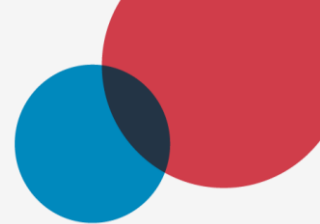




**M&A WHEN THE  
RULES ARE  
CONSTANTLY  
CHANGING**

**Your global tax partner**

# SESSION OVERVIEW



## M&A WHEN THE RULES ARE CONSTANTLY CHANGING

**Adam Benson (USA), Frédéric Teper (France), Cassius Carvalho (Brazil), Mike Benetello (South Africa), Sam Awad (Accenture)**

The significant changes in taxation around the globe, including the US, have significantly changed approaches to the structuring and financing of mergers and acquisitions. This panel reviews the most significant considerations, including conflicting changes, through several case studies.

# PANEL INTRODUCTIONS



## Panelists

### Adam Benson

Alvarez and Marsal,  
Taxand USA

### Sam Awad

**Accenture:** Managing Director  
Finance, Client Tax Matters, Ventures  
& Acquisitions, Transfer Pricing and  
Employee Tax & Immigration

### Cassius Carvalho

Garrigues, Taxand Brazil

### Frédéric Teper

Arsene, Taxand France

### Mike Benetello

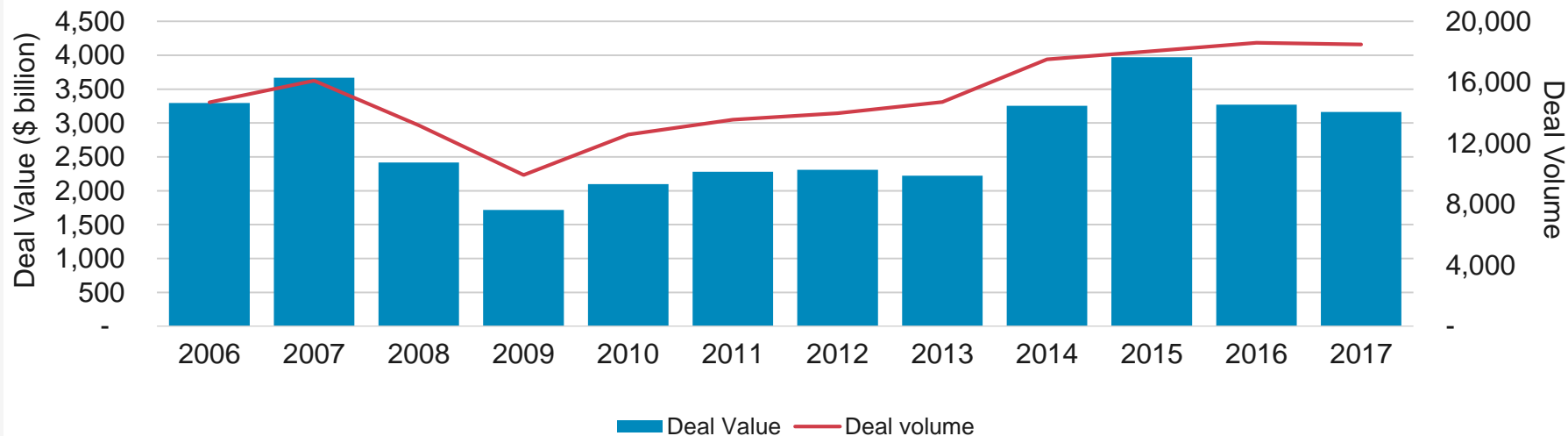
ENSafrica, Taxand South  
Africa

# STATE OF GLOBAL M&A



- Global M&A markets remain strong, though 2017 deal value declined from prior years.

**Global M&A Deals** – By deal value and volume (\$ billion, number of deals, 2006–2017)

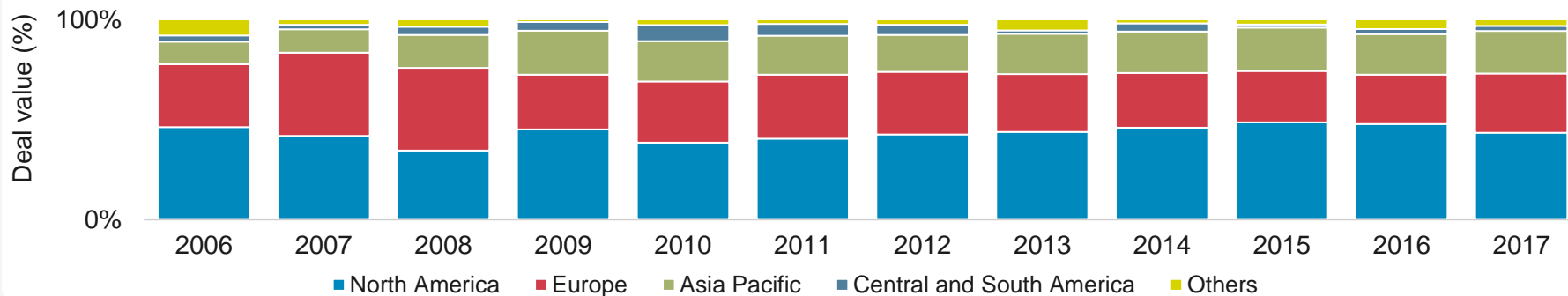


# STATE OF GLOBAL M&A



- ❖ In 2017, decline in deal activity in North America was partially offset by soaring M&A activity in Europe.

**Global M&A Deals – By Value (% , 2006–2017)**



+



+



=

~70% of global deal value



~29.5% of global deal value, the highest since 2012



LATAM



China

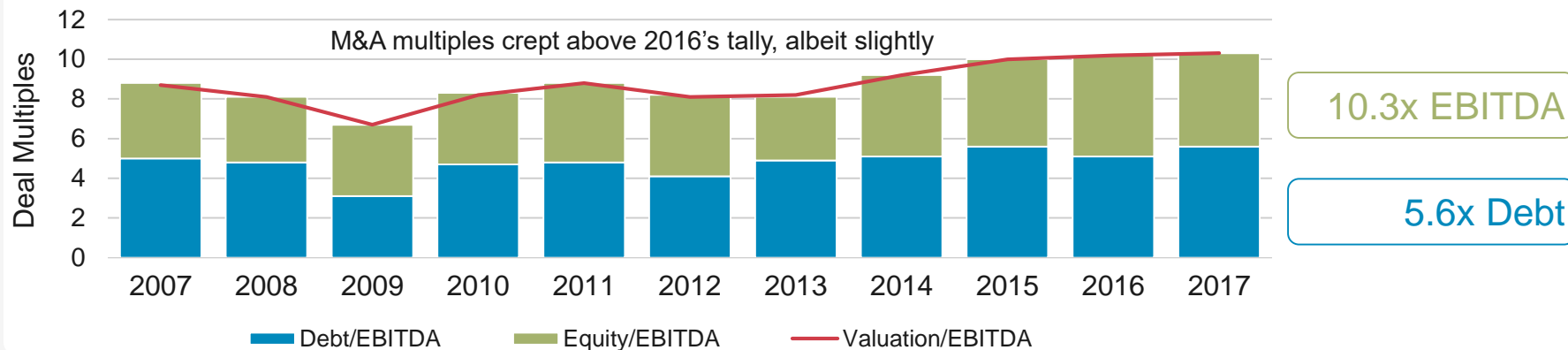


# STATE OF GLOBAL M&A



- ❖ Valuation multiples reached their all-time high in both Europe and North America.

