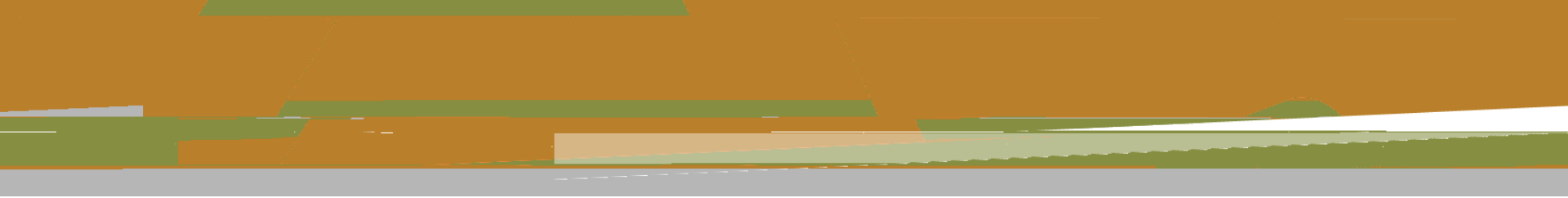


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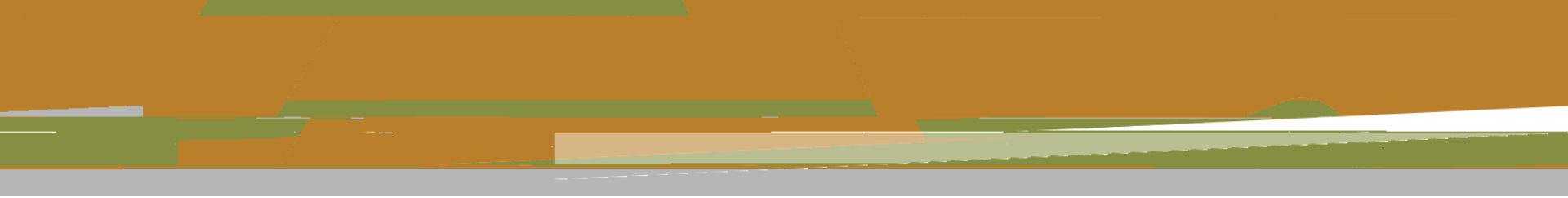


## United States

- Proposed Revisions to the U.S. Model Income Tax Convention
- Treasury proposes to deny treaty benefits for interest, royalties, or other income that benefit from a "special" tax regime in the recipient's country of residence
- Defined as any legislation, regulation, or administrative practice (such as a ruling) that provides a preferential effective rate of tax to the tested income, including reductions in tax rate or tax base, unless an exception applies
- Restriction is aimed at related-party income that is deductible in one country and taxed at preferential effective tax rates in the other country

### Exceptions would include:

- Tax regimes that do not disproportionately benefit interest, royalties, or other income
- Regimes regarding royalties that satisfy a substantial activity requirement
- Regimes that implement the principles of the treaty's business profits or associated enterprises article (e.g., Advance Pricing Agreements)
- Certain



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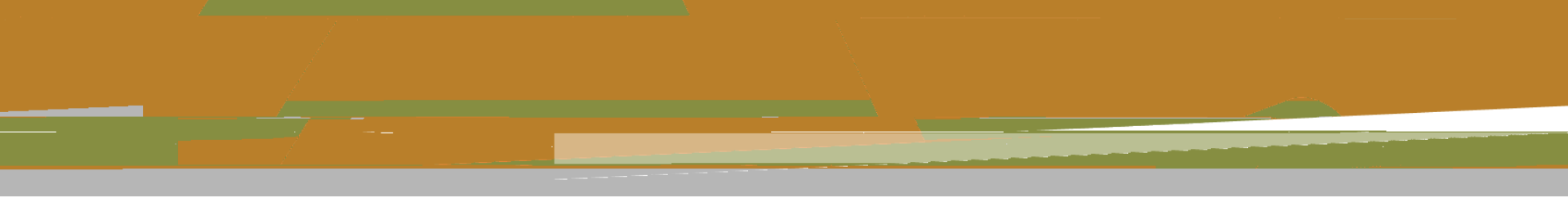
# BEPS Applicability to Various Countries

