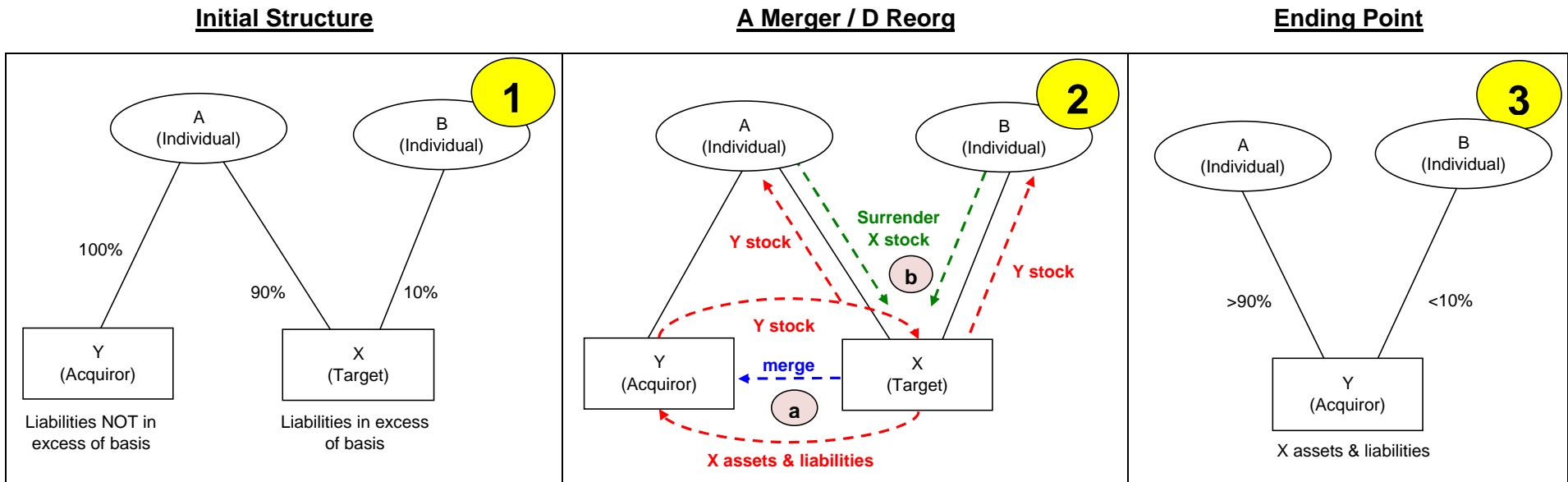


D Reorganization with Liabilities Exceeding Basis



The merger of X into Y qualified as both a section 368(a)(1)(A) reorganization and a section 368(a)(1)(D) reorganization. Section 357(c)(1)(B) provides that gain must be recognized to the extent that liabilities exceed basis on a section 361 exchange in a D reorganization. The ruling holds that there is no exception to section 357(c)(1)(B) where a reorganization qualifies under section 368(a)(1)(A) as well as under section 368(a)(1)(D).

If the merger had been in the other direction (Y into X instead of X into Y), no gain would have been recognized because Y's liabilities did not exceed its basis.

Compare Rev. Rul. 79-289, which holds that a reorganization that qualifies as both an F reorganization and a D reorganization is not subject to section 357(c)(1)(B).

Note that section 357(c)(1)(B) was amended in 2004 as part of the American Jobs Creation Act. This amendment obsoletes Rev. Rul. 75-161. Section 357(c)(1)(B) now only applies to divisive D reorganizations (i.e., section 355 spin-offs, split-offs, and split-ups). See Rev. Rul. 2007-8.