



# ***Pillar Two Technical Series: Overview & Transition Years***

# Meet Today's Presenters



**Justin Metcalfe**

Director

Forvis Mazars US

[justin.metcalfe@us.forvismazars.com](mailto:justin.metcalfe@us.forvismazars.com)

P: 980.729.7446



**Neil Rolfe**

Partner (Head of Insurance Tax)

Forvis Mazars UK

[neil.rolfe@mazars.co.uk](mailto:neil.rolfe@mazars.co.uk)

P: +44 (0)20 7063.5201



# Pillar 2 – Overview

# OECD Pillar 2 – Overview

- Multinational enterprise (MNE) groups with annual revenue exceeding EUR 750 million in two of the last four fiscal years are in scope of Pillar Two rules
- Designed to achieve a minimum rate of taxation equal to 15%
  - Applicable & collectible with respect to any jurisdiction regardless of whether such jurisdiction has enacted Pillar Two
  - Based off complex jurisdictional Top-Up Tax computations
- Global anti-Base Erosion (“GloBE”) interlocking charging rules:
  - Income Inclusion Rule (“IIR”) – 2024
  - Undertaxed Payment Rule (“UTPR”) – 2025
  - Qualified Domestic Minimum Top-Up Tax (“QDMTT”) – 2024
- OECD contemplates global taxing jurisdictions to adopt a unified approach

# OECD Pillar 2 – Timeline of Guidance

- October 2021 – over 140 member states in the G20 agree to adopt OECD Pillar Two
- December 2021 – Model rules for the GloBE tax
- December 2022 – Safe Harbour test guidance
- February 2023 – First administrative guidance – QDMTTs & Blended CFC tax regimes
- July 2023 – Second administrative guidance – additional guidance on QDMTTs, new safe harbour tests, & other clarifying information to GloBE rules
- December 2023 – Third administrative guidance – Interplay of anti-hybrid rules with GloBE, new safe harbour test for NMEs, & additional guidance regarding transitional safe harbours
- June 2024 – Fourth administrative guidance – allocation of cross-border current & deferred taxes, DTL recapture mechanism guidance, & treatment of securitization vehicles

# Calculation Steps

## Step 1 – Constituent Entities Covered

- Identify MNE Groups within scope of the GloBE Rules.
- Identify Constituent Entities (“CEs”) & Remove any Excluded Entities.
- Identify location of each CE.

## Step 2 – Determine GloBE Income or Loss

- Determination of Financial Accounting Net Income / (Loss).
- Adjust Financial Accounting Net Income or Loss to GloBE Base.
- GloBE Income or Loss allocated to Permanent Establishments or through Flow-Through Entities where necessary.

## Step 3 – Adjusted Covered Taxes

- Identification of Covered Taxes.
- Adjust Covered Taxes for temporary differences & losses & allocate to other CEs as necessary.
- Take post-filing adjustments into account.

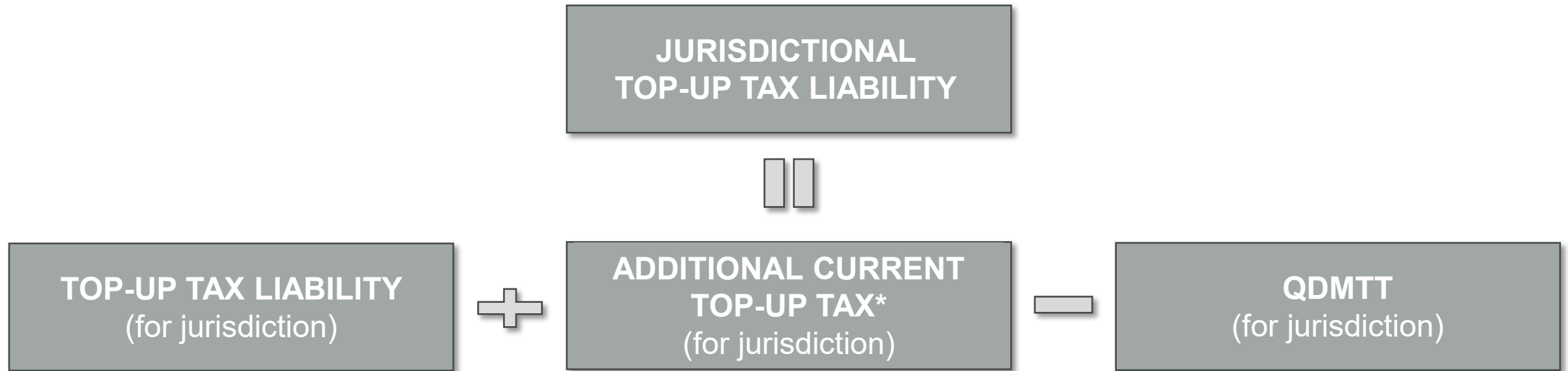
## Step 4 – Effective Tax Rate & Top-Up Tax Computation

- Determination of Substance-Based Income Exclusion Amounts & other exceptions.
- Computation of jurisdictional Top-Up Tax for low-taxed jurisdictions (after consideration of Safe Harbours & elections).
- Allocation of the Top-Up Tax between Low Taxed CEs.

