

TRANSFER PRICING FOR FUNDS: ART OR SCIENCE?

PRESENTATION BY
Andreas Medler
Christos Theophilou
Deyan Mollov
Fabrizio Lolliri
Gaspar Lopez Dias

17 NOVEMBER 2021

Your global tax partner

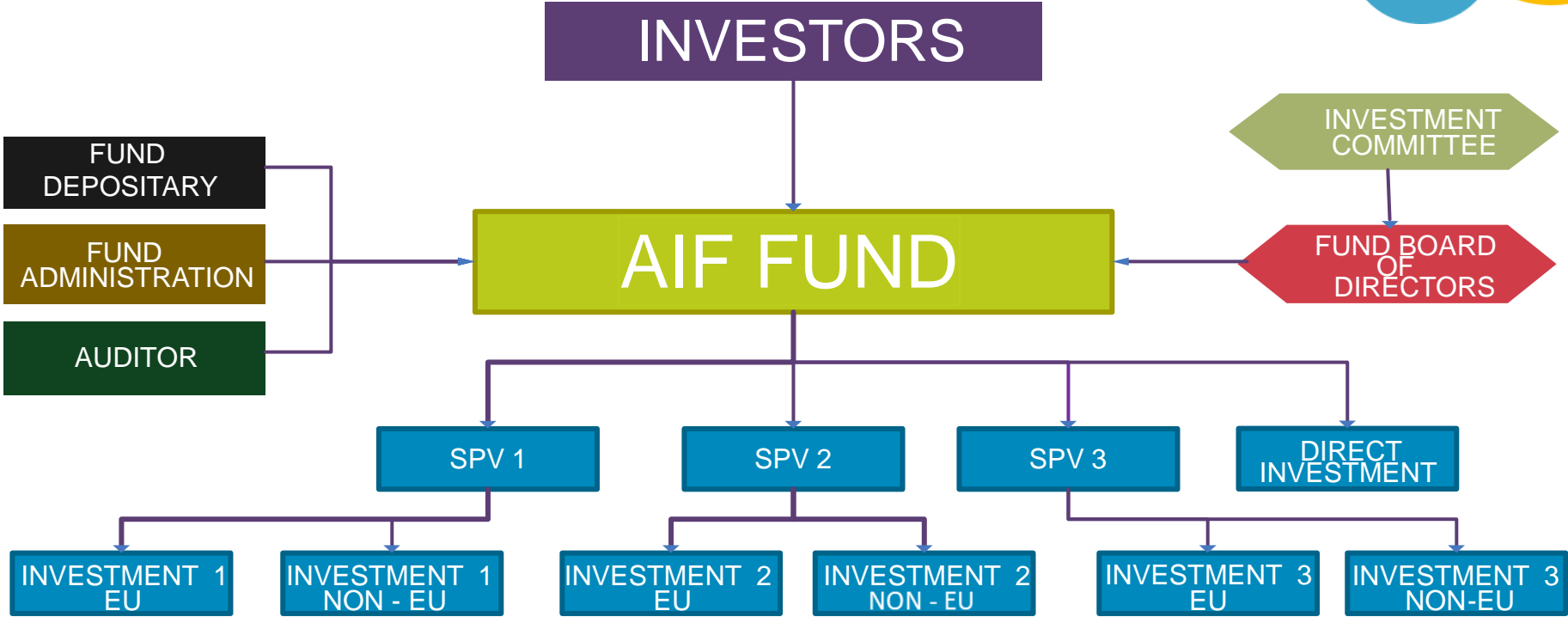
Agenda

1. Introduction
2. Management Fees
3. Debt Pricing and Thin Capitalisation
4. Value Chain Planning

INTRODUCTION

Christos Theophilou
Taxand Cyprus

Typical structure of an Alternative Investment Fund



Tax Implications level of Investor, AIF, Investment

Investor(s) State



1

Equity

5

- ▶ Tax implications on both dividend income and capital gains tax. Double tax relief
- ▶ Special Tax Regime: non-domiciled, inward expatriates

AIF State



2

Loan, Equity

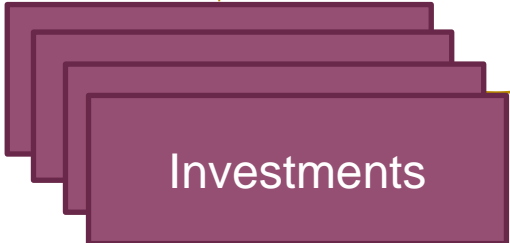
Opaque i.e. not transparent

Dividends

4

- Tax considerations:**
- 1) AIF income (e.g. dividend and interest) and gains (e.g. capital gains on sale of shares)
 - 2) Special Regime e.g. NAV taxation
 - 3) Tax Treaty network (No or low WTH outbound payments e.g. dividends)
 - 4) Double tax relief

