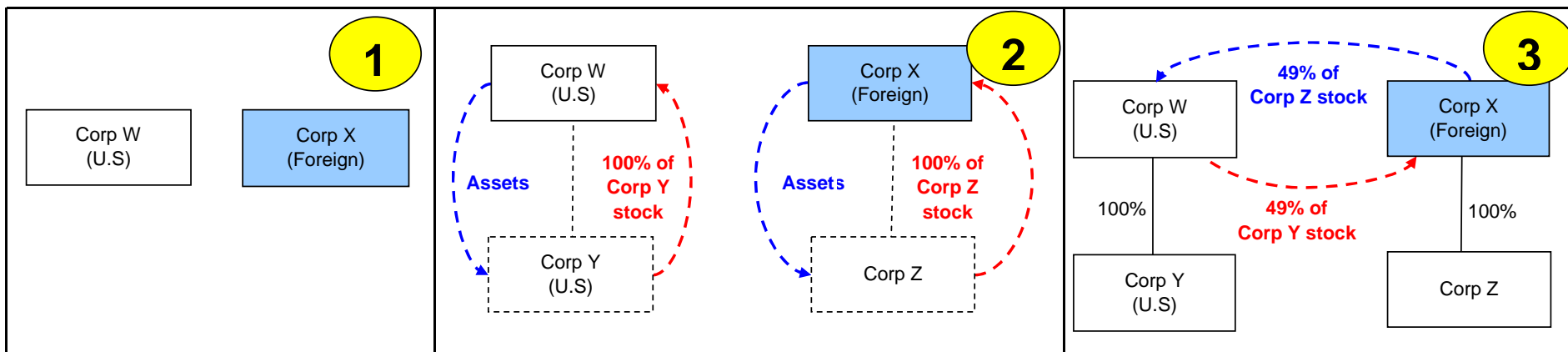


Busted 351 Via Mutual Exchanges of Stock

Initial Structure

Contributions

Exchanges of stock



W, a domestic corporation, produces and sells a product in the United States which it would like to market abroad. X, a foreign corporation owned by nonresident aliens produces and sells a similar type product in its country which it would like to market in the United States. In order to achieve their goals, W and X entered into a joint venture agreement for the organization of domestic corporation Y and foreign corporation Z.

W plans to organize Y and transfer assets worth 5x dollars to Y in exchange solely for all of the Y stock. X, in turn, plans to organize Z and transfer assets worth 5x dollars to Z in exchange solely for all of the Z stock. Thereafter, pursuant to the joint venture agreement, W will exchange 49 percent of its Y stock with X for 49 percent of X's Z stock.

Section 351(a) provides, in relevant part, that no gain or loss will be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation.

Since W is not a transferor of property as to Z and does not have "control" of Y after transferring property to that corporation and since X is not a transferor of property as to Y and does not have "control" of Z after transferring property to that corporation, there is no tax-free exchange under section 351 upon the organization of either Y or Z.

Ending Point

