AMERICAN BAR ASSOCIATION

Tax Section

2024 MAY TAX MEETING

#24TaxMay

Practical Pillar II in M&A

Foreign Lawyers Forum

May 3, 2024

#170398151v6

Agenda

Pillar II in Pictures for US lawyers

Pillar II in M&A

- Due diligence – what to look for
- Structuring the deal – JVs
- Negotiating and allocating Pillar II costs
- Impact on the definitive agreement
- Post Closing integration
  - Intercompany financing
  - Credits
  - Holding companies

The Panel

Moderator

Joan Arnold

- Troutman Pepper - Philadelphia, PA

Panelists

Nadia Altenburg

- Flick Gock Schaumburg, Hamburg, Germany

Barry Horne

Miller Thompson LLP, Toronto, Canada

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- Linklaters, London, United Kingdom

Michiel Schul

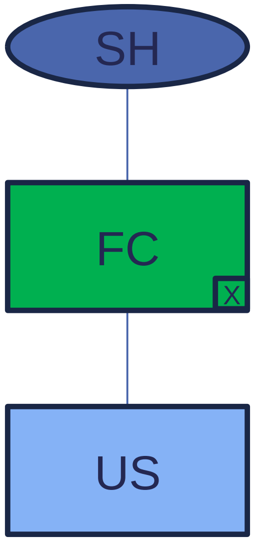
- Loyens & Loeff, New York, NY

James Somerville

- A&L Goodbody, Dublin, Ireland

Pillar II in Pictures

Intro To The Acronyms/Level Setting

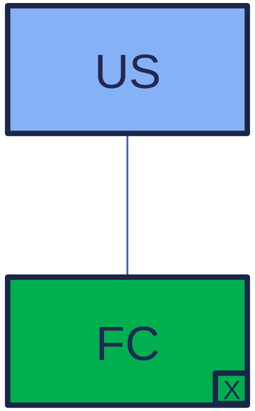


Assume Country X has adopted Pillar II rules

- FC is the ultimate parent entity (UPE)
- Both FC and US are constituent entities (CE)

- Assume that US' effective tax rate (ETR) is 10% and the group meets the revenue threshold of €750MM in two of last four years
- Since X has adopted Pillar II rules, it has put in place an income inclusion rule (IIR)
- Since US' ETR is less than 15%, under the IIR, Country X will collect an incremental tax from FC. This is a 'top up tax.'
  - Top up tax base does have a GILTI like provision to take into account bricks and mortar

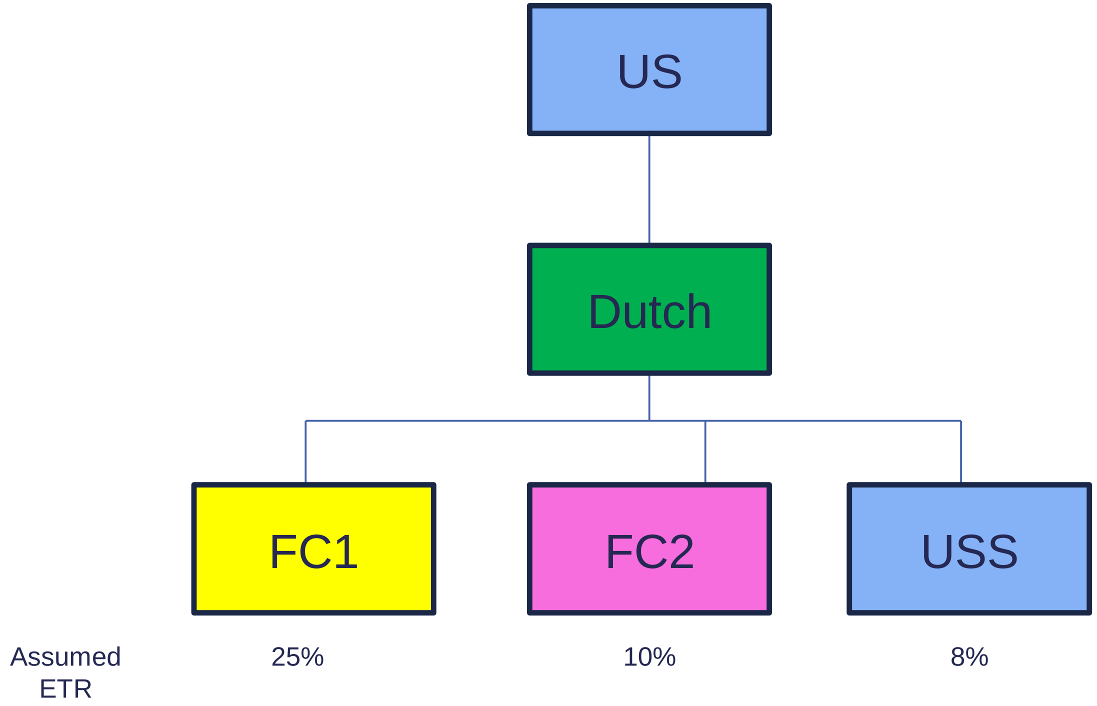
In The Reverse



- Assume US ETR < 15% and the US has not adopted a qualified domestic minimum tax (QDMTT). CAMT is not a QDMTT

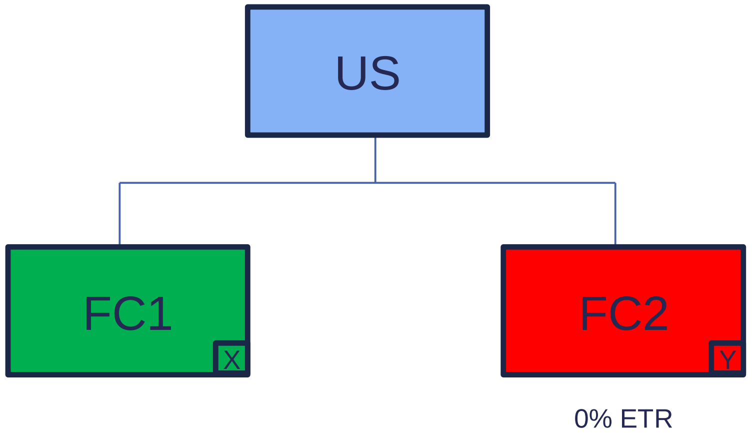
- Under the under taxed profits rule (UTPR) Country X can impose a top up tax. Delayed until 2025

A Bit More Complicated



- Assume ETRs as shown and USS
- US does not have IIR, so go down the chain
- Netherlands adopted Pillar II, so it has IIR
- Netherlands collects the top up tax
- How?

Removing Netherlands



- Assume FC 2 ETR is < 15%
- US does not have IIR
- County X, if it has adopted Pillar II, can collect top up tax under UTPR in 2025
- Consider result if Y is Cayman, X is Bermuda

Current Timing Of Applicability

- Netherlands – IIR and Domestic Minimum Top Up Tax effective from 31 December 2023.
- Germany – IIR and Domestic Minimum Top Up Tax effective from 31 December 2023.
- UK – IIR and Domestic Minimum Top Up Tax effective from 31 December 2023.
- Ireland – IIR and Domestic Minimum Top Up Tax effective from 31 December 2023 and UTPR 2025.
- Canada – IIR and Domestic Minimum Top Up Tax effective from 31 December 2023 (still draft; Canada reaffirmed on April 15th commitment to implement soon).

Due Diligence

Due Diligence - Scenarios

- Buyer is part of a Qualifying MNE Group (**QMG**) Consolidated Revenues >= 750M €
  - Seller is part of a QMG
  - Seller is not part of a QMG

- Buyer is not part of a QMG
  - Target is part of a QMG
  - Target is not part of a QMG

Due Diligence - Complexity

		Seller	
Buyer	Pillar Complexity/Risk	QMG	Non-QMG
	QMG	MEDIUM 3	LOW 1
	Non-QMG	HIGH 4	LOW 2

Non-QMG= Consolidated Revenues < 750M €
QMG= Consolidated Revenues >= 750M €

Due Diligence – Complexity – cont.

1 QMG buyer and Non-QMG seller

- no historical Pillar 2 liability
- financial modelling for post-closing may be more time consuming

2 Non-QMG buyer and Non-QMG seller

- no historical Pillar 2
- financial modelling for post-closing – Becomes a QMG?

3 QMG buyer and seller

- Possible Pillar 2 liabilities

4 Non-QMG buyer and QMG seller

- Possible Pillar 2 liabilities

Due Diligence Team

- Usually, the buyer's tax advisers will include one of the global accounting firms who will lead the Pillar 2 due diligence - presence in most if not all of the jurisdictions where the target is located.
- Accounting firm's assurance group plays an invaluable role - confirm accounting calculations and application of the accounting principles.
- Law firms play an important role where the legal characteristics of transactions, instruments, and tax principles have an impact on the application of the Pillar 2 rules.
- Law firm is also in a unique position to help deal with the Pillar 2 risks by assisting with the structuring and addressing risk through the language of the definitive agreements.

Pillar II Due Diligence

Share sale – participation exemption under Pillar II

The Pillar II legislation provides that an **excluded gain or loss,** being a gain or loss arising from:

(a) changes in the fair value of an ownership interest, other than a portfolio shareholding;

(b) an ownership interest that is included under the equity method of accounting; or

(c) the disposal of an ownership interest, other than the disposal of a **portfolio shareholding** (which means an ownership interest held by a group in an entity that carries rights to less than 10% of the profits, capital or reserves, or voting rights of that entity at the date of the disposition)

included in an entity's financial accounting net income or loss is then excluded when calculating to determine the qualifying income or loss of a constituent entity in respect of a fiscal year.

