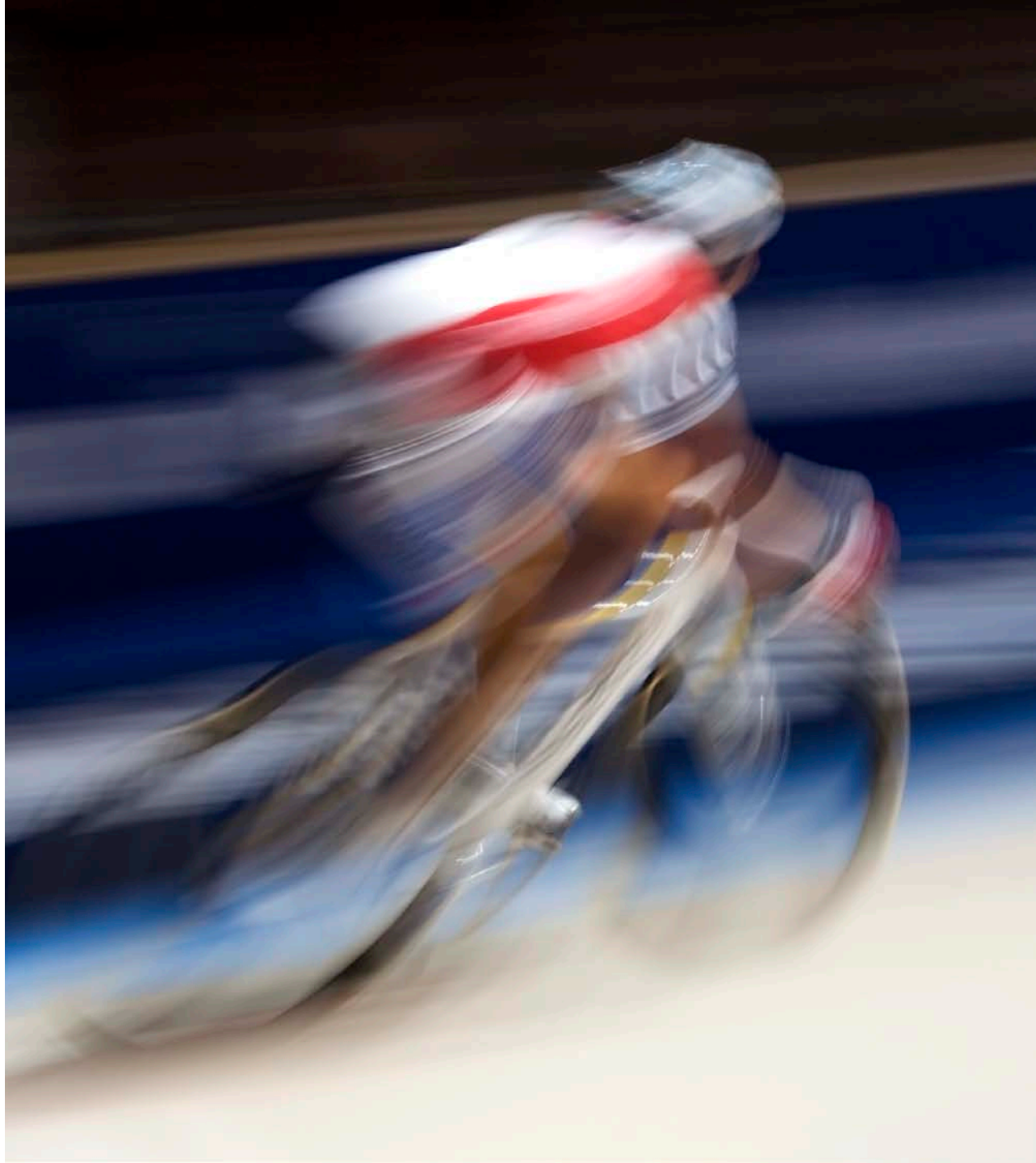




A Practical Guide to Interpreting and Addressing the BEPS Proposals

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Agenda

Introduction: Base Erosion and Profit Shifting (BEPS)

Financing

Supply chain

Intellectual Property

Looking ahead

Response to current proposals

Introduction

Organization for Economic Cooperation and Development (“OECD”) BEPS Action Plan – key themes

Widening the tax base

Interest expense
Taxable presence
Profit allocation

- Intangibles
- Methods

Compliance

Transfer pricing
documentation

Enforcement

Disclosure obligations
GAAR
Mutual agreement
Harmful tax practices
Data collection

