Pillar I Briefing

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Pillar One Overview

Amount A	Amount B	Tax Certainty
A share of residual profits allocated to countries with a revenue nexus	*Fixed return for baseline distribution functions*	*Dispute prevention and resolution mechanisms*
- Formulaic - Group level - New nexus	- ALP applies - All MNEs subject to Amount B	Early certainty and mandatory dispute resolution

Key Points

Scope:

- In-scope MNEs - global turnover above €20 billion and profitability above 10% calculated using an averaging mechanism

Nexus:

- Nexus test is met if the revenue of a Covered Group is:
    - - equal or greater than €1 million for jurisdictions with annual GDP equal to or greater than €40 billion
    - - equal to or greater than €250,000 for jurisdictions with annual GDP of less than €40 billion

Quantum:

- The profits subject to reallocation under Pillar One is 25% of the excess above 10% net profit margin

Tax certainty:

- *"an elective binding dispute mechanism for developing countries"*

Unilateral measures: an important addition:

- Indicates unilateral measures may apply beyond just vanilla DSTs — it refers to *"and other relevant similar measures"*
- Newly enacted DSTs to be stood still and stood down from 8 October 2021

Public Consultation

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- Newly enacted DSTs to be stood still and stood down from 8 October 2021

Process map of Pillar One

Step 1. Apply quantitative scoping criteria to the MNE group

Step 2. Determine MNE group's relevant profit (tax base)

Step 3. Apply nexus test to identify eligible market jurisdictions

Step 4. Allocate Amount A to eligible market jurisdictions through a formula

Step 5. Elimination of double taxation arising from Amount A

Step 6. Submission of self-assessment and early certainty process

1. Apply quantitative scoping criteria
Only MNE groups with revenue exceeding EUR 20 billion and a profitability of 10% (PBT/revenue) are potentially in scope of Amount A. In exceptional circumstances where a disclosed operating segment of an MNE independently meets the scope criteria even though the MNE group is out of scope on a group basis, the Amount A rules will apply to that disclosed operating segment.

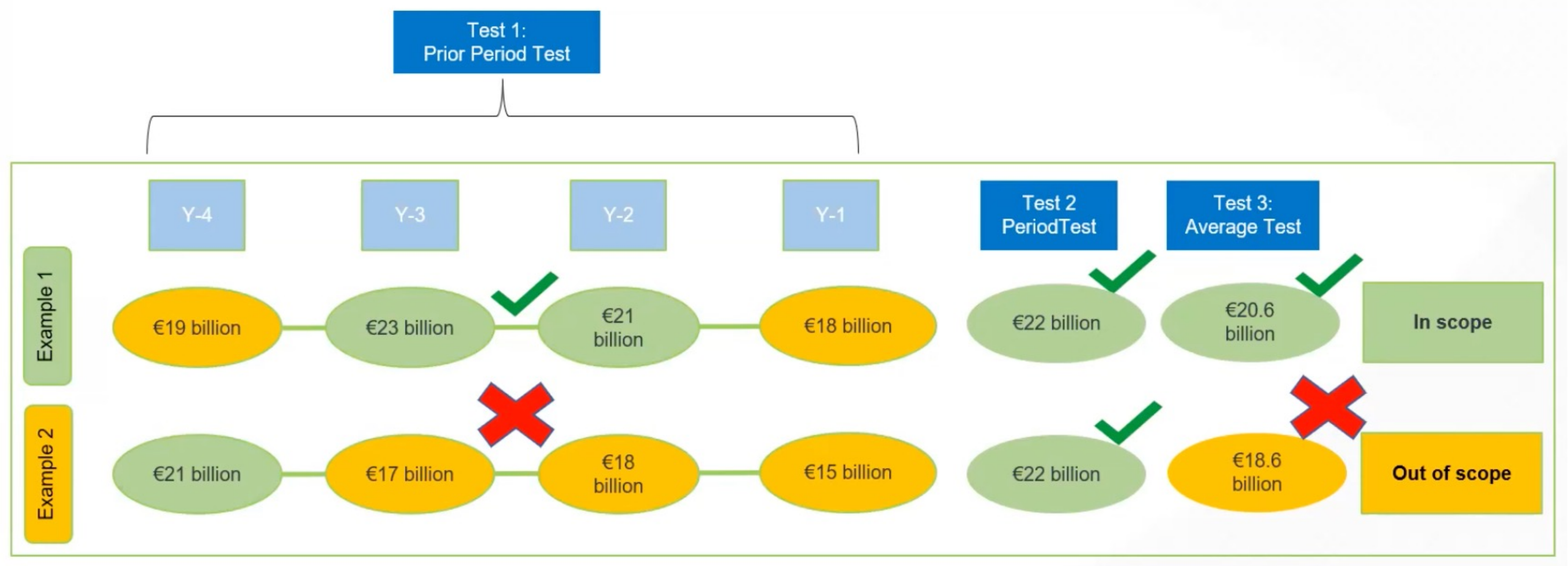
2. Determine the relevant PBT measure starting from the consolidated financial accounts
Identify eligible consolidated GAAPs and apply tax adjustments to compute the MNE group's standardised Profit Before Tax (PBT). Deduct any carry-forwarded losses.

3. Nexus test in each market jurisdiction
Market jurisdiction eligible for Amount A reallocation are those where the in-scope MNE derives at least EUR 1 million in revenue from that jurisdiction. For smaller jurisdictions with GDP lower than EUR 40 billion, the nexus will be set at EUR 250 000.

4. Formulaic calculation and allocation of Amount A
The quantum of Amount A allocated to a given eligible market jurisdiction is the result of a three-step formulaic calculation (i.e. profitability threshold, reallocation percentage and allocation key) applied to the profit determined under step 2, subject to the application of a marketing and distribution profits safe harbour for jurisdictions where the MNE has an existing taxable presence.