Investment(s) State



3

- ▶ Allowable deduction of outbound payments (e.g. interest from taxable income);
- ▶ No or low/reduced withholding tax (WHT) on outbound payments (e.g. dividends, interest)

Tax considerations at the level of Investment Managers



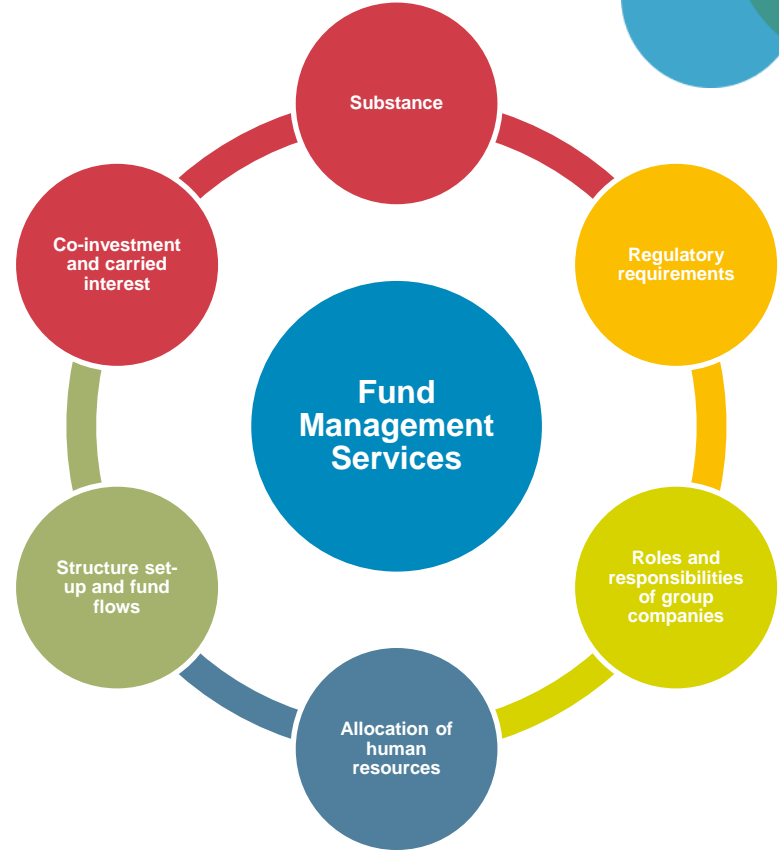
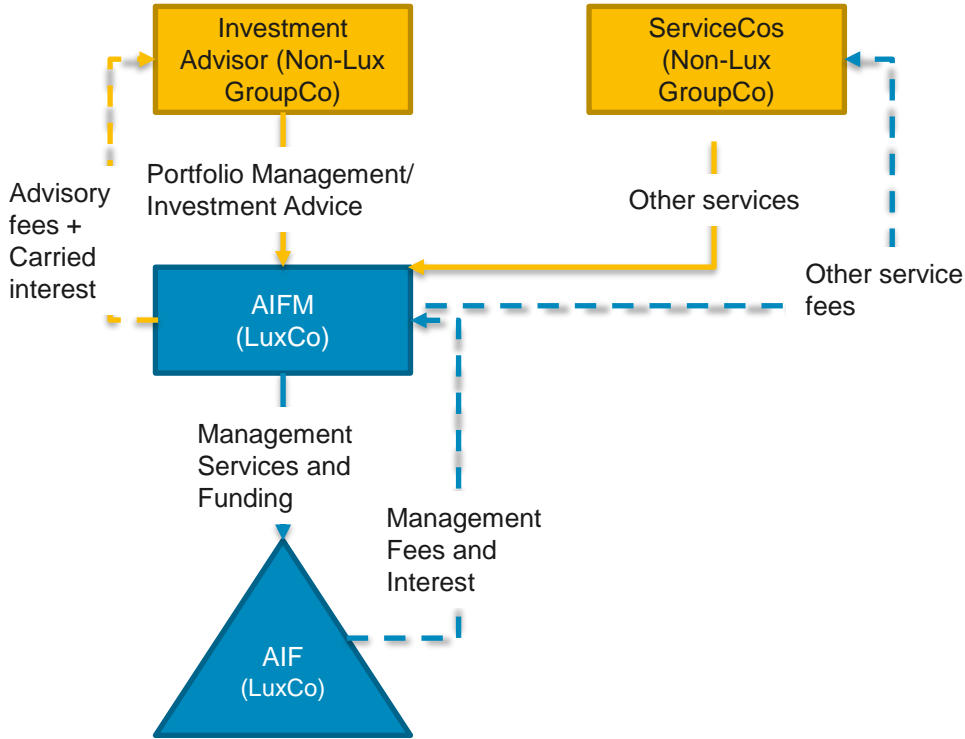
- ❖ Ordinary income tax implications in the country of residence
- ❖ Taxation of Management fees and Performance fees or Carried Interest
- ❖ Transfer Pricing considerations of intra-group fees regarding investment managers' activities, for example advisory fees.
- ❖ Investment manager exception in case it forms a permanent establishment (PE)
- ❖ Any special tax regime?