Digital business

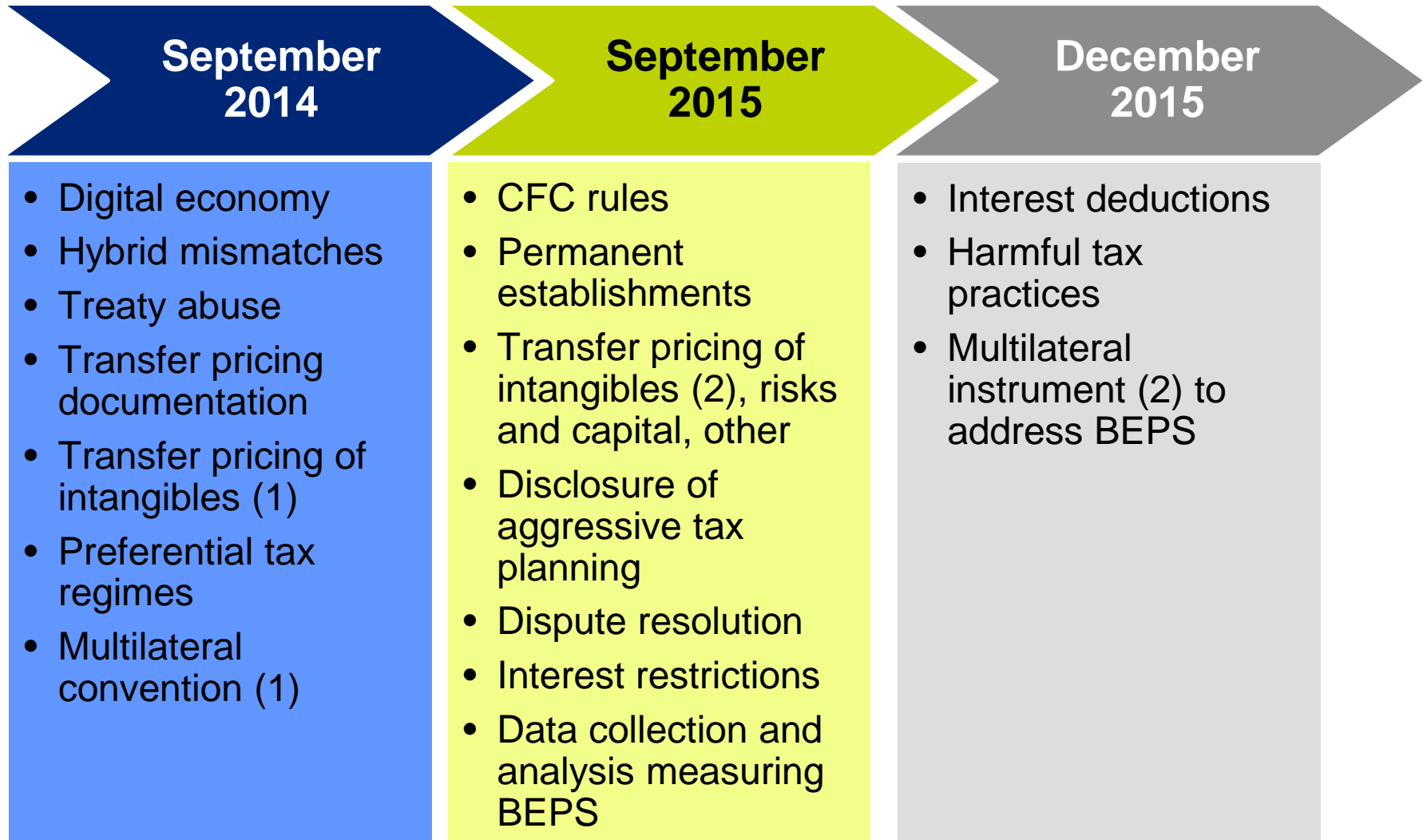
Coherence

Restoring international standards

Transparency and certainty

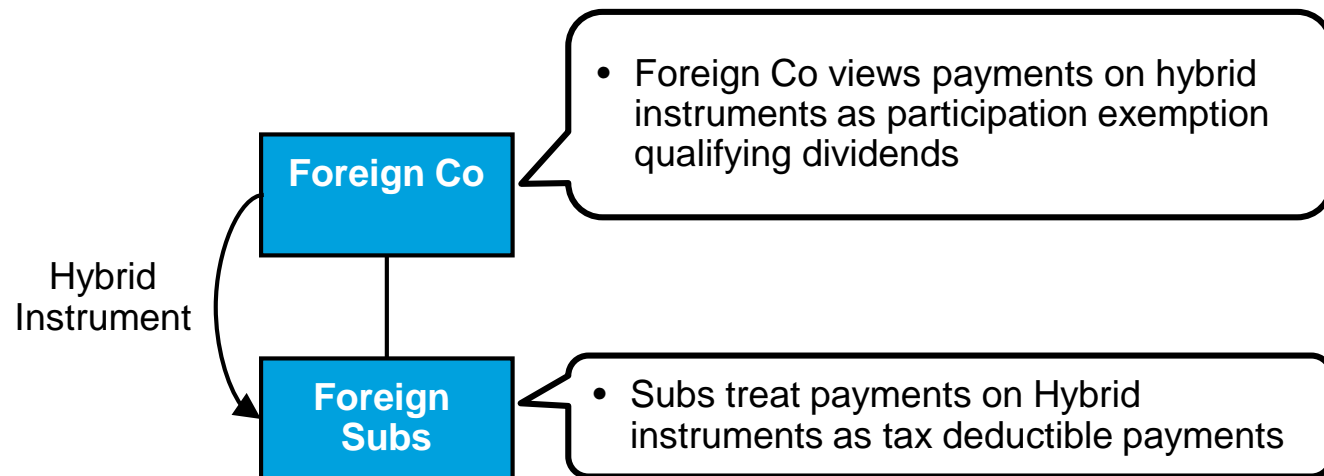
Introduction

Timeline



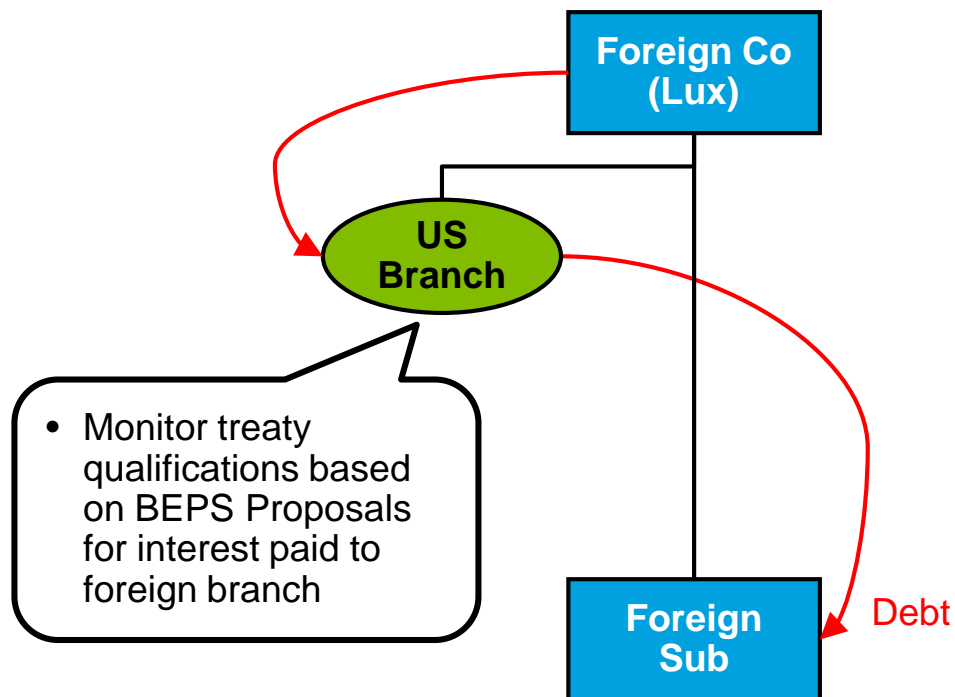
Hybrid financing

Hybrid instrument

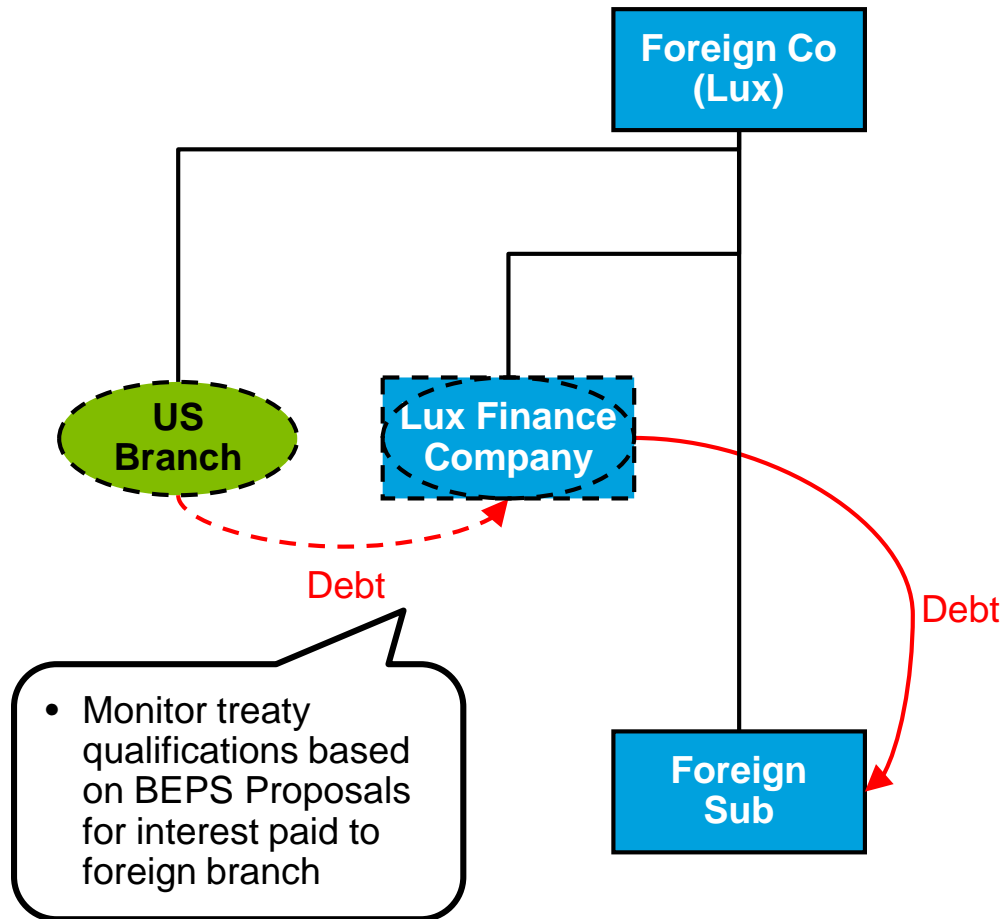


	Potential Global Tax Reform Impact	Timing of Change	Recommended Action
Non-EU/EU Hybrids	Possible loss of Foreign sub interest deduction	Mid Term	Monitor developments
	BEPS challenges to availability of treaty relief	Mid Term	Monitor developments
EU/EU Hybrids	The payment could be deemed taxable at the level of the Holder	Short Term	Begin design and flexibility analysis
	BEPS challenges to availability of treaty relief	Short Term	Monitor developments

