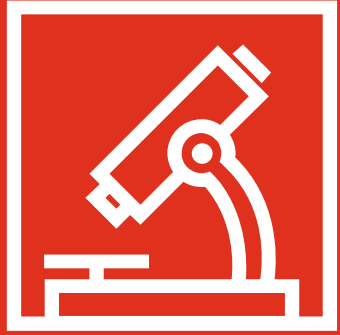




BEPS 2.0

17 June 2023

All India Chartered Accountants Society



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OECD Inclusive
Framework

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Intergovernmental Forums and OECD

G7

Canada
France
Germany
Italy
Japan
UK
USA

G20

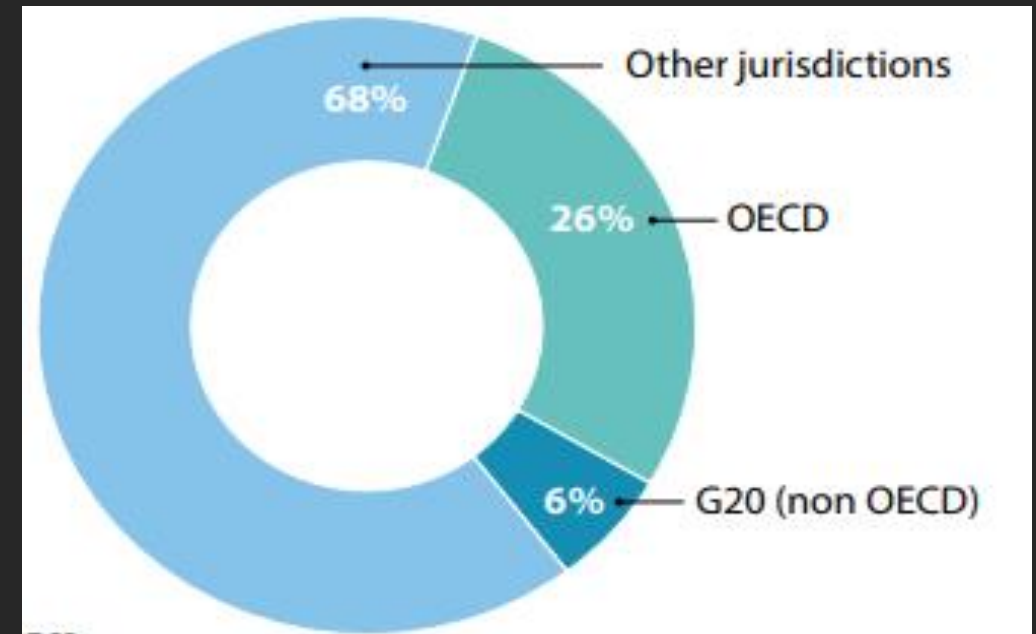
Canada
France
Germany
Italy
Japan
UK
USA
Argentina
Australia
Brazil
China
India
Indonesia
South Korea
Mexico
Russia
Saudi Arabia
South Africa
Turkey
EU

OECD

38 members
Mostly developed countries

OECD / G20 Inclusive Framework on BEPS

140+ countries



Steering Group of OECD Inclusive Framework on BEPS

(as at January 2023)

| Co-Chairs | | |
|--------------------|---------------------------|----------------|
| Gäel | PERRAUD | France |
| Marlene | NEMBARD-PARKER | Jamaica |
| Deputy Chairs | | |
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| Yong Ju | LEE | Korea |
| Filip | MAJDOWSKI | Poland |
| Maria Jose | GARDE | Spain |
| Mike | WILLIAMS | United Kingdom |
| Michael | PLOWGIAN | United States |

BEPS Action 1-15 Reports

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DIGITAL
ECONOMY

Action 2
HYBRIDS

Action 3
CFC RULES

Action 4
INTEREST
DEDUCTIONS

Action 5
HARMFUL TAX
PRACTICES

Action 6
TREATY
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Action 8
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Action 12
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PLANNING