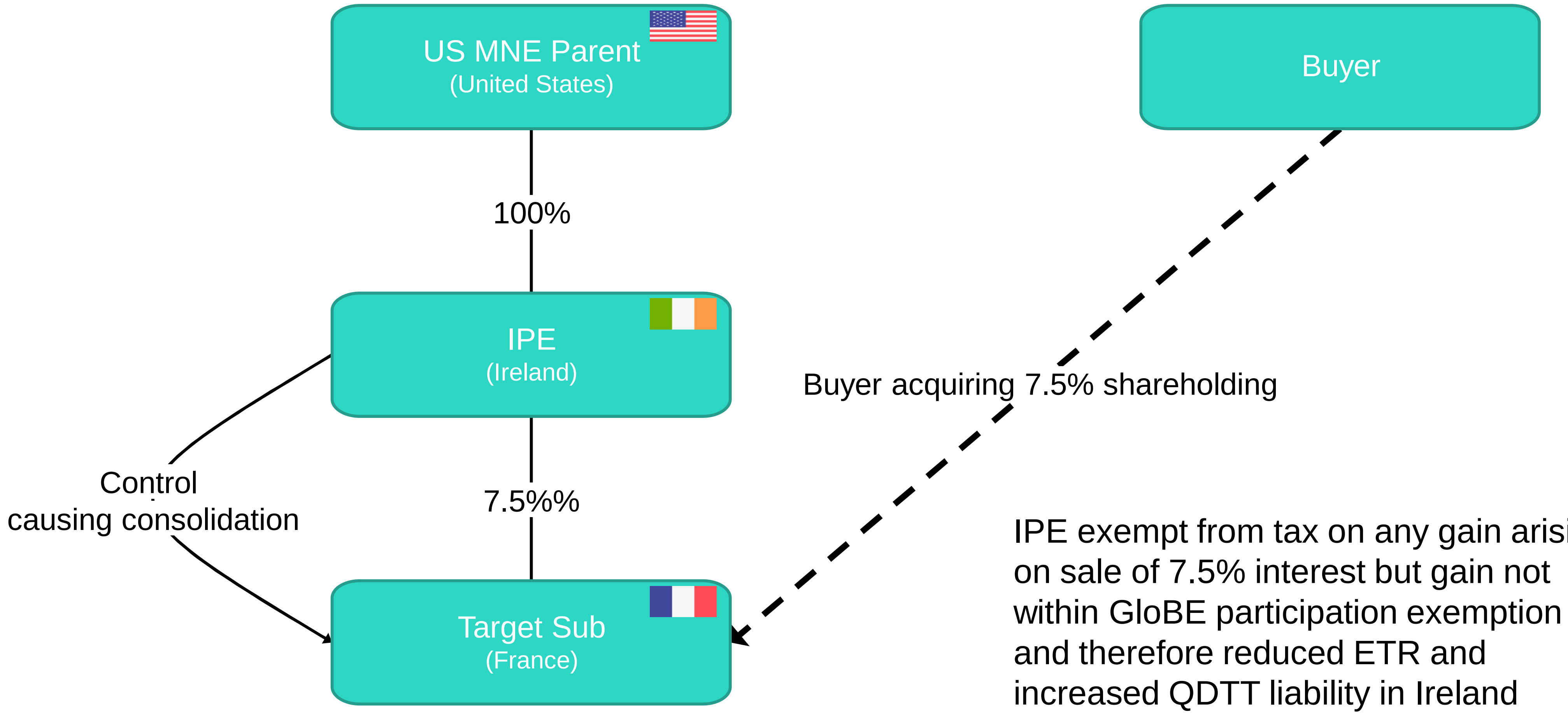
Different criteria to Irish and other domestic tax law participation exemptions:

- a higher shareholding percentage at 10% instead of 5%;
- no jurisdictional requirements/length of ownership/trading activity analysis.

So sale of 7.5% shareholding would be exempt from tax but income not excluded in GloBE calculation thereby increasing ETR

Pillar II Due Diligence

Participation exemption tax / GloBE mismatch



IPE exempt from tax on any gain arising on sale of 7.5% interest but gain not within GloBE participation exemption and therefore reduced ETR and increased QDTT liability in Ireland

Pillar II Due Diligence

Sale of shares treated as disposal of assets

- Generally, the disposal of assets/liabilities does not give rise to any exclusion or exemptions for GloBE calculation purposes. The disposing entity includes the gain or loss on disposition in the computation of its GloBE income or loss, and the acquiring entity determines its GloBE income or loss based on the carrying value of assets and liabilities (as determined under the UPE's accounting standard).
- As a result, an asset sale may be a less efficient outcome from a GloBE calculation perspective than share disposal (unless it constitutes a "reorganisation").
- A problem could therefore arise, if a share disposal (which could qualify as an excluded gain or loss) is instead treated as a disposal of assets and liabilities, which gives rise to a gain in the computation of GloBE income or losses.

Circumstances in which a share acquisition is treated as an asset deal under Pillar II rules

- Where the jurisdiction in which the target entity is located or, in the case of a tax transparent entity, the jurisdiction in which the assets are located—
  - treats the acquisition or disposal of a controlling interest in the target entity in the same, or in a similar, manner as an acquisition or disposal of assets and liabilities, and
  - imposes a covered tax on the seller based on the difference between—
    - ❑ the tax basis, and
    - ❑ either—(i) the consideration paid in exchange for the controlling interest, or (ii) the fair value of the assets and liabilities,

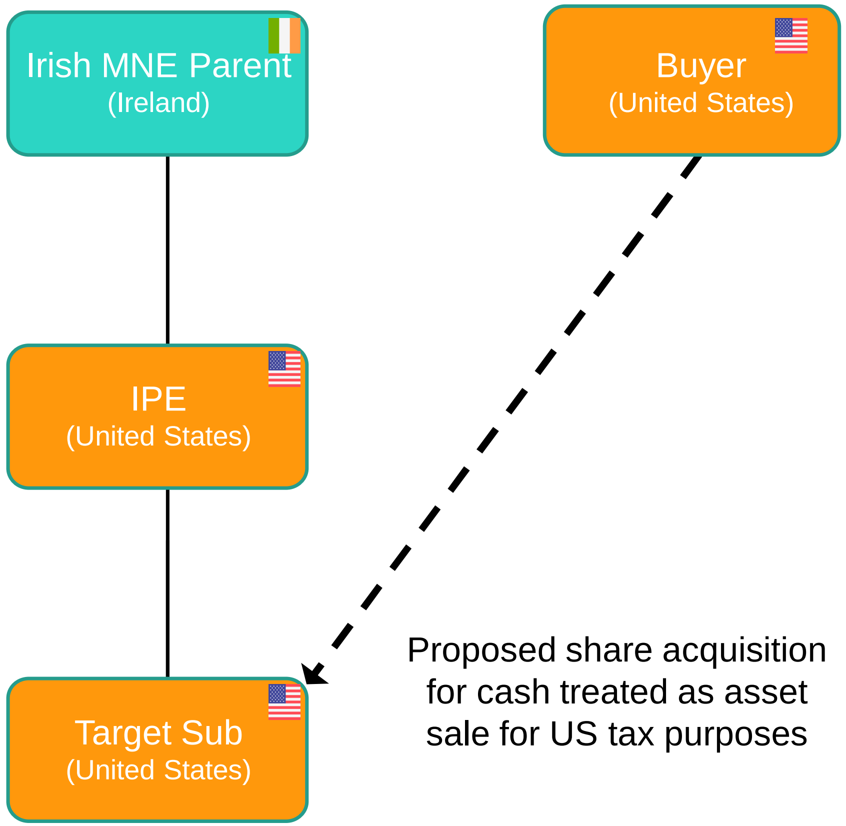
then the acquisition or disposal of that controlling interest in a target entity shall be treated as an acquisition or disposal of assets and liabilities.

Pillar II Due Diligence

Sale of shares treated as disposal of assets

- A US subsidiary is disposed of in a group with an Irish UPE. The US rules could treat the share sale as an asset sale (for example, a US section 338 election). This could result in a Pillar II charge arising for the Irish UPE, as the US has not adopted the Pillar II rules, so the US subsidiary's transaction could result in an IIR charge for the Irish UPE (based off the asset sale income computation rather than an anticipated share sale computation).

Potential IIR for Irish UPE



Deferred Tax Assets/Liabilities

- **General treatment**: Groups are able to include DTAs in their ETR calculations, which will reduce the impact of timing differences. However, in many instances if the timing difference has not unwound after five years the deferred tax will be adjusted out of the ETR calculation – referred to as "recapture" – and a top-up tax may arise. This could pose a particular problem for groups with longer-life assets that are subject to recapture, such as intangibles and goodwill.

- **How Deferred Tax Assets Work:** In a loss-making year, an entity will recognise a deferred tax asset (**DTA**) in its accounts, representing the tax that will be saved by claiming loss relief in the future. In the later year when the loss is relieved under the domestic tax system, that DTA will be reversed, producing a deferred tax expense in the entity's profit and loss account at the same time the loss is used to reduce the covered tax payable. That deferred tax expense is then taken into account under the GloBE rules when determining the entity's ETR for that year.

Deferred Tax Assets/Liabilities

- **Impact of transactions on deferred tax assets/liabilities:** Deferred tax assets and tax liabilities of a target entity that are transferred between a MNE group shall be taken into account by the acquiring MNE group in the same manner and to the same extent as if the acquiring MNE group held a controlling interest in the target entity when such assets and liabilities arose.

