Erasmus School of Law

ACTL-IBFD-Conference

Taxing the digital economy:

the EU proposals and other insights

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

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

Erasmus University Rotterdam

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..

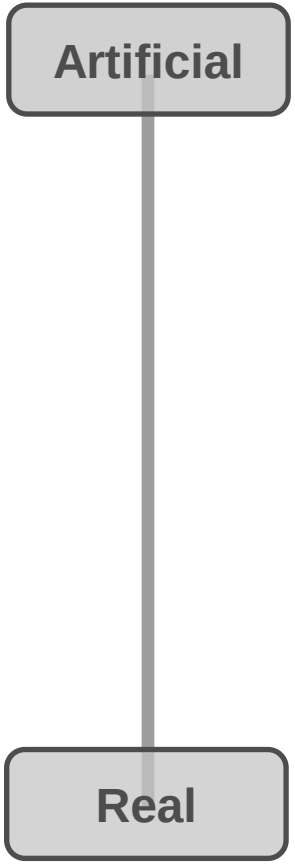
Artificial

BEPS initiative says..

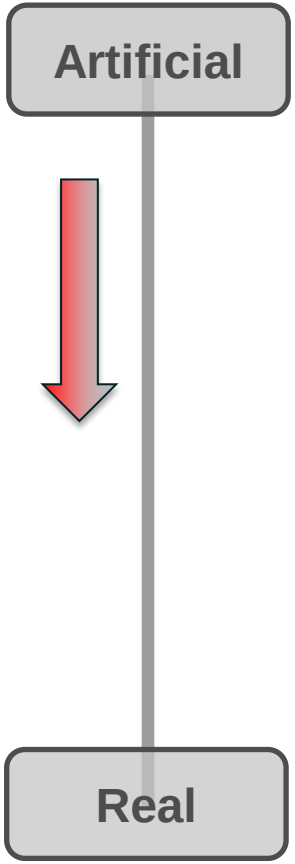
BEPS initiative says..

Artificial

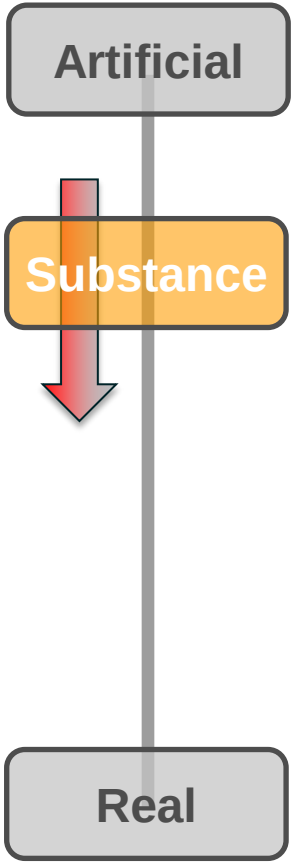
BEPS initiative says..

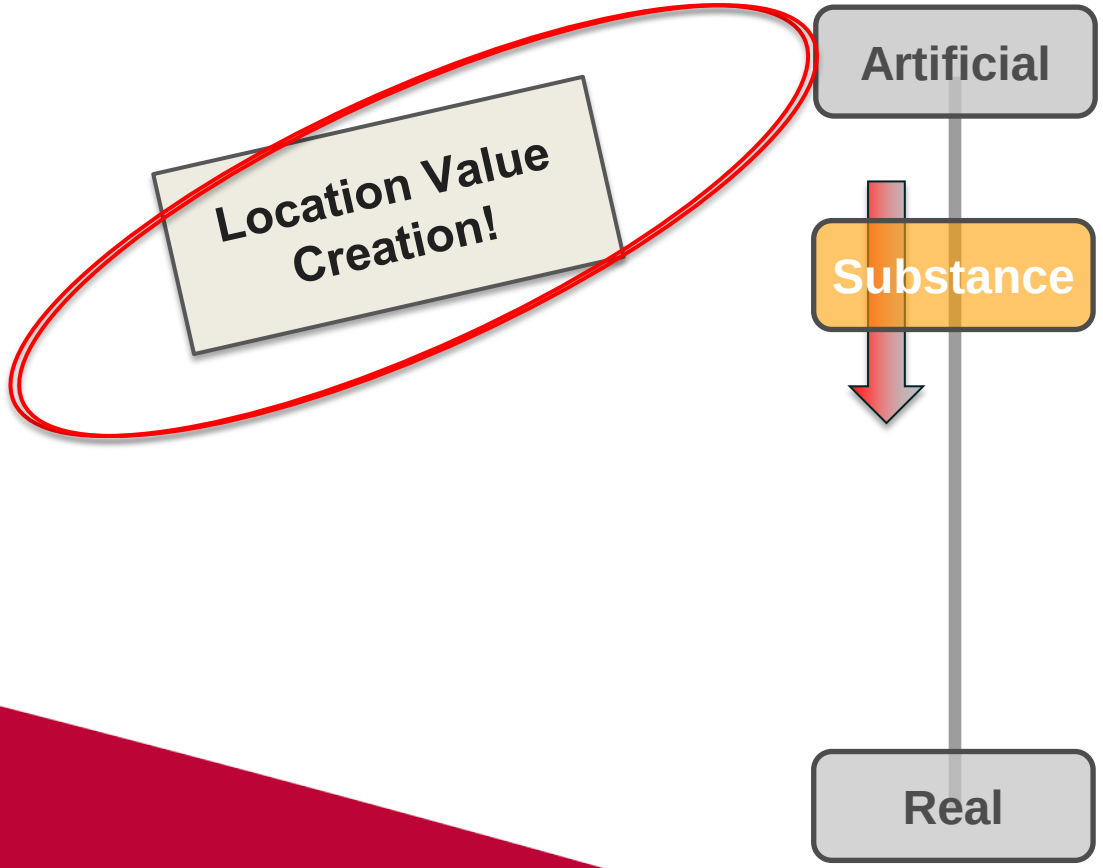


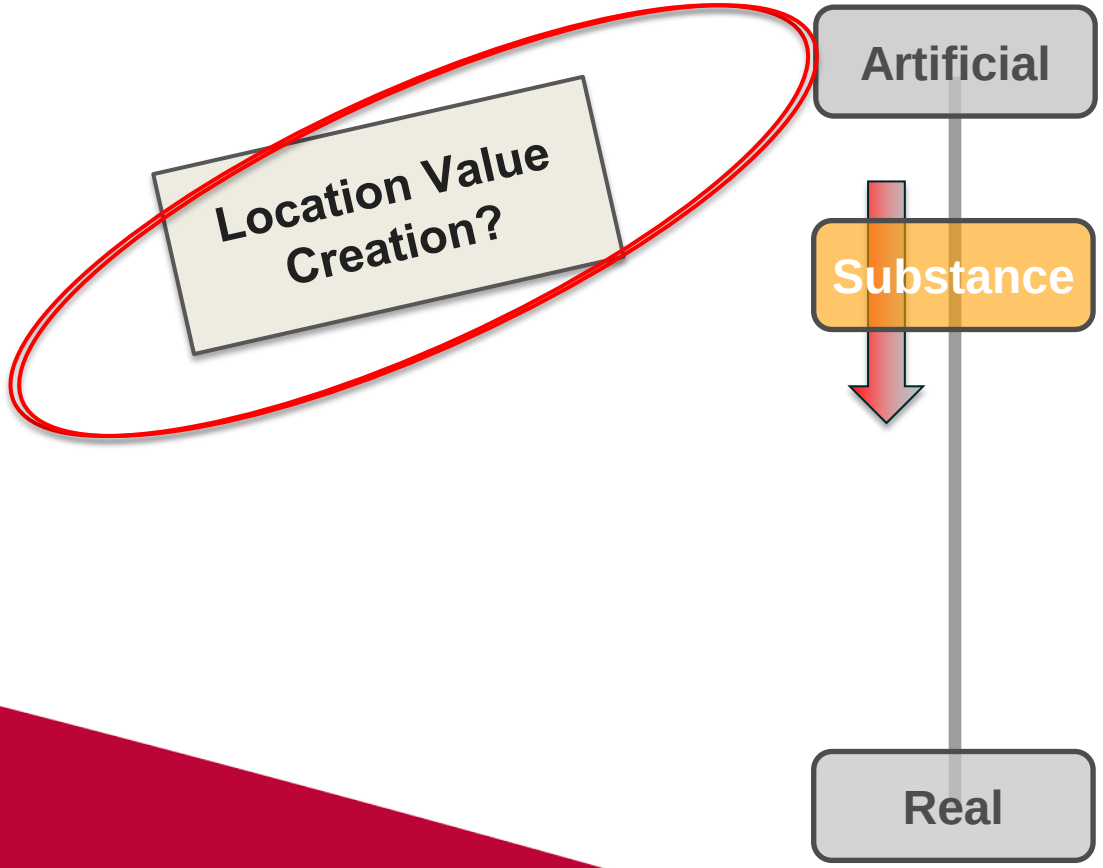
BEPS initiative says..



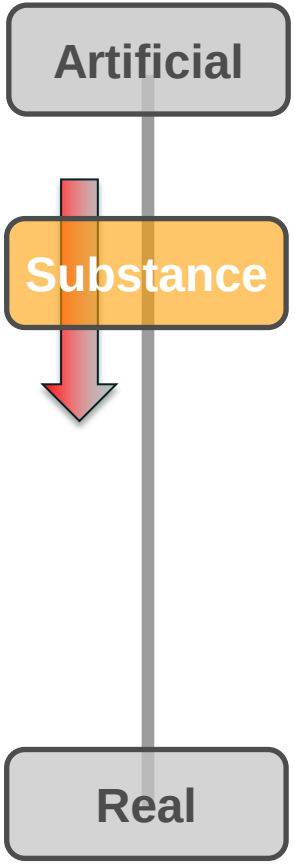
BEPS initiative says..



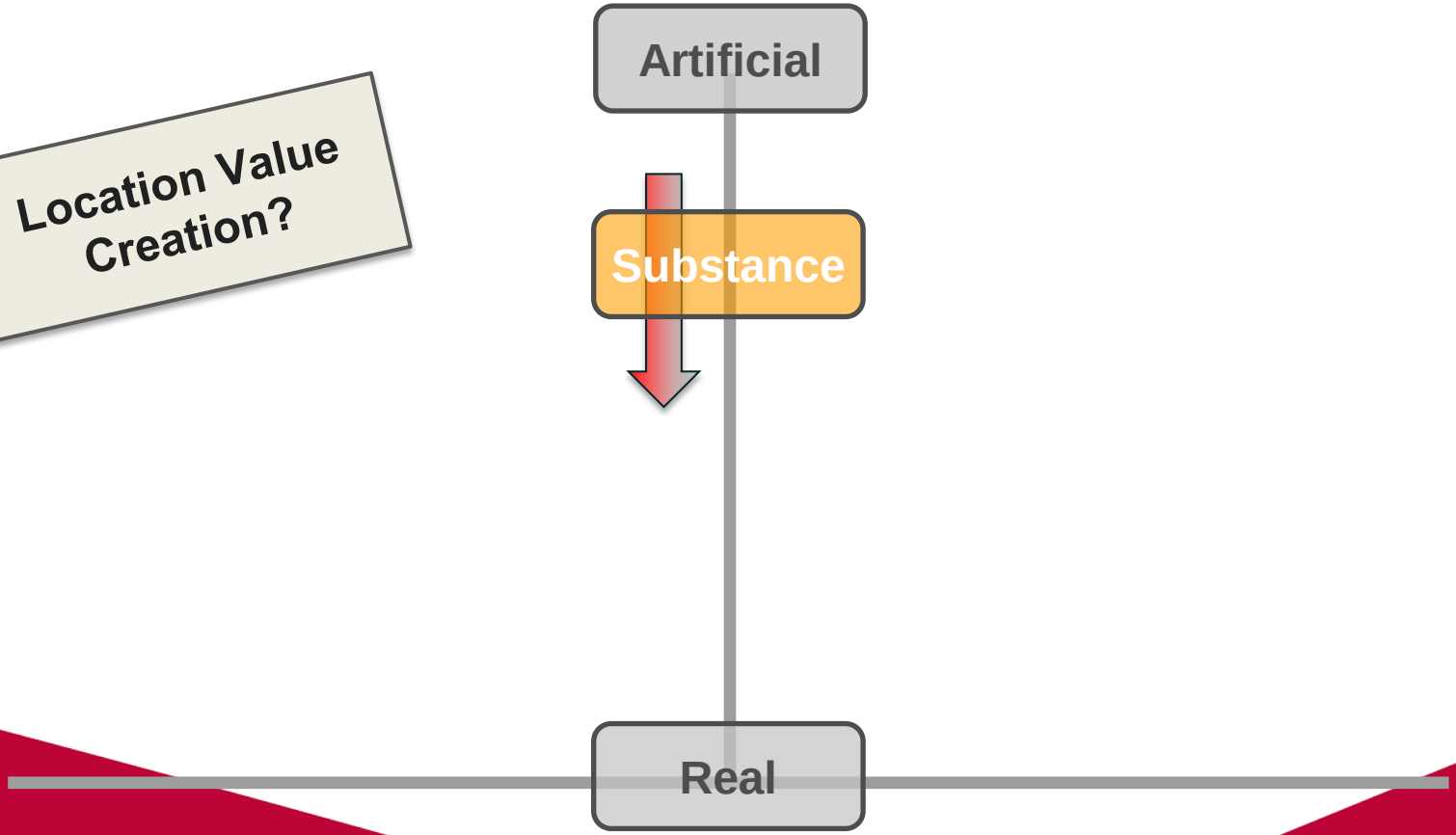

Location Value Creation!
Artificial
Substance
Real


Location Value Creation?
Artificial
Substance
Real

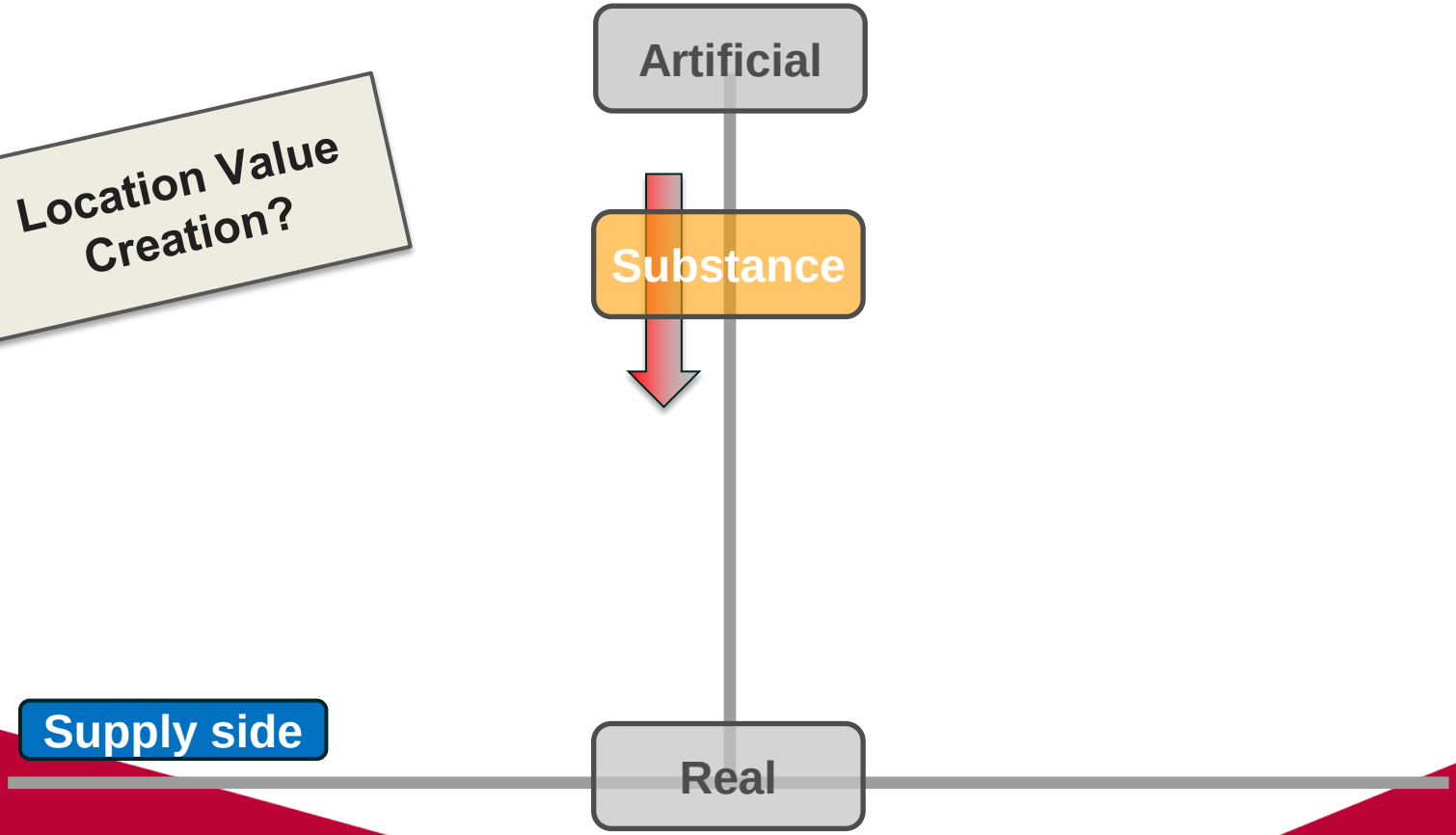
Location Value Creation?



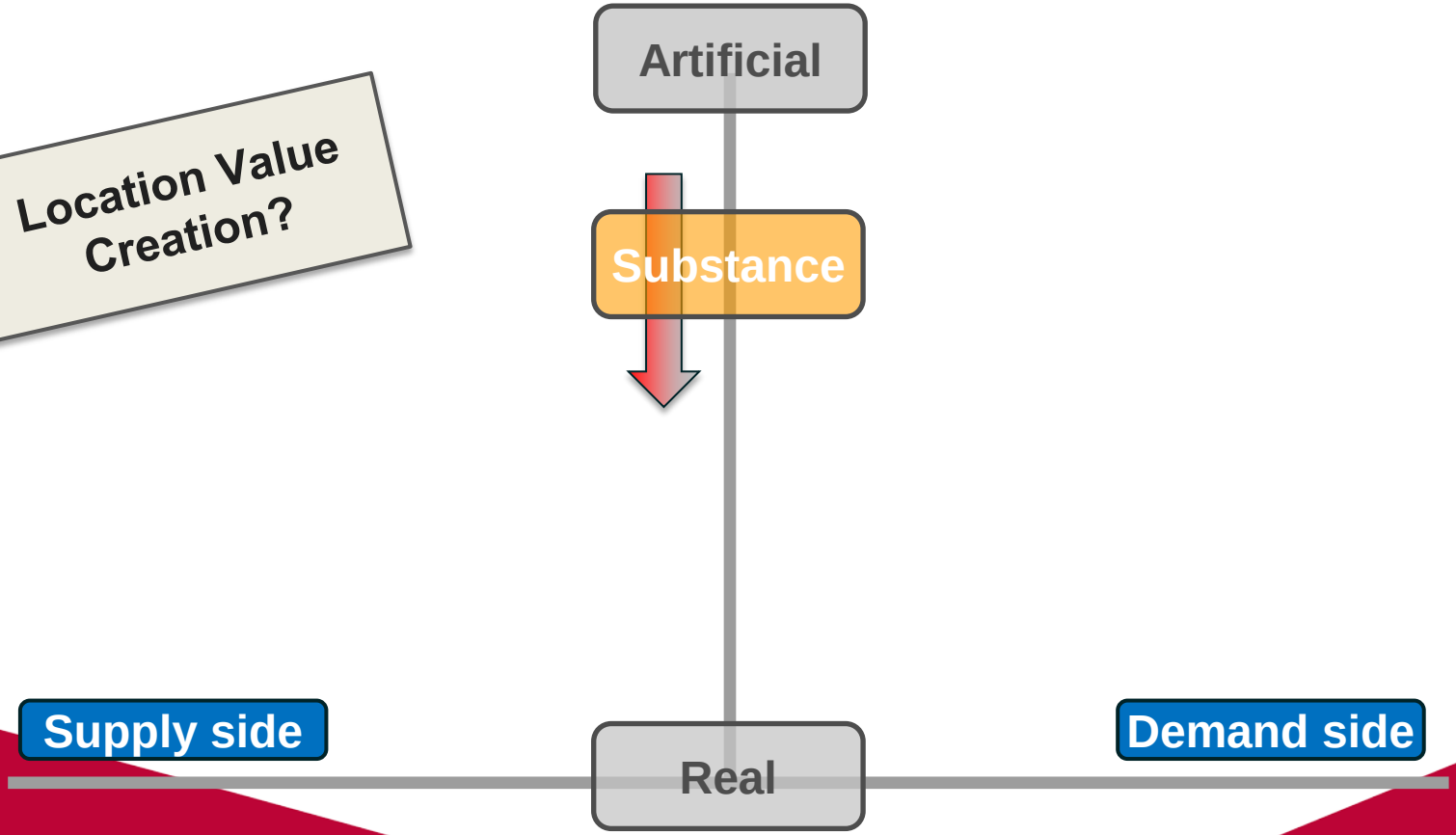
Location Value Creation?