## North American M&A Multiples (2007–2017)



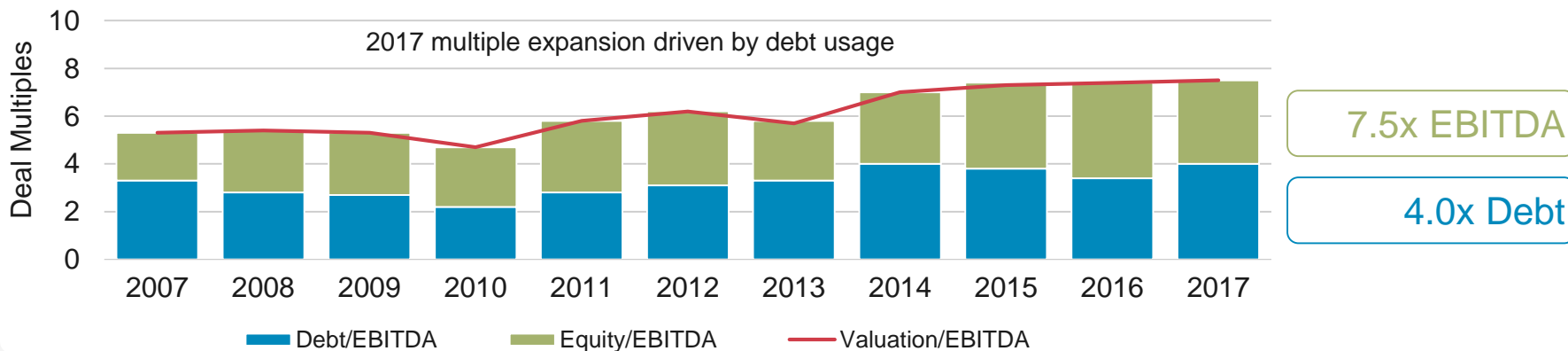
Ample dry powder reserves and readily available debt financing drove this rally.

# STATE OF GLOBAL M&A



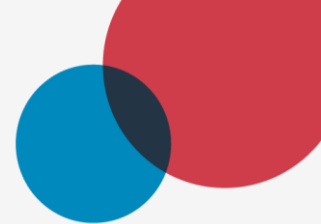
- ❖ Valuation multiples reached their all-time high in both Europe and North America.

## European M&A Multiples (2007–2017)



Political stability and stronger economic performance, along with more access to debt capital, helped drive growth.

# STATE OF GLOBAL M&A

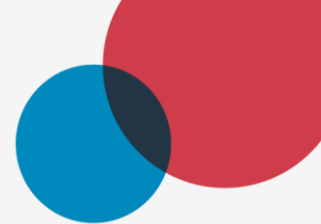


- ❖ M&A activity is expected to grow globally on account of high liquidity and heightened activity in emerging markets. However, regulatory scrutiny and activist investments pose serious challenges.

M&A TAILWINDS	
Strong European economic performance and relative political stability	❖ European M&A activity is poised for growth in the coming years as favorable economic outlook, coupled with relative political stability, is likely to offset economic uncertainties arising due to the ongoing Brexit negotiations.
Impact of US administration change	❖ President Trump's pro-business stance has given investors hope for spur in M&A activity; several major deals have been announced in the first year of the presidency.
Demand for technology solutions	❖ Tech deals soared to an all time high in 2016; several large deals already announced in 2017 and 2018.
Low interest rates and high liquidity	❖ The Federal Reserve has hiked interest rates in March 2018; however, the rates are still very low and financing for M&A activity is easily available.
Emerging markets	❖ Emerging markets witnessed higher M&A activity in 2017 than in previous years; the deal activity is expected to continue to grow in these markets.



# STATE OF GLOBAL M&A



- ❖ M&A activity is expected to grow globally on account of high liquidity and heightened activity in emerging markets. However, regulatory scrutiny and activist investments pose serious challenges.

## M&A HEADWINDS

### Activist investments

- ❖ Activist campaign settlements are expected to drop due to lower activism levels and increased shareholder pressure.

### Political challenges across LATAM

- ❖ Brazil & Mexico have faced political turbulence since 2016; however, things are looking up with opportunities in the region for long-term investors.

### Regulatory scrutiny on the rise

- ❖ Regulatory scrutiny led to a large number of deals being withdrawn; this regulatory intervention is expected to continue in 2018.

### Cross-border transactions

- ❖ The decline in cross-border activity is expected to continue due to the continued capital controls and new measures to curb outbound investments by Chinese government and increased scrutiny by US government.

# THEMES OF GLOBAL M&A TAX PLANNING

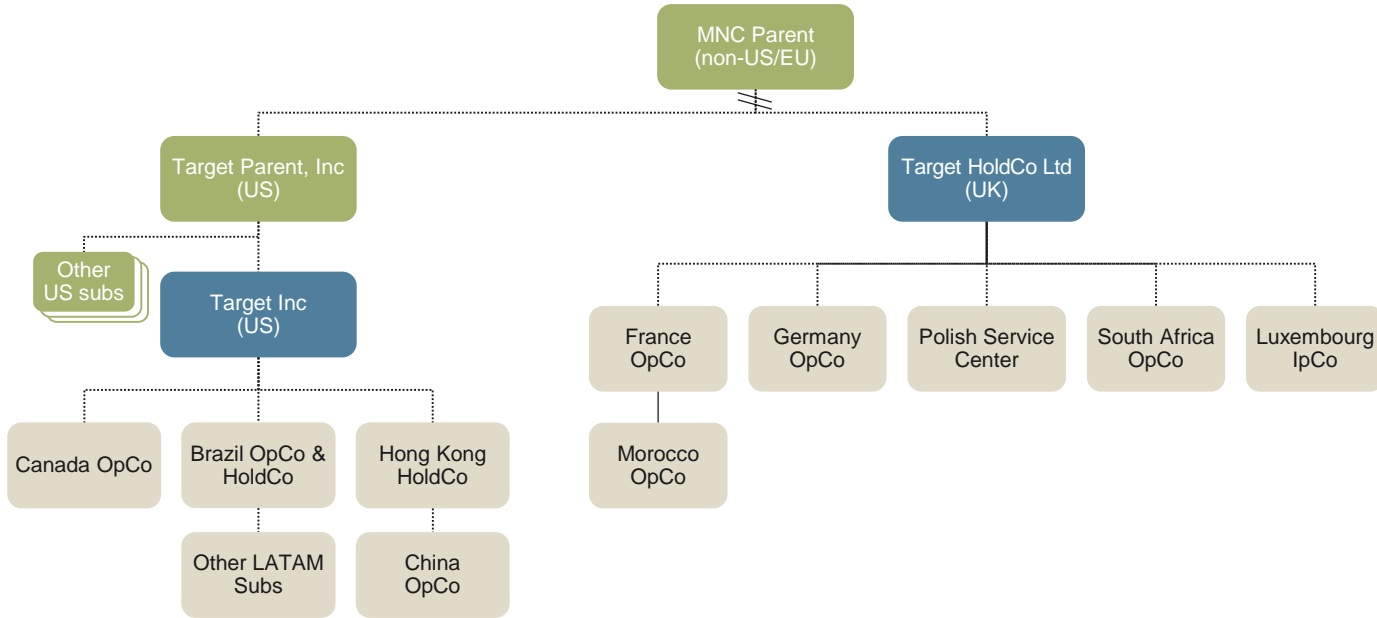


## Themes in Global M&A Tax

- ❖ Uncertainty and challenges **making business decisions** in constantly changing environment
- ❖ **Capital Structure Challenges** – debt structure and interest deductibility
- ❖ **Operational Tax Planning Challenges** – IP and transfer pricing
- ❖ **Holding Company Challenges** – substance and treaty issues
- ❖ **Reputational Challenges** – state aid, audits/litigation, exchange of information, press & public pressure
- ❖ Continued **pressure for FDI** (tax competition) vs. anti-avoidance measures. Rates coming down, but anti-avoidance increasing.

