

# 32nd Annual Asia Pacific Tax Conference

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# Alternative B: China – Recent tax developments

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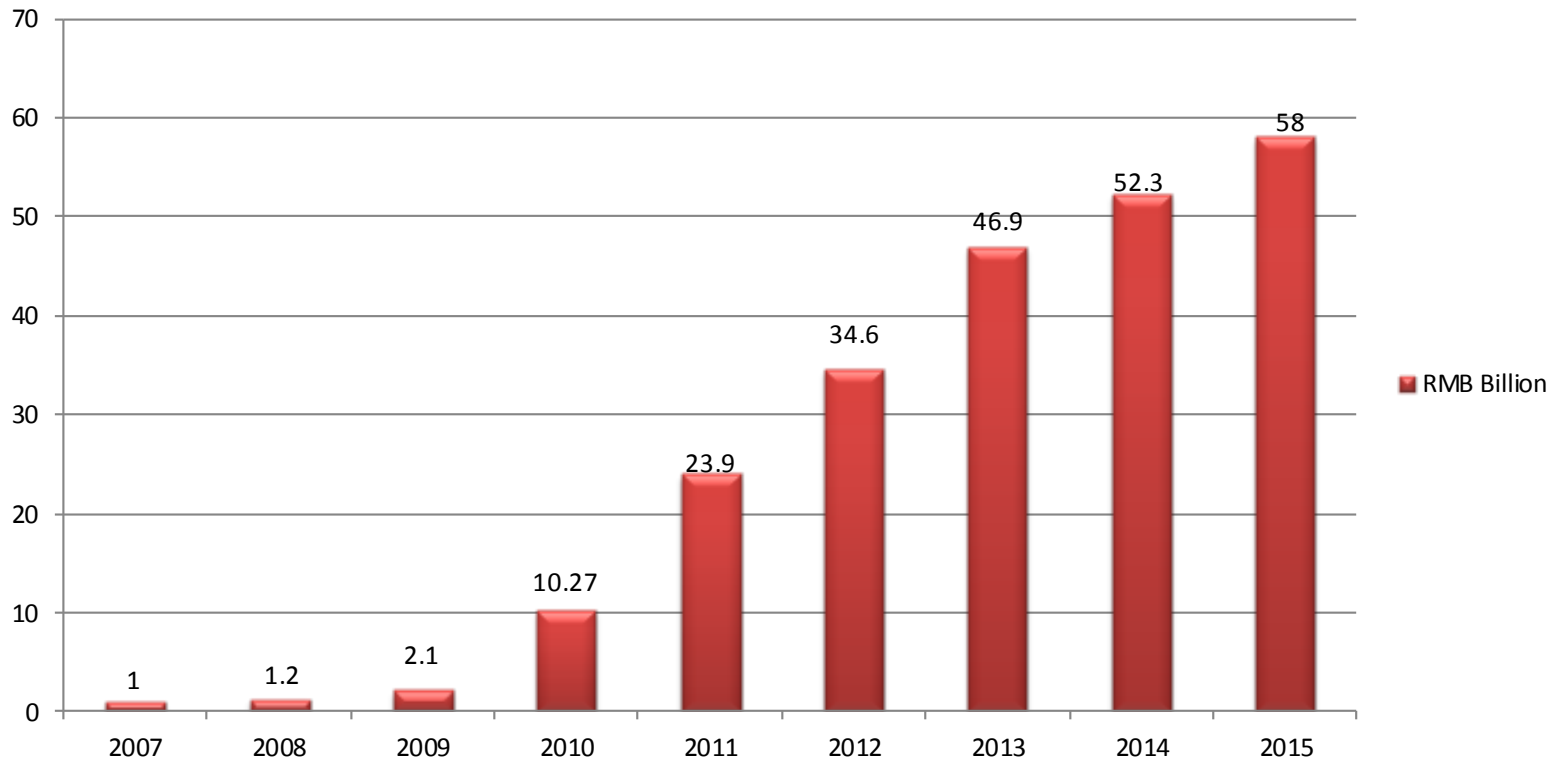
# Agenda

- Anti-avoidance in a post-BEPS environment
- Key tax developments
- Tax controversy
- Case study

# Anti-avoidance in A Post-BEPS Environment

# More Aggressive Enforcement on Anti-Avoidance

**Tax Revenue from Anti-avoidance**



# Political Endorsement on BEPS Project



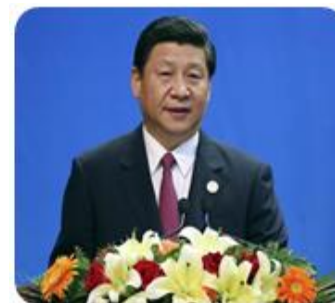
Source: The SAT's reply to a United Nations questionnaire

SAT views Actions 8-10 and 13 as the most important items under the BEPS Project.