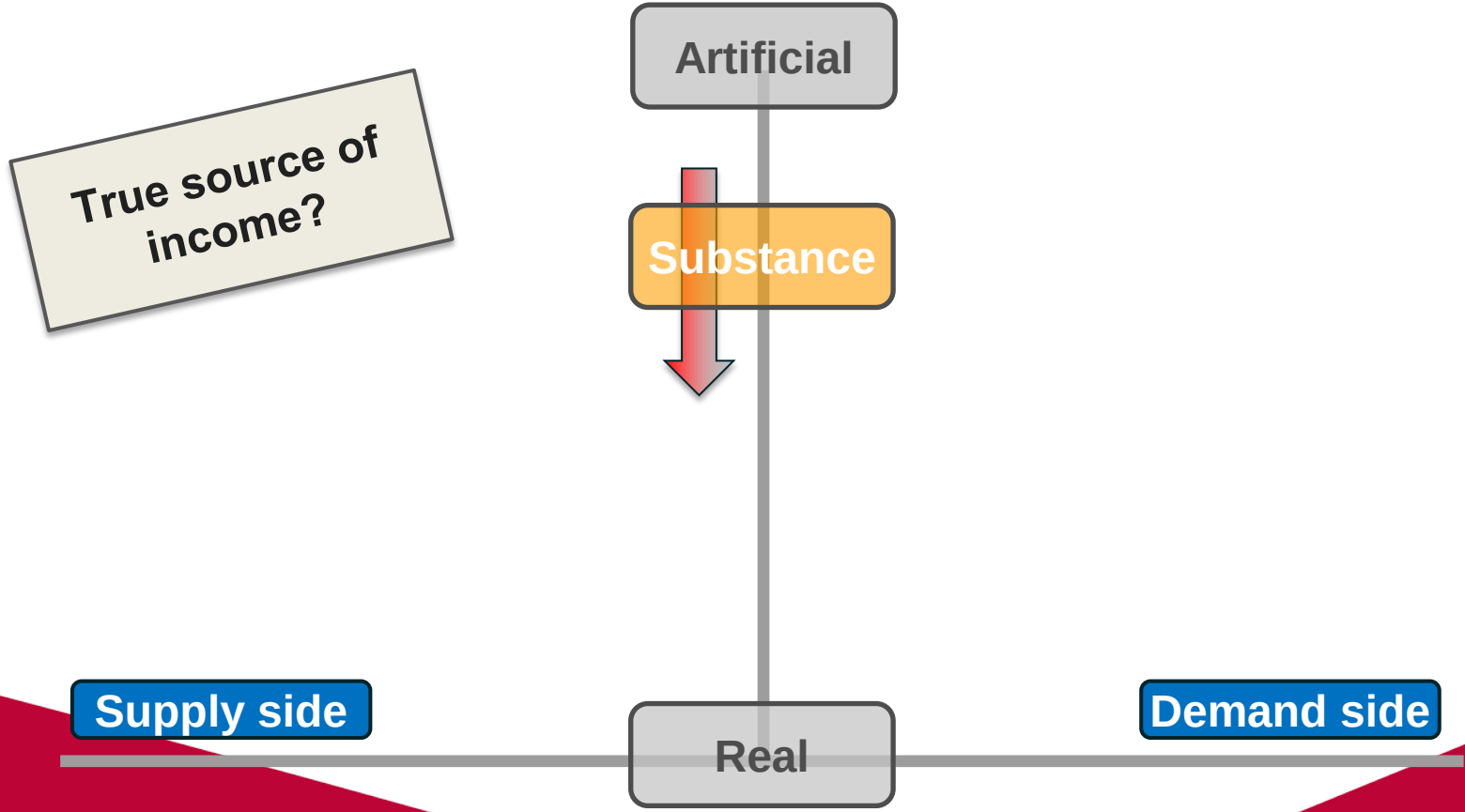


Location Value Creation?

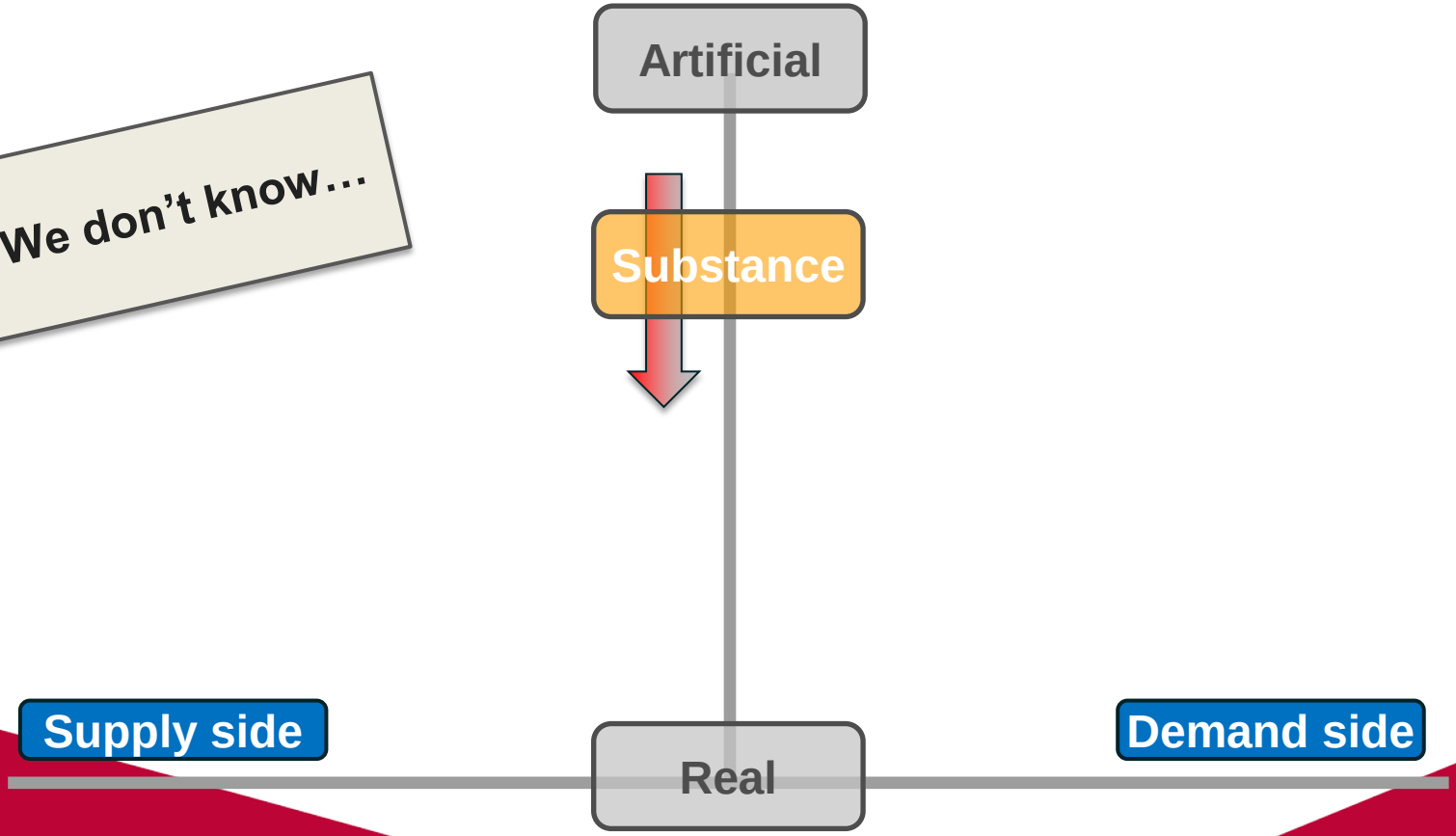


Location Value Creation?

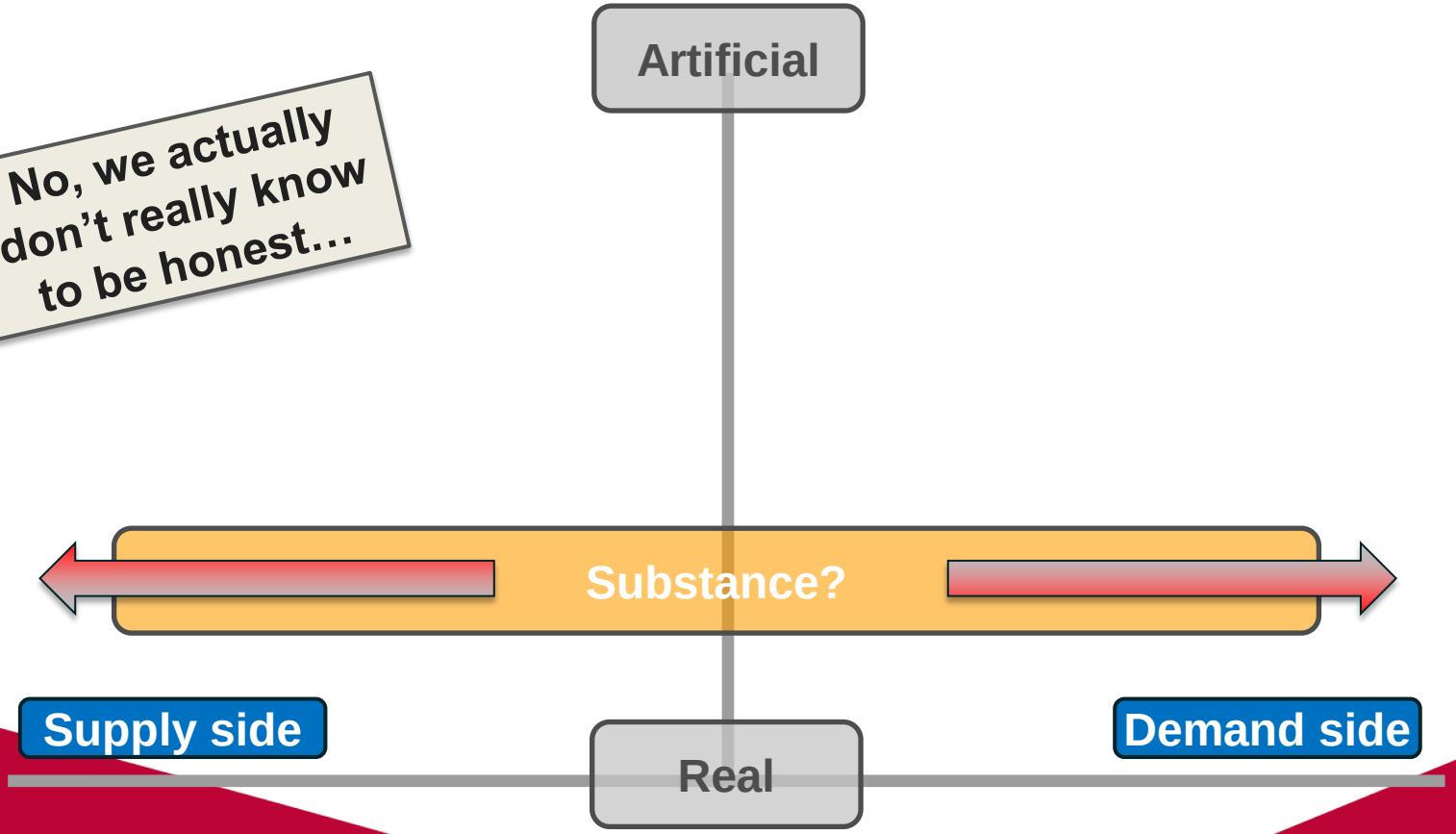


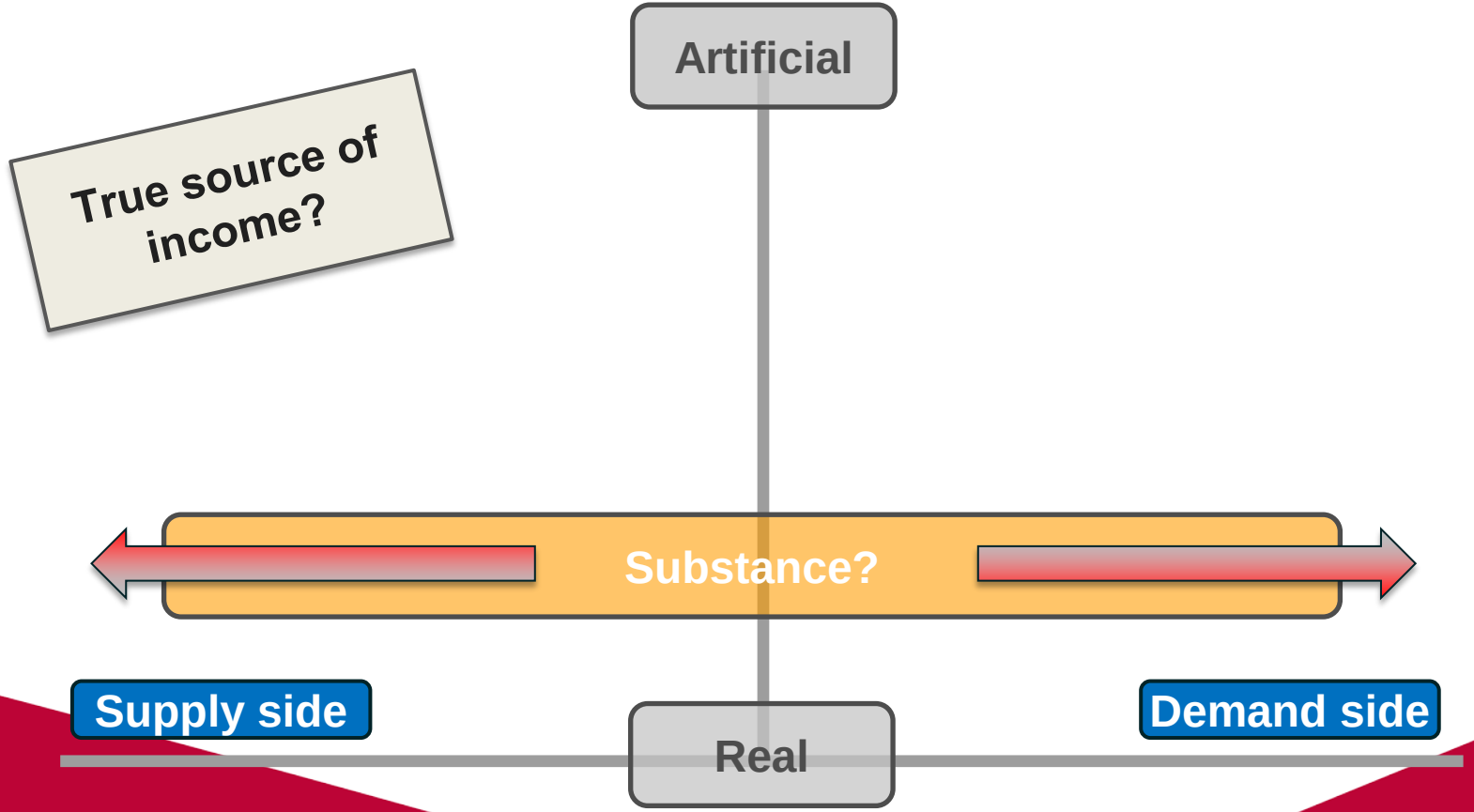

True source of income?
Artificial
Substance
Supply side
Real
Demand side

We don’t know…

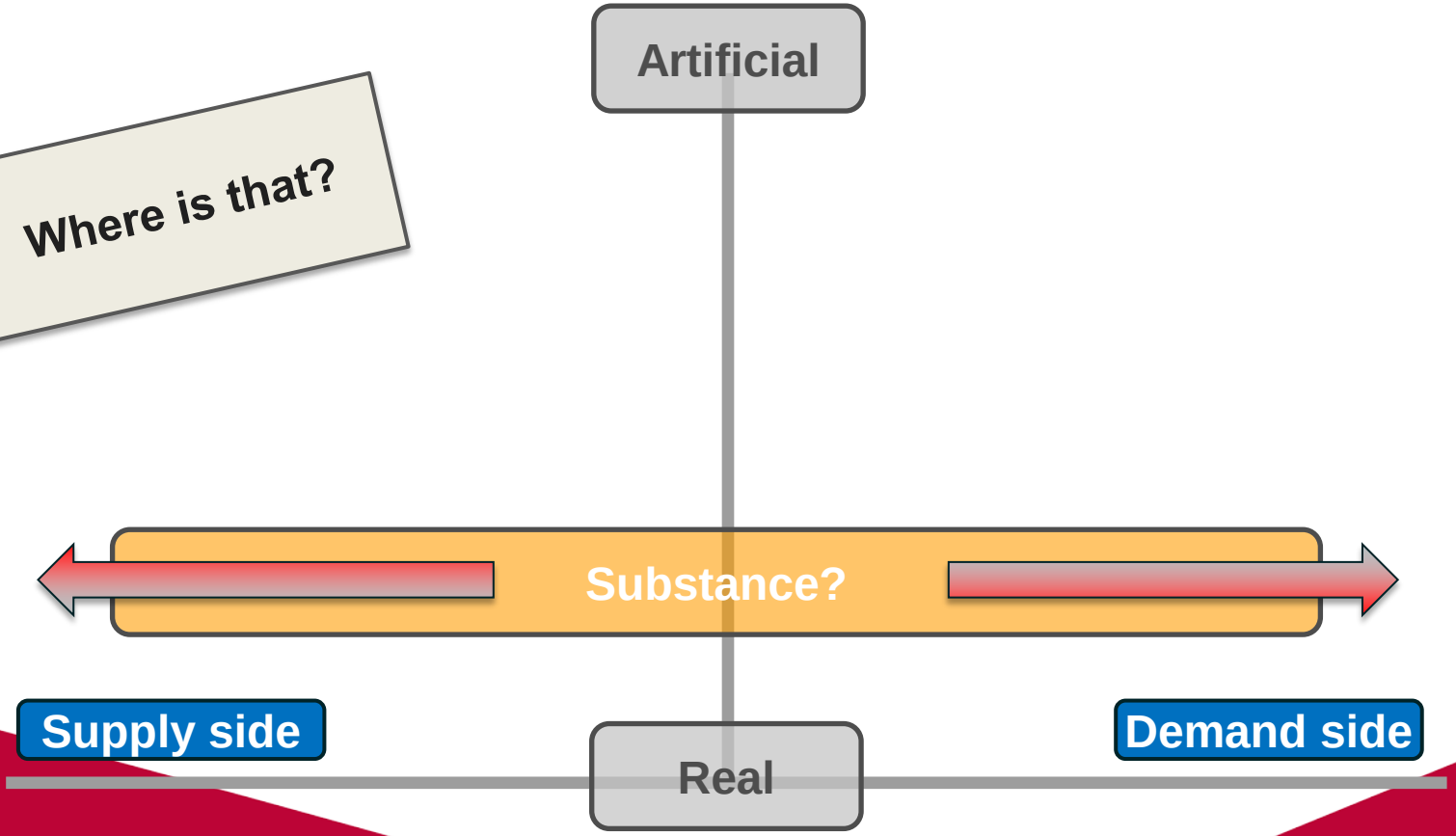


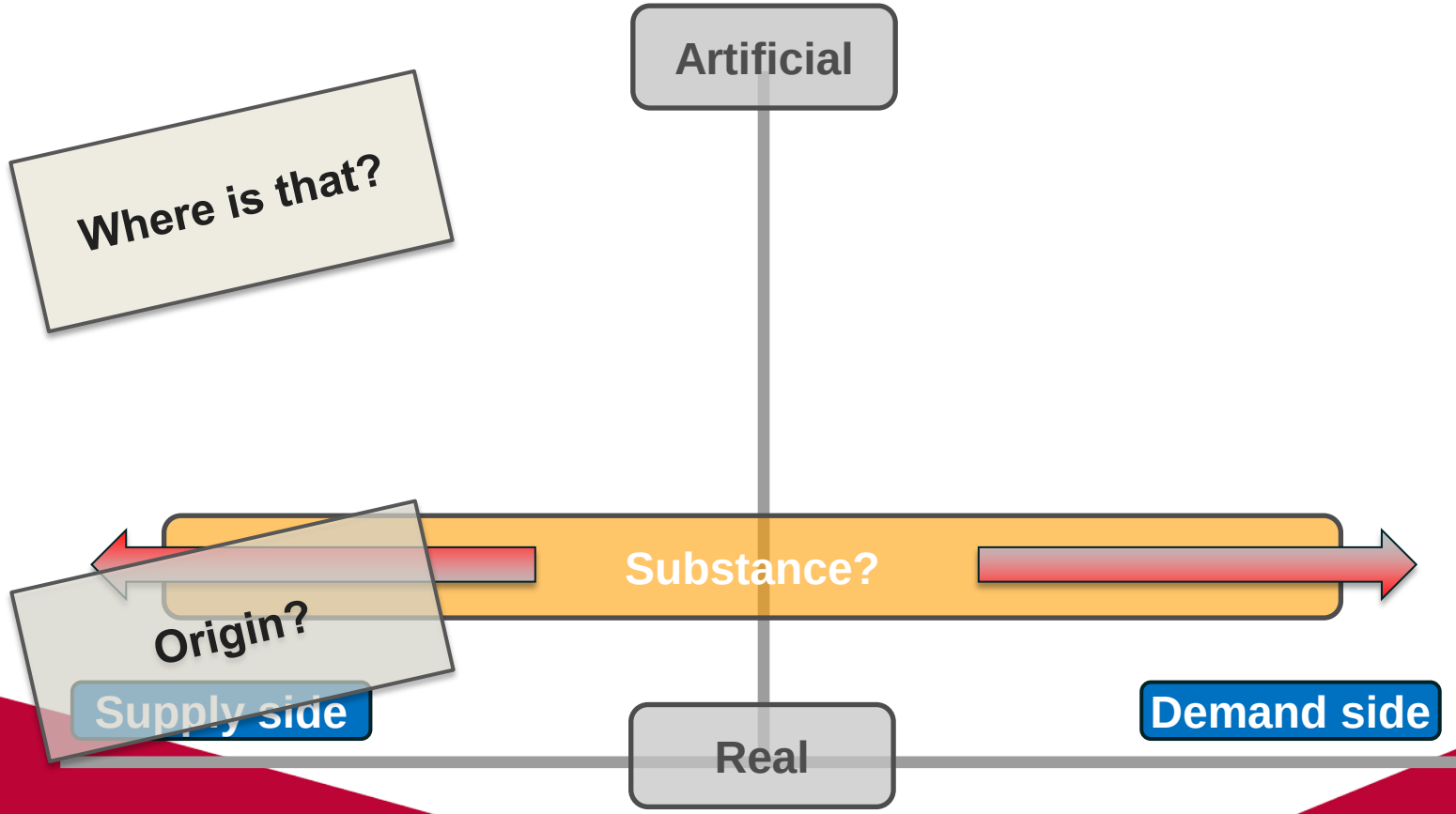
No, we actually don't really know to be honest…

