THE EVOLVING TAX LANDSCAPE IN EUROPE

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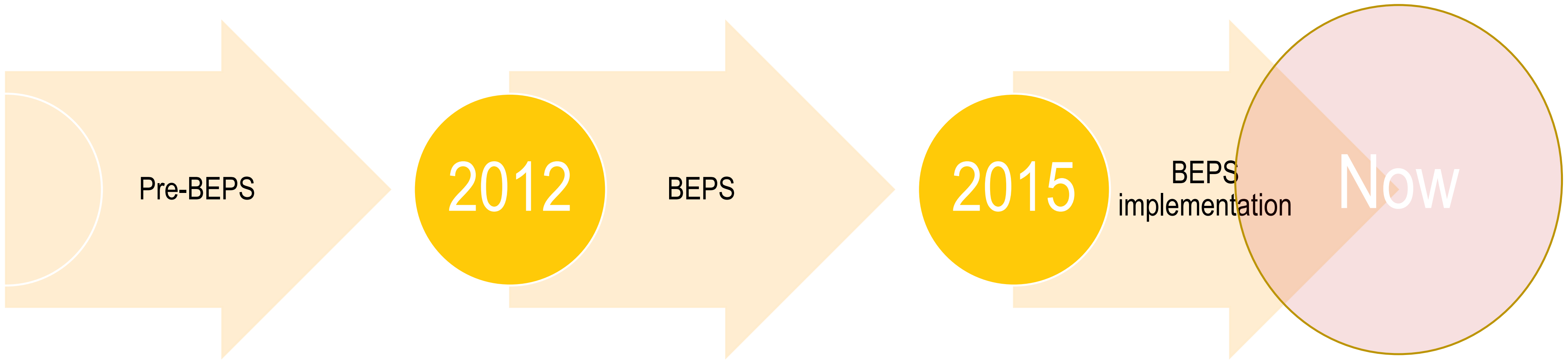
CASE

- US-based Drone Inc. is a company offering drone inspections for technical installations, bridges and other works.
- Drone Inc. wishes to expand to Europe.
- Drone Inc. wishes to set-up an office in Europe as a European business hub with European sales/account managers.
- Long-term: Local EU subs/branches

GENERAL / LOCATION

BEPS TIMELINE



EU AHEAD OF BEPS

Domestic law

GAAR in Parent Subsidiary Directive

Anti Tax Avoidance Directive

Tax Treaties

All EU states signed the MLI

State aid

EC actions against state aid

Transparency

Exchange of information regarding rulings/APAs

Expanding the exchange of information between EU member states

Country by country reporting rules

Mandatory Disclosure Directive

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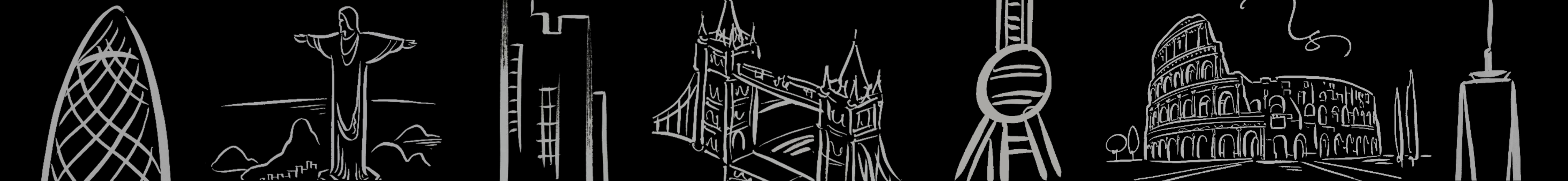


