

ACTL-IBFD-Conference
Taxing the digital economy:
the EU proposals and other insights

De Industriële Groote Club, Amsterdam, **28-29 June 2018**

Maarten de Wilde, Erasmus School of Law, Loyens & Loeff

Today's topic

*Origin v. destination principle:
where to go?*

Taxation and Digitalisation

The big issue that the digitalisation of our economies has revealed...

**BEPS initiative
says..**

**BEPS initiative
says..**

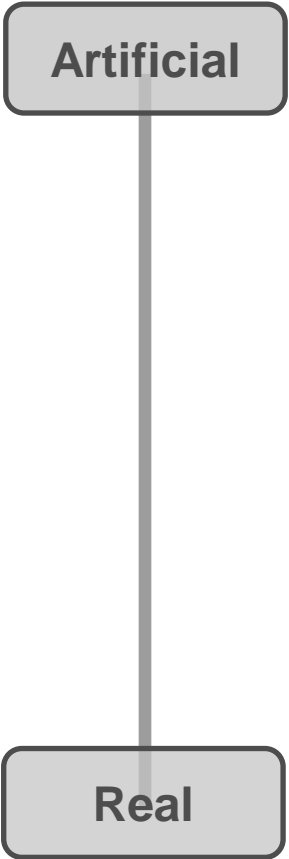
Artificial

**BEPS initiative
says..**

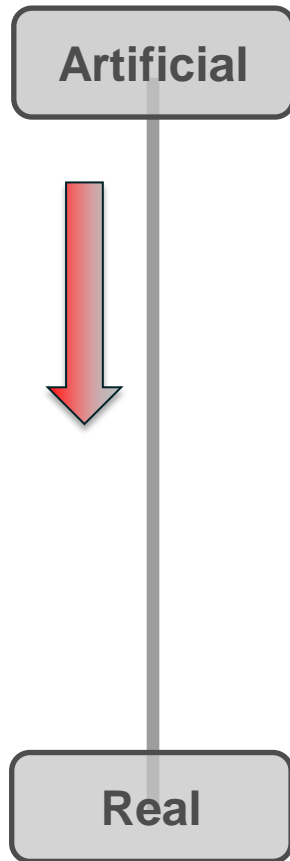
Artificial



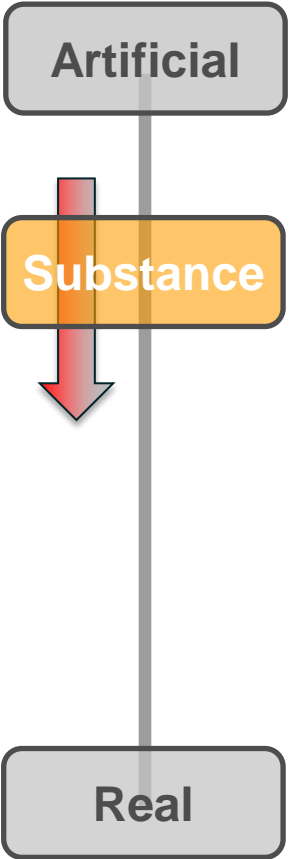
**BEPS initiative
says..**



**BEPS initiative
says..**



**BEPS initiative
says..**



**Location Value
Creation!**

Artificial

Substance

Real

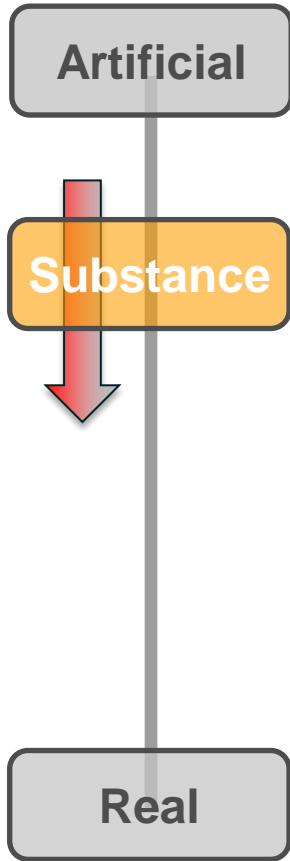
**Location Value
Creation?**

Artificial

Substance

Real

**Location Value
Creation?**



**Location Value
Creation?**

Artificial

Substance



Real

Location Value
Creation?

Artificial

Substance



Supply side

Real

Location Value
Creation?

Artificial

Substance



Supply side

Demand side

Real

True source of income?

Artificial

Substance



Supply side

Demand side

Real

We don't know...