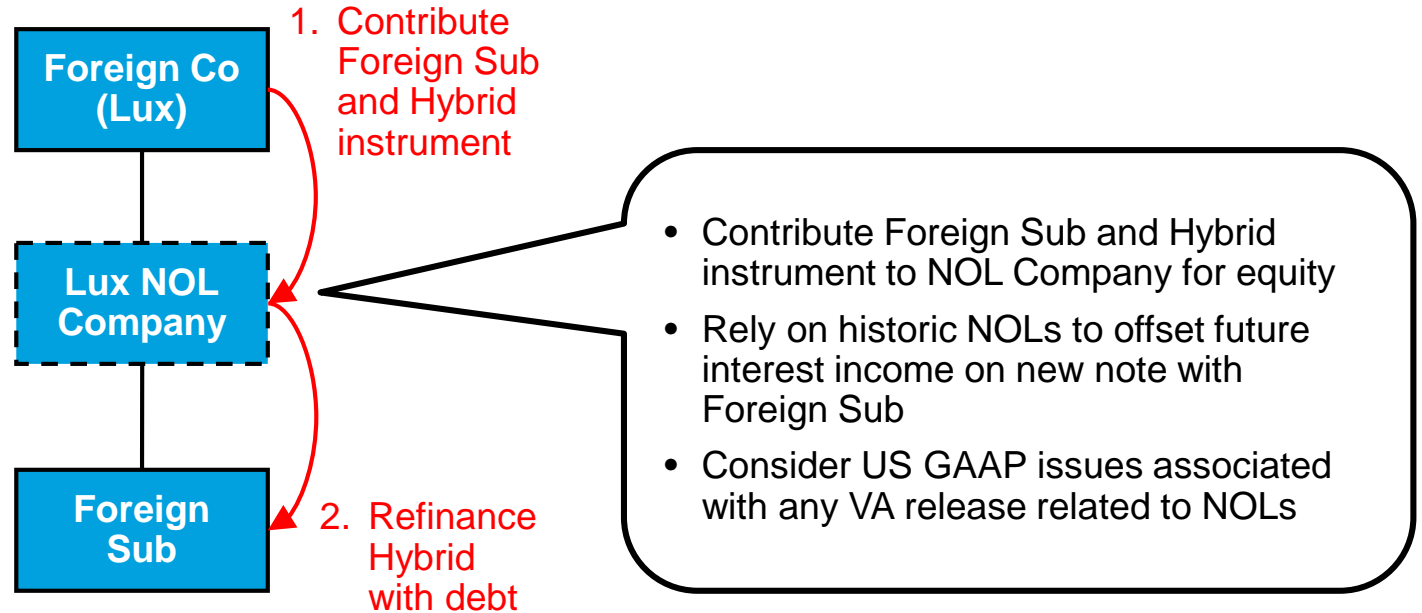
Luxembourg US Finance Branch I



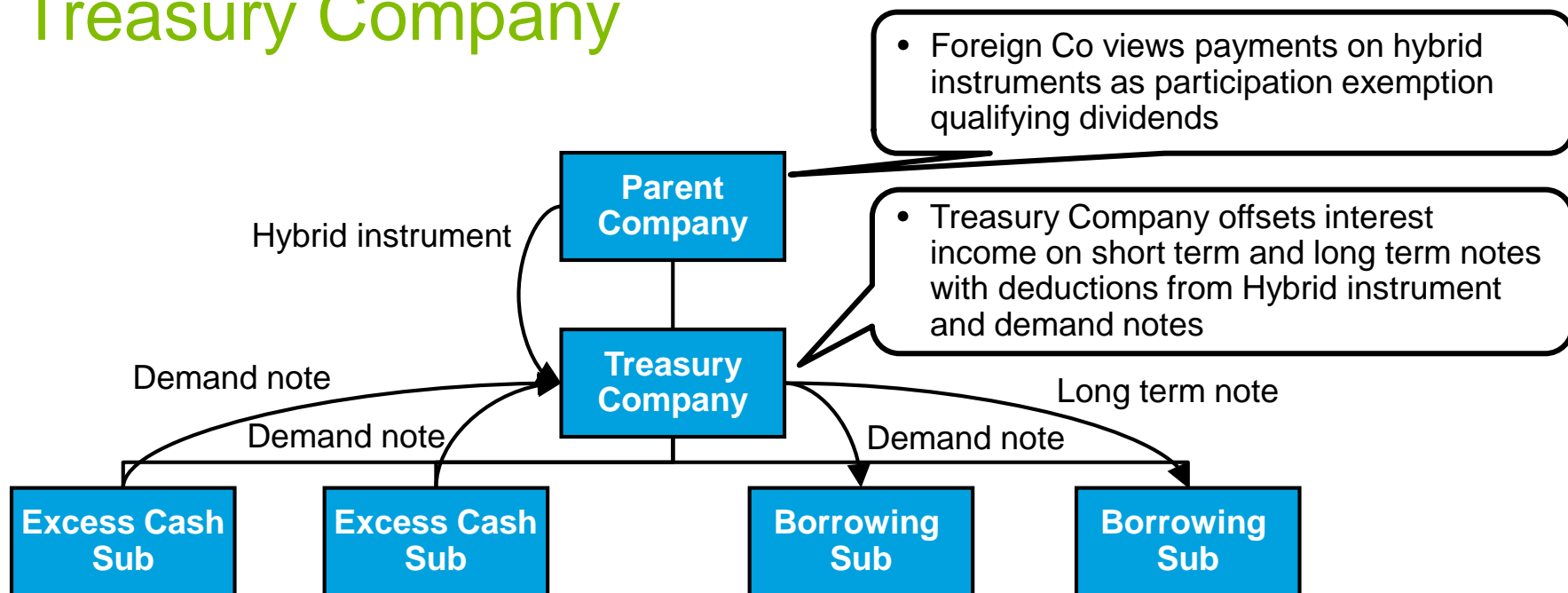
Luxembourg US Finance Branch II



Luxembourg NOLs



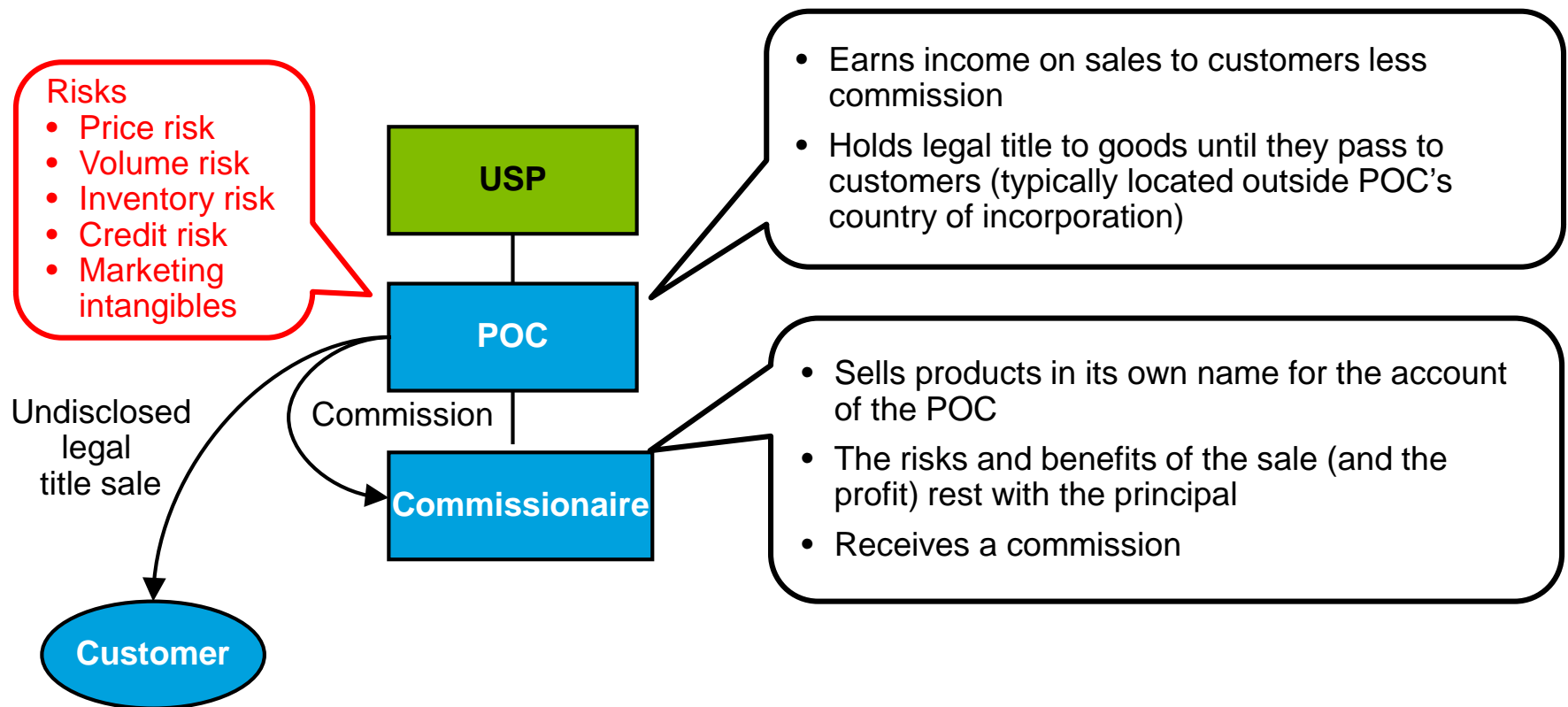
Treasury Company



Potential global tax reform impact	Timing of change	Recommended action
Possible loss of deduction at Treasury Company for hybrid payment	Mid Term	Monitor developments
Possible loss of deduction at Borrowing Sub for imported mismatch	Mid Term	Monitor developments
