When Tech Triggers Tax

IBA Annual Conference 2026
Copenhagen, Denmark

8 October 2026

Today's Panel

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Italy

Carola Trucco
Panelist
Barros & Errazuriz
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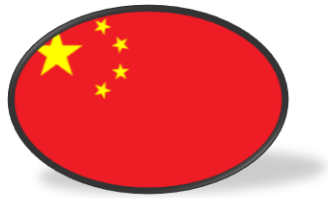
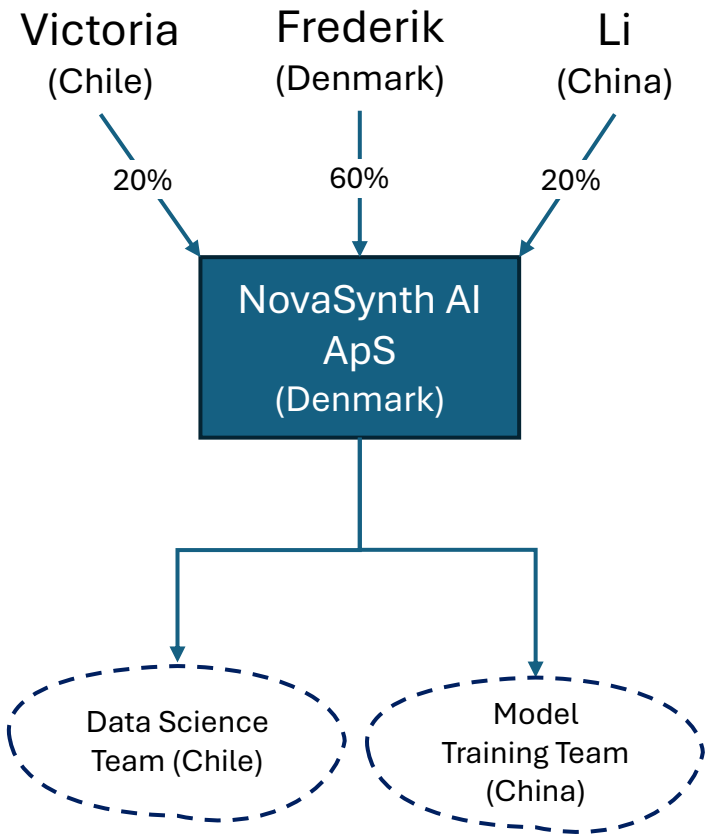


A. Start-Up Phase

October 2023 >> July 2024 >> June 2025 >> October 2026



- Frederik (from Denmark) met Victoria (from Chile) and Li (from China) at school and are graduates of the Technical University of Denmark
- In October 2023, Frederik, Victoria and Li founded NovaSynth AI ApS, a Danish incorporated software start-up with the objective of developing language models applied to legal and financial due diligence
- NovaSynth AI ApS leased office space in Copenhagen, Denmark and all servers/hardware for the business is located in Denmark
- Victoria drew on her contacts in Chile to engage a data science team to help develop the language model
- Li's close friends in China formed the initial infrastructure and model-training team, each working exclusively from home
- Victoria, Frederik and Li, located in Denmark, are the drivers re ideas, direction and development

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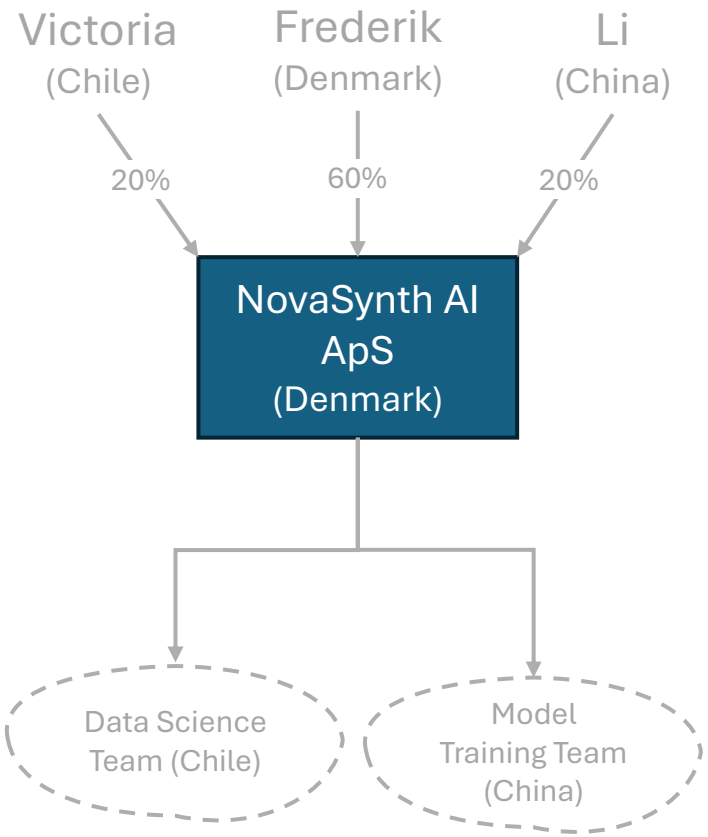

- Economic employer prevails formal employer
- PEs in Chile or China?
  - No official position on the 2025 OECD Model Commentaries on home office PEs
    - >50% of working time from home
    - Commercial reason?
    - Other relevant facts and circumstances
- NovaSynth AI ApS = Legal and "Economic" owner of IP?

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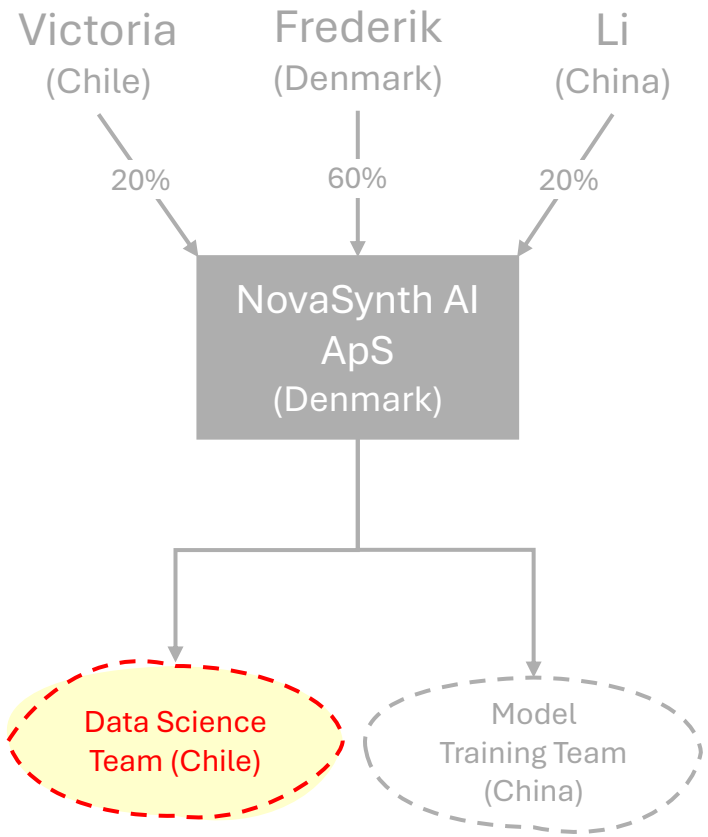

Chile: PE Risk from Remote Work Arrangements

- CDT Chile-Denmark: A PE is deemed to exist when services are provided in Chile for a period exceeding 183 days in any 12-month period.
- Domestic Law: PE is "a place used for the permanent or habitual conduct of all or part of the business of a non-resident entity," including offices, agencies, and installations. Also contemplates PE by dependent agents that conclude contracts or plays a principal role in their conclusion.
- Source of Income: The SII has ruled that payments for personal services rendered from Chile via telework constitute Chilean-source income, regardless of the location of the resources or servers used.
- NovaSynth should evaluate formalizing its Chilean presence (branch or subsidiary) and ensure proper documentation of the contractual relationship with the Chilean team.