## Step 5 – Applying the Charging Provisions

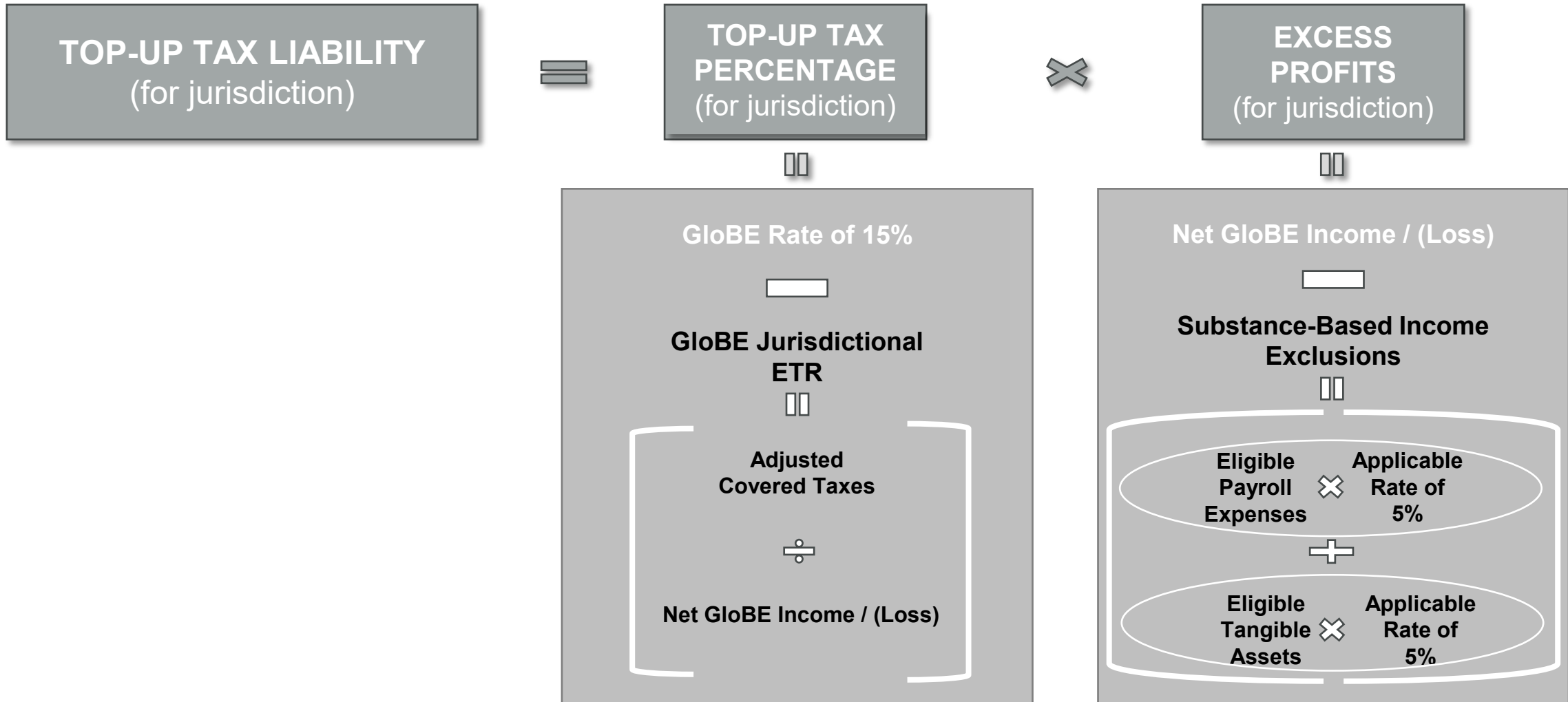
- Identification of UPE liable for Top-Up Tax under IIR & determination of Top-Up Tax paid by UPE under IIR.
- Identification of the remaining amount, if any, that is allocable under the UTPR.
- Liability for residual Top-Up Tax in the UTPR Jurisdictions through a UTPR adjustment.

# Jurisdictional Top-Up Tax Liability



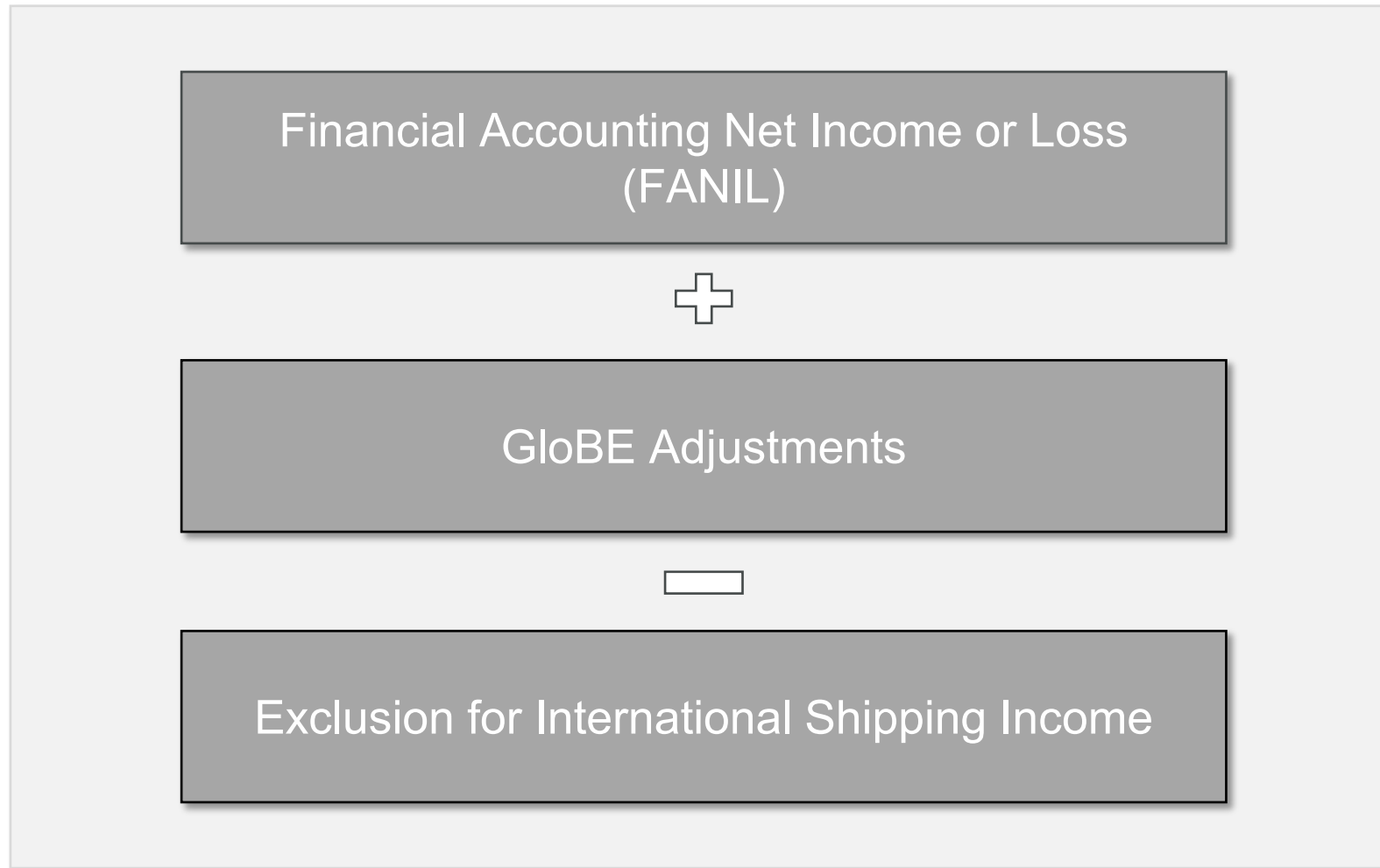
\* Applies where the ETR & Top-Up Tax for a prior Fiscal Year is required or permitted to be recalculated pursuant to an ETR Adjustment Article.