5-6. Identification of relieving jurisdictions, payment of Amount A and early certainty process
If Amount A tax is due, identify the jurisdiction(s) which are required to relieve double taxation and the entities that have to pay Amount A tax liability through a simplified administrative procedure together with an early certainty process.

Revenue Threshold Test



Elements of Tax Base

Book to tax adjustments

An MNE Group must adjust for:

- Current and deferred income tax expense/ income
- Dividends
- Equity gain or loss
- Expenses for illegal payments (e.g. bribes), fines and penalties

Restatements

Required under accounting rules (to maximum of 0.5% of group revenue)

Accounting for losses - (3 step process)

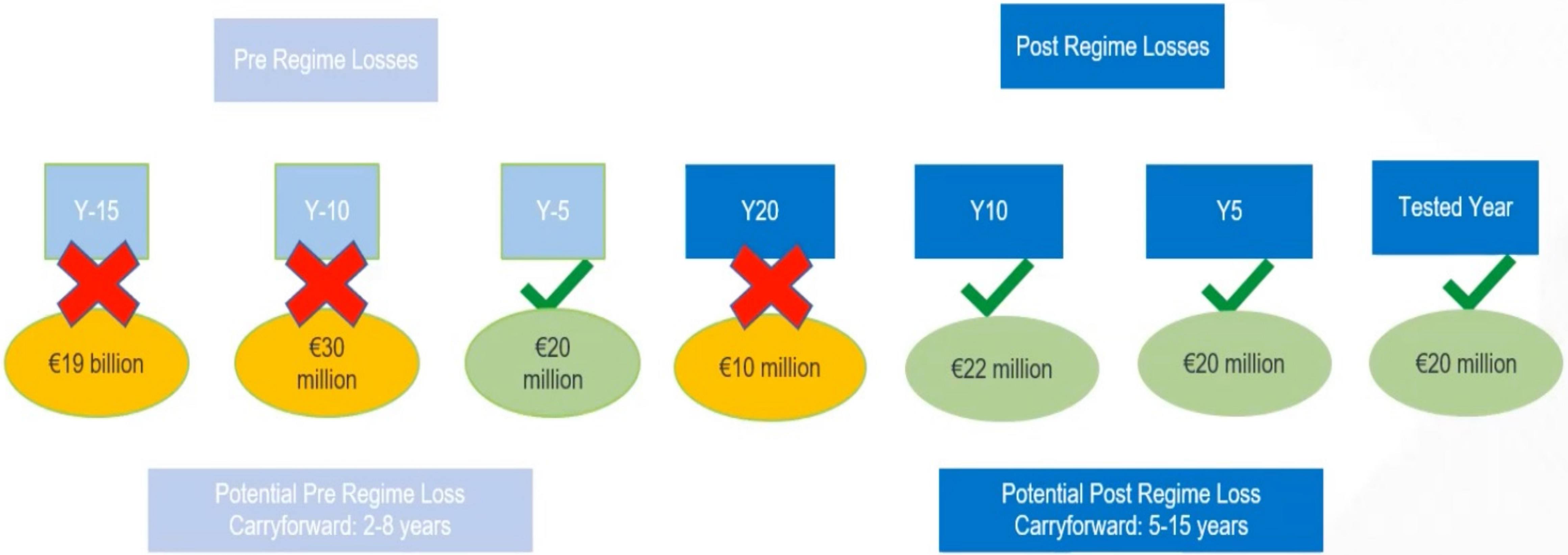
1. Identify eligible prior periods (from earliest period that generated unrelieved losses to current period)
2. Calculate net losses in eligible prior periods
3. Carry forward and deduct net losses in the current period

"Adjusted Profit Before Tax" – the basis for Amount A calculations

Calculation Tax Base

MNE Group consolidated financials	Pre-adjustment	Post-adjustment
Revenue	21,000	21,000
Other income;		
~~Dividends~~	~~100~~	0
~~Gain from sale of equity interest~~	~~200~~	0
~~Profit/loss from equity interest~~	~~1,700~~	0
Total other income	2,000	0
Total income	23,000	21,000
Cost of Goods Sold	15,000	15,000
Gross Margin	8,000	6,000
SG&A	3,875	3,875
~~Fines~~	~~600~~	0
Interest charge	400	400
Loss carry forwards applied	125	125
Adjusted PBT	3,000	1,600

Losses


Pre Regime Losses
Post Regime Losses
Y-15
Y-10
Y-5
Y20
Y10
Y5
Tested Year
€19 billion
€30 million
€20 million
€10 million
€22 million
€20 million
€20 million
Potential Pre Regime Loss Carryforward: 2-8 years
Potential Post Regime Loss Carryforward: 5-15 years