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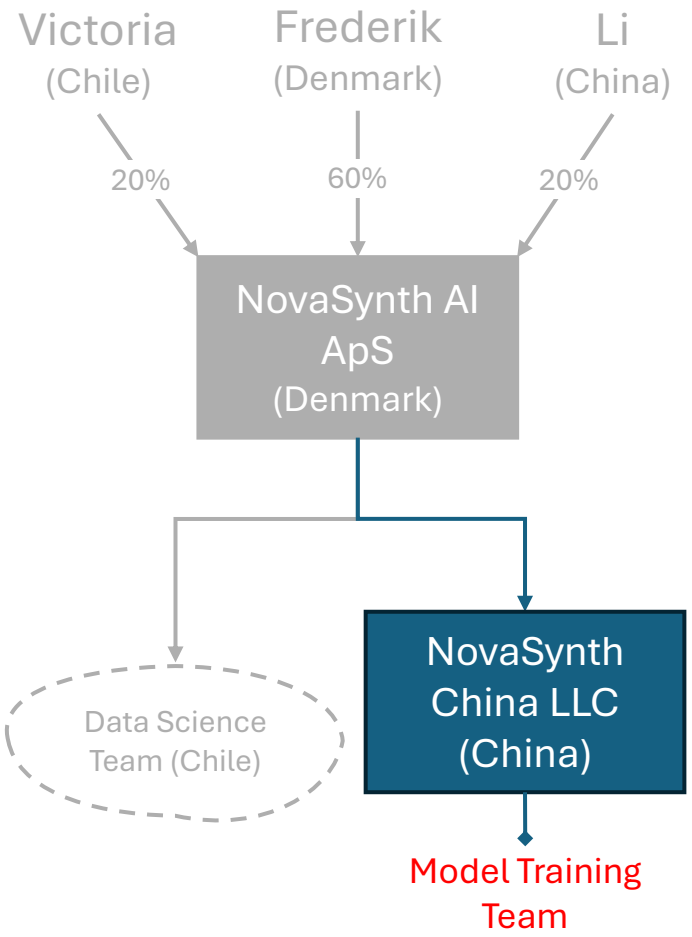
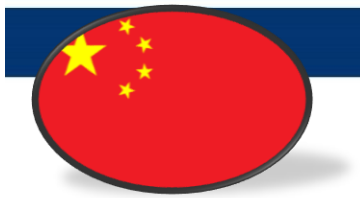


- Remote home-working Chinese model-training team creates PE risk for Danish NovaSynth AI ApS without local entity
- NovaSynth China LLC is required for regulatory / PE mitigation
- Document arm's-length service remuneration for China-based work for transfer pricing
- Comply with Chinese data & tech export controls for AI model-related outbound flows



B. Development Phase

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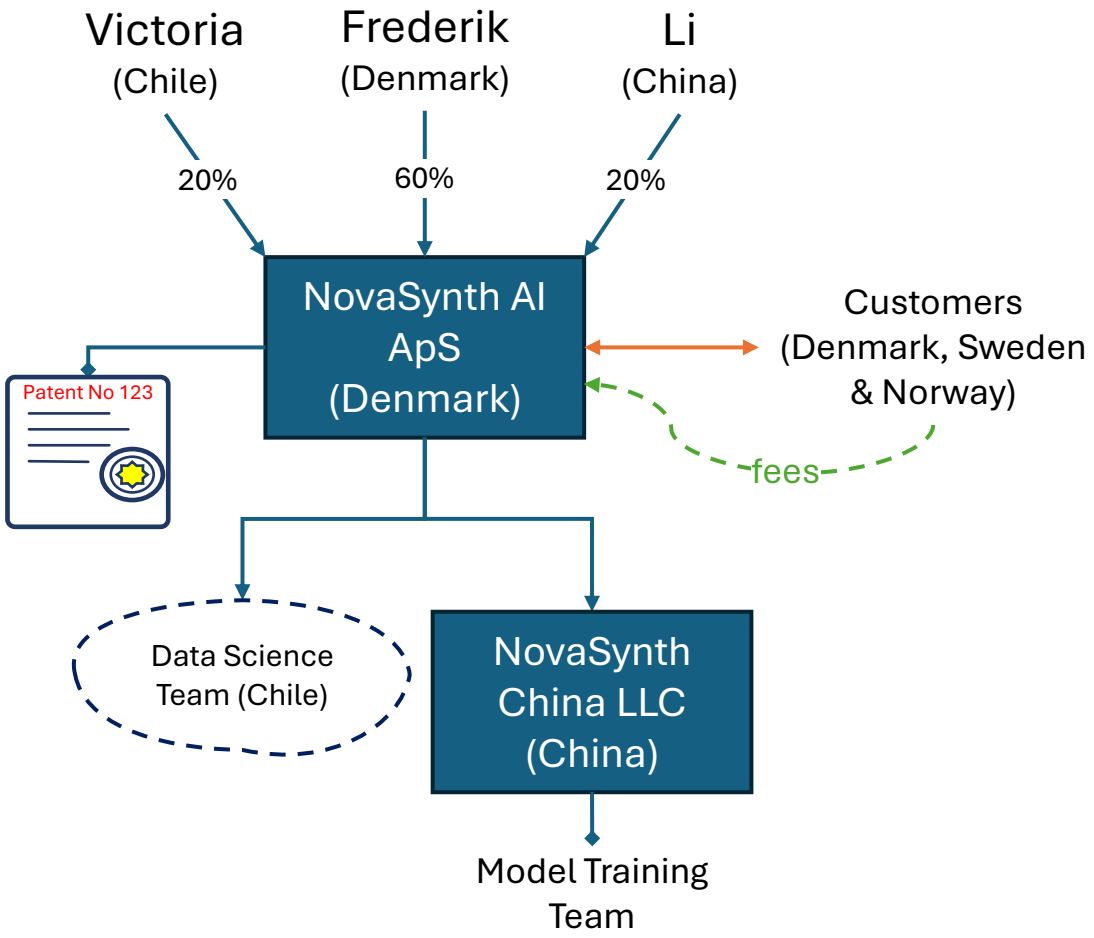

- By July 2024, the core AI model has been robustly developed by the teams in Chile and China with guiding support and direction from the Founders in Denmark
- All IP has been registered in the name of NovaSynth AI ApS
- NovaSynth AI ApS starts generating modest revenue by way of licensing its software to legal and financial services customers throughout Scandinavia

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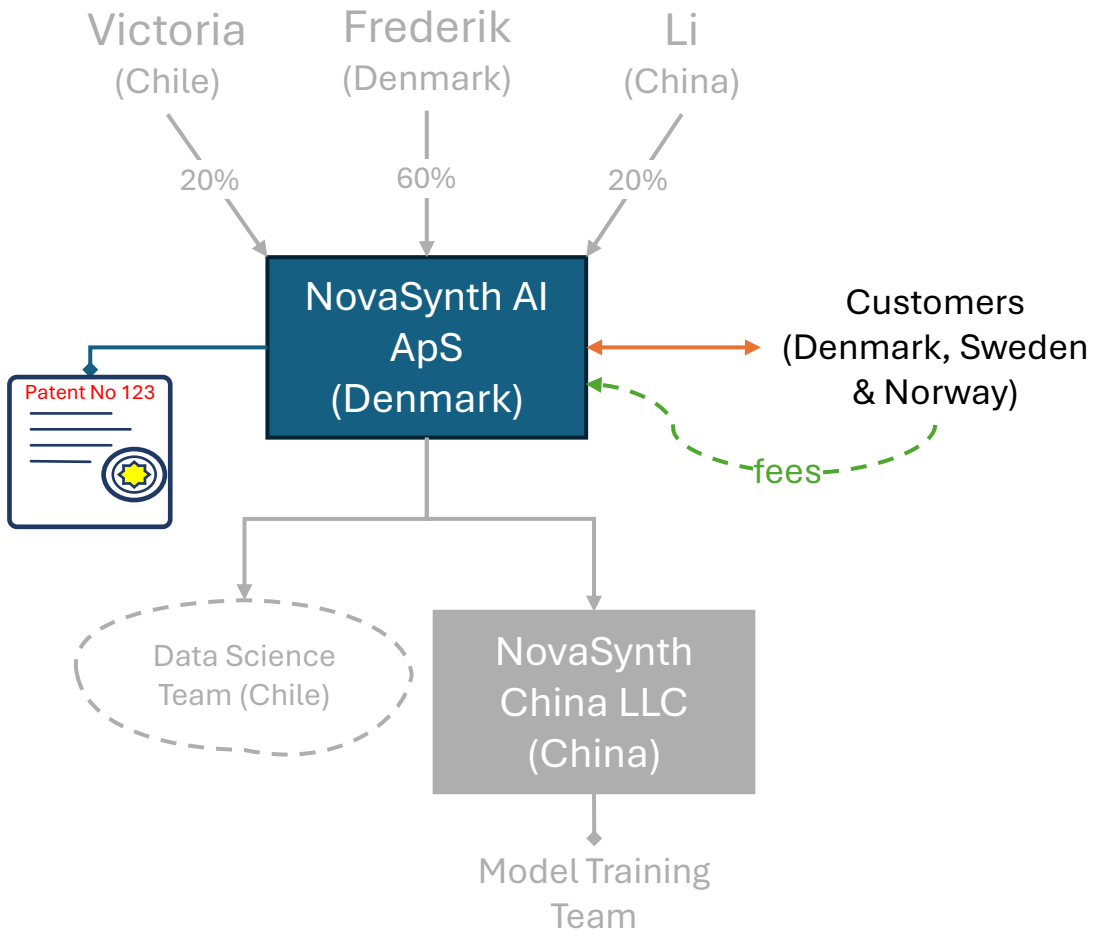