❖ **TAXAND**

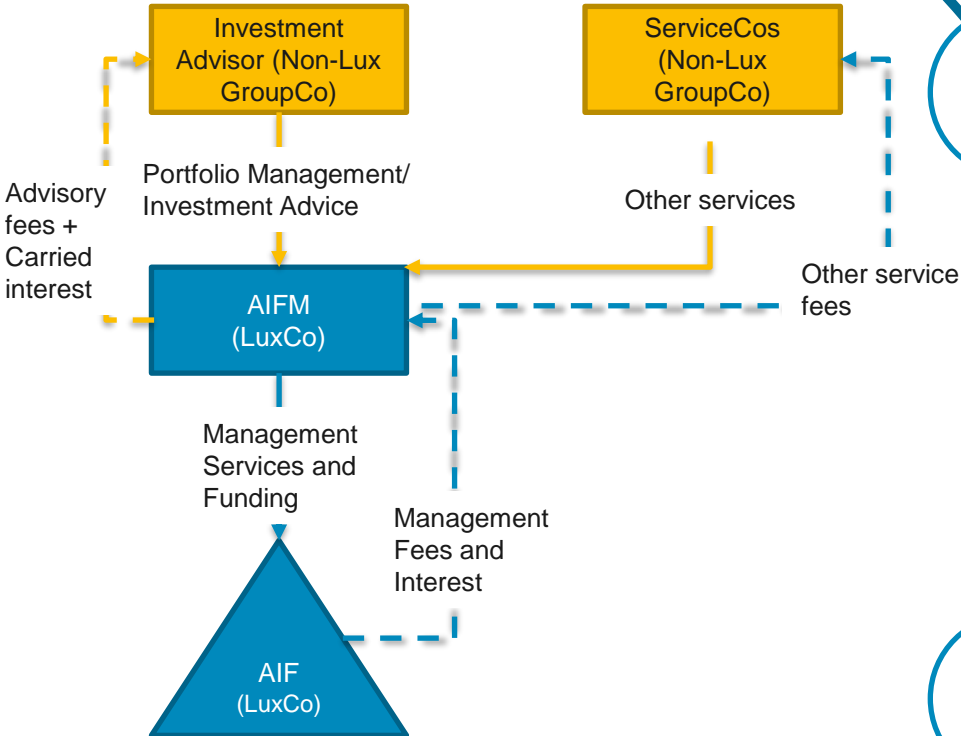
MANAGEMENT FEES


Andreas Medler
Atoz Tax Advisers Luxembourg
Gaspar Lopez Dias
Taxand Cyprus

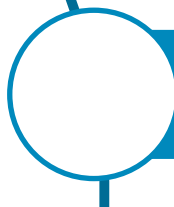
Management fees: General considerations





Management fees: Transfer pricing considerations



- 

Structuring considerations: internal / external AIFM; investment advisor vs. delegation model; key functions (fund raising/marketing, portfolio management, risk management, valuation, fund administration, other); co-investment and carried interest
- 

Actual decision-making process vs. formal allocation of tasks – **coherence**
TP and **substance** (limits in view of regulatory requirements)
- 

Proper **TP documentation** and **regular reviews** to consider structure changes (additional personnel hired or shifted within the group? Additional functions performed? Impact on current TP model)
- 