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DOCUMENTATION

Action 14
DISPUTE
RESOLUTION

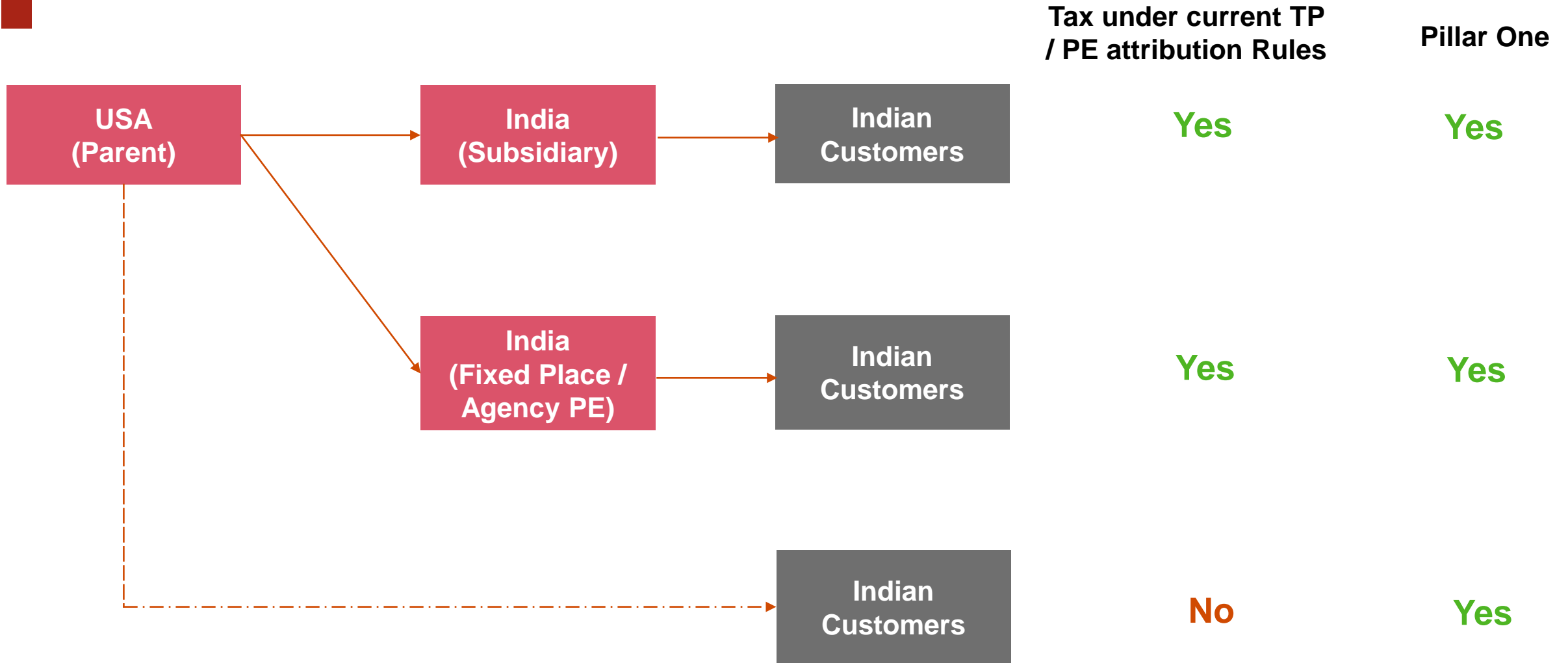
Action 15
MULTILATERAL
INSTRUMENT

01

Pillar One

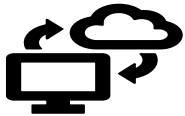


Pillar One



Pillar One – Amount A

Reallocation of taxing rights to market countries



MNEs **other than extractive businesses** or regulated financial services



Global revenue > **Eur 20bn**



Global profitability of >**10%***

In country nexus → sales of > Eur 1 MM**

Reallocation of 25% of residual profit (profit > 10%) to market countries (**Amount A**)

* Profitability test to be met in the latest year, 2 out of previous 4 years and average for latest + 4 previous years

**Eur 250k threshold for countries with GDP of <Eur 40bn

Amount A Reallocation

| Amount A – hypothetical example | | Computation | |
|--|------------|-------------|-----|
| Total revenue sourced from country X | a | | 100 |
| Profit before tax | b | 30% | 30 |
| | | | |
| Routine profit (formulaic) | c=10% of a | 10% | 10 |
| Residual profit | d=b-c | | 20 |
| 25% of non-routine profit allocable to country X | e=25% of d | 25% | 5 |

Commitment to withdraw equalisation levy / digital service tax after Pillar One is enacted

Amount B



Amount B

Fixed return for
baseline marketing and
distribution activities

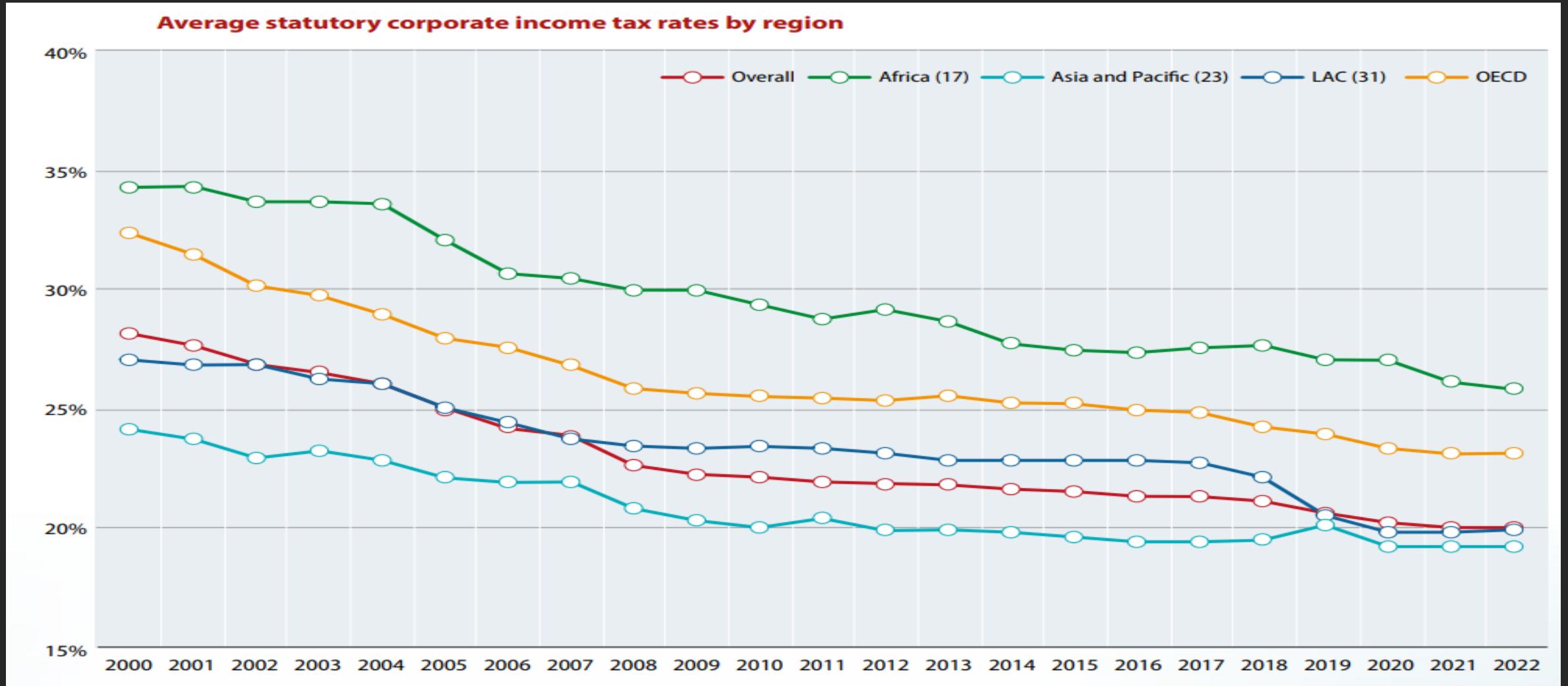
- Objective: to minimise TP litigation relating to buy-sell and agency activities
- Consultation document released on the design elements of Amount B
- Focus on scoping, arm's length pricing and documentation
- Resell of digital goods and services out of scope in the draft