- Identification of relevant IP = marketing IP (in addition to technical IP)
- Who is Accountable (and responsible) for the relevant DEMPE-functions re. the identified IPs?
  - Founders in Denmark
    - "Personal" goodwill
    - Guiding support and direction *vs* drive ideas, direction and development
- Which entity has the financial capacity to assume significant risks?
  - DTA likely to support defending DK-principal:
    - TNMM (NCP) of NovaSynth China LLC and (potential) Chilean PE
    - Residual loss/profit in NovaSynth AI ApS
- Documentation should support the accurately delineated setup

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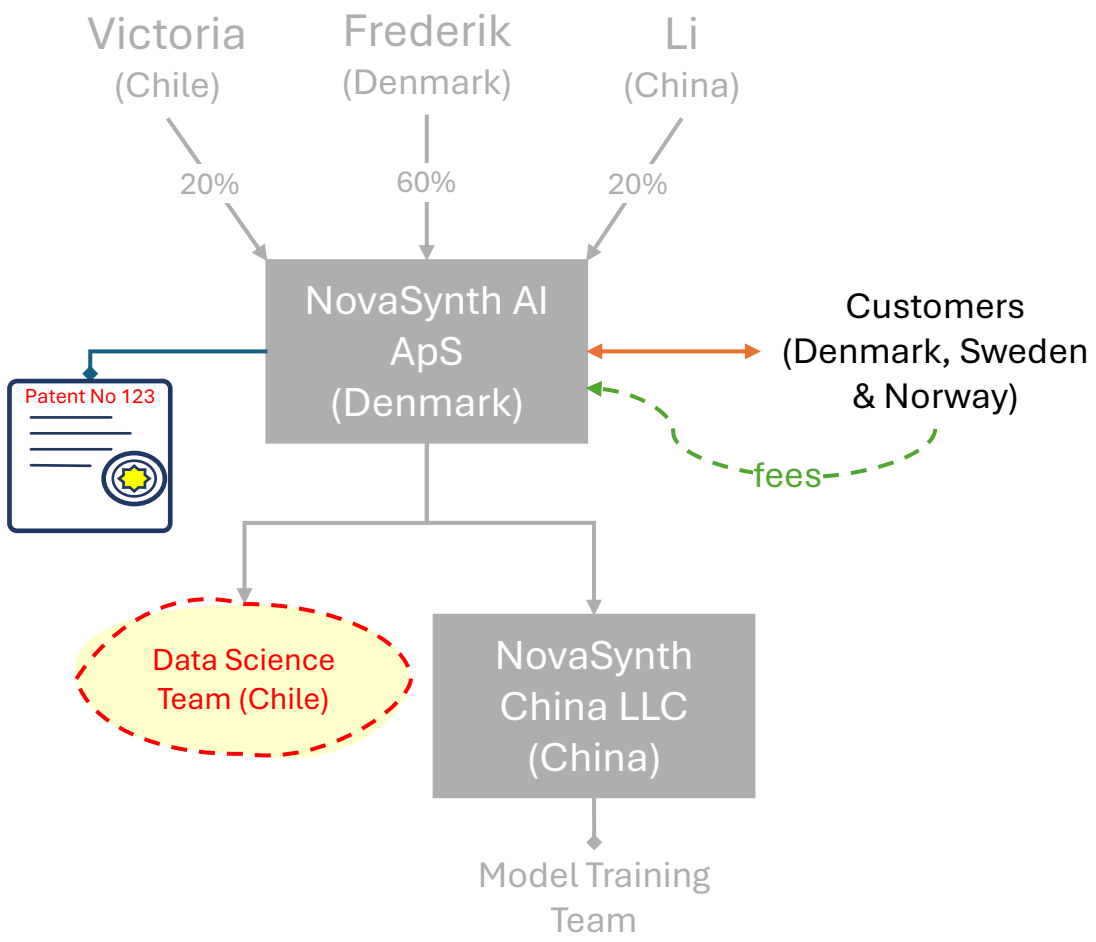

Chile: DEMPE, Value Attribution & TP Adjustments

- Transfer Pricing Framework: Chilean tax authority may challenge prices, values, or returns in cross-border related-party transactions that do not comply with the arm's length principle.
- Profit attibution to PE: The PE's income is determined based on activities carried out by it and assets assigned to or used by it, treating the PE as a "wholly separate and independent enterprise" from its head office.
- Valuation Implications:

-If the Chilean team only performs routine tasks under Danish instructions with no significant risk assumption cost-plus remuneration may be defensible.

-If the team decides model architecture, defines datasets, improves algorithms, participates in strategic product decisions, or controls relevant technical risks Chile may claim a share of the residual return on the intangible.

- Documentation is Critical: TP regulation provides that if the PE's accounting does not allow determination of effective income, the SII may determine taxable income using proportions from the head office's gross income, net income, or total assets.

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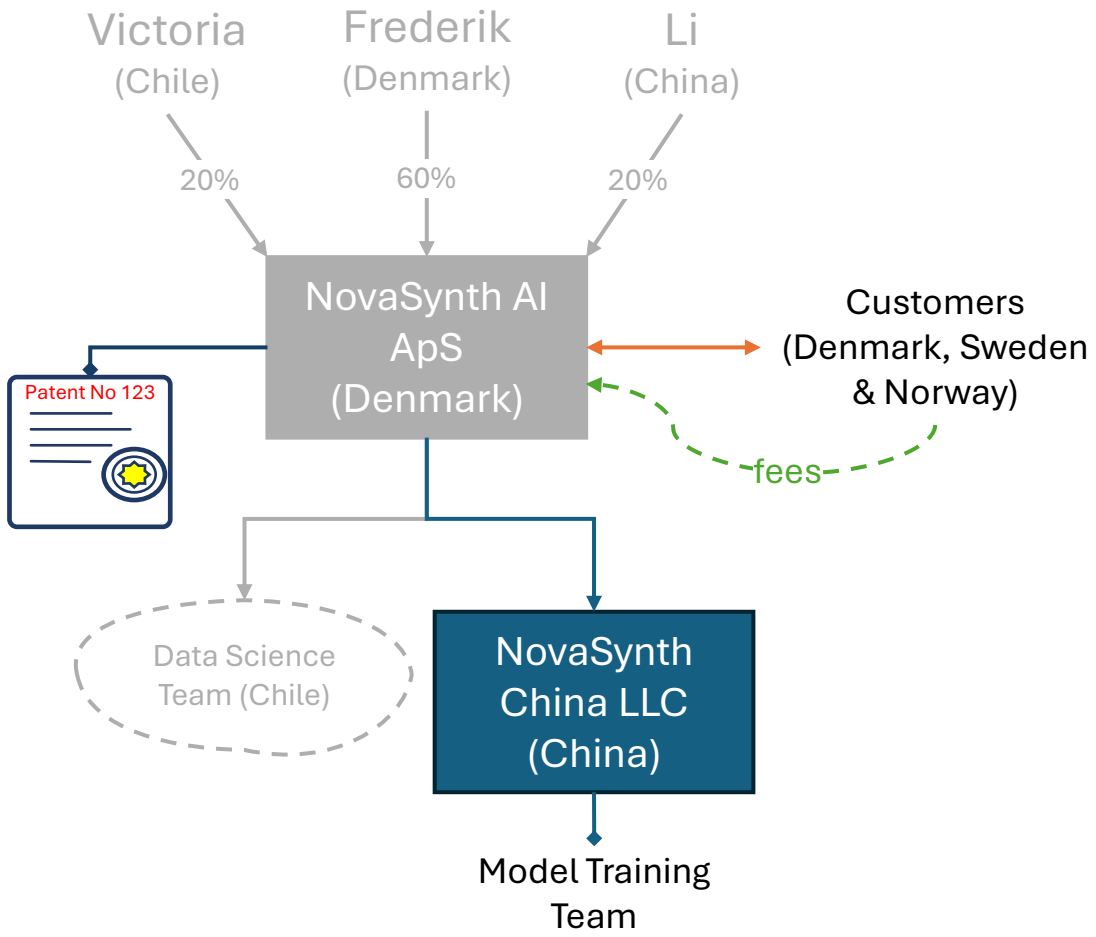

- Maintain arm's-length TP service agreements between NovaSynth China LLC and Danish parent
- Chinese tax authorities may apply DEMPE analysis: risk of TP adjustments given local AI development value-creation, despite legal IP ownership in Denmark
- Mandate formal work-product documentation to support TP positions

