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Panel 2 European Restructuring and IP Holding Companies

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Agenda

- Business Restructurings - General considerations
- OECD Update
- US Transfer Pricing Proposals
- European Restructuring: The example of Switzerland



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**Business
Restructurings**

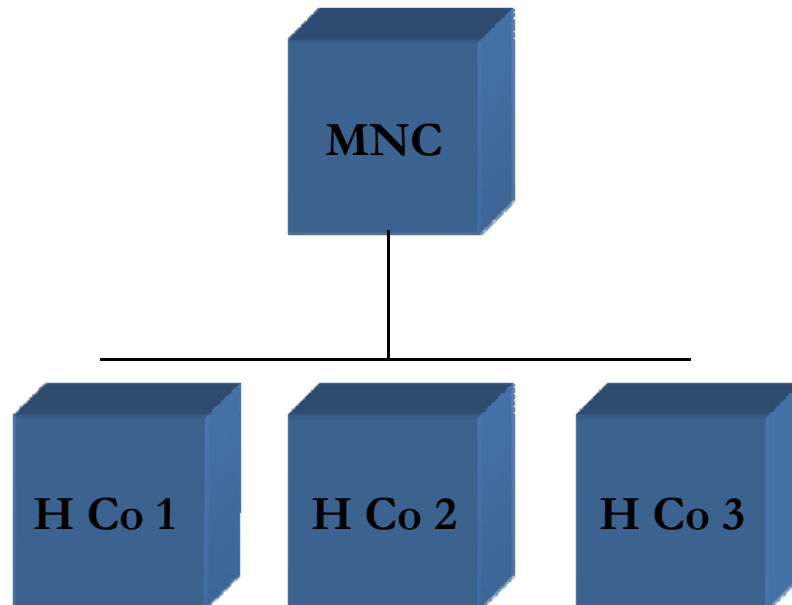
**General
Considerations**

Introduction

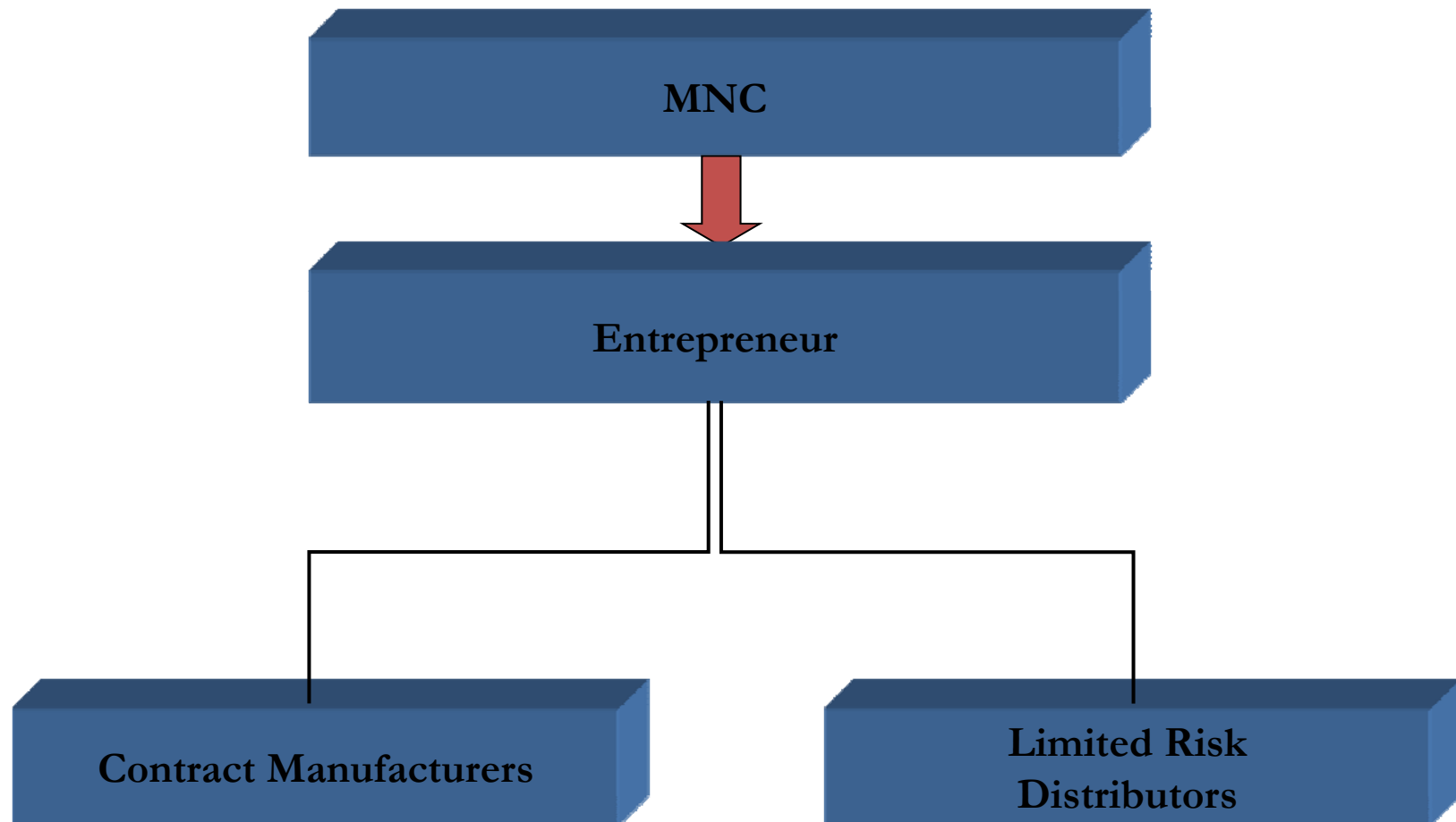
- Business Restructuring is a cross-border redeployment of assets, functions and risks among affiliated entities of a multinational group (“MNC”).
- Business restructurings can enable an MNC to compete more efficiently, preserve profits or limit losses in the global economy.
- Business restructurings may result in the erosion of the tax base of the host countries in which the restructured companies are resident and therefore are under active scrutiny by high tax countries and the OECD.

