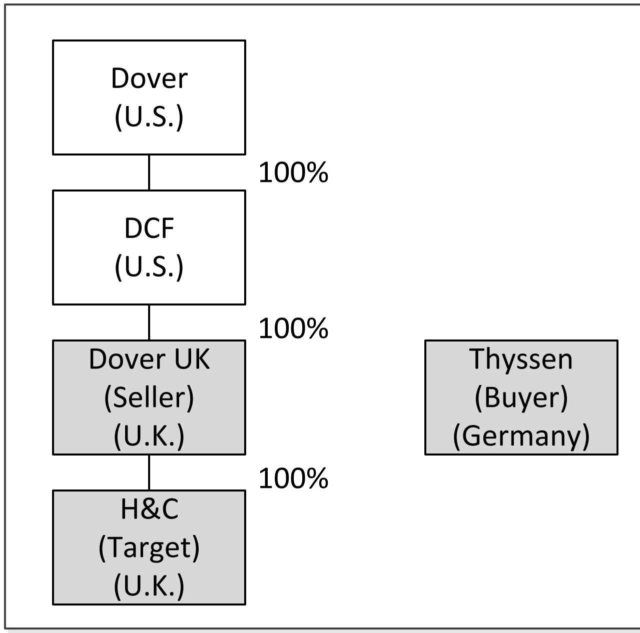
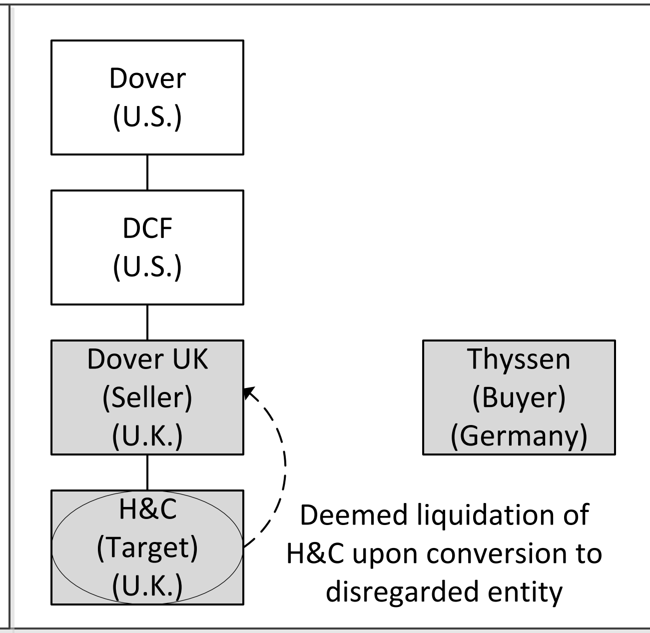
Dover Corporation v. Comm'r,
122 T.C. 324 (2004)

Check & Sell

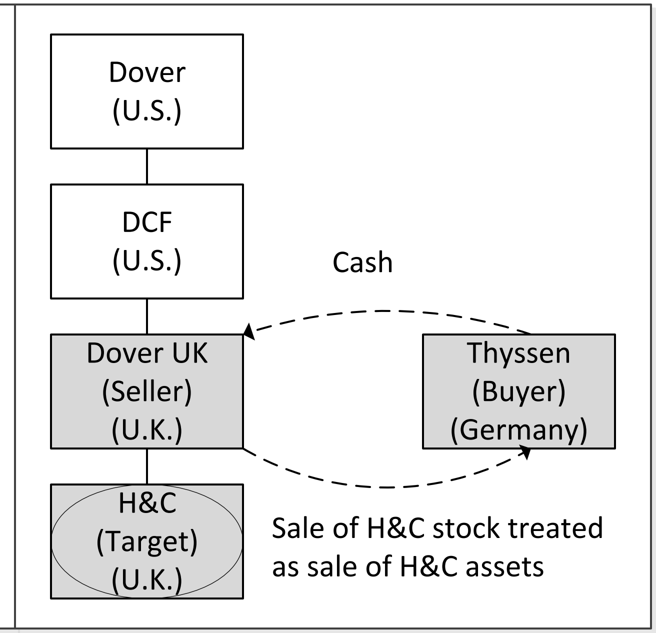
1 Begin



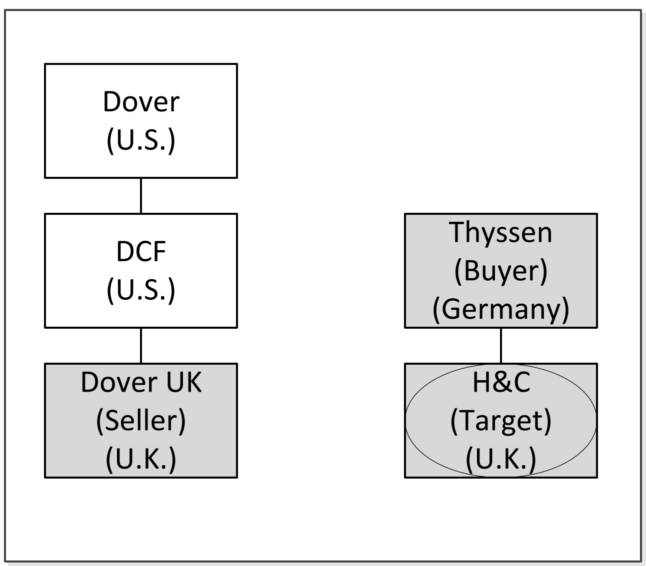
2 Check-the-Box Election - Effective June 30, 1997



3 Stock Sale – July 11, 1997



4 End



Dover UK agreed to sell its shares in H&C to Thyssen on June 30, 1997. This sale closed July 11, 1997. After the sale closed Dover UK made a retroactive check-the-box election to treat H&C as a disregarded entity effective June 30, 1997. The effect of the check-the-box election was to treat the sale of H&C shares as an asset sale for U.S. tax purposes. If such an election had not been made, Dover UK's gain related to the sale of its H&C shares would have been Subpart F income. See IRC §954(c)(1)(B). Instead, gain (if any) related to the deemed asset sale likely was not Subpart F income. This is because gain from the sale of active business assets is generally not Subpart F income.

Interestingly, Dover did not timely file its check-the-box election. So, on December 3, 1998 Dover requested "9100 relief" to file a check-the-box election for H&C. On March 31, 2000 the IRS granted relief to Dover allowing it to file a check-the-box election for H&C effective June 30, 1997.