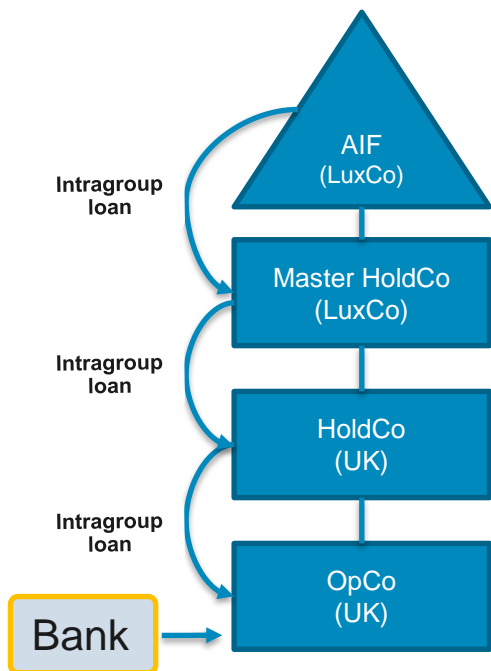
Avoid double taxation and mutual agreement procedures (risk that MAP duration exceeds lifetime of the fund)

DEBT PRICING AND THIN CAPITALISATION

Deyan Mollov

Alvarez & Marsal LLP UK

Debt pricing – main areas of focus



At acquisition:

Are we clear on the TP policies to follow, e.g. interest rate, maturity, currency, etc. ?

Are all the terms arm's length? E.g. do we have call options, break-up clauses, pre-pmt penalties included?

Are the TP policies flexible in terms of (i) quantum (ii) maturity, (iii) commercial considerations (e.g. cash repat)?

Have we documented the transactions sufficiently – both in terms of I/Co agreements and TP documentation? Are we ready for an TP audit?

Post acquisition:

Is the analysis / documentation still applicable? Did we consider the latest bolt-on acquisition(s) and how they would impact the policies?

Have we applied the TP policies correctly?

Are the terms and conditions still considered arm's length (have latest changes to market conditions been considered, e.g. LIBOR transition)?

