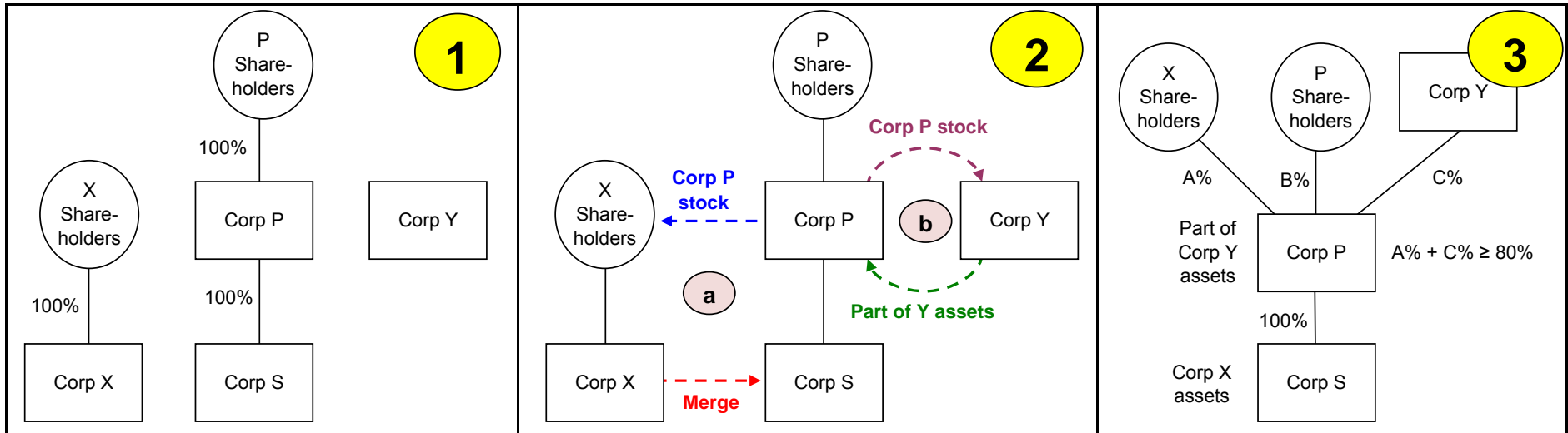


**Forward Triangular Merger  
Not Part of 351 Exchange**

**Forward Triangular Merger  
& Asset Transfer**

**Initial Structure**

**Ending Point**



X, Y and P were unrelated corporations. In a transaction qualifying as a reorganization under sections 368(a)(1)(A) and (a)(2)(D), X was merged into S, a wholly owned subsidiary of P. In the transaction, the shareholders of X received shares of P stock in exchange for their shares of X stock. At the same time, as part of an overall plan, Y transferred part (but less than substantially all) of its assets to P in exchange for P stock. While Y did not have the requisite control of P to qualify its transfer of assets within the provisions of section 351, Y together with the former shareholders of X were in control of P within the meaning of section 368(c).

Although P stock was used as the consideration in the merger of X into S, the shareholders of X did not transfer any property to P. Therefore, since P is not the transferee of the stock of X, the P stock received by the shareholders of X is not taken into account with the P stock received by Y in determining whether the requirements of section 351 have been met. The only assets received by P were transferred by Y, and since Y was not in control of P immediately after the transfer, the transaction does not qualify under section 351. Additionally, since P is not the transferee of the X assets, the receipt of P stock by X upon the transfer of its assets to S cannot be aggregated with the P stock received by Y in determining whether the 80 percent control requirement of section 351 could be met by X and Y.

The instant case should be compared with Rev. Rul. 68-357 and Rev. Rul. 76-123. In those rulings, stock received by individual transferors was aggregated with stock received in reorganizations for purposes of the control requirement of section 351 when the transfers were to the same corporation.