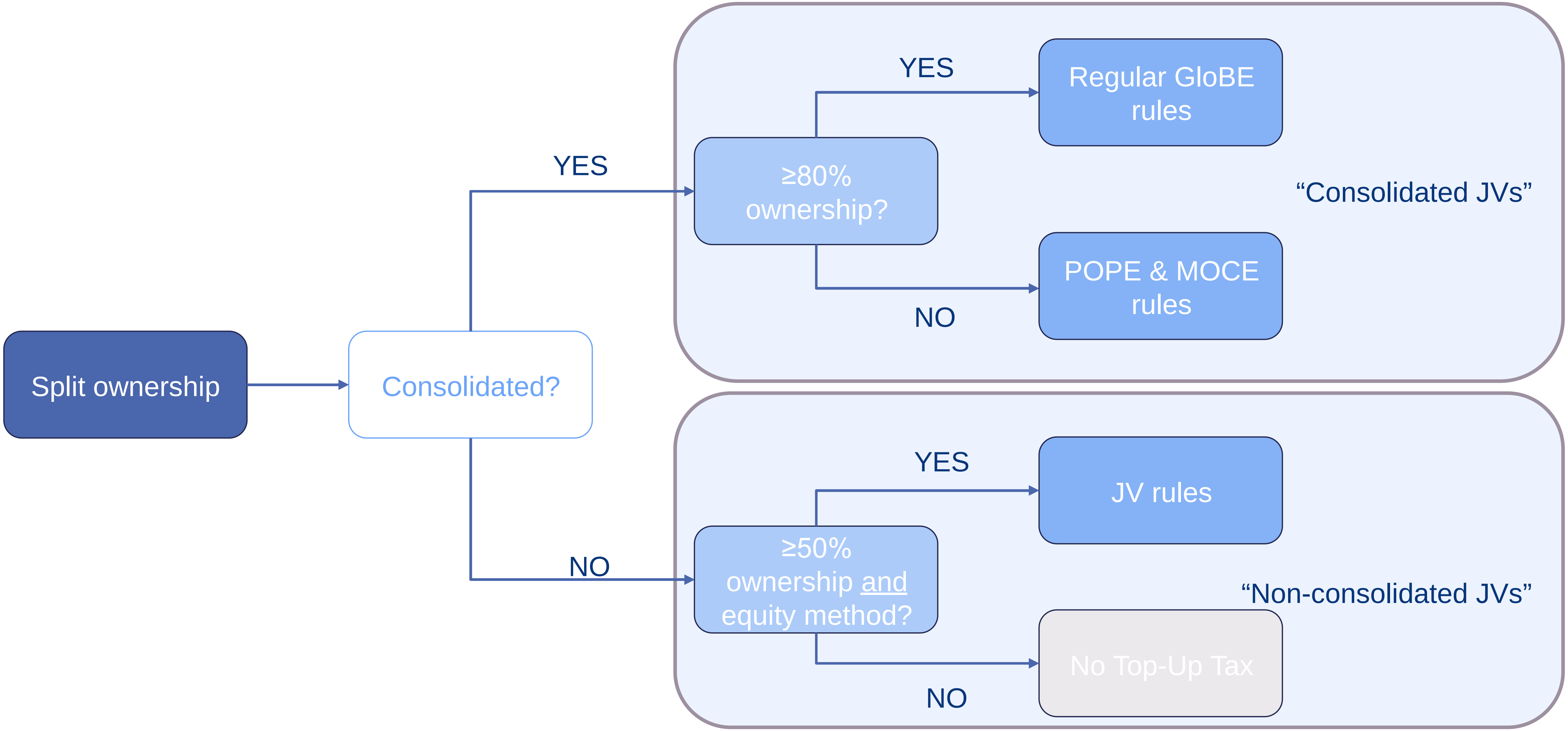
- Where a deferred tax liability of a target entity has previously been included in its total deferred tax adjustment amount, it shall be treated as reversed by the disposing MNE group and shall be treated as arising from the acquiring MNE group in the acquisition year.

- Where this applies, any subsequent reduction of covered taxes shall have effect in the fiscal year in which the amount is recaptured and if not utilized within the 5 year period there can be top up tax consequences of the deemed recapture.

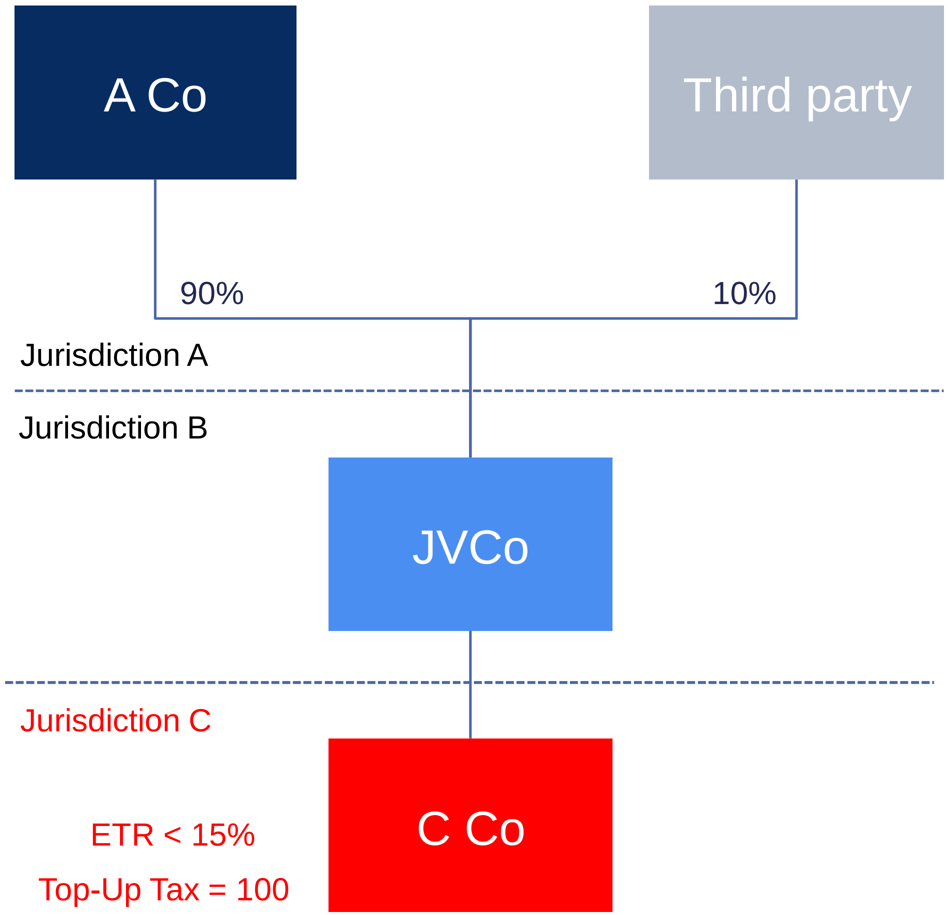
- **Key point:** You can acquire deferred tax assets, which will be reversed out and will potentially create a Pillar 2 tax charge in subsequent years.

Joint Ventures And Split Ownership

Overview – Split Ownership Under GloBE



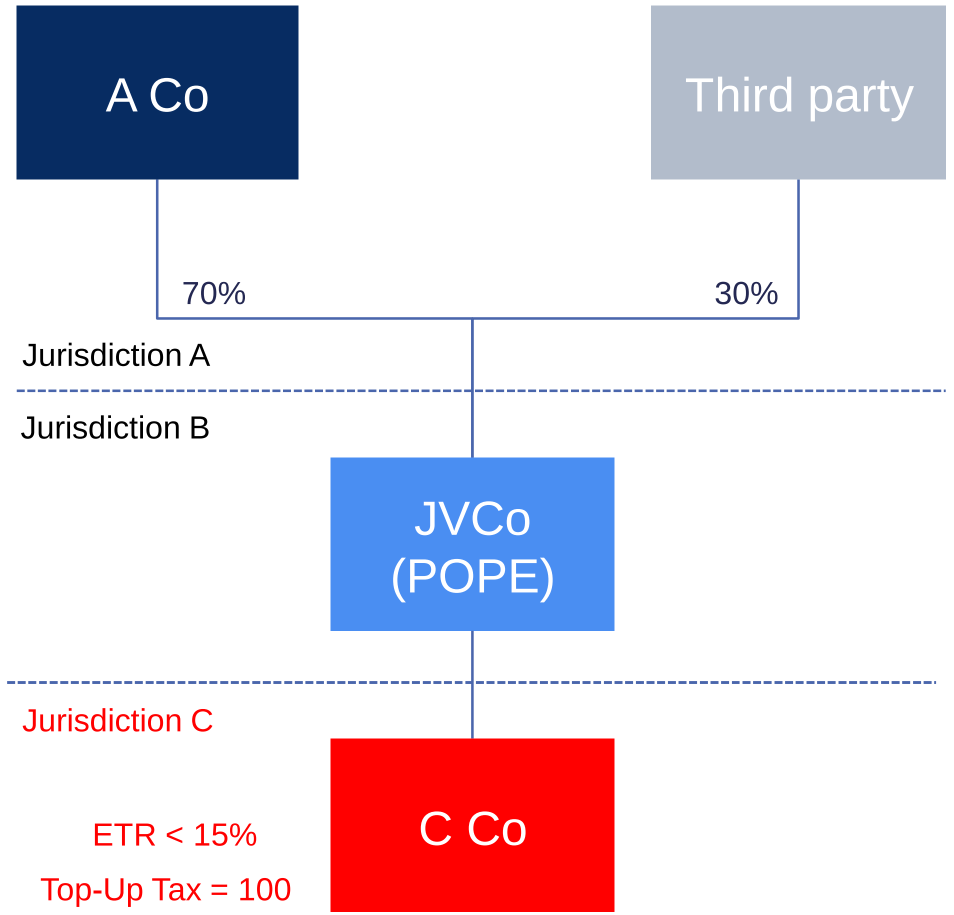
Consolidated JVs (1)



Scenario 1: Ownership Interest ≥ 80%

- A Co subject to IIR
- IIR = 90% * 100 = 90
- Top-up tax attributable to minority interest (in this case 10%) goes uncollected
- Pillar Two position C Co may also depend on other Constituent Entities of A Co Group – more to follow
- What if Jurisdiction A did not adopt Pillar Two?