# Computation of the Top-Up Tax – Overview





# Computation of Net GloBE Income / (Loss)



# Computation of Adjusted Covered Taxes

Covered Tax Expense (FANIL current tax expense)



Additions / Reductions to Covered Tax Expense



Total Deferred Tax Adjustment Amount (DTAA)\*

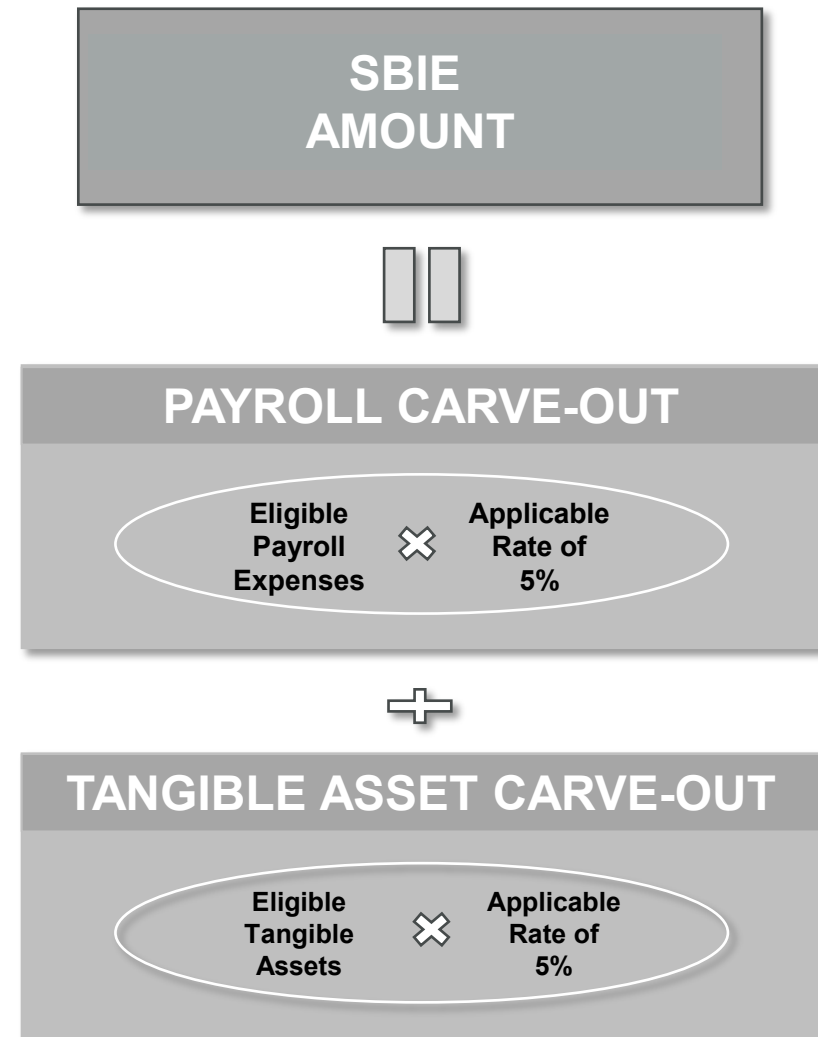


Increases / Decreases for OCI / Equity Items

\*If GloBE Loss Election under Article 4.5 is made, no DTAA adjustment required.

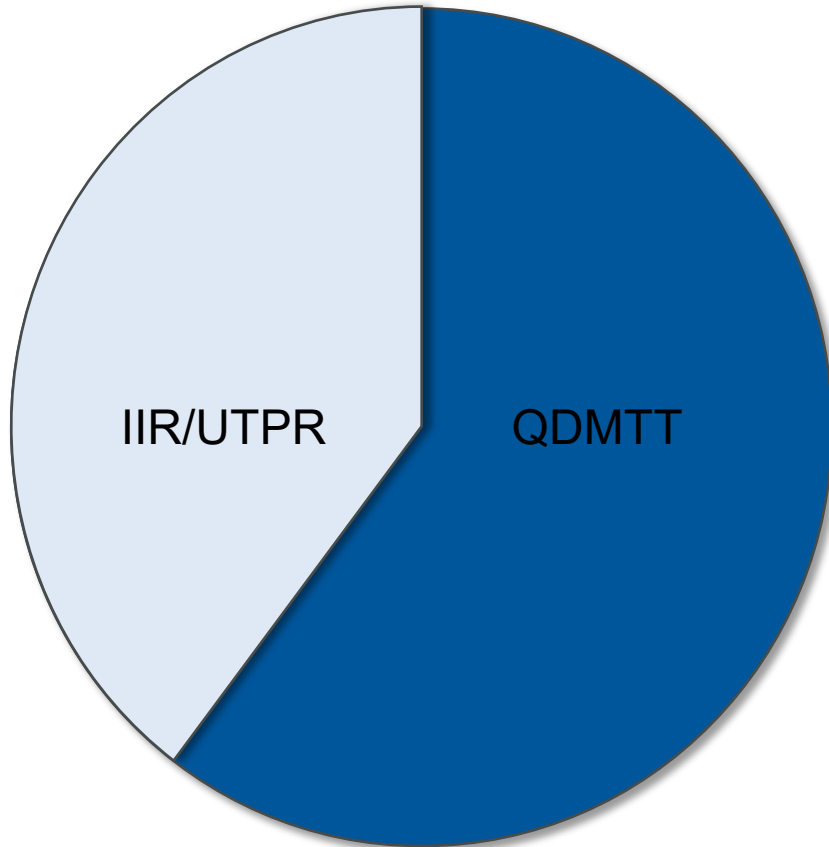
# Substance-Based Income Exclusion (SBIE) Amount

- Applies to reduce a jurisdiction's Net GloBE Income
- Annual Election is permitted to not apply the SBIE Amount per Jurisdiction
- SBIE consists of two carve-outs:
  - Payroll Carve-Out
  - Tangible Asset Carve-Out
- Transition Year Rates permit a higher rate for each carve-out until the 5% rate is applicable for both.



# Top-Up Tax & Charging Provisions – Generally

## Total Top-Up Tax



### Key Terms & Definitions

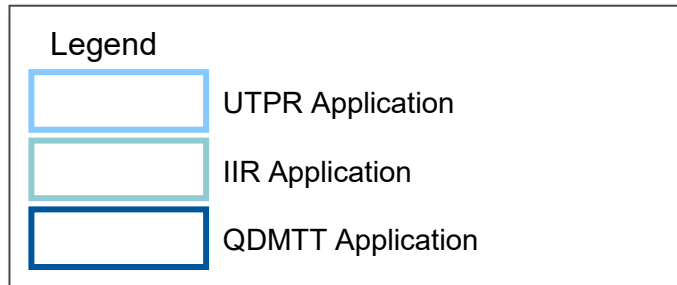
- **Qualified Domestic Minimum Top-Up Tax (QDMTT)** – A minimum tax that is imposed by the domestic law of a country that computes its own Top-Up Tax following the Pillar Two rules.
- **Income Inclusion Rule (IIR)** – Imposes a Top-Up Tax on the Ultimate Parent Entity (UPE) of a multinational enterprise group with respect to its low taxed income of its constituent entities.
- **Undertaxed Payments Rule (UTPR)** – Operates as a backstop to the IIR, applying only in specific circumstances where the Top-Up Tax is not brought into charge under an IIR or QDMTT



