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Tax challenges of matrix organizations

Chair: Daniela Steierberg, Germany

Date: Sixth of September 2022



Agenda



Tax challenges of matrix organizations

- I. Introduction of the panelists and keynote**
- II. Case study 1: virtual leadership structure**
- III. Case study 2: virtual team structure**
- IV. Discussion**
- V. Final statements of the panelists**





Introduction



Today's panelists



- Daniela Steierberg (Chair)
- VP Corporate Tax & Customs, Nordex SE, Germany



- Sahel Ahyaié Assar (Panelist)
- Counsel, Buchanan Ingersoll & Rooney, United States



- Sandra Benedetto (Panelist)
- Tax Partner, PwC, Chile



- Veronika Daurer (Panelist)
- International Tax Law Expert, Federal Ministry of Finance, Austria

Today's panelists



- Shefali Goradia (Panelist)
- International Tax Partner, Deloitte, India



- An De Reymaeker (Panelist)
- International Tax Lawyer, Vandendijk & Partners, Belgium



- Katharina Rapp (Secretary)
- Partner International Tax and Transaction Services, EY, Germany



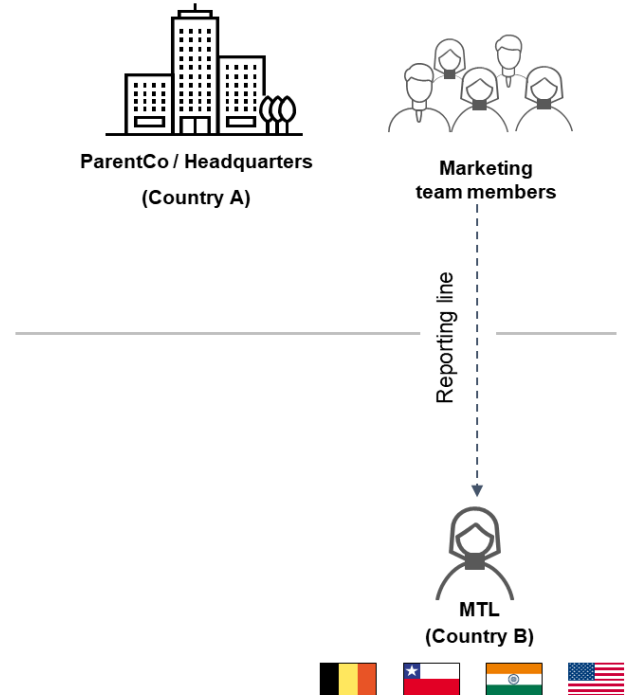


Case study 1



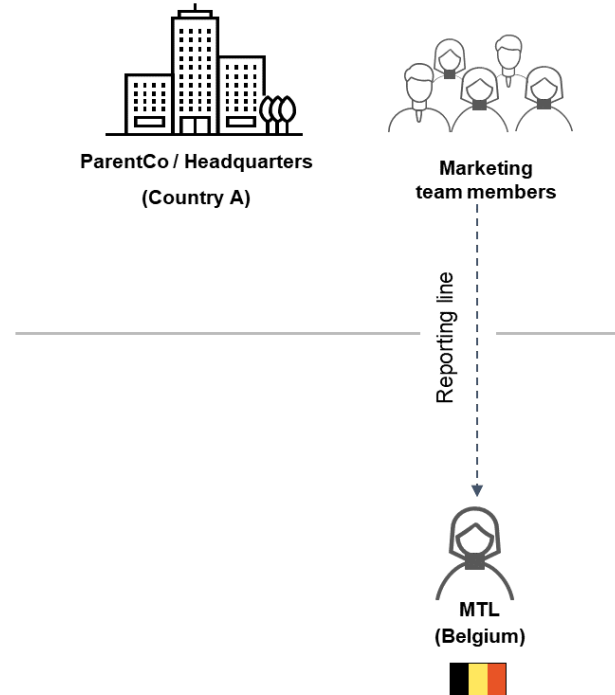
Case study 1 – virtual leadership structure

- ParentCo in Country A is the Headquarters of the group of companies.
- The corporate department “Marketing” is in Country A.
- Marketing team lead (MTL) lives in Country B and works mainly in her home office.
- Team members employed in ParentCo report to MTL & are subject to her instructions.



