

Global Tax Developments

February 2008

Contents

- The attack on tax avoidance
- PEs
- Transfer pricing Developments
- Implications for taxpayers

Multilateral attack on Tax Avoidance – OECD Project on Intermediaries

- Basic proposition – joint interest of tax authorities and taxpayers to have trusting relationship going beyond strict letter of law
- Tax authority – less leakage, more compliance. Taxpayer – less cost, management time, greater certainty
- Risk – based approach of the tax authorities
- Areas of focus going forward
 - Banks and inter-bank market
 - High net worth individuals

Actions by Other Multilateral Groups

- OECD's work on aggressive tax planning – platform for sharing information known as the Aggressive Tax Planning Directory
- Joint International Tax Shelter Information Centre (JITSIC) – Australia, UK, Canada, US and Japan – aimed at curbing abusive tax avoidance transactions
- Seven Country Tax Haven Forum – focus: offshore compliance risks
- Leeds Castle Group – forum for the heads of ten revenue bodies with focus on compliance challenges for tax administrations

Proliferation of Disclosure Requirements

Tax Law

- Rulings systems
- Statutory advance disclosure – e.g. Canada, US, UK, South Africa
- Expected spread of disclosure requirements – e.g. Germany

Accounting Principles

- FIN 48 under US GAAP
- IAS 12 under IFRS – work in progress

Unilateral actions by tax authorities on preserving the tax base: “beneficial ownership” test

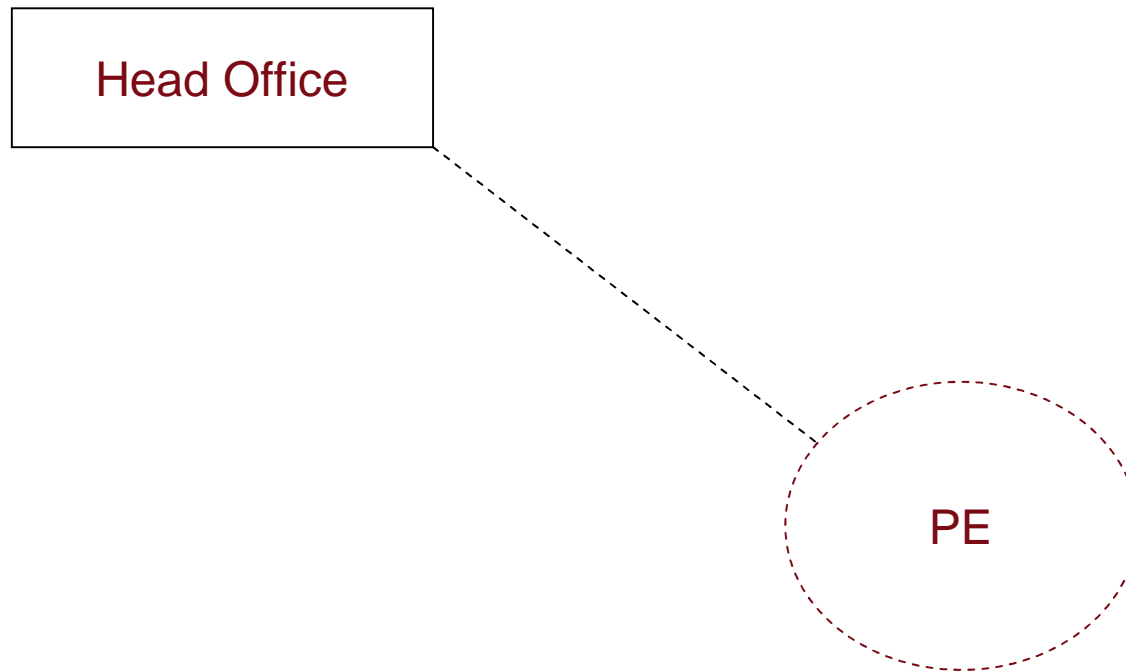
- Relevance to financial services sector
- Italy
- Switzerland
- US
- Korea
- etc

