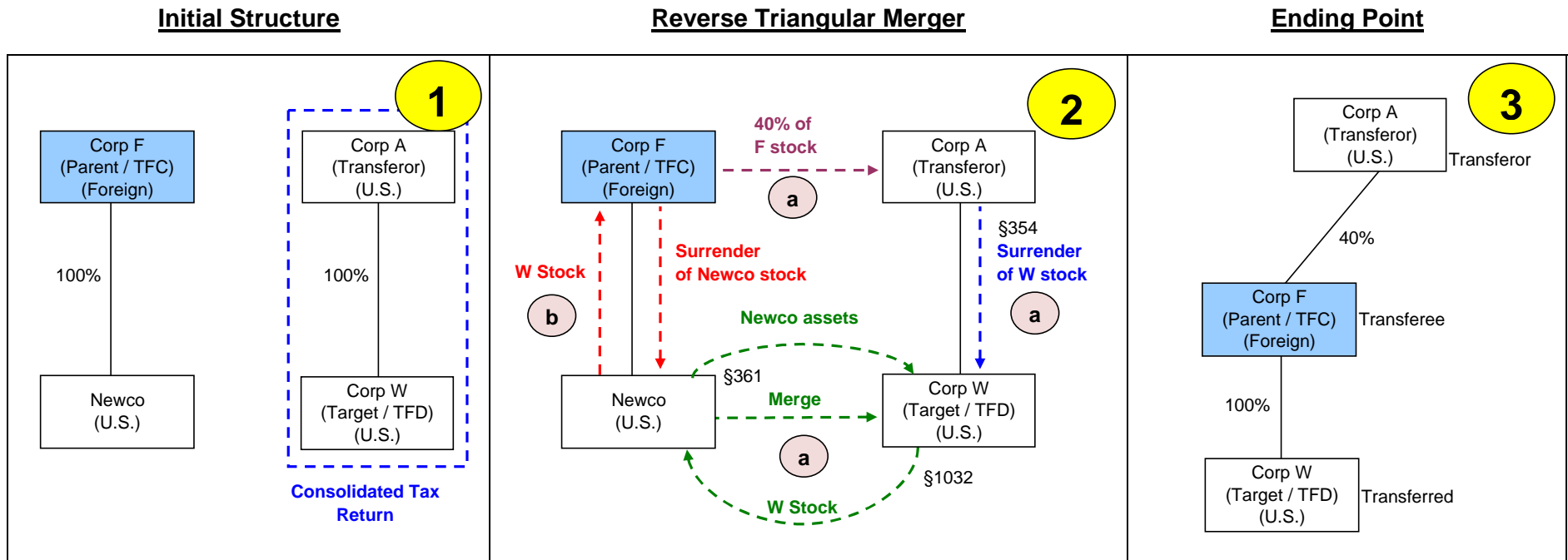


**Reg. 1.367(a)-3(d)(3), Example 2
368(a)(1)(A) / (a)(2)(E)**

**Indirect Stock Transfer -
Reverse Triangular Merger (40%)**

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F, a foreign corporation, owns all the stock of Newco, a domestic corporation. A, a domestic corporation, owns all of the stock of W, also a domestic corporation. A and W file a consolidated Federal income tax return. A does not own any stock in F (applying the attribution rules of section 318, as modified by section 958(b)). Newco merges into W and Newco receives stock of W which it distributes to F in a reorganization described in sections 368(a)(1)(A) and (a)(2)(E) ("reverse triangular merger"). Pursuant to the reorganization, A receives 40 percent of the stock of F in an exchange described in section 354.

The consequences of the transfer are similar to those described in Example 1. Pursuant to paragraph (d)(1)(ii) of this section, A is considered to have transferred its W stock to F pursuant to the indirect stock transfer rules. F is treated as the transferee foreign corporation, and W is treated as the transferred corporation. Provided that the requirements of Treas. Reg. §1.367(a)-3(c)(1) are satisfied, including the requirement that A enter into a five-year gain recognition agreement as described in §1.367(a)-8, A's exchange of W stock for F stock under section 354 will not be subject to section 367(a)(1).

Absent this rule, the section 354 exchange by A for F stock would not be subject to section 367(a)(1) because there is no actual transfer of property by a U.S. person to a foreign corporation.