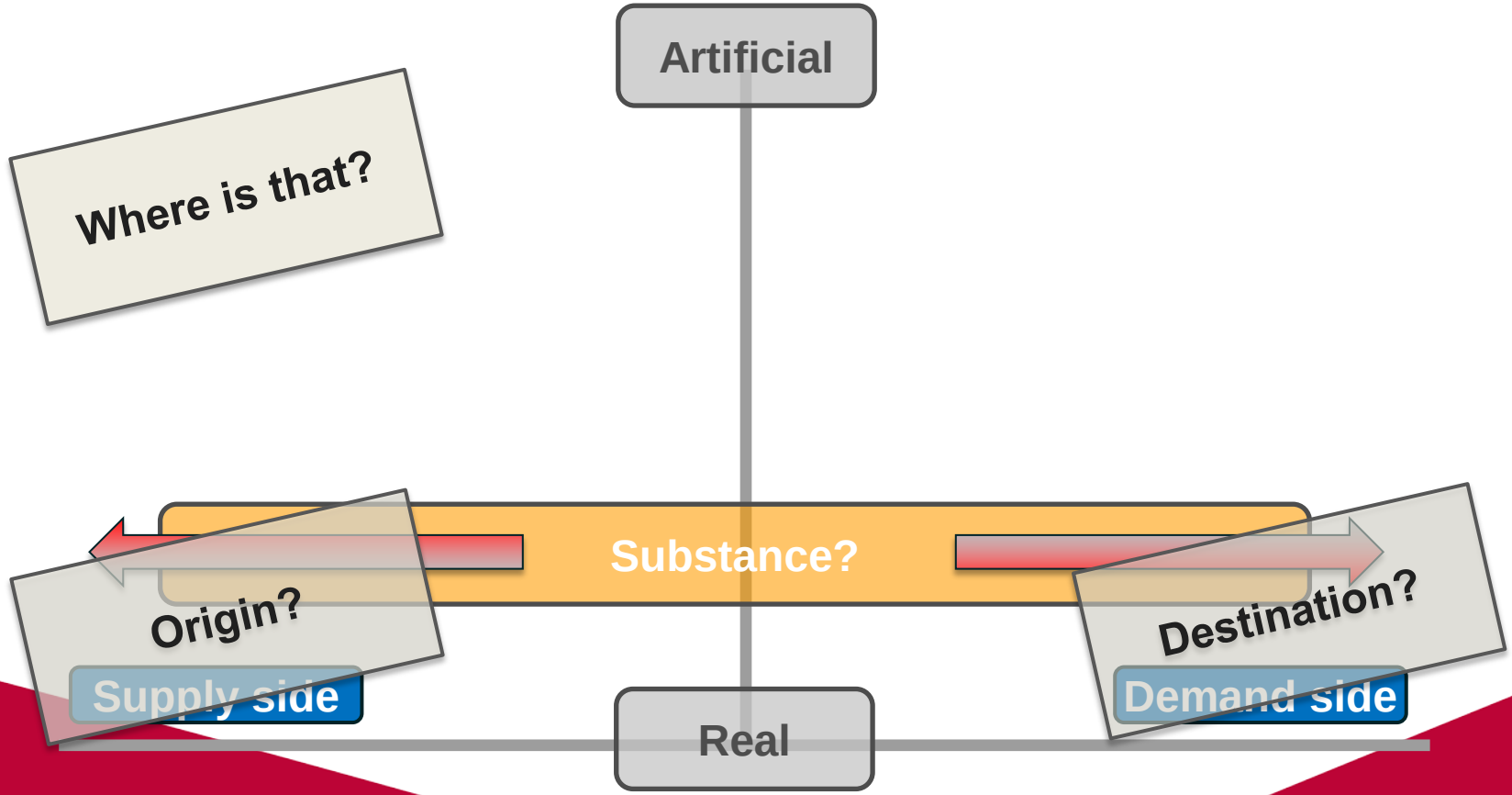



True source of income?
Artificial
Substance?
Supply side
Demand side
Real

Where is that?




Artificial
Where is that?
Substance?
Origin?
Supply side
Demand side
Real


Where is that?
Artificial
Substance?
Origin?
Supply side
Destination?
Demand side
Real

Let's take a look…

Supply side

Demand side

Country A

Let's take a look…

Supply side

Demand side

Country A

Country B

Let's take a look…

Supply side

Demand side

Country A

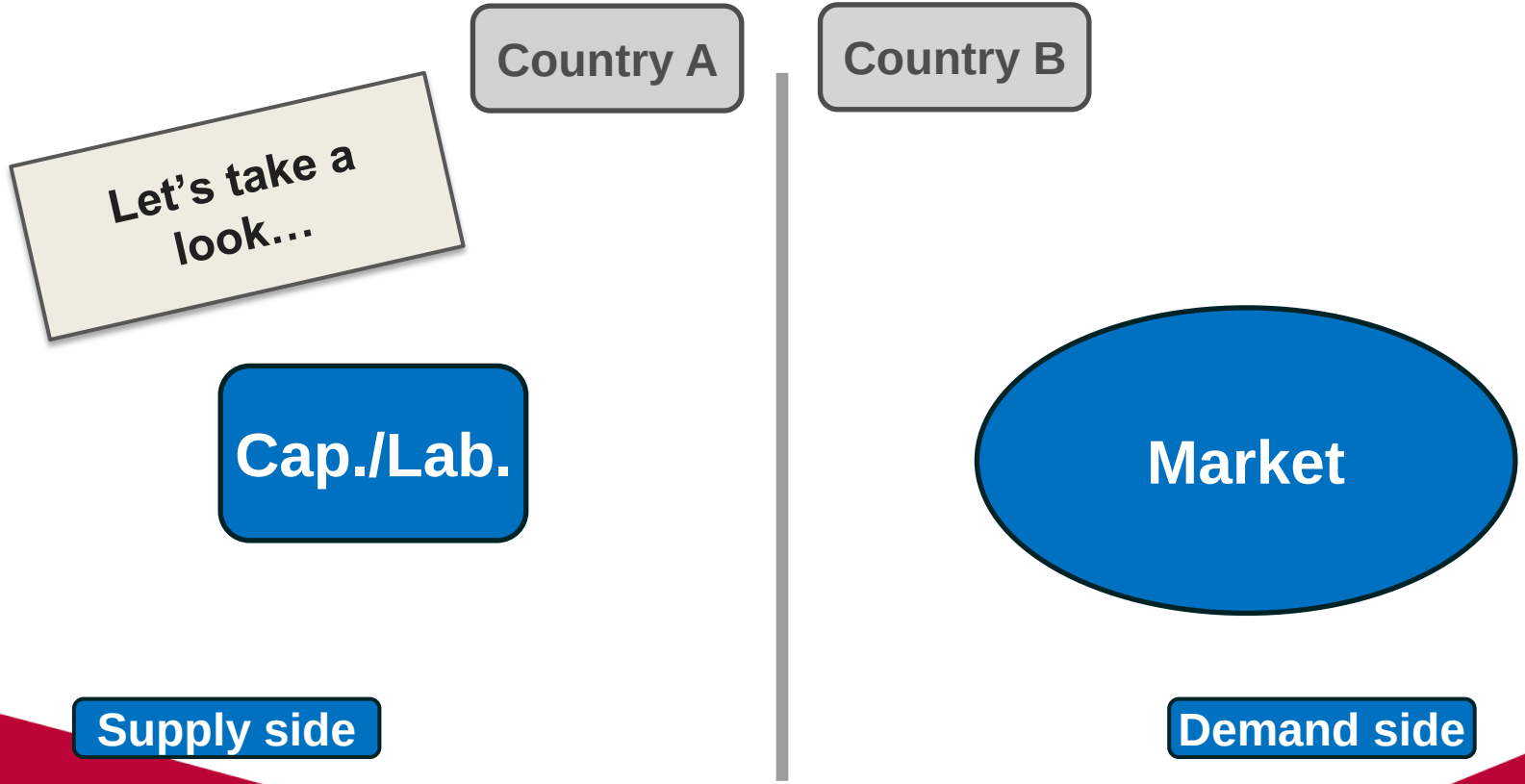
Country B

Let's take a look…

Cap./Lab.

Supply side

Demand side


Country A
Country B
Let's take a look…
Cap./Lab.
Market
Supply side
Demand side

Country A

Country B

Let's take a look…

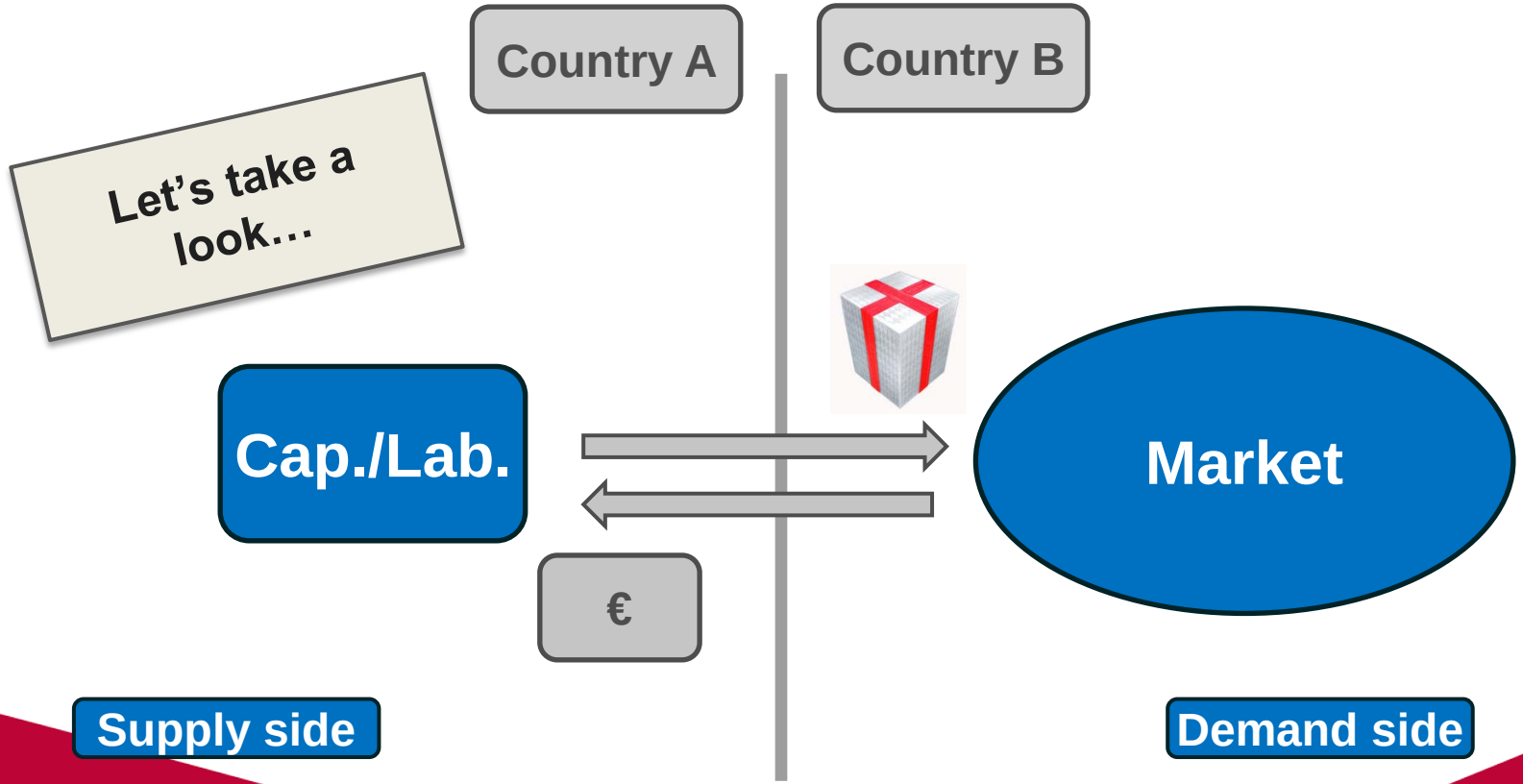


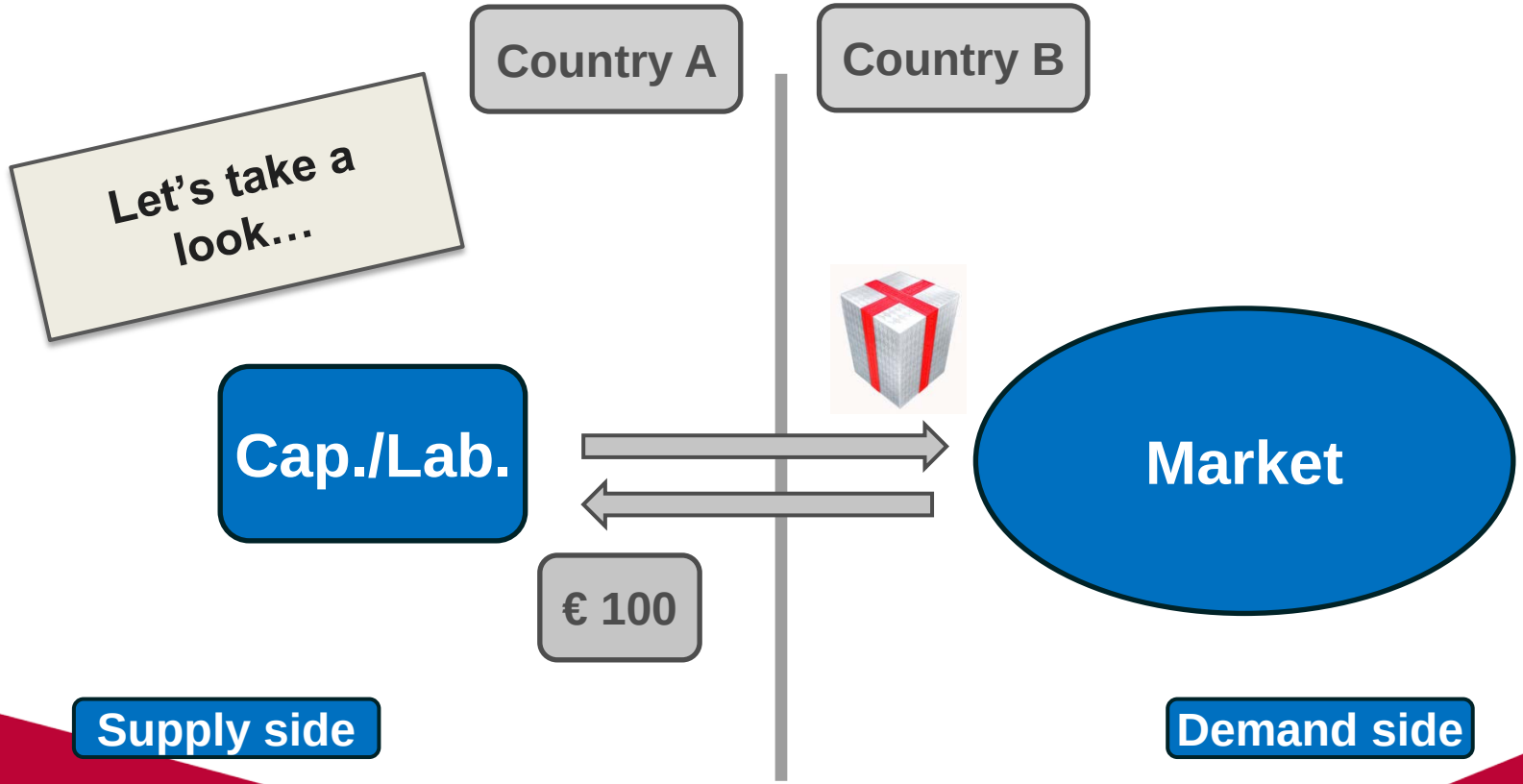
Cap./Lab.