BEPS challenges to availability of treaty relief (for Treasury and Parent Company qualification)	Mid Term	Monitor developments

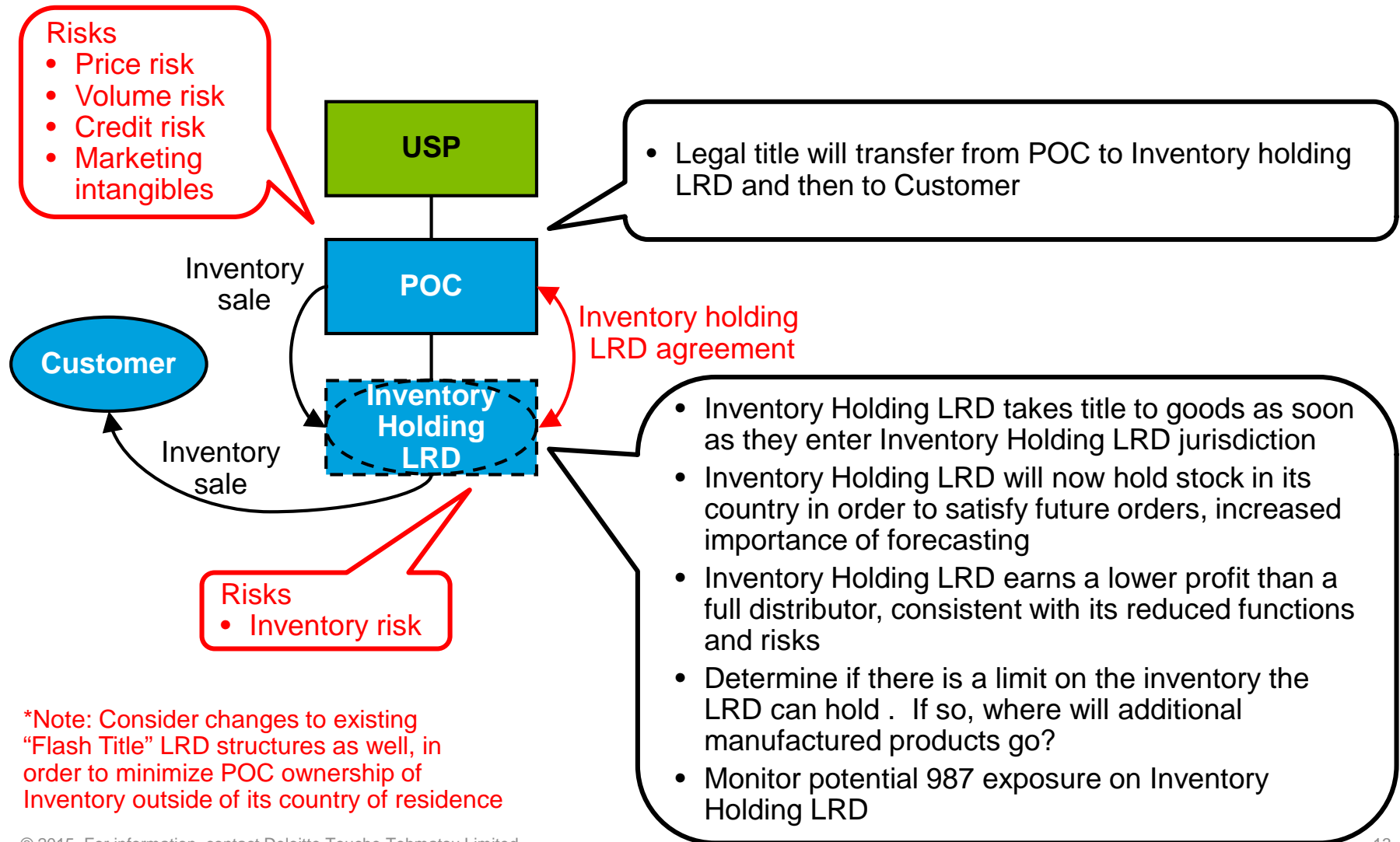
Supply Chain

Commissionaire

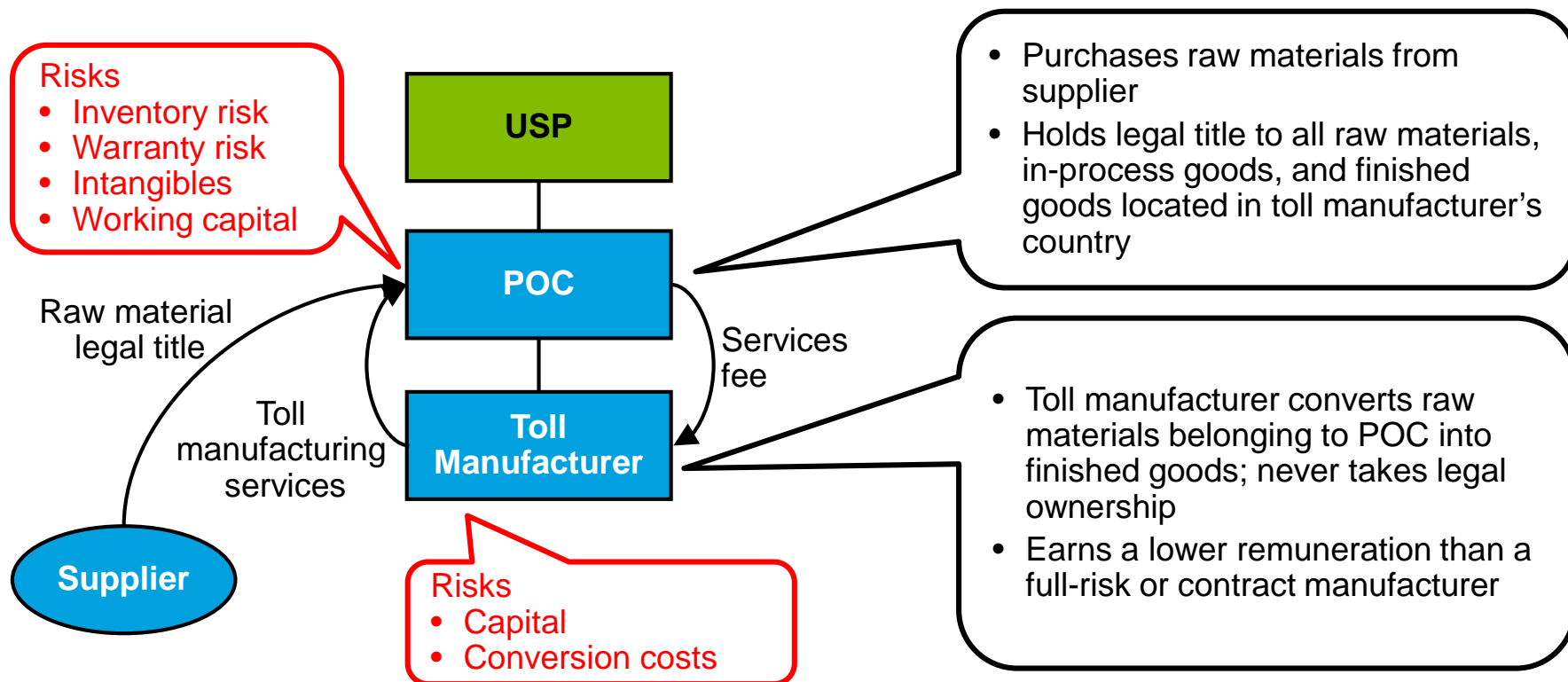


Potential global tax reform impact	Timing of change	Recommended action
BEPS changes to PE definition resulting in PE for POC	Mid Term	Feasibility study
Increased scrutiny of TP policies and POC return	Mid Term	Monitor developments