02

Pillar Two



Pillar Two - Genesis



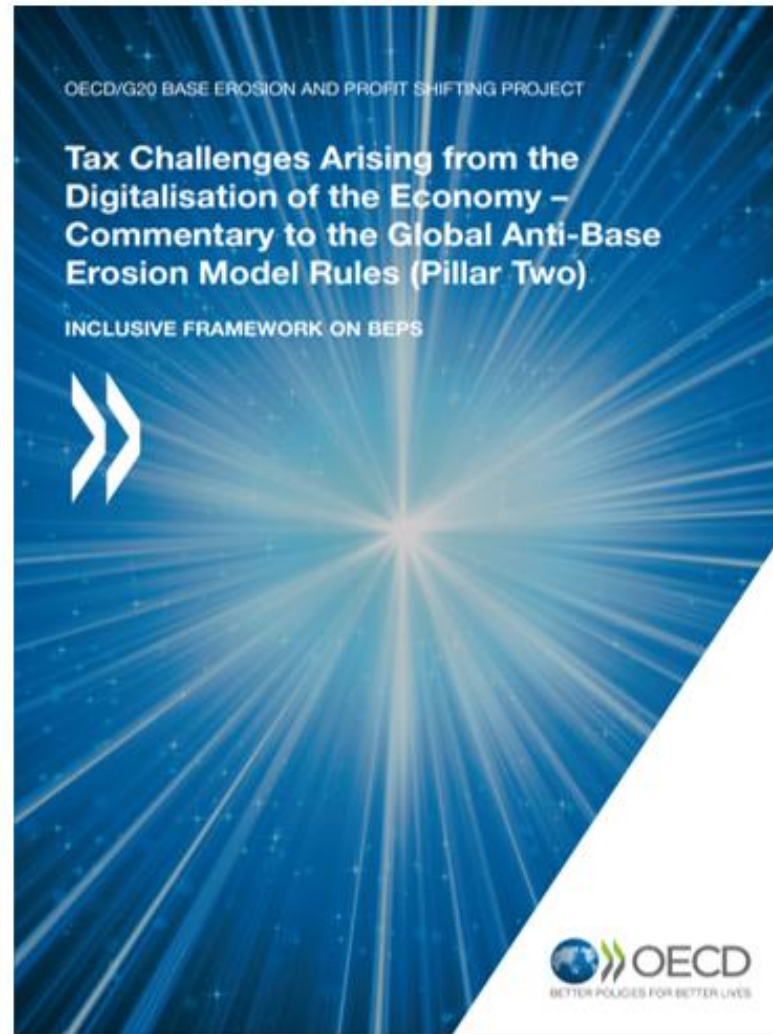
Source: OECD Corporate Tax Statistics – Fourth Edition