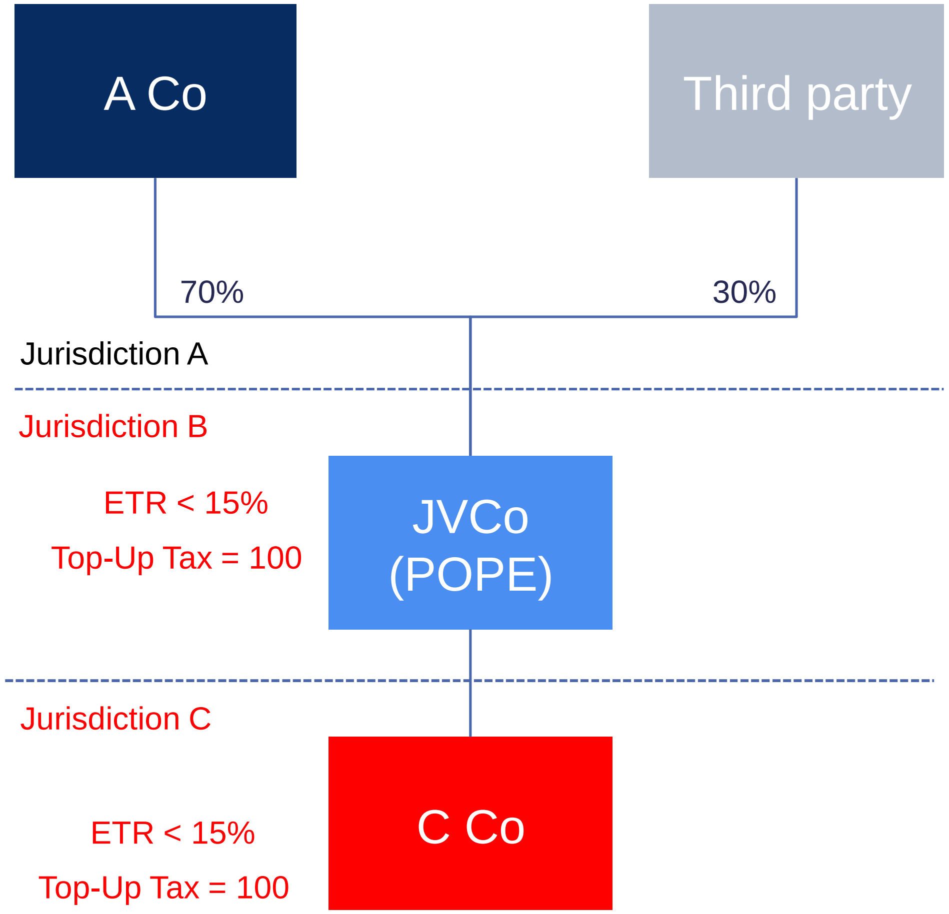
Consolidated JVs (2)



Scenario 2: Ownership Interest < 80%

- IIR shifts to JVCo as Partially Owned Parent Entity (**POPE**)
- IIR = 100% * 100 = <u>100</u>
- By migrating collection to the POPE, a key feature of these rules is that the top-up tax attributable to the minority interest (in this case 30%) does not go uncollected (c.f. Scenario 1) (albeit position is more complicated where POPE itself is in an undertaxed jurisdiction)
- What if JVCo itself is low-taxed?
- If consolidating interest in JVCo and LTCE <30% (known as a Minority Owned Constituent Entity or "MOCE"): <u>no jurisdictional blending with other Constituent Entities of A Co group (remain consolidated for revenue threshold)</u> – not explicit rules on who should bear top-up tax in respect of a MOCE, but appears the usual charging provisions should apply

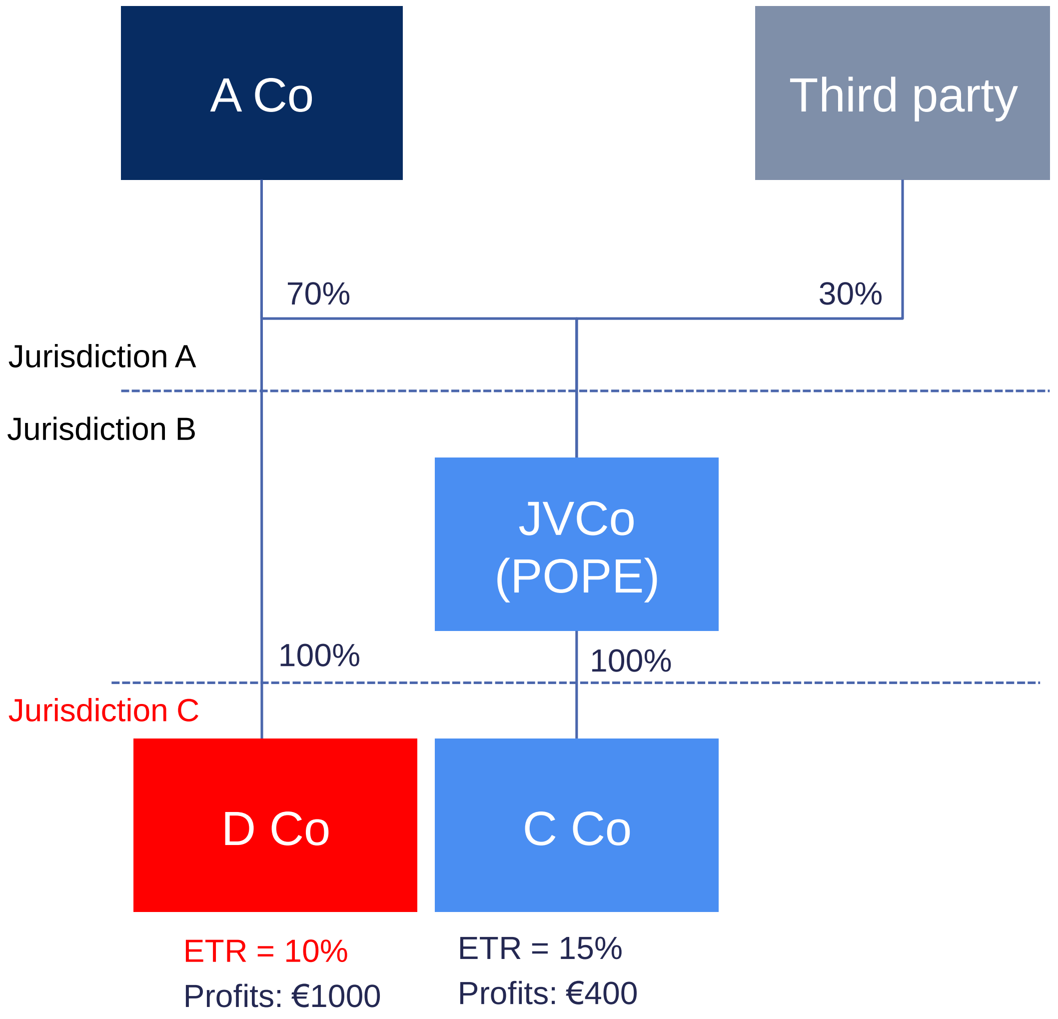
Consolidated JVs (3)



Scenario 3: Ownership Interest < 80%, POPE in low tax jurisdiction

- What if JVCo itself is low-taxed?
- As before, POPE applies IIR in respect of C Co: IIR = 100% * 100 = <u>100</u>
- However, unless a QDMTT applies, POPE does not account for its own top-up tax. Instead, A Co as UPE applies IRR in respect of JVCo: IIR = 70% * 100 = <u>70</u>

Consolidated JVs (4)



Scenario 3: Ownership Interest < 80% - impact of jurisdictional blending

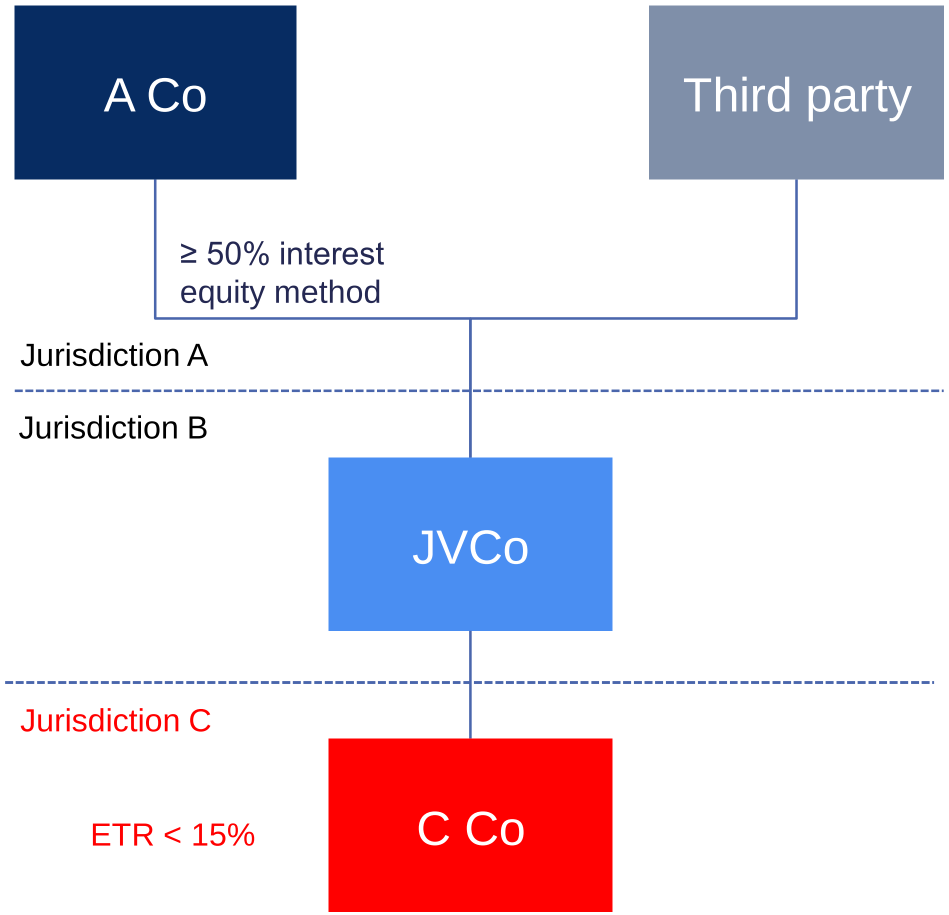
- As before, IIR shifts to JVCo in relation to C Co as JVCo is a POPE
- Jurisdictional blending rules determine ETR of Jurisdiction C:

  Excess profits: €1400

  Covered taxes: €160 ((1000x10%)+(400x15%))

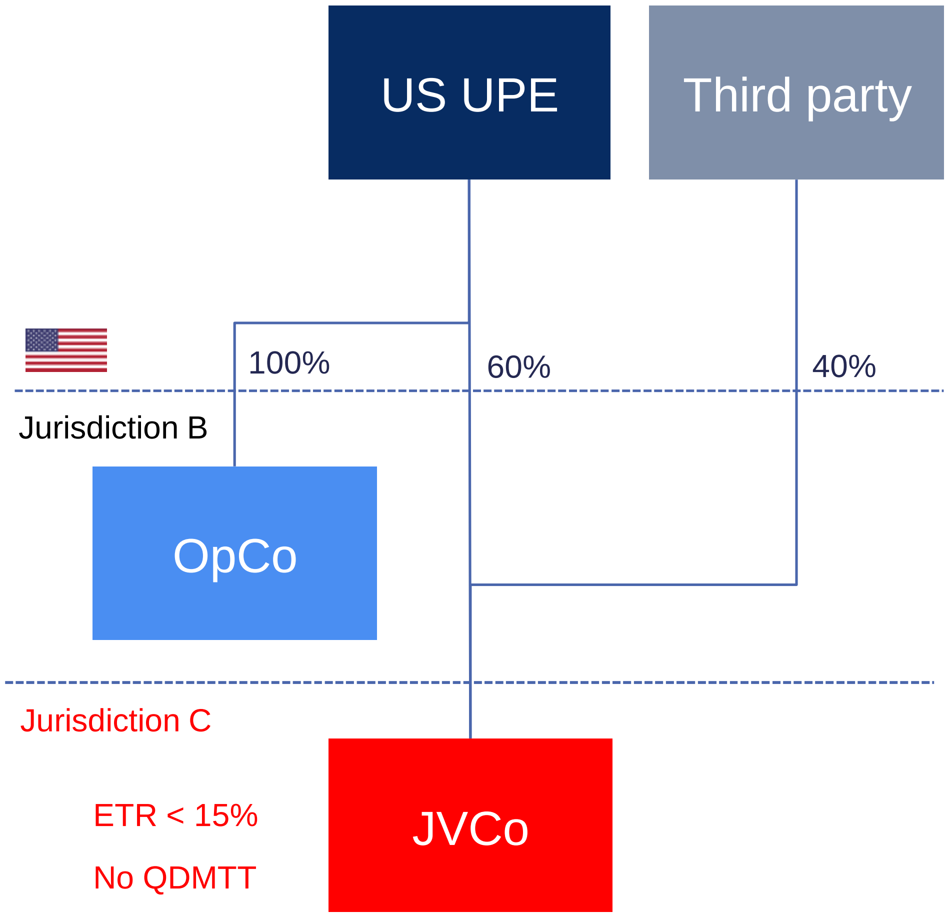
  ETR: 11.43% (160/1400)
- Top-up tax payable by POPE = €14.3 (400x3.57%) (vs nothing without jurisdictional blending)
- Top-up tax payable by A Co (as UPE): €35.7 (1000x3.57%) (vs €50 without jurisdictional blending as IRR imposed on UPE would have been 1000x5%)
- If consolidating interest in JVCo and LTCE <30% (known as a Minority Owned Constituent Entity or "MOCE"): <u>no jurisdictional blending with other Constituent Entities of A Co group (remain consolidated for revenue threshold)</u> – not explicit rules on who should bear top-up tax in respect of a MOCE, but appears the usual charging provisions should apply

Non-consolidated JVs



- No JV for GloBE purposes if entity itself is a UPE of an MNE Group
- MNE Group subject to Top-Up Tax on pro rata share of Low-Taxed profits of JV Group
- <u>No jurisdictional blending JV Group and Constituent Entities AND revenue of JV Group does not count towards €750m threshold for MNE Group</u>
- Ownership Interest determined based on equal weighting of rights to profits, capital and reserves

Case Position: Consolidated JV Of US MNE



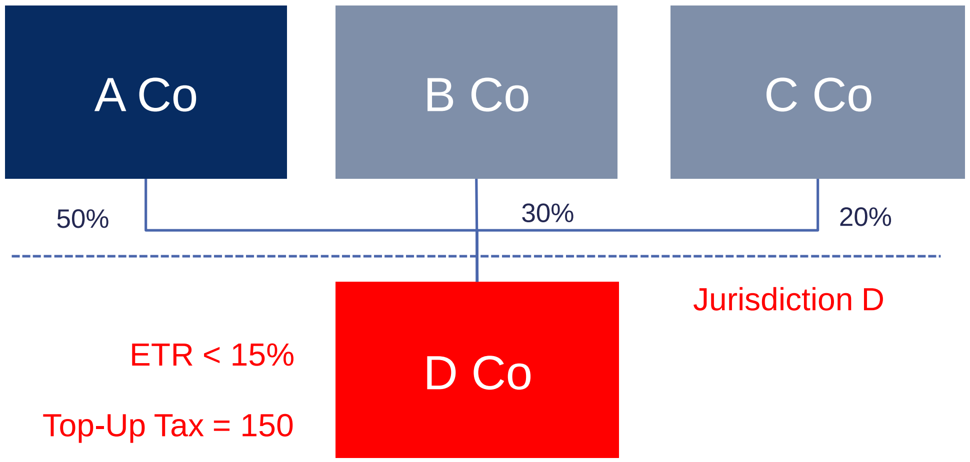
Example

- US UPE is the parent company of an MNE Group
- US UPE owns 60% of the shares in JVCo which is low-taxed
- JVCo and OpCo are consolidated by US UPE
- Jurisdiction B implemented Pillar Two

GloBE considerations

- UTPR applies for <u>100%</u> of Top-Up Tax
- US MNEs should not invest in consolidated JVs with low-taxed operations directly?

Case Position: QDMTT And Non-consolidated JVs



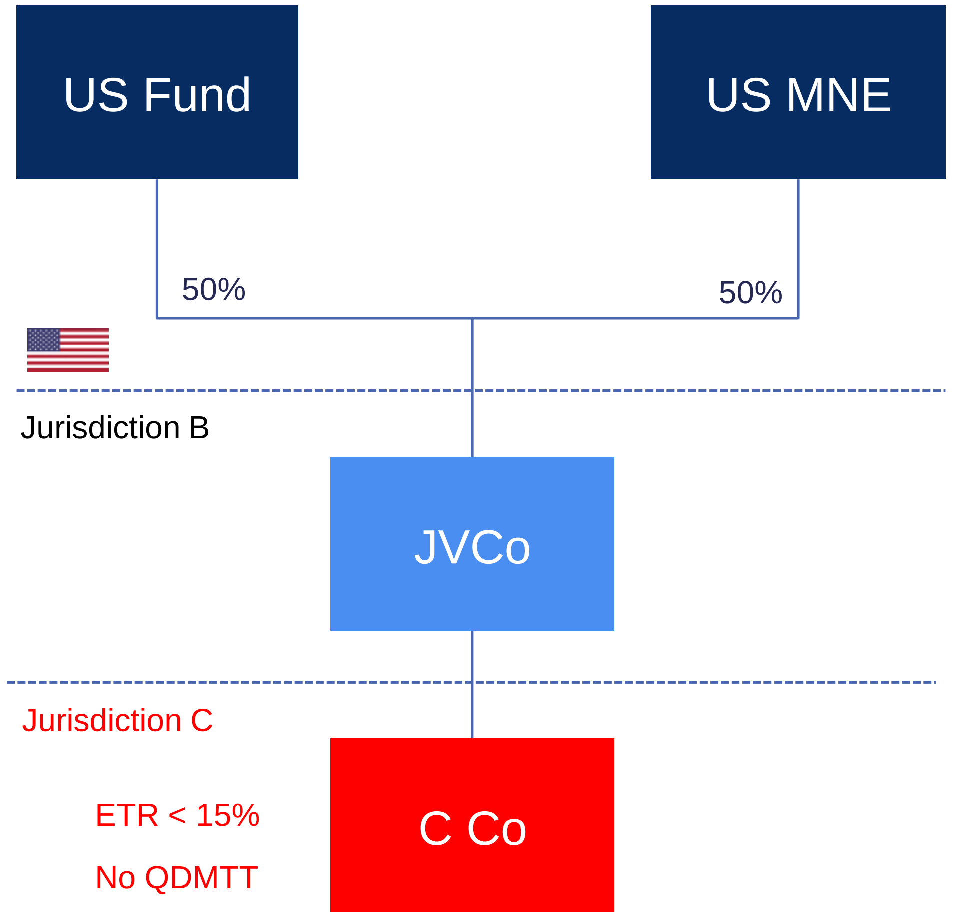
Example

- A Co is part of MNE Group and reports 50% interest in D Co under the equity method
- B Co holds 30% in D Co and C Co holds 20% in D Co
- Jurisdiction D introduces a QDMTT
- D Co's Jurisdictional Top-up Tax is 150

