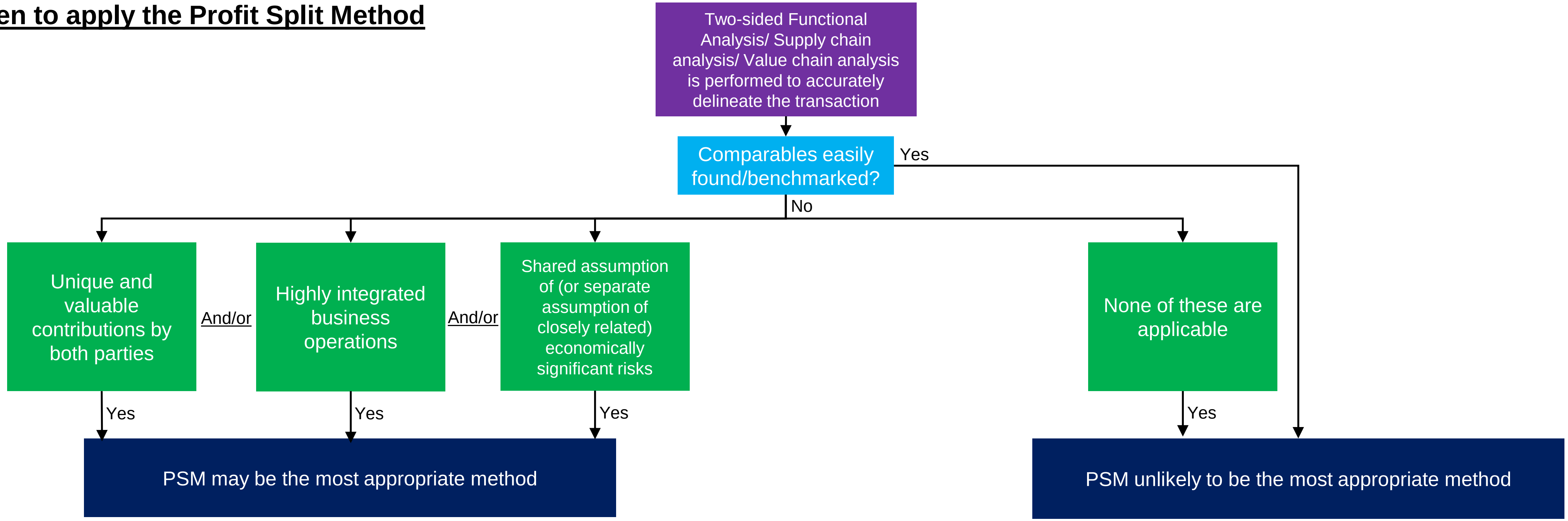
When to apply the Profit Split Method



The following are *indicators* for whether the PSM is the most appropriate method:

1. the existence of a unique and valuable contribution by *each party* to the controlled transaction; **and/or**
2. a high level of integration regarding business transactions to which the transaction relates; **and/or**
3. The shared assumption of economically significant risks by the parties to the transactions (or the separate assumption of closely related economically significant risks) by the parties to the transactions.[1]

It is not *appropriate to use the PSM:*

1. Where one of the parties to the transaction performs only simple functions, **and/or**
2. The accurately delineated transaction can be appropriately benchmarked (even when the accurately delineated transaction is quite complex), comparable transactions can be identified;

N.B. The lack of comparables alone is insufficient for determining that the PSM should be selected as the most appropriate method; a pragmatic approach should be taken such as broadening the search criteria by looking at independent enterprises:

- with different business strategies, business models or slightly different economic circumstances;
- situated in other geographical markets, but being active in the same industry; or
- engaged in different industries, situated in the same geographical market.[2]

[1] DOC: JTPF/002/2019/EN "EU Joint Transfer Pricing Forum – The Application of the Profit Split Method within the EU", page 5. & "Revised Guidance on the Application of the Transactions Profit Split Method – Inclusive Framework On BEPS: Actions 10", paragraph 2.126

[2] DOC: JTPF/002/2019/EN "EU Joint Transfer Pricing Forum – The Application of the Profit Split Method within the EU", page 5. & "Revised Guidance on the Application of the Transactions Profit Split Method – Inclusive Framework On BEPS: Actions 10", paragraphs 2.127 and 2.128

How to apply the Profit Split Method

Contribution analysis[1]