LOCATION CONSIDERATIONS

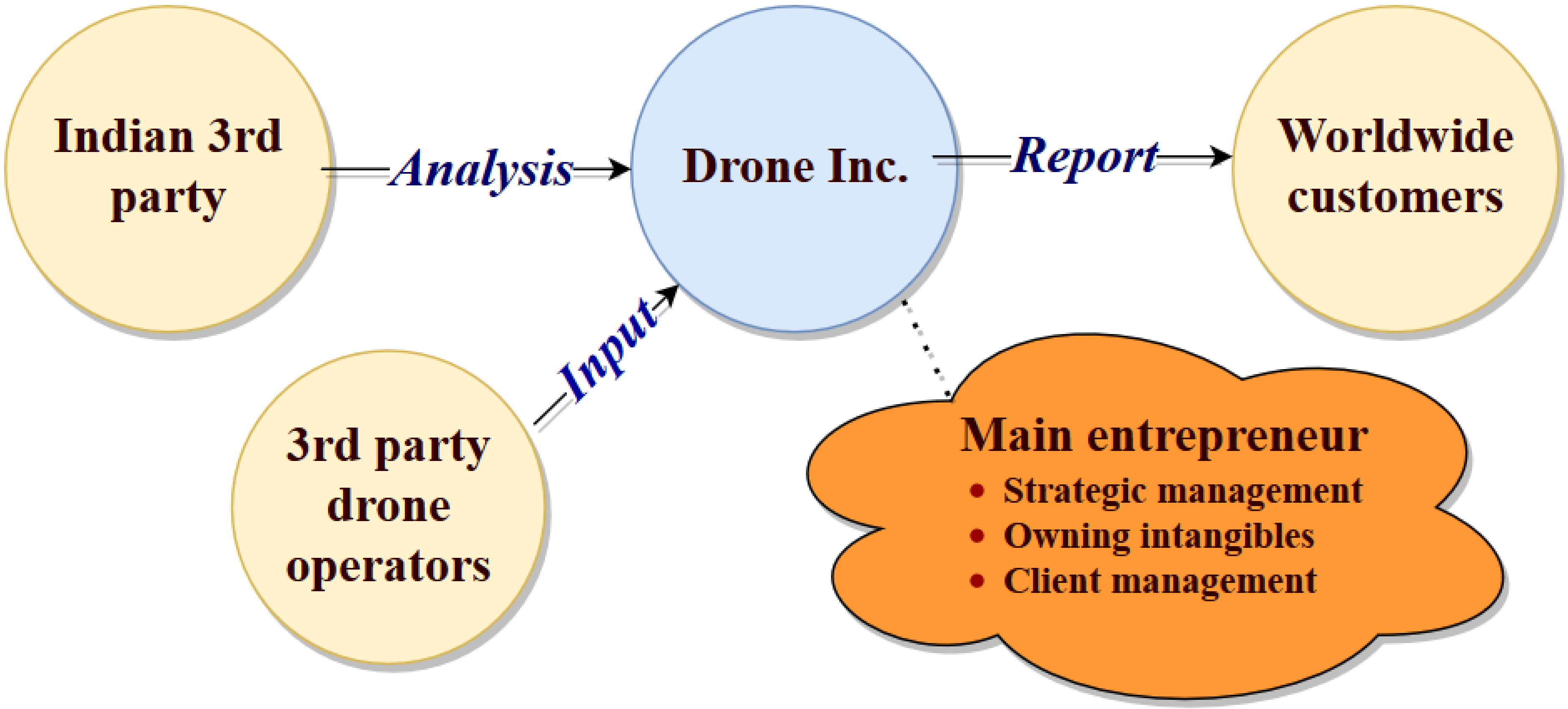
- Chubb for France: Paris is the principal office for our Continental European operations and we have a significant investment there in both financial and human resources, as well as a large portfolio of commercial and consumer insurance business throughout France.
- LG for Germany: its transport links and outstanding infrastructure were the main incentives for the move.
- Panasonic for Netherlands: Britain's plans to lower corporate income tax to retain international companies within its borders could earn it a tax haven designation and this would make the companies liable for a vast tax bill at home.