Pillar Two GloBE Rules – Documents

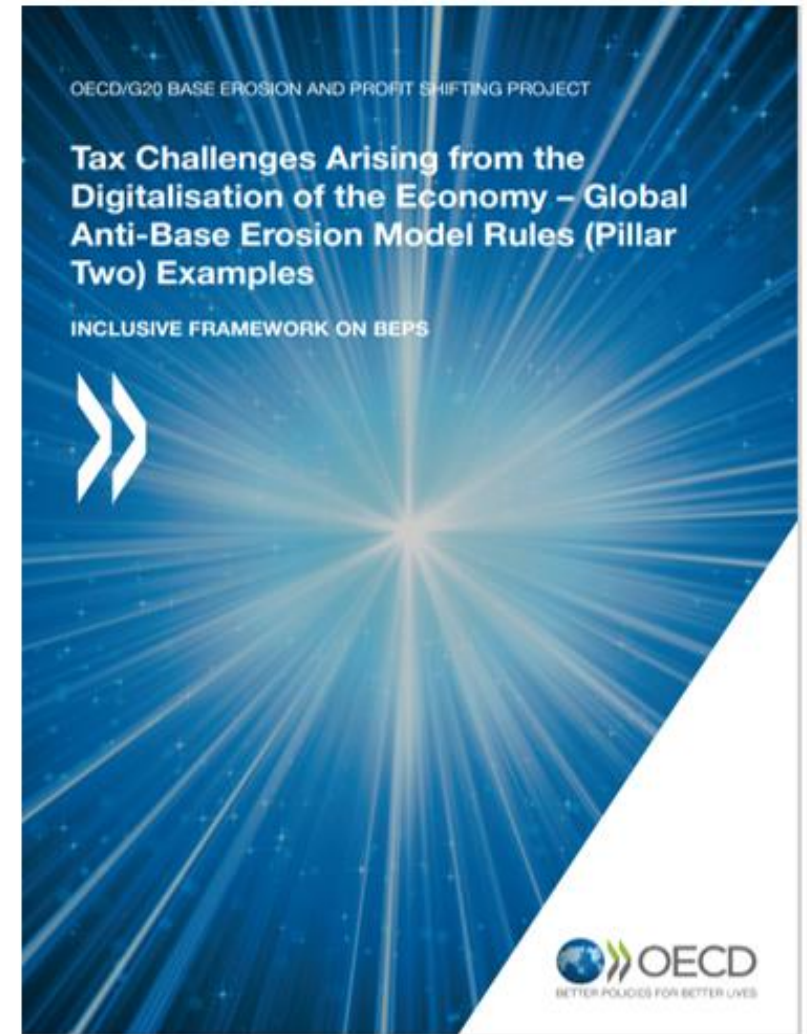
GloBE Rules – 70 pages



GloBE Rules Commentary – 228 pages



Examples to the Commentary – 49 pages



The rules have been drafted to provide a template that jurisdictions can translate into domestic law.

GloBE Rules

| | | | |
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Pillar Two – GloBE Rules

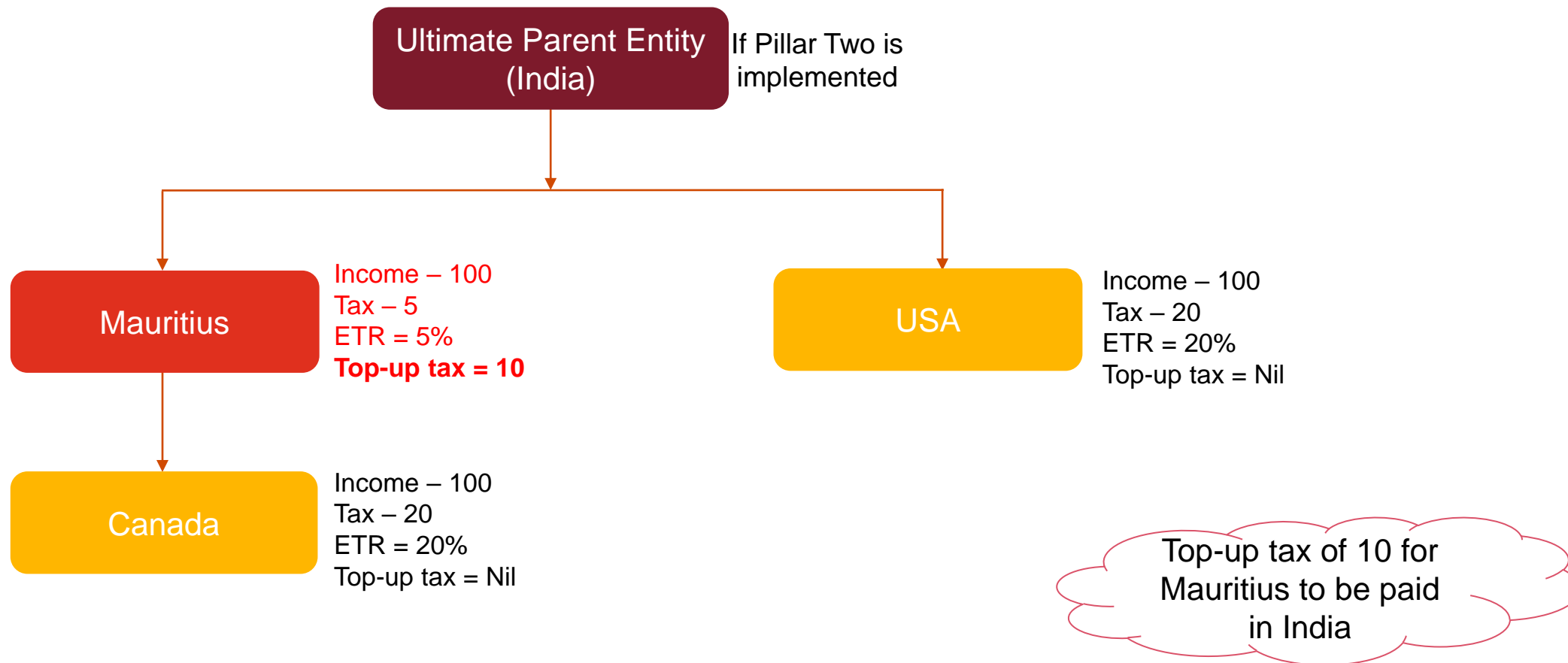
Global anti-Base Erosion
(GloBE) Rules

**Income Inclusion
Rule (IIR)**

**Undertaxed
Profits Rule
(UTPR)**


- Applies to MNEs with global revenue above **€750 mm**
- **Exclusions:** Govt entities, international organisations, non-profit organisations, pension/investment funds, real estate investment vehicles
- Establishes a minimum effective tax rate (**ETR**) of 15% at jurisdictional level
- **Top-up tax** imposed on a jurisdiction's income if ETR is <15%