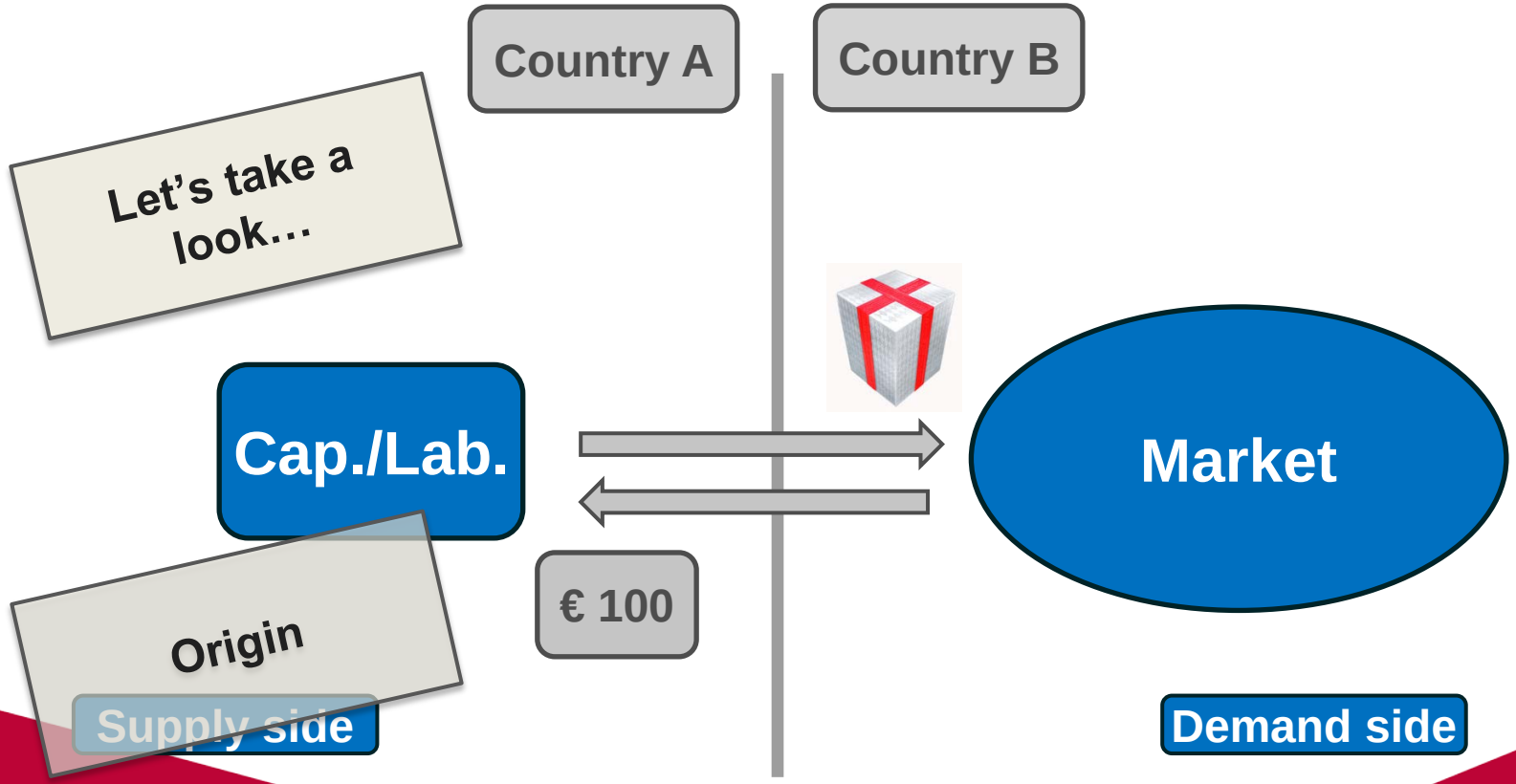
Market

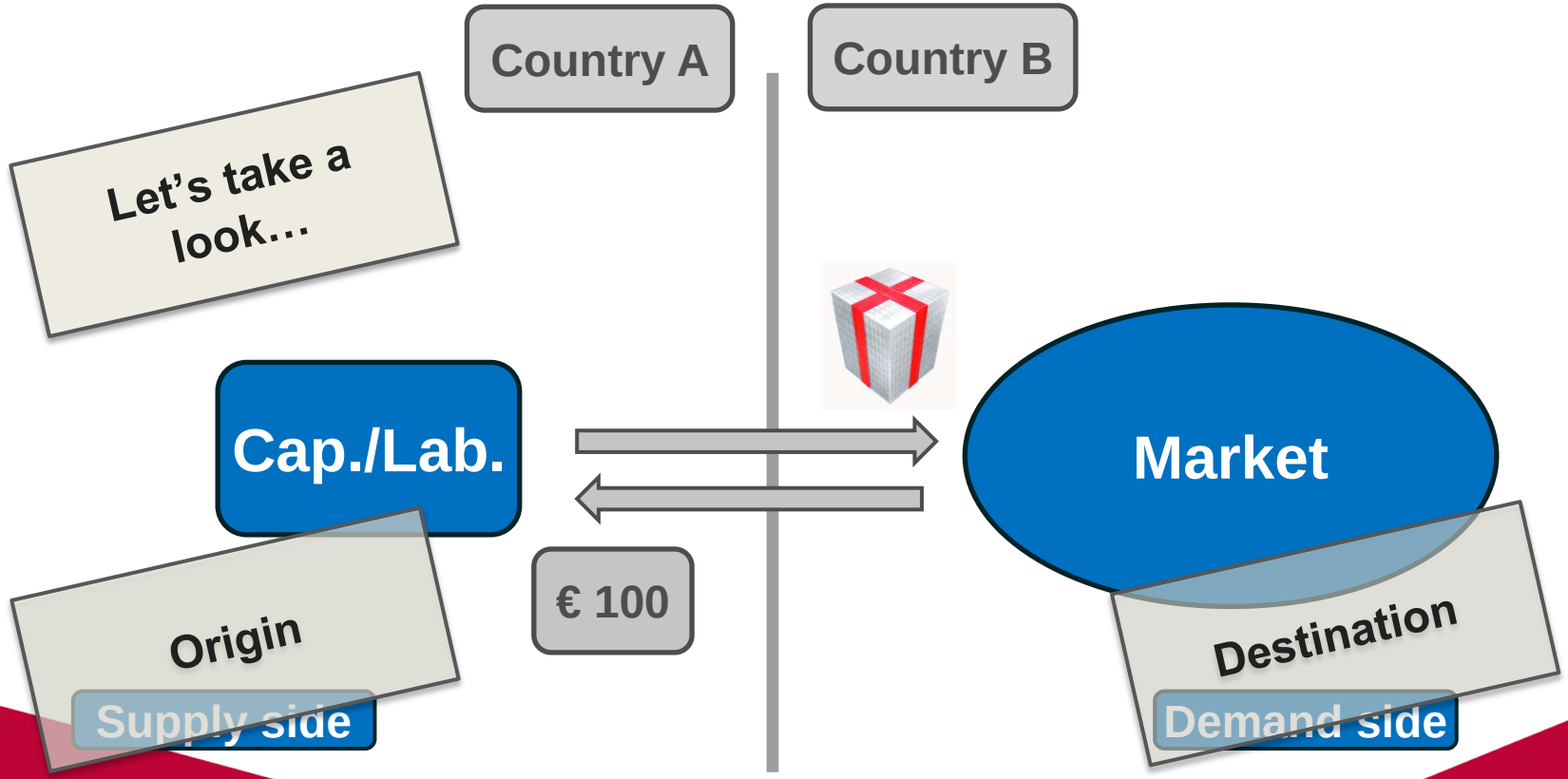
Supply side

Demand side


Country A
Country B
Let's take a look…
Cap./Lab.
Market
€
Supply side
Demand side


Country A
Country B
Let's take a look…
Cap./Lab.
Market
€ 100
Supply side
Demand side


Country A
Country B
Let's take a look…
Cap./Lab.
Market
€ 100
Origin
Supply side
Demand side


Country A
Country B
Let's take a look…
Cap./Lab.
Market
€ 100
Origin
Supply side
Destination
Demand side

Country A

Country B

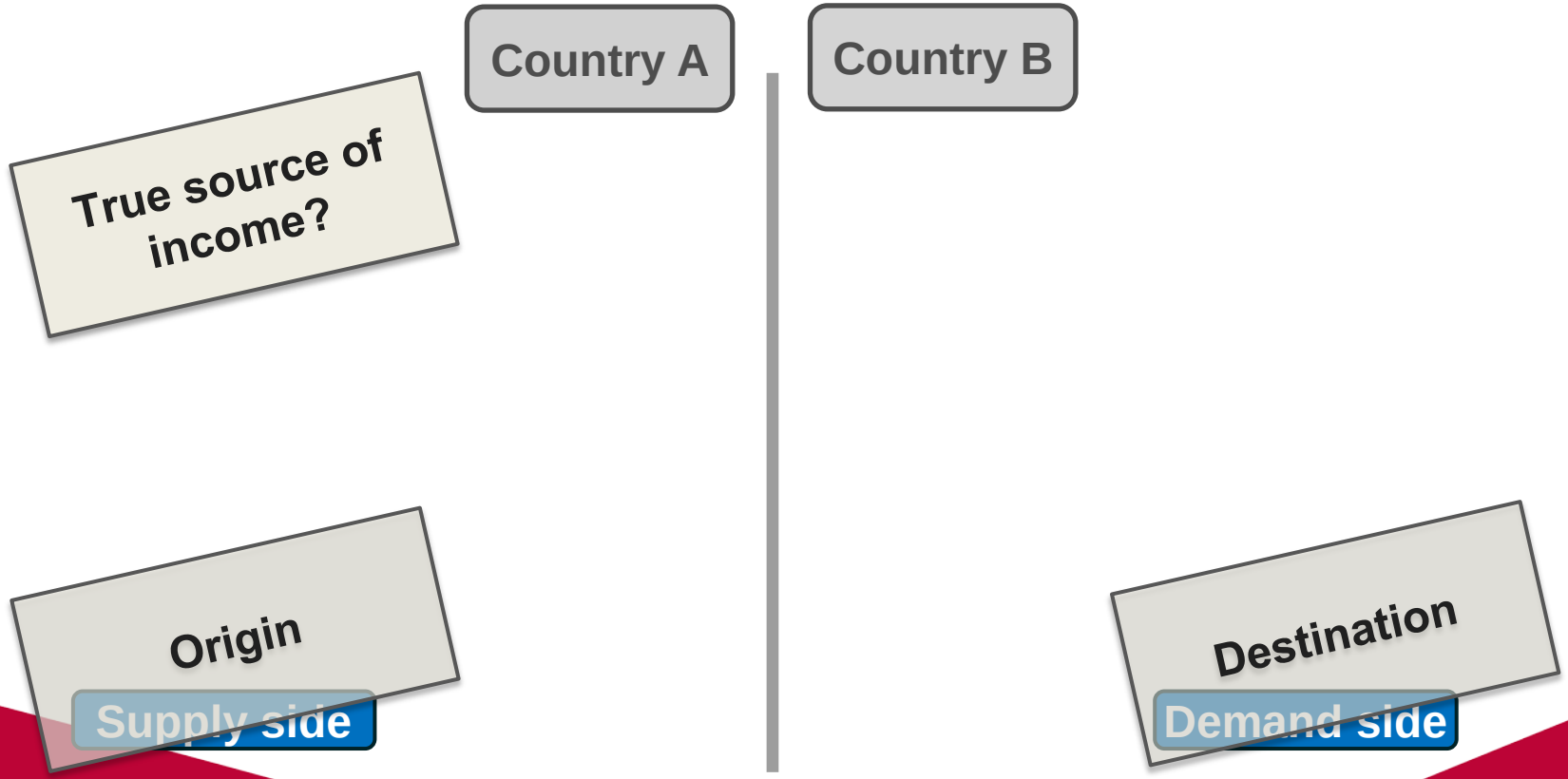
Let's take a look…

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?

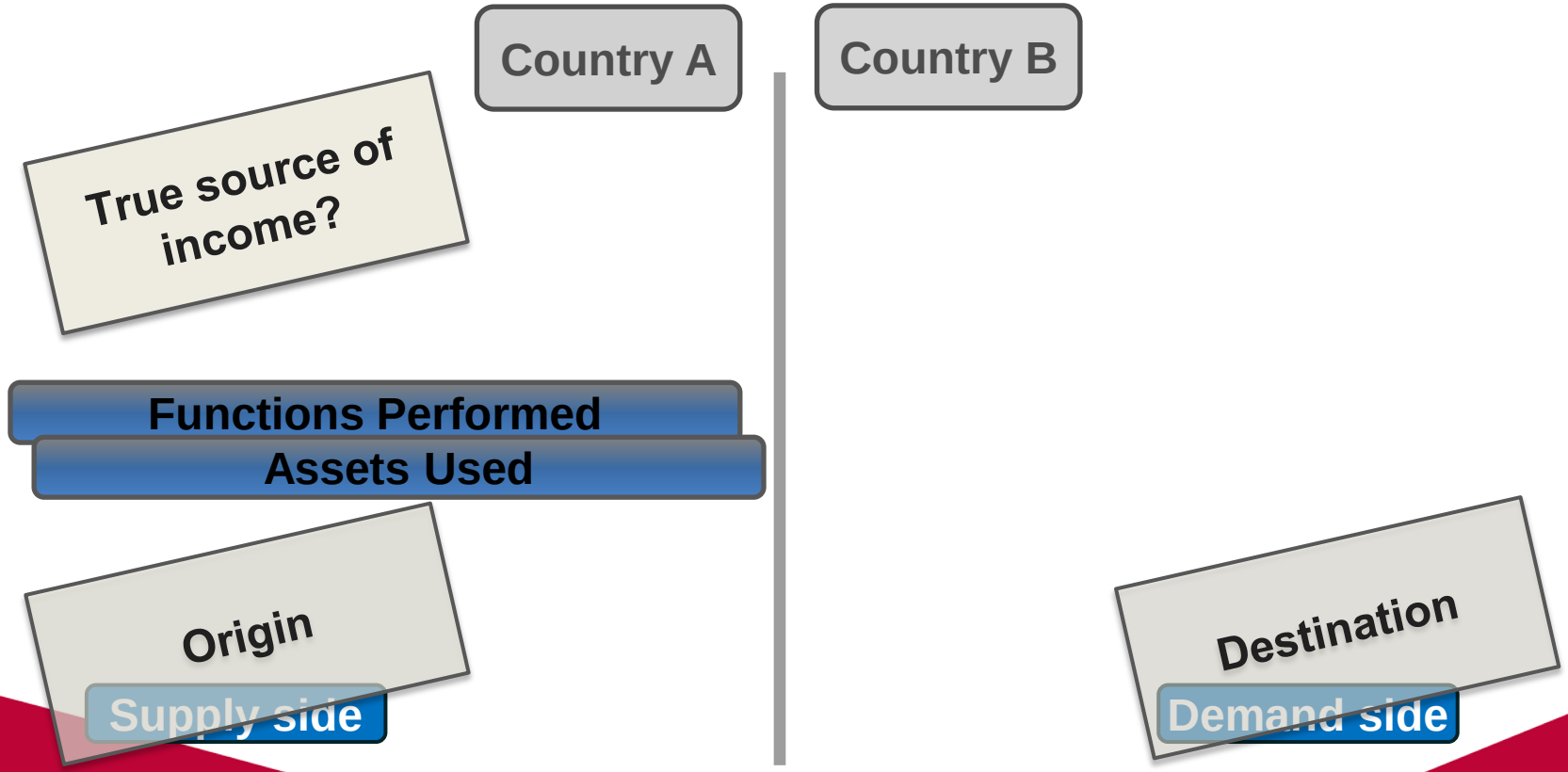
Functions Performed

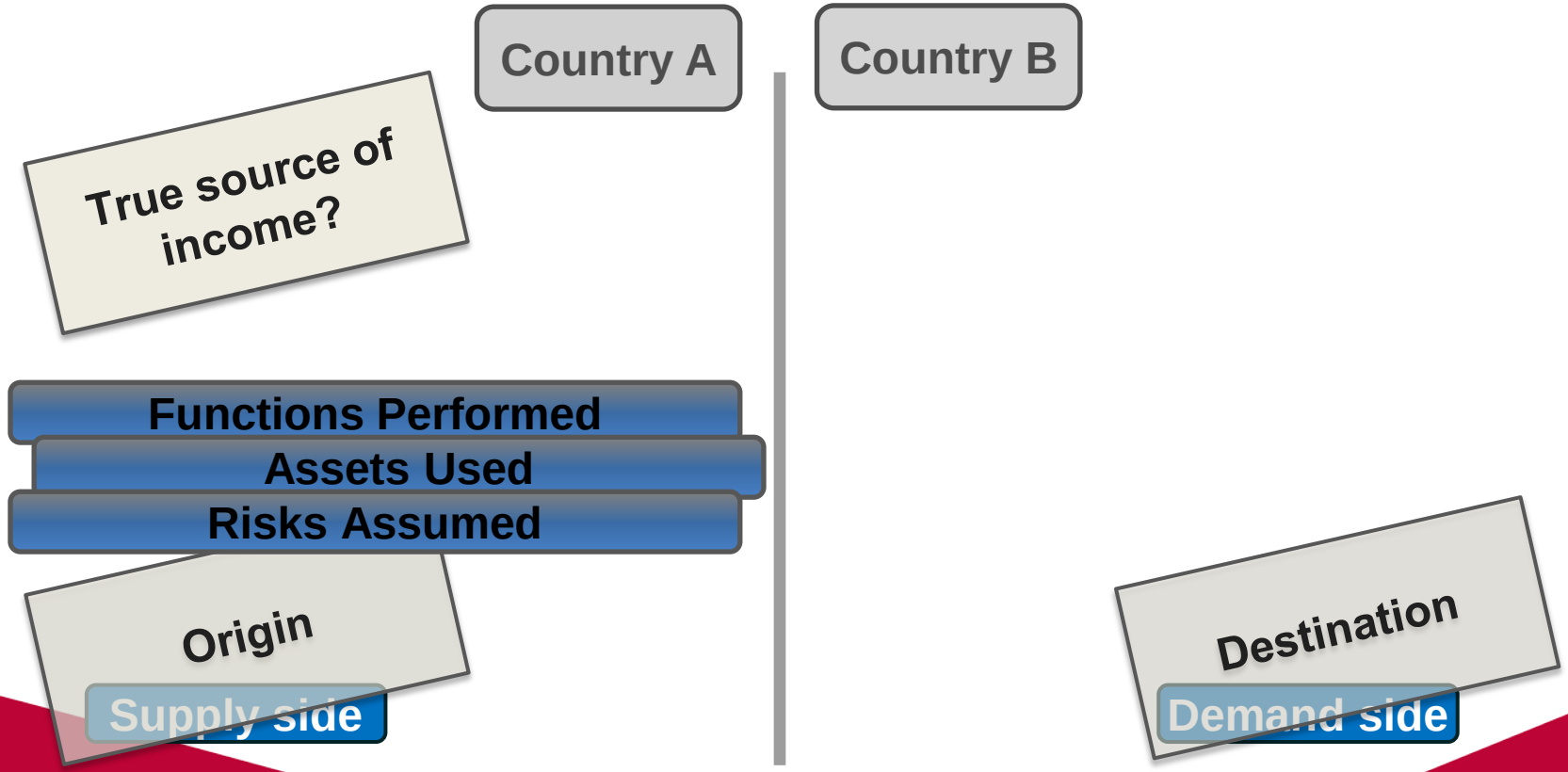
Origin

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?