SUBSIDIARY VS BRANCH

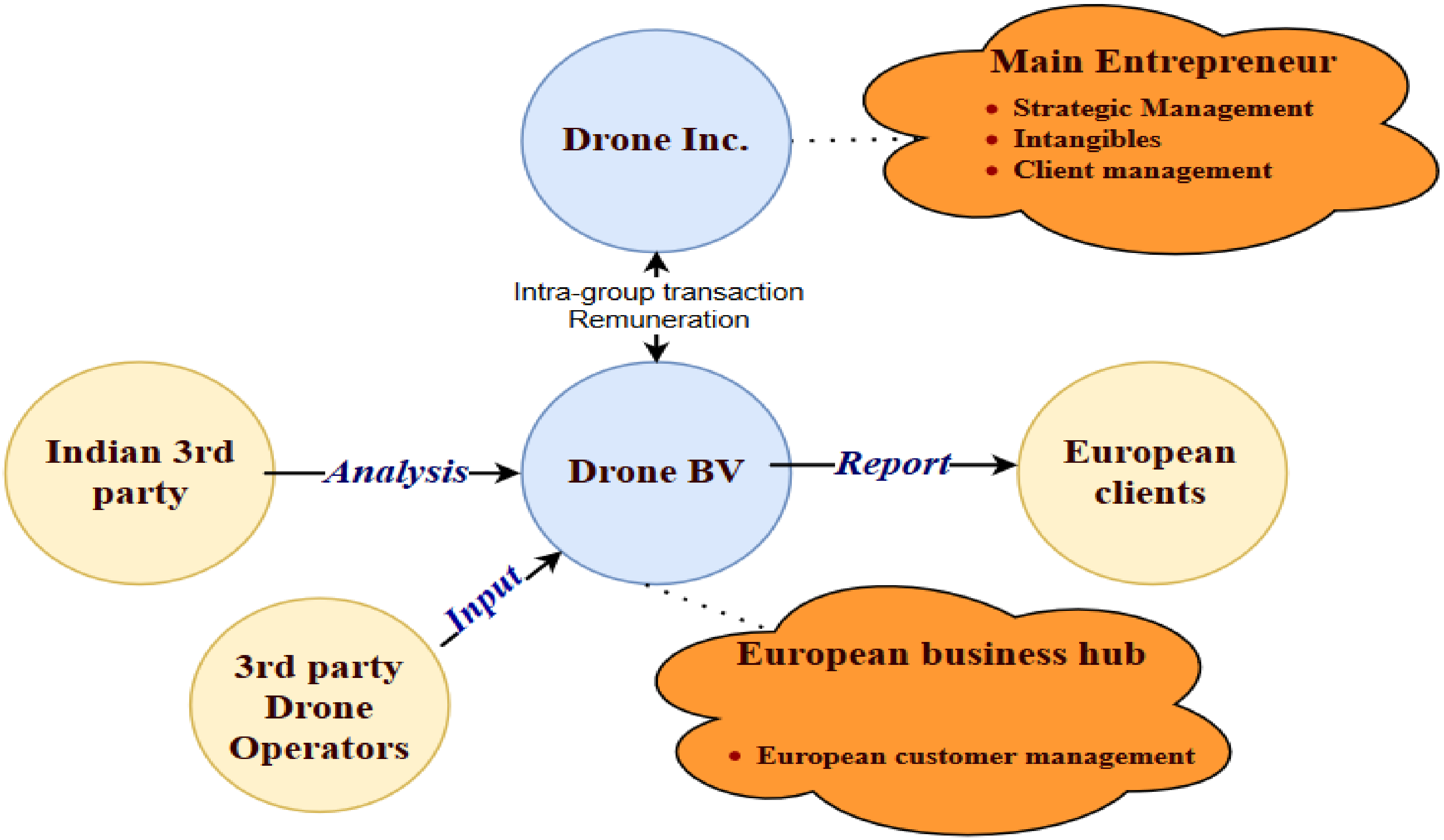
Subsidiary	Branch “PE”	Branch “non-PE”
• Local corporate income tax • Straight-forward • TP	• Local corporate income tax • Profit allocation / TP	• No local corporate income tax • An increasing PE risk