GloBE considerations

- If D Co would not introduce a QDMTT, A Co would levy IIR for an amount of 75.
- Jurisdictions have choice when implementing QDMTT:
  - Depending on implementation in jurisdiction D, D Co will pay either 150 or 0
  - Local QDMTT implementation may affect B Co and C Co

Case Position: Fund vs MNE Investor – Non-consolidated JV



Example

- US Fund and US MNE enter into 50-50 joint venture JVCo
- C Co has an ETR below 15% and is not subject to a QDMTT
- US MNE reports shareholding in JVCo under equity method
- JV Co and C Co do not form a stand-alone MNE Group

GloBE considerations

US MNE

- JV Group: IIR/UTPR with respect to C Co for 50%

US Fund

- Consolidated financial statements (deemed) prepared by US Fund?
- If not: no Top-Up Tax with respect to US Fund's share in C Co

Negotiating – Allocating Pillar II Costs

Pillar II - Negotiating Pillar II costs and risks

Timing miss-matches: share deal

- Is it an acquisition of a standalone entire Pillar II target group or a carve-out transaction from a Pillar II group?
  - Standalone – may be more conventional – existing systems/procedures and access to entire group details
  - Carve out – where target already in scope
    - Pillar II profile of target dependent on seller's wider group
    - Accessing information – probably not publicly available and may be commercially sensitive
    - Other relevant entities could have been disposed of already by seller group
    - Understanding potential secondary liabilities – both legislative and contractual

Deal Phase: Pillar 2 Risk Delineation For Share Deals

New system under GloBE

2024 - "Root year" | 2025 | 2026 - "Year of change"

IFRS balance sheet

IAS 8.41: Correction recognised directly in equity of opening balance sheet of the year of change

Taxpayer discovers mistake in balance sheet

Increase in equity 1.1.26 + 100

Adjusted Covered Taxes

Adjustments

Art. 3.2.1 h) OECD MR

Increase in GloBE income +100

Tax assessment

Consideration of for top up tax determination

Deal Phase: Pillar 2 Risk Delineation For Share Deals

Changes in the "New World" (MinStG)

2024 - "Root year"

2025

2026 - "Year of change"

IFRS balance sheet

audit leads to additional tax payment, disclosure in balance sheet +10

Adjusted Covered Taxes

No recalculation / to up tax reimbursement in the root year!

Increase of Covered Taxes +10

Art. 4.6 OECD Model Rules

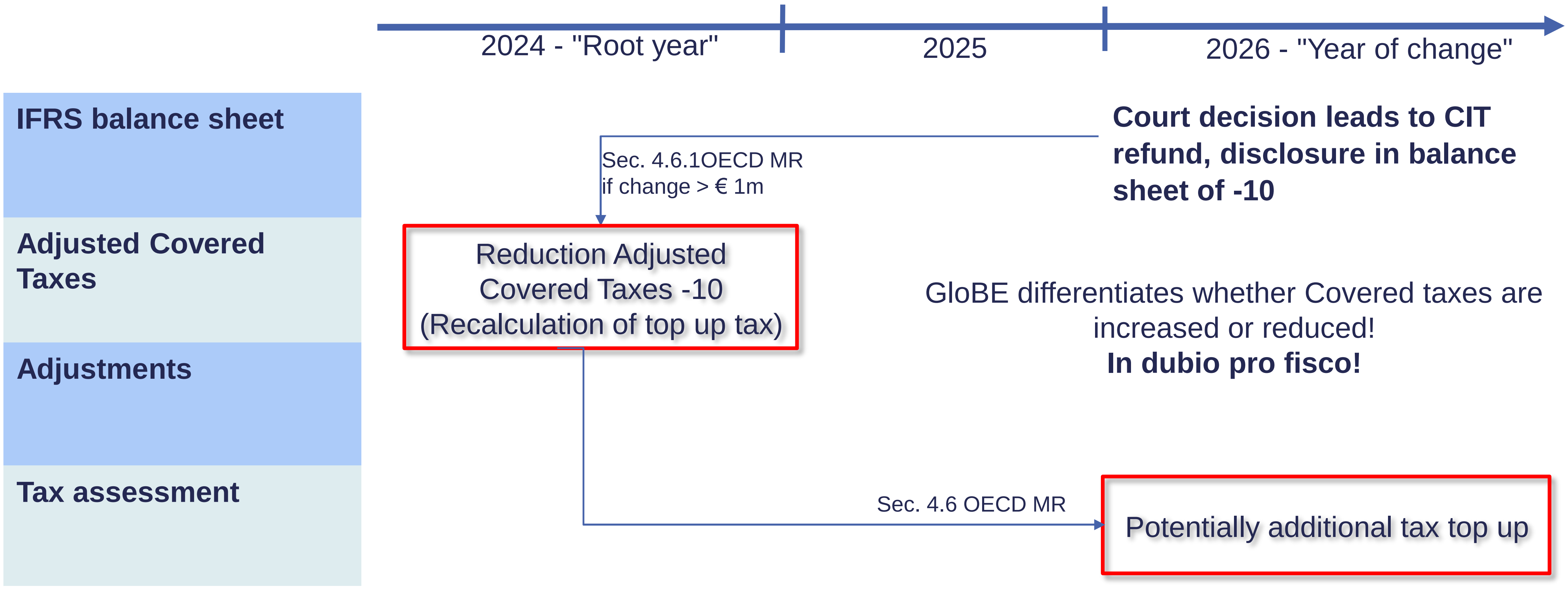
Adjustments

Tax assessment

Consideration of increased Covered Tax in 2026

Deal Phase: Pillar 2 Risk Delineation For Share Deals

Changes in the "New World" (MinStG)



Definitive Agreements

Impact on Definitive Agreements: Share sales

- No clear-cut "market practice" as yet – partly as a result of the legislation being both new and highly complex, but partly because both the risks, and their commercial allocation, will be highly fact specific
- Points to note:

  (i) Pillar II liabilities are generally "primary" not "secondary" liabilities (although "secondary" liabilities can arise!);

  (ii) they are arguably imposed by reference to a circumstance (i.e. the Effective Tax Rate of an MNE Group for a jurisdiction being less than 15%) rather than by reference to income, profits or gains or the occurrence of an event; and

  (iii) Pillar II liabilities can arise **post-**Closing as a result of the recalculation of **pre-**Closing ETR, triggered by a **post-**Closing event (e.g. deferred tax liabilities not being reversed within 5 years of Closing)
- Theoretically, many Pre-closing Pillar II liabilities could be treated in the same way as other tax liabilities i.e. indemnity/covenant protection from seller in relation to pre-Closing tax (although reaction from tax insurance/W&I market remains to be seen)

Impact on Definitive Agreements: Share Sales (2)

- However, there are a number of complications:
  - is the target a UPE, IPE, POPE or subject to a QDMTT? If so, may increase the level of risk for purchaser
  - combined effects – e.g. liabilities triggered by post-Closing actions (and/or payable in post-Closing periods) – are these caught by a standard tax indemnity/covenant?
  - economic effective date is not closing (e.g. “locked box” deals) - potentially purchaser on risk for Pillar II liabilities after economic effective date, but query whether Pillar II tax arises in the “ordinary course”?
  - “Secondary liability” type concerns (similar to joint ventures) – e.g. jurisdictional blending (exacerbated where economic effective date is not closing)
  - Actual “secondary liabilities” – e.g. UK’s “group payment notices”
- Tax administration and conduct of claims may be complex and require greater cooperation
- Indemnity/covenant protection may be backed up by warranty protection
  - In particular, warranties can also be used to elicit information about Pillar II status/compliance of group (which may involve data being provided in relation to the Seller’s retained group)

Impact on Definitive Agreements: Joint Ventures

- As discussed, a joint venture group could be liable for top-up tax caused by low ETR of a shareholder group and, *vice versa*, a shareholder group could be liable for top-up tax caused by low ETR in a joint venture group
- Again, no clear-cut "market-practice" as yet – drafting is likely to be fact specific
- Two-way indemnity/covenant protection likely to be required in Shareholders' Agreement to cover off this risk:
  - May need to introduce concept of "Incremental" Pillar Two Taxes (or similar), i.e. Pillar Two taxes that wouldn't have arisen but for being in the same MNE group
  - However, query whether this is always appropriate (e.g. have minority JV partners modelled on assurances that JV will not be consolidated with majority shareholder?)
  - Balance to be struck between general principles and detailed/specific drafting
- Potential warranties/representations (e.g. no consolidation)
- Potentially changes to commercial terms to mitigate risk of (or, alternatively, to ensure) consolidation
- Information sharing/cooperation obligations:
  - required information sharing may go beyond what counterparties typically wish to provide (and there may be particular sensitivities if information is market sensitive)
  - consider enforceability if "reasonable endeavours"/"agreements to agree" in relation to cooperation

Tax Insurance and Pillar 2

Sample JV provision

- Taxes permitted to be economically borne by the Joint Venture.
  - “any Tax to be imposed with respect to the Joint Venture under the applicable GloBE Rules **other than** any Tax that qualifies for “Qualified Domestic Minimum Top-Up Tax” as ddefined in the Global Anti Base Erosion Model Rules (Pillar Two) first published by the Organization for Economic Co-operation and Development in its report “Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two)” on December 20, 2021, as amended from time-to-time.”
- Consider whether this covers the economic considerations negotiated in the JV.

Tax Insurance and Pillar 2

First thoughts from the insurance market

Early stages: the insurance market is usually more reactive than proactive as insurers rely on case-law, administrative interpretation and sometimes even audit statistics.

W&I (R&W) Insurance

Will ultimately depend on the specific wording of the tax warranties/covenants given under the SPA.

Nowithstanding, expected to be excluded from cover following the same principles applied to Transfer Pricing and secondary tax liability exposures:

- ☒ Standard TDD Scopes not being able to cover Pillar 2; or
- ☒ Even if included in scope, TDD not to be performed on non-target group companies.