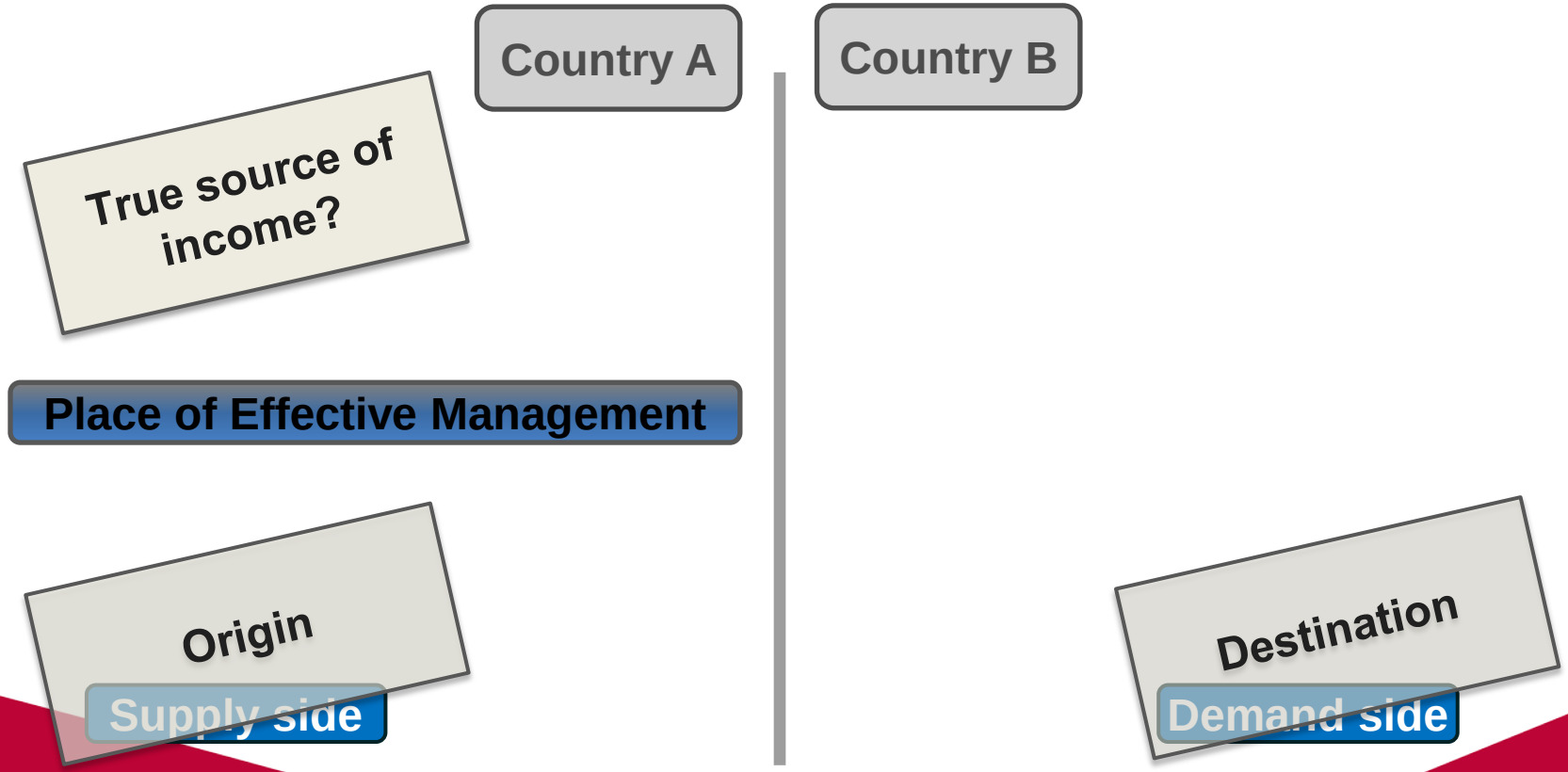
i.e. Transfer Pricing

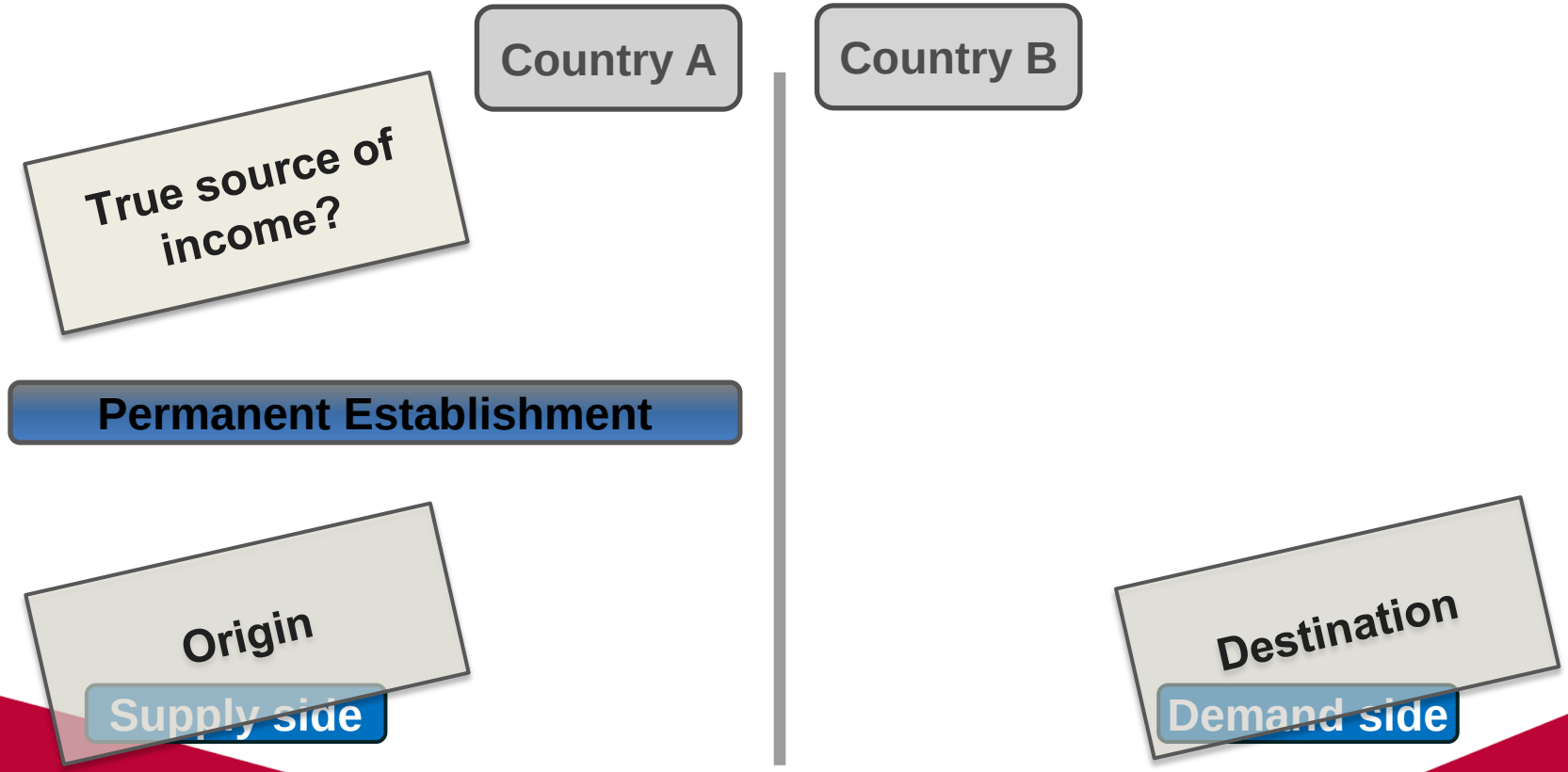
Origin

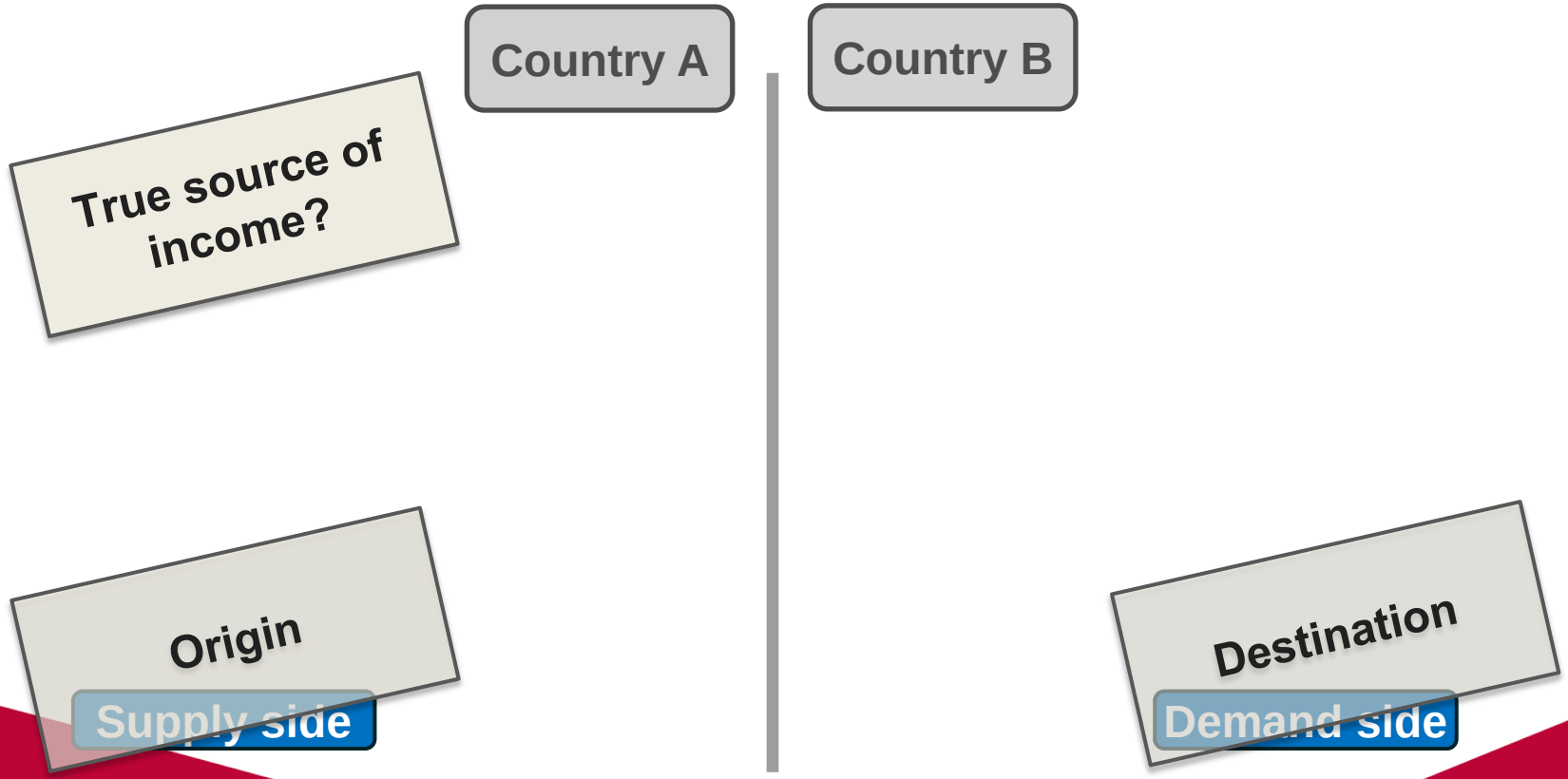
Supply side

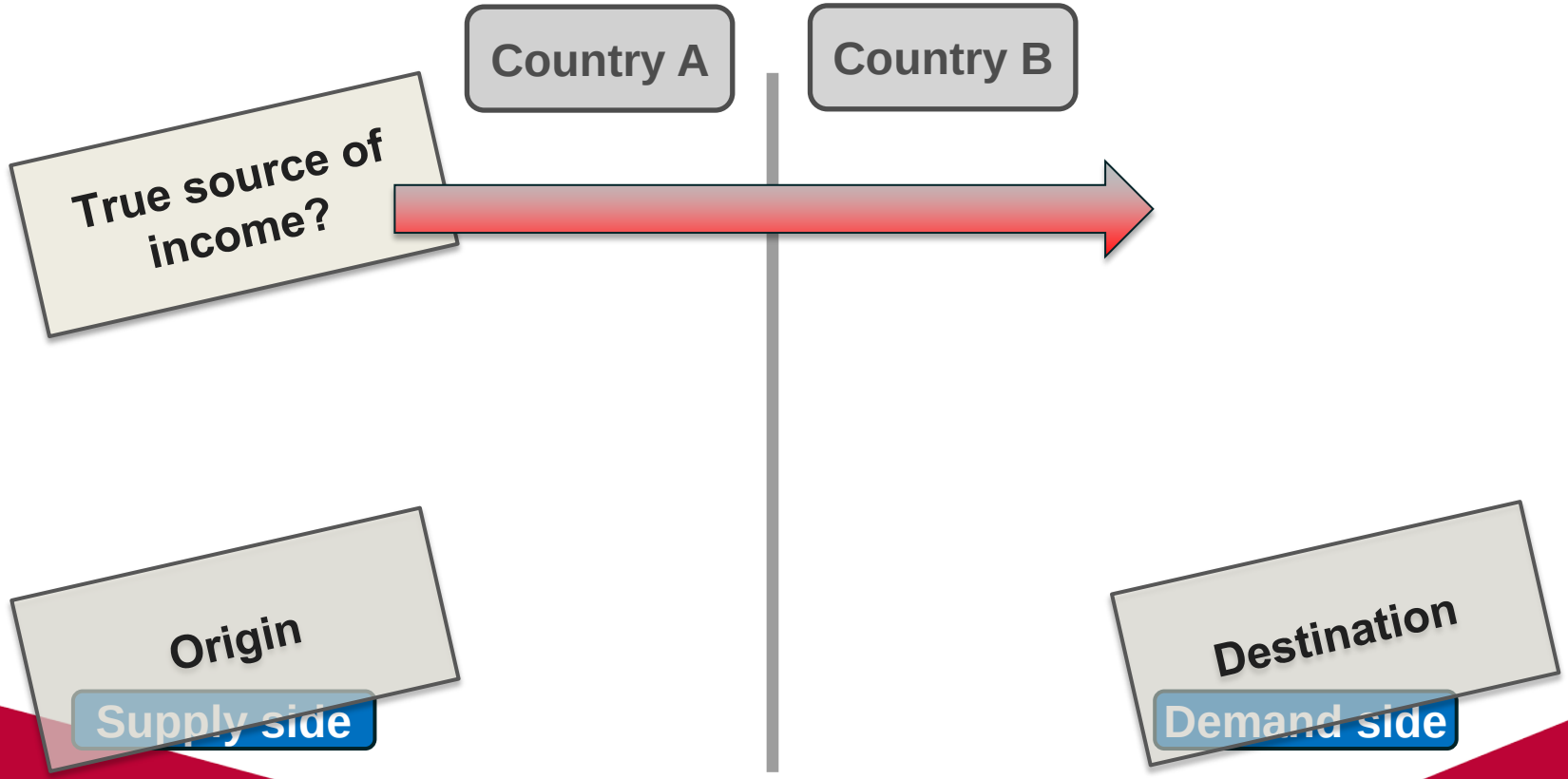
Destination

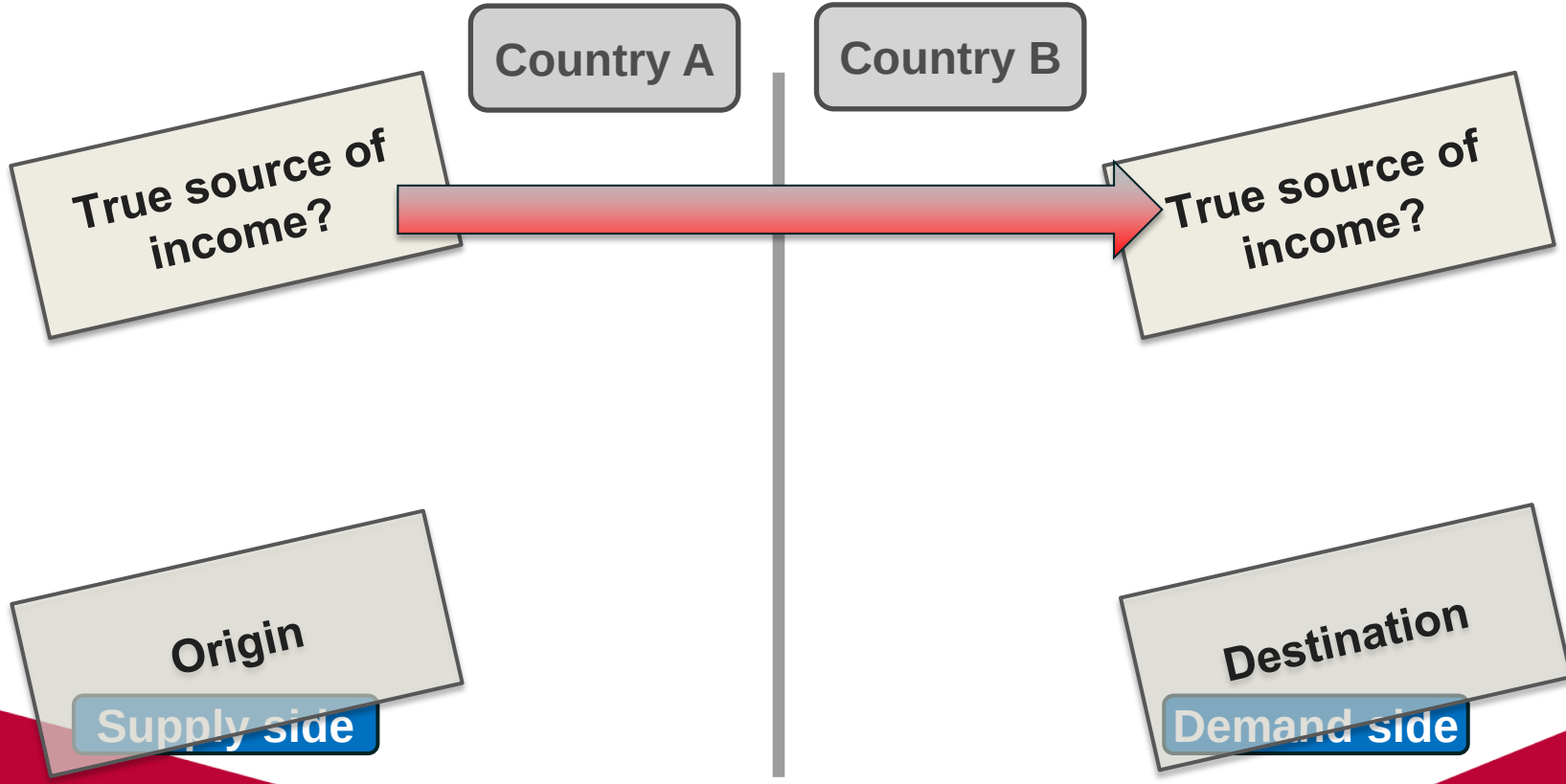
Demand side

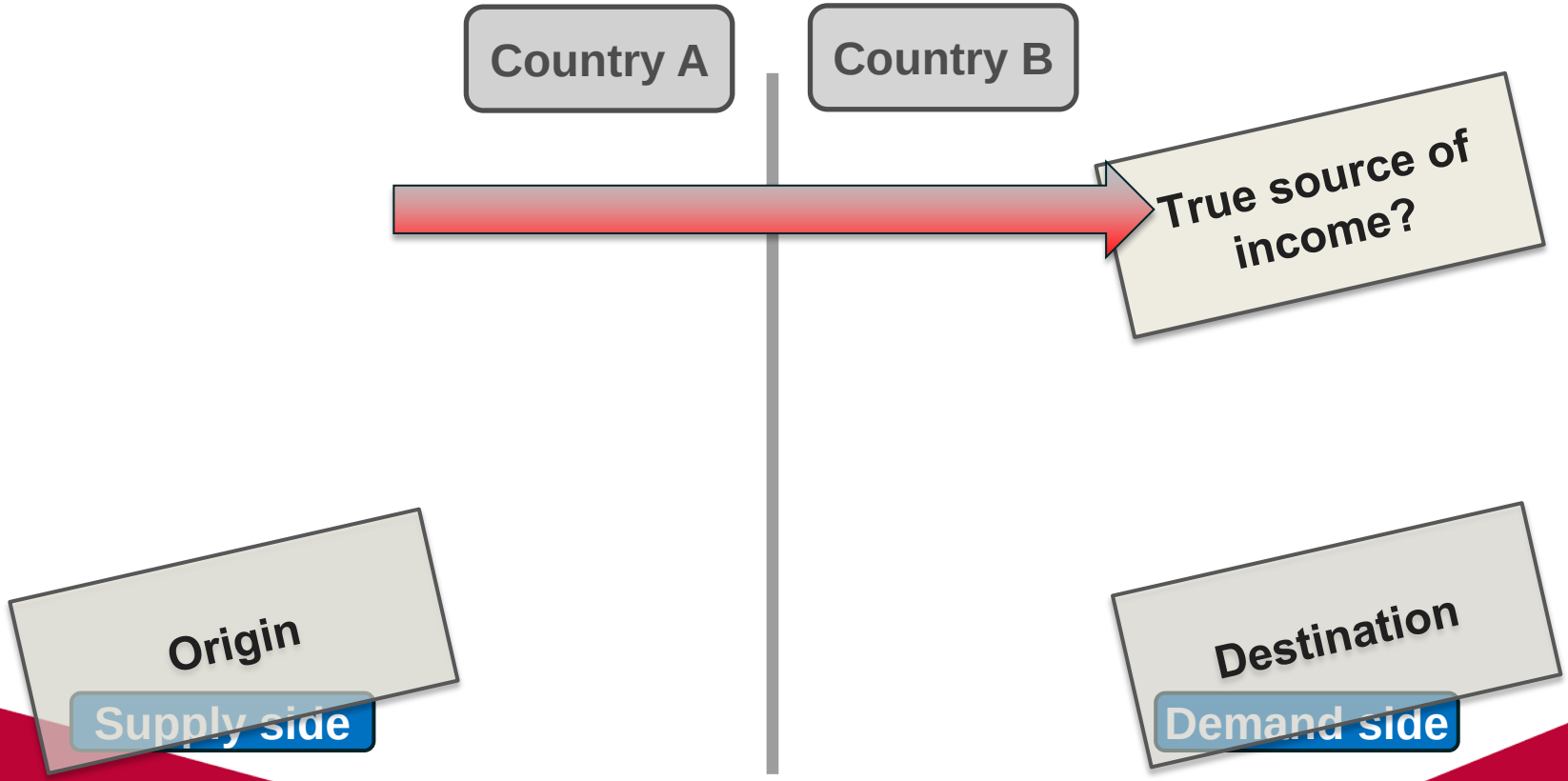

Country A
Country B
True source of income?
Place of Effective Management
Origin
Supply side
Destination
Demand side


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?
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