## ❖ TAXAND

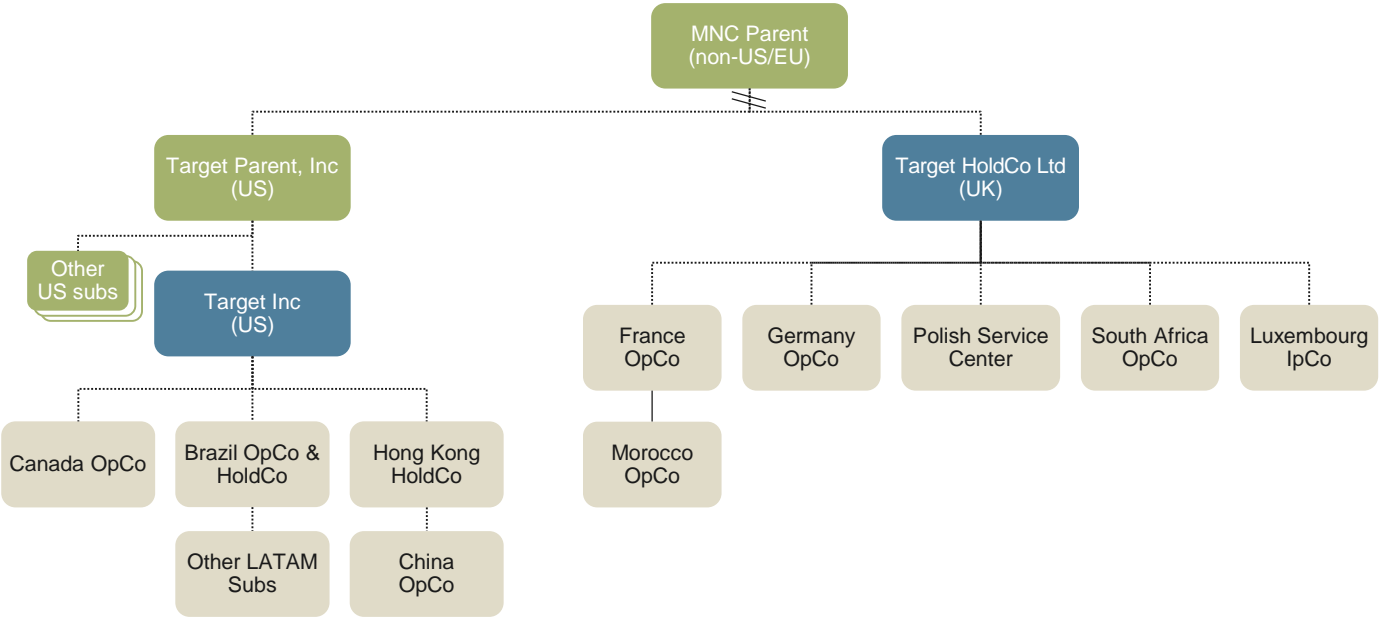
# CASE STUDY: MULTINATIONAL CARVE-OUT



## Fact pattern

- ❖ Transaction is a carve-out, with US and non-US operating companies
- ❖ Target entities are US Inc and UK Ltd
  - Business: software development and licensing
  - B2B and B2C revenue streams.

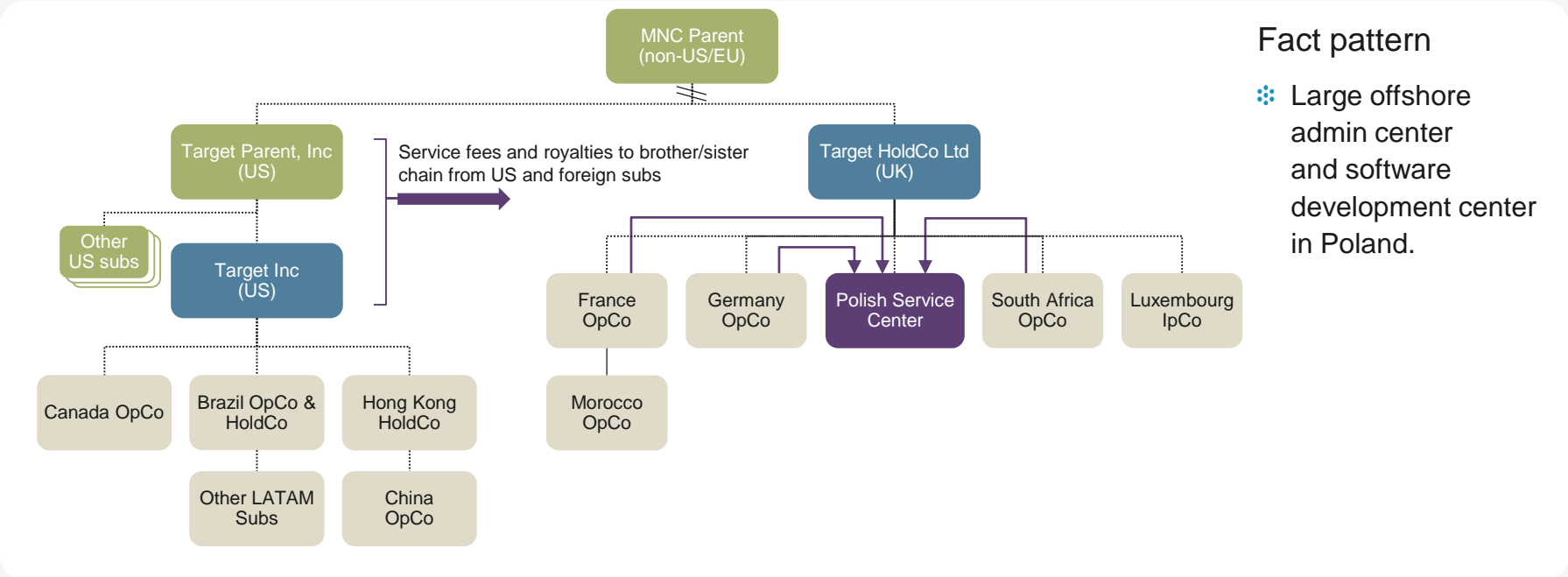
# CASE STUDY: MULTINATIONAL CARVE-OUT



### Fact pattern

- ❖ 60% US EBITDA, 40% non-US
- Buyer has US gross receipts of \$200m
- Target has US gross receipts of \$400m.