TRANSFER PRICING

- **Before the setup of the EU subsidiary**



- After the setup of the EU subsidiary – Scenario 1



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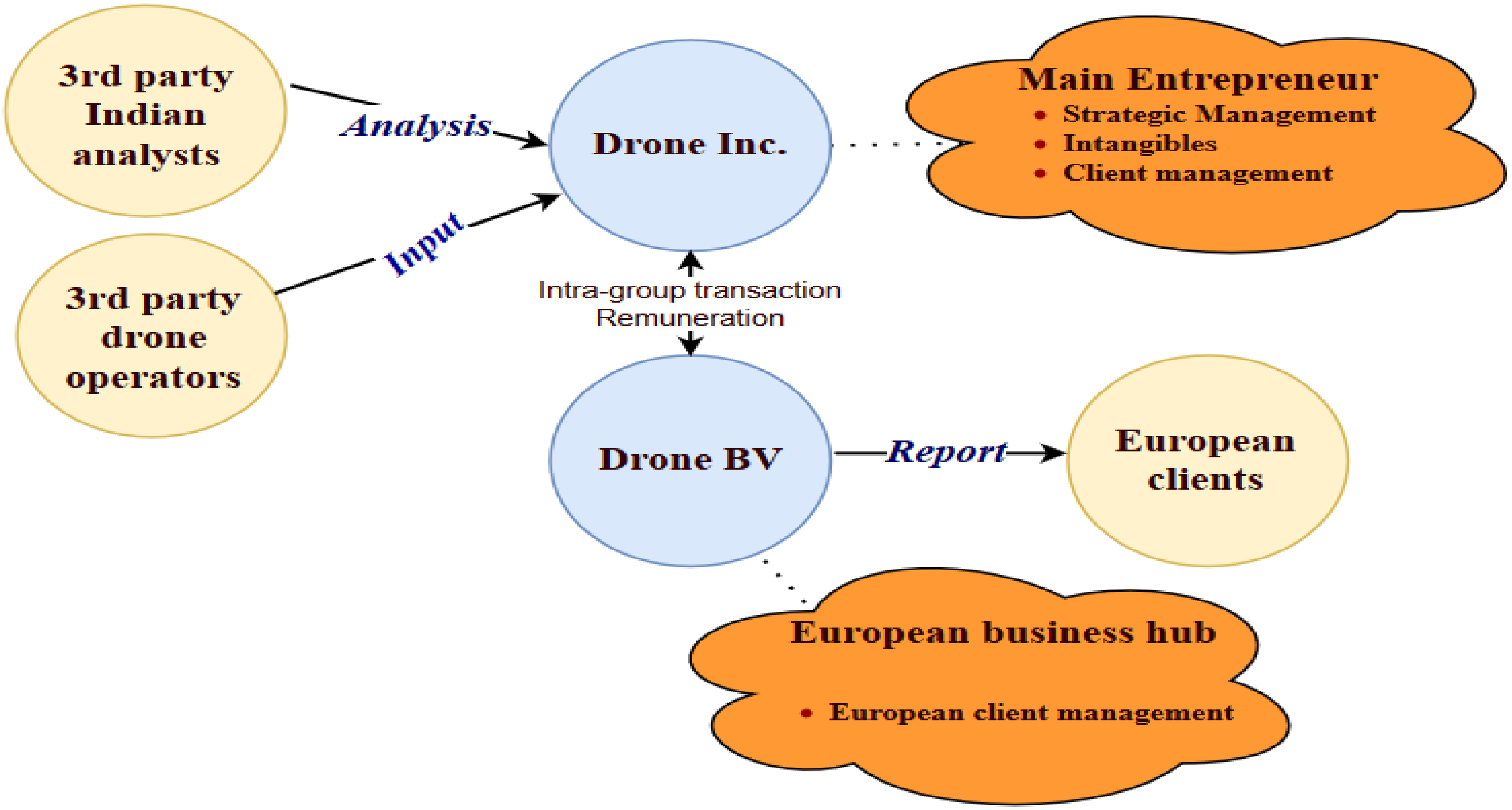
After the setup of the EU subsidiary – Scenario 2



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Issues to be clarified for transfer pricing purposes

Transfer of value of something

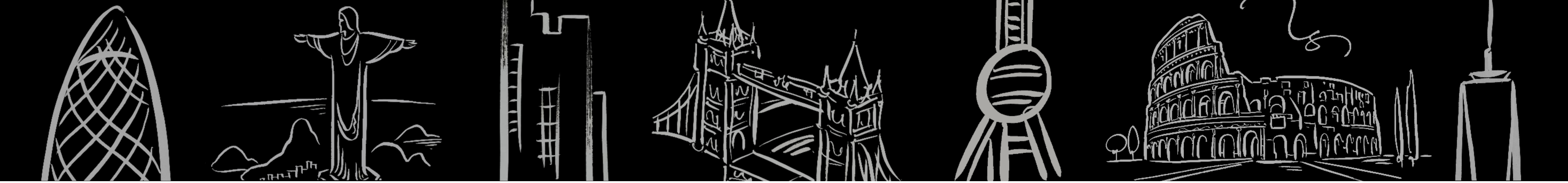
- An essential part of the analysis of a business restructuring is to identify with specificity the relevant intangibles or rights in intangibles that were transferred (if any), whether independent parties would have remunerated their transfer, and what their arm's length value is. They may also include customer lists, distribution channels, unique names, symbols or pictures.
- In our case, would the US principal entity transfer anything with value to the new EU business hub? Such could be:
  - Active effective agreement(s) with EU Clients
  - Clientele

▪ Importance of value chain analysis (VCA) from a transfer pricing perspective

- OECD puts an emphasis on value creation, therefore the documentation should involve a value chain analysis (VCA). It should consider functions, assets, intangible, risks, economic circumstances, business strategies and other factors, and the relationship of these. The steps are:

    1. Identification of the market
    2. Describing the market and critical success factors
    3. Identifying the group success market in that sector
    4. Characterizing the groups functional units and their associated value creation.