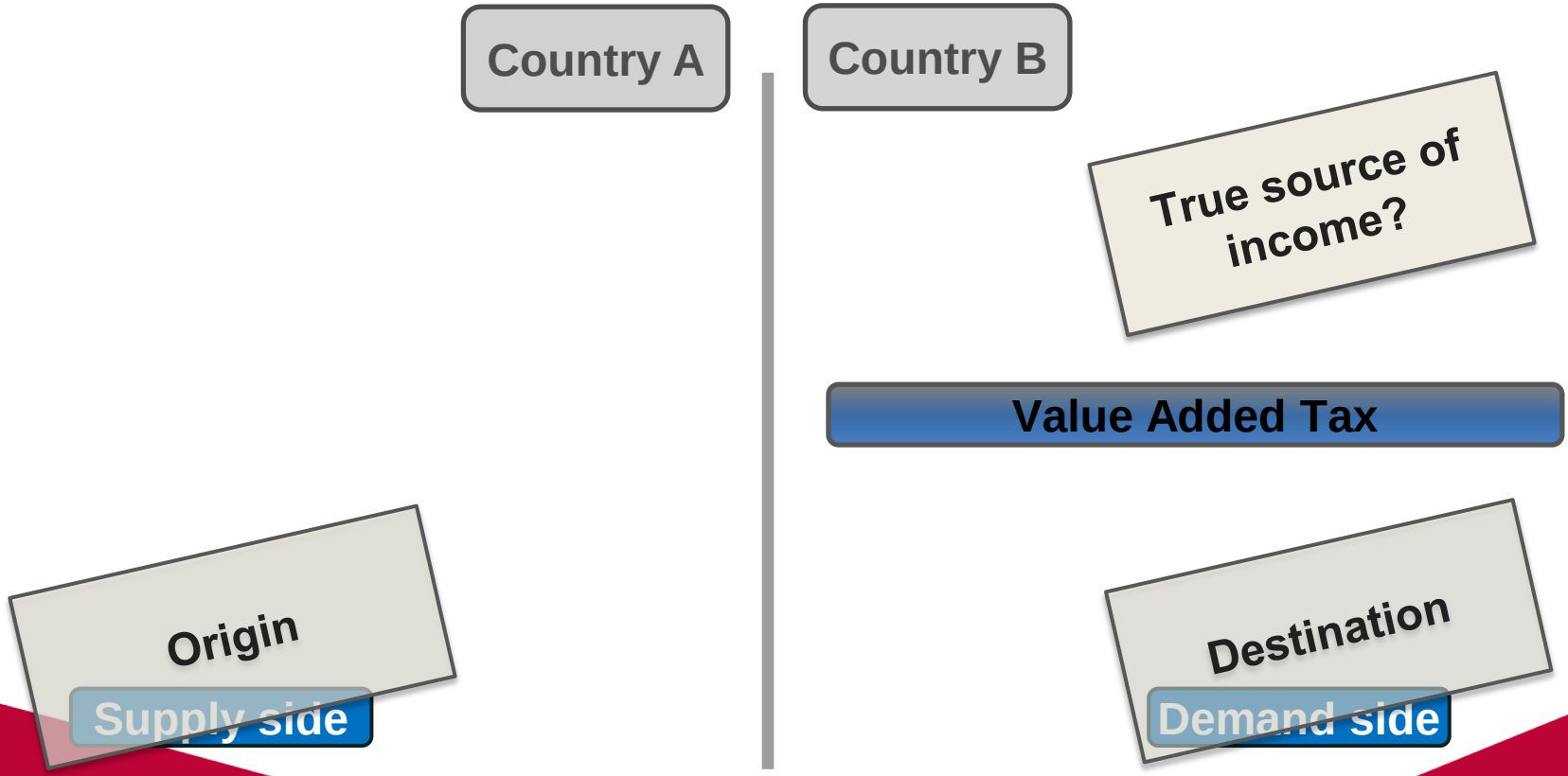
True source of income?

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?

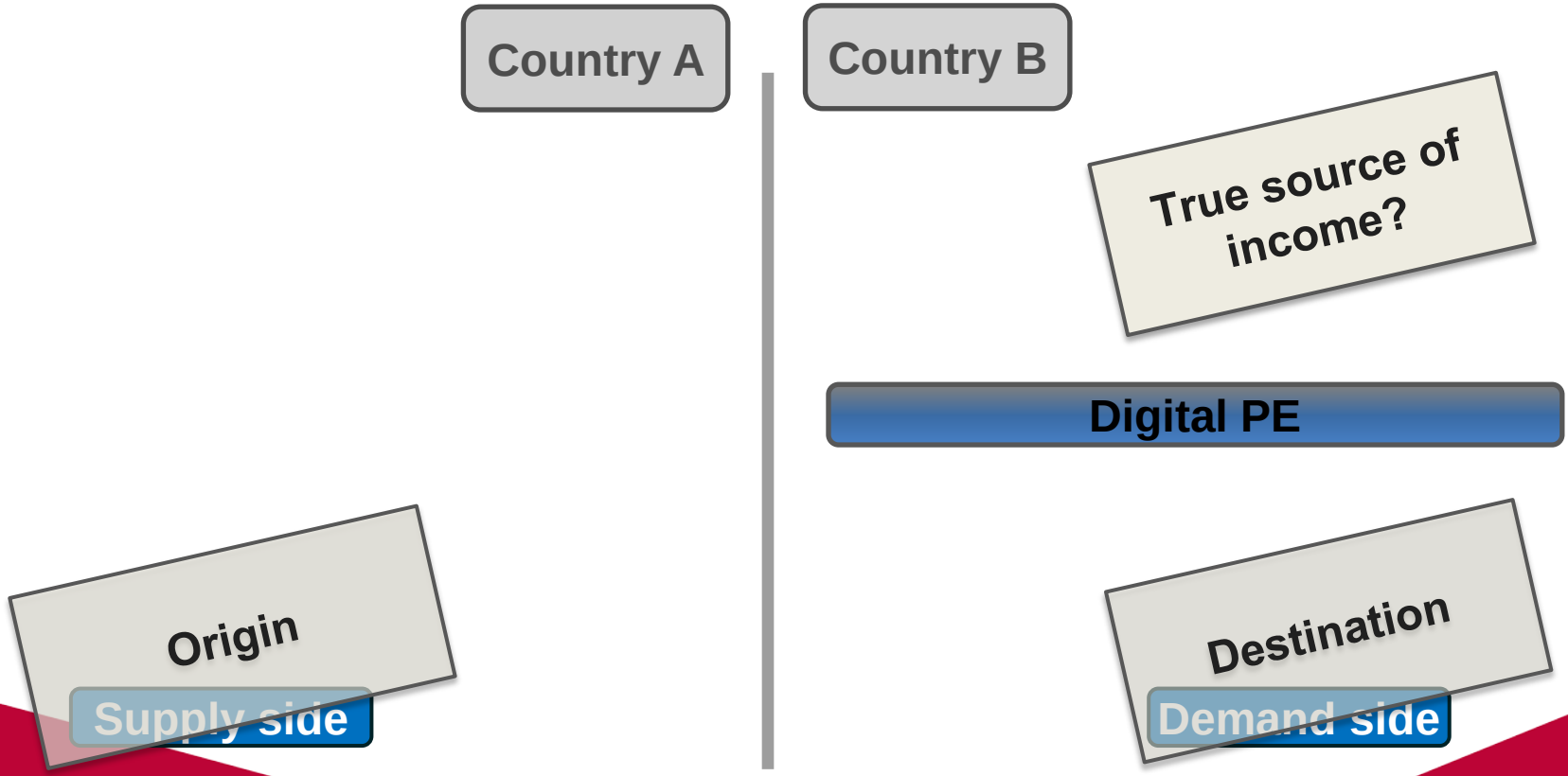
Digital Services Tax

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?

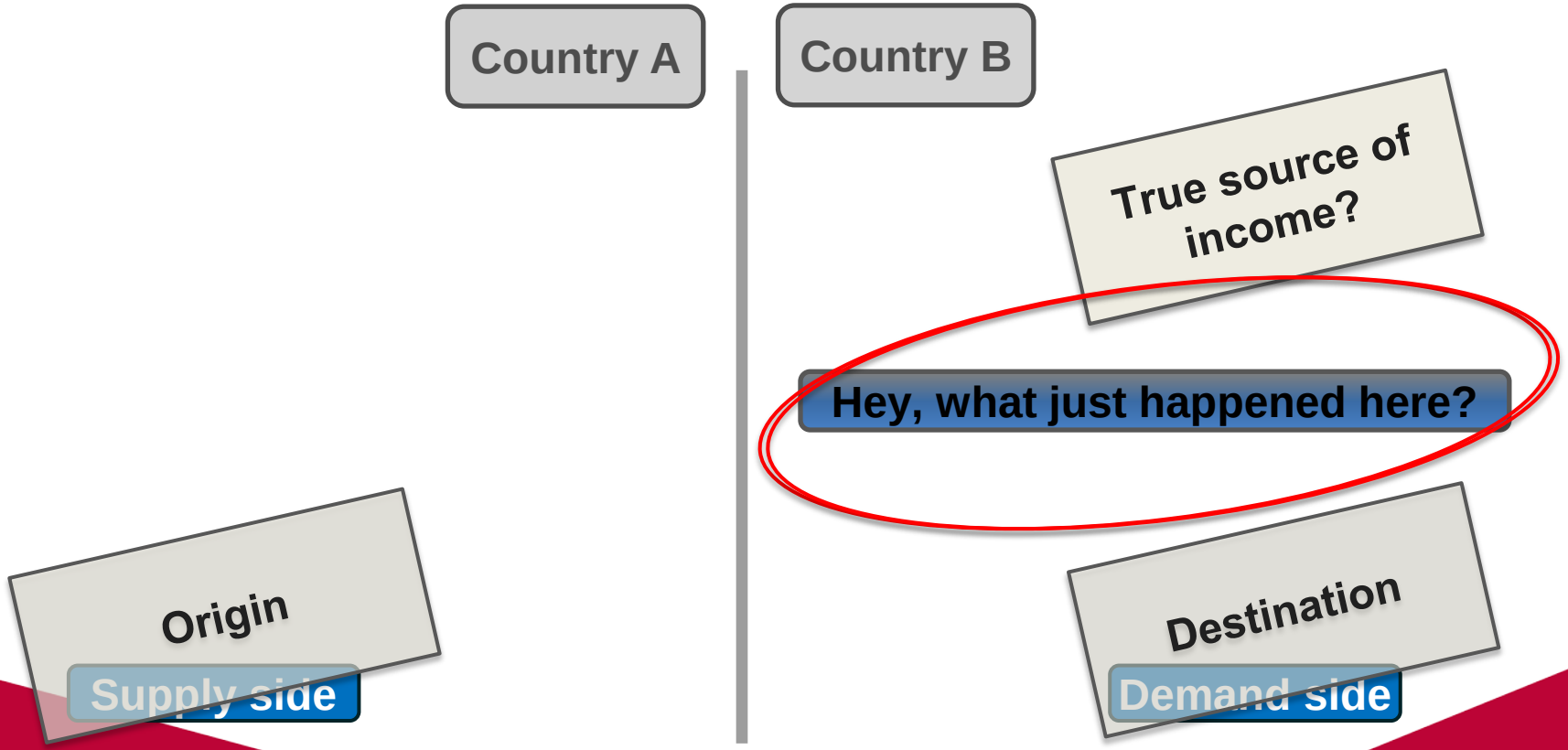
And Digital PE Profit Attribution

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?

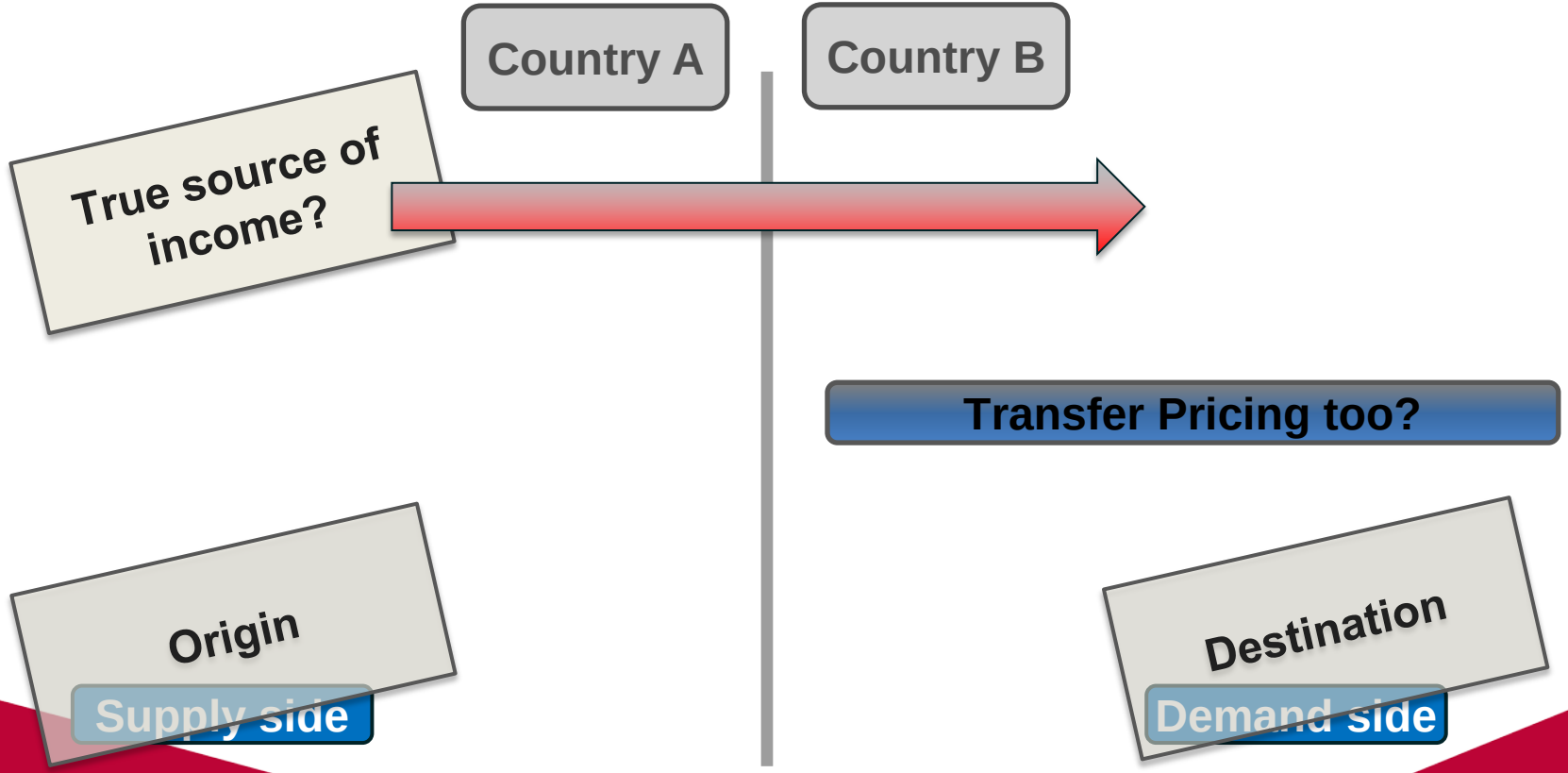
Transfer Pricing too?

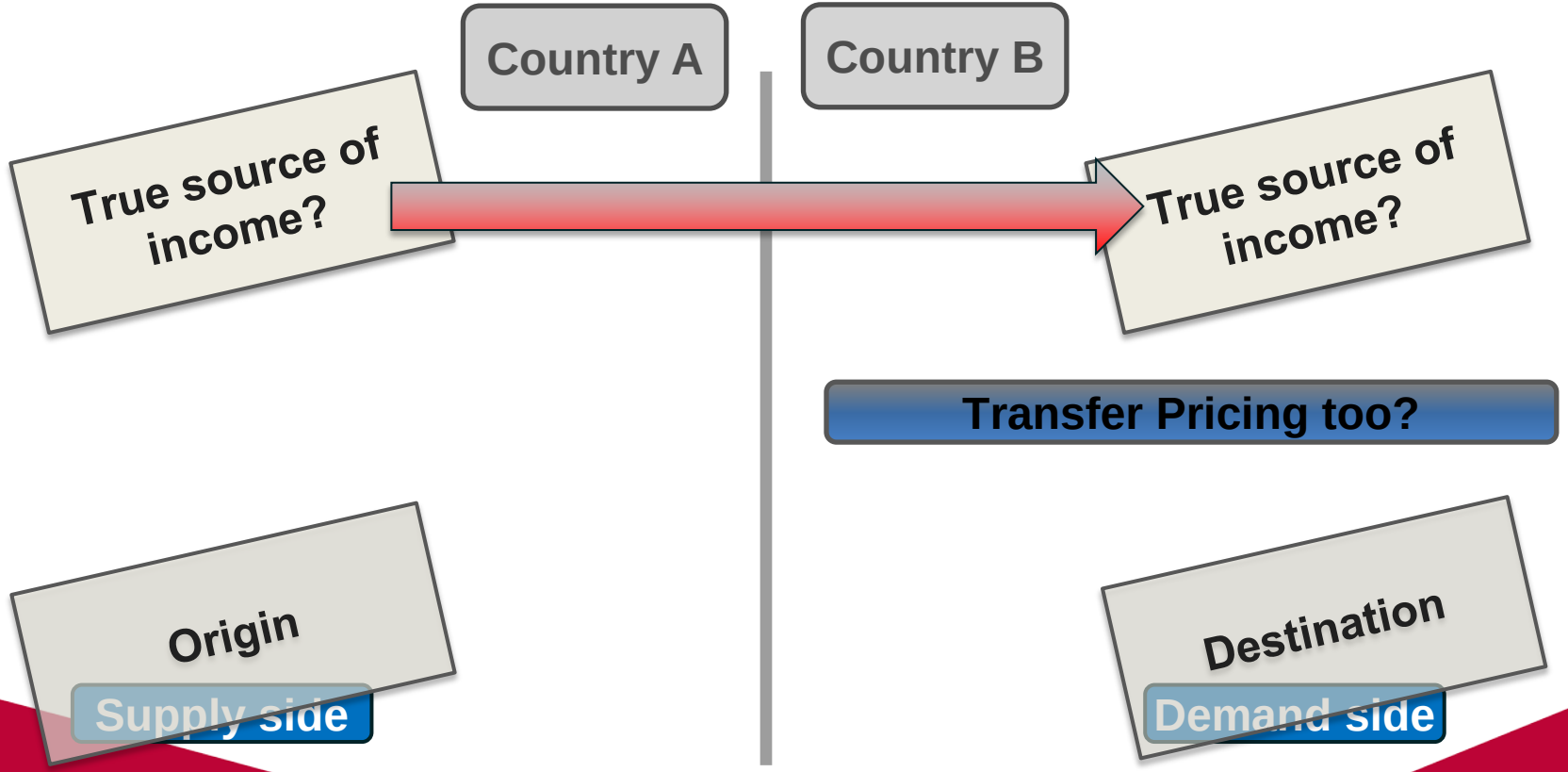
Origin

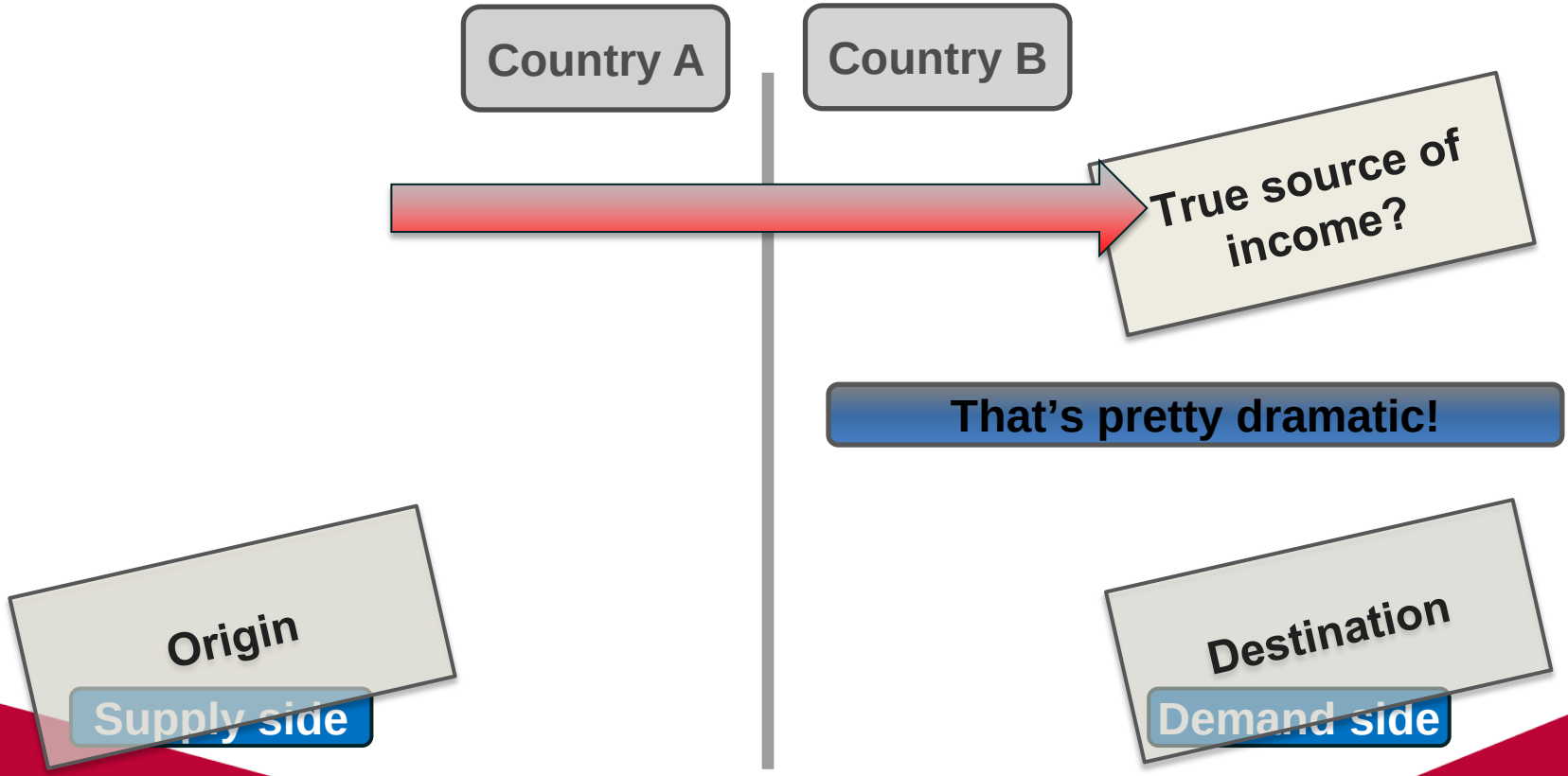
Supply side

Destination

Demand side


Country A
Country B
True source of income?
Transfer Pricing too?
Origin
Supply side
Destination
Demand side


Country A
Country B
True source of income?
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?