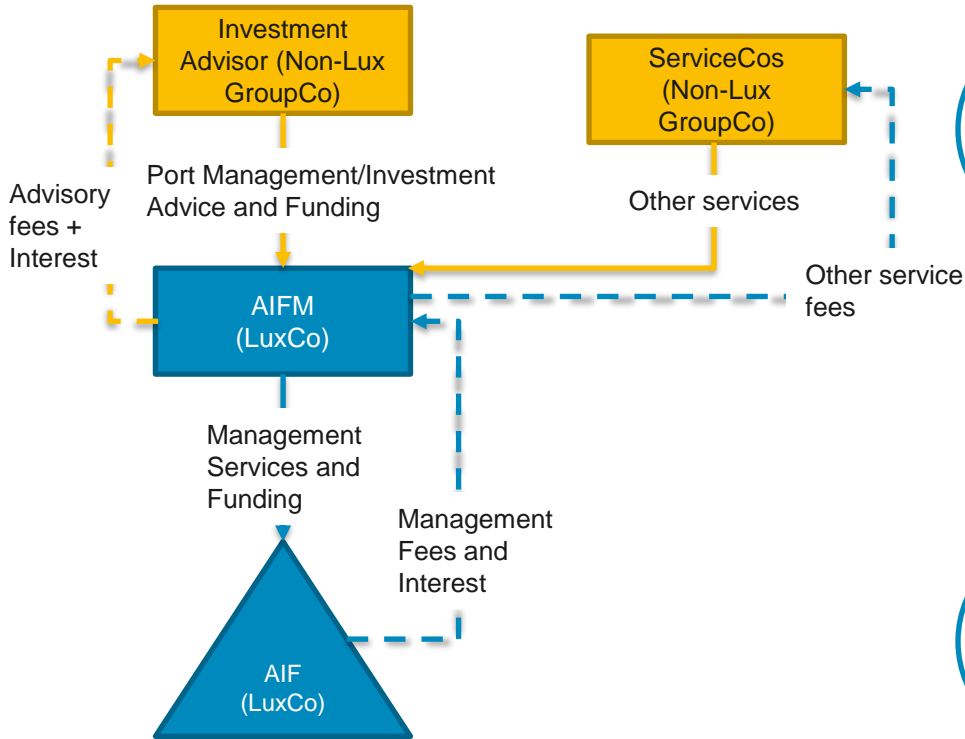
VALUE CHAIN PLANNING

BOOSTING INVESTMENT RETURN
AND EFFICIENCIES THROUGH
OPERATIONAL CHANGE

Fabrizio Lolliri

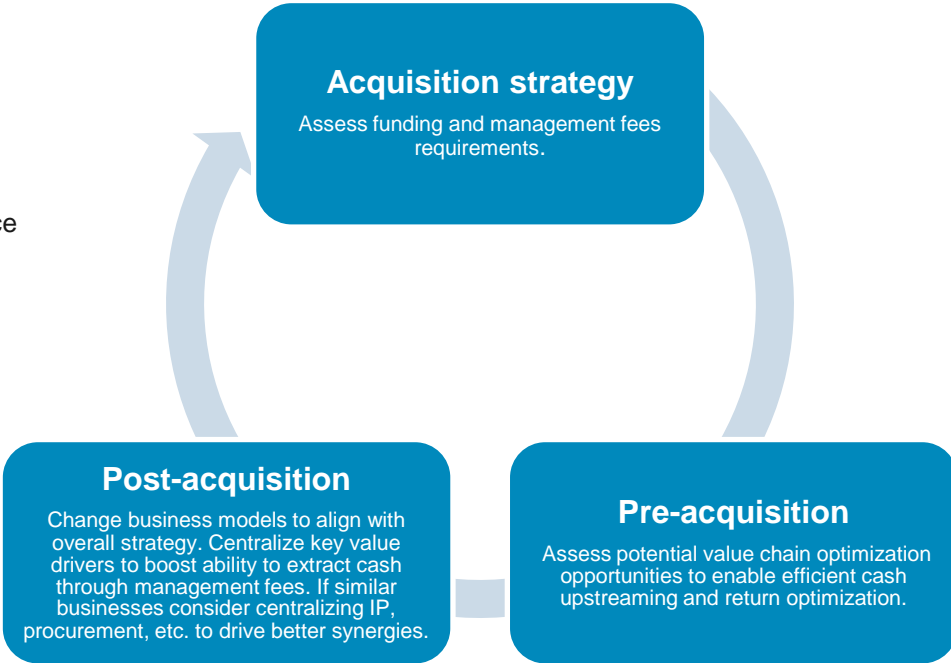
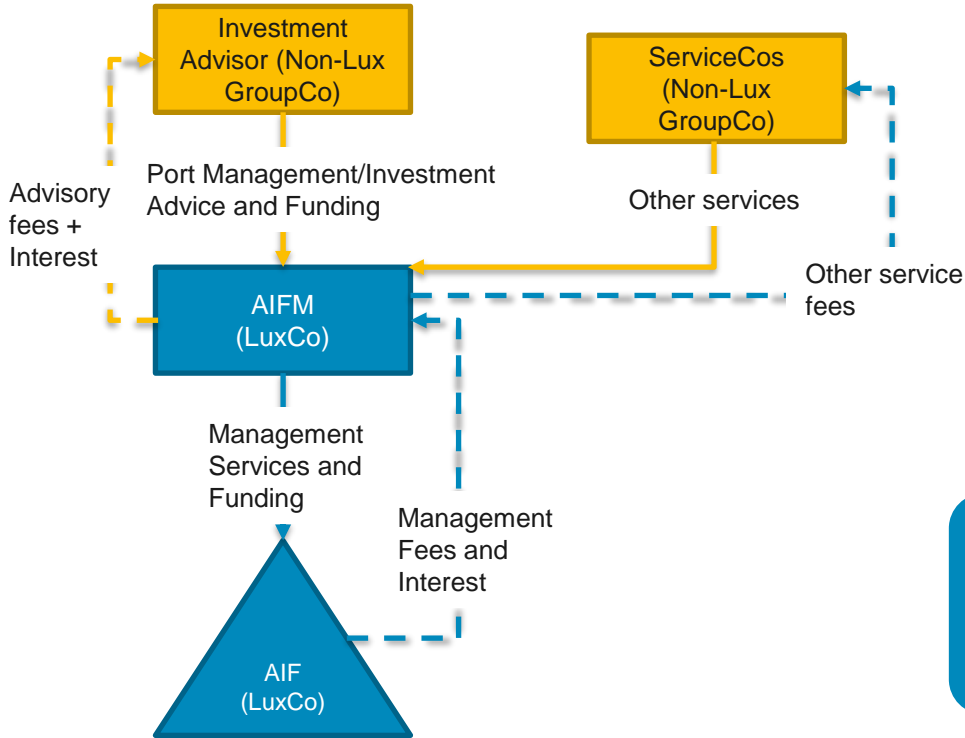
Alvarez & Marsal LLC USA