- Based on the value creation of the functional units (entities), the VCA provides a preliminary expectation on the profit that could/should be allocated to the group as a whole and the group entities.



▪ Conclusion of the VCA for the profit allocation in the case study

Residual Profit

Arm's length profit (routine profit)

Drone Inc.

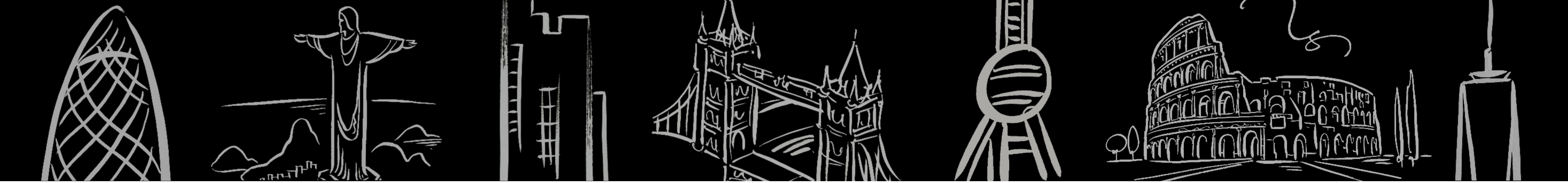
Main entrepreneur

- Strategic management
- Intangibles (know-how)
- Clientele
- Wordwide service provider

Drone BV

EU business hub

- EU service
- EU client management



TRENDS IN TRANSFER PRICING

- Compliance
  - Introduction of the master file – local file approach and Country-by-Country Reporting („CbCR")
- Value creation
  - New transfer pricing documentations and CbCR will enable the Tax Authorities to identify value creation processes
  - Profit split may become more common to allocate profits accurately based on value creation; importance of intangibles
- Tax authorities are becoming more aggressive, but their assessments may be challenged
- Enhanced emphasis on financial transactions and intra-group financing
  - Typical case:
    - a project company engaged in real estate development receives an third party bank loan at an interest rate of 2.5%
    - Parallel intragroup loan is provided at 9%→ highly challenging
  - Important to identify the arm's length gearing level
  - DAC6

VAT

VAT CONSIDERATIONS (1)

- **Basic European VAT Principles:**

  - **WHO**
    - Drone Inc. / Drone B. V.
  - IS DOING **WHAT**
    - Providing reports on drone inspections of onshore & offshore installations
    - Shipment of drones from the US to Europe
    - Letting of drones to sub-contractors to conduct tests
    - Quality checks of reports

- WITH **WHOM**
  - B2B customers located in the EU (and third countries)
  - EU-third party sub-contractors
  - Analysts located in India
- **WHERE**
  - United States
  - Europe

- AND **WHEN**
  - Depends on the contractual agreements

VAT CONSIDERATIONS (2)

- **Current Structure:**
  - **Drone Inc. towards EU-B2B customers**
    - Distinction supply of goods vs. services
    - Place of supply rules
  - **Drone Inc. towards EU-third party sub-contractors**
    - Shipment of drones to Europe
    - Legal ownership / importation into Europe
    - Letting of drones
- **EU-third party sub-contractors towards Drone Inc.**
  - Conducting tests on installations while using the drones provided by Drone Inc.
  - Place of supply of the service rendered?
  - What is the VAT base? Free issue equipment?
- **Analysts in India towards Drone Inc.**
  - Third party analysts or staff of Drone Inc.?

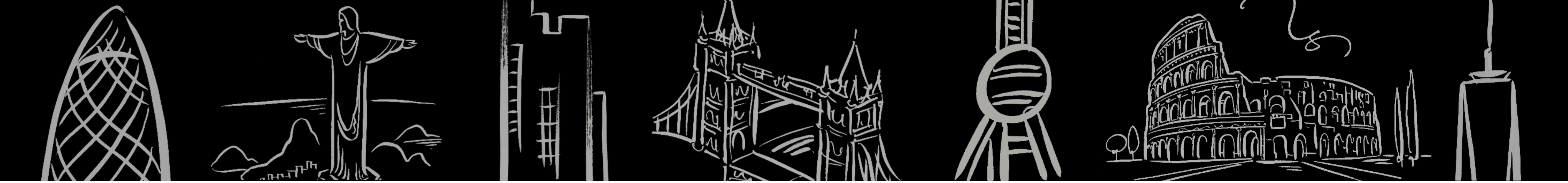
VAT CONSIDERATIONS (3)