Income Inclusion Rule - Example

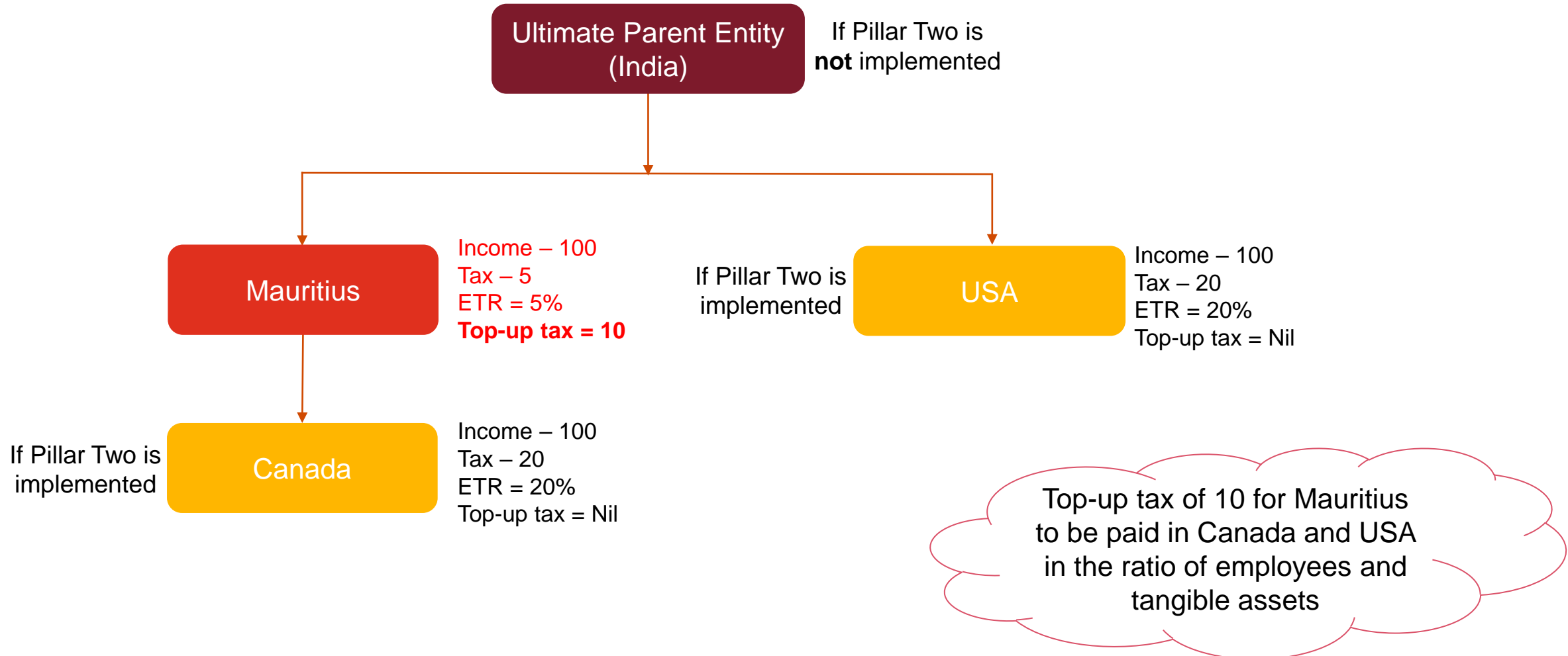


Impact on Group ETR

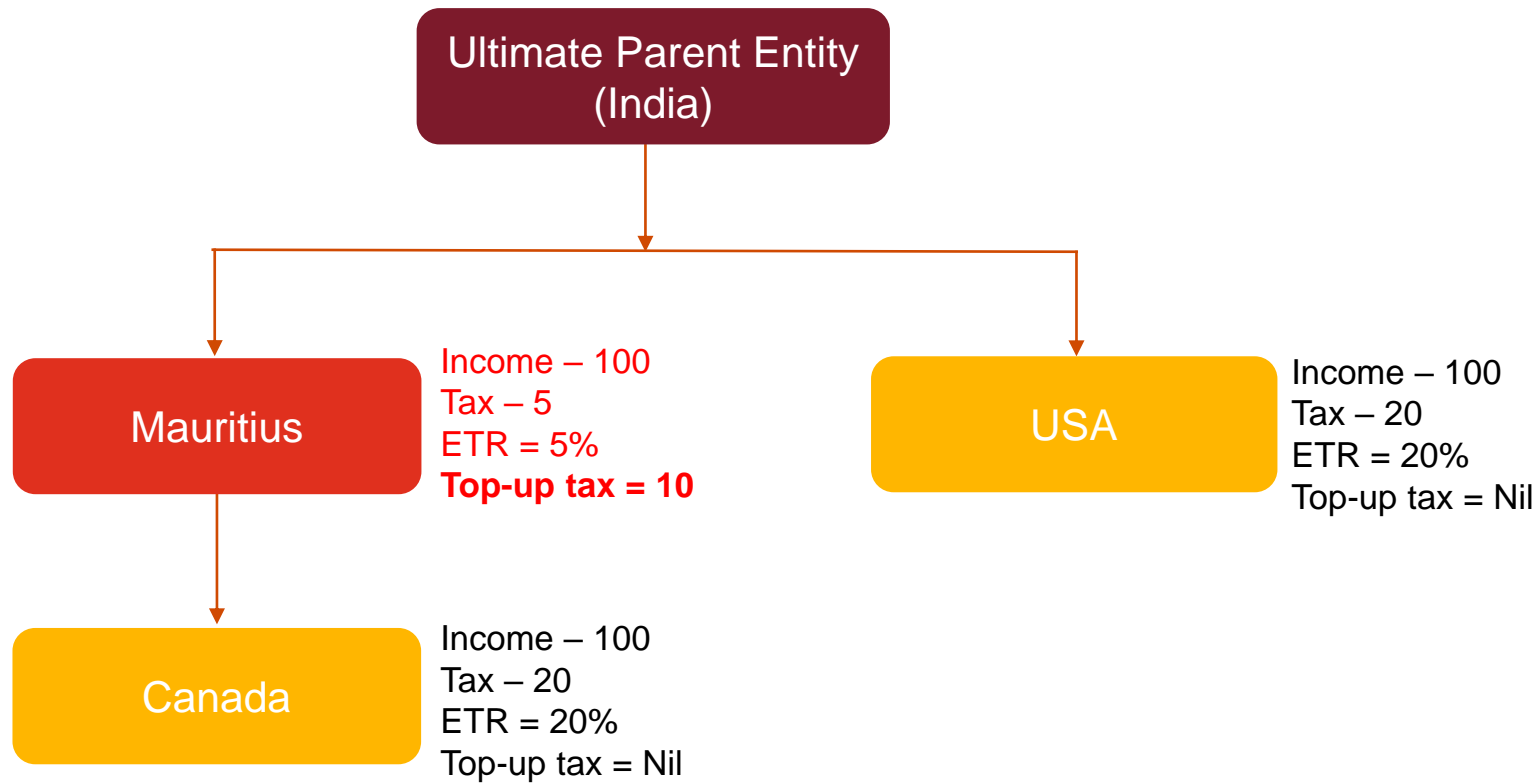
| Country | Income | Tax | ETR | Pillar Two Top up tax | Total tax including Pillar Two Top up tax | ETR after Pillar Two |
|----------------------------|------------|-----------|------------|-----------------------|---|----------------------|
| Canada | 100 | 20 | 25% | Nil | 20 | 20% |
| USA | 100 | 20 | 20% | Nil | 20 | 20% |
| Mauritius | 100 | 5 | 5% | 10 | 15 | 15% |
| Total (Group Level) | 300 | 45 | 15% | 10 | 55 | 18.3% |