Given the potential exposure, will this change our current 1 cap liability regime approach under the SPA? Your watch, my watch?

Tax Insurance

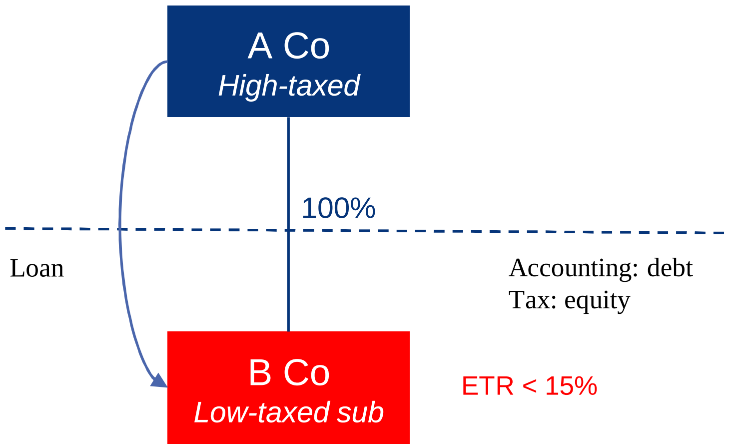
Likewise Transfer Pricing risks, global reaching Pillar 2 group positions might be challenging for insurers to get comfortable around, but specific topics within the GloBE rules that can be subject to a legal/accounting or even factual analysis could be insurable:

- ☑ QDMTT (local ETR calculations), determination of ultimate parent entity, company inclusion, safe harbour tests, etc.

Post-Closing Integration

Intercompany Financing

Impact of Art. 3.2.7



Facts

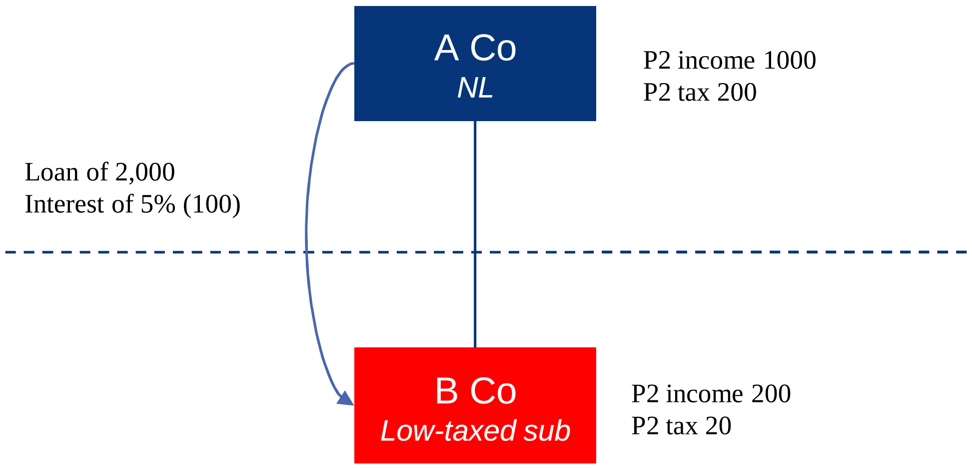
- A Co grants loan to B Co → A Co is high-taxed (ETR ≥ 15%) and B Co is low-taxed (ETR < 15%) for P2 purposes .
- Loan is treated as debt for accounting purposes and equity for tax purposes.

➢ Goal of structure: Increase the ETR of low-taxed entity B Co as interest expense will be recognized in financial accounts, but not in tax accounts → reduction in P2 income, but not in P2 taxes.

➢ Article 3.2.7 (OECD P2 Model Rules): Sanction is the denial of the interest expenses at level of low-taxed entity B Co (but interest income still included at level of A Co).

- But article 3.2.7 not applicable with respect to Transitional CbCR Safe Harbor?

Impact of Art. 3.2.7



ETR before granting the loan

Entity	P2 income	P2 tax	ETR
A Co	1000	200	20%
B Co	200	20	10%

ETR after granting the loan / article 3.2.7 does not apply

Entity	P2 income	P2 tax	ETR
A Co	(1000 + 100=) 1100	200	18.18% (-1.92%)
B Co	(200 – 100-) 100	20	20% (+10%)

ETR after granting the loan / article 3.2.7 does apply

Entity	P2 income	P2 tax	ETR
A Co	(1000 + 100=) 1100	200	18.18% (-1.92%)
B Co	(200 ~~– 100-~~) 200	20	10%

Hybrid Arbitrage Rules: Impact on Intercompany Financing

An entity must exclude the following from its transition safe harbor income (i.e., CbCR income):		
1. Expenses from Deduction / Non-Inclusion Arrangements	2. Expenses from Duplicate Loss Arrangements	3. Duplicate Tax Recognition Arrangements

OECD officials have indicated that these hybrid rules will also be incorporated into the Globe Rules in some form

Deduction Non-Inclusion Arrangements

- **DNI Rule:** A deduction / non-inclusion arrangement is an arrangement under which one Constituent Entity directly or indirectly provides credit or otherwise makes an investment in another Constituent Entity that results in an expense or loss in the financial statements of a Constituent Entity to the extent that:

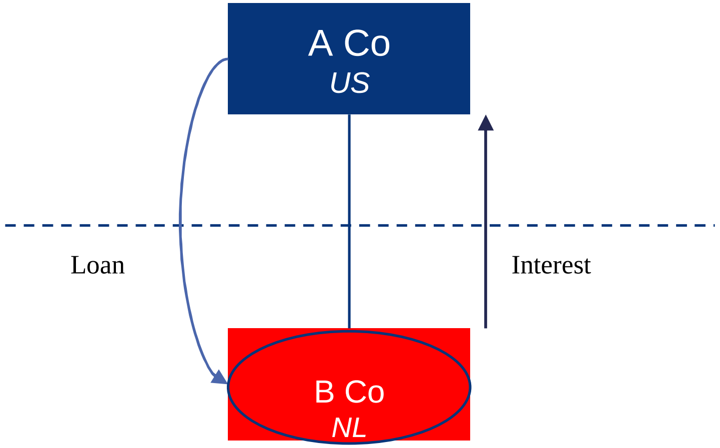
  a. there is no commensurate increase in the revenue or gain in the financial statements of the Constituent Entity counterparty; or
  b. the Constituent Entity counterparty is not reasonably expected over the life of the arrangement to have a commensurate increase in its taxable income

- Similar to ATAD 2 Rules for DNI arrangements.

  - *Primary rule → denial of deduction in country of EU payor*
  - *Secondary rule → inclusion of income at level of EU recipient (deduction outside EU / no inclusion in EU)*

- What is a "commensurate increase in taxable income"?

Hybrid Financing Arrangement: DNI Example 1



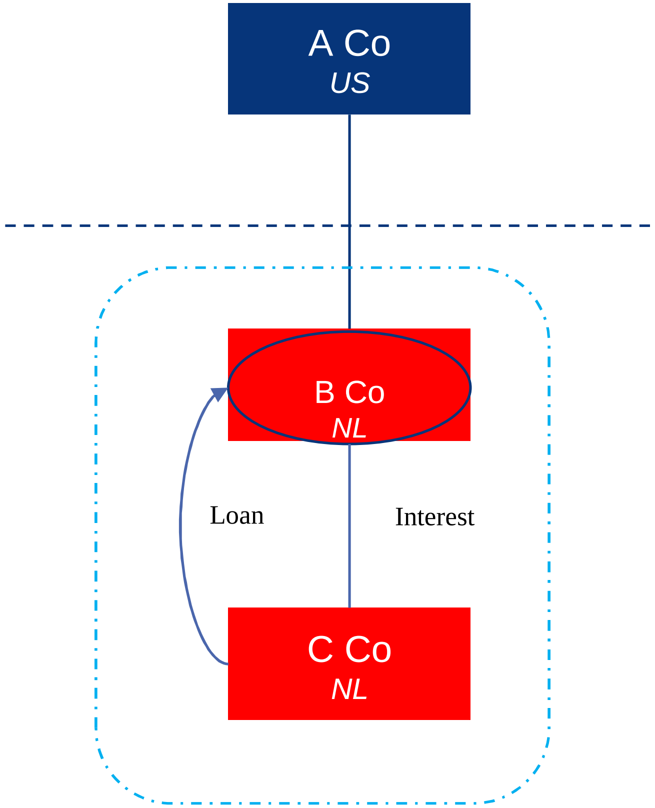
Analysis

1. DNI Rule: Does this fall within the scope of the D/NI arrangements as mentioned in Dec. 2023 OECD Guidance?

2. What is the result under EU ATAD2 rules? And how this this relate to D/NI Rule under Pillar Two?

3. Does this situation fall within the scope of article 3.2.7?

Hybrid Financing Arrangement: DNI Example 2



Analysis

1. DNI Rule: Does this fall within the scope of the D/NI arrangements as mentioned in Dec. 2023 OECD Guidance?

2. ATAD 2 consequences:

   - Interest income included in taxable income at level of B Co as parent company of fiscal unity under ATAD 2
   - Commensurate increase in taxable income for C Co as counterparty?