Artificial

Substance

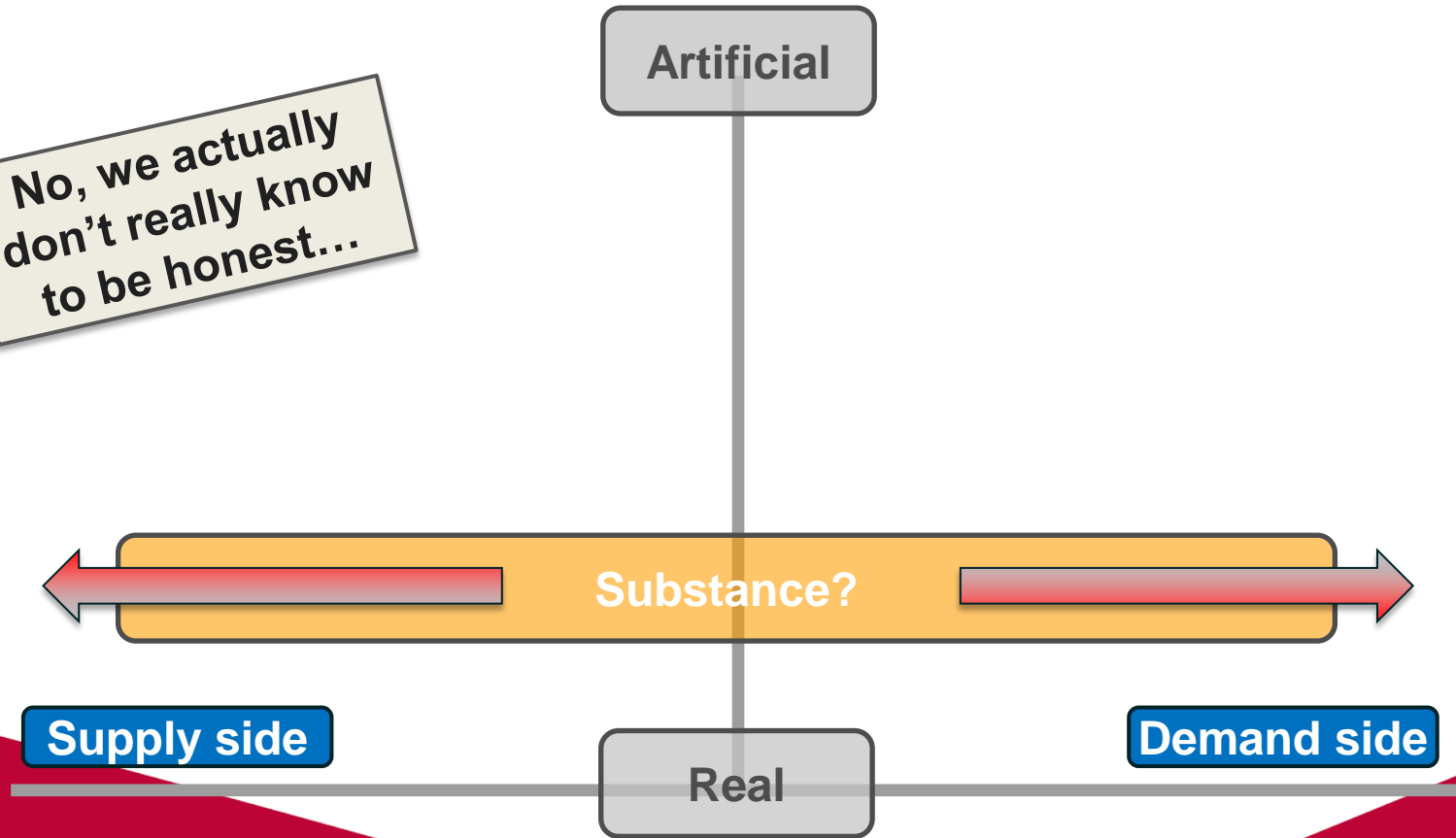


Supply side

Demand side

Real

No, we actually don't really know to be honest...



True source of income?

Artificial



Supply side

Demand side

Real

Where is that?