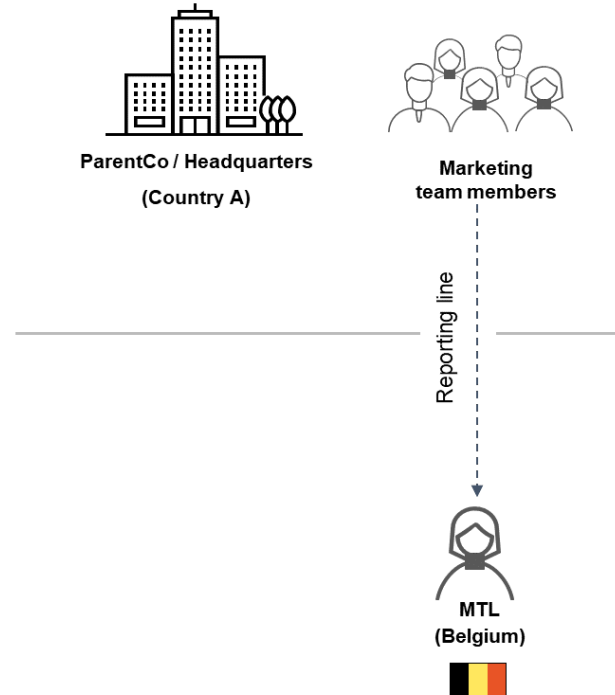
Case study 1 – Belgium (1/2)

- Broader PE definition in Belgian ITC:
no exception for preparatory activities/
negotiation of contracts
- Home office PE:
(after covid measures) at disposal of
enterprise/required by employer?



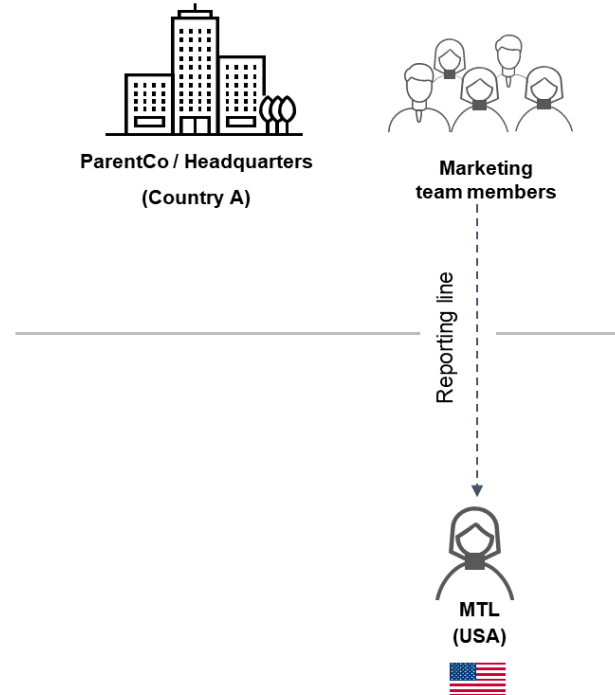
Case study 1 – Belgium (2/2)

- TP issues: profit allocation?
- Belgium follows OECD guidelines (see country profile) & circular letter of 25/2/2020 & ruling
- WHT/SS issues: payroll/registration PE/ITR
- Mitigation options: limit risk PE office/ ruling request/EU initiatives



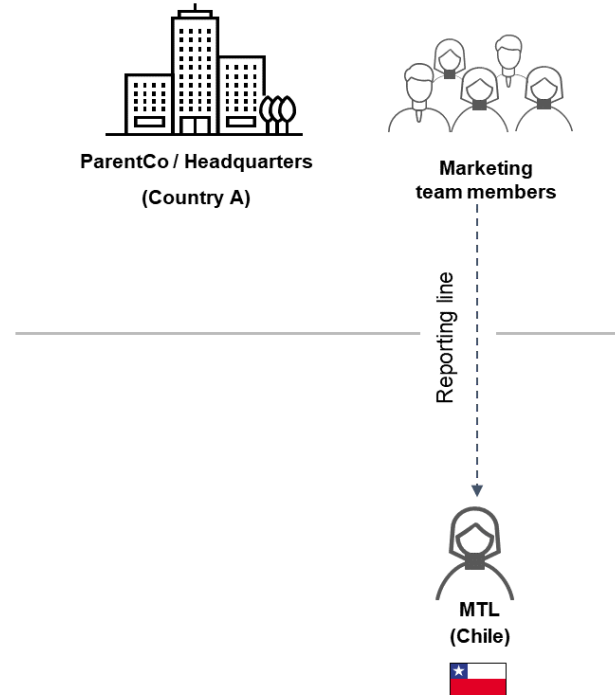
Case study 1 – USA

- Does the employee “habitually exercise ... an authority to conclude contracts that are binding on the enterprise”?
- ECI associated with the USTB
- Compliance considerations: protective filing to preserve FTCs and deductions associated with business profits at source