Undertaxed Profits Rule - UTPR - Example



Qualified Domestic Minimum Top-up Tax (QDMTT)



Rule Order

1 QDMTT

If Mauritius introduce QDMTT

Top-up tax to be paid in Mauritius

2 IIR

If Mauritius **doesn't** introduce QDMTT

Top-up tax to be paid in India

3 UTPR

If Mauritius **doesn't** introduce QDMTT

& India doesn't introduce IIR

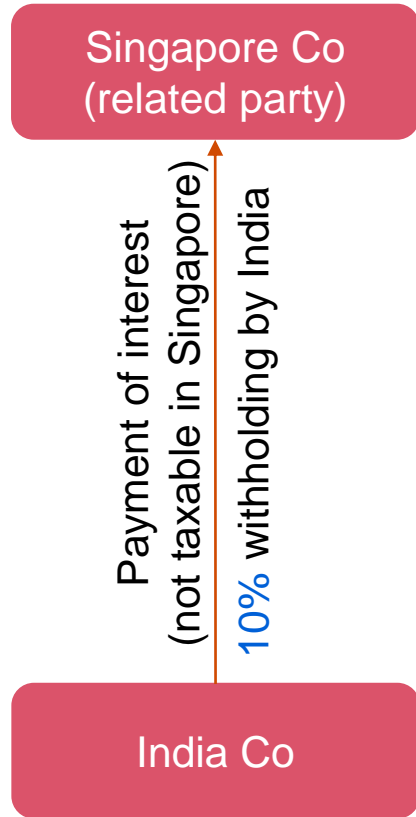
Top up tax to be paid in Canada and USA under UTPR

Subject to Tax Rule

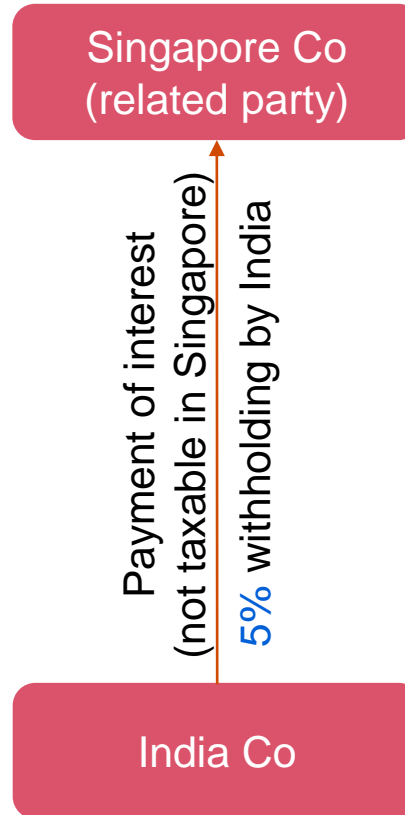
| Parameter | Explanation |
|----------------------|---|
| Enabler | <ul style="list-style-type: none"> Treaty based minimum standard To be implemented in treaties between developing* and developed countries |
| Threshold | <ul style="list-style-type: none"> STTR liability if nominal tax on a transaction is <9% Transaction-by-transaction testing |
| Applicability | <ul style="list-style-type: none"> Applies to intragroup interest, royalty and “other defined payment” India’s push for inclusion of capital gain, services and dividend |
| Other aspects | <ul style="list-style-type: none"> Applies before GloBE Rules Model treaty changes and commentary expected soon |

**As per OECD / G20 Inclusive Framework October 2021 Statement: developing countries are defined as those with a GNI per capita, calculated using the World Bank Atlas method, of USD 12,535 or less in 2019 (to be regularly updated)*

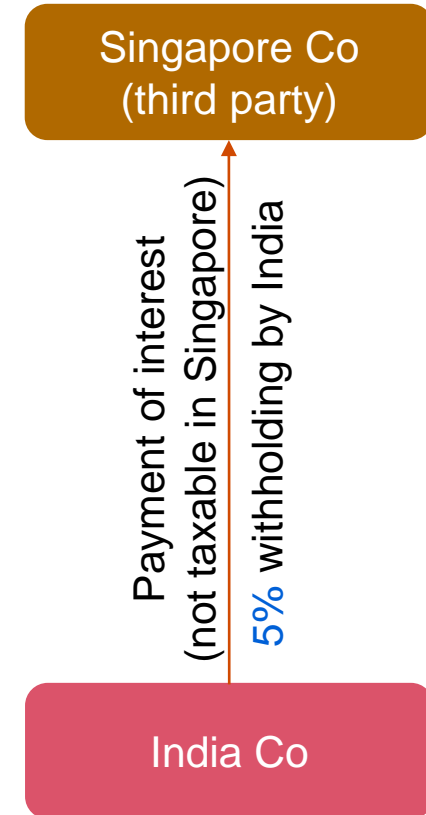
Subject to Tax Rule



STTR not applicable as the nominal tax rate is >9% (i.e., 10%)