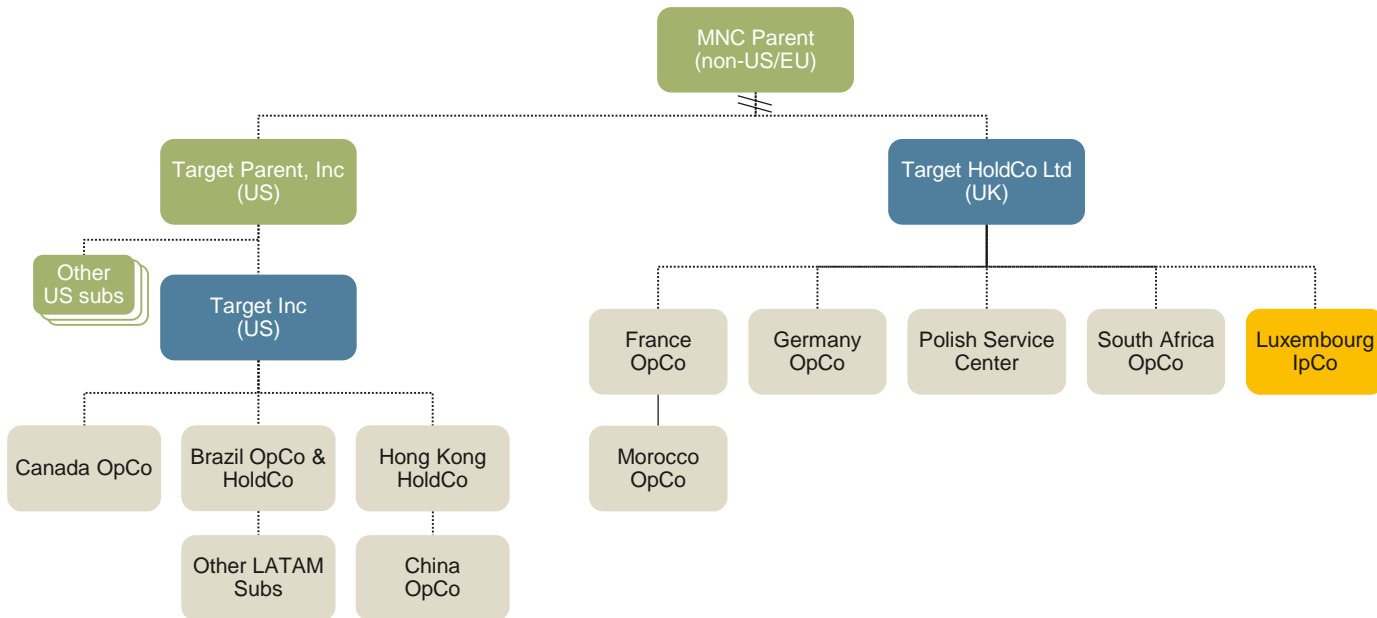
# CASE STUDY: MULTINATIONAL CARVE-OUT



## Fact pattern

- ❖ Large offshore admin center and software development center in Poland.

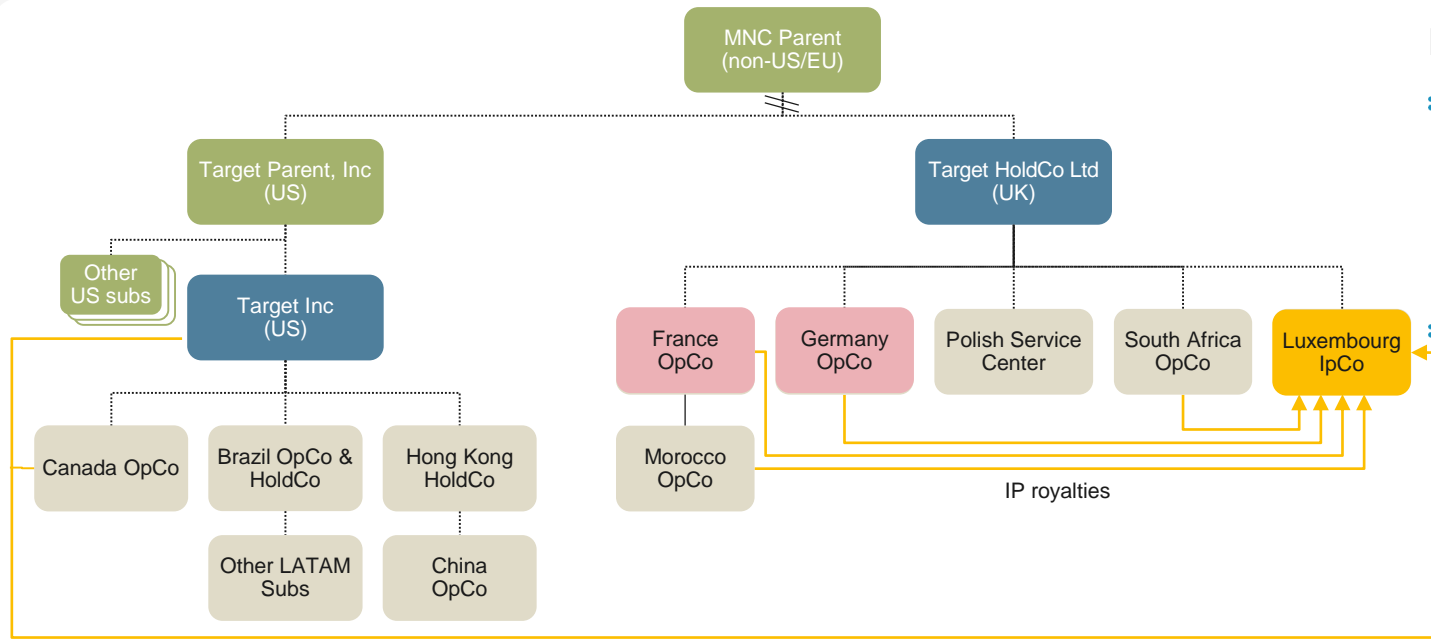
# CASE STUDY: MULTINATIONAL CARVE-OUT



## Fact pattern

- ❖ IP rights in Luxembourg
  - The IP was transferred to Luxembourg in 2010 and has benefited from the 'old patent box regime'.

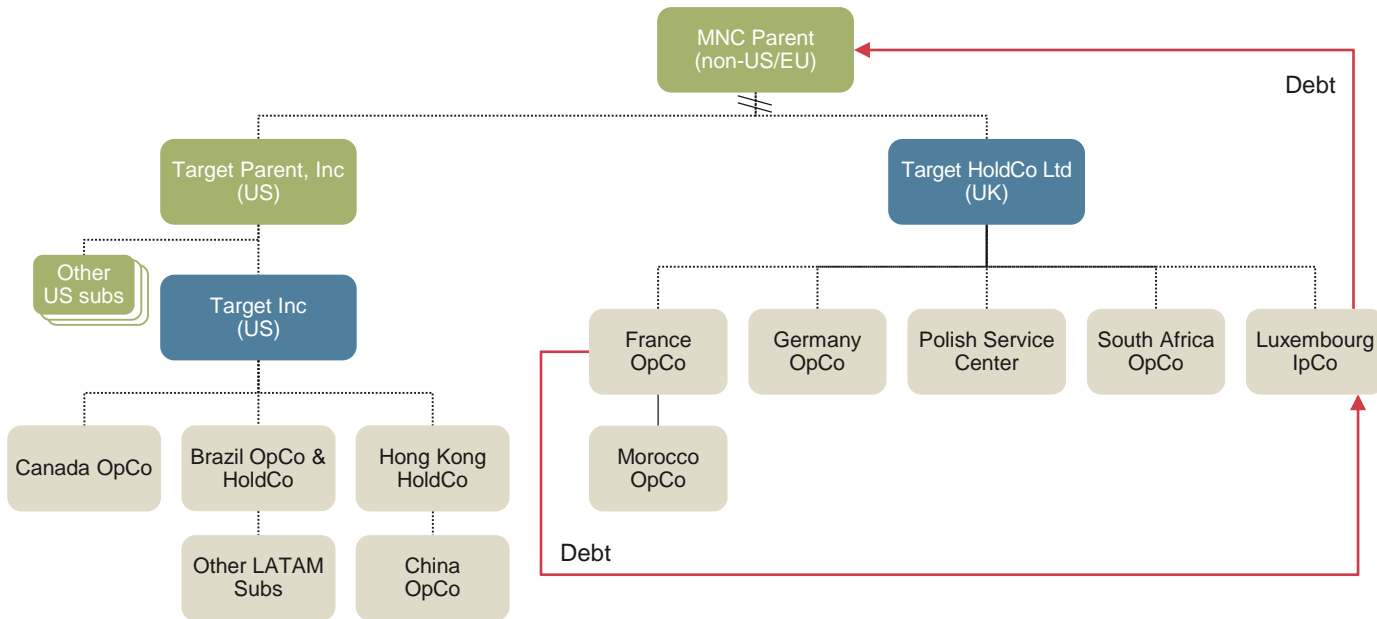
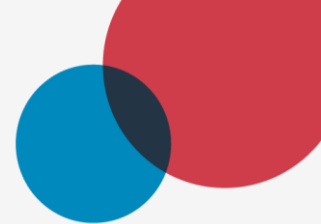
# CASE STUDY: MULTINATIONAL CARVE-OUT



## Fact pattern

- ❖ Significant royalty payments made to Luxembourg IP entity from US and Non-US chains for B2C sales/licenses
- ❖ Historically, benefits under EU Directives
  - B2C back to back licenses with Luxembourg
  - B2B commissionaires in France and Germany.

