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Valuation
Conference

Valuation and tax
considerations

November 2015



Conference Agenda



2015 Valuation Conference Series

Please click on the title to register for the conference.

1. Valuation for AIFMs

10 February 2015

2. AIFMD valuation requirements for depository banks & asset servicers

24 February 2015

3. Fund directors: valuation and related risks

12 March 2015

4. Valuation matters for conducting officers and risk managers

23 April 2015

5. Valuation challenges in credit institutions and investment firms

16 June 2015

6. Valuations for incentive plans

15 October 2015

7. Valuation and Tax considerations

12 November 2015

If you have any questions or comments, please contact valuation@deloitte.lu

Agenda

1	Introduction
2	Luxembourg legal framework: new measures
3	Valuation for Transfer Pricing purposes
4	Conclusion

Valuation and tax considerations

Valuation for Transfer Pricing purpose: Panelists



Douwe Terpstra
Executive Director, Intertrust Luxembourg



Bruno Beernaerts
Independent Director



François Lerusse
Partner, D. Law



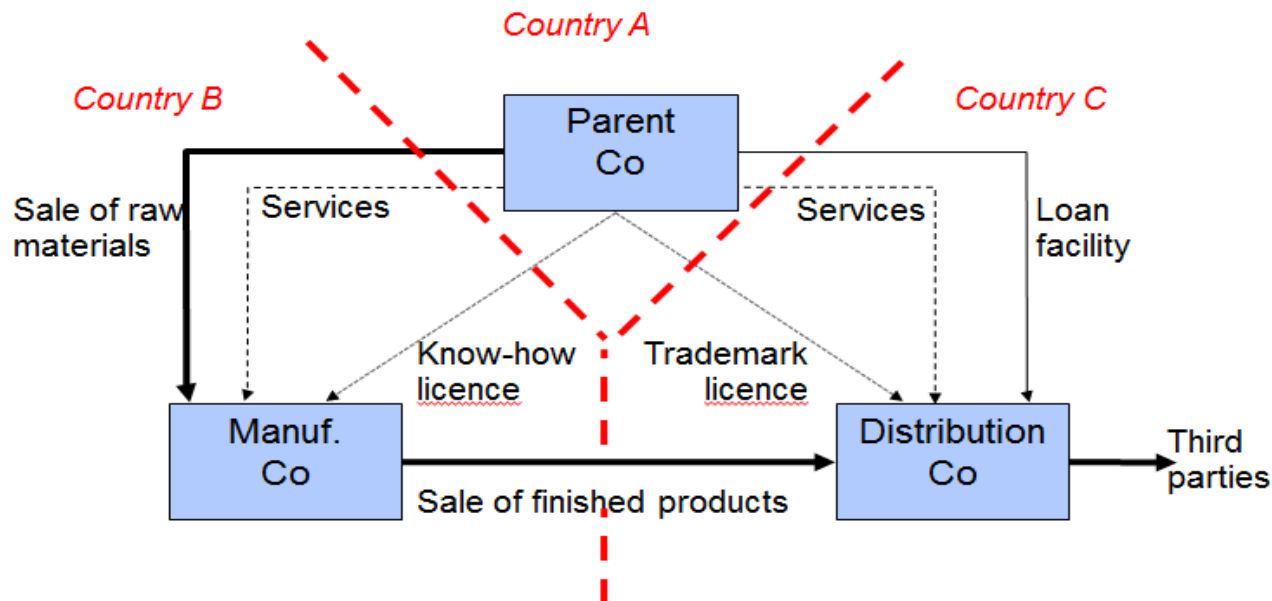
Henri Prijot
Partner, Deloitte – International Tax

Valuation and tax considerations

Introduction

Intercompany transactions

- ✓ Physical goods: purchases and sales of goods
- ✓ Intangible property: IP license fee, sale of IP right, etc.
- ✓ Services: legal, accounting, IT, financial, HR etc.
- ✓ Financing arrangements: interest rates, guarantee fees, etc.



More than two third of international trade takes place within multinational enterprises!