Desire vs. Reality

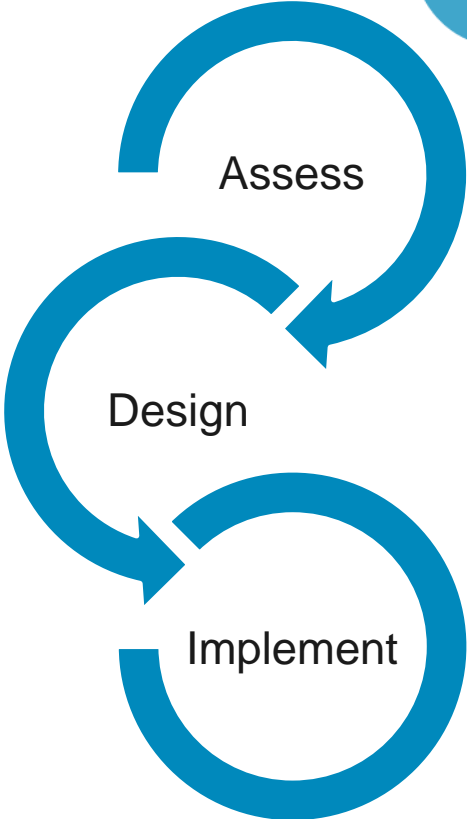
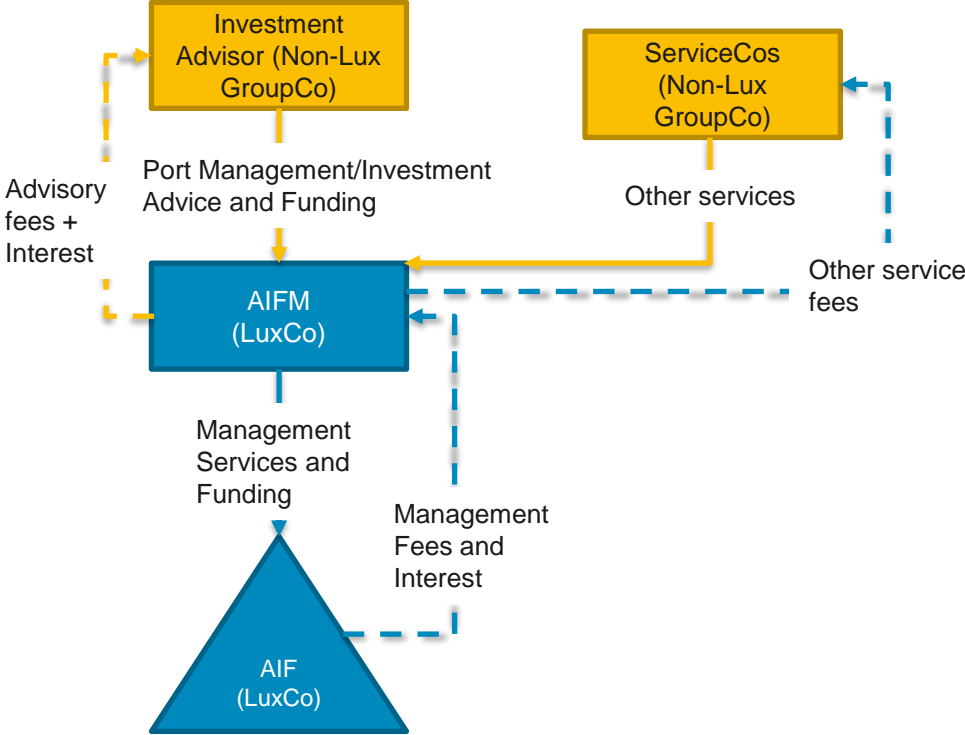


- Ability to move cash upstream, service the debt and achieve optimal deductibility of interest expense and management fees **HEAVILY** relies on profitability of individual portfolio companies.
- Ability to charge higher management fees (i.e. not a routine cost-plus charge) requires fund management team to direct strategy and bear risk in relation to portfolio companies even after acquisition (i.e. organic growth, future M&As and key strategic decisions).
- Assessing opportunities to integrate new portfolio companies, identifying potential synergies (operation, cost and cash) when acquiring new businesses are key to maximize overall investment return and value on exit.