C. Investment Phase

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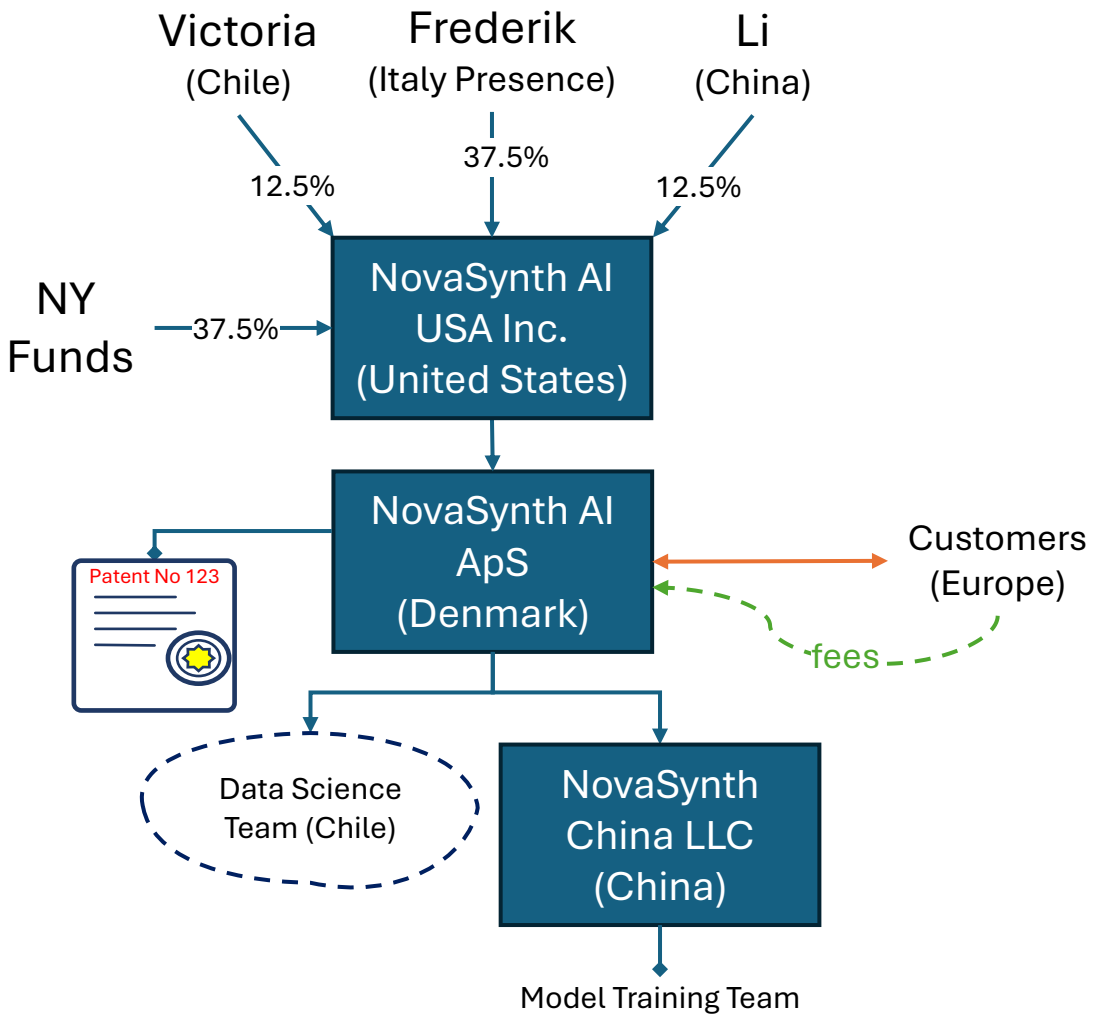

- By March 2025, NovaSynth AI ApS has achieved success in Scandinavia and has expanded its offering into Europe
- The company requires a significant capital infusion to scale and offer its product worldwide
- New York led bankers and funds have required the structure to convert into a US holding company structure as a condition to a Series B financing - NovaSynth AI ApS completes a “flip” transaction to facilitate closing
- Concurrently with the subscription financing, each of the Founders sells a portion of their equity interest for cash
- Frederik has started spending more time abroad and from March 2025 to present has spent 200 days (annualized) per year in Milan, Italy where he has executed contracts and from where he has participated in board meetings and in making strategic decisions for the business

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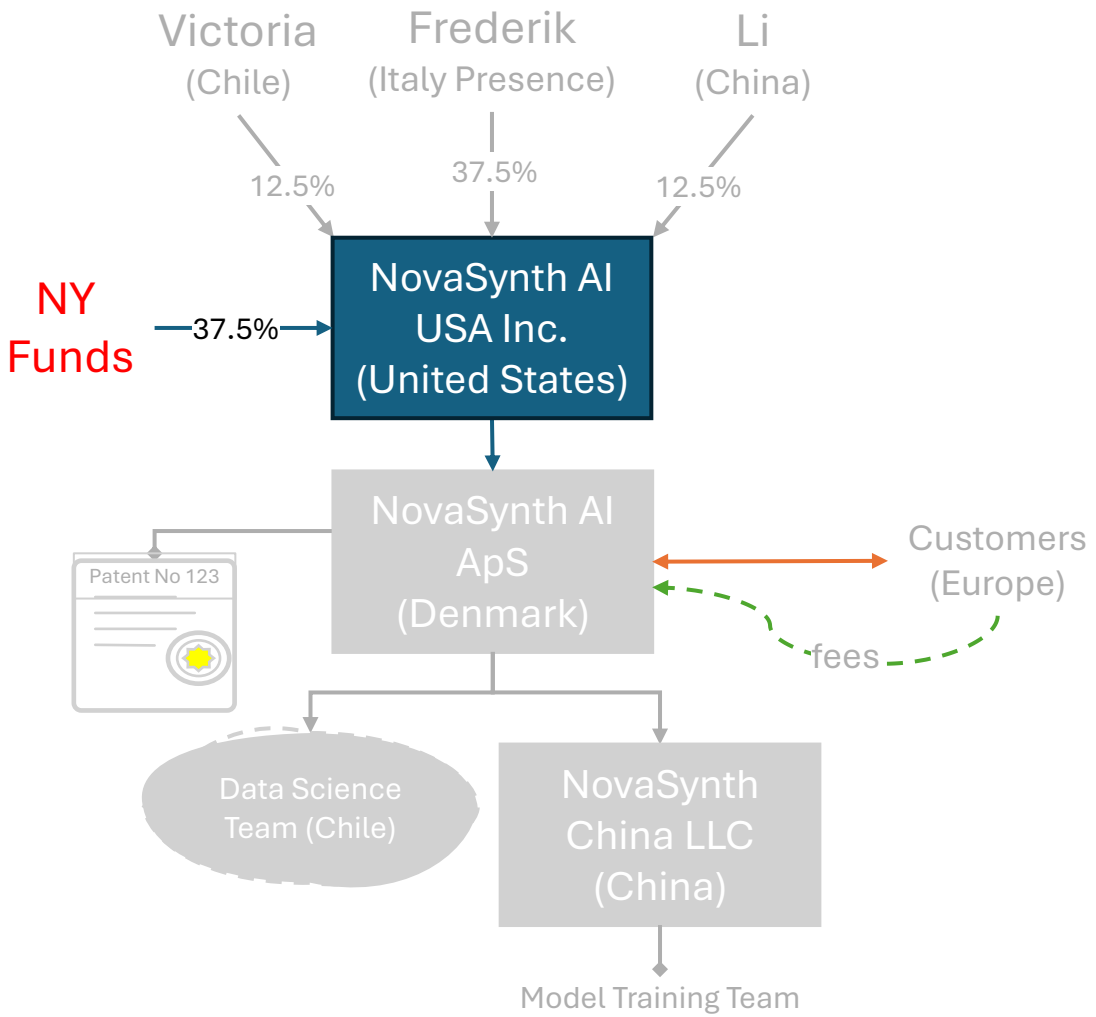

- Many options to structure of US domestication – most obvious transactions could be an F reorg or a 351
- U.S. tax classification of Denmark ApS and China LLC become relevant and have tax consequences
- Structuring to get at least partial step-up in basis of assets may be possible
- Choice between full pass-through regime or CFC regime – comparison of
  - Tax Rate on Income
  - Loss Utilization
  - Foreign Tax Credits
  - Remitting Cash to USA Inc.

