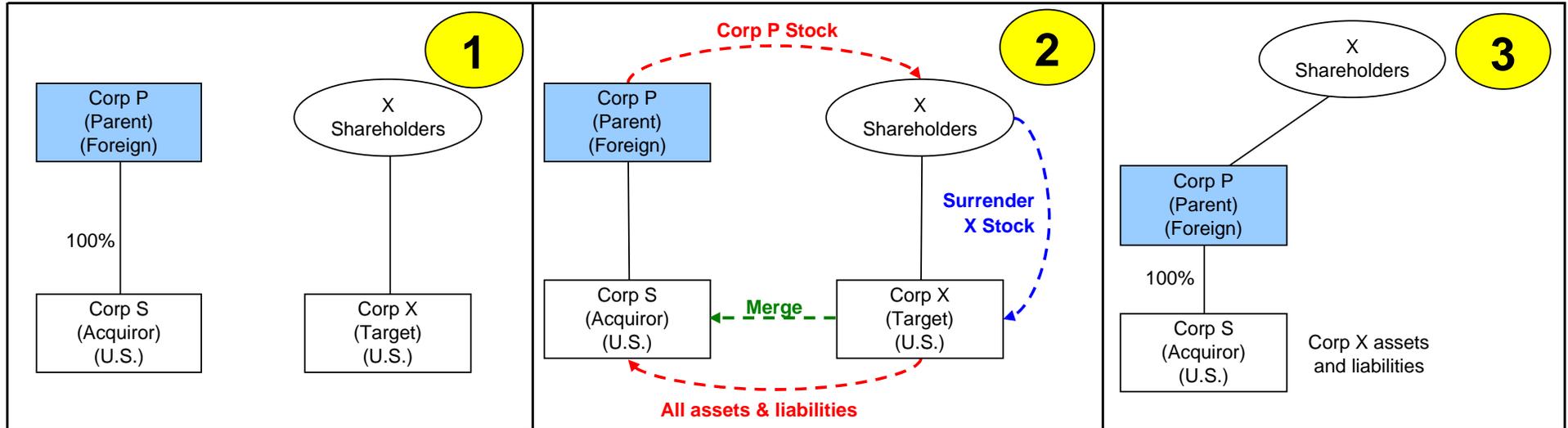


Merger into Foreign Corporation's Domestic Subsidiary

Initial Structure

Forward Triangular Merger

Ending Point



Corp S, a wholly owned subsidiary of Corp P, desires to acquire all of the assets of Corp X, an unrelated corporation. P is incorporated under the laws of a foreign country. S and X are incorporated under the laws of State A. It is proposed that the acquisition will be accomplished by merging X into S, pursuant to the laws of State A, with the X shareholders exchanging their X stock for P stock. No stock of S will be used in the transaction. In the merger, S will receive all of the assets of X and will assume all of X's liabilities.

At the time of this ruling, section 367(a) provided that gain would be recognized unless before the exchanges are consummated a ruling was issued by the IRS. Section 368(a)(1)(A) defines the term "reorganization" to mean a statutory merger or consolidation. Section 368(a)(2)(D) provides that the acquisition by one corporation, in exchange for stock of a corporation ("controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation will not disqualify a transaction under section 368(a)(1)(A) if (i) such transaction would have qualified under section 368(a)(1)(A) if the merger had been into the controlling corporation, and (ii) no stock of the acquiring corporation is used in the transaction.

The test of section 368(a)(2)(D) of whether the transaction would have qualified under section 368(a)(1)(A) if the merger had been into the controlling corporation means that the general requirements of a reorganization under section 368(a)(1)(A) (such as business purpose, continuity of business enterprise, and continuity of interest) must be met in addition to the special requirements of section 368(a)(2)(D). Under this test, it is not relevant whether the merger into the controlling corporation could have been effected pursuant to state or Federal corporation law.

The proposed transaction meets the requirements of a reorganization under section 368(a)(1)(A) and the special requirements of section 368(a)(2)(D). Therefore, the transaction qualifies as a reorganization under section 368(a)(1)(A) by reason of the application of section 368(a)(2)(D).