# CASE STUDY: MULTINATIONAL CARVE-OUT

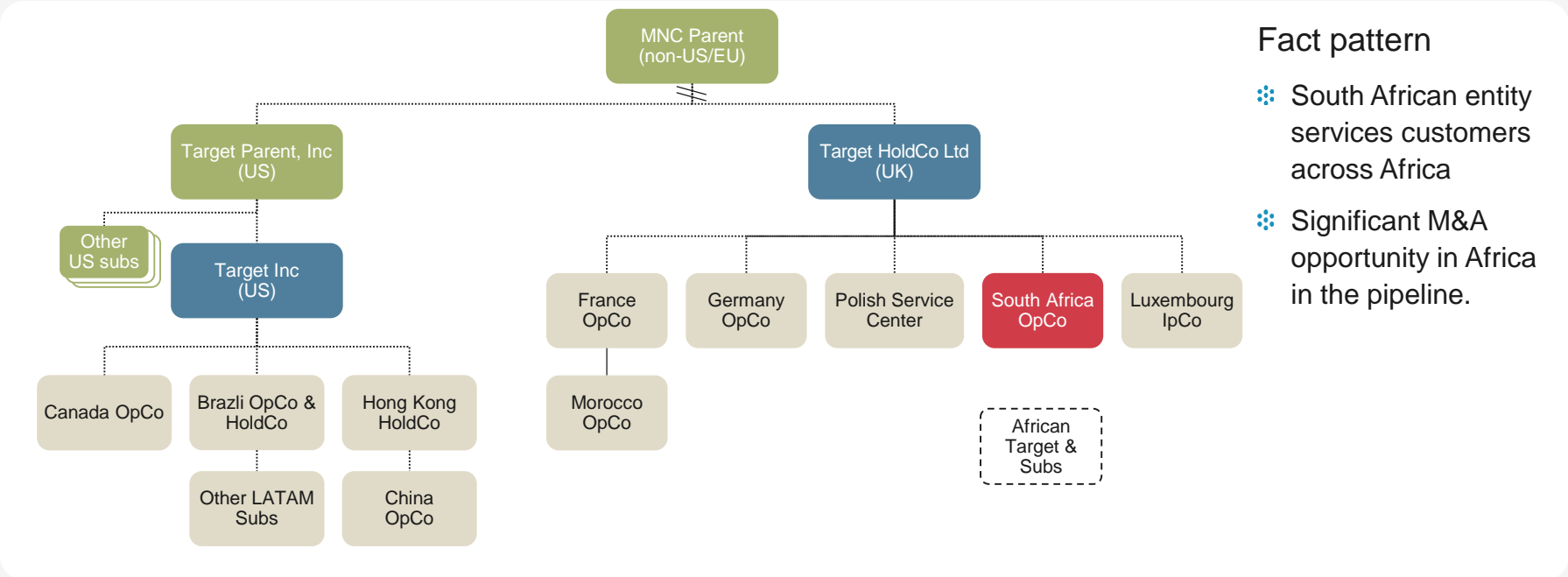


## Fact pattern

- ❖ France financed the acquisition of Morocco OpCo by a debt vis-à-vis Luxembourg
- ❖ Luxembourg refinanced the debt by a back to back loan with Parent.



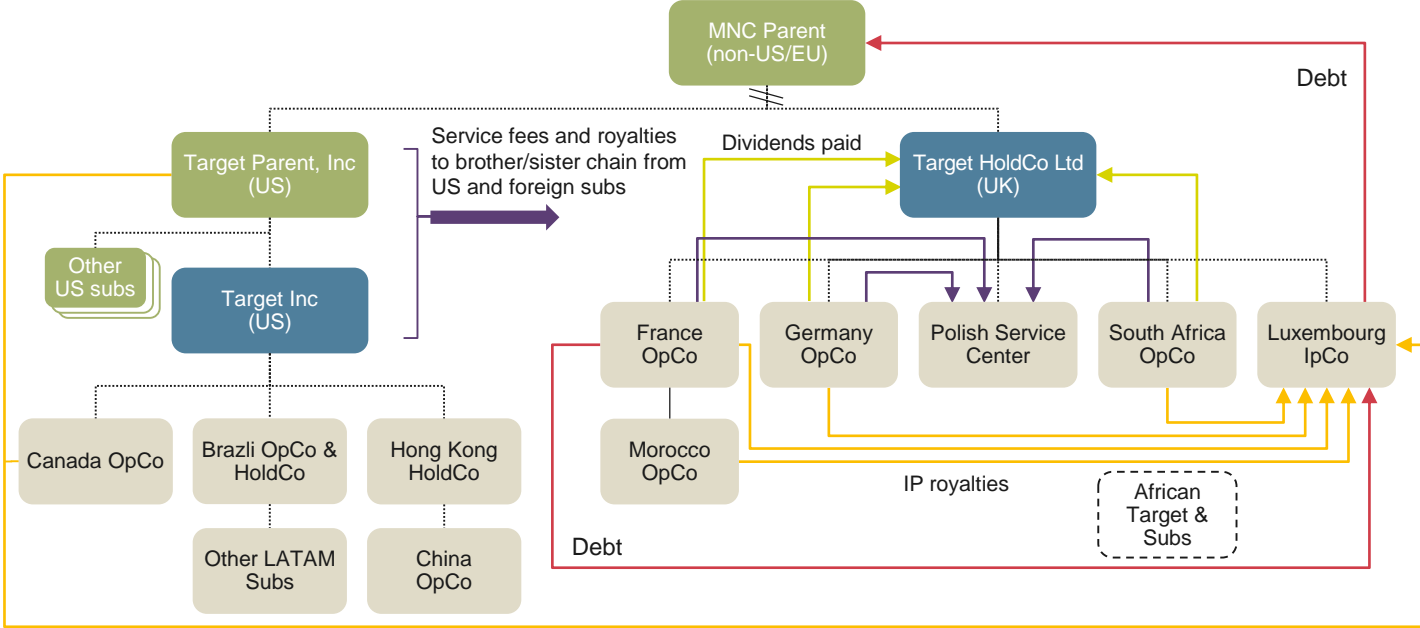
# CASE STUDY: MULTINATIONAL CARVE-OUT



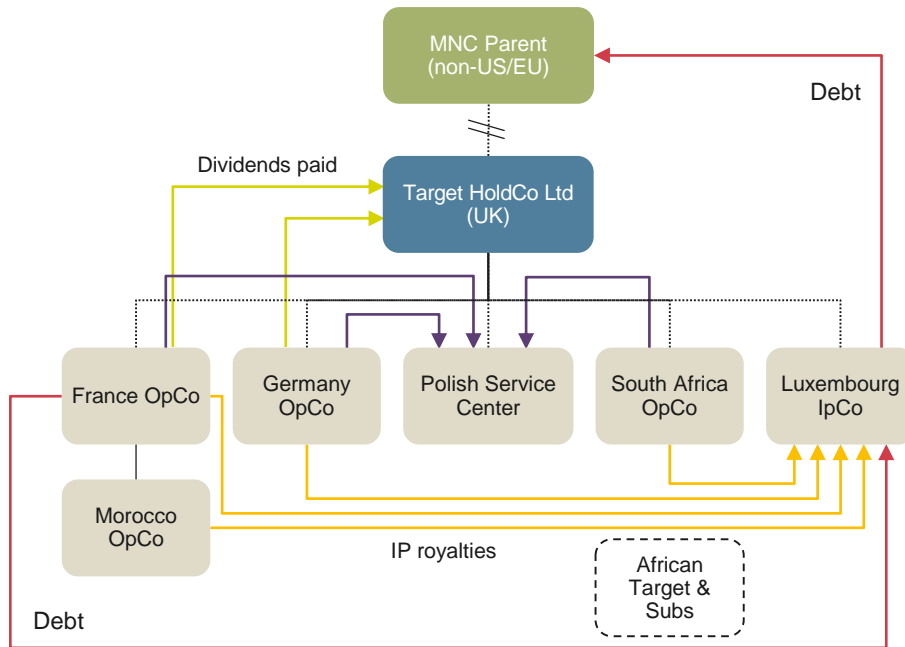
### Fact pattern

- ❖ South African entity services customers across Africa
- ❖ Significant M&A opportunity in Africa in the pipeline.