PEs – 1: Measure of attributable profit

- 10 year + OECD Project
- Key questions and approach
- Breakdown of the project
 - General principles
 - Banking
 - Global trading
 - Insurance
- Essence of the new approach – identify KERTS – attributable assets – allocate capital – apply 1995 guidelines by analogy
- Dependent agent PEs

OECD – The Objective

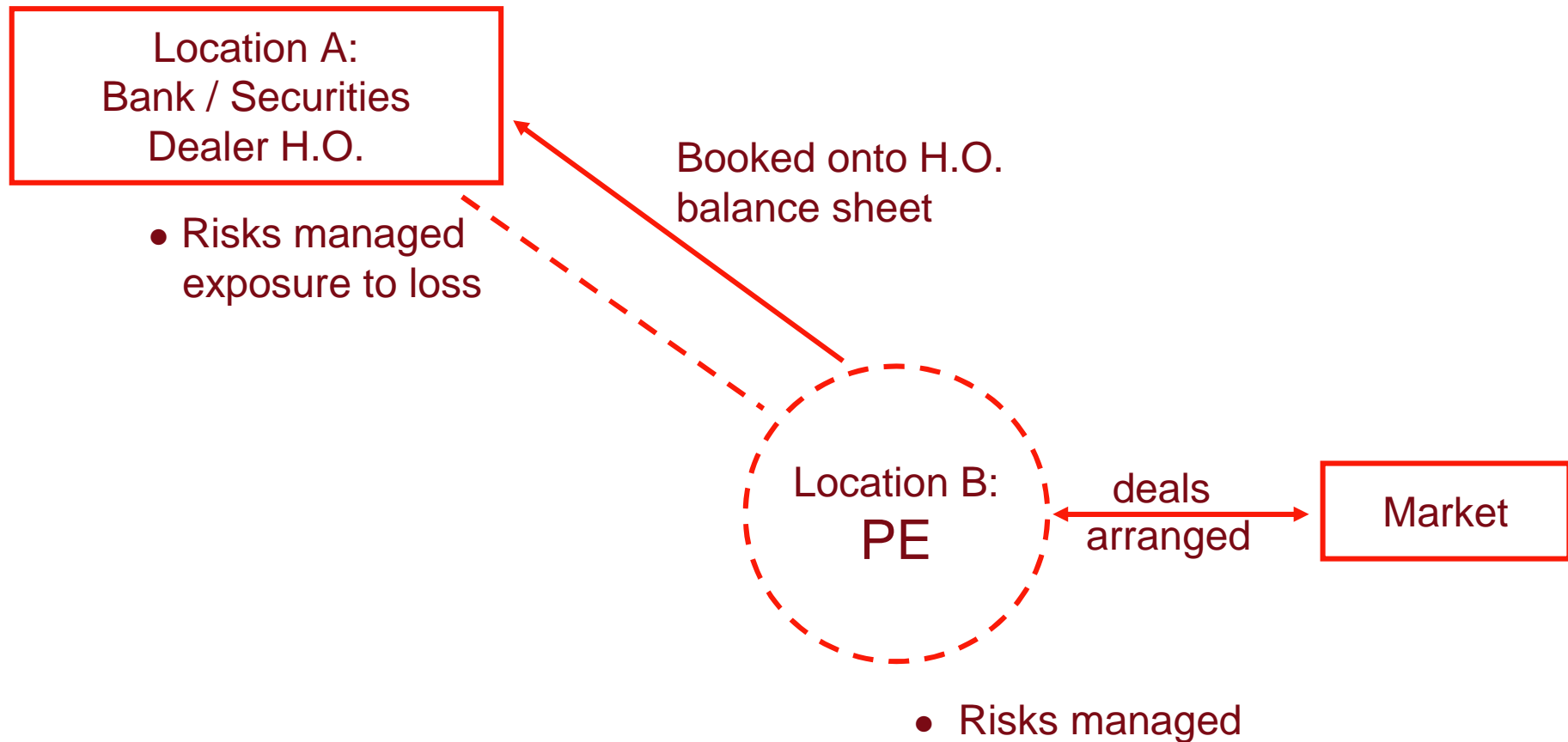
The Article 7(2) task:



OECD – The proposed Article 7(2) answer

- Based on functional analysis, identify location of key people and activities, i.e. KERTs (KERTs = key entrepreneurial risk taking factors)
- That is the location where the relevant assets are deemed to be located
- In consequence, attribute capital to that location to support those assets
- Treat the PE as an independent entity – the ‘Working Hypothesis (SH)’
- No allocation of profits to reward risks borne, capital or brand value

OECD PE Project Example 1



Model Shift at the OECD

Before

Location
A

Dealing function –
(1) Reward for dealing

Location
B

Risks borne –
(2) Majority of reward
For exposure to loss

After

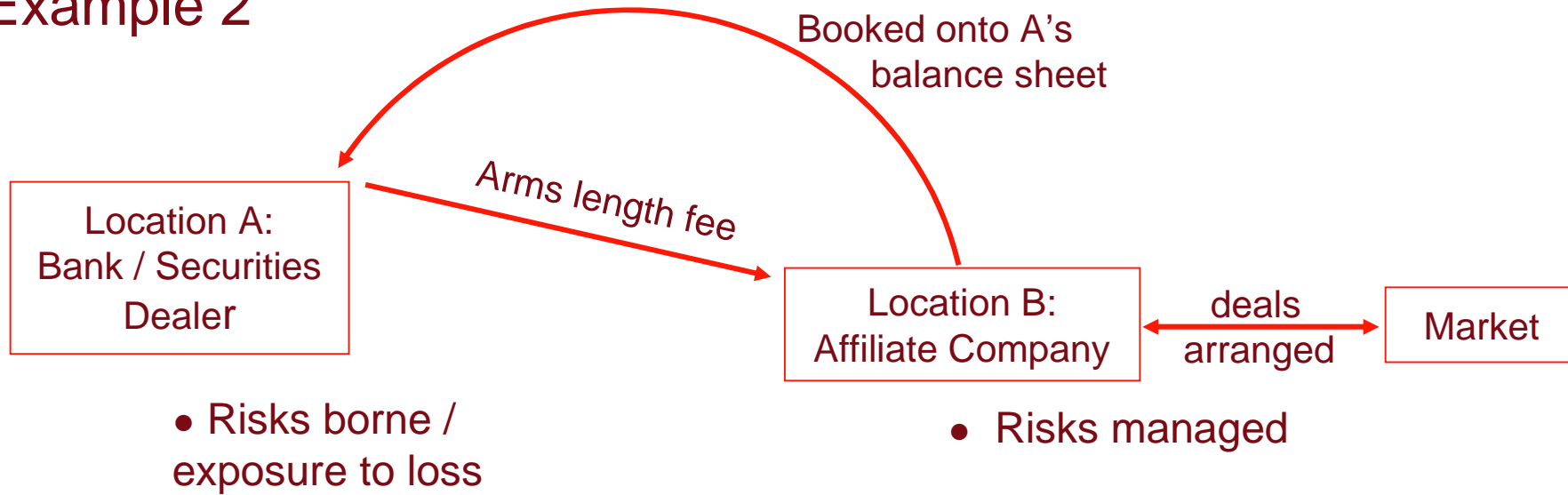
Location
A

Dealing function –
(1) Reward for dealing
and
(2) Location of reward
for exposure to loss