Limited Risk Distributor (LRD)

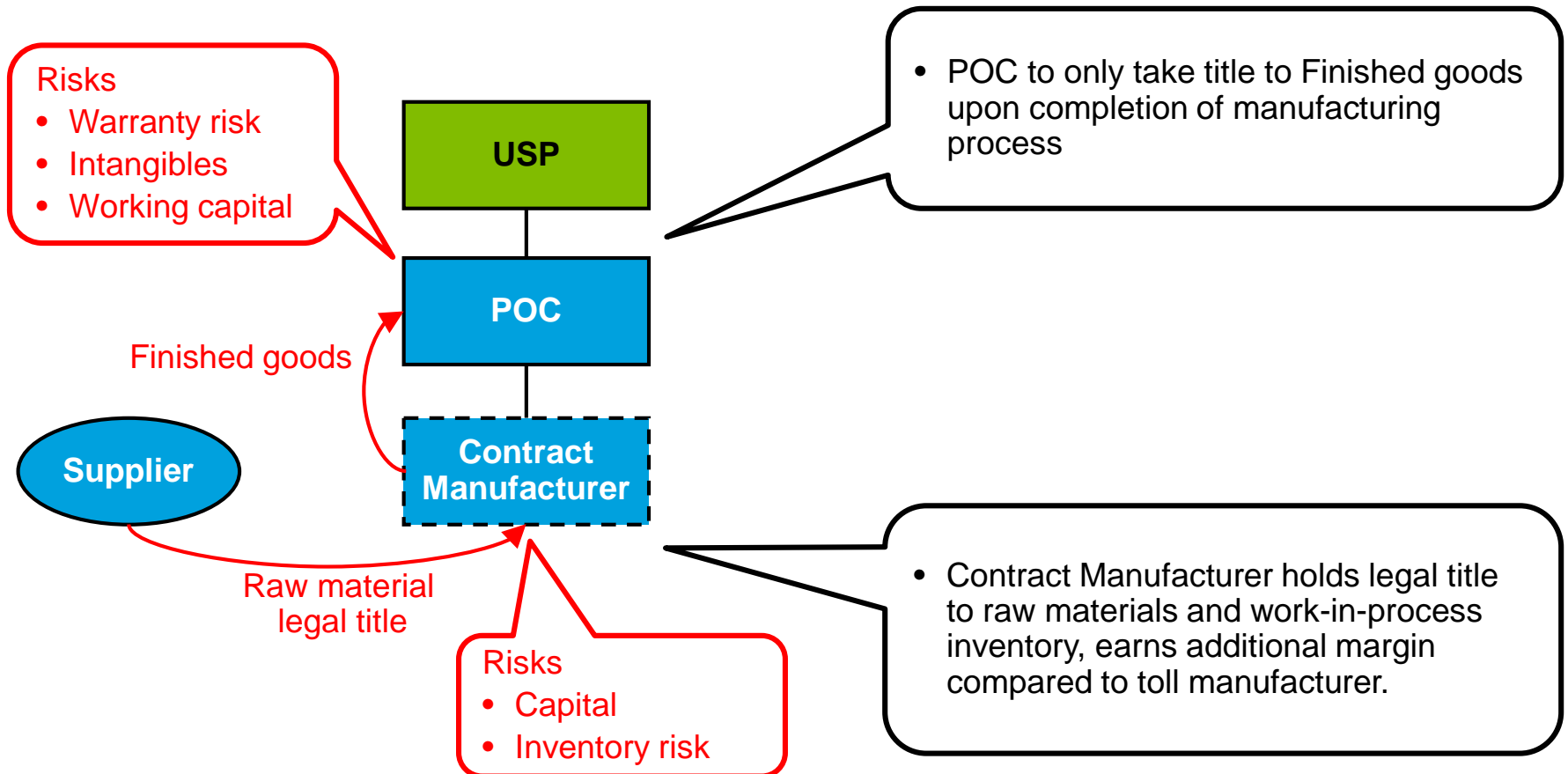


Tolling



Potential Global Tax Reform Impact	Timing of Change	Recommended Action
BEPS changes to PE definitions – resulting in PE of POC	Mid Term	Feasibility study
Increased scrutiny of TP policies and POC return	Mid Term	Monitor developments

Contract Manufacturing



Intellectual Property (IP)

Action 8: Transfer Pricing Aspects of Intangibles

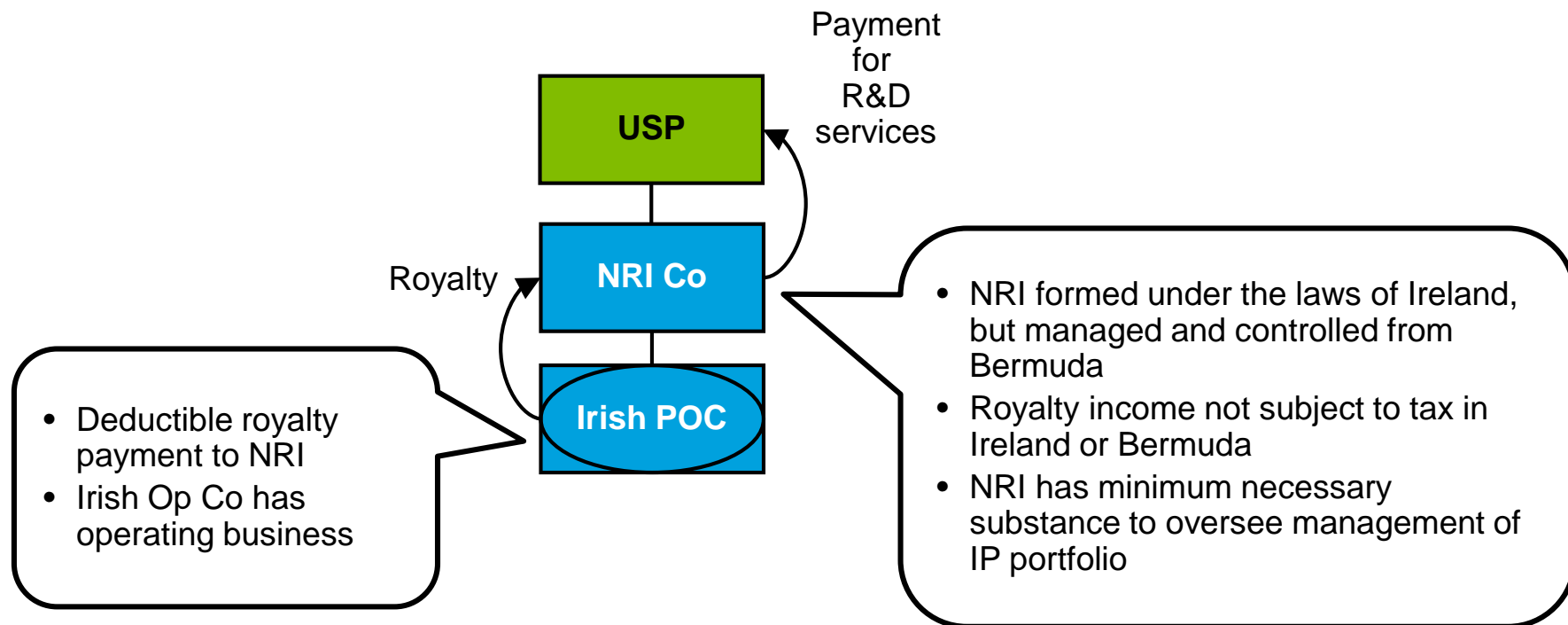
Action 8 focuses on limiting the potential BEPS that can result from moving intangibles among group members, by specifically