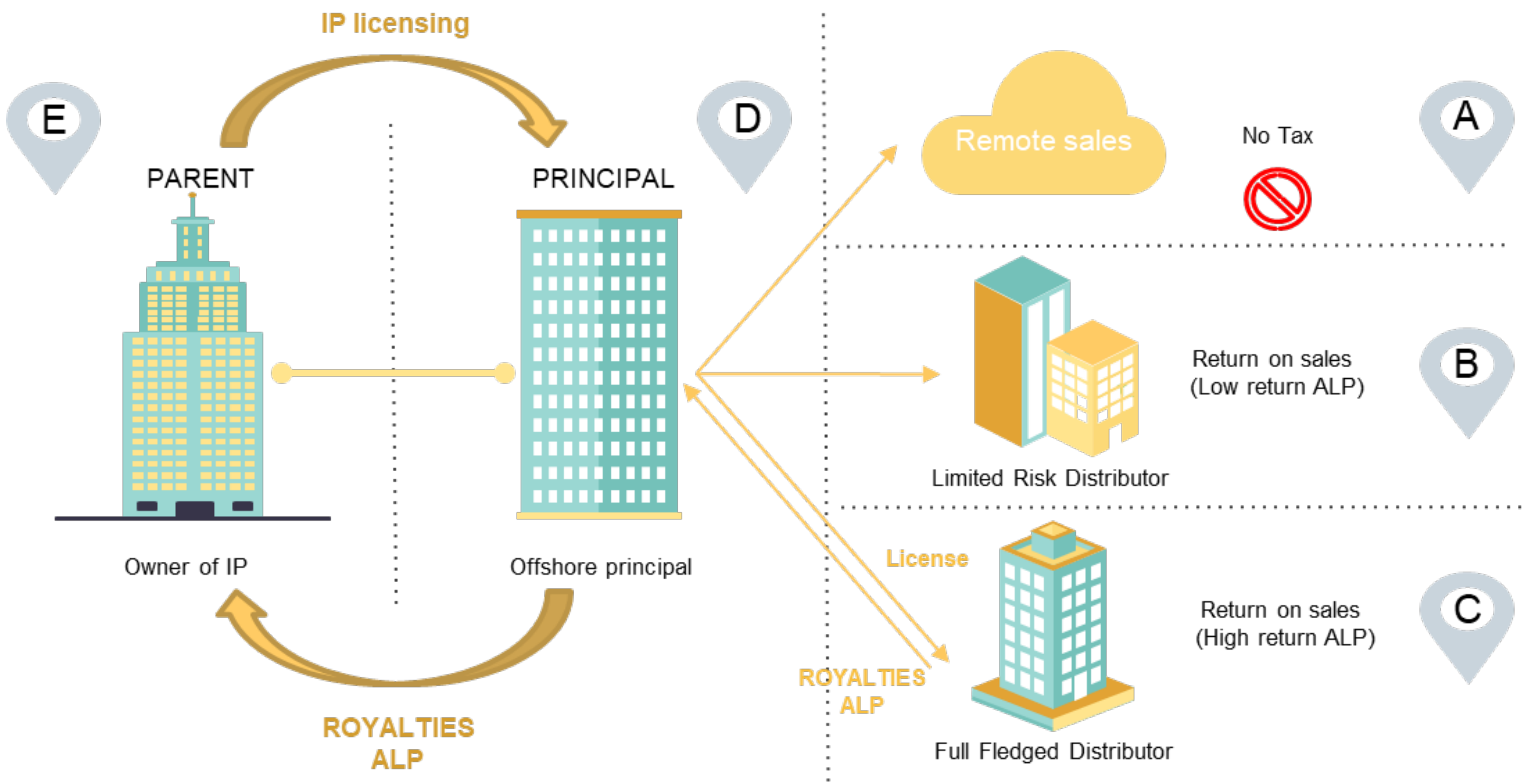
Categories of revenue and source rules

	Category	Principle of sourcing revenue
1	Finished goods	Place of delivery to final customer
2	Digital goods	Place of location of the customer, or place of use by a business
3	Components	Place of delivery to the final customer of the finished good
4	Services	Depends on the sub-category of service
5	Intangible property	Place of use of a service; place of delivery of a finished good or copyright; or location of user
6	Real property	Where real property is located
7	Government grants	Jurisdiction of granting government
8	Non-customer revenues	In proportion to other categories of revenue

MNEs will need to prove the accuracy of the application of the revenue sourcing rules

Amount A - Case study

Overview of MNE X



Amount A - Case study

Step 1 & 2 – Scope and tax base determination

Consolidated financial statement of MNE group X in EUR billion	
Consolidated revenue	**100**
Consolidated expenses	**60**
Group PBT	**40**
Group profit margin	**40%**

Step 1 - Scope: Considering that MNE X has a total revenue of EUR 100 billion (>20 billion), and a profitability of 30% (>10%), MNE X is in scope for the purpose of Amount A

Step 2 – Tax base: Assumes MNE X prepared their consolidated financial statement under IFRS and no further adjustments are necessary (except for income taxes). There are no available carry-forward losses. The tax base for Amount A purposes will therefore be the P&L disclosed in the consolidated financial statement less income taxes: EUR 40 billion.

Amount A - Case study

Step 3 - Nexus

Step 3 – Nexus: MNE X generates revenue in 5 market jurisdictions. In each jurisdiction, the total sales of MNE X are larger than EUR 1 million. Therefore, there is a nexus in each of the 5 market jurisdictions.

Jurisdiction	GDP in EUR billion	Total locally sourced revenue of MNE group X in EUR billion	Is the market jurisdiction eligible? (MNE's sales >EUR 1 million)
Jurisdiction A	45	10	Yes
Jurisdiction B	120	20	Yes
Jurisdiction C	300	30	Yes
Jurisdiction D	250	30	Yes
Jurisdiction E	260	10	Yes

Amount A - Case study

Step 4 – Allocation of Amount A (I)

Step 4 – Allocation of Amount A: The allocation of Amount A involves a profitability threshold, an allocation percentage, and a reallocation key.

1. **Profitability threshold:** Residual profit has been defined as profit in excess of 10% of revenue. The amount of residual profit of MNE group X is therefore EUR 40 billion (PBT) – 0.1 * EUR billion 100 (10% of total revenue), which is EUR 30 billion.

2. **Reallocation percentage:** 25% of residual profit will be reallocated to market jurisdictions. This means that the re-allocable tax base is 25% of EUR 30 billion, which is EUR 7.5 billion.