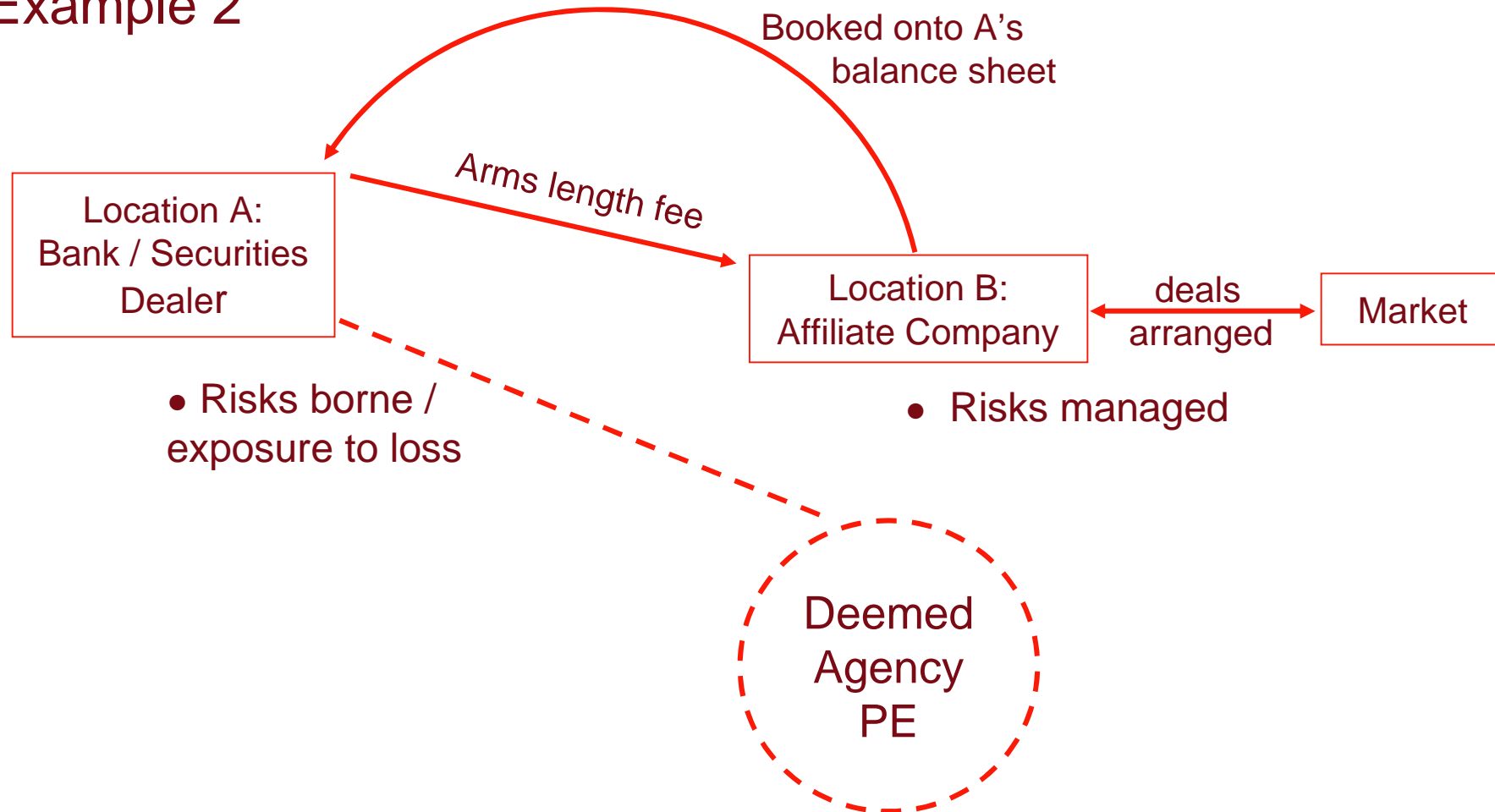
Location
B

Risks borne –
Ignore for tax
purposes

OECD PE Project Example 2



OECD PE Project Example 2



- How can such an agency PE be deemed?
- What is the test and where does it come from?