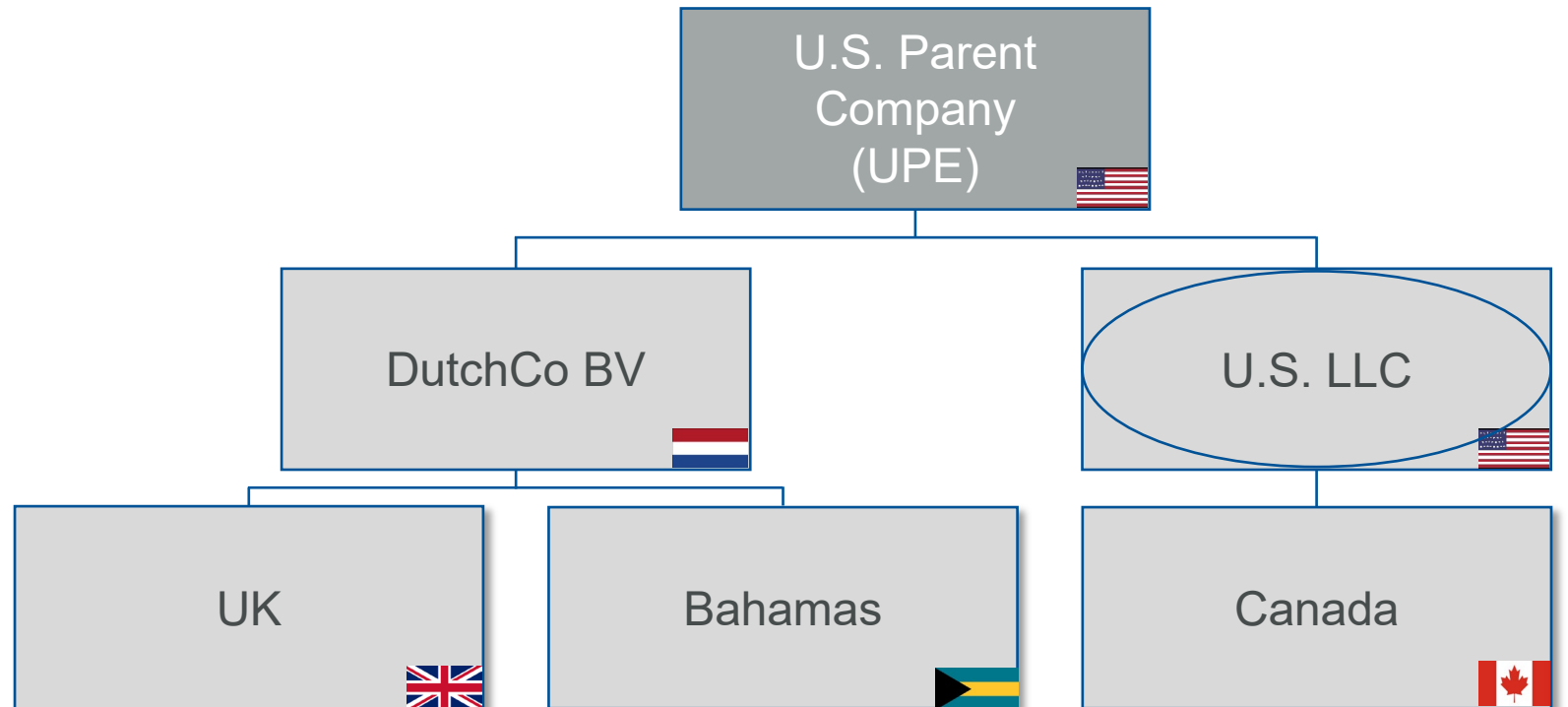
# Ordering of the Pillar Two Charging Provisions



# Org Chart Example of Charging Provisions






**Assumptions:**  
Netherlands, UK, & Canada adopts QDMTT, IIR, & UTPR  
U.S. & Bahamas do not adopt an IIR, QDMTT, or UTPR