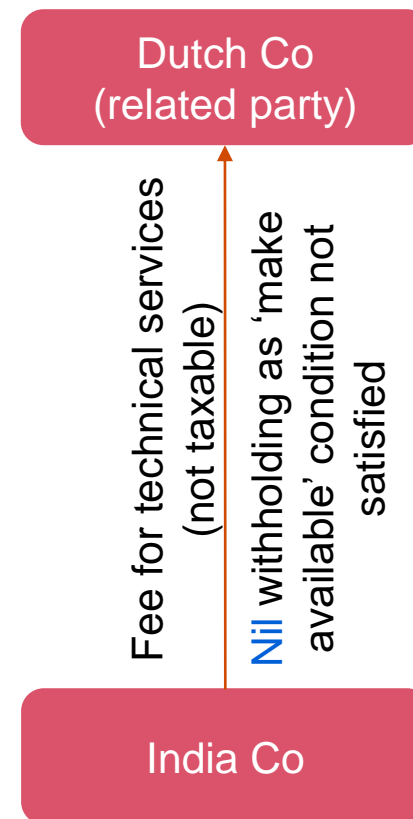
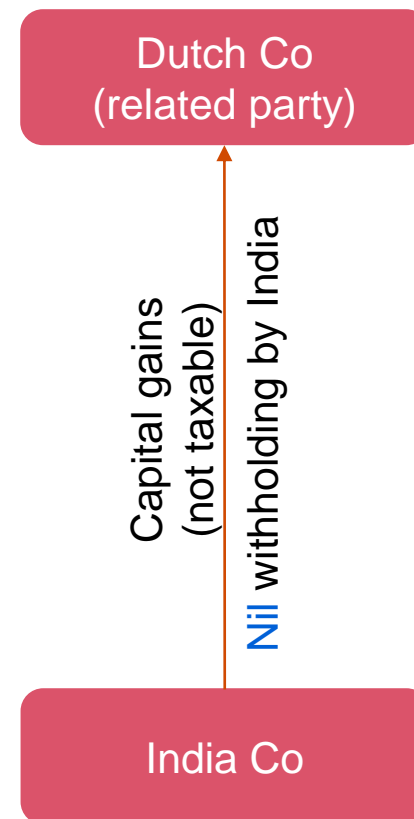
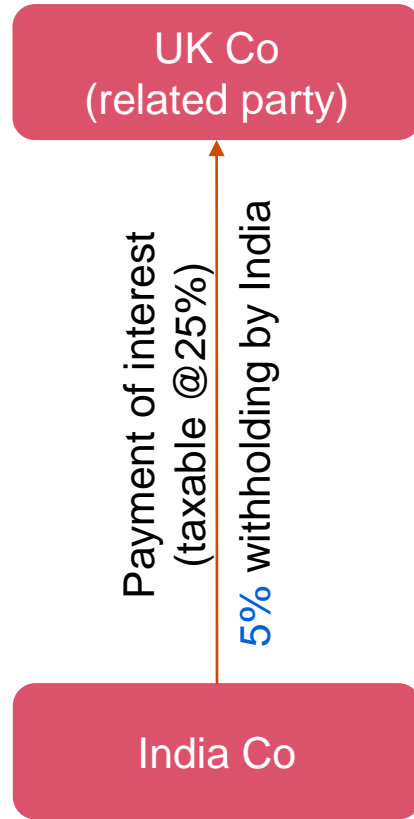
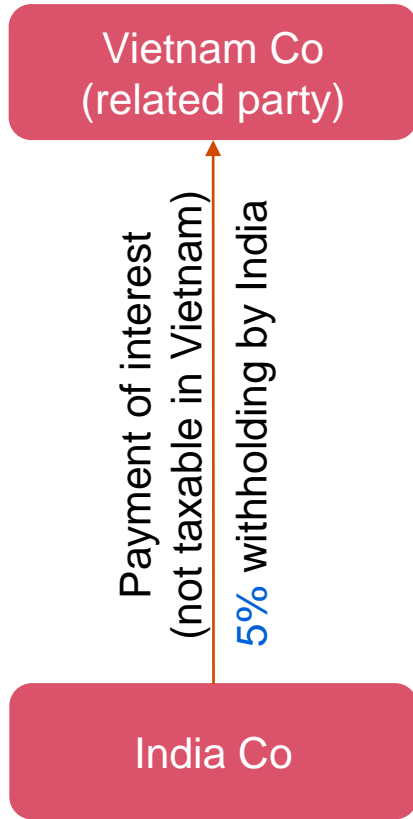


India can invoke STTR and levy incremental withholding of 4%



STTR not applicable as payment not to a related party

Subject to Tax Rule



STTR not applicable as payment not between a developing and a developed country

STTR not applicable as nominal rate of tax on the transaction not less than 9%

STTR not applicable as capital gains not subject to STTR in its current form

India's push??

STTR not applicable as services not subject to STTR in its current form

India's push??