- **Target Structure:**
  - Potential Relationship **Drone Inc.** towards **Drone B.V.**
    - Supply of drones?
    - Business relationship in respect to Indian analysts?
    - Quality check of the reports – specialists in the US?
    - Intercompany charges?
  - **Drone B. V. towards EU-B2B customers**
    - Distinction supply of goods vs. services
    - Place of supply rules
  - **Drone B. V. towards EU-third party sub-contractors**
    - Shipment of drones to Europe
    - Legal ownership / importation into Europe – Drone B.V. and/or Drone Inc.
    - Letting of drones
  - **EU-third party sub-contractors towards Drone B. V.**
    - Conducting tests on windfarms while using the drones provided by Drone Inc. or Drone B.V.
    - Place of supply of the service rendered?
    - What is the VAT base? Free issue equipment?
  - **Analysts in India towards Drone B. V.**
    - Third party analysts or staff of Drone ?

CUSTOMS IMPORT / EXPORT IMPLICATIONS

CUSTOMS IMPORT & EXPORT IMPLICATIONS (1)

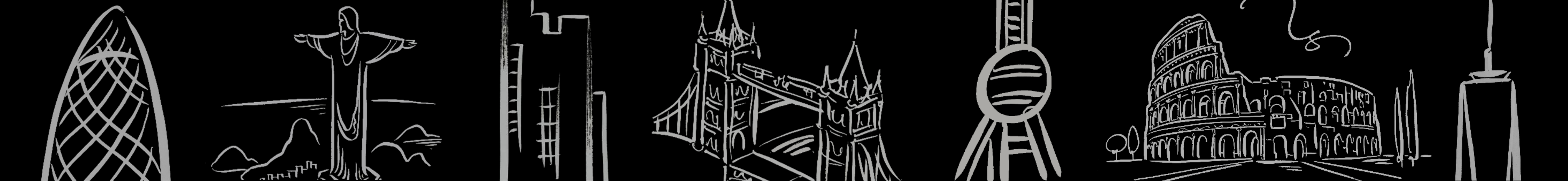
- Temporary import or import into free circulation of EU
- Restrictions and licenses
- If imported – duties payable on import
- Determine the amount due
  - Origin
  - Classification
  - Customs value



CUSTOMS IMPORT & EXPORT IMPLICATIONS (2)

- Product classification
- Import rates EU
  - Camera's # 8525 3.5%
  - Toys # 9503 0%
  - Helicopters # 8802 7.5%

WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES



CUSTOMS IMPORT & EXPORT IMPLICATIONS (3)

18.2.2017 EN Official Journal of the European Union

COMMISSION IMPLEMENTING REGULATION (EU) 2017/285

of 15 February 2017

concerning the classification of certain goods in the Combined Nomenclature

A remote-controlled multi-rotor helicopter (so-called 'drone') with a diagonal length of 35 cm and a weight of 1 030 g together with a remote control unit in a package for retail sale. The helicopter is equipped with a system to ensure stability, Wi-Fi and a global positioning system (GPS) module. The maximum flight speed is approximately 54 km/h and the flight time is 25 minutes. The remote control unit operates at a frequency of 2,4 GHz and is operated by four batteries. The helicopter can be controlled by the remote control unit (in an open area) for a distance of up to 1 000 m.	8802 11 00	

European Commission

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CUSTOMS IMPORT & EXPORT IMPLICATIONS (4)

The EU export control system

- Reg. (EC) No 428/2009
- Common export control rules
- EU list of dual-use items
- a ‘catch-all clause’ for non-listed items usable for WMD program
- Controls on brokering dual-use items and their transit through the EU
- Specific control measures / record-keeping and registers
- Provisions of setting up a network of competent EU authorities
- Annex I list of goods, Annex IV list of goods for transport within EU