- Adopting a broad and clearly delineated definition of intangibles
- Ensuring that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with (rather than divorced from) value creation
- Developing transfer pricing rules or special measures for transfers of hard-to-value intangibles
- Updating the guidance on cost contribution arrangements

Returns from intangibles and methodology

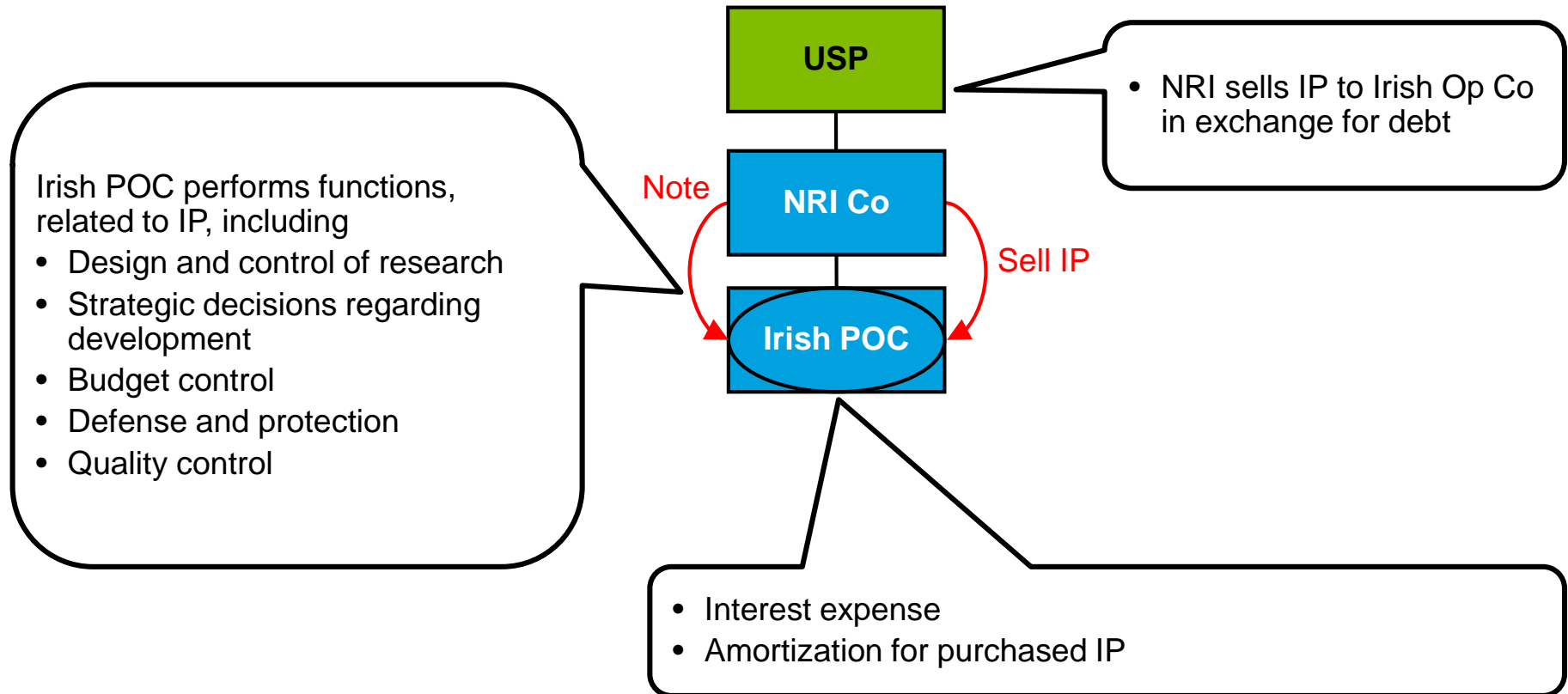
- If legal owner does not control or perform functions related to development, enhancement, maintenance, protection or exploitation legal owner will not be entitled to ongoing benefit attributable to outsourced functions
- Certain important functions have special significance for allocation of returns from intangibles. While identification of important functions in each case will depend on specific facts and circumstances, important functions may include (per Action 8: 2014 Deliverable, ¶ 6.56.)
 - Design and control of research and marketing programs
 - Direction of and establishing priorities for creative undertakings including determining the course for blue sky research
 - Control over strategic decisions regarding development programs
 - Management and control of budgets
 - Defense and protection of intangibles
 - Quality control over functions performed by independent or associated enterprises

Non-resident Irish (NRI) Company

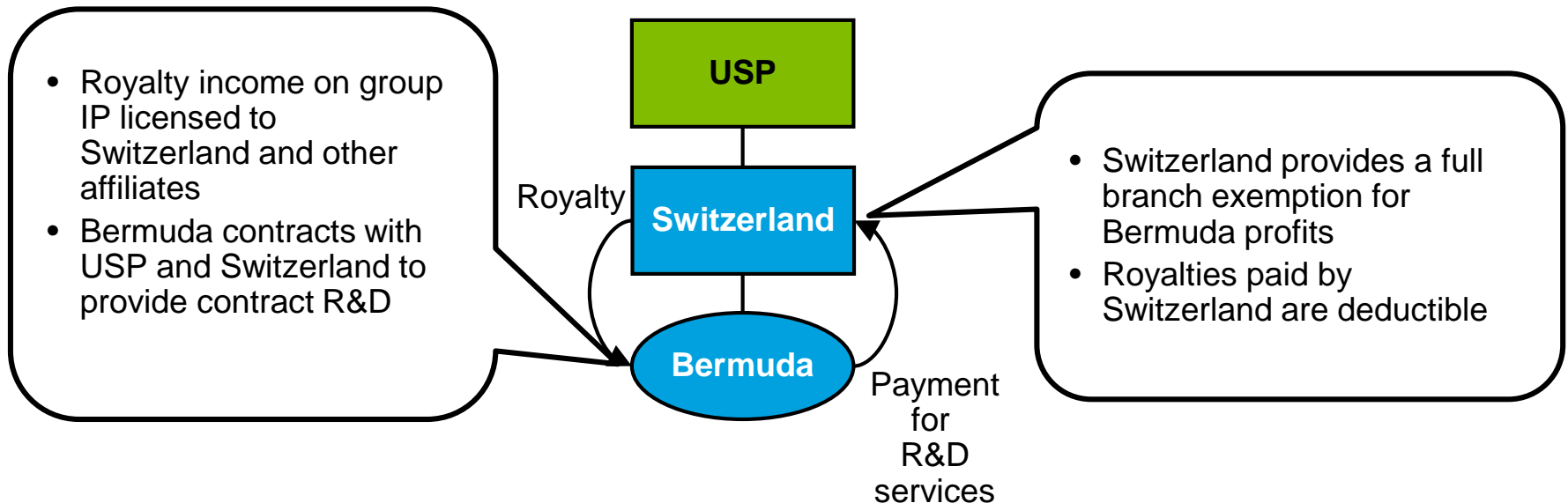


Potential global tax reform impact	Timing of change	Recommended action
Denial of deduction for royalties paid to NRI Company	Long Term	Monitor proposals
Focus on transfer pricing of Irish Operating Company putting additional pressure on profitability/return	Long Term	Monitor proposals