3. **Allocation key:** allocation of the reallocable residual profit to eligible market jurisdictions will be based on a revenue-based allocation key**.** (See next slide)

Amount A - Case study
Step 4 – Allocation of Amount A (II)

Allocation of the reallocable residual profit to eligible market jurisdictions will be based on a revenue-based allocation key

Jurisdiction *(EUR billion)*	Total locally sourced revenue of MNE group X (S)	Global revenue of MNE group X (R)	Allocable tax base (A)	Amount A allocated to the market jurisdiction (S/R*A)
Jurisdiction A	10	100	7.5	10 / 100 * 7.5 = 0.75
Jurisdiction B	20			20 / 100 * 7.5 = 1.5
Jurisdiction C	30			30 / 100 * 7.5 = 2.25
Jurisdiction D	30			30 / 100 * 7.5 = 2.25
Jurisdiction E	10			10 / 100 * 7.5 = 0.75

Amount A - Case study

Step 4 & 5 – Allocation of Amount A and elimination of double taxation

The total amount of profit allocated to an eligible market jurisdiction that is ultimately taxed in that jurisdiction may also be impacted by the *marketing and distribution profits safe harbour* and the *mechanism to eliminate double taxation*.

Marketing and distribution profits safe harbour (MDSH)

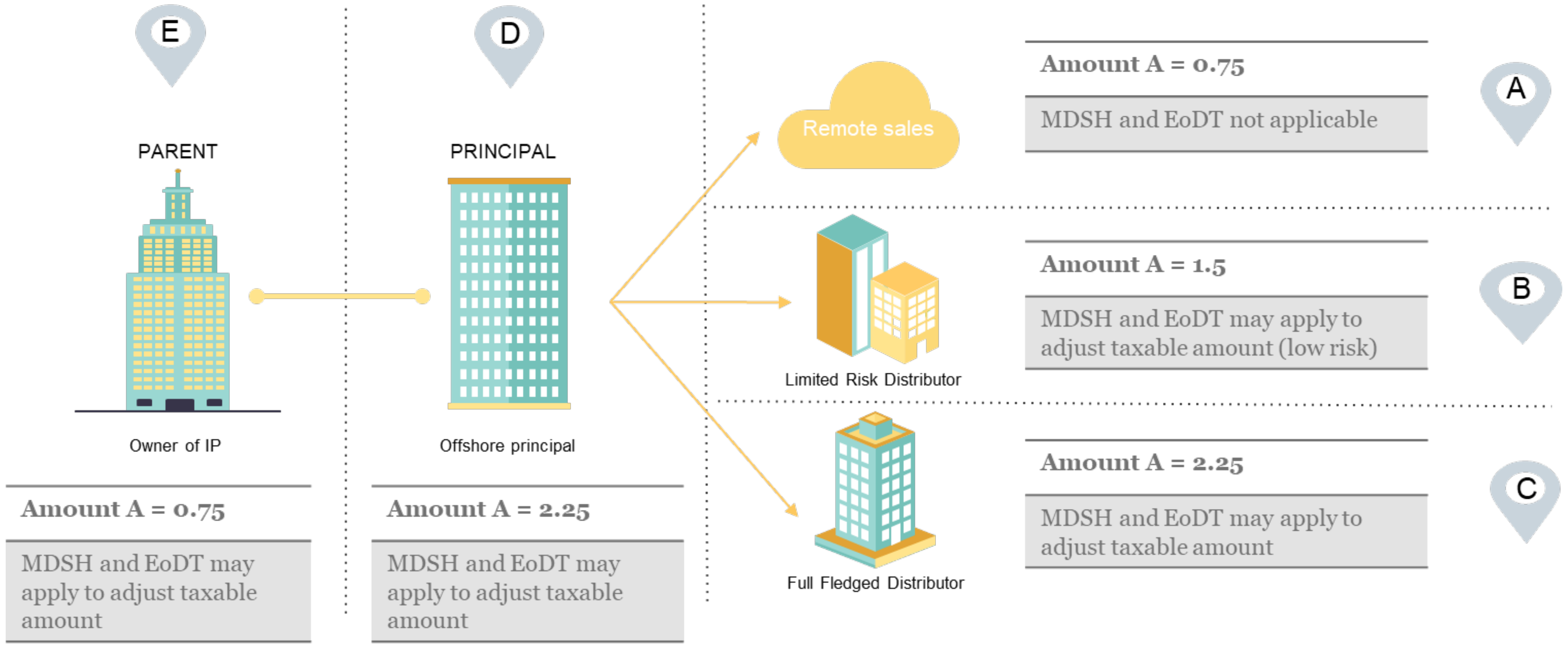
In jurisdictions where MNE group X already has a taxable presence entitled to residual profit, Amount A may be capped to prevent the same residual profit being taxed twice.

Mechanism to eliminate double taxation (EoDT)