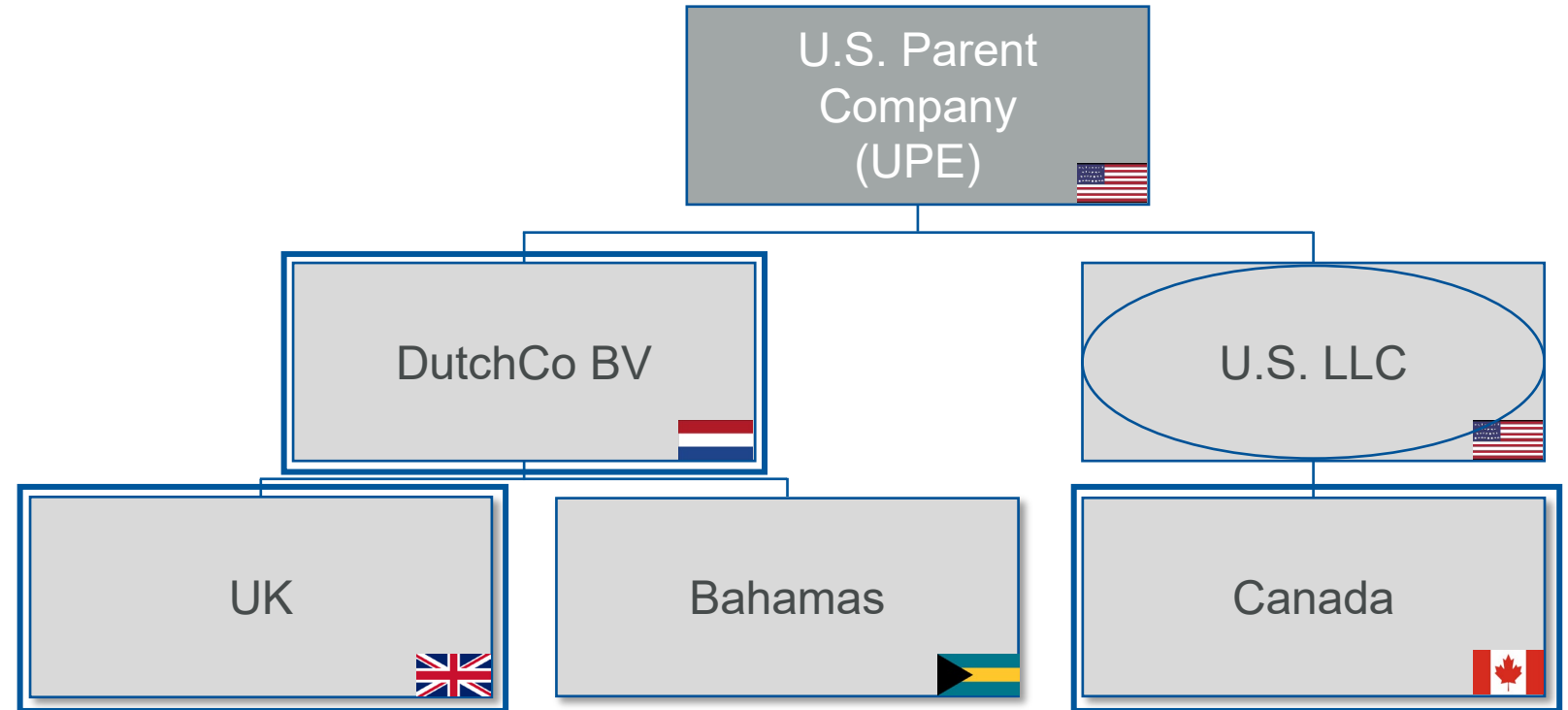


# Org Chart Example – QDMTT

## Legend

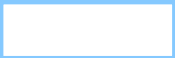


-  UTPR Application
-  IIR Application
-  QDMTT Application

- DutchCo BV will collect its share of Top-Up Tax through application of its QDMTT.
- UK will collect its share of Top-Up Tax through application of its QDMTT.
- Canada will collect its share of Top-Up Tax through application of its QDMTT.
- DutchCo BV will not collect UK's share of Top-Up Tax since UK's QDMTT has fulfilled UK's Top-Up Tax liability.

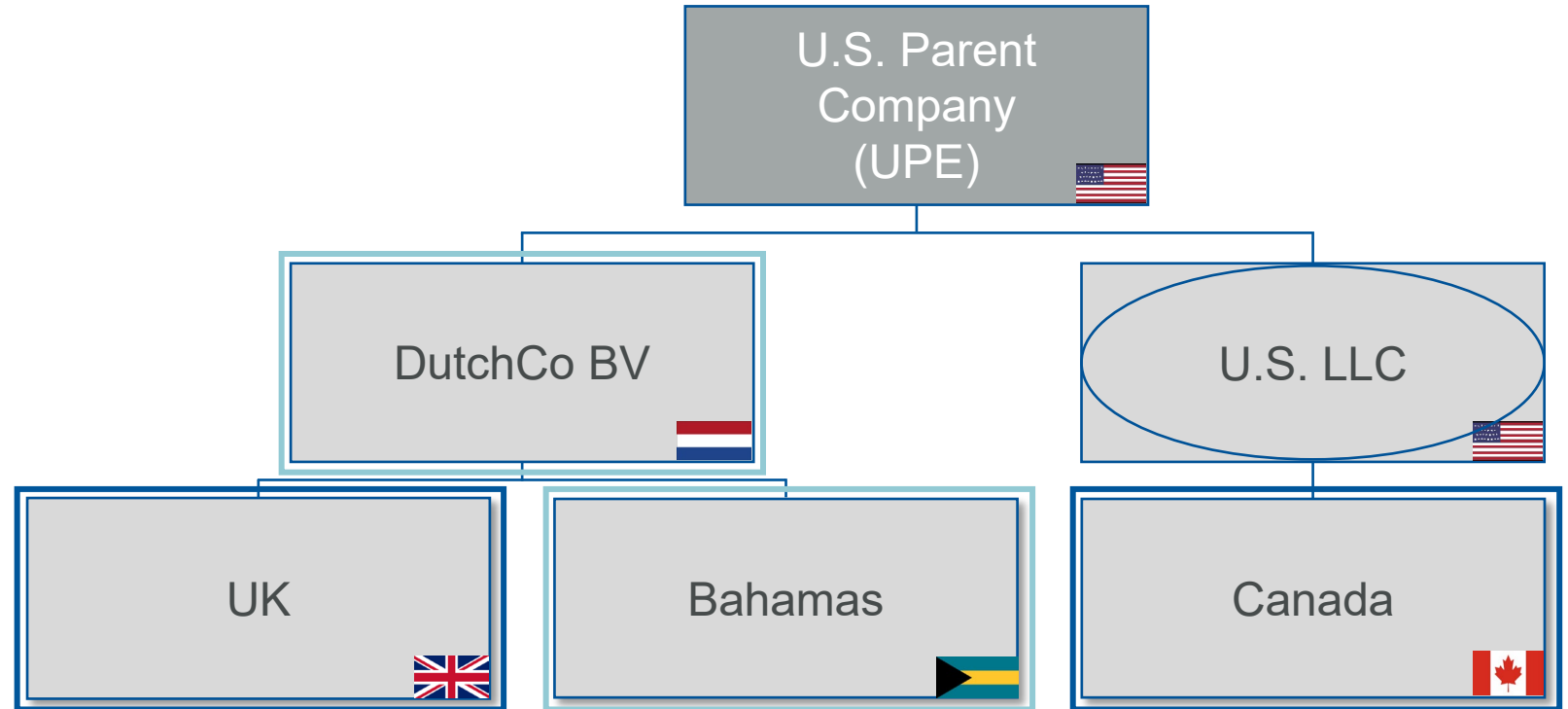


# Org Chart Example – IIR

## Legend

-  UTPR Application
-  IIR Application
-  QDMTT Application




- DutchCo BV, Canada, & UK collect their share of Top-Up Tax through their QDMTTs
- Bahamas's share of Top-Up Tax will be collected through DutchCo BV's IIR.
- UK's QDMTT will exclude its share of Top-Up Tax from DutchCo BV's IIR due to application of its QDMTT.
- UPE & U.S. LLC will have outstanding Top-Up Tax.