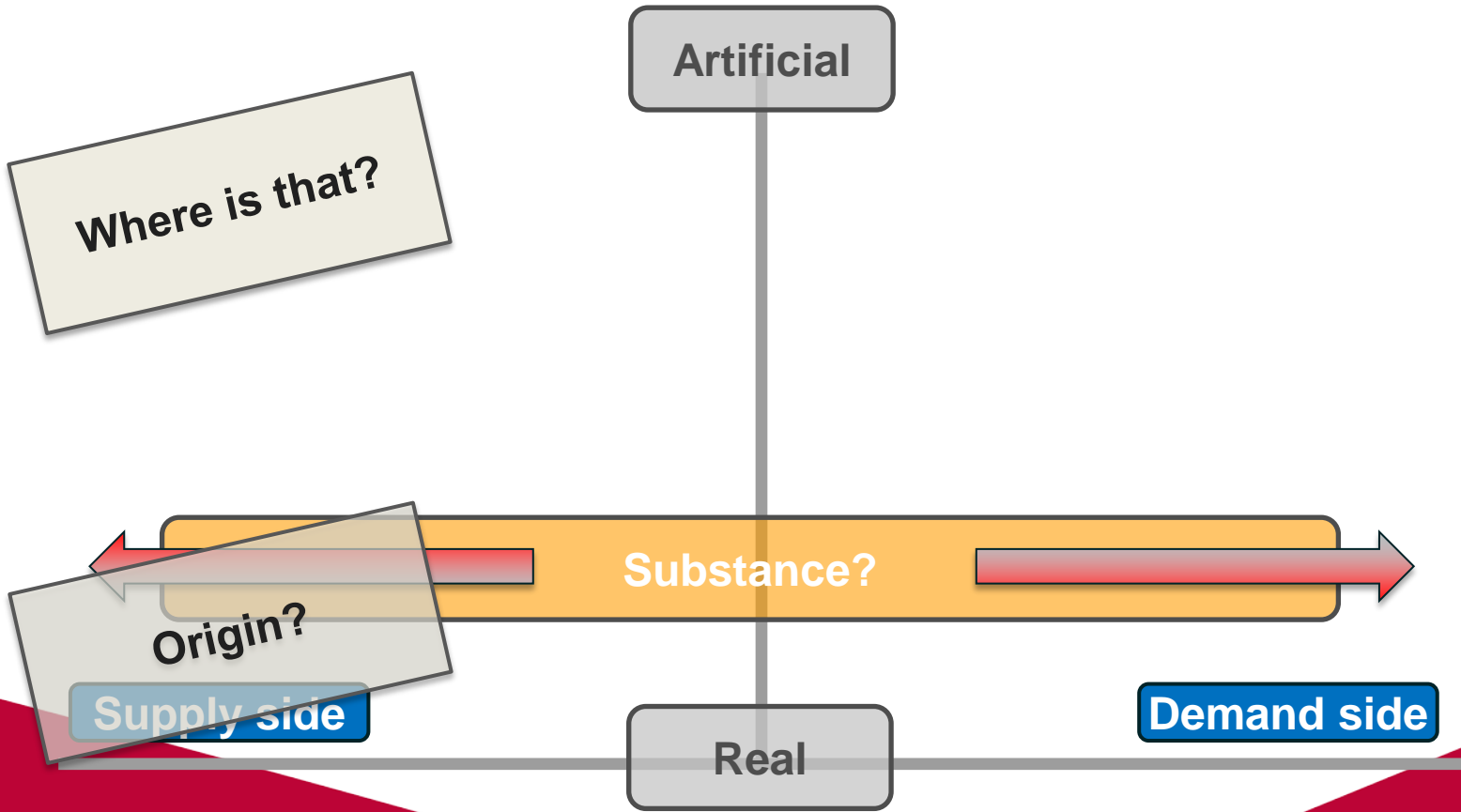
Artificial

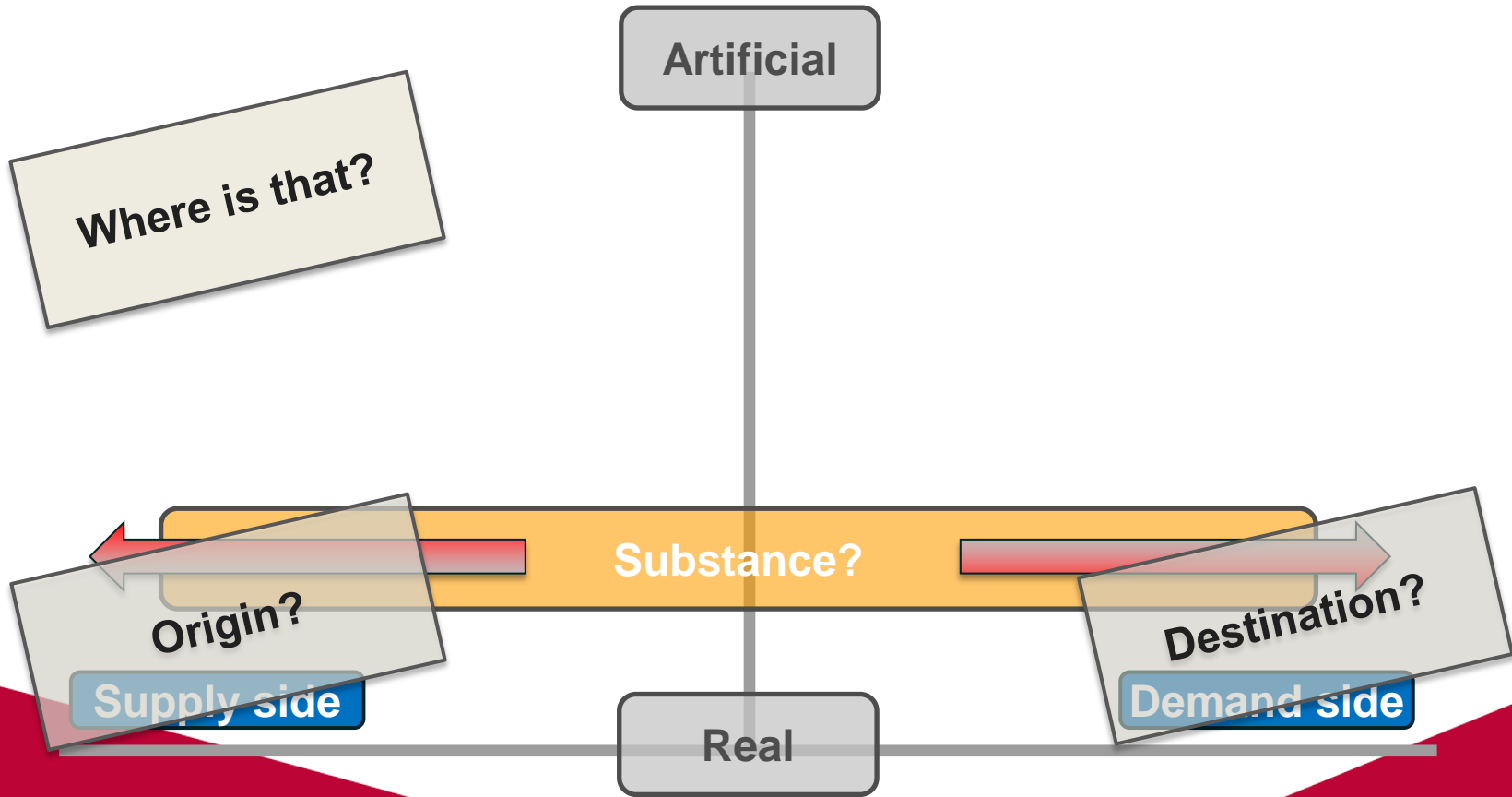


Supply side

Real

Demand side





Let's take a
look...

Supply side

Demand side

Let's take a look...

Country A

Supply side

Demand side

Let's take a look...

Country A

Country B



Supply side

Demand side

Let's take a look...

Country A

Country B

Cap./Lab.

Supply side

Demand side

Let's take a look...

Country A

Country B

Cap./Lab.

Market

Supply side

Demand side

Let's take a look...

Country A

Country B

Cap./Lab.



Market

Supply side

Demand side

Let's take a look...

Country A

Country B

Cap./Lab.



Market

€

Supply side

Demand side

Let's take a look...

Country A

Country B

Cap./Lab.