On-shore Irish IP

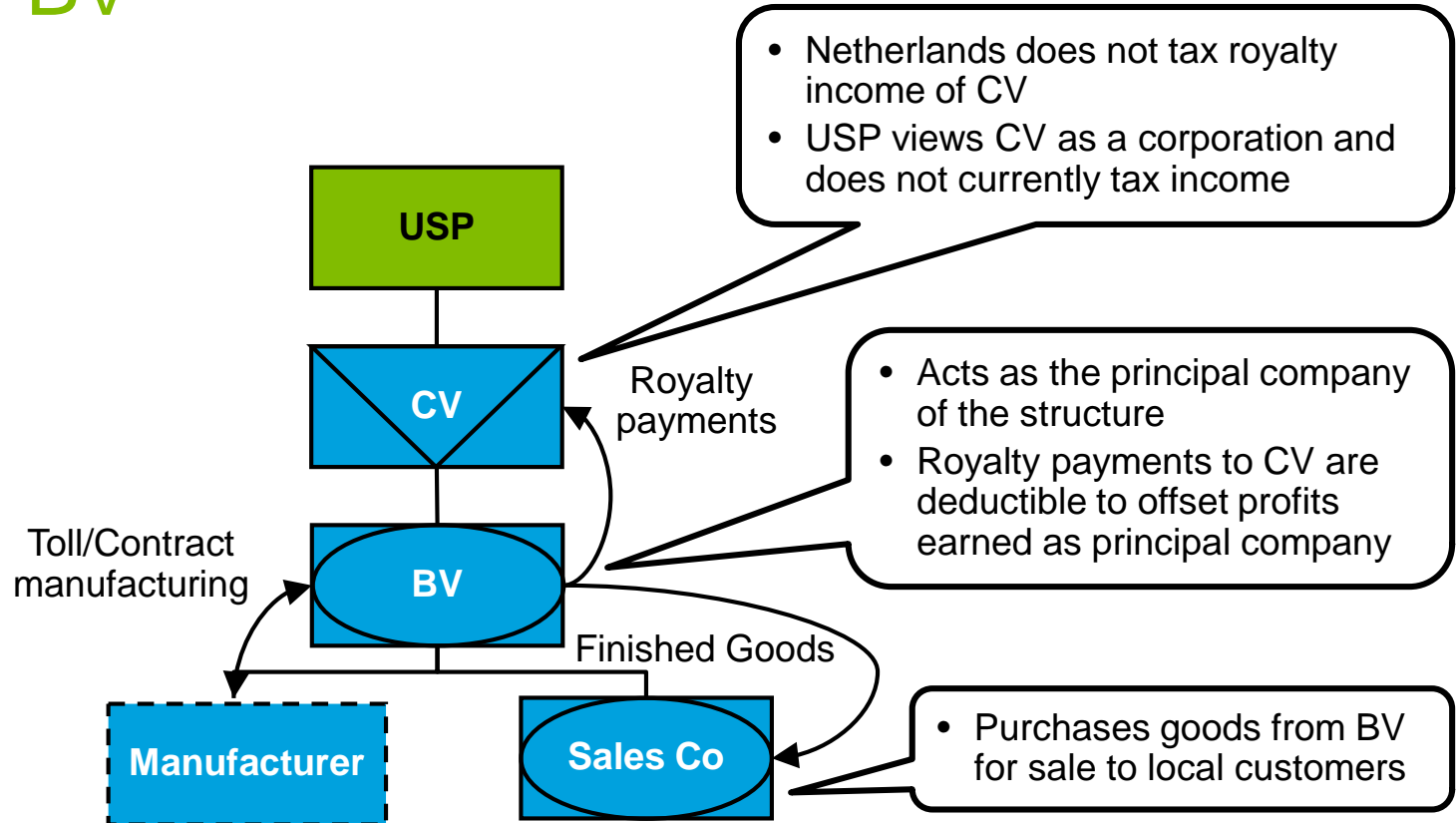


Swiss/Bermuda IP branch



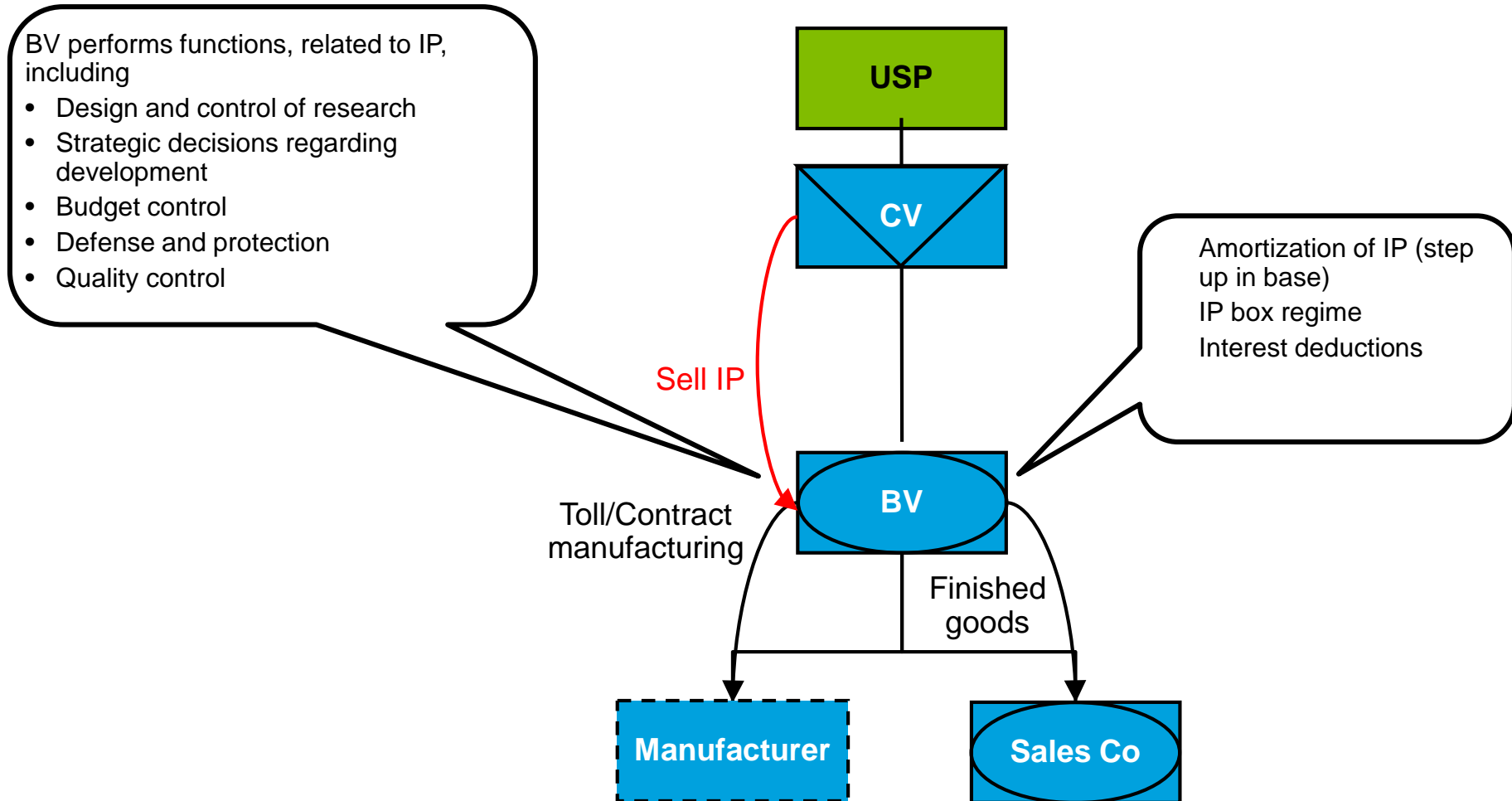
Potential global tax reform impact	Timing of change	Recommended action
Denial of deduction for royalties paid to Bermuda Company	Long Term	Monitor proposals
Focus on transfer pricing of Switzerland company putting additional pressure on profitability/return	Long Term	Monitor proposals
Attribute beneficial ownership of group IP to Switzerland given important functions provided by Switzerland or increase the TP for R&D services	Long Term	Monitor proposals

Dutch CV BV



Potential global tax reform impact	Timing of change	Recommended action
Denial of deduction for royalties paid to CV Company	Long Term	Monitor proposals
Focus on transfer pricing of BV Company putting additional pressure on profitability/return	Long Term	Monitor proposals
Attribute beneficial ownership of group IP to BV given important functions provided by BV or increase the TP for R&D services	Long Term	Monitor proposals

CV sells IP to BV



Looking ahead

Looking ahead

January-March 2015 –
Public Open days

September 2015 –
Committee on Fiscal
Affairs meets to approve
Actions

September 2015? –
G20 Finance Ministers
meeting

December 2015 –
Final actions

End 2015 – Conference
called on Multilateral
Convention

Spring 2016 – Release
of updated OECD
Transfer Pricing
guidelines, including
Chapter V
(documentation) and
Chapter VI (intangibles)

2016 – Release of
updated model treaty

2016-2018?? Countries
implement agreed actions

2020 – Review of country
by country reporting

Continuing role of
expanded OECD?