Valuation and tax considerations

Increased level of scrutiny



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

ADMINISTRATION
DES CONTRIBUTIONS DIRECTES



Foreign tax administrations

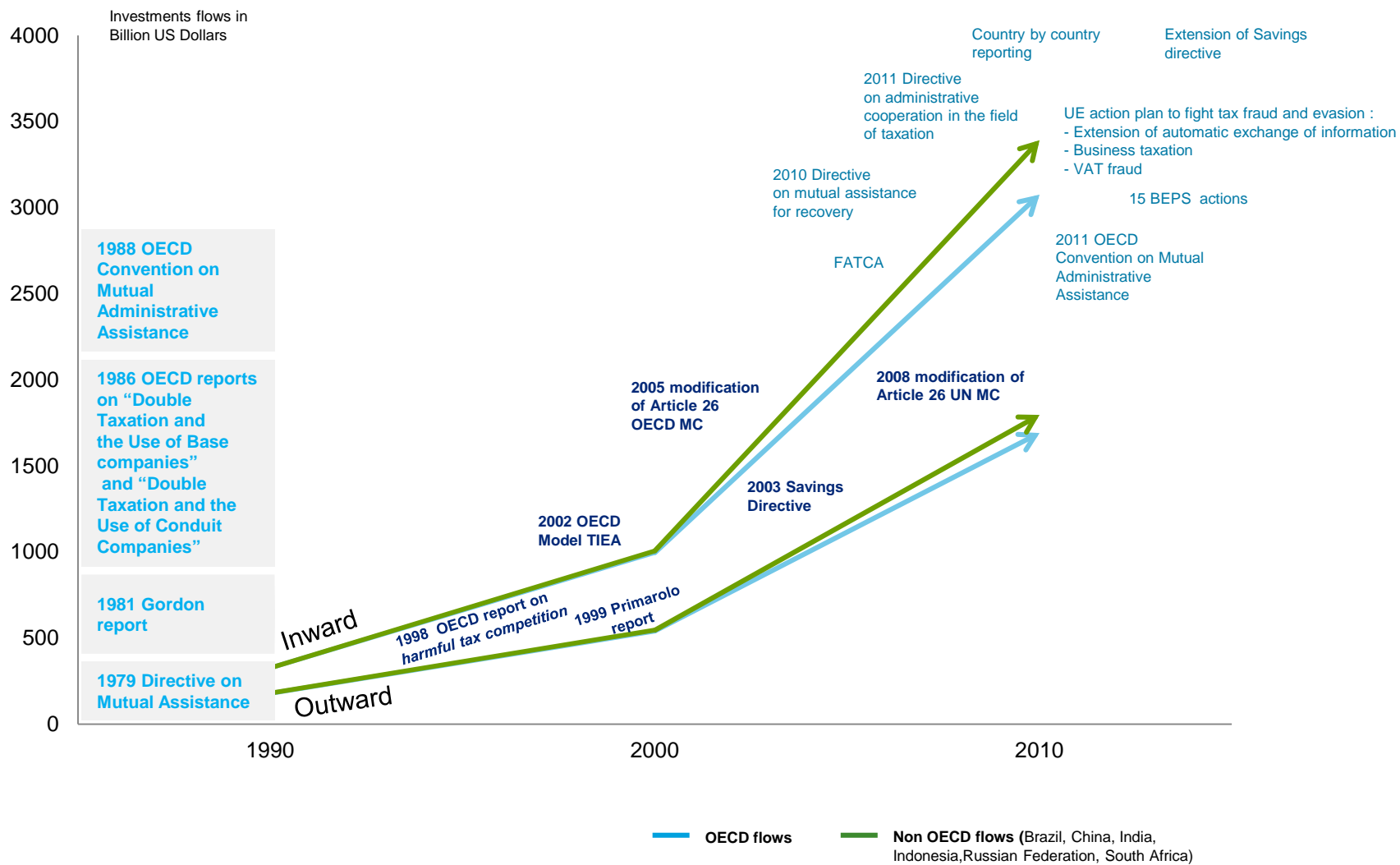


Intra-group transactions

RIGHT PRICE? RIGHT VALUE?