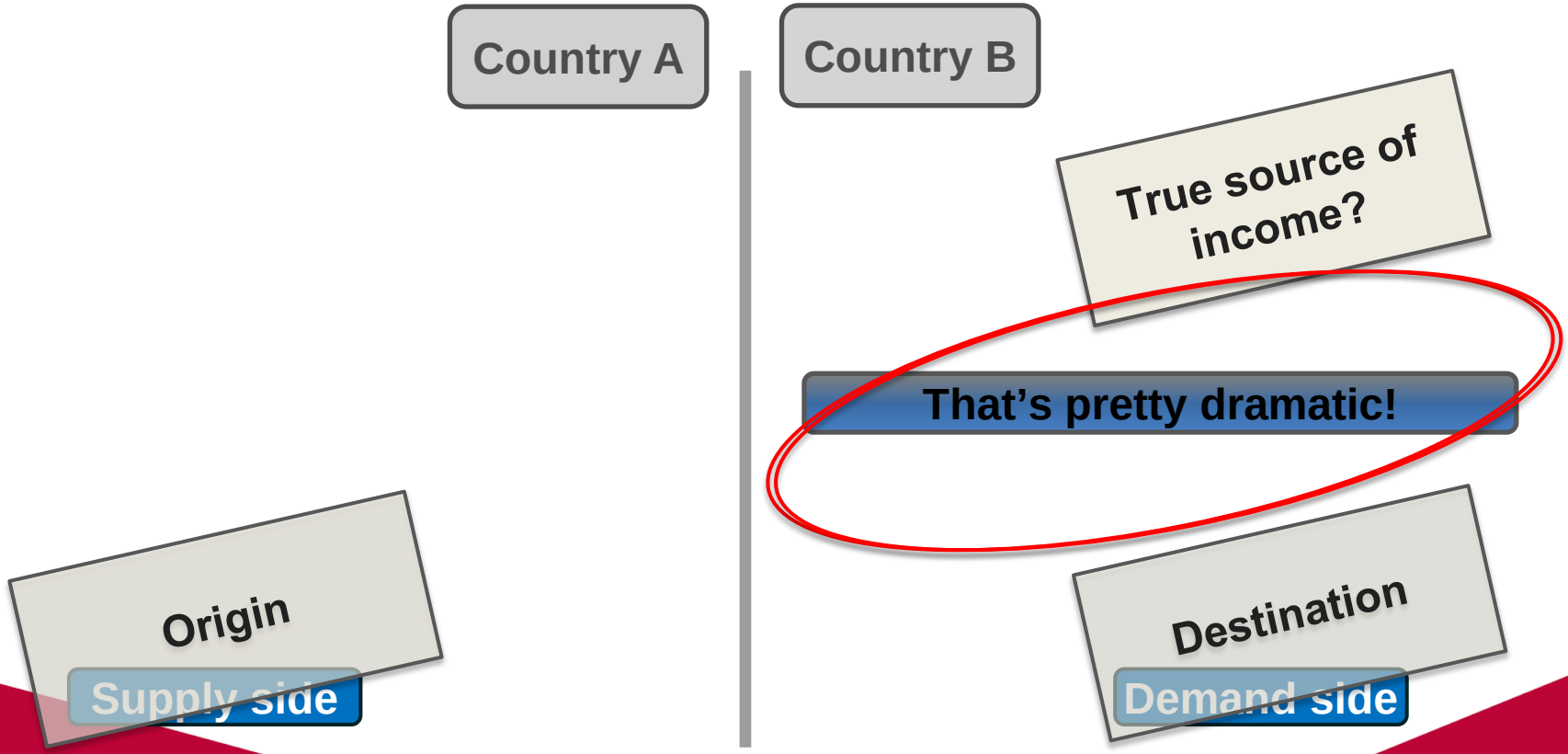
That's pretty dramatic!