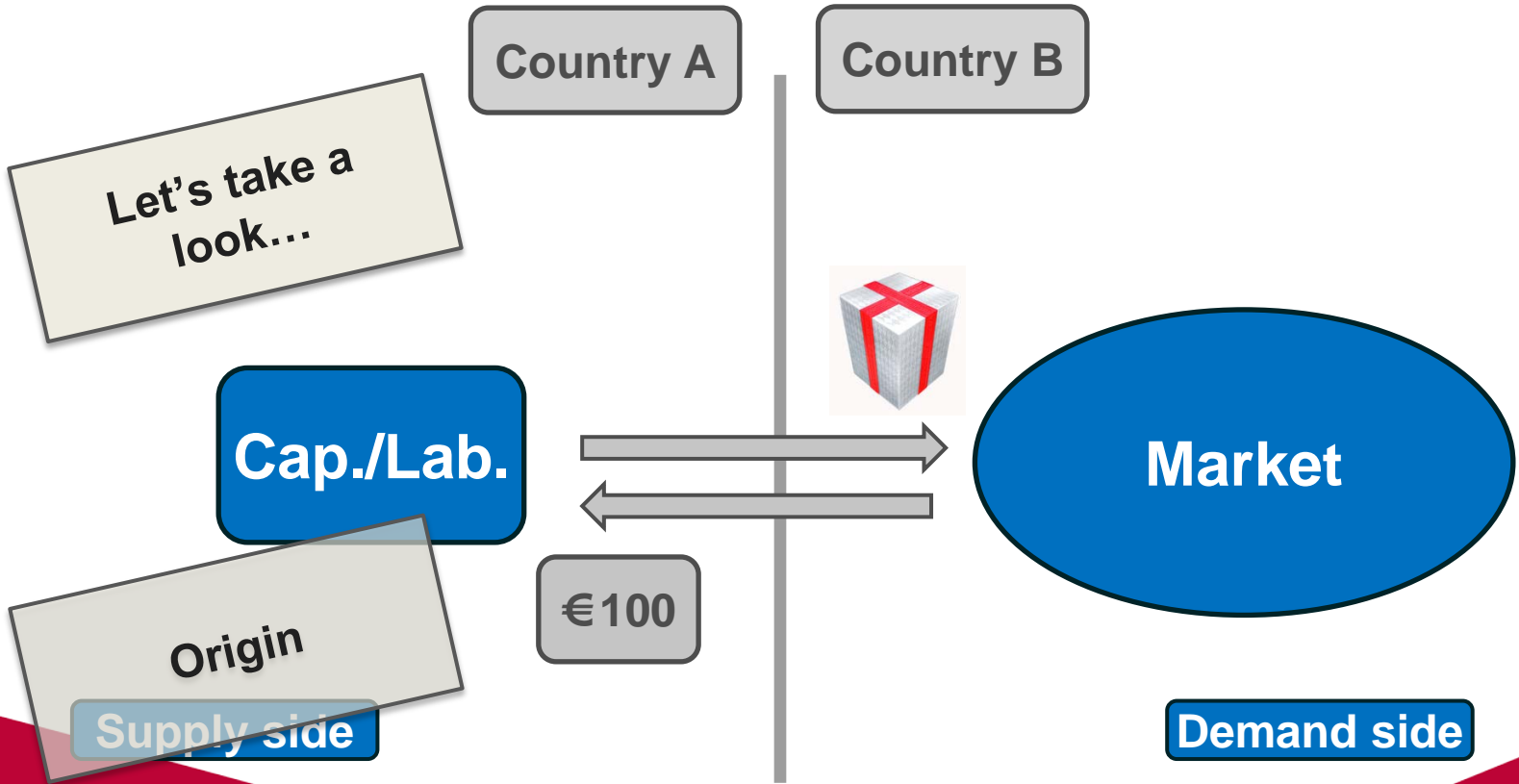


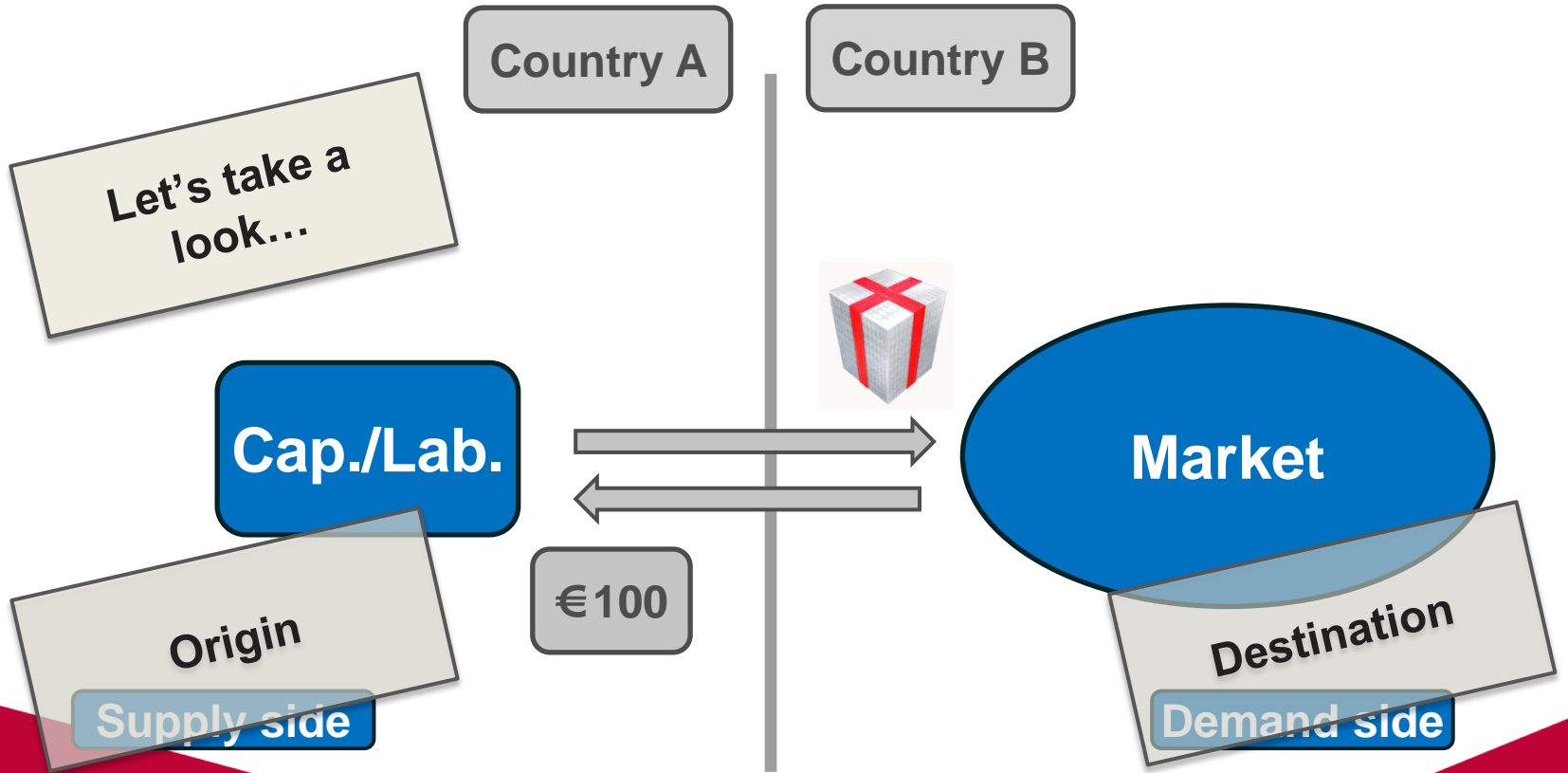
Market

€100

Supply side

Demand side





Country A

Country B

Let's take a
look...

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

Functions Performed

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of income?

Functions Performed
Assets Used

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of
income?