Valuation and tax considerations

Introduction



Agenda

1 Introduction

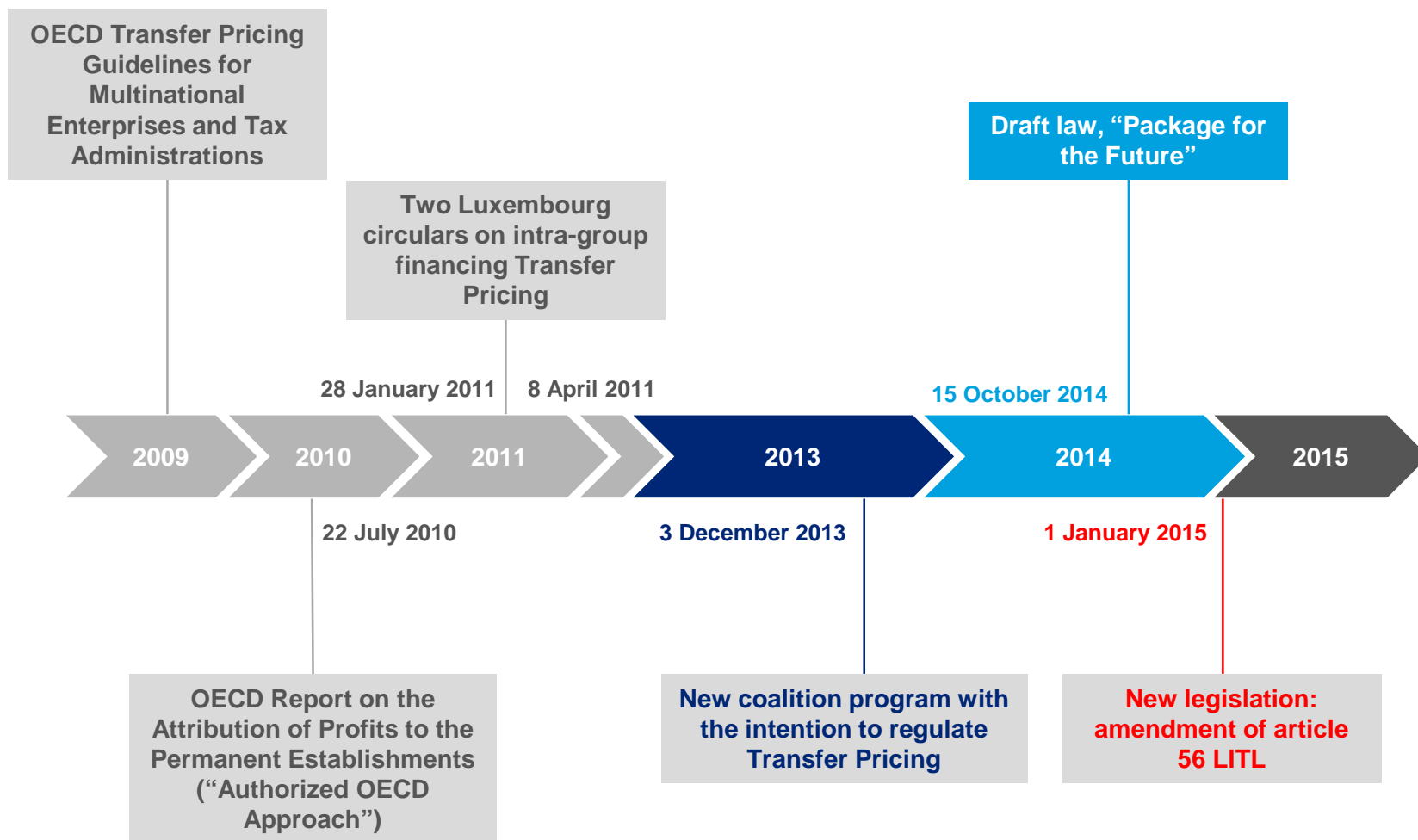
2 Luxembourg legal framework: new measures