Multinational groups, the SAT said, "set up shell companies with no genuine economic substance in the low-tax jurisdictions and tax havens, in order to shift the profits."

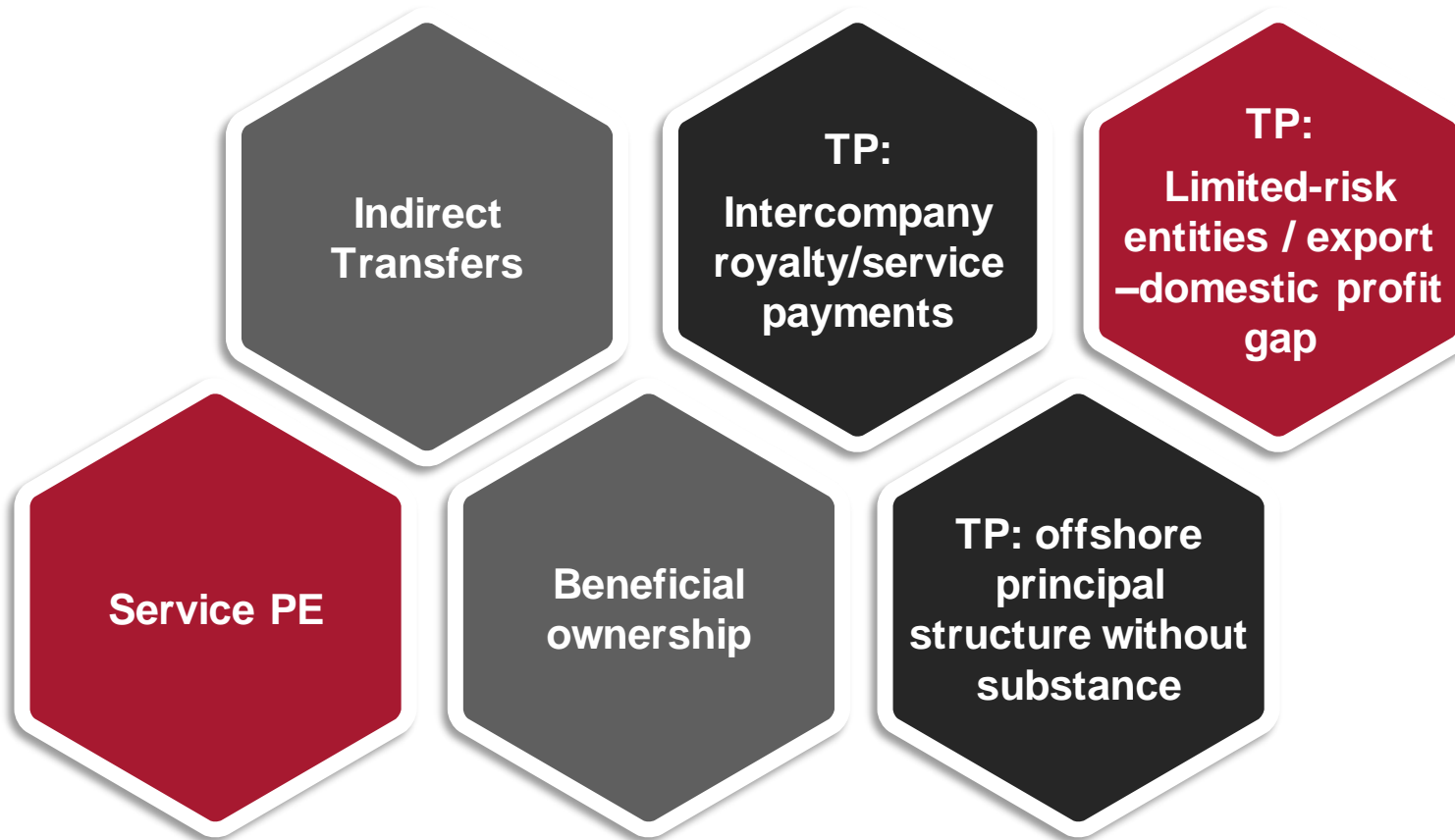
"We aim to strengthen international taxation cooperation and increase the efforts on cracking down on international tax avoidance and evasion."