Vertically Integrated Business Model

- MNC Group currently conducts business abroad through locally incorporated legal entities (H Cos) that manufacture and sell product in their local countries.
- Each entity is a fully-functioning manufacturer and distributor and provides its own associated services.
- Each H Co is the entrepreneur with respect to its activities.
- Returns are commensurate with the benefits and burdens of the entrepreneur.



Supply Chain Business Model



Restructuring

- The restructuring is achieved by “migrating” intangibles and “stripping out” functions and risks from the H Cos and centralizing these intangibles, functions and risks in E Co, which will function as the entrepreneur with respect to the business segment that is the subject of the restructuring.

Migration of Intangibles

- **Intangibles can be migrated through:**
 - Assignment
 - Licensing
 - Cost sharing
 - Transfer of employees
 - Virtual migration

Manufacturing Operation and Supply Chain Restructuring

- Manufacturing operations are restructured by converting full-fledged manufacturers into contract or toll manufacturers.
- After restructuring, R&D is performed pursuant to a cost sharing arrangement and/or on a reimbursable cost plus basis.
- The supply chain is restructured by converting full-fledged distributors into low-risk stripped distributors or commissionaires, and the creation of central regional management logistics platforms and shared service centers.

Attributes: The Entrepreneur

- E Co will incur the benefits and burdens associated with the centralized activities and be allocated the residual income or loss from such activities.
- E Co will have the requisite substance to function as the entrepreneur.
- E Co will be adequately capitalized to perform its functions and to bear the risks that it will incur.
- E Co will have the tangible and intangible assets necessary to perform its functions.
- E Co will have its own employees capable of conducting the business resident in its office in the tax-friendly jurisdiction.

Attributes: Possible E Co Functions

- License MNC's intangibles (name, patents, trademarks, copyrights, manufacturing know-how, etc.) or become a participant in a cost sharing agreement through a buy-in arrangement.
- Fund and perform R&D and own newly developed intangibles.
- Determine product price lists and allowable discounts.
- Manage production scheduling and sales forecasting.
- Approve purchase and sales orders.
- Procure raw material and components for contract manufacturers.
- Act as principal in the contract manufacturing or toll manufacturing arrangement.
- Acquire output of contract manufacturing affiliates for resale to distribution affiliates.
- Manage logistics, quality control, credit approval, invoicing, account control, inventory and back office support.