03

Pillar Two Steps





Steps

$$\frac{\text{Covered taxes}}{\text{GloBE income}} = \text{ETR}$$

Covered Taxes

| | Inclusion | Exclusion |
|---|--|--|
| 1 | Taxes on a constituent entity's income recorded in the financial accounts of the constituent entity; | Digital service tax / equalisation levy |
| 2 | Taxes in lieu of corporate income tax | Fines, penalties or interest |
| 3 | Taxes under an eligible distribution tax system | Consumption taxes (GST, VAT, sales tax, etc) |
| 4 | Withholding taxes – pushed up | Stamp duty / ad valorem taxes |
| 5 | Taxes paid under controlled foreign company (CFC) rules... pushed down to the country in which the CFC is located | Payroll taxes and other employment-based taxes |
| 6 | Qualified domestic minimum top up tax | Property taxes |
| 7 | Taxes paid under Pillar One | |
| 8 | Corporate Zakat levied by the Kingdom of Saudi Arabia | |

GloBE Income

Financial accounting net income / loss for each entity (FANIL)

Adjustments

1. Net taxes expense
2. Excluded dividends;
3. Excluded equity gain/loss;
4. Policy disallowed expenses;
5. Prior period errors and changes in accounting principles; and
6. Accrued pension expense.
7. Included revaluation method gain/loss;
8. Asymmetric foreign currency gains/losses;
9. Gain or loss from disposition of assets and liabilities excluded under group restructurings

Five-year elections

1. Substitute amount expensed in financial accounts for tax deduction available locally for **share-based compensation**;
2. Use **gains and losses on a realization basis** for assets and liabilities subject to fair value or impairment accounting;
3. **Capital gains on tangible assets**: election to spread over five years
4. Apply **consolidated accounting treatment** to eliminate income, expense, gains, and losses between constituent entities in the same country;

GloBE Income

04

Country Developments



Country Developments

AMERICAS

USA

FY 2024 budget proposes adoption of UTPR and **QDMTT** wef 2025

.....

Canada

IIR and **QDMTT** in 2024; UTPR in 2025

AFRICA

Mauritius

Exploring possibility of introducing **QDMTT**

.....

South Africa

Legislation to be introduced in 2024

EUROPE

EU

Minimum tax directive adopted. To be translated into country laws by end-2023

.....

UK

IIR and **QDMTT** wef 2024 and UTPR wef 2025

.....

Switzerland

Pillar 2 approved by the Swiss Parliament. To be introduced wef 2024 (subject to public vote)

.....

Netherlands

Pillar Two Bill tabled in the parliament. IIR wef 2024. UTPR wef 2025

.....

Spain

Public consultation document released in March 2023.

.....

Ireland

Public consultation feedback statement released in March 2023. Final rules to be published in October 2023

.....

Germany

Draft law published in March 2023 to implement EU's Minimum Tax Directive

ASIA PACIFIC

Singapore

Pillar 2 including **QDMTT** to be introduced wef 2025

.....

Japan

IIR applicable to fiscal years beginning on or after 1 April 2024. UTPR and **QDMTT** being considered

.....

Korea

Pillar Two rules enacted. IIR and UTPR effective 2024

.....

Thailand

Implementation approved by Thai Cabinet. Specific legislation being developed to introduce Pillar Two wef 2025

.....

UAE

Federal decree enacted a new corporate tax rate of 9%. Effective for FYs starting on or after 1 June 2023

.....

Australia

IIR and **QDMTT** wef 2024 and UTPR wef 2025

.....

New Zealand

IIR wef 2024 and UTPR wef 2025

.....

Others: Malaysia, Indonesia, Hong Kong, – different stages of implementation

| | | | | | |
|---|--|---|---|---|---|
| <p>A Acceptable Financial Accounting Standards</p> | <p>B Blended CFC Regime</p> <p>BEFIT: Business in Europe: Framework for Income Taxation</p> | <p>C Covered Taxes</p> | <p>D DEBRA: Debt-equity Bias Reduction Allowance</p> <p>Determination Panel</p> | <p>E ETR: Effective Tax Rate (as per GloBE)</p> <p>Excluded Entity</p> | <p>F FANIL: Financial Accounting Net Income or Loss</p> <p>FATAL: Framework on Aggressive Tax Arrangements and Low Rates</p> |
| <p>G GloBE: Global Anti-Base Erosion</p> <p>GIR: Globe Information Return</p> | <p>H High-Tax Counterparty</p> | <p>I IIR: Income Inclusion Rules</p> <p>Inclusion Ratio</p> | <p>J Joint Venture Group</p> | <p>K Korea UTPR – first country to legislate UTPR</p> | <p>L LTCE: Low Taxed Constituent Entity</p> |
| <p>M MOCE: Minority-Owned Constituent Entity</p> <p>MDSH: Marketing and Distribution Profit Safe Harbour</p> | <p>N Non-Qualified Refundable Tax Credit</p> <p>NOON jurisdictions - No or only nominal tax rate jurisdiction</p> | <p>O Ownership Interest</p> | <p>P POPE: Partially owned parent entity</p> | <p>Q QDMTT: Qualified Domestic Minimum Top-up Tax</p> <p>Qualified CBCR</p> | <p>R Review Panel</p> <p>Recaptured Deferred Tax Liability</p> |
| <p>S STTR: Subject to Tax Rule</p> <p>SHIELD: Stopping Harmful Inversions and Ending Low Tax Developments</p> <p>Substance-based Carve Out</p> | <p>T TUT: Top-up tax</p> <p>Transitional Safe Harbour</p> | <p>U UTPR: Undertaxed Profits Rule</p> | <p>V Valuation adjustment wrt deferred tax asset</p> | <p>W Withholding taxes (treatment in Pillar One?)</p> | <p>X X (50% weight to employees and tangible assets for UTPR percentage)</p> |
| <p>Y Y% (offset percentage in safe harbour)</p> | <p>Z Zero (assumed top-up tax if safe harbour met)</p> | | | | |