3 Valuation for Transfer Pricing purposes

4 Conclusion

Valuation and tax considerations

Luxembourg legal framework: until 2015



Valuation and tax considerations

Luxembourg legal framework: New Article 56 LITL and change to § 171AO

Luxembourg Domestic legislation		OECD standards
Arm's length principle (✓) No explicit reference in the LITL New Art. 56 LITL consecrated to arm's length principle	T r a n s f e r P r i c i n g	Arm's length principle ✓ Art. 9 OECD MC ✓ Chapt. I OECD Guidelines
TP adjustment ✓ Art.164 (3) LITL New Art. 56 LITL aligned on Art. 9 OECD MC		Upward TP adjustment ✓ Recognized in OECD (✓) No detailed guidance
Associated enterprise (✓) Circular follows definition of Art. 9 OECD MC New Art. 56 LITL includes the definition		Associated enterprise ✓ Art. 9 OECD MC
Comparability analysis and methods (✓) No detailed TP regulations but indirectly addressed by the Circular		Comparability analysis and methods ✓ Chapt. II and III OECD Guidelines
Documentation requirements (✓) General provision in §171 AO ✗ No specific documentation requirement (✓) Only for APA on intra-group financing New Art. 171 LITL expressly stipulates transfer pricing documentation upon request ➤ Further development by Circular		Documentation requirements ✓ Chapt. V OECD Guidelines ✓ Action 13 BEPS
Penalties ? Non specific penalties		Penalties ✓ recognized in OECD (✓) no detailed guidance

Valuation and tax considerations

Luxembourg legal framework: future trends

Example: BEPS Action 13

Significant changes to the compliance and reporting of global information for risk assessment and transfer pricing purposes : The **Country by Country reporting** likely to be used for risk assessment purposes only

COUNTRY-BY-COUNTRY REPORT

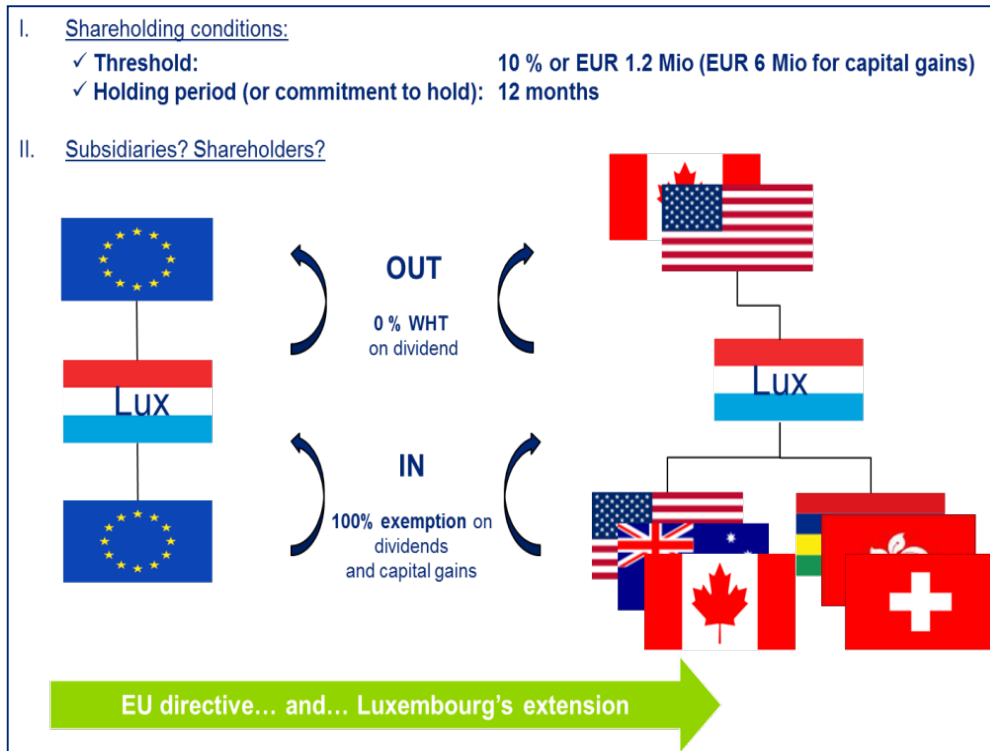
- Aggregate tax jurisdiction-wide information
- Available to each relevant tax administration
- To be finalized maximum 1 year following the last day of FY of the Ultimate Parent