## Netherlands

- Action 2 – Intend to reach agreements soon on guidance and explanatory notes on hybrid PE mismatches, in situations involving third countries
- Action 12 – Developing EU guidance for implementing disclosure of aggressive tax planning, with a view to facilitate exchange of such information between tax authorities
- Actions 8 to 10 will start developing transfer pricing guidance on the interpretation of harmful measures (granting of tax advantages even in the absence of any real economic activity), to align transfer pricing outcomes with value creation

## Germany

- Action 12 – 2014 bill introduced to disclose aggressive tax planning yet law
- Action 13 – Transfer pricing legislation passed, expected to become law during 2016
- Action 13 – Legislation passed to make mandatory automatic exchange of information in the field of taxation, expected to become law by end of 2016



# Data Centers (Servers) – Location and Potential PE Issues

- **Issue**
- Servers should be located outside US, to avoid global income becoming subject to US taxation
- US should NOT own the off-shore servers, or it will have PE in the local countries
- Ownership of data servers in various countries can create Permanent Establishment (PE) – as a “fixed place” branch of US in those countries
- Results in US having local taxable income attributed to it, from these branch countries
- PE usually depends on if the country uses “Agency” principle, or interprets “OECD guidelines”
- OECD - “A place where computer equipment, such as a server, is located may in certain circumstances constitute a PE, if the functions performed at that place go beyond what is preparatory or auxiliary”
- **Suggestions to Avoid PE – If servers are needed by US**
- Have servers owned by foreign affiliate, to avoid in-country servers creating PE, and then have a cost-plus charge-out by foreign affiliate, as provision of services for these servers to the US



## Germany

- **Creates PE** - Based on latest German tax rules and OECD guidelines
- However, there are no high court decisions yet as to if servers would be treated as PE
- If Germany, suggest implementing a cost-

# PE – Servers – Example of Rules in Various Countries

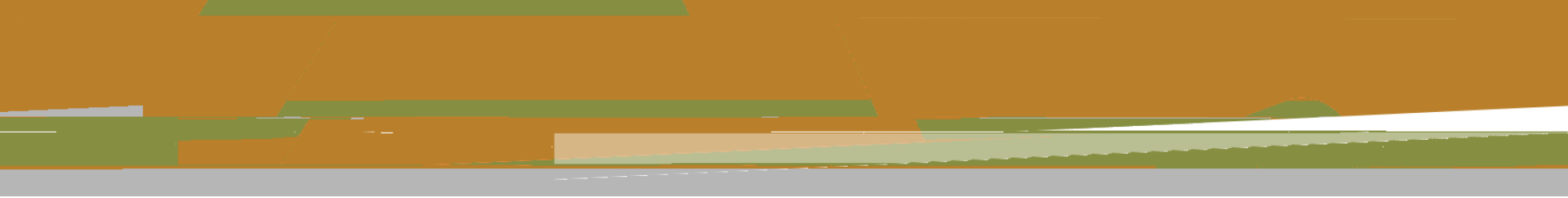
## UK

- **NOT a PE** - Existence of servers alone in UK does not create PE
- Per HMRC interpretation of the OECD model treaty (definition of a fixed place of business PE), a server “does NOT fit well with the examples of what constitutes a PE”
- HMRC is clear in its view that just a server, or a server in combination with websites, cannot constitute a PE, if a server was only part of the presence that an overseas company had in the UK
- Does not dismiss the possibility that servers, in combination with other assets and activities in UK could create PE

## Netherlands

- **Creates PE** – unless server operations are restricted to “preparatory or auxiliary activities”
- PE exists - if the functions performed by the servers are an essential and significant part of the business activity of the enterprise as a whole; or
- If the core functions of the company are carried on through the servers
- Examples – sales or customer order fulfilment carried on by the servers