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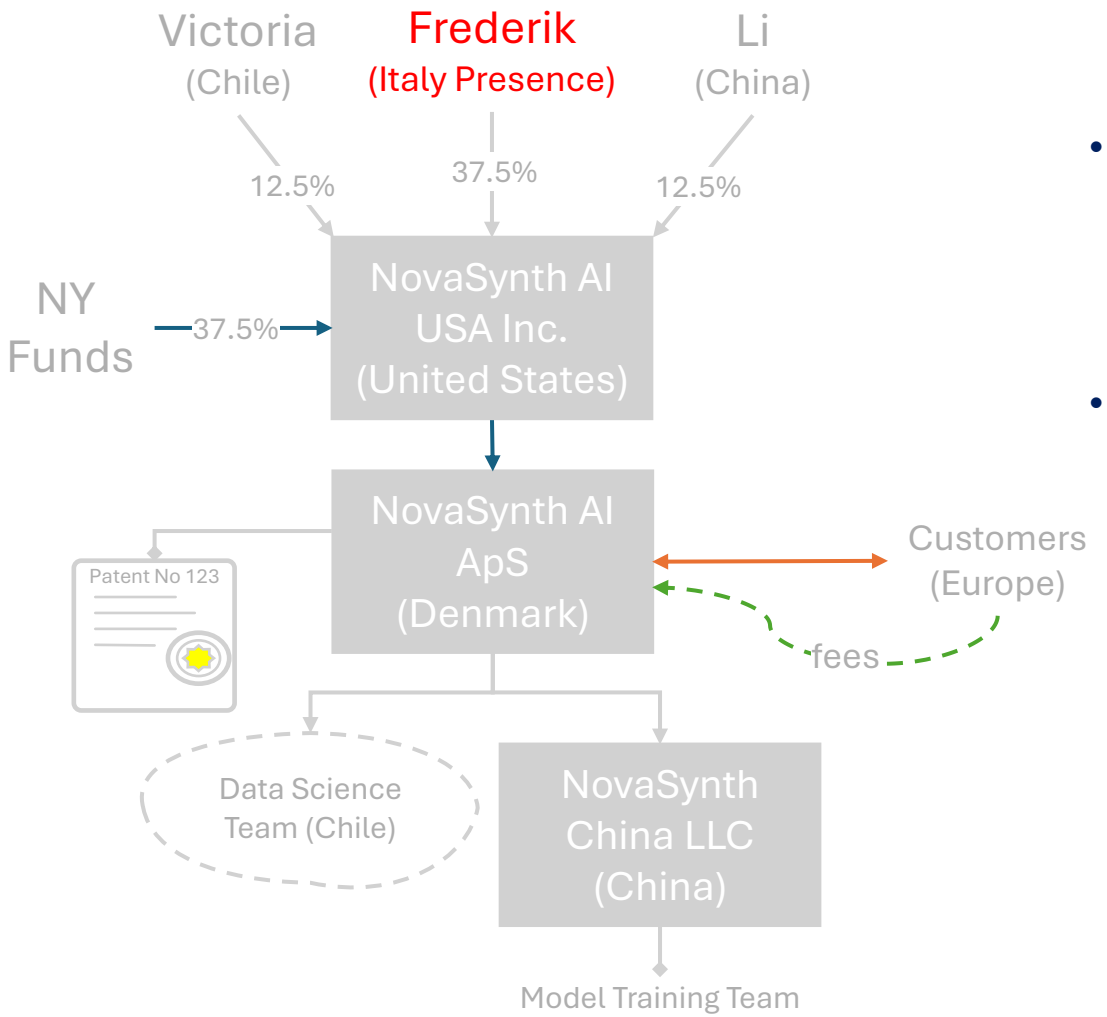

- Fixed-place PE risk (Art. 5(1) - (2) IT-DK DTT; Art. 162(1) - (2) IITC): Frederik's 200-day annual presence in Milan - where he executes contracts and attends board meetings - may give rise to a fixed-place PE

- Dependent-agent PE risk (Art. 5(5) IT-DK DTT; Art. 162(6) IITC): the fact that Frederik habitually concludes contracts in Italy on behalf of NovaSynth AI ApS may give rise to a dependent-agent PE. It is not necessary that he signs «in the name of» the foreign enterprise; it suffices that the contracts are routinely approved by the principal without substantial modifications

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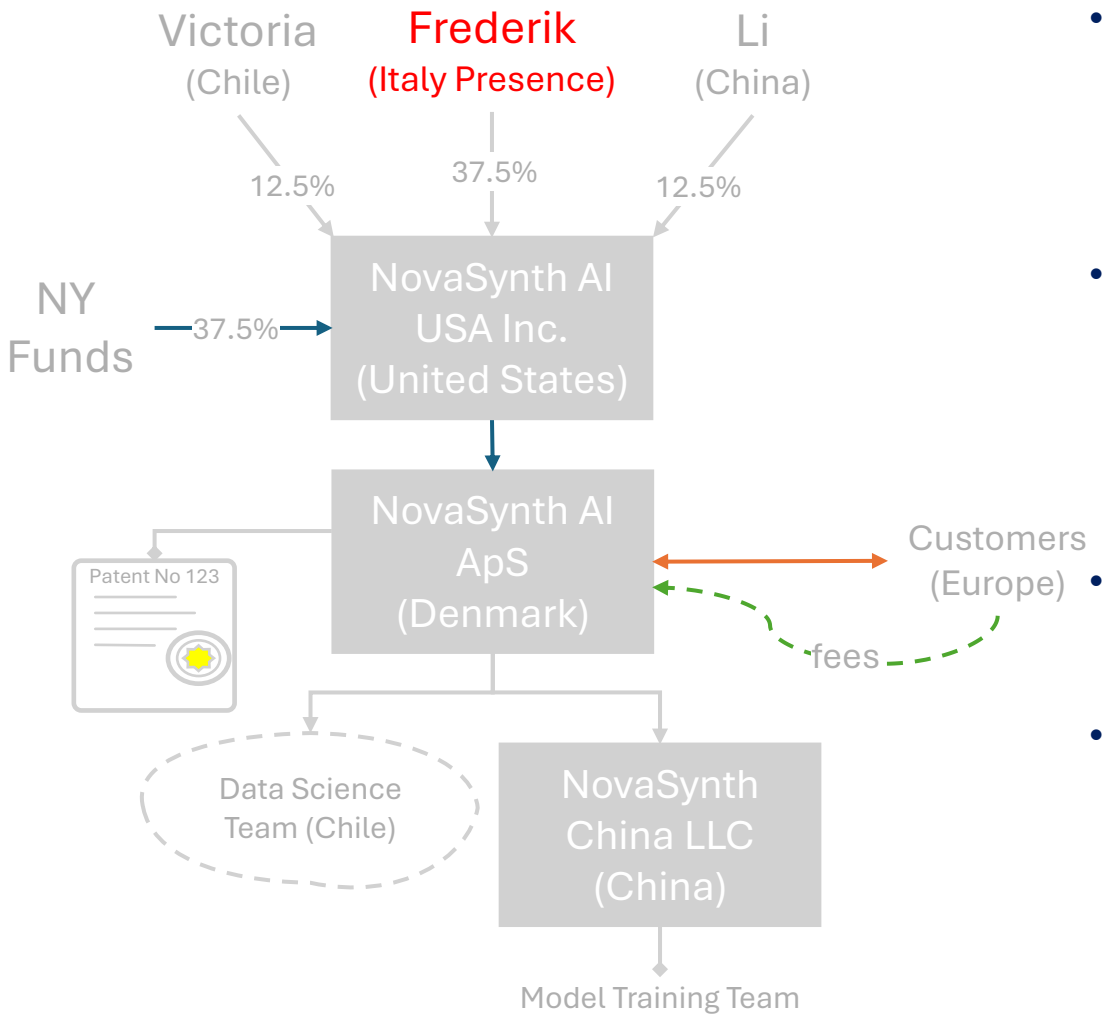

- Corporate tax residence risk (Art. 4(3) IT-DK DTT; Art. 73(3) IITC, effective from 1.1.2024): three alternative domestic criteria - (i) legal seat, (ii) place of effective management, or (iii) day-to-day management.
- Frederik's continuous strategic decision-making from Milan may trigger the «place of effective management» criterion, which - in line with recent case law aligned with OECD principles - is to be understood as the place where continuous and coordinated strategic decisions concerning the entity as a whole are taken.
- Under the IT-DK DTT, the tiebreaker for dual-resident companies is determined by reference to the «place of effective management»
- Impact of the Italian flat tax regime (Art. 24-bis IITC): if Frederik opts for the Italian flat tax regime (lump-sum substitute tax of EUR 300K from 1.1.2026), the foreign entity being deemed tax resident in Italy (Art. 73 IITC) becomes irrelevant for tax purposes, provided that the Italian tax residence arises solely from the relationship with the individual benefiting from the flat tax regime