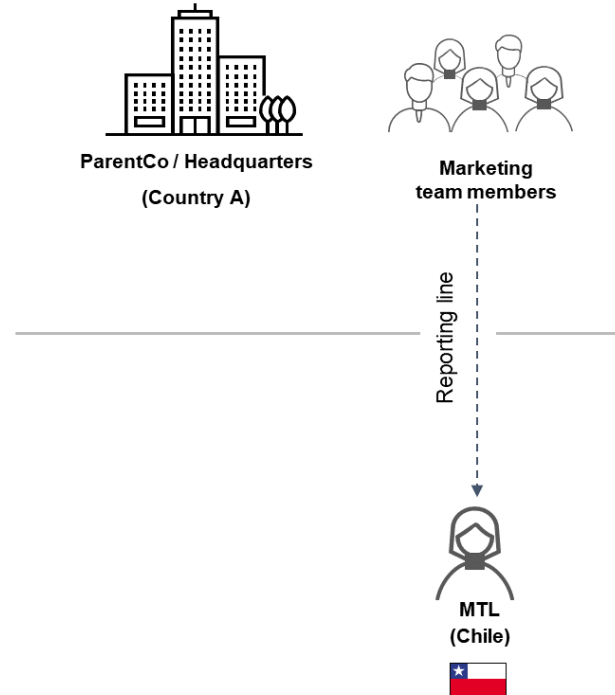
Case study 1 – Chile (1/2)

- Legal domestic PE concept since 2020; before only construed administratively.
- Differences to the OECD’s Model:
 - “Fixed” is not required (i.e. only a “place”)
 - No time thresholds/no exceptions list
 - Agent PE: may be triggered by any contract modification; no limit on the type of contracts



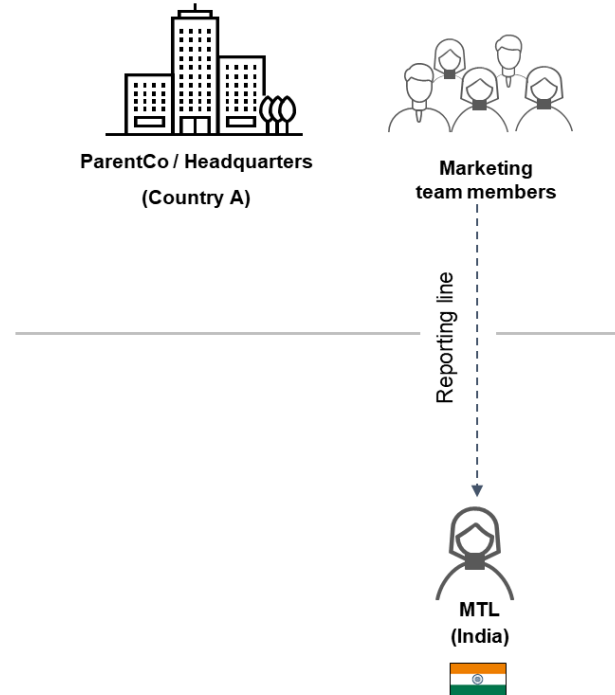
Case study 1 – Chile (2/2)

- No further jurisprudence by IRS so far
- Binding ruling vs. PE registration:
 - Relative effect of IRS rulings
 - Apply a ruling in good faith
 - Certainty can also be achieved by registering a PE



