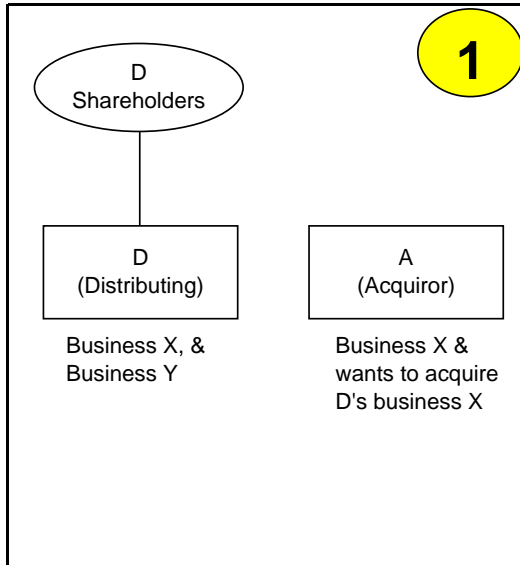
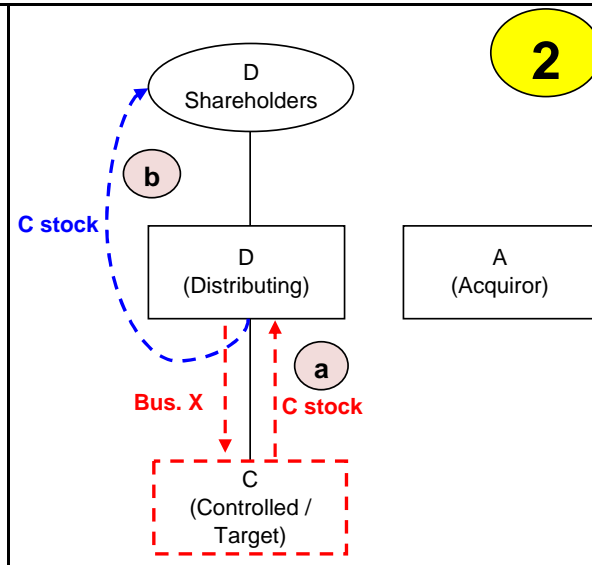


D Reorg Spin-Off & C Reorg of Controlled

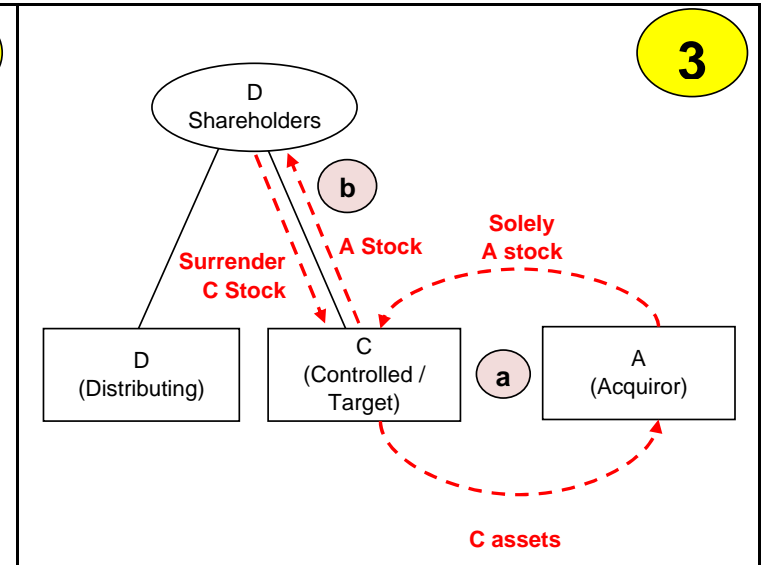
Initial Structure



D Reorg / Spin-Off



C Reorg



The issue in the ruling was not whether the spin-off qualified as a tax free reorganization. Rather, the issue was whether the C reorganization qualified for tax free reorganization treatment. Specifically, the issue was whether the assets transferred in the C reorg were substantially all of the assets ("SAA") of the transferor. Was the SAA test based on D's assets before the spin-off, or only based on C's assets after the spin-off?

The ruling held that the SAA requirement was met even though C's assets represented less than SAA of D before it formed C. The ruling also held that the SAA requirement would not be met if D had spun off its Y business and A had acquired the remaining assets from D in a purported C reorg. See *Elkhorn Coal*, 95 F.2d 732 (4th Cir. 1937).

Note that, under current law, D would be required to recognize gain on the distribution of Controlled stock under section 355(e), but the shareholders would not be required to recognize gain.

Ending Point