Functions Performed

Assets Used

Risks Assumed

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

i.e. Transfer Pricing

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

Place of Effective Management

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

Permanent Establishment

Origin

Supply side

Destination

Demand side

Country A

Country B

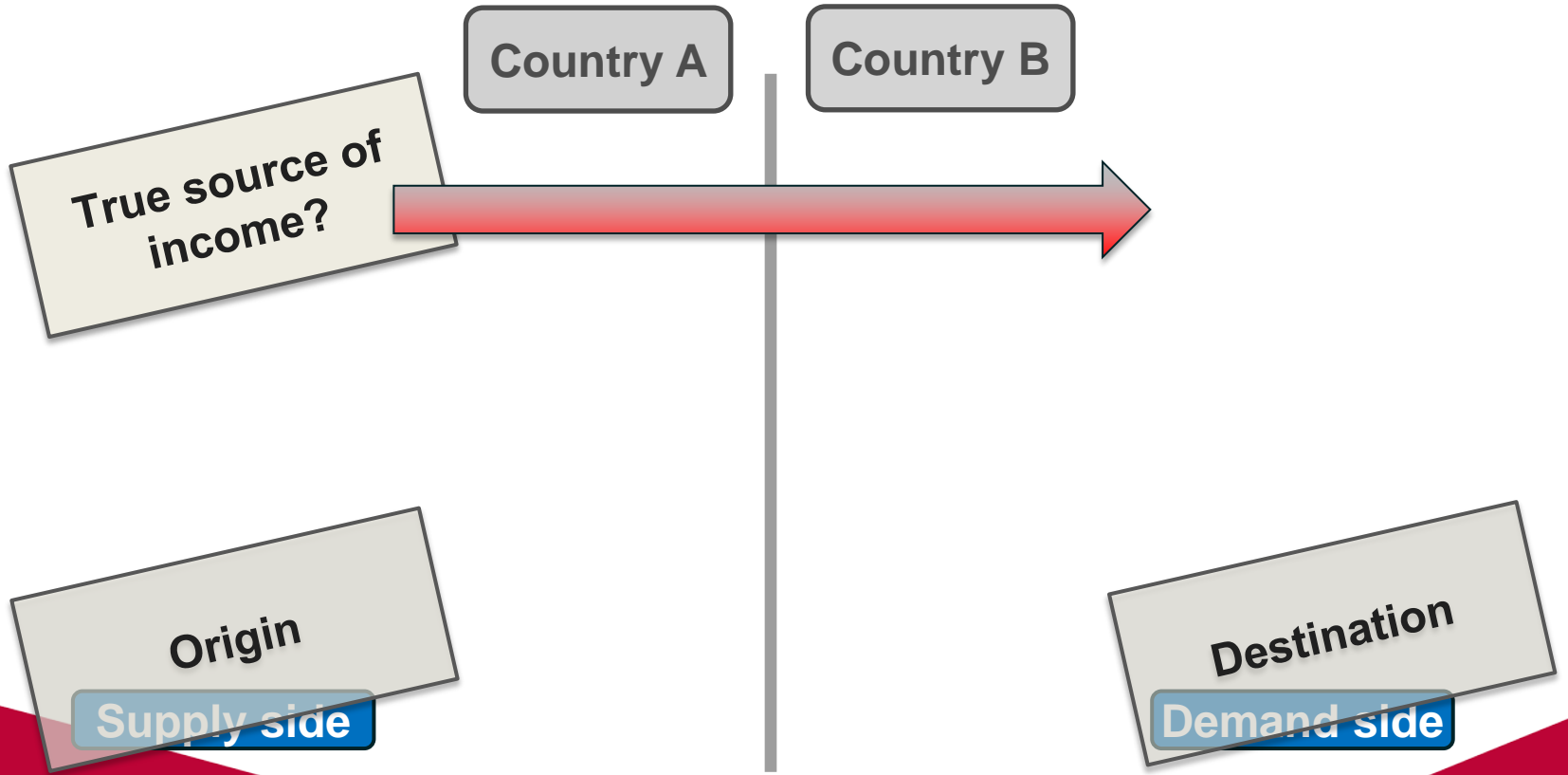
True source of
income?