Attributes: Potential E Co Risks & Return

E Co Risks:

- Licensee/cost sharing risks
- Market risks
- Procurement risks
- Inventory risks
- Currency and interest rate risks
- Legal risks
- Credit and collection risks

E Co Return:

- Entrepreneur's residual profit or loss

Attributes: Limited Risk Companies

- **Limited risk manufacturer for E Co**
 - Functions: manufacturing
 - Risks: commensurate with limited risk functions
 - Return: routine cost plus or ROCE
- **Limited risk buy-sell distributors for E Co**
 - Functions: market, solicit, negotiate orders and sell product to third party customers
 - Risks: commensurate with limited risks functions
 - Return: routine operating margin



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OECD Update

OECD Project

- On July 22, 2010, the OECD published final guidance (Final Guidance) on business restructurings in the new Chapter IX of the OECD Transfer Pricing Guidelines.
- Chapter IX is the culmination of the project begun in 2005.

Issues Considered

- Final Guidance covers four issues:
 - The allocation and transfer of risks among related parties.
 - Whether the internal business restructuring transaction requires arm's length compensation or indemnification.
 - The application of transfer pricing rules to the parties post-business restructuring.
 - When can a tax authority disregard a business restructuring?



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US Transfer Pricing Proposals

Administration's Transfer Pricing Proposals

- Include workforce in place, goodwill, and going concern value in the definition of intangible property for purposes of sections 482 and 367(d).
- In cases of multiple intangible property transfers, the Commissioner could combine the values of the properties on an aggregate basis to achieve a more reliable result.
- The Commissioner could also value intangible property taking into consideration the prices and profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction undertaken.
- If a US person transfers an intangible from the United States to a related controlled foreign corporation that is subject to a low foreign effective tax rate in circumstances that evidence excessive income shifting, then an amount equal to the excessive return would be treated as subpart F income in a separate foreign tax credit limitation basket.

Circular 230

- In compliance with US Treasury Regulations, please be advised that any tax advice given herein (or in any attachment) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another person any transaction or matter addressed herein.