D. Worldwide Growth

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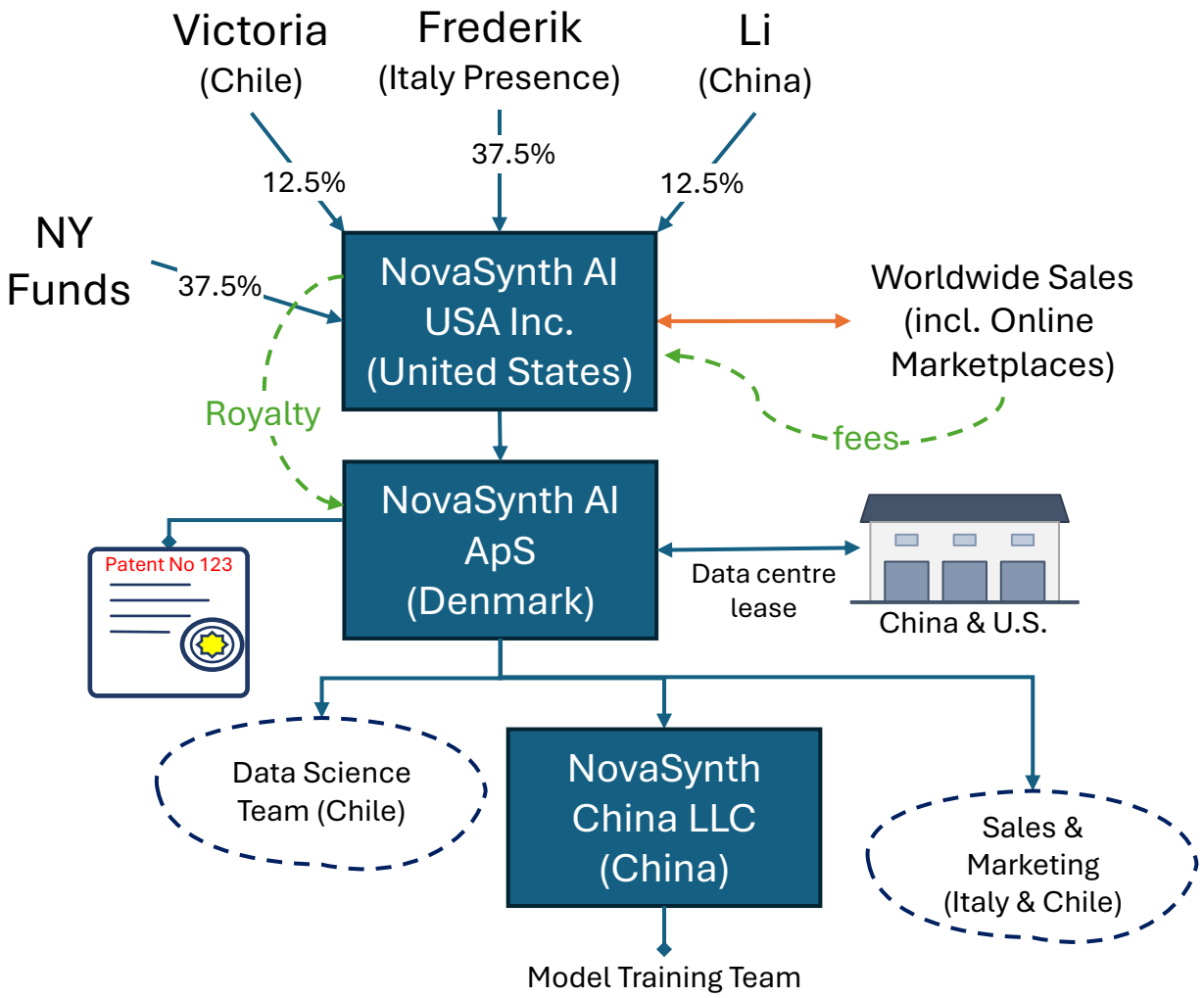

- Operations and the customer base have grown significantly
- The product is sold to users worldwide by subscription through an online software marketplace
- Dedicated servers and hardware in data centres located in Shanghai, China and Austin, Texas have been leased to service the growing demand and run the language model
- Frederik has created relationships in Milan, Italy where the company's sales and marketing teams for EMEA now reside
- Victoria has since relocated to Chile and has engaged and leads sales and marketing professionals to devise and execute the expansion strategy into South America and Asia
- Li has relocated to China where he leads the product development by the Data Science and Model Training Teams

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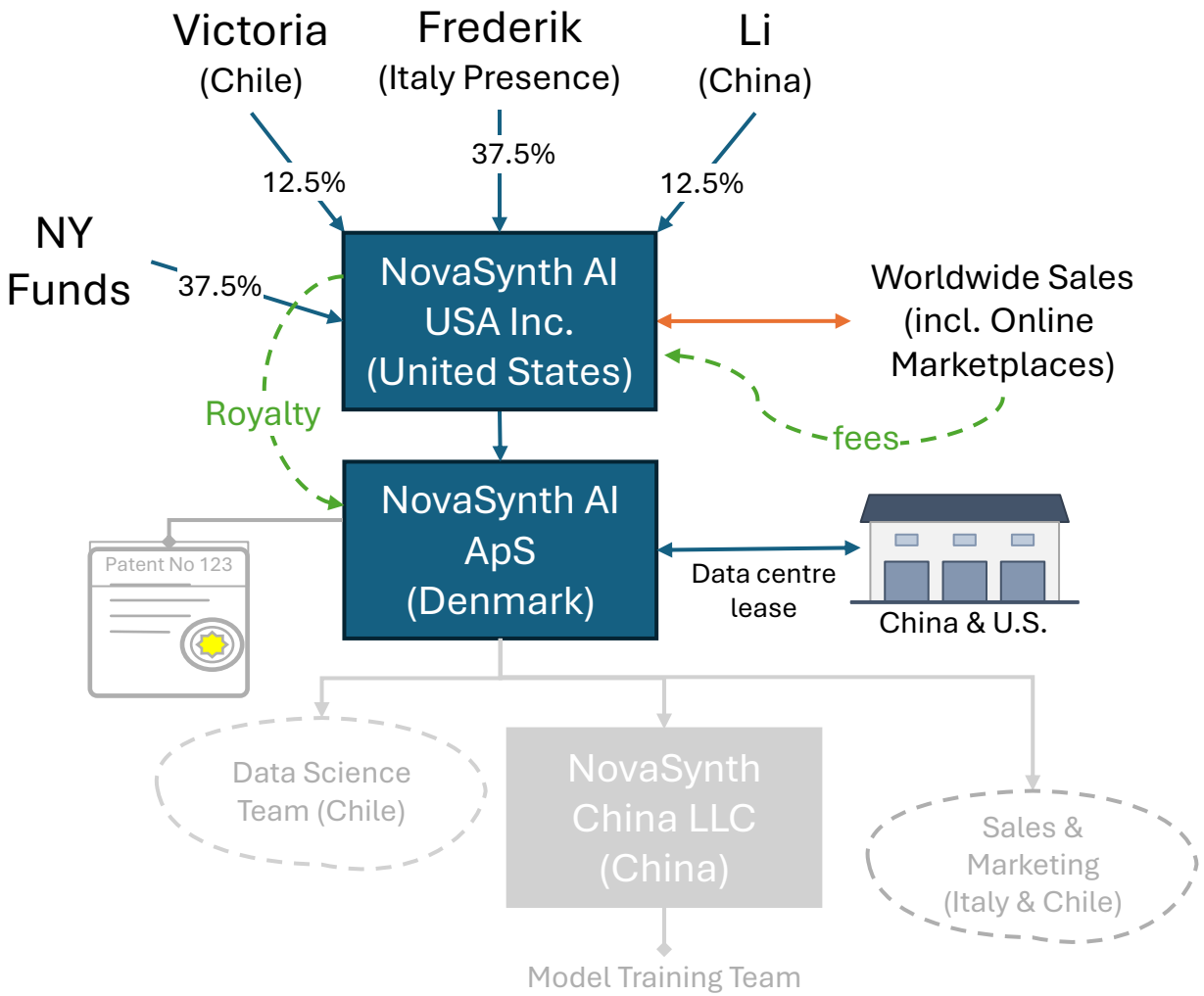

- Royalty Payments from USA Inc. to ApS
  - Transfer pricing
  - U.S. withholding on royalty payment
  - Royalty payment could result in inclusion from CFC
  - BEAT / CAMT could limit corresponding deduction
  - FTC for Danish taxes could be limited
- Austin Data Center
  - Creates PE in U.S.
- Effects on Founders
  - U.S. withholding on dividends
  - USA Inc. shares are U.S.-situs assets subject to estate and gift tax