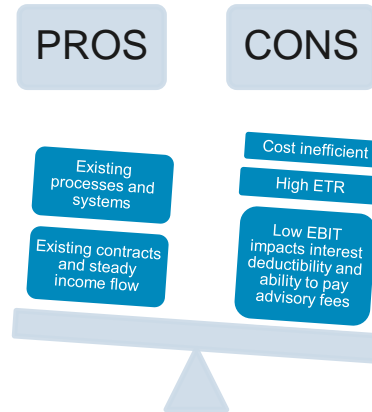
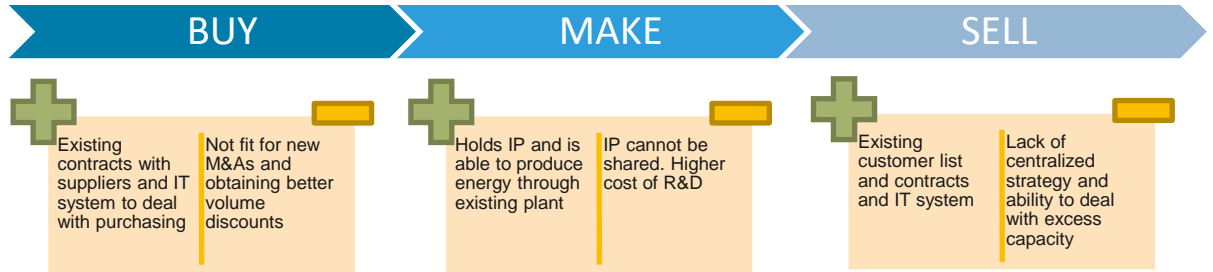
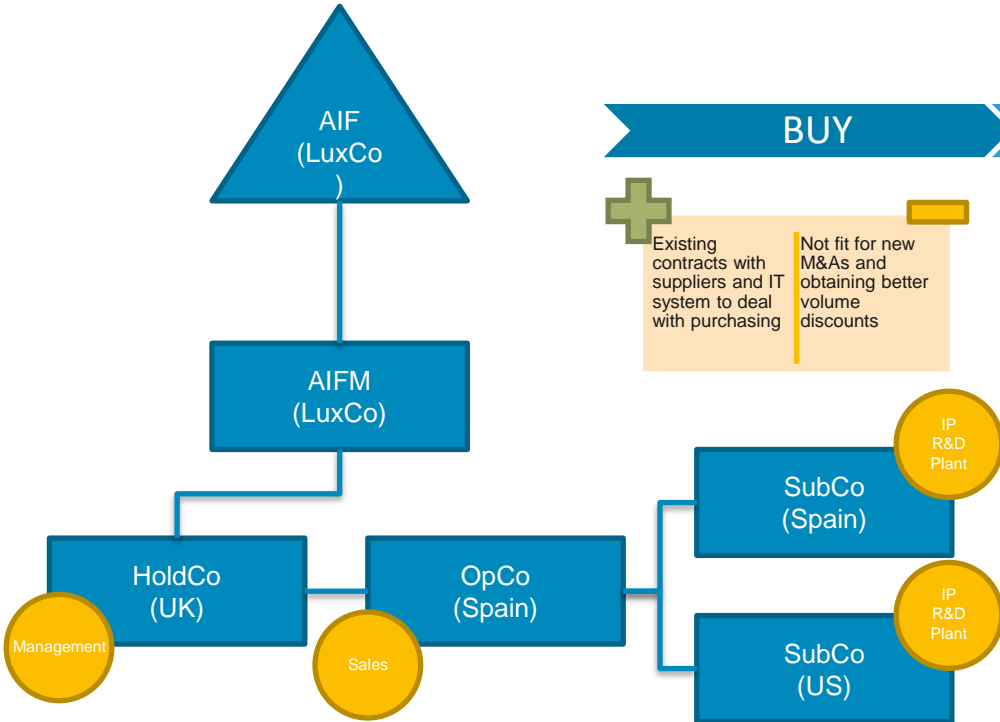
Plan in Advance