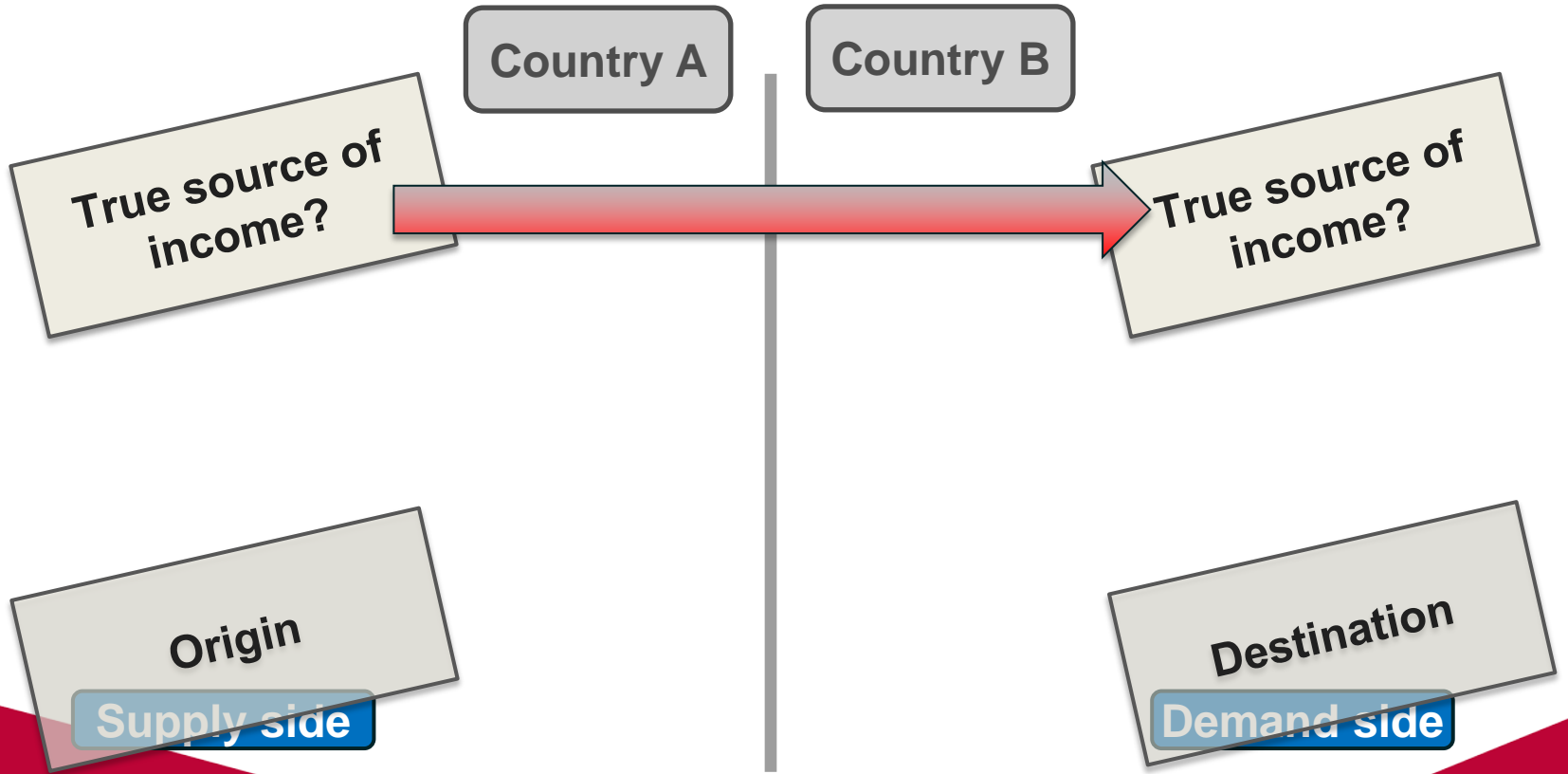
Origin

Supply side

Destination

Demand side





Country A

Country B



True source of income?

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of
income?

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of income?

Value Added Tax

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of income?

Sales Taxation

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of
income?

But Source Taxation too!

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

And Equalization Levy

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

Digital Services Tax

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of income?

Digital PE

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of
income?

And Digital PE Profit Attribution

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of income?

Hey, what just happened here?

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of
income?

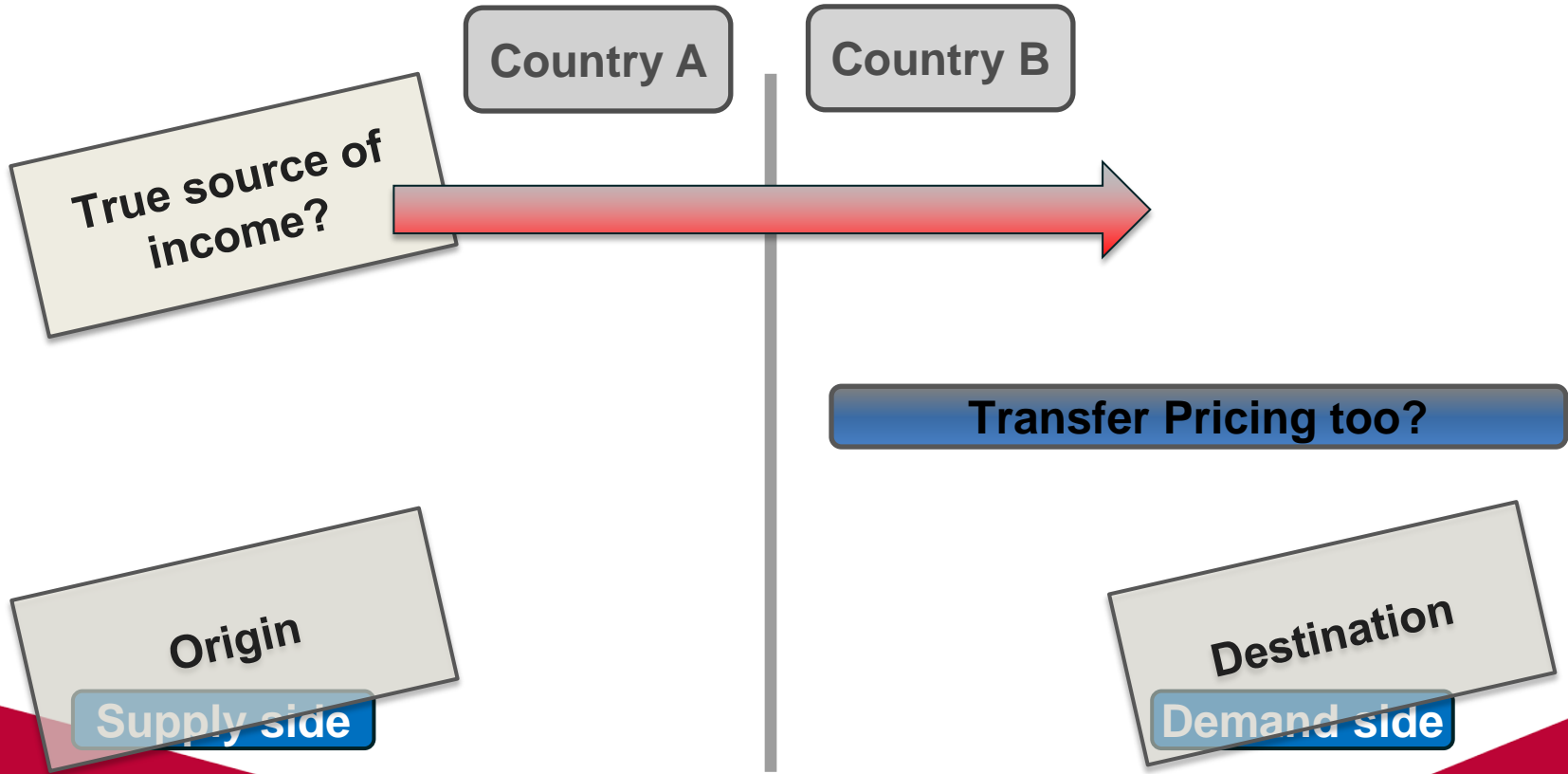
Transfer Pricing too?