Response to current proposals

Approach

	IDENTIFY	MEASURE	PRIORITIZE	COMMUNICATE
Transfer Pricing work flow	<ul style="list-style-type: none"> Interview tax team to understand current TP information gathering processes Gather key CbC data from existing financial systems to identify potential CbC reporting challenges 	<ul style="list-style-type: none"> Analyze current financial systems readiness to satisfy proposed CbC reporting requirements Summarize CbC reporting results to identify outliers 	<ul style="list-style-type: none"> Perform GAP analysis of current functionality compared to future TP data needs and prioritize action items Tier outlier results based on potential risk to consider updates to current TP policies or further factual development to support existing CbC metrics 	<ul style="list-style-type: none"> Utilize initial analysis to communicate additional requirements of existing financial system from a data availability standpoint Summarize key challenges to current transfer pricing policies that could be highlighted as a result of additional TP disclosures
Cross-border structural review	<ul style="list-style-type: none"> Interview Tax Department index current cross border planning structures/initiatives and identify those potentially impacted by reforms Review financial data associated with (Financing, IP, PE, and other) structures to inventory structures potentially impacted by reforms 	<ul style="list-style-type: none"> Quantify potential ETR impact of proposed and anticipated tax reform initiatives (unilateral, OECD, etc.) Develop alternative structures and quantify potential tax impacts 	<ul style="list-style-type: none"> Identify any alternatives that should be pursued prior to enactment of anticipated reforms Tier potentially impacted structures based on projected reform impact magnitude and timing (short, middle, and long term) 	<ul style="list-style-type: none"> Utilize DGS to illustrate potential ETR impact of Global Tax Reform and any alternatives Educate key stakeholders (corporate management, audit committee, etc.) around potential impacts of Global Tax Reform along with potential alternatives

Sample Dashboard

P o t e n t i a l C h a n g e s	Work stream		Potential challenges	Estimated change timing	Amount at risk
	1	Transfer Pricing/Country-by-country reporting	<ul style="list-style-type: none"> Increased volume and depth of TP documentation Greater transparency leading to targeting of apparent TP inconsistencies 	Short Term	N/A
	2	French Commissionaire	<ul style="list-style-type: none"> PE of principal operating company in France Additional pressure on existing TP policies and supporting return of POC 	Mid Term	\$1,500,000
	3	Luxembourg holding and financing company structure	<ul style="list-style-type: none"> Elimination of U.S. basis repatriation strategies Denial of deductions for payments on hybrid instruments Impact to interest netting calculation based on Lux changes to hybrid instrument 	Return of basis Short Term Hybrid instrument Long Term	\$2,000,000
	4	UK financing structure	<ul style="list-style-type: none"> Denial of deductions for interest paid on hybrid entity financing structure Denial of Treaty benefits for reduced withholding tax on hybrid financing arrangements 	Short Term	\$1,000,000
	5	NRI IP company	<ul style="list-style-type: none"> Denial of deductions for royalty payments to NRI Company 	Long Term	\$3,000,000



Short Term



Mid Term



Long Term

Areas of focus

Potential Changes

Compliance

- Country-by-country reporting

Prevent treaty abuse

- Back-to-back financing structures
- Companies with limited substance
- Third country branch structures

Operating model

- Hybrid entity POC (limited/no substance)
 - UK LLP structures
 - CBT structures
 - Canada LP structures
 - CV/BV structures
- Base eroded POC
 - See finance and royalty structures on following page
- PE risks
 - Commissionaires
 - LRDs (flash title)
 - Tollers

Areas of focus (cont'd)

Potential Changes

Financing/Royalties

- IP structures
 - NRI IP Co
 - CV IP Co
 - UK Rev. Hybrid IP Co
- Hybrids instruments
 - Lux CPECs
 - Australian MRPS
 - Belgium PPL
 - Canada note/FSA
 - U.S. repo structures
- Hybrid entities (RH and DRE structures)
 - Lux SCS finance structures
 - Netherlands CV/BV finance structures
 - China CBT structures
 - UK LLP financing structures
 - US LLC financing structures
 - UK tower outbound structures
 - UK tower inbound structures
 - UK DRE structures
 - Canada LP structures
 - US LLC financing branch structures

BEPS ASC 740 considerations

- Consider need for 10-K risk disclosure
- Impact on changes to or establishment of Fin 48 reserves
- Change in plans or ability to use deferred tax assets
- BEPS concerns may lead to transfers of IP between group entities – impact on pending changes in ARB 51/9(e)

Please remember
to complete your
evaluation

Speaker bios

Todd Izzo is an international tax partner and the global tax leader for the Consumer Business practice for Deloitte Touche Tohmatsu. He serves multinational corporations worldwide in a variety of industries, including manufacturing and consumer business. Todd has a focus on global tax planning, tax efficient supply chain planning, financial products and instruments, international mergers, acquisitions, reorganizations, tax treaties, foreign tax credit planning, income tax accounting and other areas of U.S. corporate and international taxation. Prior to joining Deloitte & Touche in 2000, Todd worked in the area of international and corporate tax for five years in the Washington, D.C. office of Dewey Ballantine and served as a law clerk for one year in the chambers of Judge Ed Becker of the U.S. Third Circuit Court of Appeals.

Todd received a B.S. degree with highest distinction in Accounting from Penn State University, a J.D. summa cum laude from the University of Pennsylvania Law School and a LL.M. in taxation summa cum laude from the Georgetown University Law Center. Todd was awarded the May 1991 Alexander E. Loeb Gold Medal award for the high score in Pennsylvania on the CPA exam and the Elijah Watt Sells Award for one of the top scores in the U.S. Todd is a frequent speaker on international tax matters and has served as an adjunct professor at both Duquesne and Robert Morris Universities. He is a member of the AICPA, PICPA, as well as both the Pennsylvania and District of Columbia Bars.

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Rob Plunkett is a Principal in the New York office of Deloitte Tax LLP, and the leader of Deloitte Tax's Financial Services Transfer Pricing Group. He has provided services to some of the firm's largest clients, including banks, investment banks, insurance companies, and investment advisors.

Rob's banking projects have involved income and expense allocation among branches for activities ranging from global trading to provision of ancillary/support services. His investment banking experience includes analysis of global trading of derivatives, merger & acquisition activity, and loan syndication. In global trading transactions, Rob has helped to price the assumption of market risk, the assumption of credit risk, the performance of trading functions, and the provision of sales/marketing services. He has assisted insurance companies in pricing the transfer of risk among entities, and has worked on a number of investment advisory projects including the pricing of advisory functions, sub-advisory functions, custody functions, and brokerage functions.

In addition, Rob devotes a considerable amount of time to assisting clients with the pricing of intercompany lending, the provision of guarantees, and to transactions that transfer credit risk from one legal entity to another.

Rob received his graduate training in Economics at the University of California, Los Angeles, where he specialized in Industrial Organization and Market Microstructure. His dissertation was "NYSE Specialist Merger and Economies of Scale and Scope." His undergraduate degree in Economics is from Harvard University.

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Speaker bios

Gretchen Sierra is the current head of Deloitte Tax LLP's international tax group in its Washington National Tax office with over 14 years of tax experience involving international tax matters. Her prior experience includes six years of government service as Legislation Counsel for the Congressional Joint Committee on Taxation, and Deputy International Tax Counsel for the Department of Treasury. Gretchen specializes in a broad range of international tax matters, including supply chain structuring, global development and use of intellectual property, U.S. income tax treaties, inbound planning, financing transactions, and cross-border mergers and acquisitions.

Gretchen received her B.A. and J.D. from the University of Iowa. She is a frequent lecturer on topics related to international tax, and an adjunct professor of law at Georgetown University Law Center.

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