Credits

Tax Incentives

- Qualified Refundable Tax Credit (QRTC) – paid or payable in cash (includes a credit against other types of credits) within 4 years. Could be federal or provincial credits
- Non-Qualified Refundable Tax Credit (non-QRTC) – Not a QRTC

Transferable Tax Credits

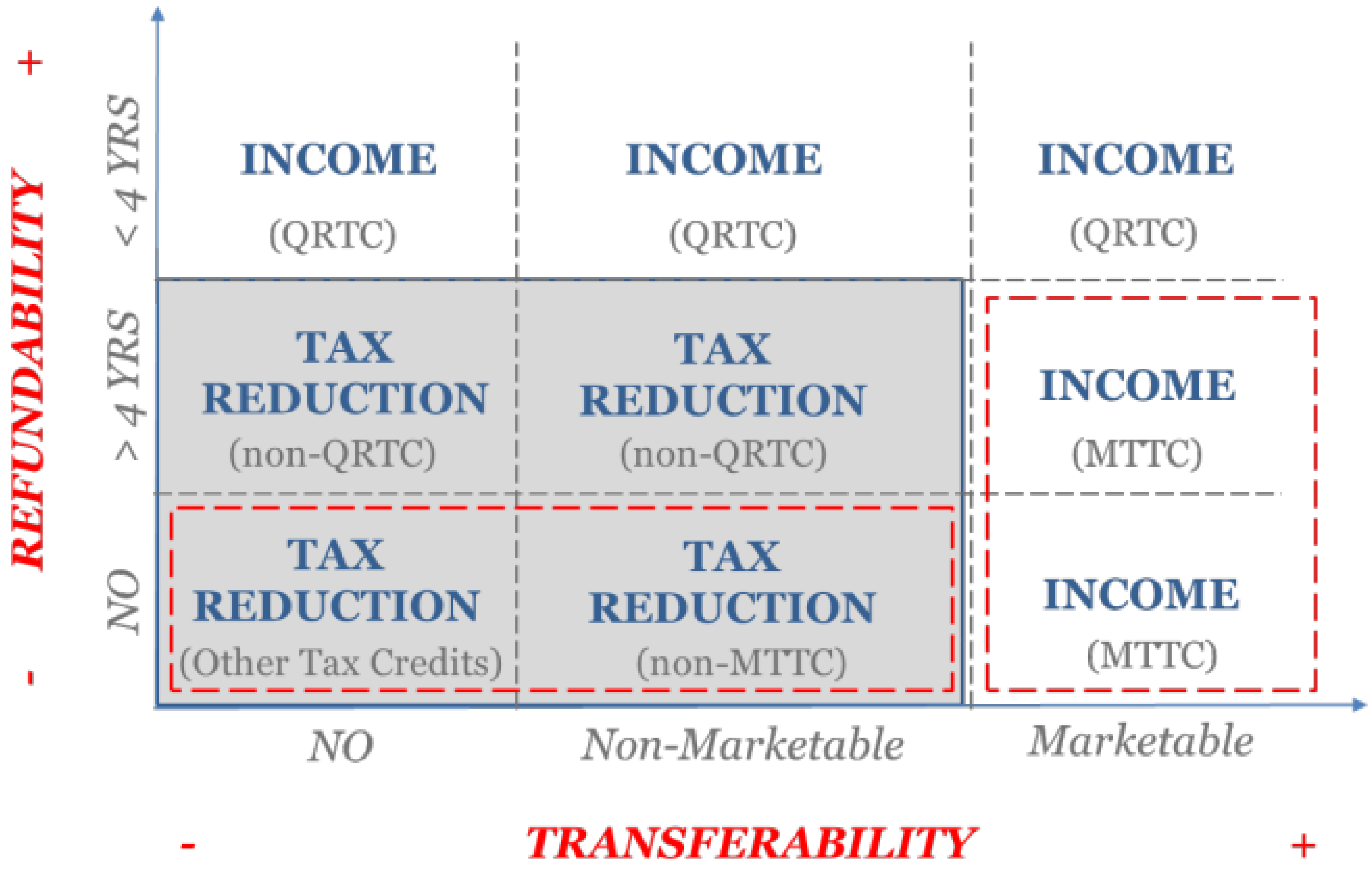
- July 2023 guidance introduced the concept of Marketable Transferable Tax Credits (**MTTCs**)

- MTTC for originator if (i) transferable within 15 months of origination year and (ii) transfer to unrelated party or between parties on market at price ≥ 80% NPV

- MTTC for purchaser if (i) transferable in year of purchase without more stringent restrictions than originator and (ii) purchased from unrelated party at price ≥ 80% NPV

- Most IRA renewable tax credits expected to qualify as MTCCs for originators but not for purchasers absent possibility to on-sell

Tax Incentives



OECD Guidance July 17, 2023

Tax Incentives

- Nature of credit has an impact on ETR for a jurisdiction. Tax benefit is either + to income of CE (😋) or - covered tax (😒)
- Canada – clean electricity investment tax credit, clean technology investment tax credit, carbon capture utilization and storage tax credit, clean hydrogen investment tax credit, and clean technology manufacturing tax credit
- Example
  - US UPE has one subsidiary in Canada (Canco).
  - Canco invests 3M in project and gets a 40% tax credit
  - GloBE income =10M and Covered Tax = $2.65M

Tax Incentives

Before Credit

Tax Credit = 1.2M

$$\frac{\text{Covered Taxes} = 2.65\text{M}}{\text{GloBE Income} = 10\text{M}} = 26.5\ \%$$

QRTC & MTTC

$$\frac{\text{Covered Taxes} = 2.65\text{M}}{\text{GloBE Income} = 10\text{M}\underline{\mathbf{+1.2M}}} = 23.7\ \%$$

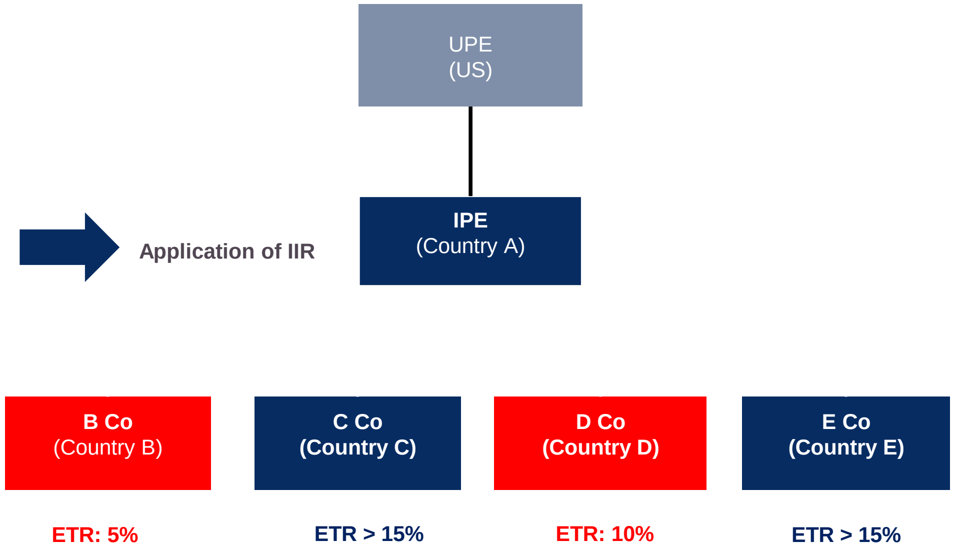
Non-QRTC & non-MTTC

$$\frac{\text{Covered Taxes} = 2.65\text{M}\underline{\mathbf{-1.2M}}}{\text{GloBE Income} = 10\text{M}} = 14.5\ \%$$

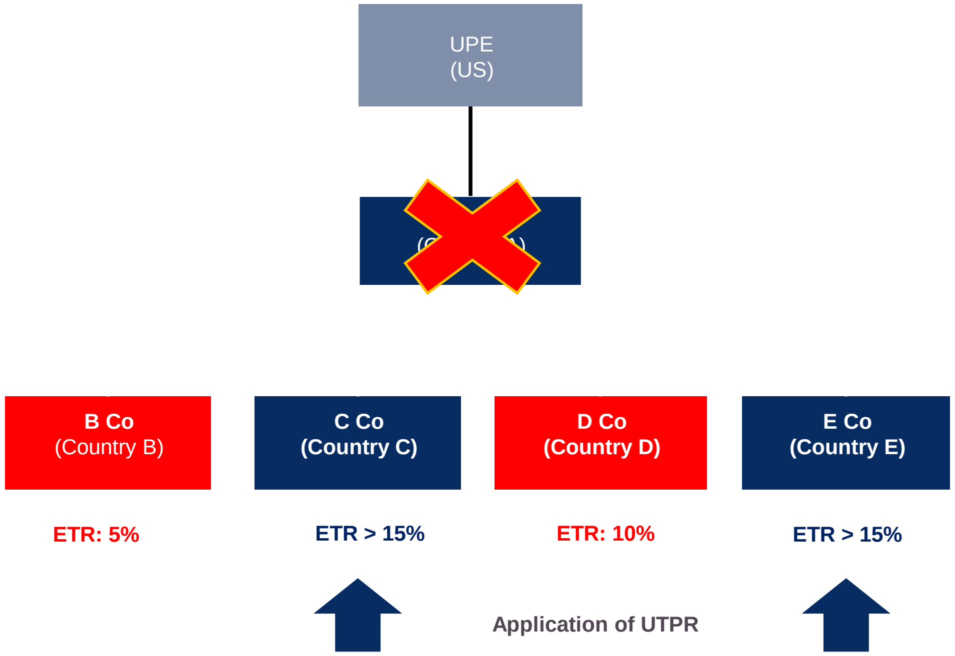
Holding Companies

Future of Holding Companies in Light of Pillar Two

Structure with Holding Company



Structure without Holding Company



Future of Holding Companies in Light of Pillar Two

Potential advantages of elimination of holding companies in view of Pillar Two

- UTPR as of 2025 vs. IIR as of 2024

Potential advantages of holding companies in view of Pillar Two

- Clear view on jurisdiction to pay Top-up Tax (one to two jurisdiction vs. all UTPR jurisdictions)
- Disputes on UTPR allocation as of 2025
- Top-up Tax payable in jurisdiction with stable tax administration / good relationship with tax administration
- UTPR vs. IIR in <100% structures and POPE structures

Questions?