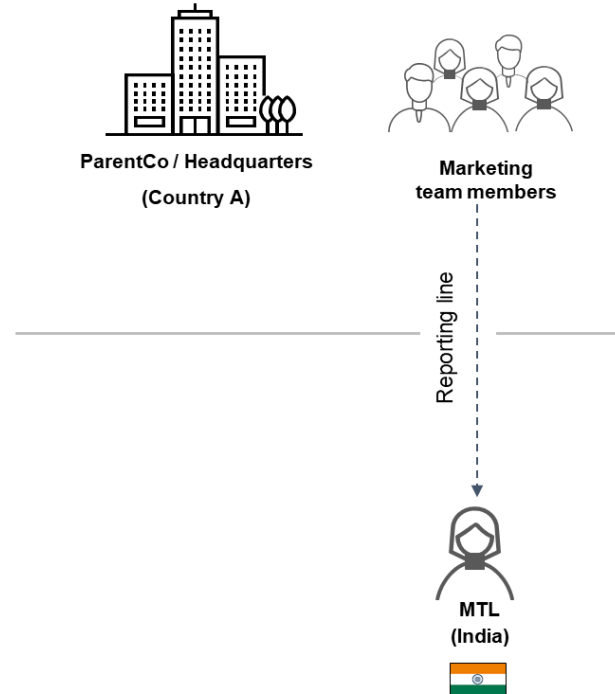
Case study 1 – India (1/2)

- Dotted line vs. day-to-day reporting
- ‘Place of Management’ PE
- Whether home office of MTL at the disposal of ParentCo?
- Limited access to local office (if any): is that a problem?
- Multiple employees at multiple locations: geographical and economic coherence?



Case study 1 – India (2/2)

- No service PE if customers not in the same country
- Customer facing vs. internal functions: would it make a difference?
- Exchange control/VAT (GST) registration for deemed PE
- Profit attribution

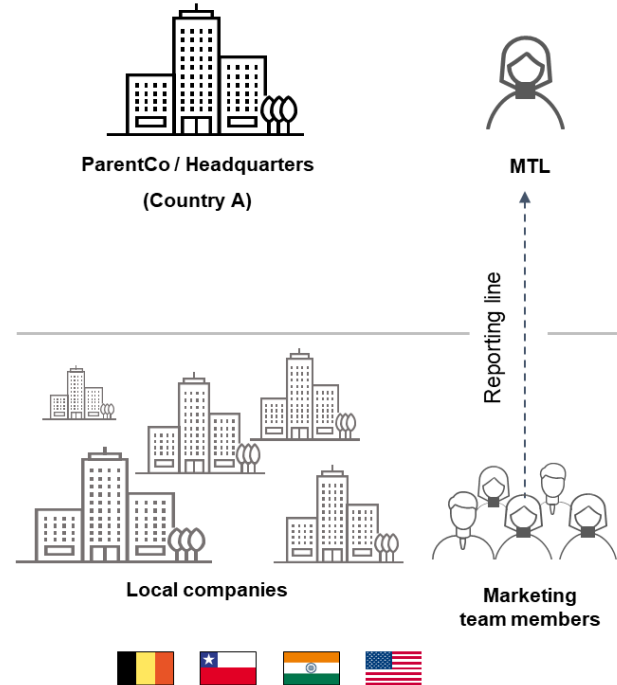




Case study 2

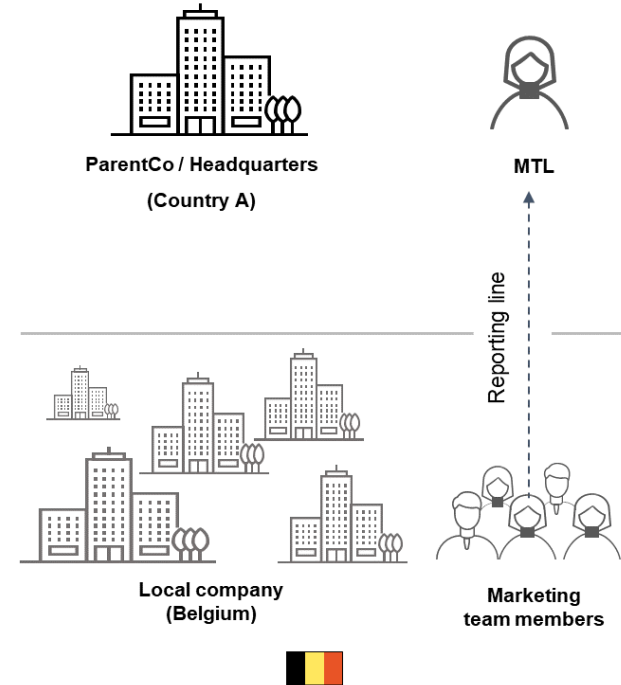
Case study 2 – virtual team structure

- ParentCo is the Headquarters of the group of companies.
- MTL is employee of ParentCo (Country A).
- The corporate department “Marketing” is in Country A.
- MTL’s team members are employed by the respective local companies, but report to MTL and are subject to her instructions.