- Information on the global allocation of income, the taxes paid and certain indicators of the location of economic activity among tax jurisdictions in which the Group operates

- To be prepared by the ultimate parent (no public disclosure). Flexibility for source of data
- Substantial changes for those business which do not prepare their transfer pricing documentation on a global basis. Necessary to prepare or coordinate the documentation centrally to ensure consistency of country-by-country template, master file and local files
- A lot of open questions : filing process, timeframe, frequency of updates, language, confidentiality, sharing mechanism, materiality, penalties, exclusion of smaller groups, coexistence with existing TP rules...
- Anticipated implementation dates for most countries 2016-2017

Valuation and tax considerations

Luxembourg legal framework: overview of some key tax



- ✓ Successful regime
- ✓ Treaty network
- ✓ Allowing deductibility of expenses
- ✓ Flexible thin-cap rules
- ✓ No third-party valuation for Sàrl
- ✓ No complex TP rules
- ✓ **UTILIZATION OF TAX LOSSES**

➤ Tax consideration: such flexibility could lead to an inappropriate or unjustifiable exploitation of tax losses and raise inquiries about their legitimacy

Agenda

1

Introduction

2

Luxembourg legal framework: new measures

3

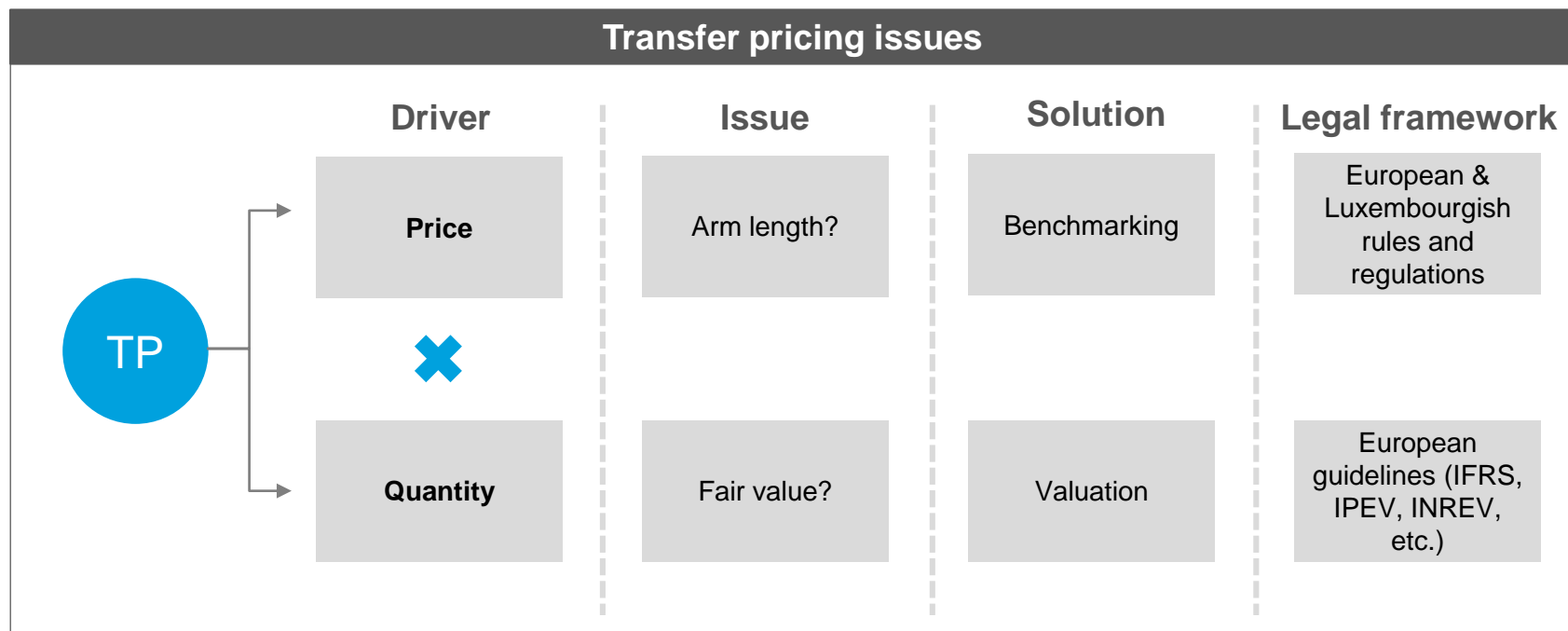
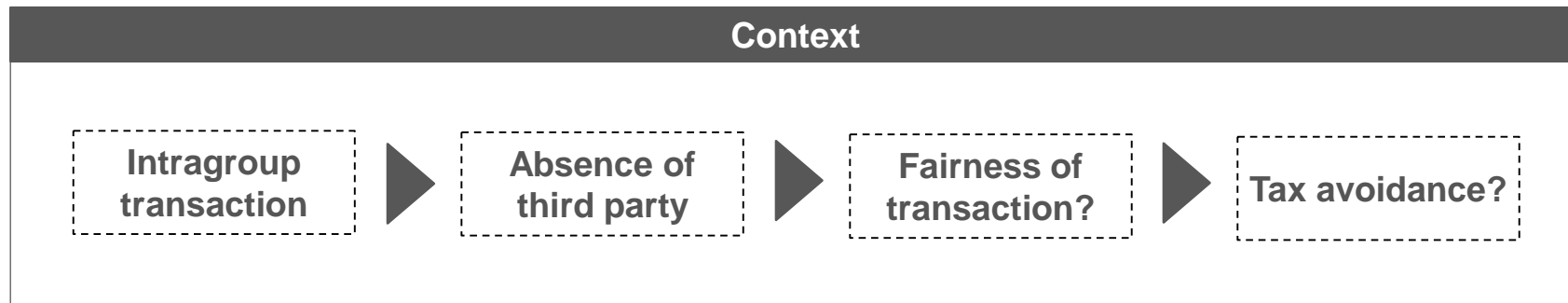
Valuation for Transfer Pricing purposes