"G20 implements the BEPS Project with real actions rather than mere words."



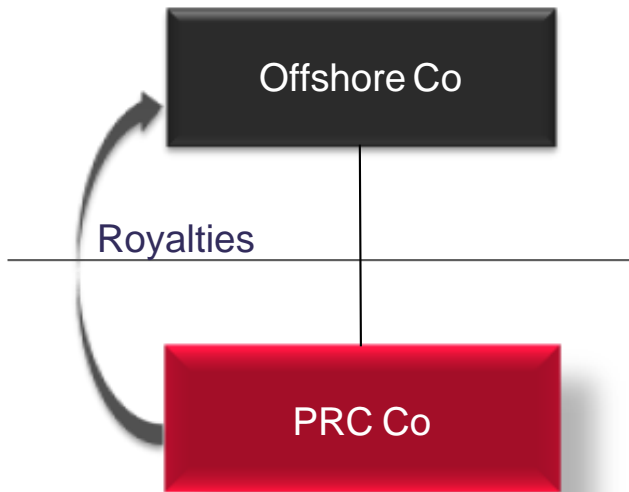
President Xi Jing Ping of PRC  
2016 G20 meeting in Hangzhou

# Key Focuses of Tax Audits



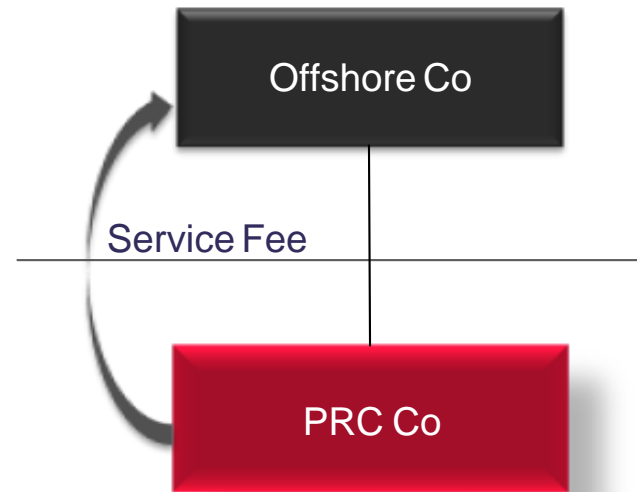
# TP Audit Cases: Aligning TP Outcomes with Value Creation

## Qingdao Case



- RMB14.95 million collected in EIT and interest
- Tax bureau partially denied deduction of the royalty payments

## Anshan Case

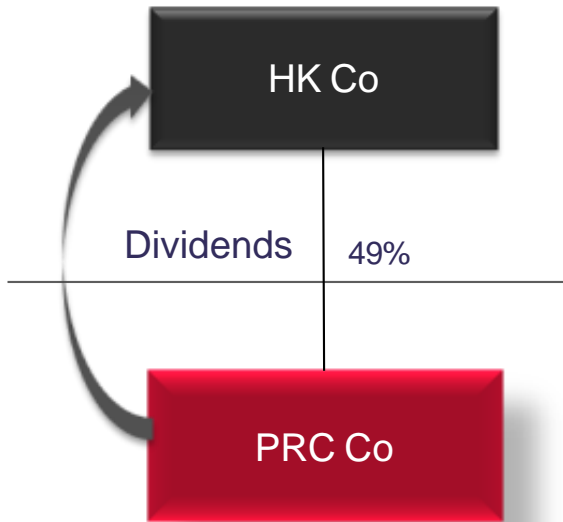


- RMB11.34 million collected in EIT and interest
- Tax Bureau partially denied deduction of the service fees