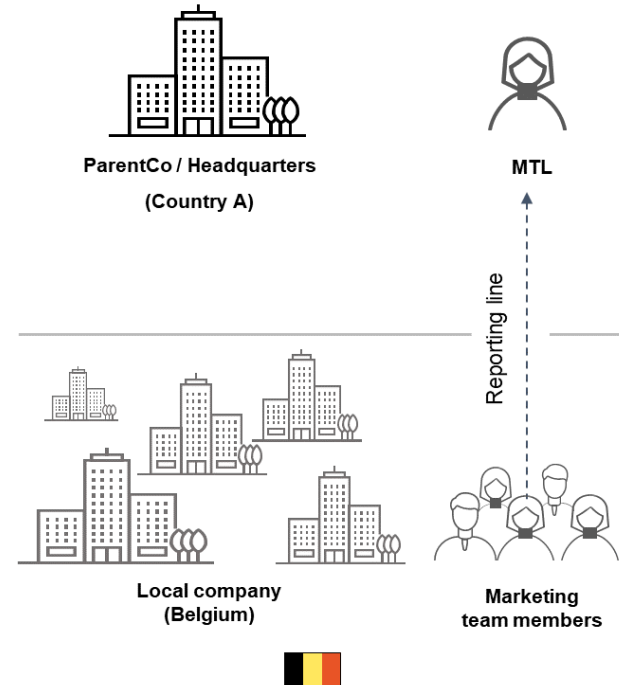
Case study 2 – Belgium (1/2)

- PE issues: Art. 5 OECD & Art. 229 Belgian ITC?
- Art. 5 OECD exception for preparatory/ auxiliary activities (court cases/ rulings)
- Marketing team member employee of Belgian company



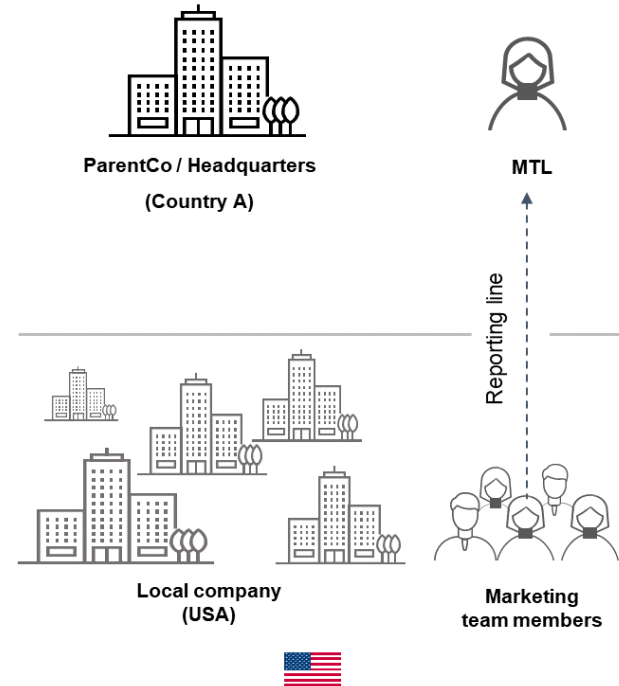
Case study 2 – Belgium (2/2)

- Cost/service charge: at arm's length following OECD guidelines (Belgium country profile) & ruling
- Belgian (legal) employer: payroll obligations: WHT (up to 52%) / Belgian SS (25% employer contributions)



