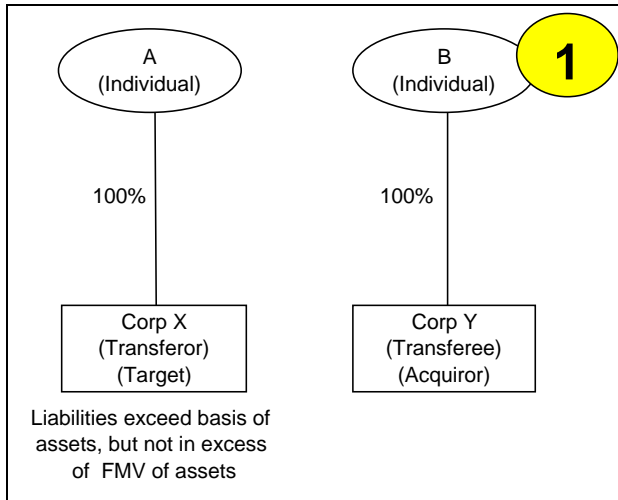


**Revenue Ruling 2007-8,  
Situation 2**

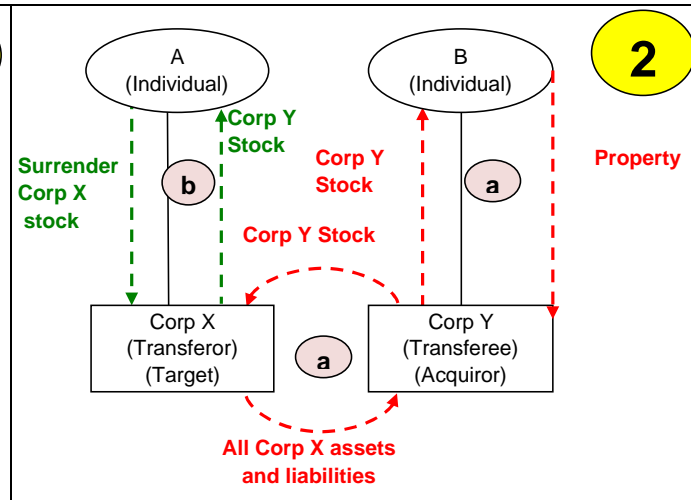
**351 Exchange / C Reorg Overlap  
With Liabilities Exceeding Basis**

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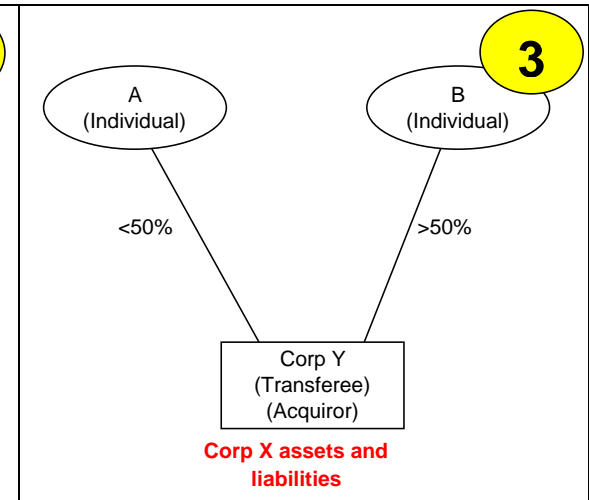
**Initial Structure**



**351 Exchange/C Reorganization**



**Ending Point**



A, an individual, owned all of the stock of corporation X. B, an individual unrelated to A, owned all of the stock of corporation Y. Y acquired all of the assets of X in exchange for Y voting stock and the assumption by Y of X's liabilities. Pursuant to the plan, X liquidated and distributed the Y voting stock to A. At the time of the acquisition, the sum of the X liabilities assumed by Y exceeded X's total adjusted basis in the property transferred to Y. Further, the value of X's assets transferred to Y exceeded the amount of X's liabilities assumed by Y, and, immediately after the exchange, the value of Y's assets exceeded the amount of Y's liabilities. Simultaneously, and as part of the overall plan, B contributed property to Y in exchange for additional Y stock so that immediately after the transaction, B held more than 50 percent of the vote and of the value of all the stock of Y. The Y stock issued to X along with the Y stock issued to and held by B immediately after the transaction constituted section 368(c) control of Y. The transfer by X of all of its assets to Y in exchange for Y voting stock and assumption of liabilities, followed by the liquidation of X, qualified as a reorganization described in section 368(a)(1)(C). Further, X's transfer of assets to Y in exchange for Y voting stock along with B's transfer of property to Y in exchange for additional Y stock was an exchange to which section 351 applied.

Section 357(a) provides that if, as part of the consideration in an exchange to which sec. 351 or sec. 361 applies, a liability of the taxpayer is assumed by another party to the exchange then such assumption shall not be treated as money or other property. However, in the case of certain exchanges, sec. 357(c)(1) provides that the transferor is required to recognize gain if the sum of the amount of liabilities assumed exceeds the total of the adjusted basis of the property transferred. Prior to the enactment of The American Jobs Creation Act of 2004 (the Jobs Act), sec. 357(c)(1) applied in the case of an exchange (A) to which sec. 351 applied, or (B) to which sec. 361 applied by reason of a plan of reorganization within the meaning of sec. 368(a)(1)(D). The Jobs Act amended sec. 357(c)(1)(B), limiting the application of sec. 357(c)(1) to exchanges to which sec. 351 applies, or to which sec. 361 applies by reason of a plan of reorganization within the meaning of sec. 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction that qualifies under sec. 355. Thus, as amended, sec. 357(c) no longer applies to an acquisitive sec. 368(a)(1)(D) reorganization - i.e., one that satisfies the requirements of sec. 354(b)(1).

The intent of the Jobs Act amendment to sec. 357(c)(1)(B) was to exclude reorganizations from the application of sec. 357(c)(1) unless described in sec. 357(c)(1)(B), regardless of whether such reorganizations are also exchanges to which sec. 351 applies. In the above transaction, the transferor corporation ceases to exist and, therefore, cannot be enriched as a result of the assumption of its liabilities. In accordance with the above reasoning, sec. 357(c)(1) does not apply to X's transfer of assets to Y in exchange for Y stock and assumption of X's liabilities notwithstanding the fact that such transfers were also exchanges to which sec. 351 applied.