4

Conclusion

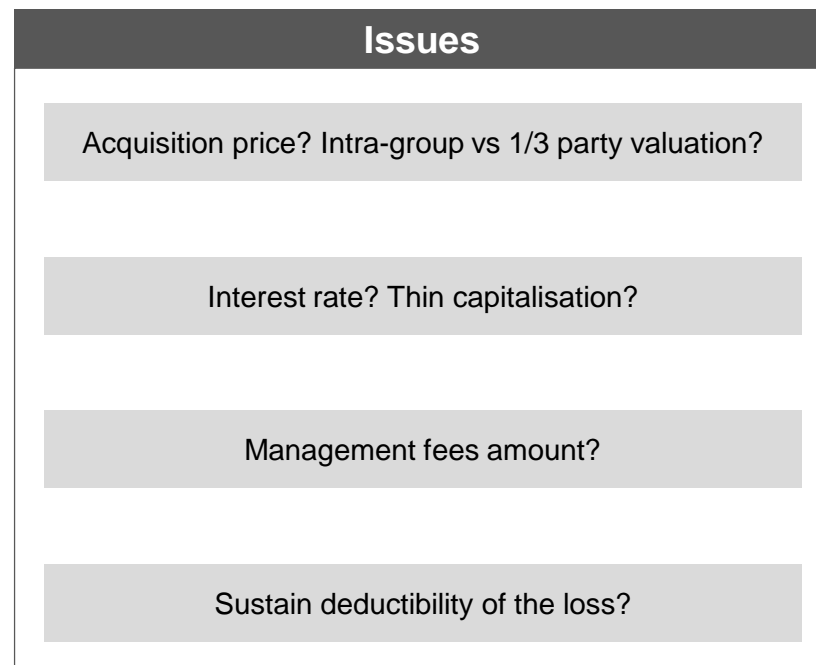
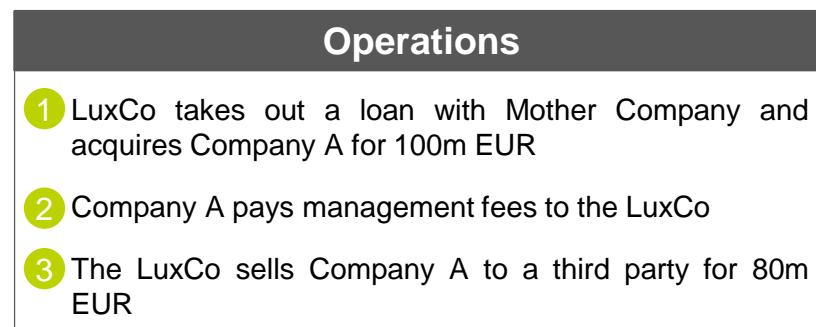
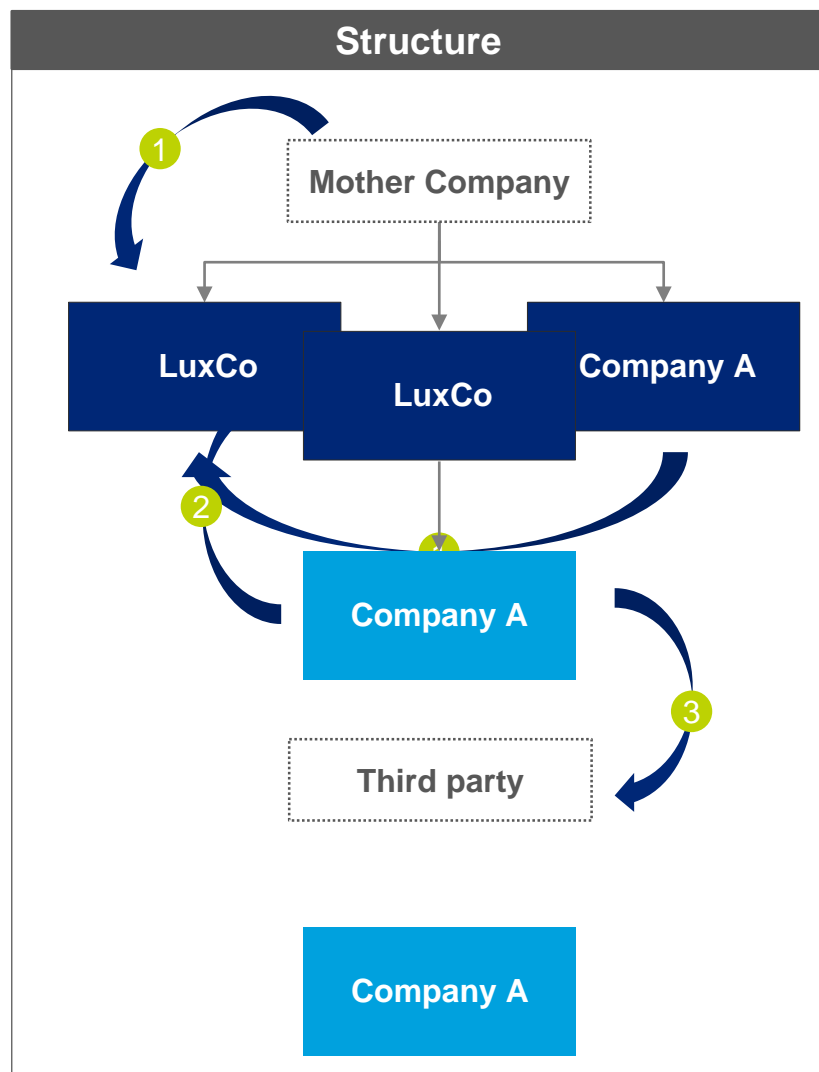
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Valuation for Transfer Pricing purposes: Theory



