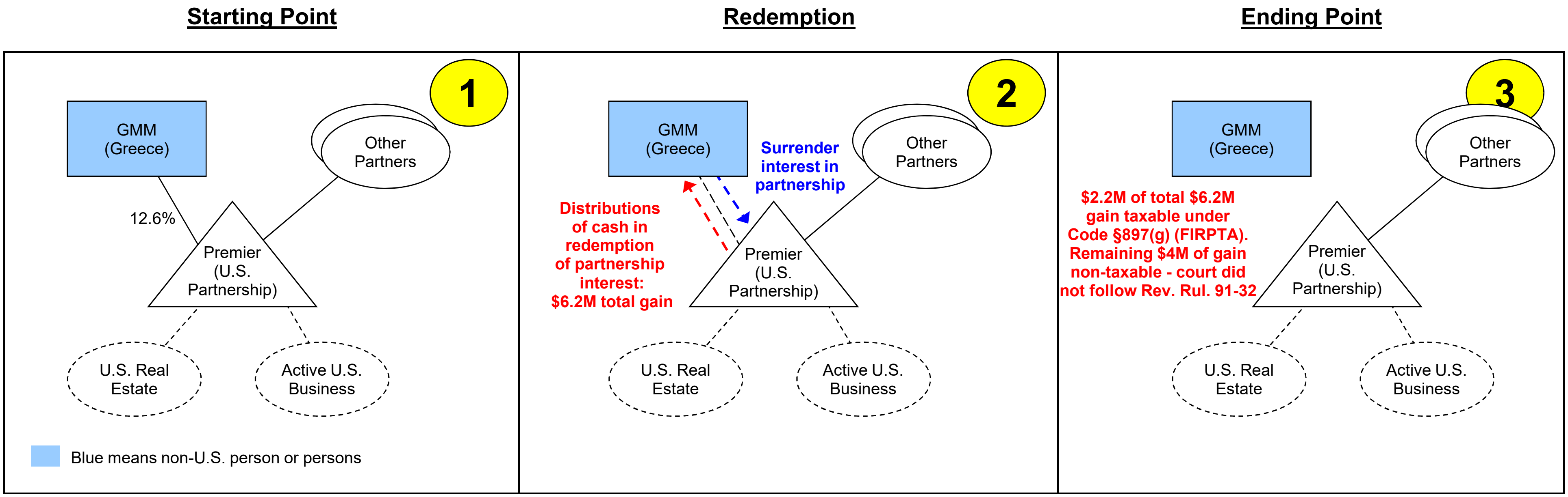
Grecian Magnesite Mining v. Commissioner
149 T.C. No. 3 (2017)

Foreign Partner's Gain on Sale of U.S. Partnership Interest Not Effectively Connected Income



In 2001, GMM, a foreign corporation, purchased an interest in Premier, a U.S. limited liability company that was treated as a partnership for U.S. income tax purposes. From 2001 to 2008 income was allocated to GMM from Premier, and GMM paid income tax in the U.S. In 2008 GMM's interest was redeemed by Premier, and GMM received two liquidating payments, one in July 2008 and the second in January 2009. GMM realized gain totaling over $6.2 million, of which $2.2 million was deemed attributable to U.S. real property interests (which GMM conceded was taxable under the FIRPTA rules of Code §897(g)).

The court held that the non-FIRPTA portion of the gain ($4 million, referred to by the court as the "disputed gain") was capital gain that was not U.S. source income. As a result, the disputed gain was not effectively connected with a U.S. trade or business and was not subject to U.S. income tax. The court applied the "entity theory" (as opposed to the "aggregate theory") with respect to the sale or exchange of the interest in the partnership. The court declined to follow Rev. Rul. 91-32.