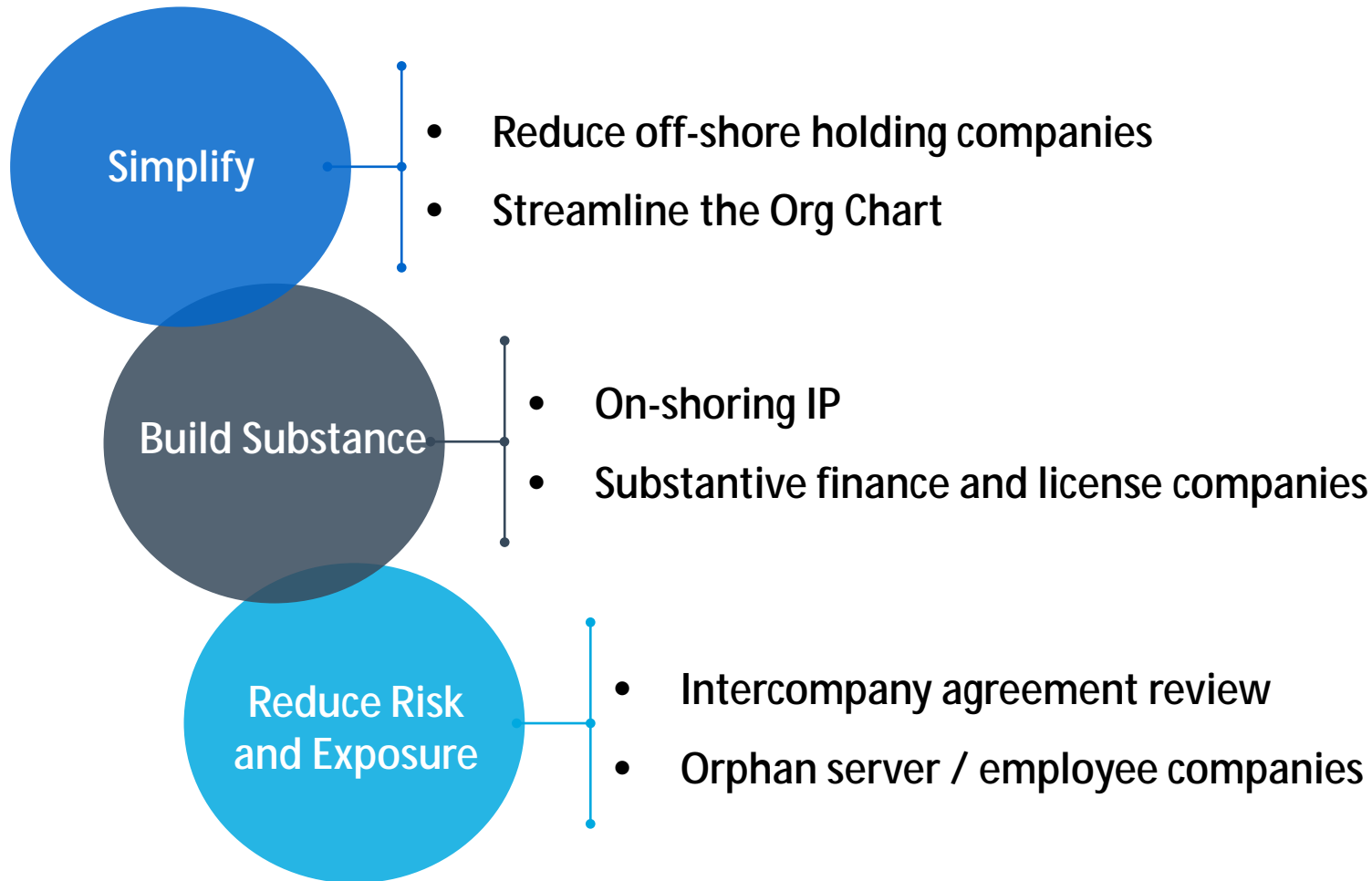


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## BEPS Inspired Actions on Global Business - Selected Examples