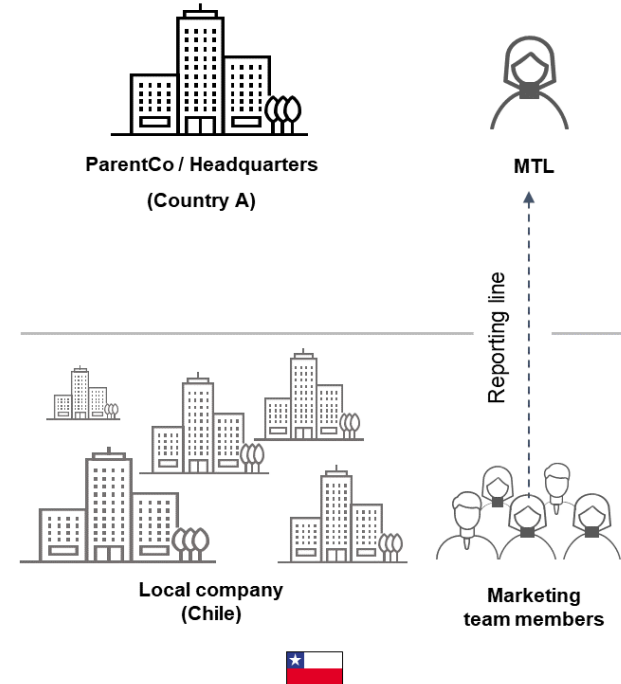
Case study 2 – USA

- Dependent agent vs. independent agent
- Accounting treatment/income recognition
- Income attribution
- Determination of the arm's length mark-up under domestic law
- Identification/reimbursement of costs associated with the service activity: allocation between recipients



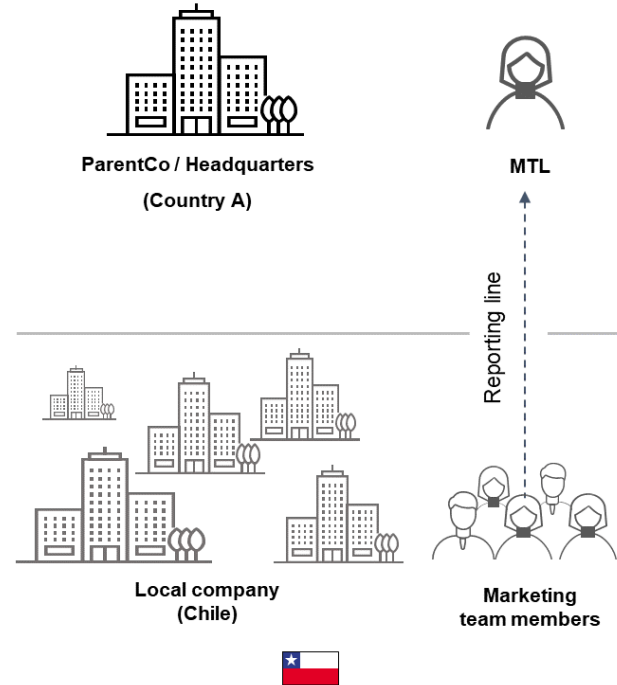
Case study 2 – Chile (1/2)

- Level of reporting impact:
 - Solid line: evidence that ParentCo is developing its business through MTM in Chile
 - Dotted line: whose business is actually being carried out?



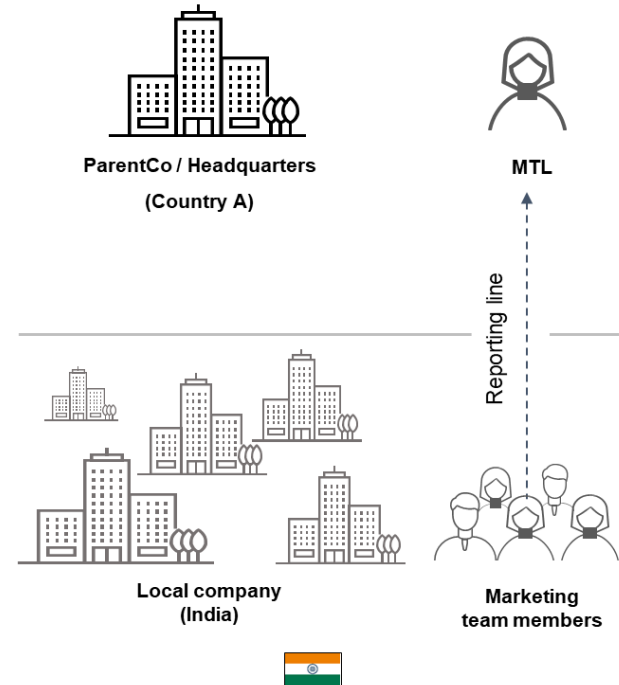
Case study 2 – Chile (2/2)

- Extended dependent agent PE concept:
 - No limit on the type of contracts
 - Any contract modification may be relevant
- Deductibility issue: link between expenditure & generation of income
- Mitigation by a service agreement



Case study 2 – India

- Real employment with local company: whose business is being undertaken?
- In a new-age matrix organization, multiple supervisors may contribute to evaluation
- MTL's activities: stewardship if limited to knowledge/experience sharing
- Inter-company agreement at arm's length: no further profit attribution?







Discussion & final statements