# CASE STUDY: MULTINATIONAL CARVE-OUT



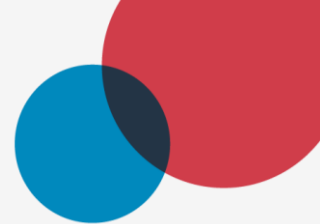
# CASE STUDY: EUROPEAN PERSPECTIVE



## European Structure Facts

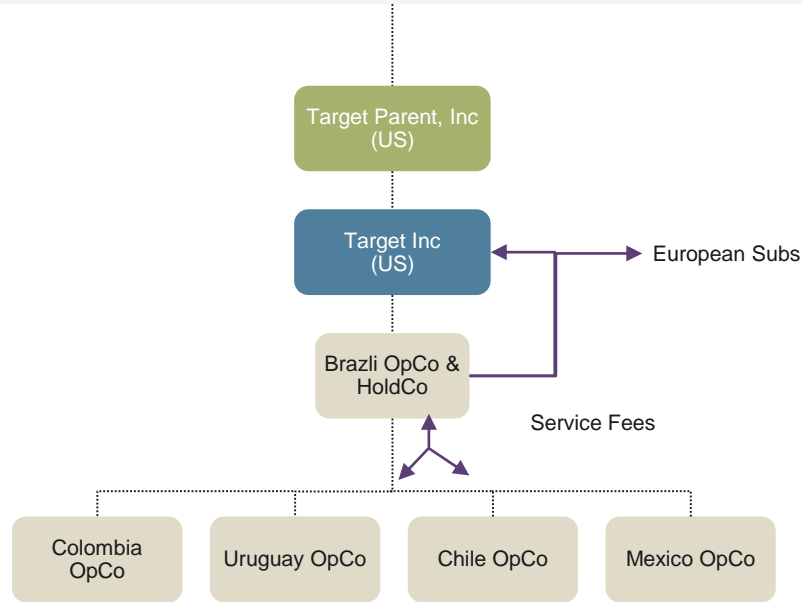
- ❖ IP in Luxembourg 'old patent box'
- ❖ B2C sale licensing with Luxembourg
- ❖ Commissionaires in FR and DE
- ❖ Back to back debt through Luxembourg
- ❖ Significant services fees paid to Poland
- ❖ Dividends/distributions to UK parent.

# CASE STUDY: MULTINATIONAL CARVE-OUT



“So what does that mean  
for **the deal??**”

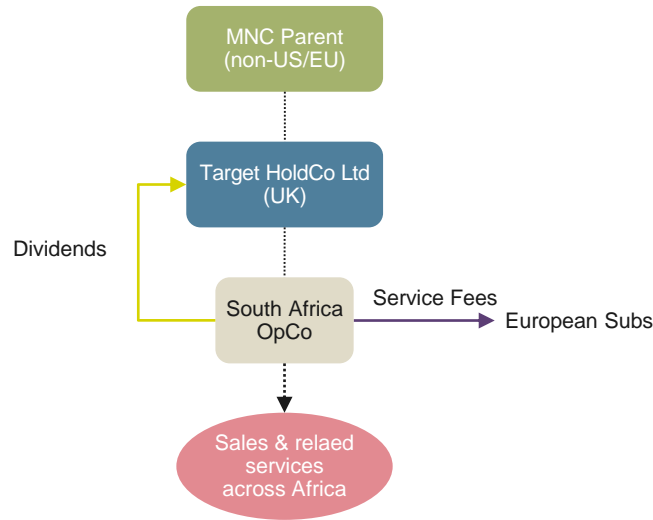
# CASE STUDY: LATAM PERSPECTIVE



## LATAM Structure Facts

- ❖ Brazilian OpCo and holding company for other LATAM subs
- ❖ Excess cash in Brazil & subs
- ❖ Material earnings in Brazil and Mexico, other subs have historically been cost centers
- ❖ LATAM is growth market
- ❖ Significant services fees between LATAM and US, and European subs.

# CASE STUDY: AFRICAN PERSPECTIVE



## African Structure Facts

- ❖ South African operating company, which services African region
- ❖ SA employees make sales and provide related services across the region
- ❖ Service fees paid to related European subsidiaries
- ❖ UK parent, SA OpCo periodically makes dividends/distributions to UK parent.

# CASE STUDY: MULTINATIONAL CARVE-OUT



Any press is **good press**?

# POLLING QUESTION 1



Of all the issues just discussed, which would you least like to have to explain and discuss with your Board/Partner/Deal-Team (relevant non-tax decision makers)?

**A** ❖ The BEAT, and how it may apply to your organization if this transaction moves forward?

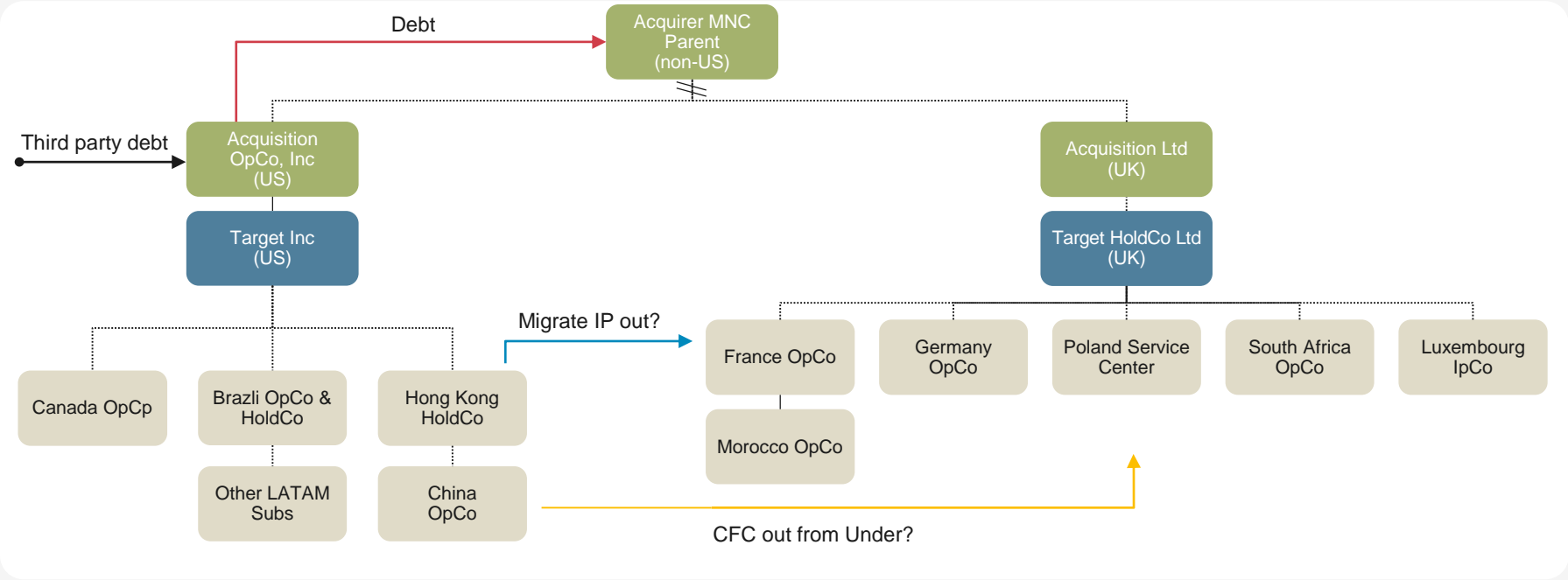
**B** ❖ The 'Nexus Approach' and validity/risk/exposure of the existing Luxembourg IP structure?