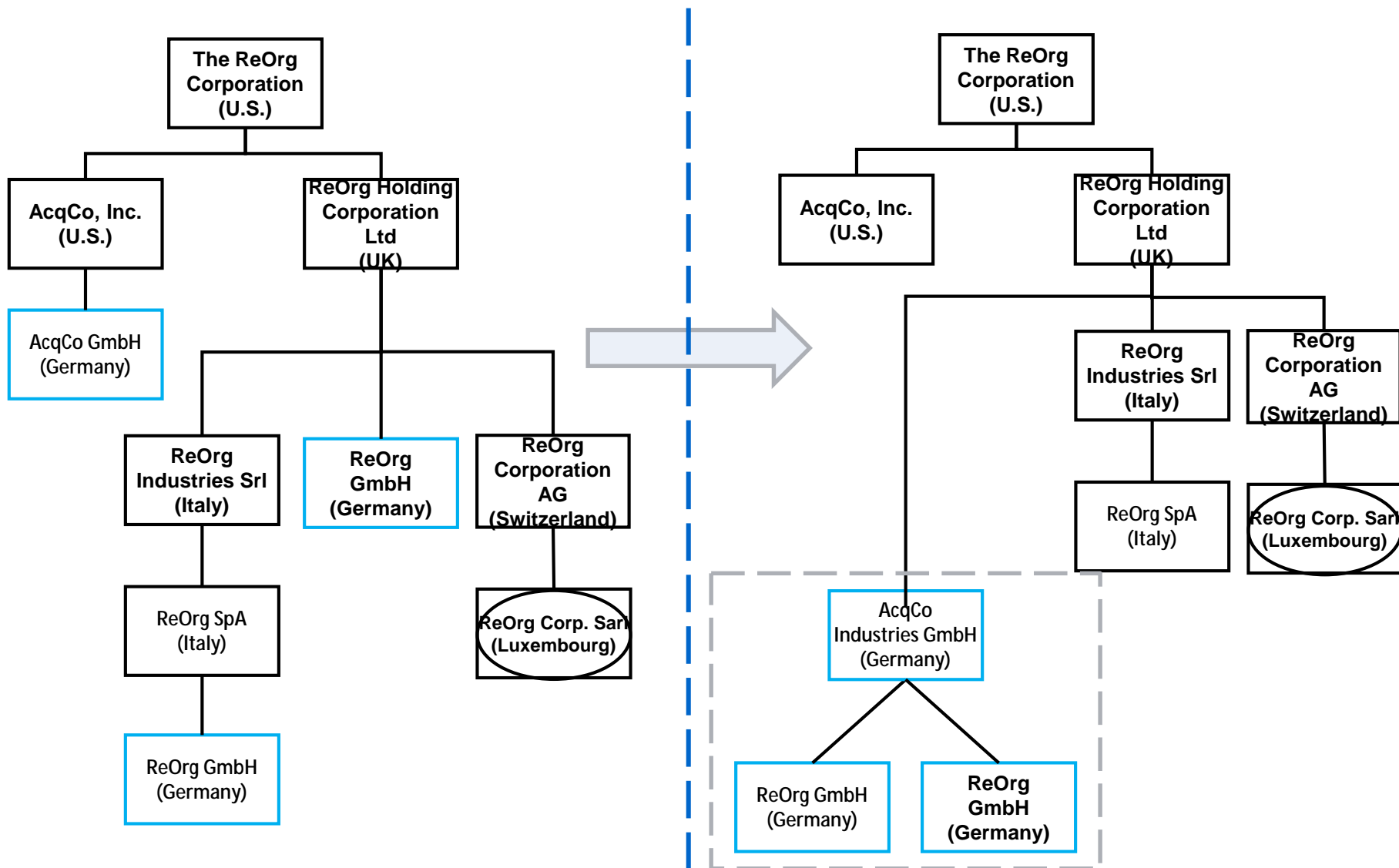








# SIMPLIFY: Streamline Org Chart







## Objectives

Assess consistency / completeness of:

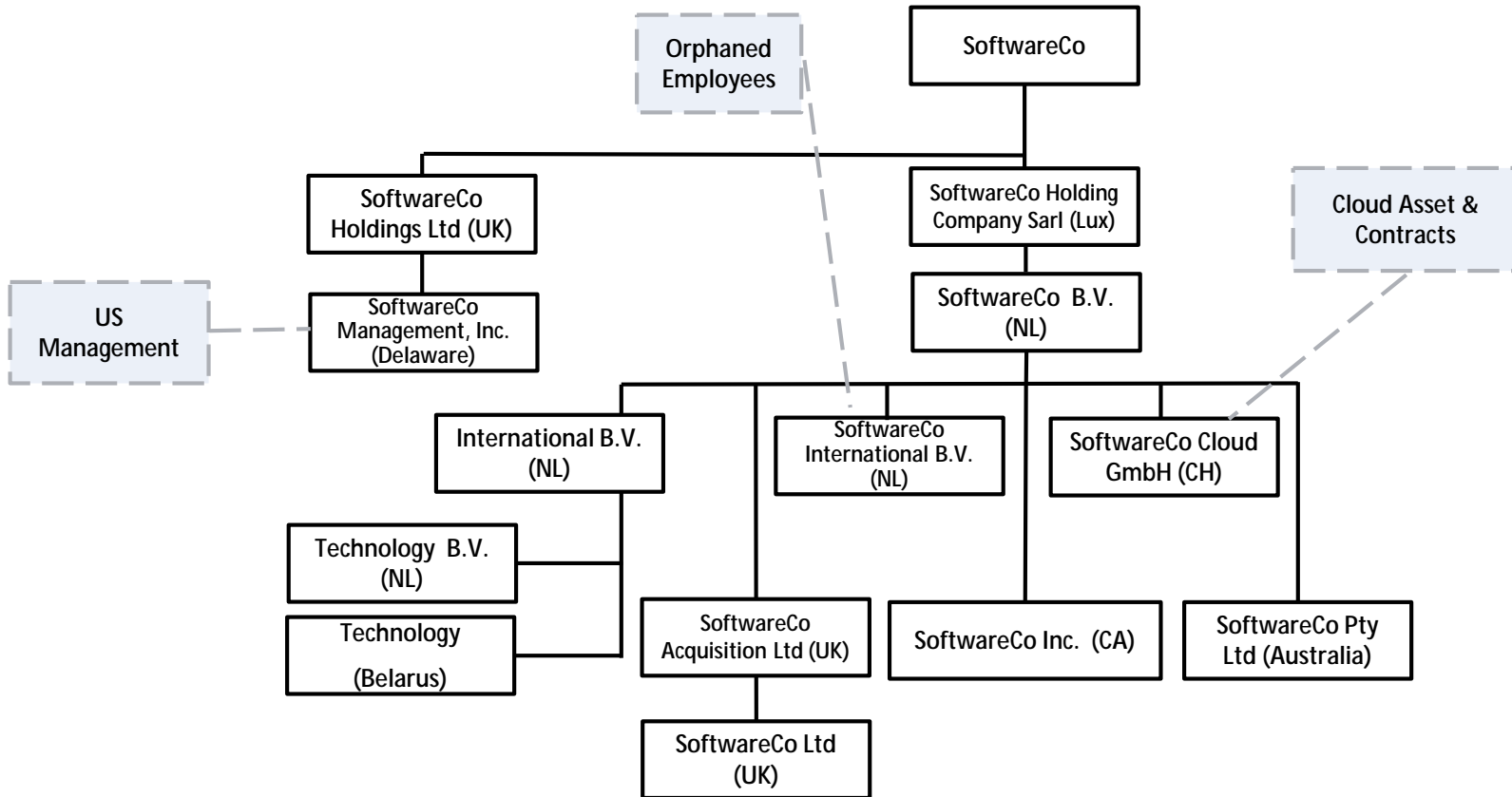
- Intercompany agreements and
- Transfer pricing policies and reports, with
- Accounting for internal transactions, and
- Cross border operations

## Benefits

- Improved corporate governance / compliance
- Tax authority readiness and reduction of audit adjustments
- Confirm conformity with transfer pricing rules

# REDUCE RISK and EXPOSURE

Orphan server / employee companies



- Michael Hardgrove has provided international tax consulting, legal entity structuring, cross-border reorganization and intangible property transaction services to numerous public and private companies with operations throughout the world.
- His practice focuses on optimizing the potential benefits of international structures and business operations, including assessing international tax exposures, recommending efficient strategies, and executing the legal steps required to meet the primary objectives of minimizing costs, lowering tax rates and improving cash flows.
- Michael's proactive approach and unique international tax and legal practice has often been recognized for its consistent abilities in identifying cash saving opportunities, providing strategic planning, advocating defensible positions and advising on alternative approaches to manage international tax, legal and business matters.
- Beyond his own expertise on international tax and structuring matters, he manages, supervises and oversees a team of DLA Piper's top lawyers, economists and tax professionals, in order to consistently deliver on international tax and structuring objectives. This team has the proven capability to address the full range of inter-related tax and legal issues relevant to complex international transactions, by utilizing lawyers with significant experience in specific areas of tax law as well as providing global solutions with coordinated advice across all relevant jurisdictions, including these specific areas:
  - Foreign Group Entity structuring services
  - Legal Agreement Drafting and Reviewing of Intercompany Transactions and Execution
  - International Transaction Execution, Global Resources and Legal Services
  - Global Alignment and Integration
  - Regional principal trading company implementation and supply chain conversion legal ( )-21.1(er)n3ices