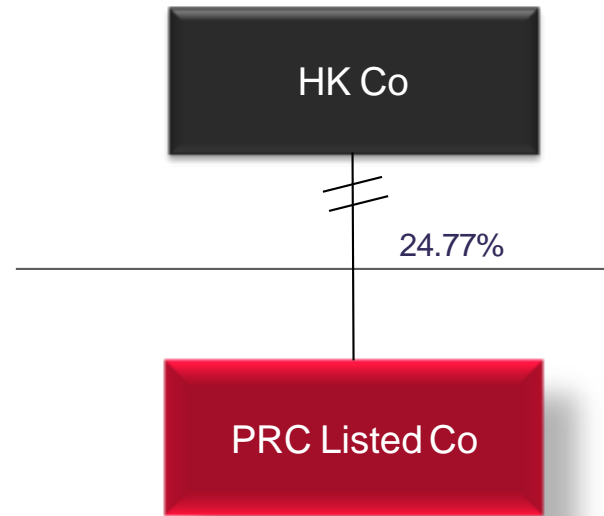
# Treaty Benefit Cases: Anti-treaty Abuse

## Wuzhong Case



- RMB7.84 million tax collection
- Tax bureau decided HK Co was not the beneficial owner (BO) and denied treaty benefits

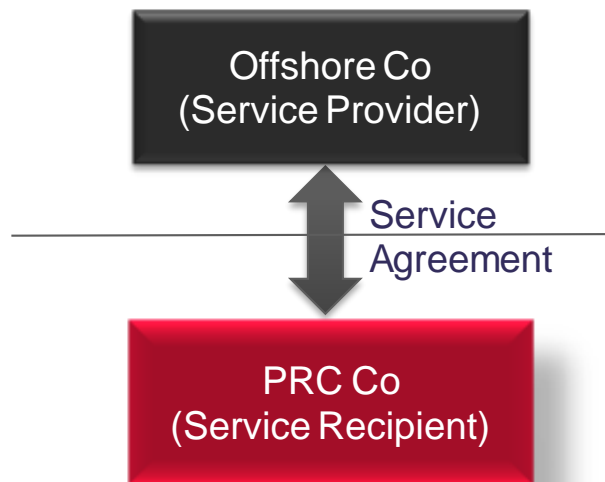
## Huzhou Case



- RMB77.79 million collected in EIT
- Tax bureau denied tax exemption for capital gains based on BO analysis despite no BO requirement exists under the treaty

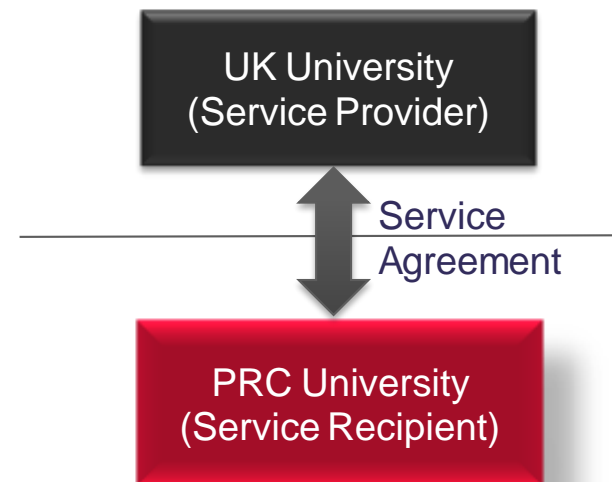
# Service PE Cases: Increased Enforcement of PE Taxation