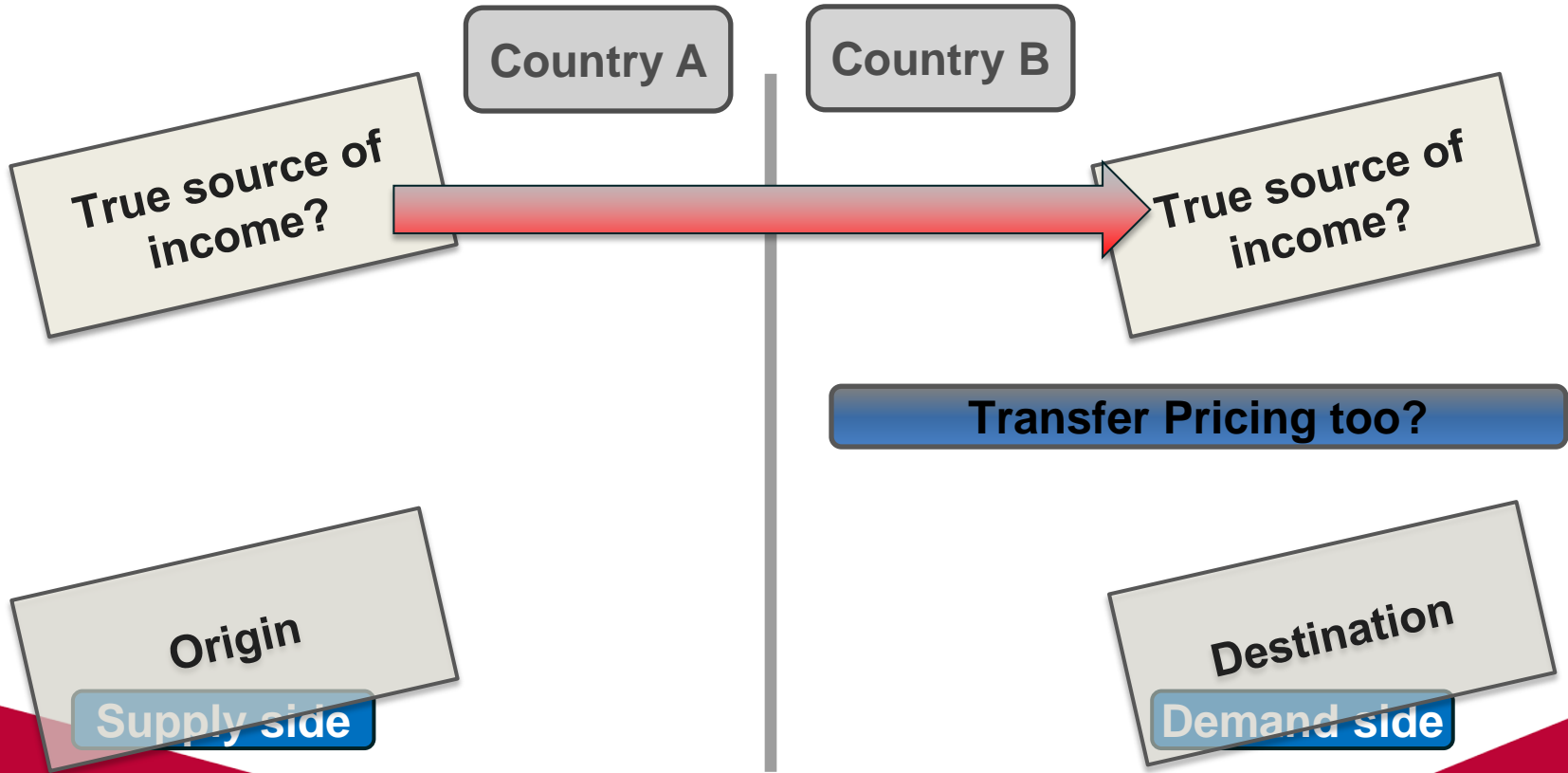
Origin

Supply side

Destination

Demand side





Country A

Country B



True source of income?

That's pretty dramatic!