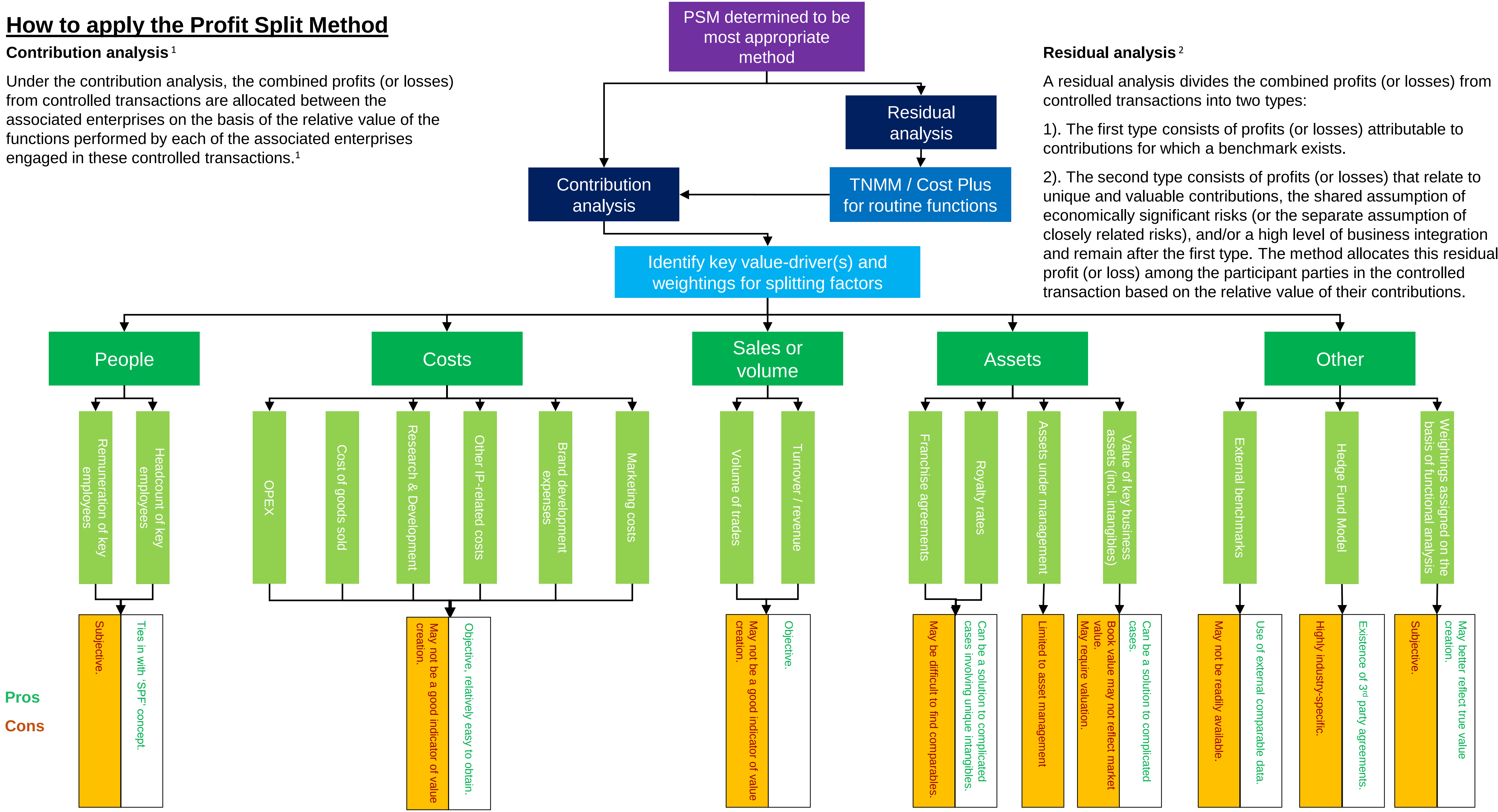
Under the contribution analysis, the combined profits (or losses) from controlled transactions are allocated between the associated enterprises on the basis of the relative value of the functions performed by each of the associated enterprises engaged in these controlled transactions.[1]

Residual analysis[2]

A residual analysis divides the combined profits (or losses) from controlled transactions into two types:

1). The first type consists of profits (or losses) attributable to contributions for which a benchmark exists.

2). The second type consists of profits (or losses) that relate to unique and valuable contributions, the shared assumption of economically significant risks (or the separate assumption of closely related risks), and/or a high level of business integration and remain after the first type. The method allocates this residual profit (or loss) among the participant parties in the controlled transaction based on the relative value of their contributions.



[1] DOC: JTPF/002/2019/EN "EU Joint Transfer Pricing Forum – The Application of the Profit Split Method within the EU", page 4. & "Revised Guidance on the Application of the Transactions Profit Split Method – Inclusive Framework On BEPS: Actions 10", paragraph 2.126

[2] Ibid