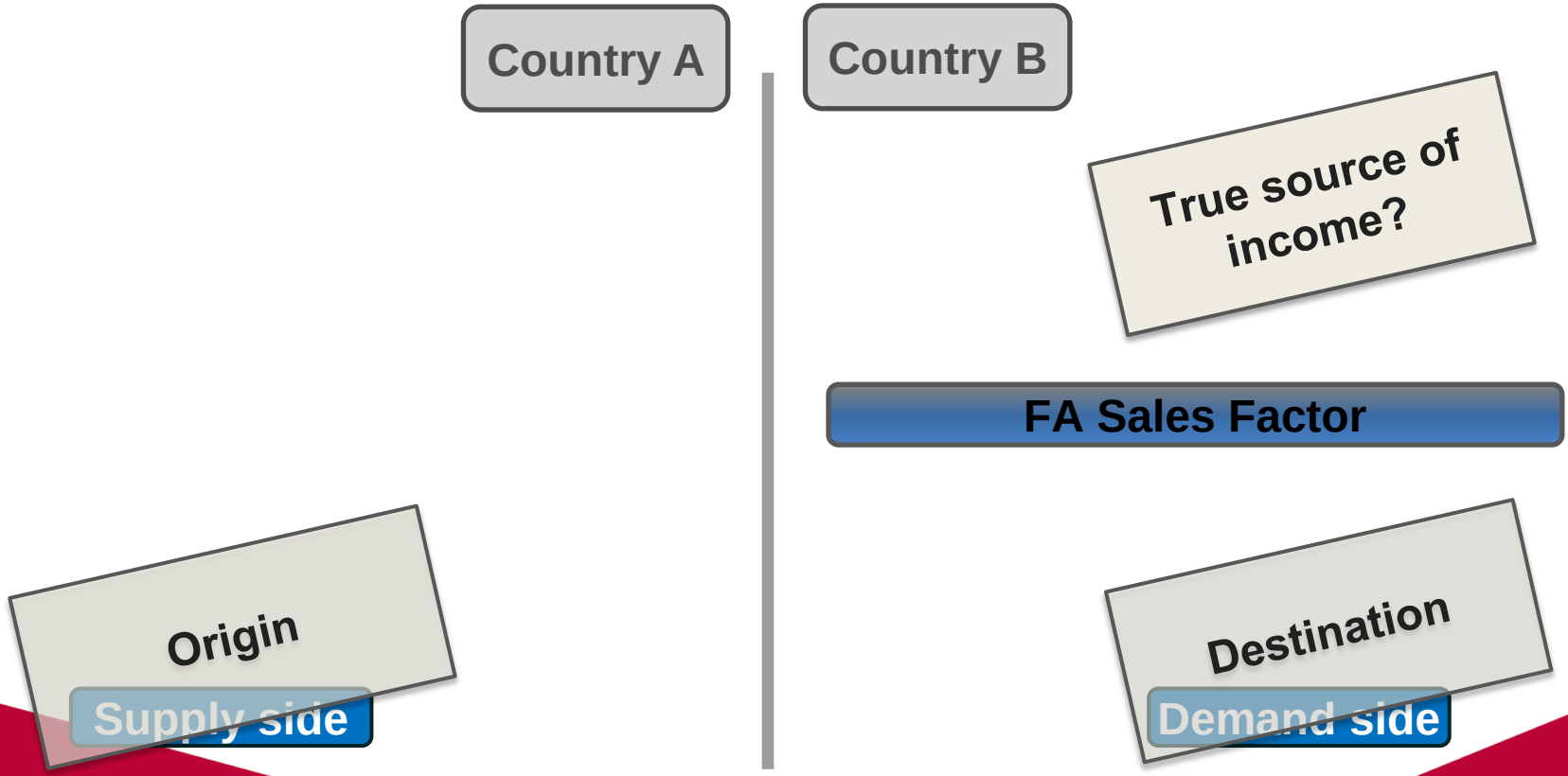
Origin

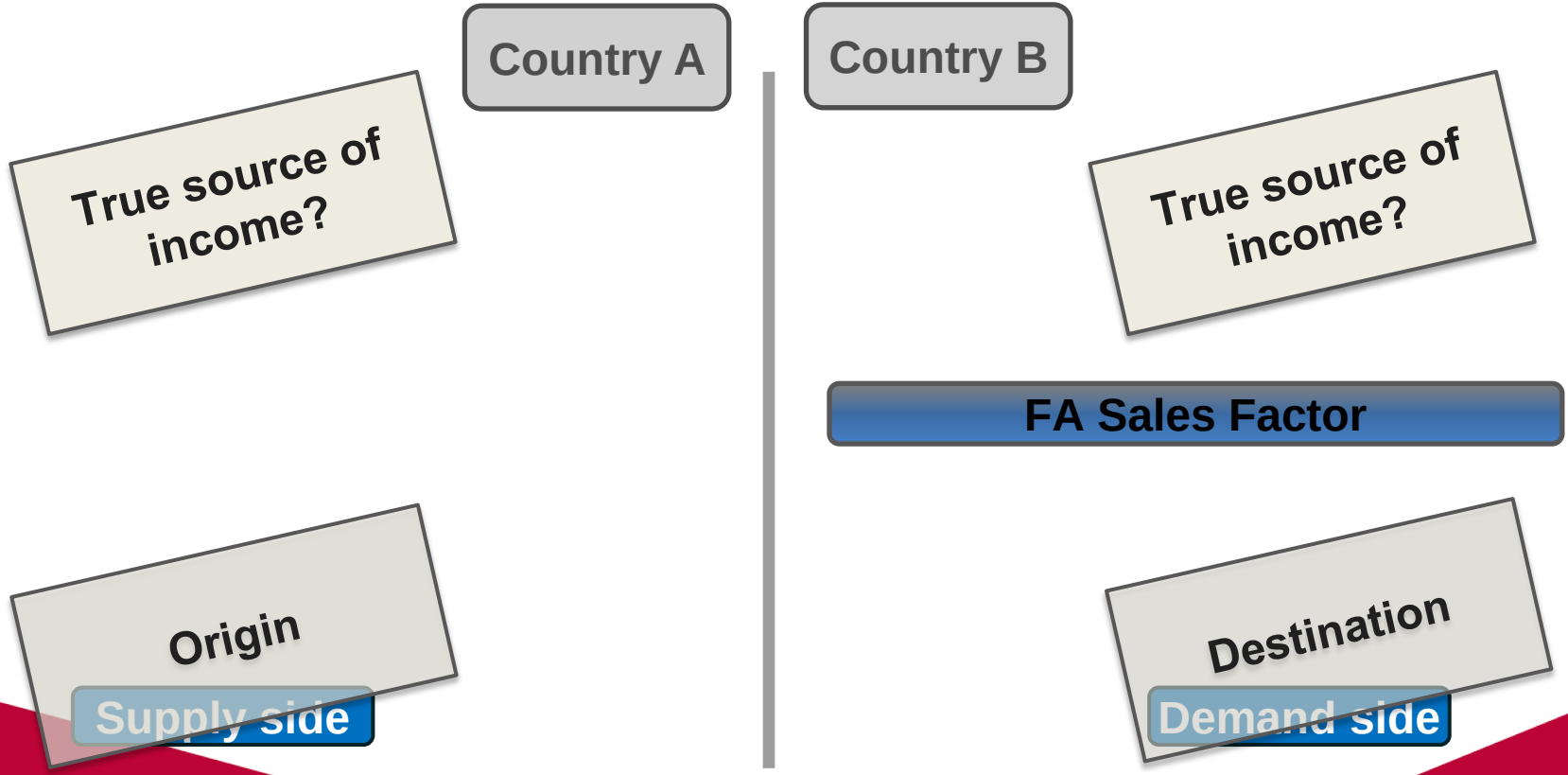
Supply side

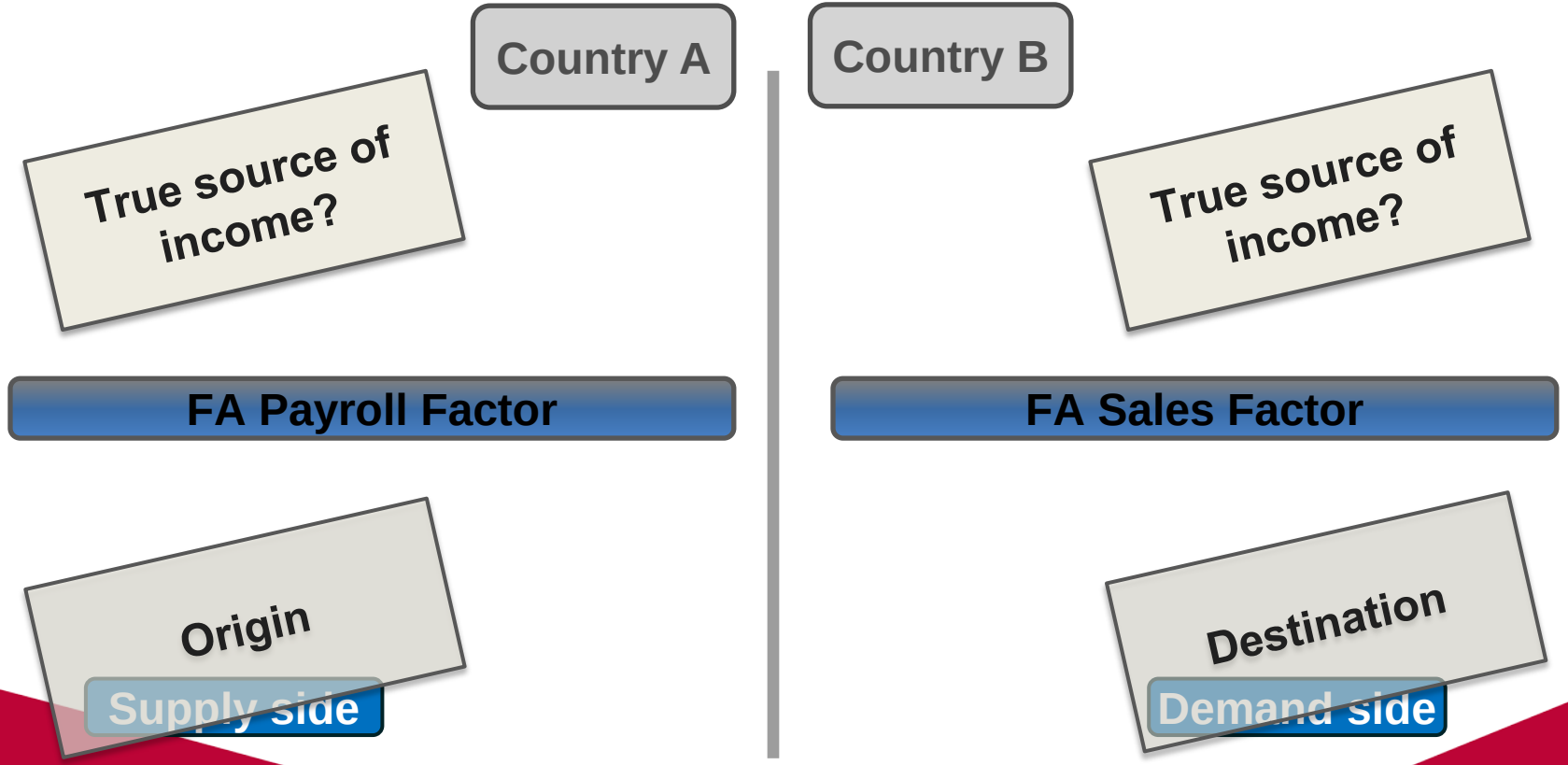
Destination

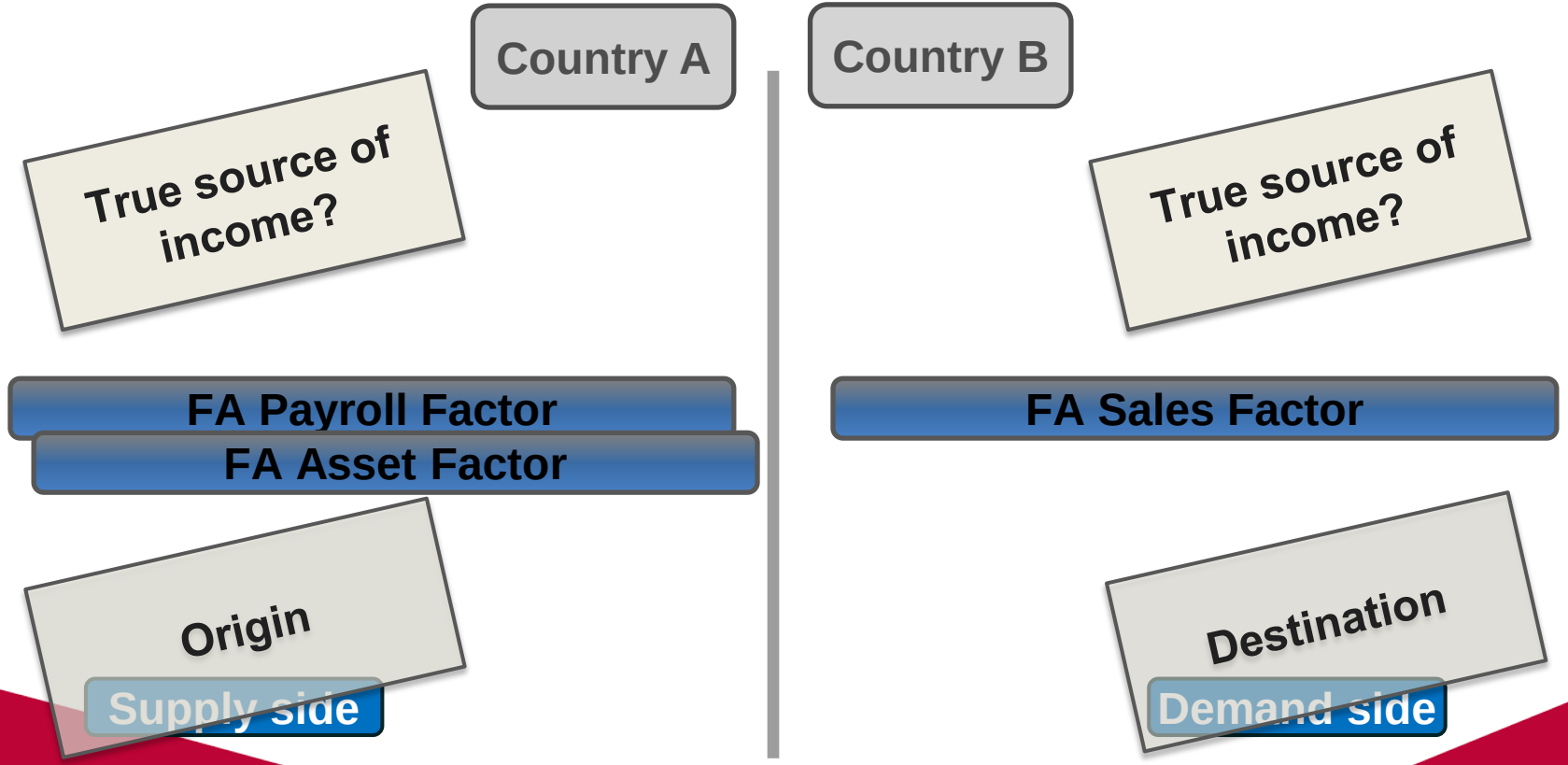
Demand side

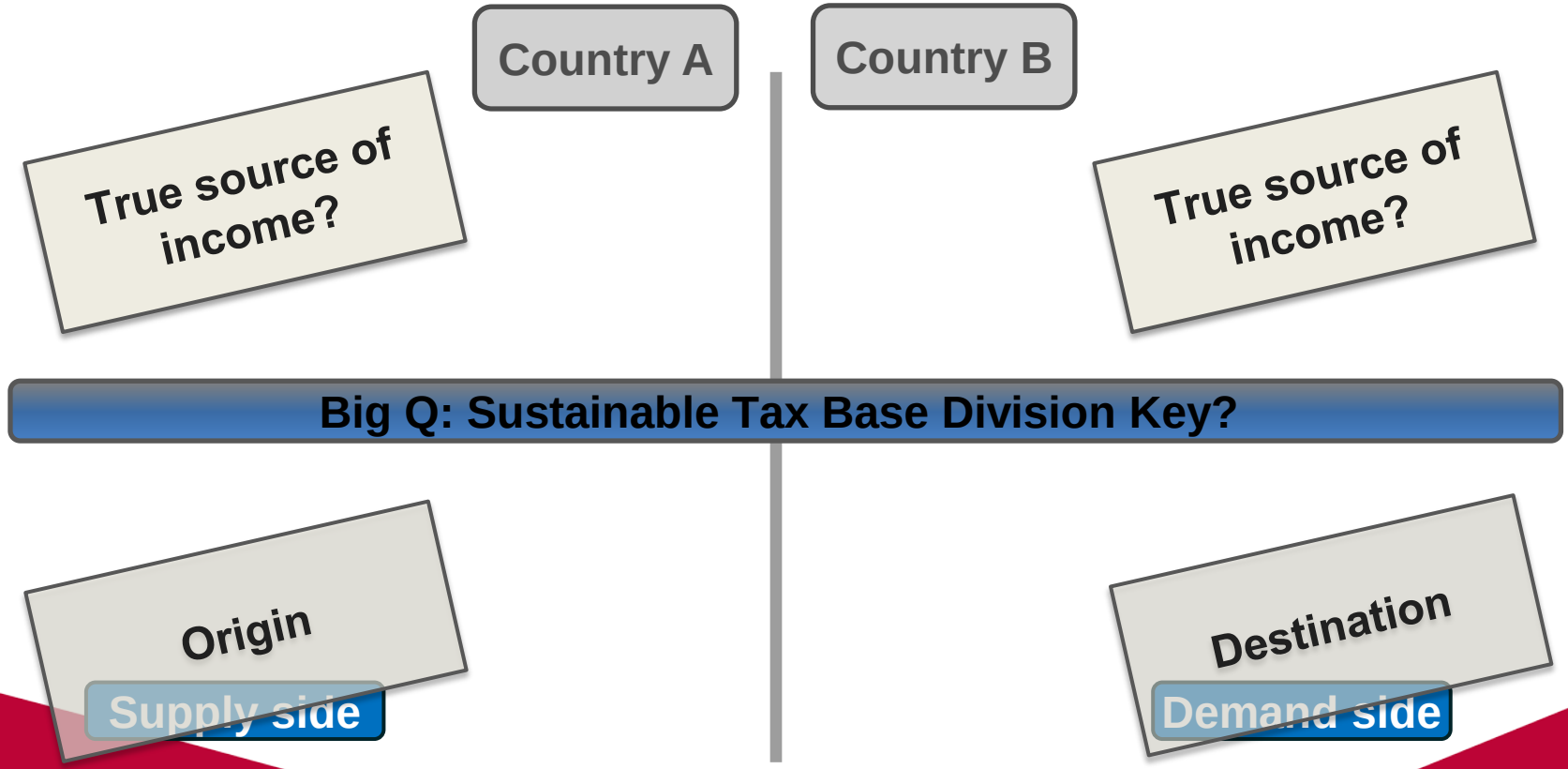

Country A
Country B
True source of income?
That's pretty dramatic!
Origin
Supply side
Destination
Demand side

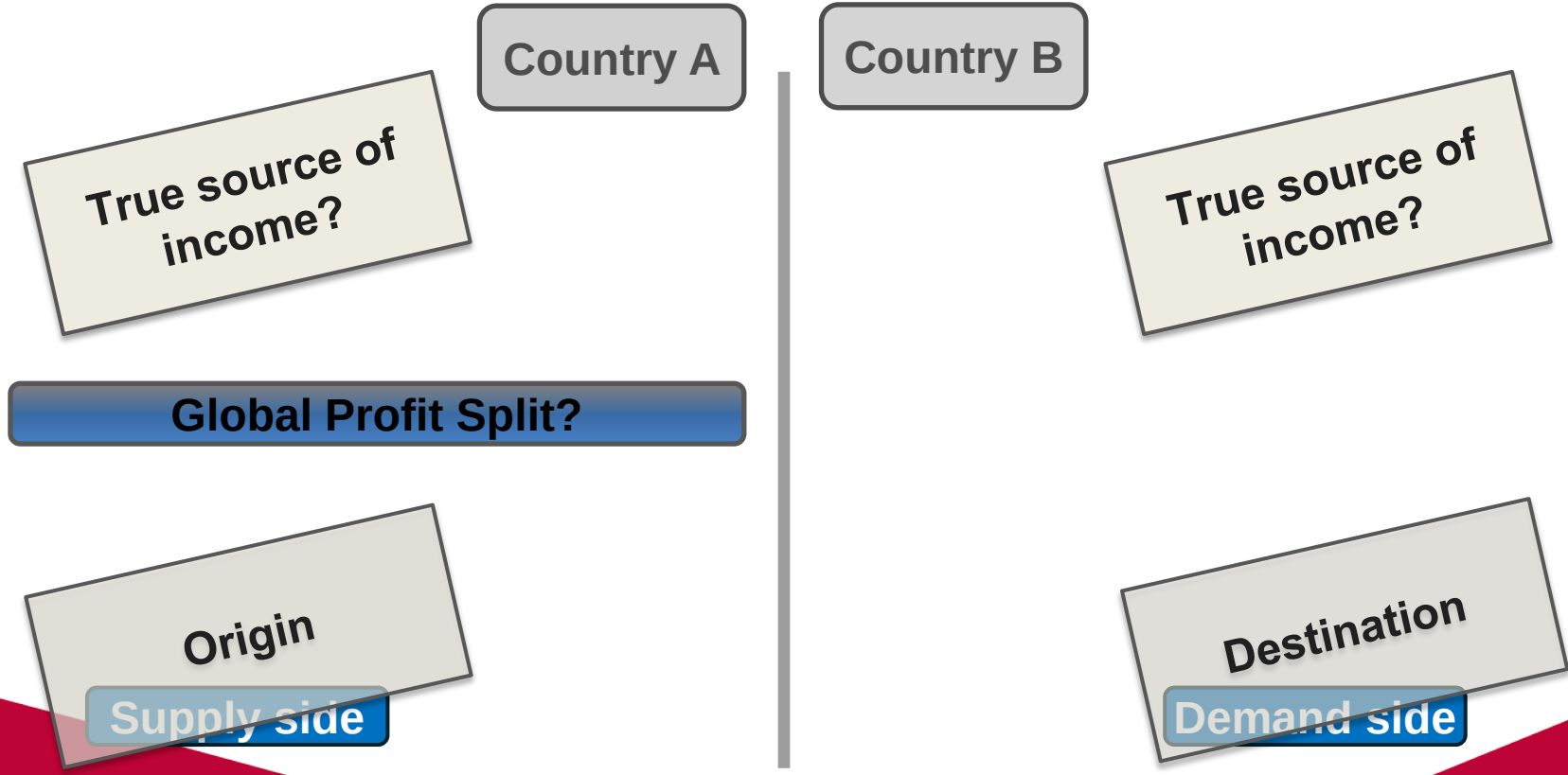

Country A
Country B
True source of income?
FA Sales Factor
Origin
Supply side
Destination
Demand side

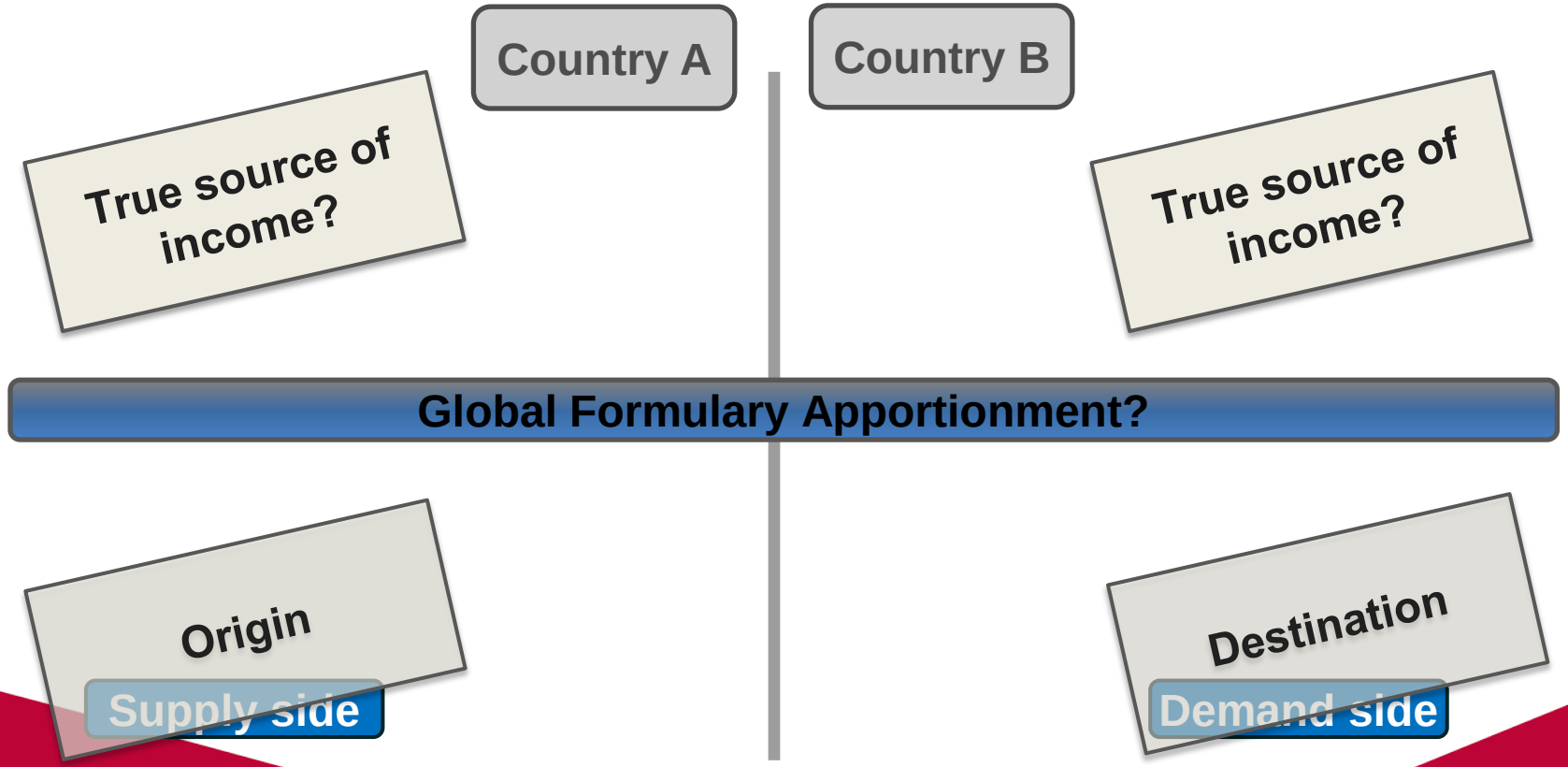

Country A
Country B
True source of income?
True source of income?
FA Sales Factor
Origin
Supply side
Destination
Demand side


Country A
Country B
True source of income?
True source of income?
FA Payroll Factor
FA Sales Factor
Origin
Supply side
Destination
Demand side


Country A
Country B
True source of income?
True source of income?
FA Payroll Factor
FA Asset Factor
FA Sales Factor
Origin
Supply side
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?

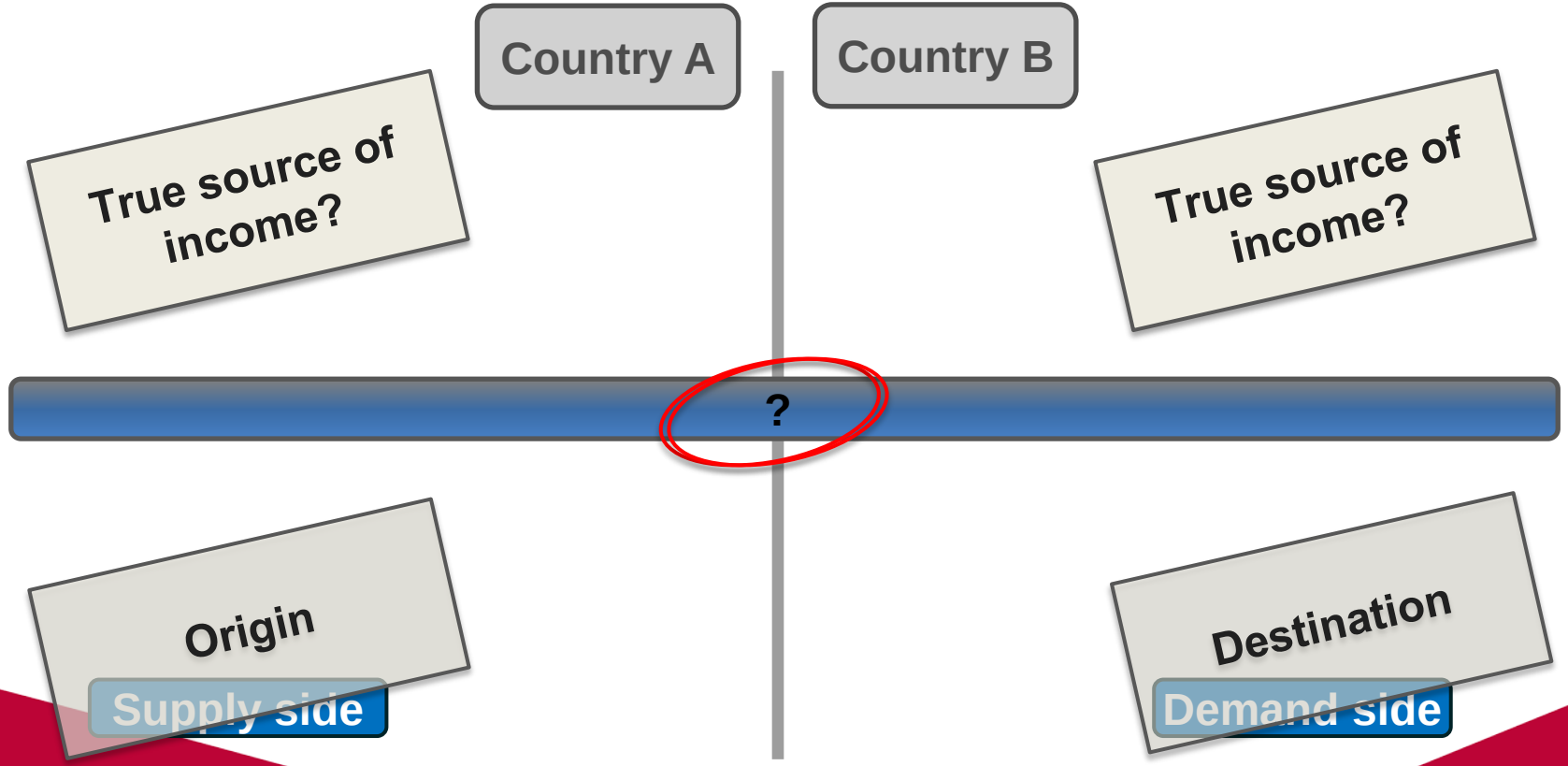
Sales Only Apportionment?

Origin

Supply side

Destination

Demand side


Country A
Country B
True source of income?
True source of income?
?
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?

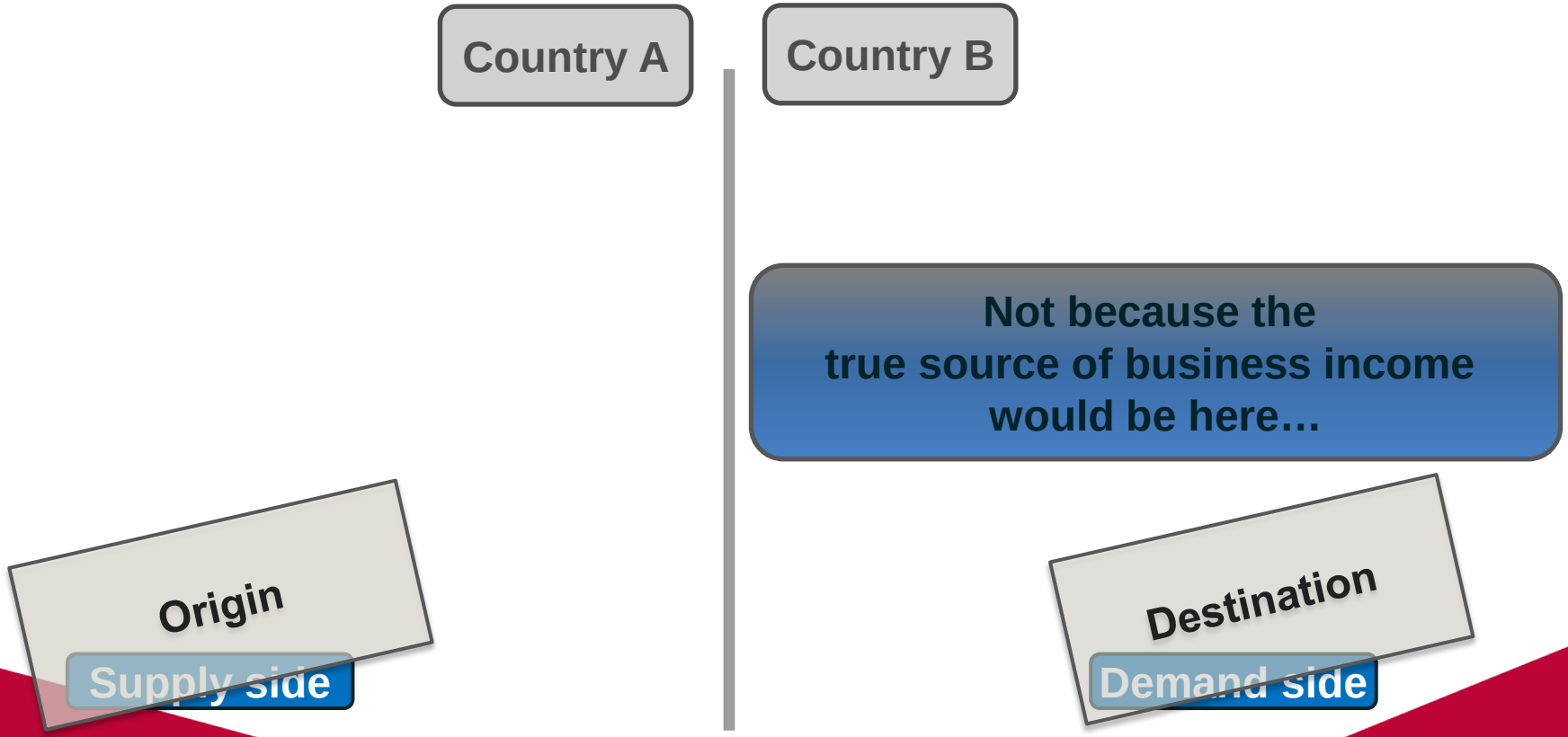
Why?

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

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