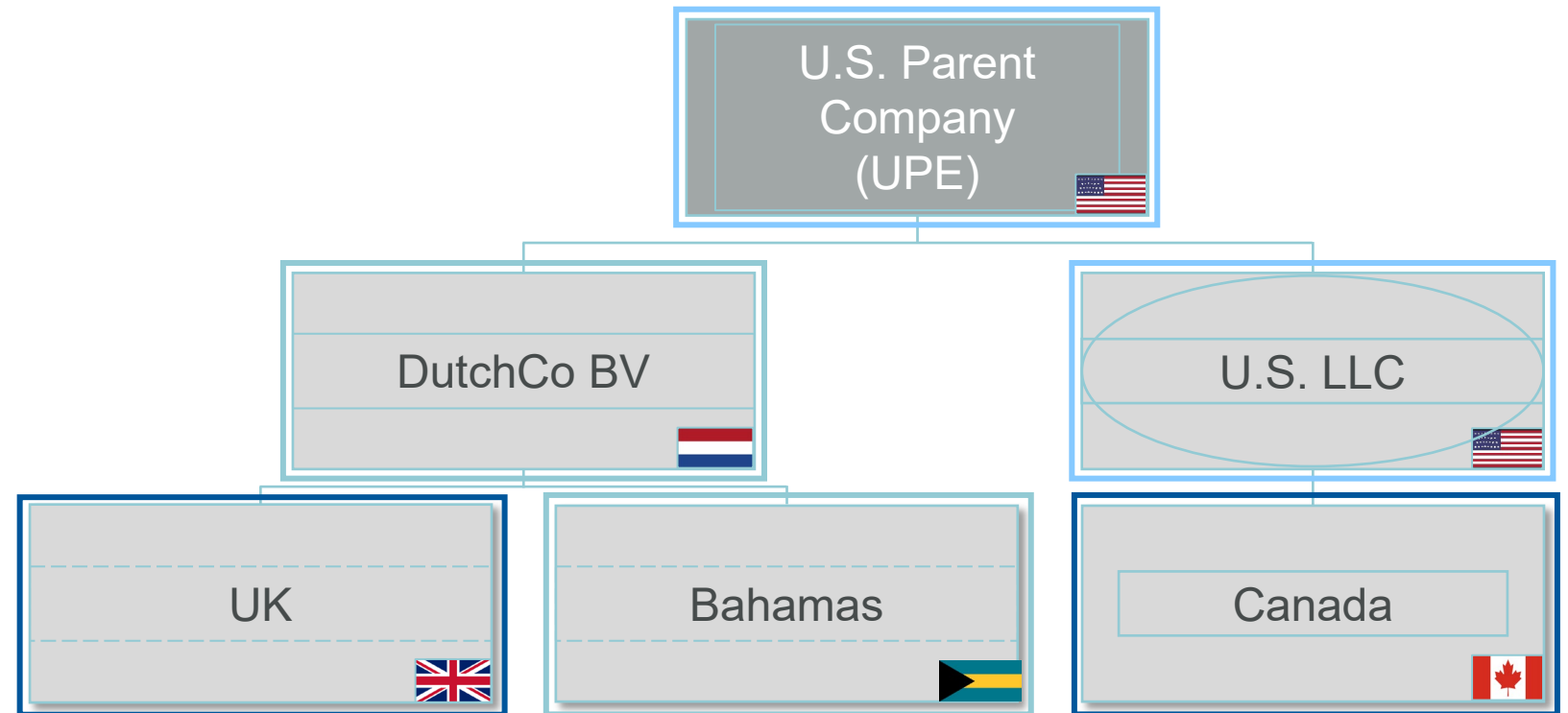


# Org Chart Example – UTPR

## Legend




	UTPR Application
	IIR Application
	QDMTT Application

- DutchCo BV, Canada, & UK will collect their share of Top-Up Tax through application of their respective QDMTTs.
- DutchCo BV will collect Top-Up Tax on behalf of Bahamas through its IIR; UK's Top-Up Tax is excluded from DutchCo BV's IIR due to its QDMTT.
- UPE & U.S. LLC's Top-Up Tax will not be collected by either Canada or DutchCo BV's IIR.
- DutchCo BV, Canada, & UK will make adjustments to their deductions to collect the shares of Top-Up Tax at UPE & U.S. LLC by application of their UTPRs.

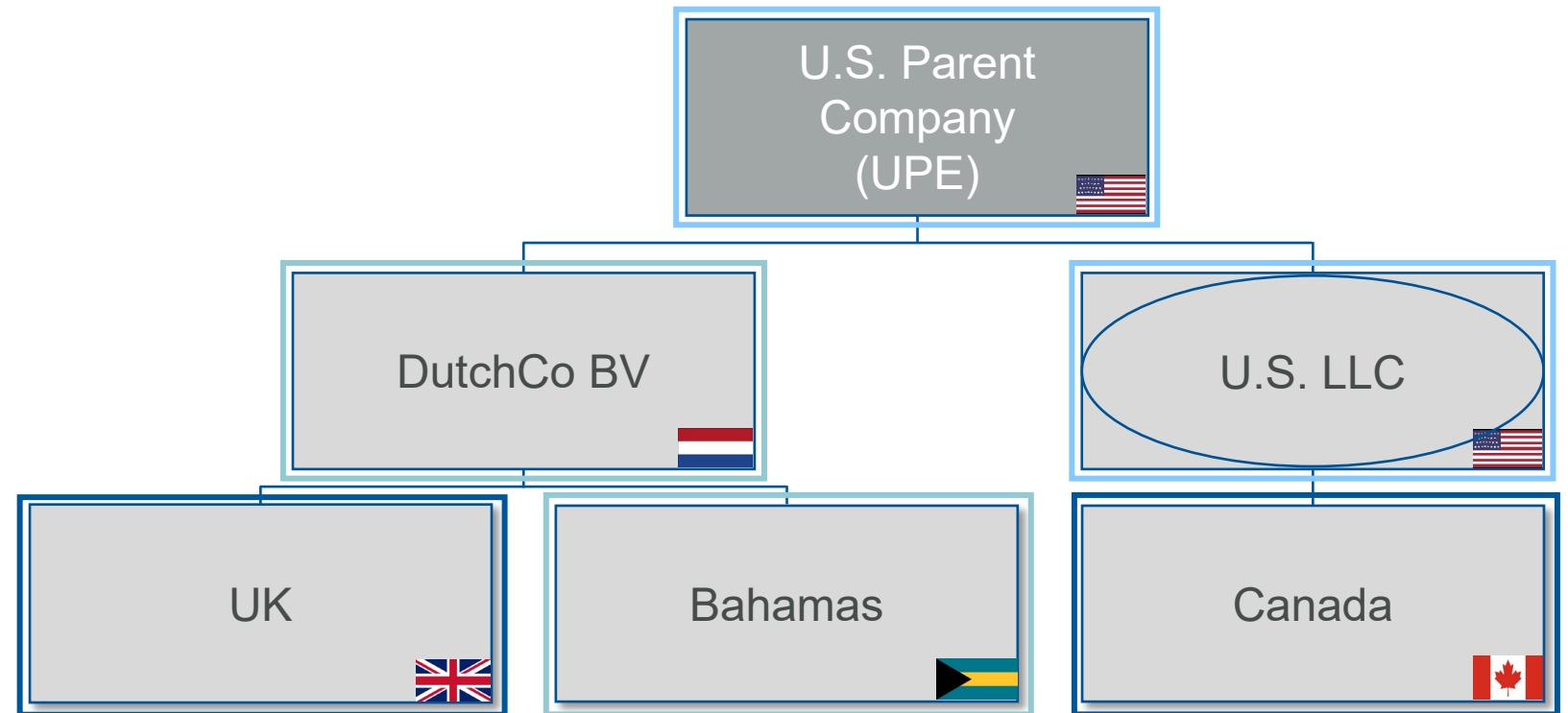


# Org Chart Example – Summary

## Legend

-  UTPR Application
-  IIR Application
-  QDMTT Application

- DutchCo BV, Canada, & UK will collect Top-Up Tax with respect to their share based on their QDMTTs.
- DutchCo BV will collect Bahamas's share of Top-Up Tax through application of its IIR.
- DutchCo BV, Canada, & UK will collect Top-Up Tax on behalf of UPE & U.S. LLC through their UTPR.