**C** ❖ How to get cash out of Brazil

**D** ❖ Why you can't accurately quantify the Permanent Establishment Exposure in Africa?



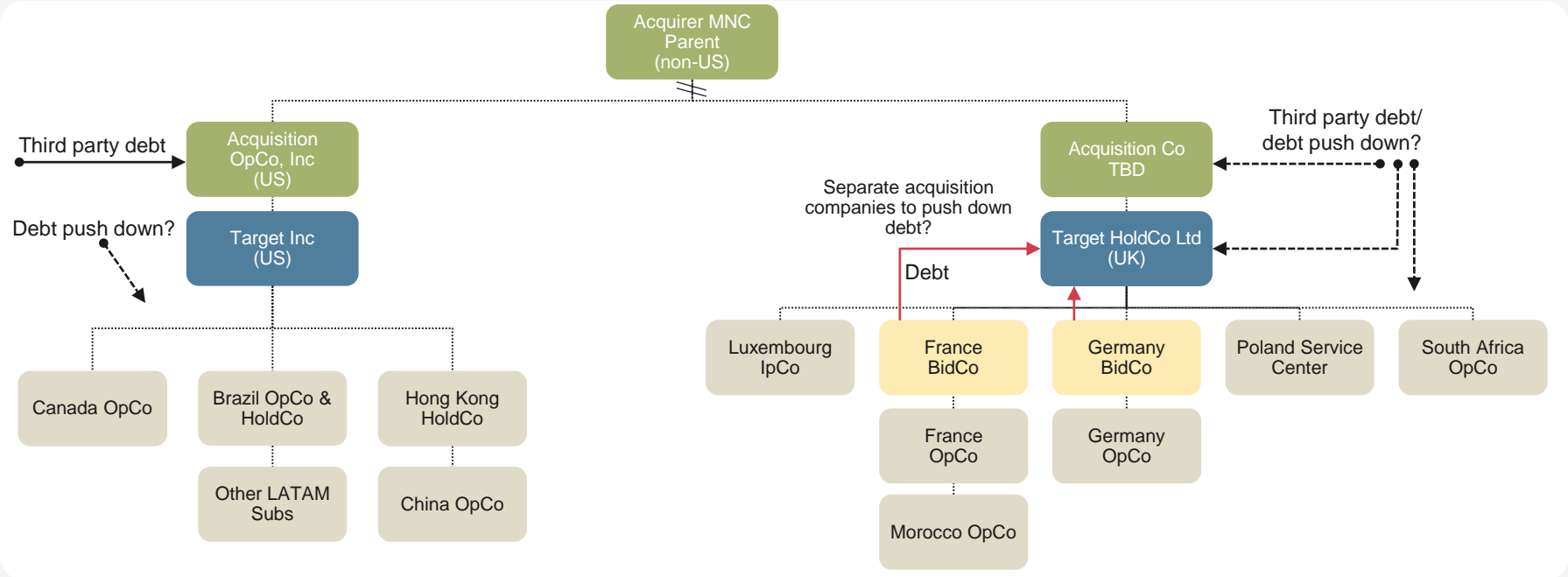
# CASE STUDY: HISTORICAL STRUCTURING



# CASE STUDY: STRUCTURING



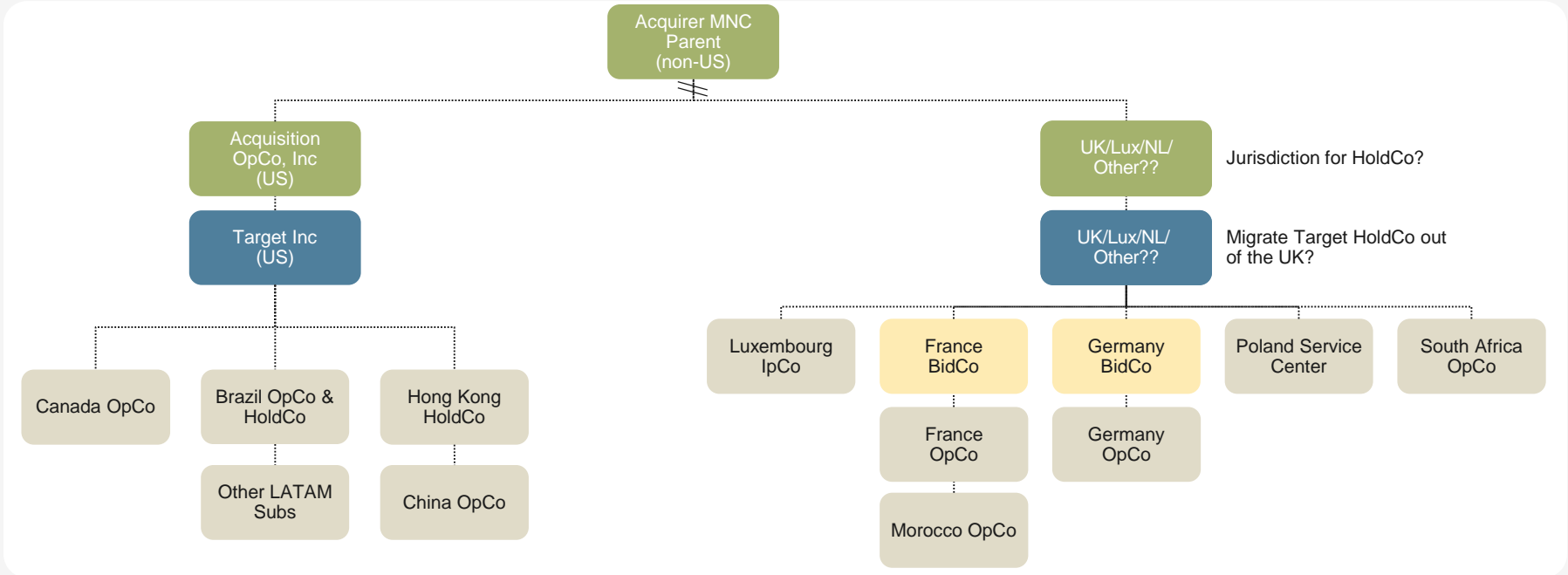
## Where do we put the debt?



# CASE STUDY: STRUCTURING



## European HoldCo structure?



# POLLING QUESTION 2



How comfortable are you with using the UK as a holding company jurisdiction given potential Brexit?