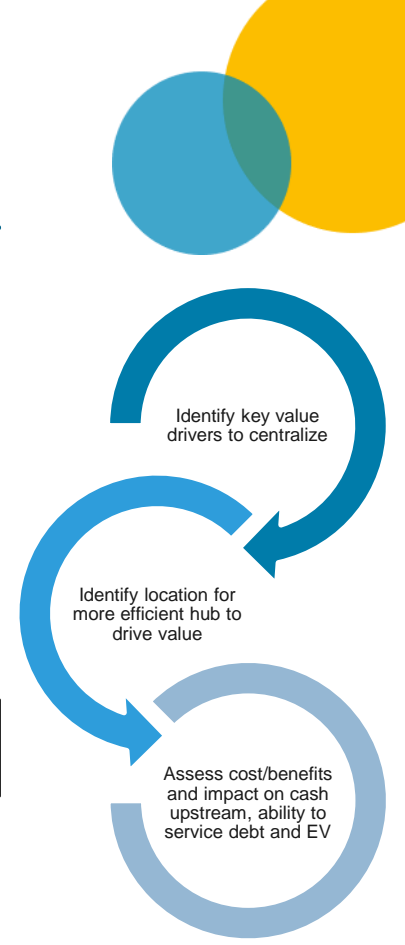
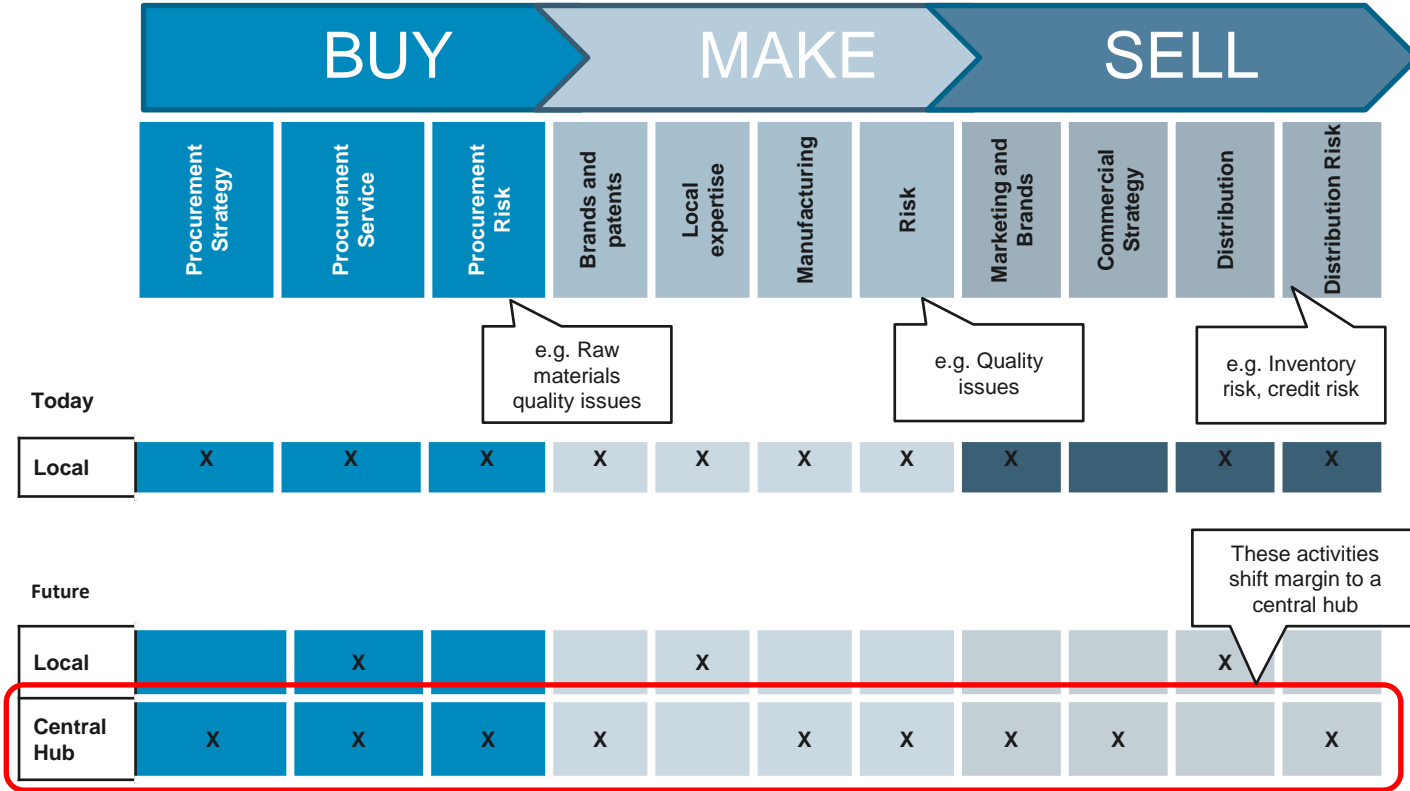
The Art of Supply Chain Planning



Status Quo



Potential Changes



Future State

What can be changed

Cost sharing arrangement to allow ability to share IP and concentrate exploitation rights in more favorable jurisdiction

Centralize procurement and commercial strategy and conversion of local sales entities to limited risk model

Convert manufacturers to contract manufacturing arrangement

Results

Reduced tax leakage

Higher EBIT to service debt and ability to pay management fees

Centralized hub can be used to integrate new acquisitions

Improved cost efficiencies through performance improvement

Greater multiple on exit

Better management of tax and TP risk


Other factors to consider

Exit planning

Future M&As

New markets and products

Ability to drive strategy from the top (i.e. improved ability to charge management fees)



Cash benefits

Enhanced ability to pay interest and fees

Easier integration of new M&As

Lower tax leakage and interest/fees disallowance