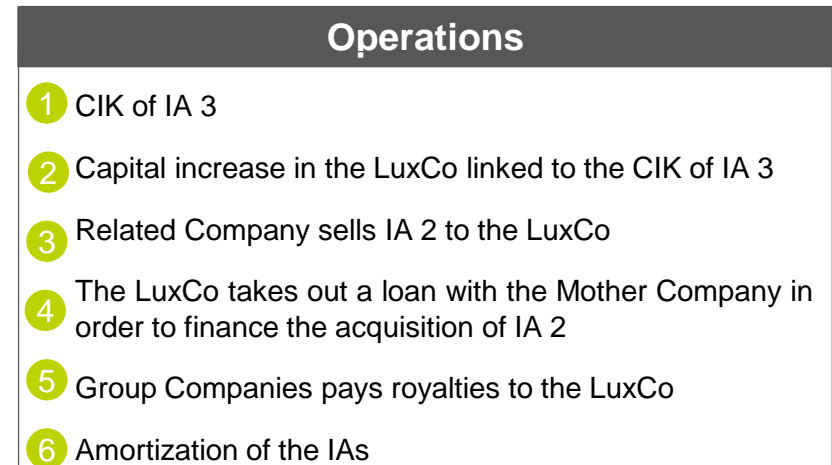
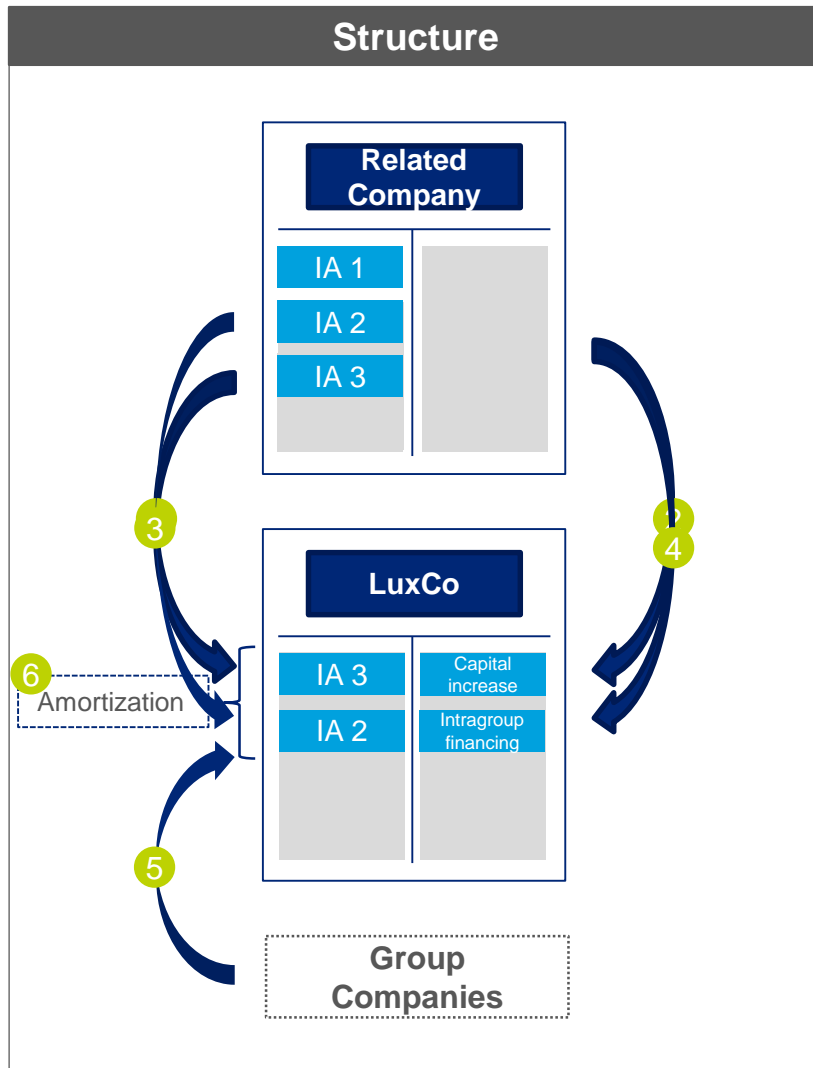
Valuation and tax considerations

Valuation for Transfer Pricing purposes: Case study 1



Valuation and tax considerations

Valuation for Transfer Pricing purposes: Case study 2



Thank you for listening

If you have any questions or comments, please contact valuation@deloitte.lu

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