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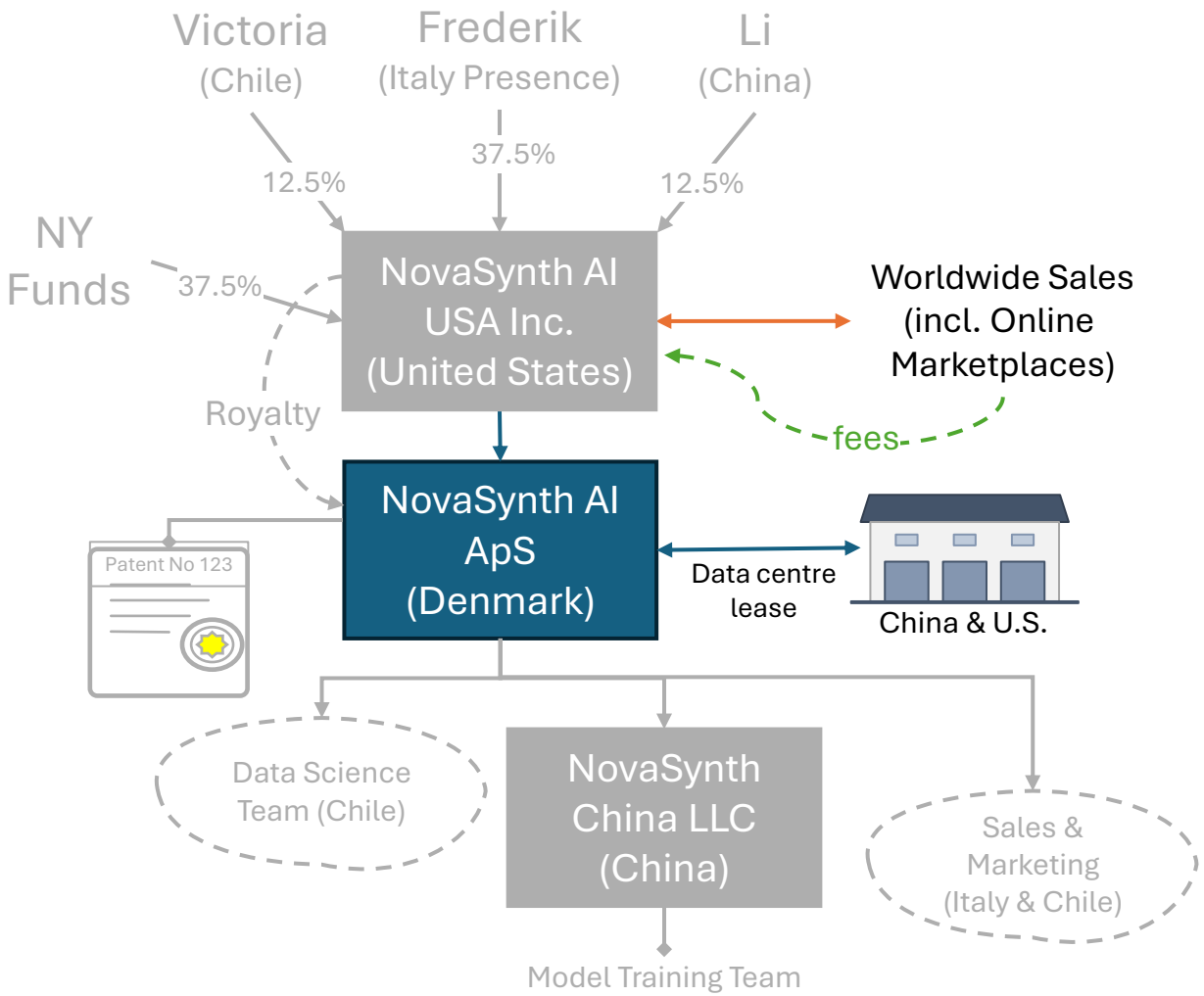

- Leased Shanghai dedicated servers: trigger potential server-based PE risk; overlay data-localization compliance
- Update TP functional-risk analysis for Li-led expanded Chinese development teams
- Li's Chinese tax planning: residency and the impact of the new offshore trust rules

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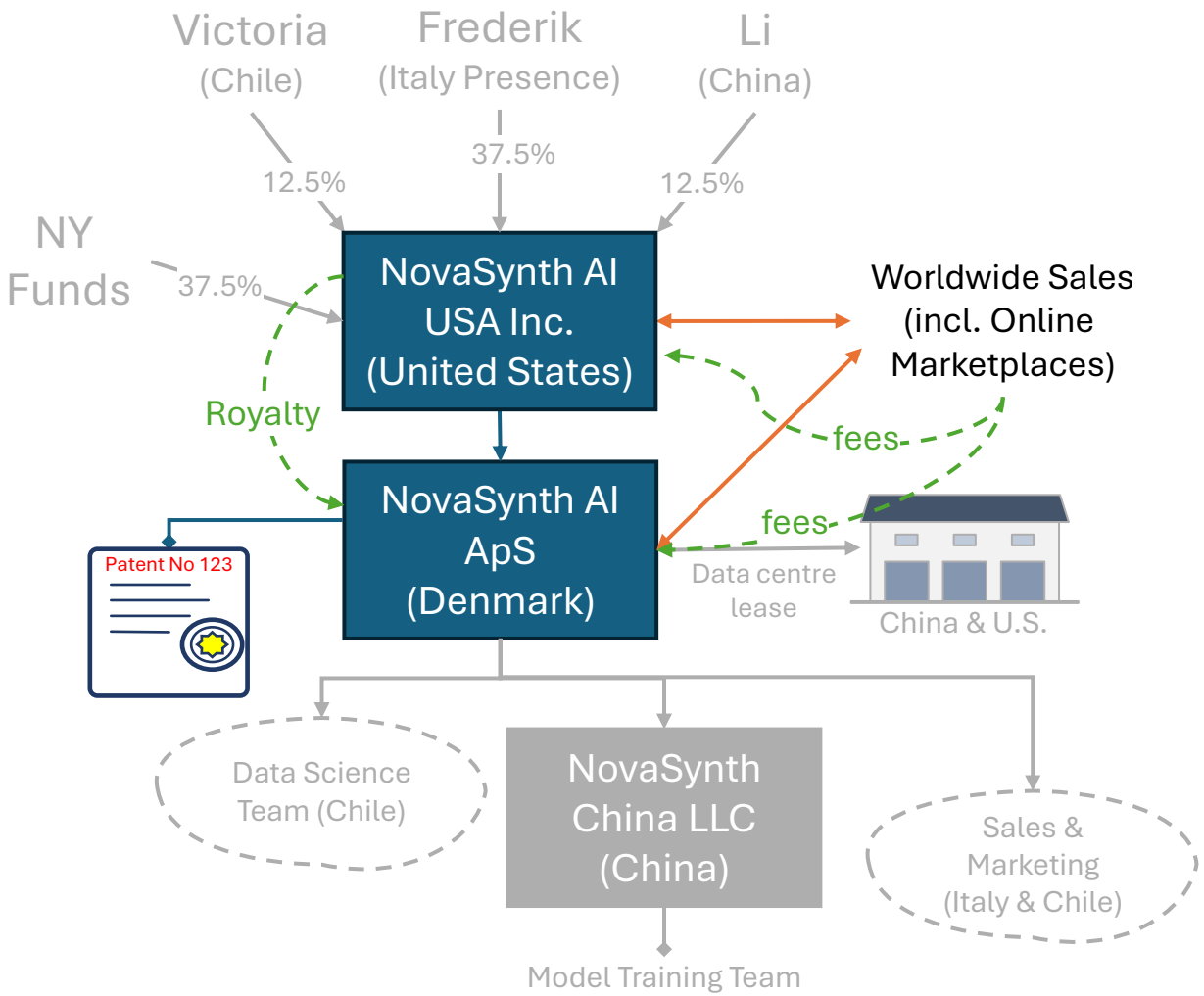
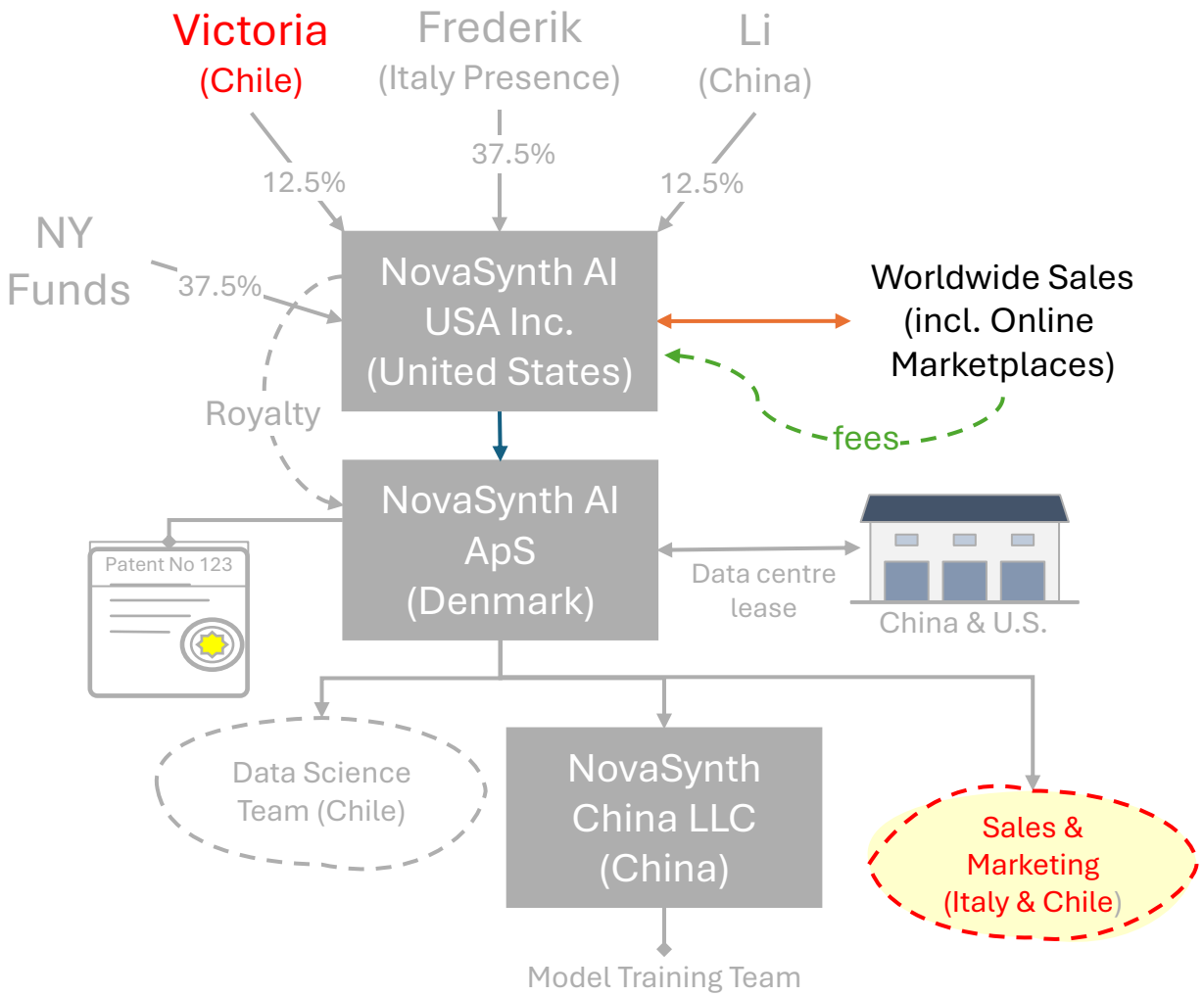