# QDMTT Overview

- Peer review process for determining whether tax is functionally equivalent to the GloBE rules is subject to two guiding principles:
  1. The minimum tax in question must be **consistent with the design** of the GloBE rules.
  2. The minimum tax in question must provide for **outcomes that are consistent** with the GloBE rules.



# QDMTT Status – Consistent With Design

- Modest degree of variability is expected
- Must follow the architecture of the GloBE rules using mechanisms that are substantially the same as those used to calculate the effective rate & Top-Up Tax payable under the GloBE rules.
- Must be close enough to the GloBE rules such that an MNE Group can use the same data points for calculating its minimum tax liability that it uses for calculating the GloBE tax liability (under IIR & UTPR).
- Deviations from GloBE rules are permitted if in context of jurisdiction's local tax laws – implies assessment on a case-by-case basis.

# QDMTT Status – Consistent Outcomes

- Requires the local minimum tax produce an incremental tax liability of Top-Up Tax equivalent to the Top-Up Tax Liability that would have arisen under the GloBE rules.
- Definitions for Ultimate Parent Entity, MNE Group, & Constituent Entity in local minimum tax enacted **must** correspond to GloBE rules definitions.
- Local minimum tax must compute tax liability for the jurisdiction by taking into account income & covered taxes of constituent entities located in jurisdiction as determined in the GloBE rules.
- Variations permitted – if systemically produce a greater incremental tax liability or would not produce lower tax liability than would be expected under GloBE rules or commentary.

# CAMT vs. QDMTT

#	Description	Inflation Reduction Act – Corporate AMT	BEPS Pillar Two – Global Minimum Tax
1	Applicability Threshold	Average annual AFSI over a three-year tax period in excess of 1B USD	Annual global consolidated revenues over 750M EUR for at least 2 of 4 fiscal years preceding tested fiscal year
2	Income	Jurisdictional Blending	Country-by-Country Application (no cross-jurisdictional blending)
3	Carve-Outs	Tangible Asset Depreciation	Substance-Based Income Carve-Outs for applicable rate on Tangible Assets & Qualified Payroll Expenses



# The Transition Years – Safe Harbour Tests & Other Relief

# Transition Year Relief Summary

- Transitional CbCR Safe Harbour
- UTPR Safe Harbour
- Transitional Penalty Relief

# Transitional CbCR Safe Harbour Overview

**Goal:** to identify low-risk jurisdictions by using readily available & easily verifiable data rather than seeking to achieve the high degree of precision involved in full GloBE calculations.

During the Transition Period, the Top-Up Tax in a jurisdiction for a Fiscal Year is zero where one of the following tests are satisfied:

- a) **De minimis** test
  - b) **Simplified ETR** test
  - c) **Routine profits** test
- Must comply with the filing requirements in GloBE Information Return (“GIR”) that are specific to the Transitional CbCR Safe Harbour.
  - **“Once Out, Always Out” Rule:** To the extent a jurisdiction fails all three tests for a fiscal year during the Transition Period, the MNE Group is no longer able to apply the Transitional CbCR Safe Harbor Tests for any subsequent fiscal year in the Transition Period.



# Transitional CbCR Safe Harbour Overview

- **Reliance** upon CbCR, Qualified CbCR Financial Statement Data, & SBIE Data (for Routine Profits Test)
- **Excluded Entities & Arrangements for Transitional CbCR Safe Harbor** – include:
  - Stateless constituent entities;
  - Certain multi-parented MNE groups;
  - Jurisdictions with constituent entities that have elected to be subject to eligible distribution tax systems under Article 7.3 of the OECD Pillar II Model Rules; &
  - Jurisdictions that have not benefited from the Transitional CbCR Safe Harbor in a previous year.
- **Transition Period** – any fiscal year beginning on or before December 31, 2026, but not including a fiscal year that ends after June 30, 2028.
- **GloBE Information Return** – for jurisdictions that do qualify, the MNE group would **still** have to complete the relevant sections in the GIR for safe harbor applications.

# Transitional CbCR Safe Harbour – De Minimis Test

- The De Minimis Safe Harbour test is similar to the De Minimis Exclusion in Article 5.5 of the GloBE Rules
- **Satisfied** if Tested Jurisdiction has CbCR revenue less than 10 million Euro, **&** the CbCR profit (loss) before income tax is less than 1 million Euro
- Transitional Safe Harbour Rules only consider Total Revenue & Profit (Loss) before Income Tax of the current year as reflected in the CbC Report
- Exclusion applies in the case of Entities that are held for sale. Where CEs of an MNE Group in a jurisdiction include an Entity held for sale, that jurisdiction cannot rely on the De Minimis test

$$\text{De Minimis} = \text{CbCR Revenue} < 10\text{M EUR} + \text{CbCR Profit / (Loss) before Tax} < 1\text{M EUR}$$

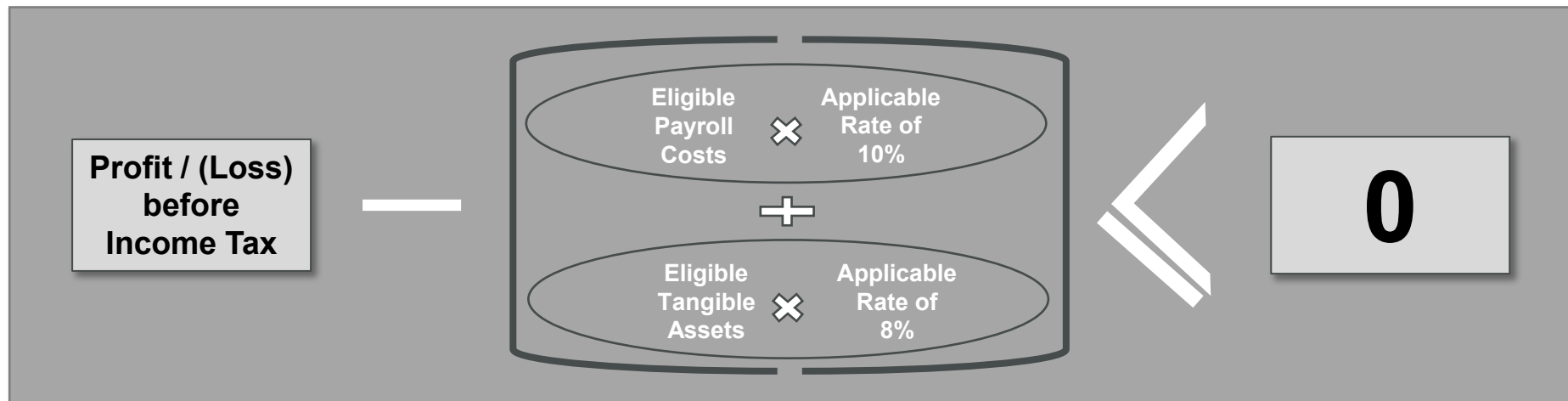
# Transitional CbCR Safe Harbour – Simplified ETR Test