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of
income?

That's pretty dramatic!

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of income?

That's pretty dramatic!

Origin
Supply side

Destination
Demand side

Country A

Country B

True source of
income?

FA Sales Factor

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of income?

True source of income?

FA Sales Factor

Origin
Supply side

Destination
Demand side

Country A

True source of
income?

FA Payroll Factor

Origin

Supply side

Country B

True source of
income?

FA Sales Factor

Destination

Demand side

Country A

True source of income?

FA Payroll Factor

FA Asset Factor

Origin

Supply side

Country B

True source of income?

FA Sales Factor

Destination

Demand side

Country A

Country B

True source of
income?

True source of
income?

Big Q: Sustainable Tax Base Division Key?

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

True source of
income?

Global Profit Split?

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

True source of
income?

Global Formulary Apportionment?

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

True source of
income?

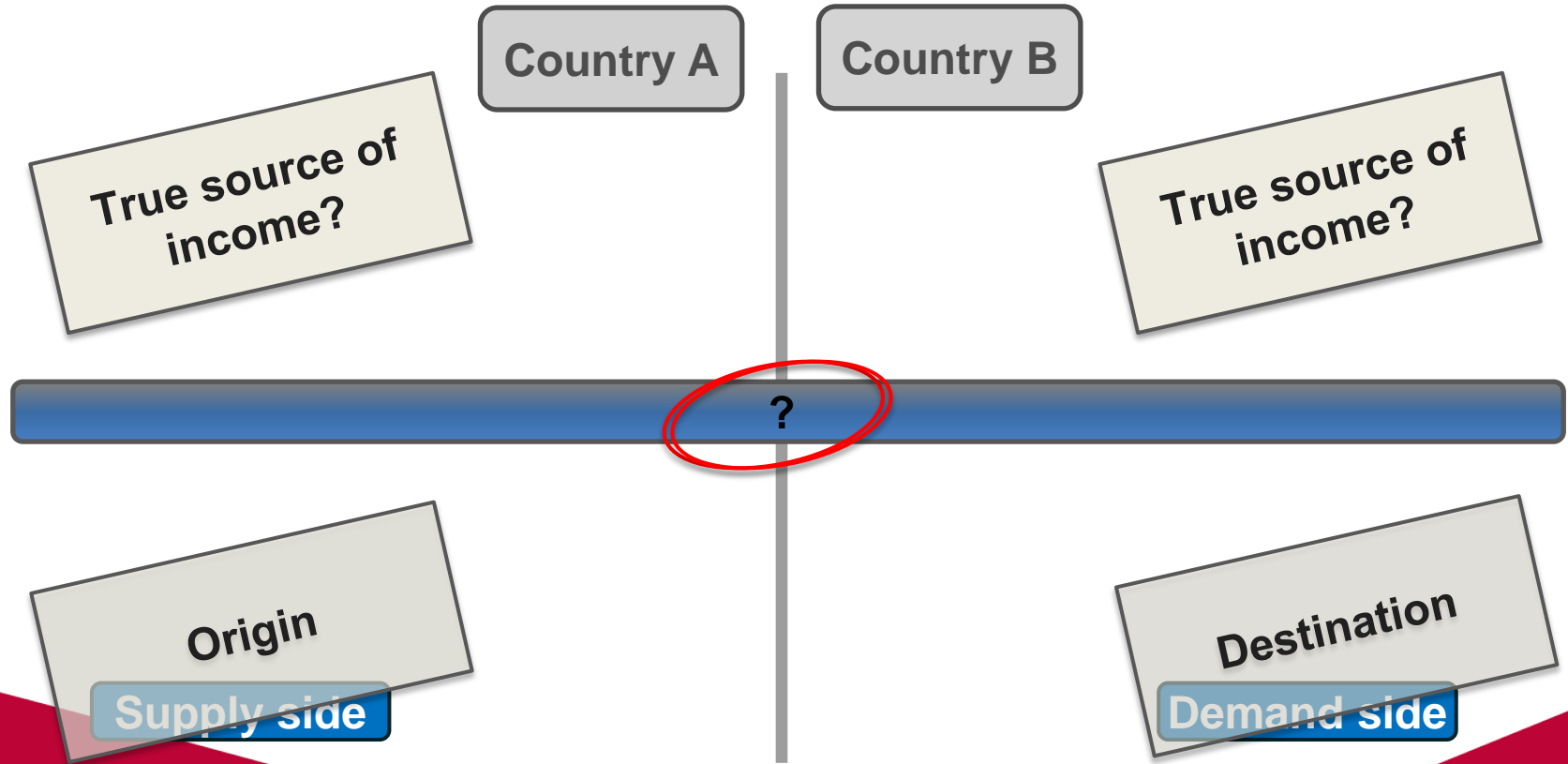
Sales Only Apportionment?

Origin

Supply side

Destination

Demand side



Country A

Country B

True source of
income?

True source of
income?

I'd go for sales only apportionment
of MNE infra-marginal business returns

Origin

Supply side

Destination

Demand side

Country A

Country B

True source of
income?

True source of
income?

Why?

Origin

Supply side

Destination

Demand side

Country A

Country B

Not because the
true source of business income
would be here...

Origin

Supply side

Destination

Demand side

Country A

Country B

But because it caters to self-centred economic and competitive interests of countries, regions and companies

Origin

Supply side

Destination

Demand side

Country A

Country B

It facilitates an equilibrium
through competition

Origin

Supply side

Destination

Demand side

Country A

Country B

Inelastic properties would restore much country autonomy in company taxation

Origin

Supply side

Destination

Demand side

Country A

Country B

At the end of the day it seems the only truly sustainable alternative

Origin

Supply side

Destination

Demand side

**At the end of the day
destination based tax base division
seems the only
truly sustainable company tax reform option available**

Wrap-up

- Maarten de Wilde, PhD, LL.M
 - dewilde@law.eur.nl
 - papers on ssrn.com

