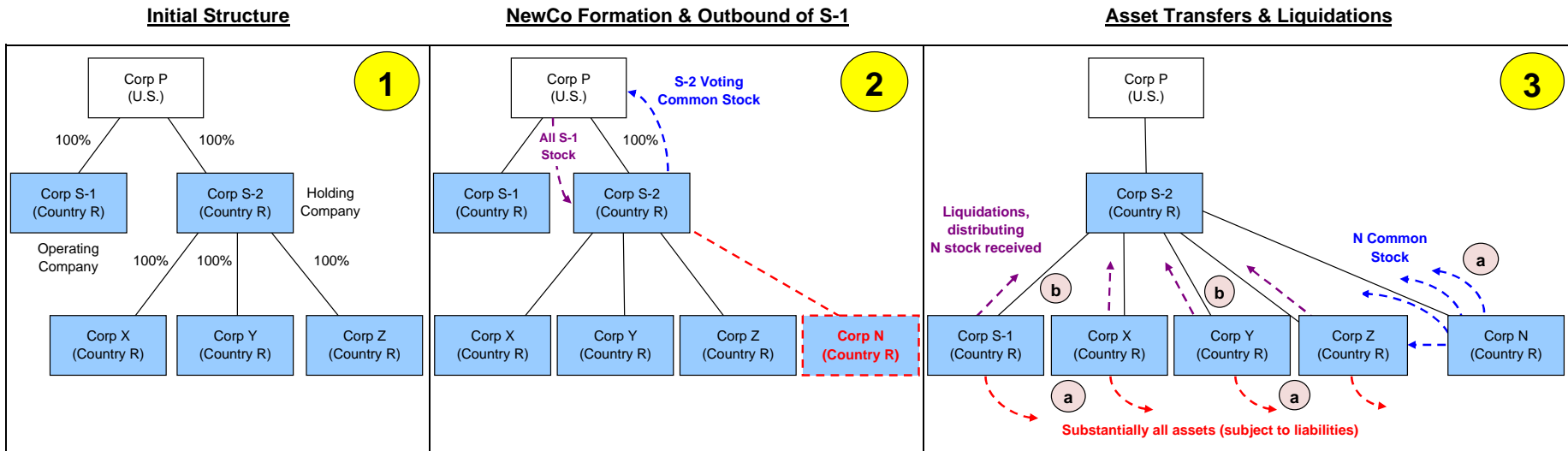


**Outbound 351 & Asset Reorg  
Recast as a Triangular C Reorg**



P, a domestic corporation, owns all of the stock of S-1 and S-2, both of which are incorporated in foreign country R. S-1 is an operating company. S-2 is a holding company that owns all of the stock of corporations X, Y, and Z, which are also incorporated in foreign country R. In a proposed transaction that the Commissioner of Internal Revenue has determined is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes within the meaning of section 367, all of the operating companies in country R are to be combined into a new subsidiary of S-2 to be formed in country R in accordance with the following plan: (a) S-2 will organize N corporation, in foreign country R, solely for the purpose of participating in the proposed transaction. (b) P will then transfer all of the stock of S-1 to S-2 in exchange for additional shares of voting common stock of S-2. (c) Immediately after P's transfer of the stock of S-1 to S-2, pursuant to a plan of reorganization X, Y, and Z, as well as S-1, will transfer substantially all of their assets (subject to liabilities) to N, in exchange for additional shares of common stock of N. (d) X, Y, Z, and S-1 will then be liquidated and S-2 will receive in liquidation the N stock held by X, Y, Z, and S-1. Thus, upon consummation of the plan N will have acquired substantially all of the assets of X, Y, Z, and S-1.

Since the two steps of P's transfer of the stock of S-1 to S-2 immediately followed by N's acquisition of S-1's assets are part of a prearranged, integrated plan which has as its objective the consolidation of all of the operating companies in N, the two steps should not be viewed independently of each other for Federal income tax purposes. Accordingly, the transfer by P for the stock of S-1 to S-2 will not constitute an exchange within the meaning of section 351. Instead, N will be viewed as directly acquiring substantially all of the assets of S-1 in exchange for stock of S-2. This recast transaction does not meet the definitional requirements of a section 368(a)(1)(D) reorganization because neither S-1 nor P (the transferor or its shareholder) will be in control of N, within the meaning of section 368(c), immediately after the transaction. However, the direct transfers of assets of X, Y, and Z to N in exchange for common stock of N, in each instance, will qualify as reorganizations within the meaning of section 368(c)(1)(D) because S-2, the sole shareholder of X, Y, and Z will be in control of N, within the meaning of section 368(c), immediately after each transfer.

On the other hand, the acquisition of the assets of S-1 (subject to liabilities) in exchange for stock of S-2 by N, as recast, may be properly characterized as an acquisition of substantially all of the assets of S-1 by N in exchange solely for part of the voting stock of S-2 which is in control of N and as such constitutes a reorganization within the meaning of section 368(c)(1)(C) (a triangular C reorganization). It is interesting to note that if S-2 had issued non-voting stock to P then the reorganization of S-1 into Corp N would not have been considered a triangular C reorganization, but still should have qualified as a section 351 transaction followed by a D reorganization.

**Ending Point**