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European Restructuring

The example of Switzerland

Boston, September 20, 2011



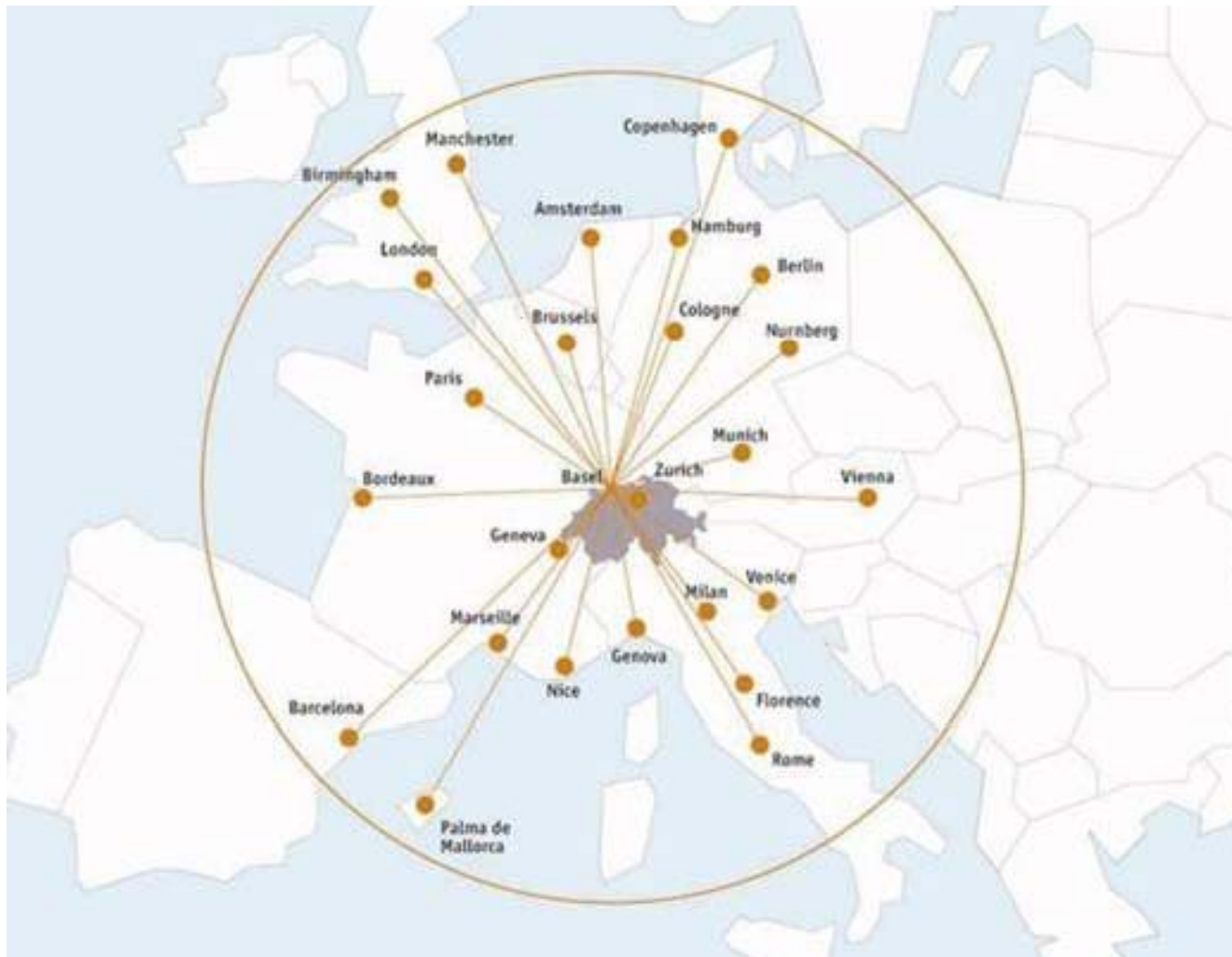


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Introduction and Market trends

Strategic location in the heart of Europe



International Headquarters in Switzerland

Genf & Lausanne

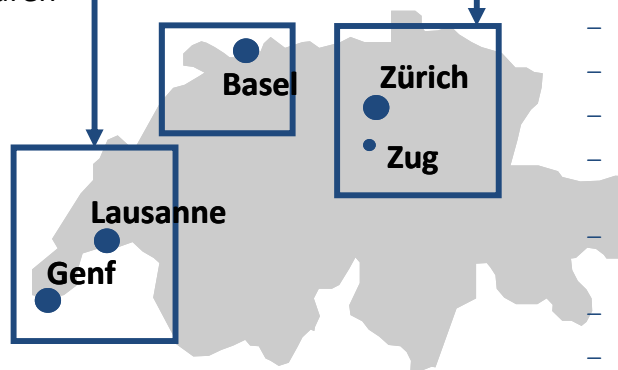
- Proctor & Gamble
- Philip Morris
- Maxwell
- Caterpillar
- Cisco
- Fedex
- Honeywell
- Alcoa
- Dupont
- General Mills
- Medtronic
- Iomega/EMC
- Eaton
- PPG Industries
- Eastman Kodak
- Yum
- Monsanto
- Ebay
- I - O
- Federal Mogul
- McCann/Interpublic
- Japan Tobacco
- AIG
- Stryker
- Kelly
- Agilent Technologies
- Polo Ralph Lauren
- Chiquita
- Cargill
- Energizer
- Autodesk
- Invacare
- Palm one
- Covance
- Verisign
- Columbia
- Colgate-Palmolive
- Celgene

Basel

- Huntsman
- Fisher Clinical/Thermo Fisher
- Becton Dickinson
- Genzymes
- Synthes
- Fossil Group

Zürich & Zug

- IBM
- General Motors
- Cilag/Johnson & Johnson
- Dow
- Pfizer
- Taloca/Kraft Foods
- Abbott
- 3M
- Merck
- Emerson
- International Paper
- Bristol-Meyers Squibb
- Tyco
- Amgen
- Mariott
- H. B. Fuller
- Baxter Healthcare
- CMC
- Thomson (Reuters)
- AGCO
- Eastman Chemical
- Arvin Meritor
- Avery Dennison
- Ecolab
- Google
- Zimmer
- Brink's
- Kennametal
- Hercules
- Appelera
- Varian
- Citrix
- Garmin



Source: Tages-Anzeiger vom 23. August 2008

Market trends – some rankings of Switzerland

1st in the World Economic Forum's "Global Competitiveness Report 2010-2011"

1st in Europe in the Heritage Foundation's 2011 Index of Economic Freedom

1st in the European Innovation Scoreboard issued by the European Union

2nd after Iceland in the 2010 Environmental Performance Index

4th globally in The Global Information Technology Report 2009-2010

What the Swiss Did Right

Newsweek

The Swiss faced one of the globe's worst financial-sector blowups. Now they're setting the gold standard for how to regulate their banks.