## Nanjing Case



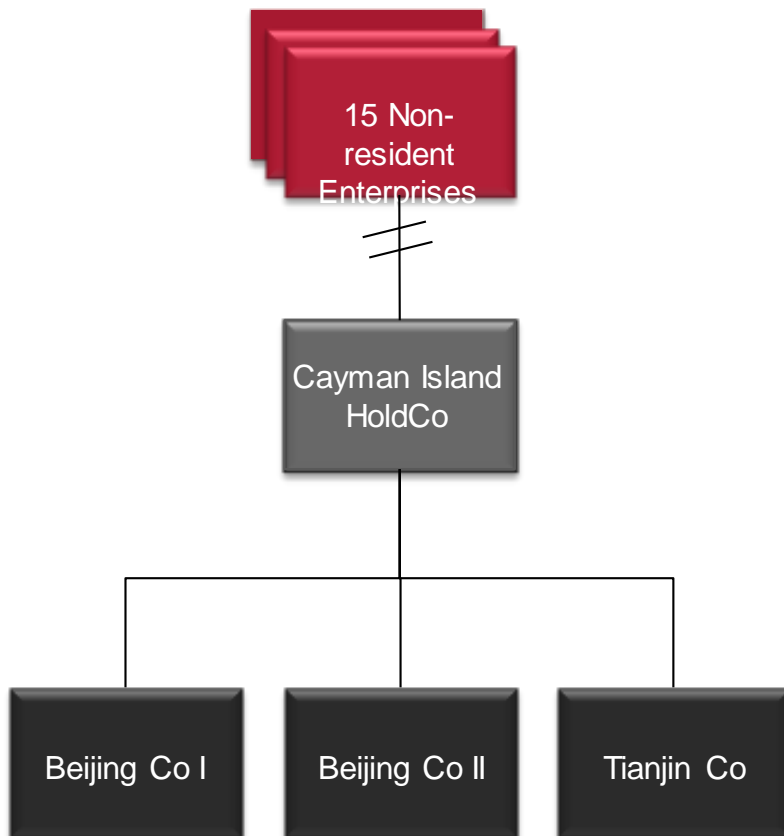
- RMB5.89 million in EIT and RMB31 million in IIT collected
- Offshore Co's employees provided services in China for a time long enough to create a PE
- Tax bureau allocated 42.7% service fees to the PE and taxed the PE on a deemed profit basis

## Ningbo Case



- RMB10.88 million collected in EIT
- UK university seconded employees to provide services in China for a time long enough to create a PE (concurrent labor contracts with the PRC University)
- Tax bureau allocated 47% service fees to the PE and taxed the PE on a deemed profit basis

# Haidian Indirect Transfer Case



- RMB1.2 billion tax collection
- Only three transferors from treaty partner jurisdictions
- Tax bureau denied treaty safe harbor for all transferors
  - Shareholding exceeds 25%?
  - Beneficial ownership?
  - 15 transferors' share transfers treated as a single transaction?
- Article 4 blacklist

# Key Tax Developments

# Bulletin 42: New Transfer Pricing Documentation Requirements

## Bulletin 42: TP Documentation

Related Party Transaction Disclosure Forms	Contemporaneous Documentation		
22 forms including CbC Report	Master File	Local File	Special Documentation

# PRC CbC Reporting and US CbC Rules

- Interplay with the US and home country concepts for CbC reporting
- Legal authority to request a CbC Report during audit where no information sharing agreement exists
- How to manage PRC tax authorities' request for CbC Report?
- What will happen once the PRC tax authorities get an MNC's CbC Report?

# Local File: Value Chain Analysis

Description of the group's business, logistics and capital flow

The latest fiscal year's financial statements for each participant in the value chain

Measurement and allocation of the enterprise's value contributed by LSAs

Allocation principles and results of the enterprise group's profit in its global value chain

- Information exceeds what is relevant to China?
- How to present value chain information: qualitative description vs. quantitative analysis?
- Will the value chain analysis affect the selection of TP methods?

# Local File: Location Specific Advantages



- Local comparables vs. location specific advantages (LSAs)
- Quantification and allocation of additional profits arising from LSAs
- Accurate quantification or a bargaining chip?

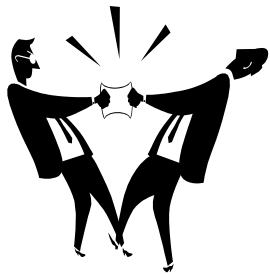


# Challenges from Bulletin 42

- Balance between compliance and appropriate information disclosure
  - Compliance burden?
  - Confidentiality?
  - How will the tax authority use the information?
  - How to manage the tax authorities' information request?
- Greater transparency vs. sustainability of current TP structures (potential TP audit risk)