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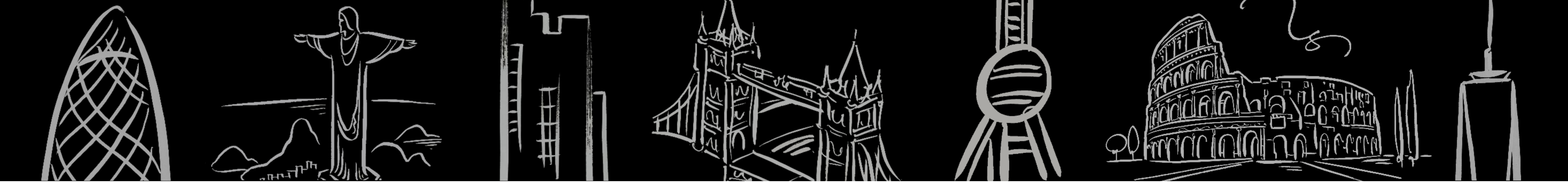
GLOBAL MOBILITY & HR



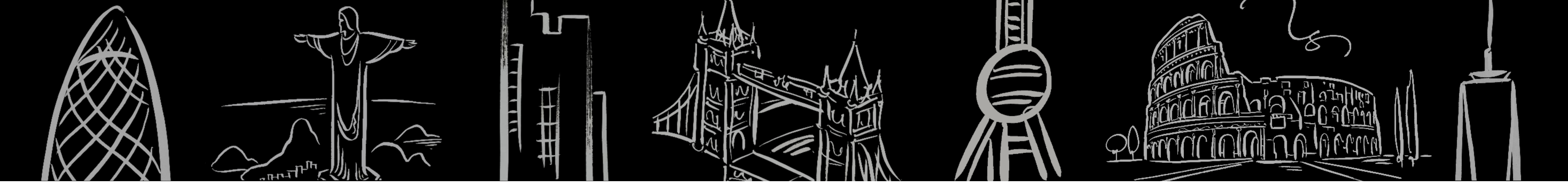
GLOBAL MOBILITY TAX & HR ISSUES

- Company Goals
  - Set-up EU-subsidiary as a European business hub with European sales/account managers.
  - Expansion through local EU subsidiaries/branches
- Staffing requirements
  - Having sales agents who can manage EU business and customers
  - Back office personnel
  - Local and regional management / directors

- Identifying solutions & challenges
  - HR (recruitment, awards)
  - Tax
  - Social Security
  - Immigration
  - Compliance
  - Business needs
  - Profit projections versus costs

GLOBAL MOBILITY TAX & HR ISSUES

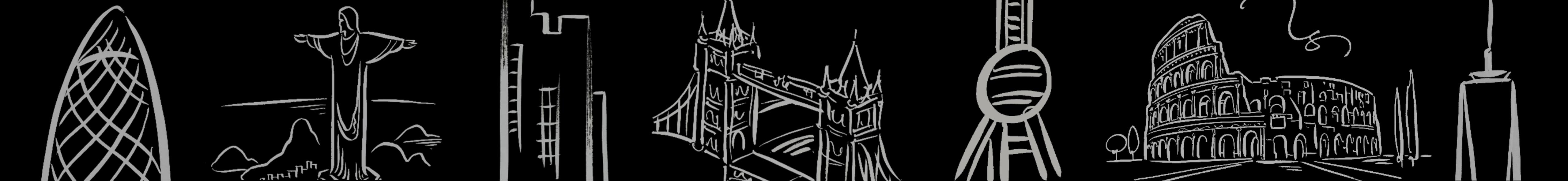
- Challenges
  - Finding qualified personnel
  - Identifying markets & regions
  - Locating personnel
- Solutions
  - Internal recruitment
  - External recruitment
  - Employee versus independent contractor
- Employment/Assignment types
  - Commuter assignment
  - Long term assignment
  - Business travel
  - Local to Local move
  - Local (external) hire



GLOBAL MOBILITY TAX & HR ISSUES

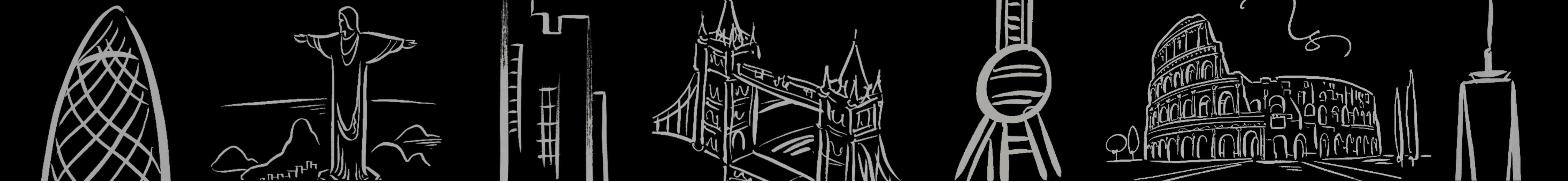
- Relevant Trends
  - Employees are less motivated to move
  - Companies will move to their clients
  - Companies are looking for cost-effective solutions
  - Companies are more compliance driven than before
  - <u>Result</u>: Companies will hire locally if they can
    - Control and engagement risk, less business driven?
- Do we expect our staff to travel?
- Home office or company office?