.... Yet today, little Switzerland is a rock in the global tempest.

What did the Swiss do right? For one, the country's regulators and central bank were faster and tougher than most.

Second, the Swiss decided early on that tighter reins on their banks wouldn't just protect taxpayers from future crises and bailouts, but would ultimately be good for the banks' own business as well.

Yet if the fast return to stability of the country's banks, economy, and currency is any lesson, the world could do worse than follow Switzerland's lead.

[Newsweek: What the Swiss Did Right, Dec. 27, 2010](http://www.newsweek.com/2010/12/27/how-switzerland-saved-its-banking-industry.html)

<http://www.newsweek.com/2010/12/27/how-switzerland-saved-its-banking-industry.html>

Leading Industrial and Commercial Clusters

- Leading Location for Energy, Soft Commodities and Metall Trading
- Number one Location in Life Sciences and Medical Devices in Europe
- Leading Financial and Insurance Center
- Top rated Universities
- Leading Hub for precision Manufacturing, Engineering and
- Nanotechnology
- Leading trading center for Contemporary Art
- Leading location for Cloud Computing and R+D for the ICT industry
- (Google, Salesforce, IBM, HP, Disney Pixar etc.)
- Leading center for global Luxury and Fashion companies
(VF-corp, Guess, Polo Ralph Lauren, la Prairie, Richmont, SMH, etc)

Where does this success come from?

- Competitive Tax System
- Economic and political stability
- Healthy public finance
- Unrestricted access to the European Markets
- Strong international Treaty Network for Tax, Trade and Social
- Security
- Top infrastructure
- Strategic and central location
- Growing population, well-educated workforce, Liberal Labor law
- Know-how and reliability (Swiss made)
- Top Universities
- Quality of life



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Swiss Tax efficient structures

Swiss Holding / Management Headquarters

Participation exemption on dividends and capital gains

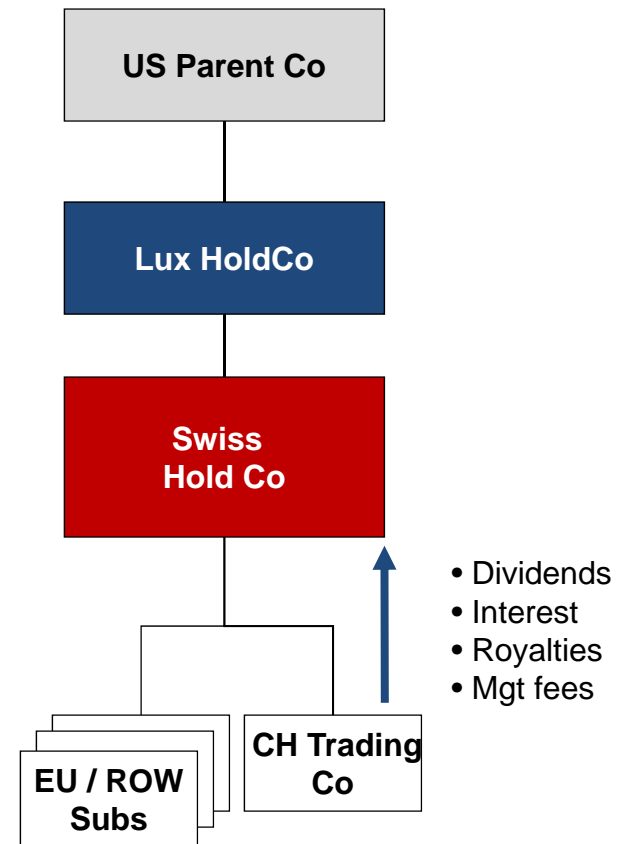
- No test to be met!