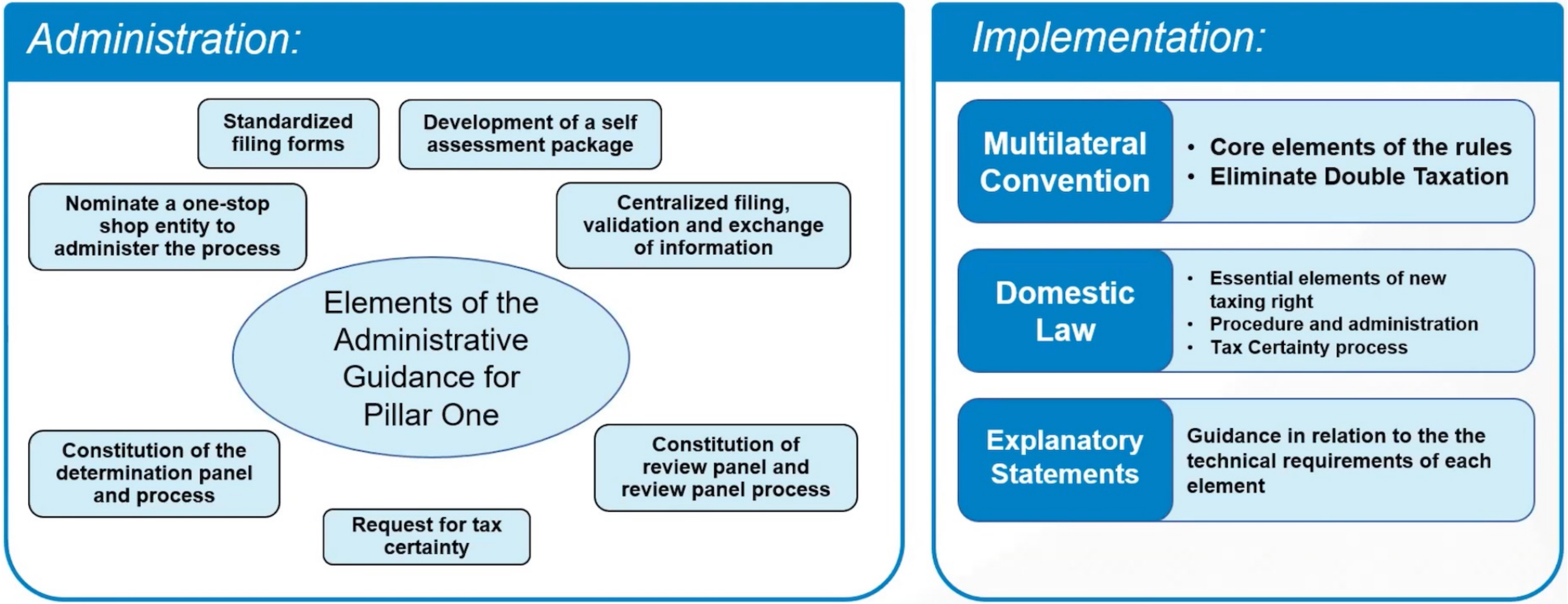
In jurisdictions where MNE group X has entities entitled to residual profit, there may be a requirement to relieve double taxation for Amount A allocated to other jurisdictions (i.e. give up part of their existing taxing rights).

Amount A - Case study

Conclusion

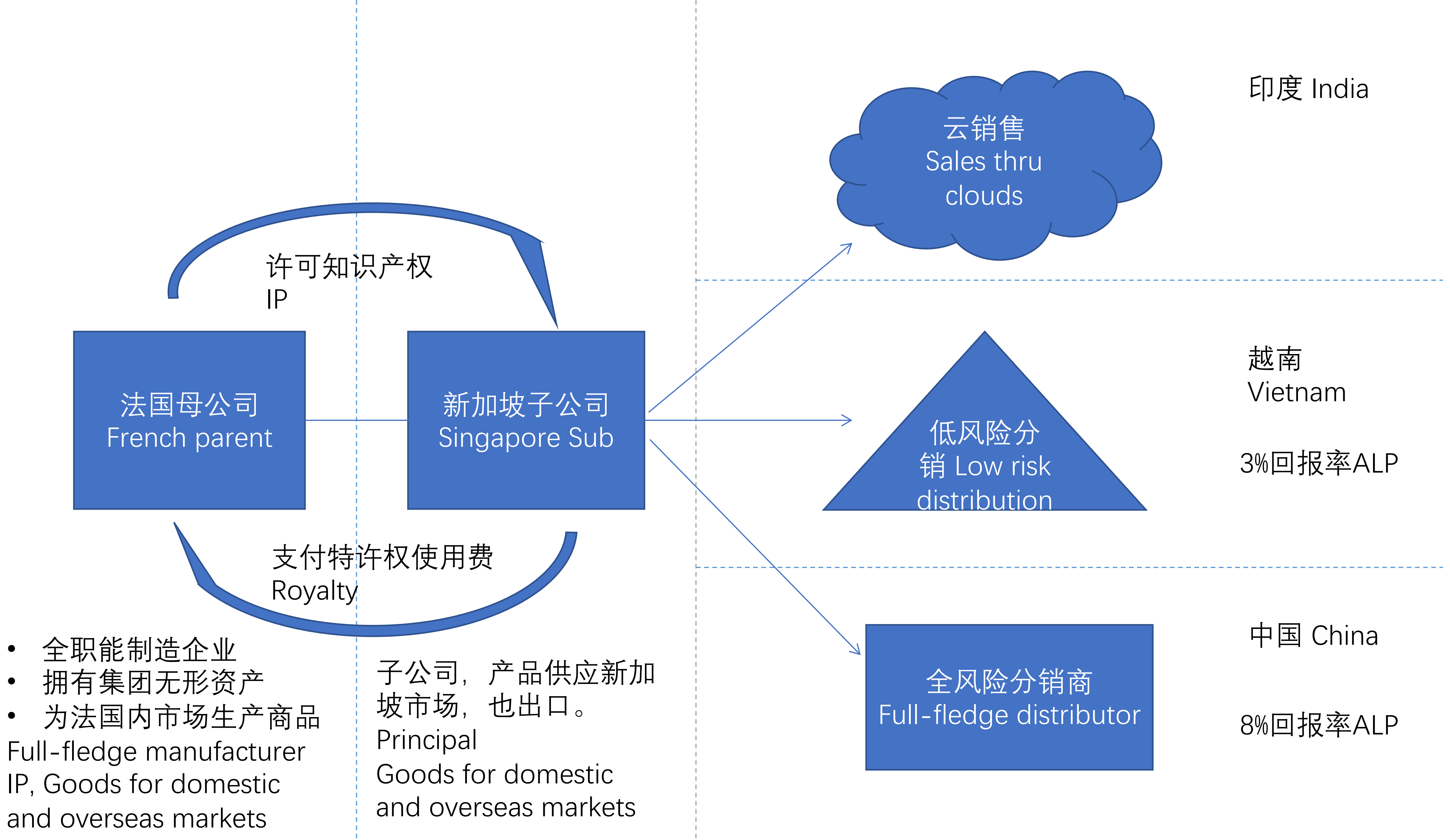


Administration and Implementation



规则简述

- **范围**
  - 企业：年营收200亿欧元以上（含）。
  - 排除：金融业、采掘业。
  - 盈利能力：利润率10%以上（含）。
  - 市场国：企业在该国的年销售收入1 百万欧元（含） 以上；GDP400亿欧元以下的国家，年销售收入应达到25万欧元。
- **分配比例**：剩余利润（非常规利润）的25%。
- **联结度**：企业在市场国的销售收入占集团总营收的比例。
- 公式：A = (集团税前利润率 − 10%)×25% ×联结度