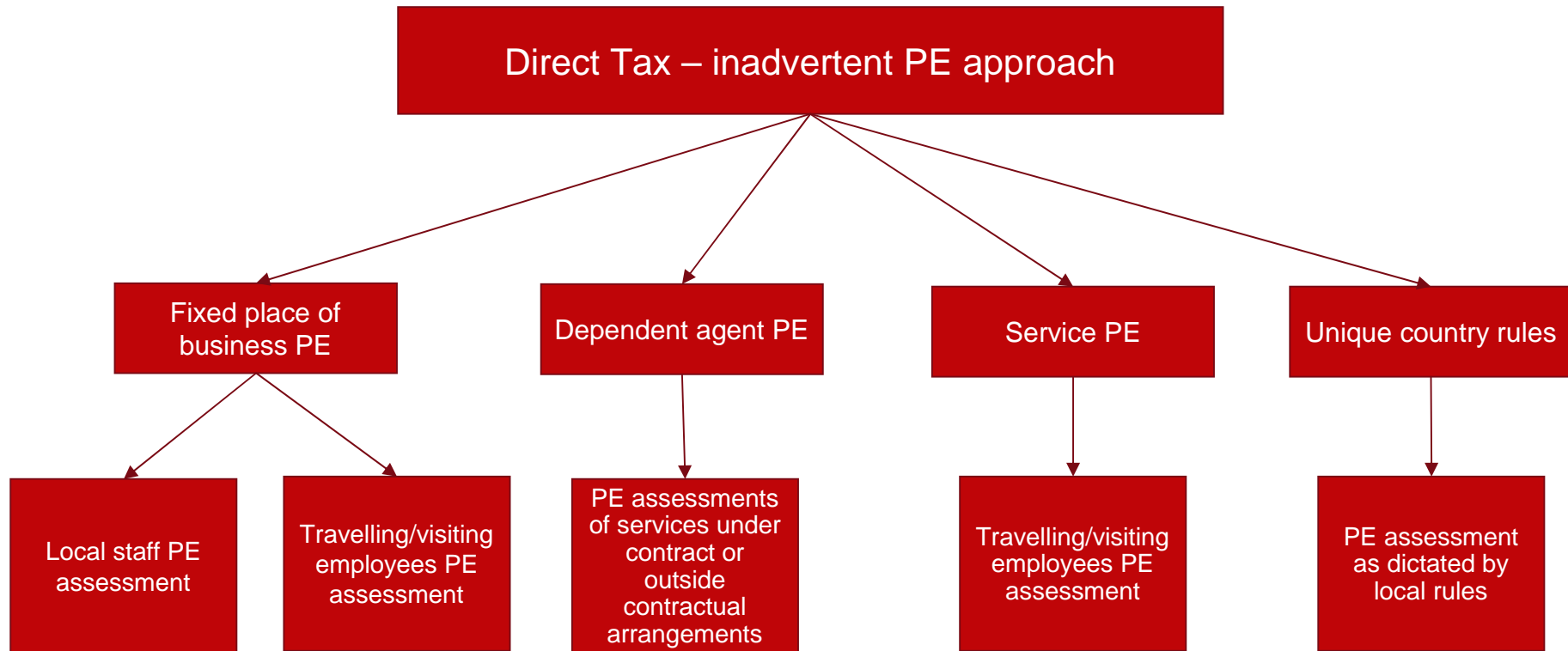
PES – 2: Threshold tests

- Focus on threshold tests
 - Attribution Project
 - Business Restructuring
 - Expansion of OECD
- The two traditional tests
 - Fixed place of business PE
 - Dependent agent PE
- The new test – lowered threshold
 - Services PE

Direct Tax: How may inadvertent PEs arise?

- I Fixed place of business PE (Art 5(1), OECD Model, UN Model)
- II Dependent agent PE (Art 5(5) OECD Model, UN Model)
- III “Service” PE (Art 5(3)(b) UN Model)
- IV Other country specific rules

Direct Tax: Approach to inadvertent PE



Transfer Pricing Rules

- Work on revising the 1995 transfer pricing guidelines
 - Comparability issues
 - Profit based methodologies
- OECD Accession Standards as part of the enlargement process – e.g. Russia
- Anti-avoidance dimension – e.g. business restructuring

Impact on Multinationals

- Proliferation of Disputes
- Increased Risks of Double Taxation
- Inability for Field Agent Execution
- Likely Areas of Change/Required Actions
- Risk Transfer/Risk Stripping Issues

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