- Impact and flexibility of digital economy
  - Effects of digitalization: work can be executed from anywhere
  - Work from home office
  - Permanent representative issue
  - Tracking challenges (tax, social security?)
  - Ability to remotely develop and interact with a global customer base
  - Facilitates relocation of production processes & centralization of functions
  - Complex profit allocation and p.e. analysis



GLOBAL MOBILITY TAX & HR ISSUES

- Non-resident employer hiring local sales agent (non-traveler)
  - PE risk (if working from home)
  - No immigration, tax, social security issues
  - Local withholding/registration obligations
  - Information gap on local benefits, labor law, CLA
- Non-resident employer hiring local sales agent (traveler)
  - +Immigration: travel frequency, nationality, countries
  - +Local compliance (withholding) varies per country i.e. who pays tax and social security. Gross-net income estimation
  - +Possible double taxation (group company location, extended stay)
  - +Social security impact
- Business traveller on behalf of foreign (non-EU) company
  - Critical immigration risk (work or stay?), non-compliance risk
  - Effective execution of the work
  - Tracking challenges (tax, social security?)
- Short and long term assignments to local EU subsidiary
  - Generally less cost-effective, but improved control, consistency, compliance
  - Establishing expertise and values overseas
  - Global Mobility Policy, dual payroll requirements and tax protection
  - Potential use of expat benefits
  - Employee satisfaction



NEXT 5 YRS: THE CHANGING EU TAX LANDSCAPE

PROPOSALS EU DIGITAL TAX PACKAGE

Digital Service Tax (DST)

- EU tax of 3% on gross revenues of certain digital services
- Applicable to groups with a total annual worldwide revenue > EUR 750 and total EU digital services revenue of > 50M
- Short term solution

Digital PE

- Significant digital presence = PE
- Significant means: annual digital revenue of > EUR 7M or >100k users or > 3k business contracts
- Long term solution

NEXT 5 YRS: VAT

- **EU ACTION PLAN ON VAT (1):**
  - On **7 April 2016**, EU commission started initiative to amend the European VAT System fundamentally ('Action Plan')
  - As an outcome, on **4 October 2017** EU commission published suggestions for amendments ('follow up to action plan'):
    - Supplies are VAT able in the country of destination; no longer VAT exempt supplies of goods
    - VAT registration of the supplier in the country where he is located - OSS (One-Stop-Shop)
    - Implementation of 'Certified Tax Payer' – with simplifications in case the certificate will be granted
    - Harmonized rules for consignment stocks, VAT Id No. as proof for VAT exemption, binding guidance in case of chain transactions, unified proof in case of intra-community supplies of goods
    - Supplies of services: taxation where the recipient is located; reverse charge rule shall be replaced by OSS
  - **5 December 2017:** amended rules for cross-border electronic supplies of services and distance sales
  - **18 January 2018:** simplified measures for KMUs / flexible VAT rates
  - **25 May 2018:** final harmonized rules for cross border business

NEXT 5 YRS: VAT

- **EU ACTION PLAN ON VAT (2):**
  - From **1 January 2019** onwards, threshold of EUR 10,000 within the EU for services rendered electronically:
    - In case threshold will be exceeded, place of supply will be shifted to country where recipient of the services is located (B2C) – no longer place where supplier is located.
    - Simplified Proofs where B2C customer is located (additional threshold of EUR 100,000)
    - Application of invoicing requirements of country where taxpayer is registered for OSS
  - From **1 January 2022** onwards, threshold shall be applied for all supplies including distance sales (supplies of goods to B2C customers)
    - Rule can be applied also for businesses in third countries (no longer EU-specific)
    - Country specific rules are no longer applicable
  - From **1 January 2021**, businesses which support supplies via marketplaces shall become part of a “fictive” supply chain
    - Threshold of EUR 150 per supply
    - 10 years documentation obligation for affected businesses
  - **Additional measures** under discussion

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