许可知识产权
IP
法国母公司
French parent
新加坡子公司
Singapore Sub
支付特许权使用费
Royalty
云销售
Sales thru clouds
印度 India
低风险分销 Low risk distribution
越南
Vietnam
3%回报率ALP
全风险分销商
Full-fledge distributor
中国 China
8%回报率ALP
• 全职能制造企业
• 拥有集团无形资产
• 为法国内市场生产商品
Full-fledge manufacturer
IP, Goods for domestic and overseas markets
子公司，产品供应新加坡市场，也出口。
Principal
Goods for domestic and overseas markets

集团合并财务报表（2023年，美元）

- **集团营收：** 1000亿
- **合并成本费用**
  - 销售成本 ＝ 300亿
  - 研发成本 ＝ 50亿
  - 推广与分销 ＝ 150亿
  - 管理费用 ＝ 50亿
  - 利息支出 ＝ 50亿 600亿
- 集团利润（税前） 400亿
- 集团税前利润率 （PBT） 40% （400÷ 1000）

集团合并财务数据假设

（财务年度：2023年度）

序号	财务指标	单位	金额	备注
1	**集团合并营收总额**	亿元	1000	
2	**集团合并成本费用**	亿元	600	
2.1	销售成本	亿元	300	
2.2	研发成本	亿元	50	
2.3	推广与分销	亿元	150	
2.4	管理费用	亿元	50	
2.5	利息支出	亿元	50	
3	**集团合并利润（税前）**	亿元	400	
4	**集团税前利润率**	%	40%	

分配率的计算

- 第一步：常规利润率（税前）为10%， 所以非常规利润率（税前）为30%（40%-10%）。
- 第二步：30%非常规利润的25%视为市场国经济活动创造的利润； 30%非常规利润的75%视为供给端经济活动创造的利润。所以，7.5%（25%*30%）是向市场国分配利润的比例，22.5%（30%-7.5%）是向供给端分配利润的比例。
- 第三步：因集团总营收的7.5%为向市场国分配的利润率，所以拟分配至市场国的利润总额为75亿（1000*7.5%）。

向市场国分配的总额的计算

（财务年度：2023年度）

序号	计算指标	单位	金额	备注
1	**集团合并营收总额**	亿元	1000	
2	**计算步骤**			计算公式＝（集团合并税前利润率－常规利润10%）＊分配至市场国的比例: 25%
2.1	**集团合并税前利润率**	%	40%	
2.2	**减：常规利润率10%**	%	10%	谈判议定
2.3	**非常规利润率**	%	30%	
2.4	乘：分配至市场国的比例20%	%	25%	谈判议定
2.5	**向市场国分配的比例**	%	7.5%	
3	**可供分配至市场国的总额**	亿元	75	计算公式＝集团合并营收＊市场总联结度

集团销售信息 (Information on sales)

- 印度(India)： 总营收的10%, 10 billion
- 越南(Vietnam)： 总营收的20%, 20 billion
- 中国(China)： 总营收的30%, 30 billion
- 新加坡(Singapore)： 总营收的30%, 30 billion
- 法国(France)： 总营收的10%, 10 billion

如何分配75亿？

- 印度：已知印度对总营收的贡献比例（即来自印度的销售收入占集团总营收的比例）为10%， 所以，分配给印度的剩余利润是6亿（75*100/1000 = 7.5 ）。

- 越南：已知越南对总营收的贡献比例（即来自越南的销售收入占集团总营收的比例）为20%， 所以，分配给越南的剩余利润是12亿（ 75*200/1000 = 15 ）。

但注意：越南当地公司财务报表显示的回报率为3%，200*3% = 6，小于15。怎么办？需要看第一支柱金额B的设计（2022年底完成）。

如何分配60亿？（续）

- 中国：已知中国对总营收的贡献比例（即来自中国的销售收入占集团总营收的比例）为30%， 所以，分配给中国的剩余利润22.5亿（75*300/1000 = 22.5 ）。

但是，注意：中国公司财务报表显示的回报率为8%，300*8% = 24，大于22.5。怎么办？这时需要注意**安全港规则**，即：

假如集团公司在市场国的营销、分销业务所取得的利润回报大于或等于拟分配的利润，则不再向该市场国分配剩余利润。

如何分配75亿?（续）

- 新加坡：已知新加坡对总营收的贡献比例（即来自新加坡的销售收入占集团总营收的比例）为30%， 所以，分配给法国的剩余利润是22.5亿（75*300/1000 = 22.5 ）。