- No official position of DTA and no (relevant) case law
- Require analysis of actual DEMPE profile of all parties and their realistically available options
  - Has something been transferred?
  - If yes, at what value?
- Royalty from NovaSynth AI USA Inc
  - Revenue based or fixed?
  - Duration?
- Documentation should support the accurately delineated setup

D. Worldwide Growth October 2023 >> July 2024 >> March 2025 >> October 2026



Chile: Sales & Marketing Functions Led from Chile:

- Victoria's role must be carefully structured. Formal limitations on her authority, substantive approval of contracts outside Chile, and clear negotiation protocols are essential to mitigate dependent agent PE risk. The combination of technical and commercial functions in Chile significantly strengthens Chile's taxing rights.
- HIGH RISK if Victoria negotiates essential contract terms, obtains client commitments, channels proposals routinely approved by Denmark, directs regional commercial teams, or plays the principal role in closing license/SaaS/AI service contracts.
- LOWER RISK if her functions are limited to preparatory marketing, market research, and lead generation without authority or principal role in contract conclusion, and contracts are substantively negotiated and approved outside Chile.

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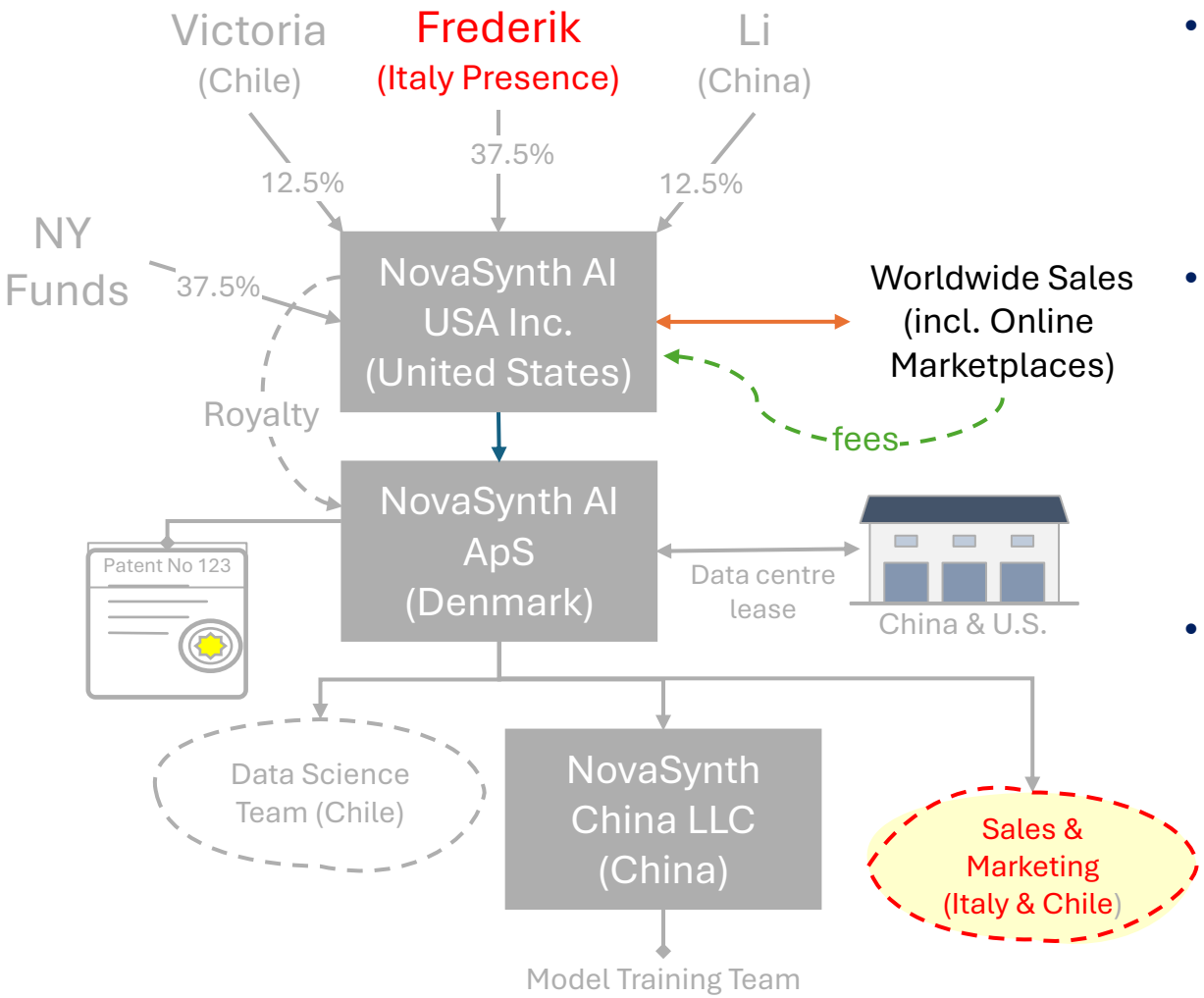

- Italian PE highly likely to exist: The establishment of a dedicated EMEA sales and marketing team in Milan under Frederik's leadership would create a stable business presence in Italy performing core revenue-generating functions that go well beyond preparatory or auxiliary activities.
- Consequences of the PE: profit attribution to the Italian PE (Art. 7 IT-DK DTT) applying the AOA - requiring a functional analysis of the functions performed, assets used, and risks assumed by the Milan-based team vis-à-vis the other group entities. The Italian PE would be subject to Italian corporate income tax on an arm's length share of the group's profits attributable to the Italian activities
- Practical recommendation: the group should proactively address its Italian PE exposure by adopting robust profit attribution and TP policies and ensuring full compliance with Italian tax obligations. Depending on the group's commercial, operational and legal objectives, the Italian presence may be maintained as a registered PE for tax purposes, formalised as a branch, or structured as an Italian subsidiary