# Tax Controversy

# Tax Controversy Resolution Options



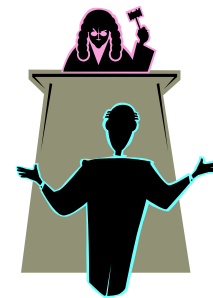
Negotiation with  
tax bureaus



Administrative  
Review

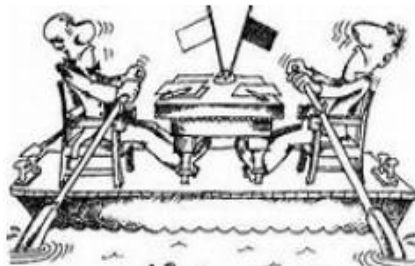


Litigation



Appeal

OR



MAP



APA

# Controversy: Trends on Two Sides



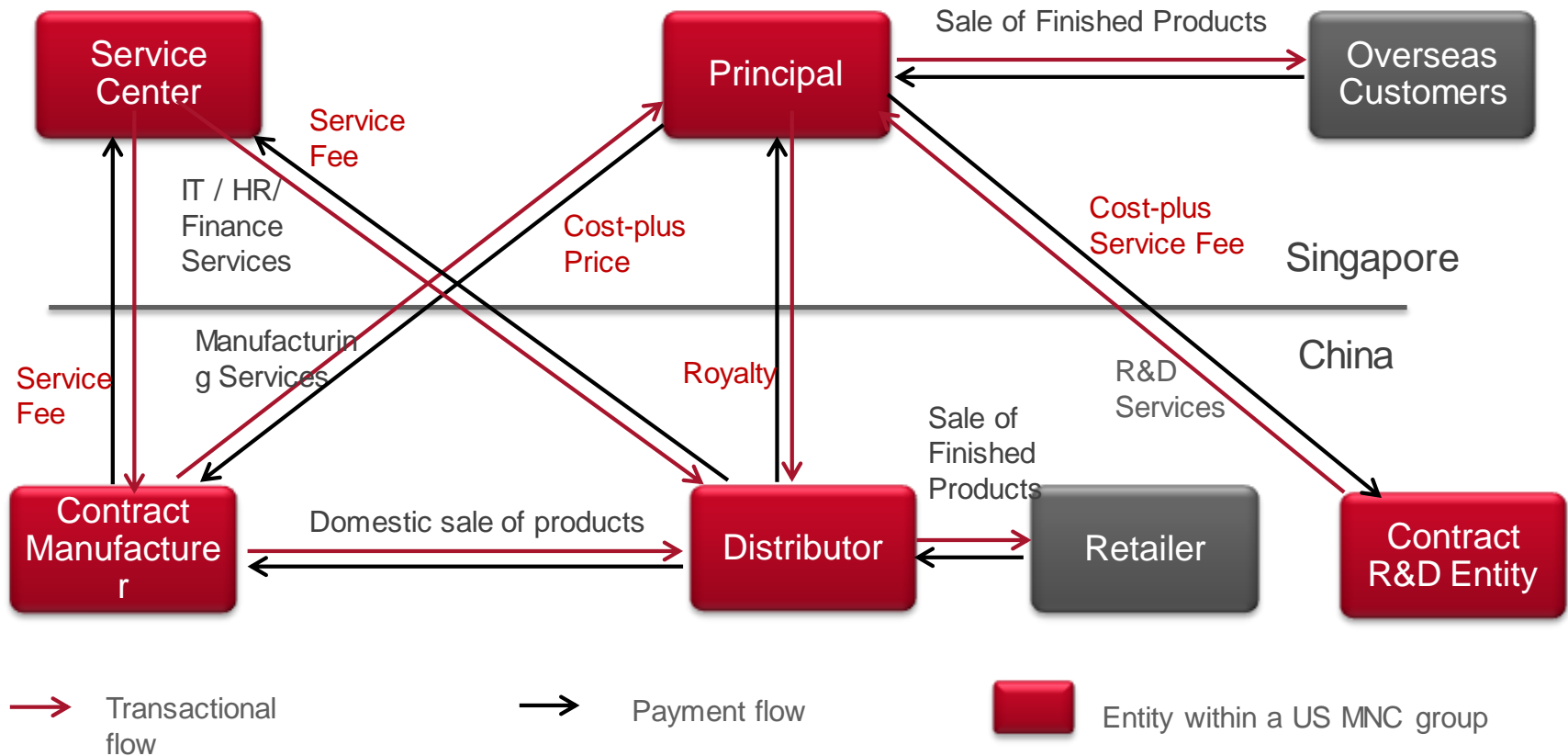
# Dispute Resolution via APA: New APA Administrative Rules (Bulletin 64)



- Standardize APA application procedures
- Analysis and evaluation ahead of formal application
- Increased focus on value/supply chain analysis and LSAs
- No deadline for tax authorities to respond to the application
- More stringent monitoring on profitability
- Limitation on the availability of APA vs. opportunity for high quality APA application?

# Case Study

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# China – Recent tax developments

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