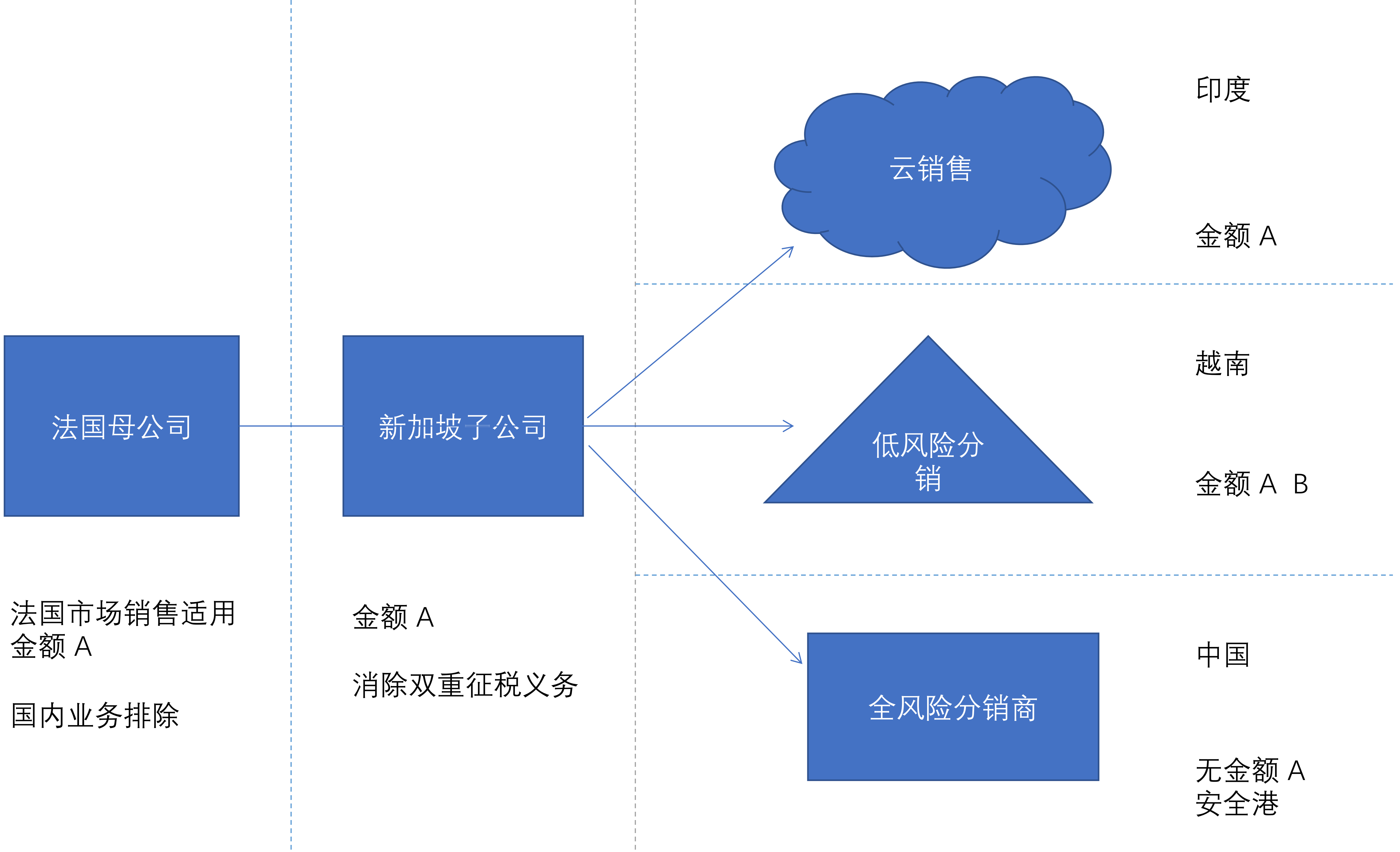
但注意：因印度的销售是新加坡公司进行的，越南的公司是新加坡公司的投资，所以，新加坡公司需要承担消除印度、越南相关所得双重征税的义务，集团公司分配给新加坡的税基（利润）正好是集团公司分配给印度的利润（7.5亿）与分配给越南的利润（15亿）之和，所以集团公司不再分配利润给新加坡。22.5 – 22.5 = 0

如何分配75亿?

- 法国：已知法国对总营收的贡献比例（即来自法国的销售收入占集团总营收的比例）为10%， 所以，分配给法国的剩余利润是7.5亿（75*100/1000 = 7.5）。

注意：

法国公司财务报表还会记录公司在法国的剩余利润情况，该公司将承担集团财务数据汇总，以及金额A的计算与分配。如果法国公司的部分业务完全是法国国内业务，不属于A范畴，则可能排除。



法国母公司
新加坡子公司
云销售
低风险分销
全风险分销商
印度
金额 A
越南
金额 A B
中国
无金额 A
安全港
法国市场销售适用金额 A
国内业务排除
金额 A
消除双重征税义务

最终分配情况

- 印度： 6亿
- 越南： 12亿
- 中国： 22.5-24
- 新加坡： 22.5－22.5=0
- 法国： 7.5亿

* 余额留给UPE（法国）。

**各国收到A以后，乘以国内企业所得税率，即是本国企业所得税收。

损失处理

	2022	2023
合并营收	1000	1000
合并费用	1200	600
集团利润（税前）	-200	400
集团利润率（税前）	-20%	40%
损失	？？？	

2022年的损失处理

- 第一步：常规利润率为10%， 所以，非常规利润率为-30%；
- 第二步： -30% 的75%给供给端，25%给市场端（需求端），得出-7.5%分配给市场国；
- 第三步：集团公司在市场国的损失是集团总营收的-7.5%，-75亿（1000*-7.5%）。

2022年的损失以及2023年的税基

75	2022	2023
合并集团营收	1000	1000
合并费用	1200	600
集团利润（税前）	-200	400
集团利润率（税前）	-20%	40%
往前结转损失	-75	-75
金额 A		0 = 75-75

新税制之前的损失处理

	2021	2022	2023
合并集团营收	1000	1000	1000
合并费用	1200	1200	600
集团利润（税前）	-200	-200	600
往前结转损失	-75	-75	+75
金额 A			0 * 2024年仍有75亿可以弥补

结语：新税制的性质

1. 单一税制：集团统一申报；
2. 公式分配法：不适用独立会计原则、独立实体原则和独立交易原则；
3. 税基分配；
4. 给市场以回报：以销售收入为税基分配变量。

Why Amount A

Why A

G20 Mandate:

Building a **fair** and **modernized** international tax system

A is designed to reward the market jurisdictions where an MNE has significant and sustainable presence through sales.