No CFC rules

Very good treaty network

Withholding tax free cash repatriation of capital contributions

- Effective January 1st, 2011
- Inversions / contributions



Statutory ETR of 7.8%

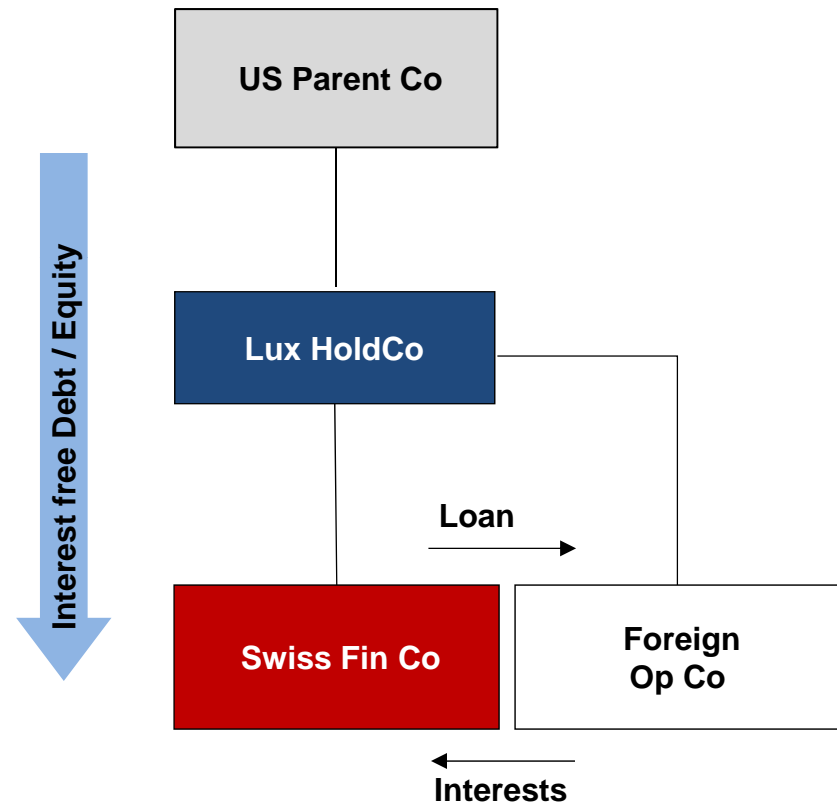
Swiss Finance Headquarters

Mixed company status / Deemed interest deductions

Stamp duty does not apply

Minimum fund requirement M\$100

Branch as well



Statutory ETR of 1 - 1.35%

Swiss IP Headquarters

Mixed company status = multi-purpose vehicle

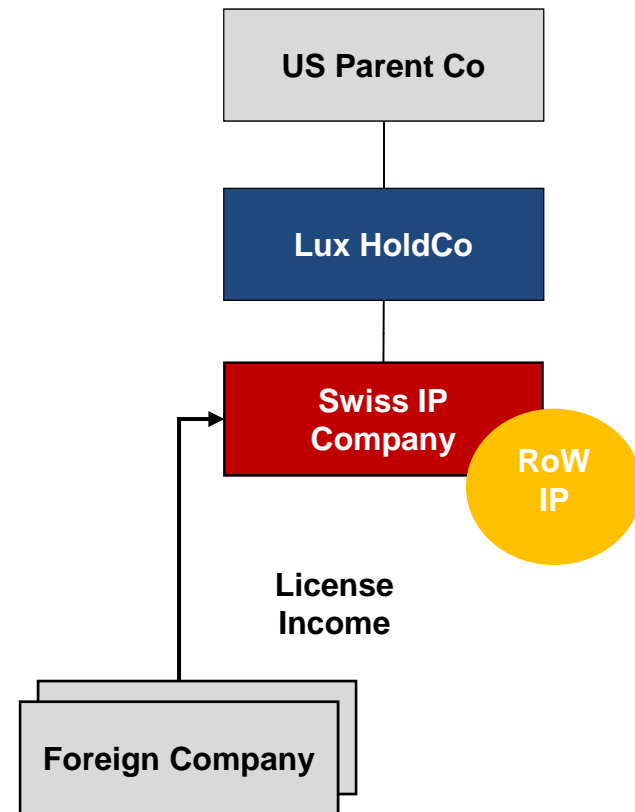
No substance requirements

No restriction regarding type of IP

No obligation to further develop the IP in- or outside Switzerland

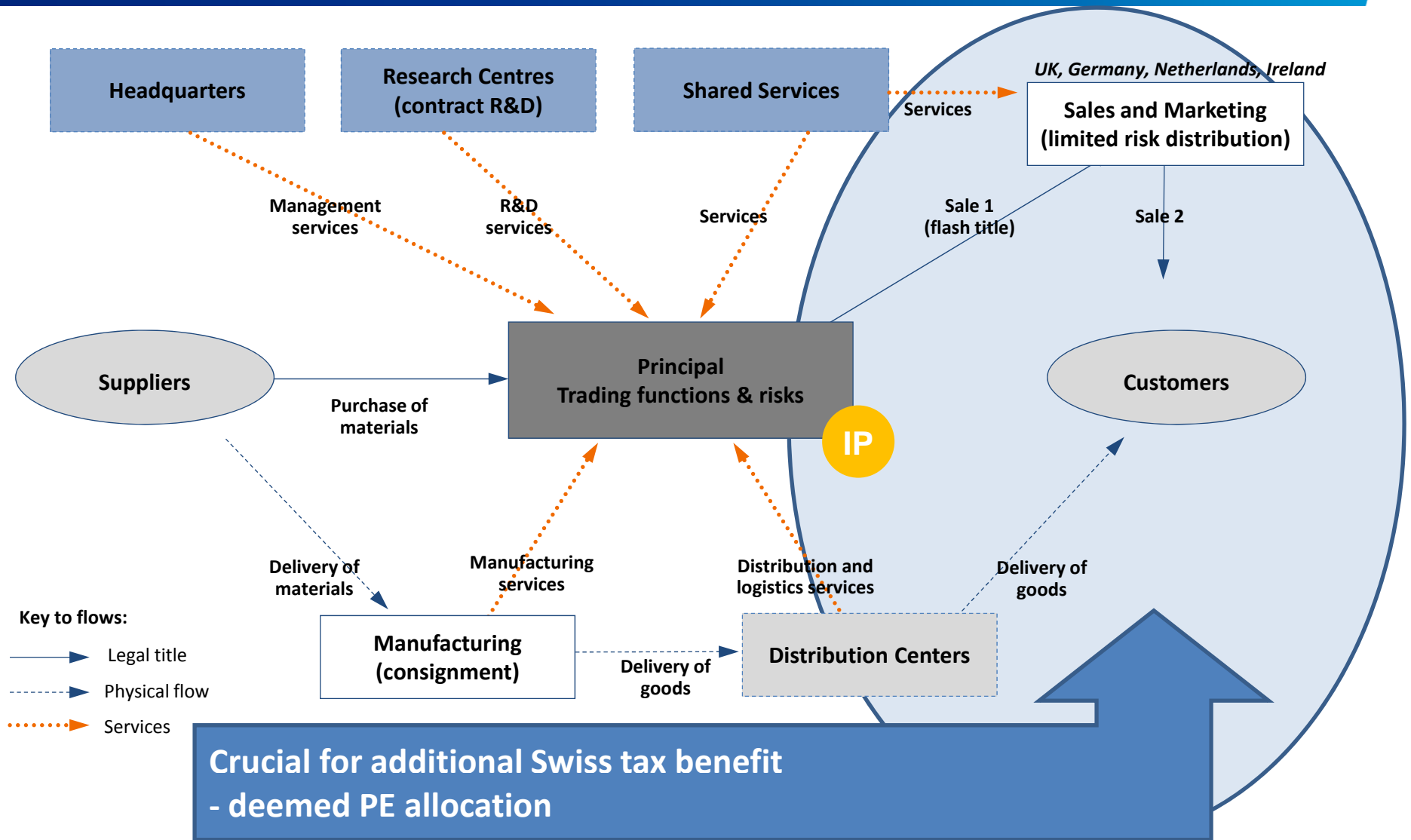
Full deduction of R&D costs + other income taxed at same rate

Reduction of tax base can lead to substantially lower ETR



Statutory ETR of 8.5%
Further reduction of ETR through base erosion

Swiss Principal Headquarters – TESCM (1)



Swiss Principal Headquarters – TESCM (2)

Ruling within 4 to 10 weeks – substance required in Switzerland

Substantive - and not just contractual - reallocation of function, risk, IP and the respective income

Integration of efficient TESCM must meet the requirements of business

Companies can re-engineer their value chain resulting in permanent cost-reductions and associated tax savings

Properly implemented TESCM is in line with tax laws and accepted by tax authorities

Statutory ETR of 5 to 7.5%



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