A

❖ Very comfortable

B

❖ Pretty comfortable, but I consider other alternatives too just in case

C

❖ Gives me a bit of heartburn, prefer other jurisdictions where possible given the uncertainty

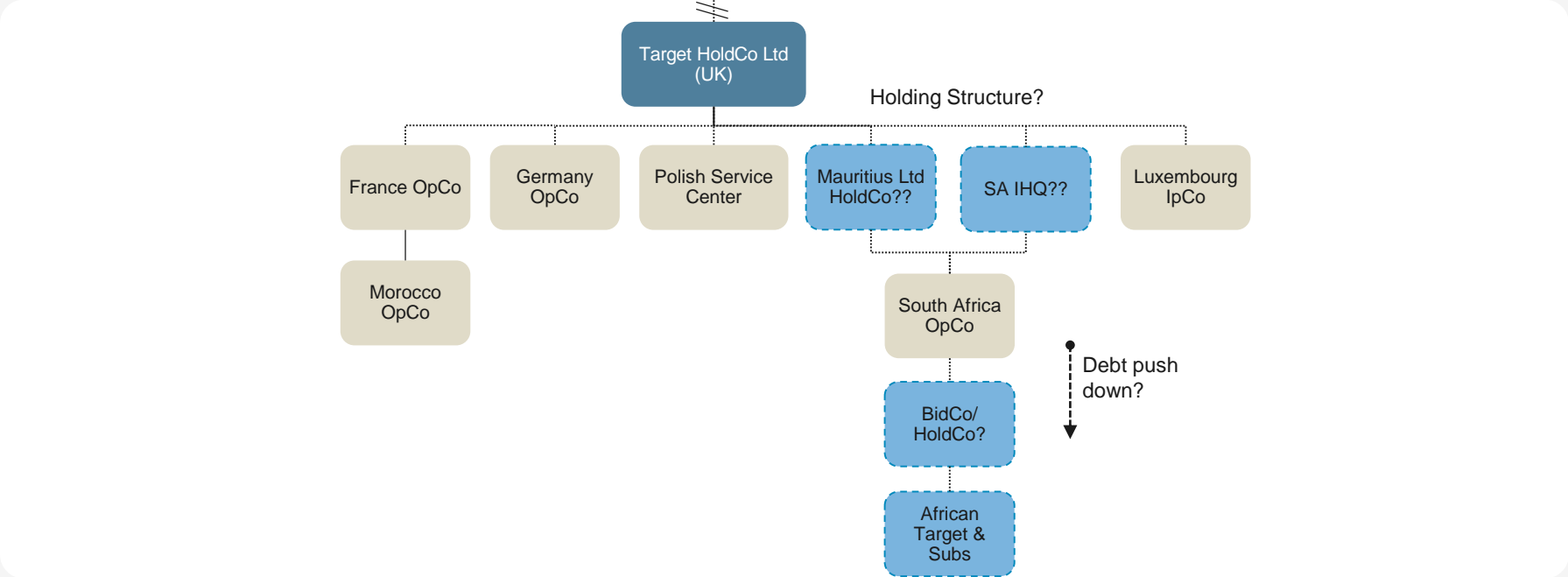
D

❖ Lot of heartburn – I go elsewhere where possible

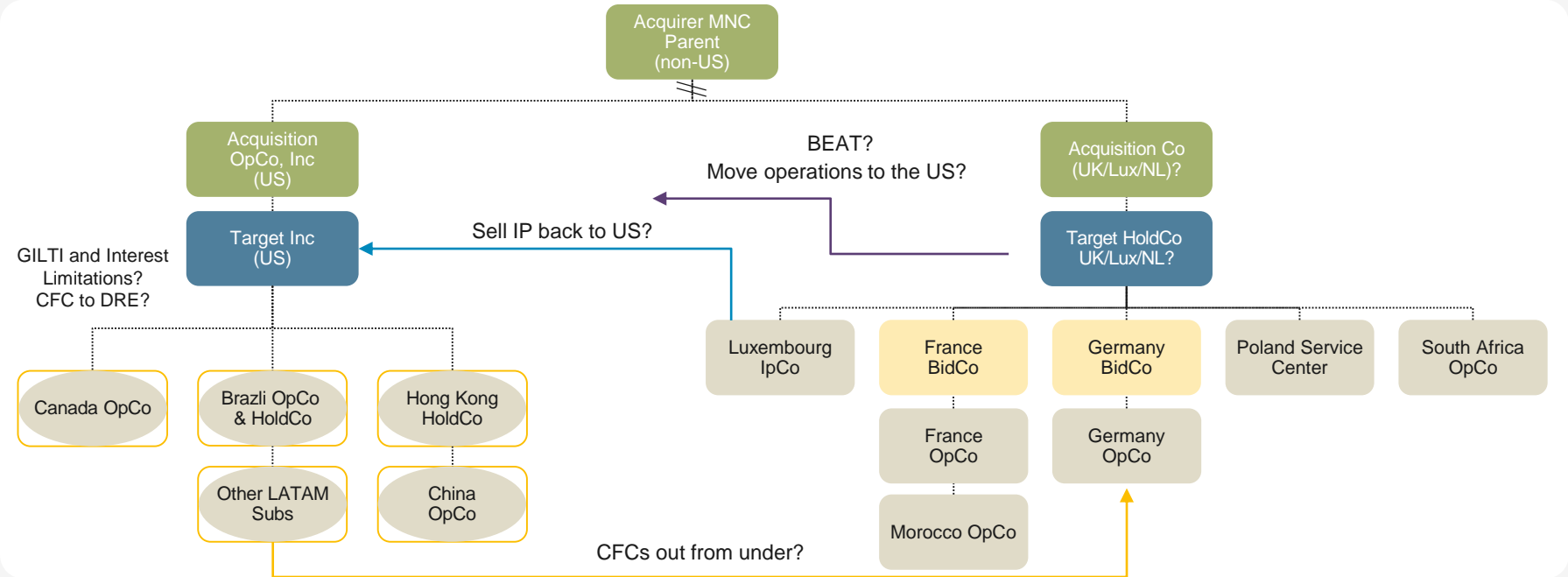
# CASE STUDY: AFRICAN M&A CONSIDERATIONS



## Capital & holding structure?



# CASE STUDY: INTEGRATION/OPERATIONS



# CASE STUDY: MULTINATIONAL CARVE-OUT



Time to **come home?**

# POLLING QUESTION 3



Have recent global tax changes, including those in the US around the structuring and financing of M&A, created a more accommodating environment for multinational deals to take place?

A

• Yes

B

• No





So what's a **guy or gal** to do?



**SPEAKER  
PROFILES**

# SPEAKER PROFILE



**Sam Awad**  
**Accenture**

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Sam Awad has been with Accenture since 1998. He has held various roles within Accenture's tax group and currently leads the Mergers & Acquisitions, Client Tax, Employment Tax & Immigration and Transfer Pricing teams. Accenture provides services in strategy, consulting, digital, technology and operations, to clients in over 120 countries across more than 40 industries. Before Accenture, Sam worked for two global accounting firms. Sam is active in professional organisations and has taught as a visiting law professor in tax.

# SPEAKER PROFILE



**Adam Benson**

**Alvarez & Marsal, Taxand USA**

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Adam Benson is a Managing Director with Alvarez & Marsal Taxand in New York. He has more than 11 years of experience advising clients on a range of domestic and international taxation issues, specialising in mergers and acquisitions, tax due diligence, cash tax modelling, debt financing, reorganisations, group structure changes, entity rationalisation, global tax structuring, cash and effective tax rate optimisation, and integration of existing and acquired businesses.

# SPEAKER PROFILE



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Mike Benetello is an executive in ENSAfrica, Taxand South Africa. He has over 20 years of experience, and specialises in corporate and international tax, mining tax, M&A tax, transfer pricing and tax compliance. He has acted for clients in a variety of industries, and has authored a number of chapters and articles for publications including Lexis Nexis' Silke on International Tax and Juta's Income Tax. He has also lectured for the University of Johannesburg's MCom tax module.

# SPEAKER PROFILE



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Cassius Carvalho is the partner in charge of Garrigues Consultores Tributários, Taxand Brazil. Prior to his current role, Cassius worked for twenty years at PwC, the last seven of which he was a partner. Cassius is specialised in corporate and international taxation, as well as in transfer pricing (local documentation, management, planning, alignment of Brazilian and international rules and dispute resolution support).

# SPEAKER PROFILE



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Frédéric Teper is based in Paris where he is a partner with Arsene, Taxand France. Frédéric has developed specific expertise in group taxation of French and international companies. He has been working for international groups and private equity houses for many years on acquisition/development projects to address optimal tax conditions (structuring, acquisition due diligence, vendor due diligence, and financial flows dividends, interest, royalties and license fees, etc).