Five paradigms of the current int’l tax regime

1. ***Simplicity:*** Conflict between integration and separate accounting (SA) approach. Conflict between separate accounting (SA) and in-group integration caused by integration of value creation: in-group transactions soar across the world (40% of trade being intermediate products) --*Avi-Yonah*

2. ***Efficiency:*** ALP dos not correctly benchmark in-group transactions (intermediate goods and services, intangibles, market characteristics etc.) -- *Avi-Yonah*

Five paradigms (Cont'd)

3. Fairness and inequality across countries: Uneven distribution of residual profit caused by the monopoly of intangibles

-- Liao

4. Tax competition: Globalization leading to race to the bottom -

-- Zucman

5. BEPS: OECD estimation 200-300 billion USD -- *OECD*;

50% of US corporate profits anchored in tax havens in 2016

-- Zucman

Uneven distribution of residual profits

- 400$ - US
- 350$ - Japan, Korea, Taiwan
- 50$ - CN

-- Yukon Huang

Uneven distribution of residual profits (cont'd)

- Apple, Amazon, Facebook, Google, Netflix
- MNCs generate 10 percent of the world' s annual GDP
- MNCs create more than 50 percent of the value of world trade.
- MNCs abuse the defected tax system, operating with global group integration in more than one country (a transitional company) to use shadow pricing and other forms of legal tax avoidance to reduce their liability to pay tax and thereby increase the return to those with an equity stake.
- Because of tax avoidance, national governments do not generate the revenues needed to pay for public services and welfare systems - both of which can have a progressive effect on the final distribution of income.
- UK estimated that, in 2017, multinational businesses managed to avoid paying nearly £6 billion in tax revenues.
- Oxfam estimates that tax avoidance costs developing countries $170 billion a year whereas $100 billion could provide an education for 124 million children and pay for healthcare services that could prevent the deaths of at least six million children annually.

Challenges

- Digitalization: Physical presence unnecessary, tangibility and visibility disappear, vicinity lost
- Globalization
  - Synergy and Synchronization of value chain which renders separate accounting principle, separate entity principle and ALP variant with real economy
  - Monopoly of intangibles
  - Uneven distribution of profits
  - Relevant poverty
  - Competition and race to bottom, which renders harm to fair competition, policy neutrality and public financing

Locus of problem: residual profit (RP) distribution

- Profits for automated digital service and other intangible-loaded suppliers are extravagant, exorbitant and excessive.
- Political, economic and judicial effects and implications.

Residual Profit VS Trade

- China manufacturing: ¼ automobile, ¼ lap top, ¾ mobile 。
- In 2009, China ranked the 1st as an exporter; in 2011, the 2nd largest importer; in 2012, replaced US as the biggest world trader. So far China is the biggest trader with 130 countries.
- RP proportion (CN): 4-5%
- RP proportion (US): 50-70%
- CN wins by production efficiency
- US wins by science and technology (intangible)

RP VS Demography

- World population: 7.2 billion
- Below absolute poverty line: 1.3 billion (1 dollar a day)
- 5 billion poorer than Chinese. 200 million Europeans poorer than Chinese
- 1/7 population belong to the 1st world.

- Stiglitz: Globalization and Its Discontent, Failure of trickle-down economics
- Thomas Piketty: On Capital, exploring inequality

The political economy of RP uneven distribution

- Globalization pulls down state boundary
- Digitalization pulls down cultural anthropological boundary
- Economy follows logic of capital for RP, being relatively dispensable from politics
- Capital has its logic that does not follow the call of politics. It follows its own logic to pursue RP ending with monopoly
- That's why central banks tend to be independent. Federal Reserve, The Bank of England (before 1964) as examples.
- Taxation is a political device, a power or an instrument to balance the power of capital.
- In the end, capital wins.
- …………

Response: Principle veers towards profit generation

- IP being source of value creation. If adhering value creation, title owner justified for profit monopoly out of IP monopoly, fairness sabotaged.

- Market being source of profit generation. General principle being modified as profits should be taxed where economic activities occur and ***profits are generated***.

Response: technical

- Bifurcation of profits
  - Routine
  - Non-routine
- Residual profit split: bilateral or multilateral checking (of who contributes more to the making of the non-routine profit)
- TNMM: unilateral checking
- Residual profit allocation
  - **by sales**
  - by income
  - by employee
  - by asset
  - …………

Unilateral response: US TCJA in 2017

- Purposes
  - Make US corporations competitive
  - Prevent BEPS
- Contents
  - Cut tax rate from 33% to 21%
  - Participation exemption
  - GILTI
  - BEAT
  - FDII

Unilateral responses: other States

Other economies

- DST: EU, Austria, Britain, France, Italy, Spain, Turkey, UK…
- Equalization tax: India
- VAT: Indonesia

……………………………….

Multilateral responses: OECD

- CbC R
- Audit without borders
- ICAP
- BEPS program
- Digital Program
- …………

Multilateral response: Inclusive Framework (137 jurisdictions)

Splitting taxing rights

- Why income tax?
- Is it a sound choice?
- Income tax by nature is about profits and losses, which are contextual, local, coordinative for principle not for return rate, coz return rates are subject to constraints and conditions of geography, demography, politics, market and many other parameters.

Principle to follow？

Value-creation doctrine? No.

- Discretion-based? No
- Power-based? No
- Principle-based? ***If so, what is it?***

partial destination principle (25%)?

Amount A

- Pro-globalization
- Governance without government

Political will and technical rationale

Options and way out

- China: Janus, LSA, Dispute, Sovereignty
- US: Safe harbor (Mnuchin): optional
  - Amount A
  - Conventional TP policy and ALP?
  - DST?
- Other States

Five paradigms revisited

- Simplicity
- Fairness
- Efficiency
- Competition
- BEPS

The old world is dying,

the new world struggles to be born…

- Antonio Gramschi

Thanks