- Mirrors the mechanics of the GloBE rules
- **Satisfied** if the computed ETR is equal to or greater than the global minimum tax transition rate
- If Simplified ETR is greater than 15% (in 2023 & 2024), then the jurisdiction would qualify for the ETR Safe Harbour
  - Transition rate increases to 16% in 2025 & 17% in 2026, respectively

$$\text{Simplified ETR} = \frac{\text{Simplified Income Tax Expense}}{\text{Simplified Profit / (Loss) Before Income Tax}}$$

# Transitional CbCR Safe Harbour – Routine Profits Test

- Requires determination of SBIE under the GloBE rules
  - Likely more data gathering required than De Minimis & ETR tests
- **Satisfied** if Tested Jurisdiction’s profit or loss before income tax is equal to or less than the substance-based income (payroll & tangible assets carve-out)
  - A Tested Jurisdiction with a loss or zero profits will not have income that exceeds the routine profits amount
- Beneficial to MNE Groups that utilized significant labor or tangible assets



# Transitional CbCR Safe Harbour – Routine Profits Test

- Eligible Payroll Costs
  - Salaries & Wages
  - Employee Benefits (insurance, pension, other retirement contributions)
  - Bonuses
  - Allowances
  - Stock-Based Compensation
  - Payroll Taxes
  - Fringe Benefits Taxes
  - Social Security Contributions
- Excludes amounts capitalized in the carrying value of Eligible Tangible Assets
- Excludes amounts attributable to CE's international shipping income & qualified ancillary international shipping income under Article 3.3.5 that is excluded from the computation of GloBE Income or Loss for a fiscal year

$$\text{Payroll Carve-Out} = \text{Eligible Payroll Costs} \times \text{Applicable Carve-Out Percentage}$$

# Transitional CbCR Safe Harbour – Routine Profits Test

- Article 9.2 Transition Rules for Applicable Carve-Out Percentage (modifying Article 5.3.3 Payroll)
  - 2023 – 10%
  - 2024 – 9.8%
  - 2025 – 9.6%
  - 2026 – 9.4%
  - 2027 – 9.2%
  - 2028 – 9.0%
  - 2029 – 8.2%
  - 2030 – 7.4%
  - 2031 – 6.6%
  - 2032 – 5.8%



# Transitional CbCR Safe Harbour – Routine Profits Test

- Eligible Tangible Assets
  - property, plant, & equipment located in that jurisdiction;
  - natural resources located in that jurisdiction;
  - a lessee’s right of use of tangible assets located in that jurisdiction; &
  - a license or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets.
- Carrying Value
  - The computation of carrying value of Eligible Tangible Assets shall be based on the average of the carrying value (net of accumulated depreciation, amortization, or depletion at the beginning & ending of year)
  - Include any amount attributable to capitalization of payroll costs

$$\text{Tangible Asset Carve-Out} = \text{Eligible Tangible Assets} \times \text{Applicable Carve-Out Percentage}$$

# Transitional CbCR Safe Harbour – Routine Profits Test

- Article 9.2 Transition Rules for Applicable Carve-Out Percentage (modifying 5.3.4 Tangible Assets)
  - 2023 – 8.0%
  - 2024 – 7.8%
  - 2025 – 7.6%
  - 2026 – 7.4%
  - 2027 – 7.2%
  - 2028 – 7.0%
  - 2029 – 6.6%
  - 2030 – 6.2%
  - 2031 – 5.8%
  - 2032 – 5.4%

# Transitional Safe Harbour – UTPR Safe Harbour

- UTPR Top-Up Tax for the Ultimate Parent Entity (UPE) Jurisdiction is deemed to be zero
  - For each Fiscal Year during the Transition Period
  - If the UPE Jurisdiction has a corporate income tax rate that applies of at least 20%, including extra-jurisdictional taxes, (e.g., States) are included
  - The nominal statutory rate applied to a comprehensive measure of income – so the U.S. qualifies
  - OECD maintains a listing of Jurisdictional Rates
- Transition Period means the Fiscal Years that run no longer than 12 months that begin on or before 12/31/2025 & end before 12/31/2026
  - Calendar year 2024 begins before 12/31/2025 & ends before 12/31/2026
  - Calendar year 2025 begins before 12/31/2025 & ends before 12/31/2026
  - Effectively two-years of transition relief
  - Note that Transition Period coincides with IRC Section 250 GILTI/FDII rates
- Jurisdictions can pick & choose which Safe Harbour to elect if both the UTPR & CbCR apply to take advantage of the “once out, always out” rule

# Transitional Safe Harbour – UTPR Transitional Rule

- Available to MNE groups that are in the “Initial Phase of Their International Activity”
- CEs in no more than six countries &;
- Net book value of tangible assets of all CEs located in jurisdiction other than reference jurisdiction less than or equal to 50 million
- Made with election
- UTPR is zero if the above requirements are satisfied

# Transitional Penalty Relief

- Penalty for noncompliance is 5% of revenue per jurisdiction
- **Penalty Relief** is available during the Transition Period in connection with filing of GloBE Information Return where a tax administration considers that an MNE has taken “**reasonable measures**” to ensure the correct application of the GloBE Rules.
  - Demonstration of good faith to understand & comply with relevant domestic application of the GloBE Rules & QDMTT
  - Transition Period is similar to that of the Transitional Safe Harbour – for years beginning on or before December 31, 2026 but not including a fiscal year that ends after June 30, 2028.
- Would not apply in cases of avoidance, fraud, or abuse.

# Transitional Penalty Relief

- Based on facts & circumstances
- The term “**Reasonable Measures**” is not defined in Article 3 of the inclusive framework, but **examples** are provided:
  - Full disclosure of GloBE computation to tax administration;
  - Where there is a mistake of fact that is reasonable in the circumstances;
  - The errors can be reasonably attributed to unfamiliarity with the rules in the initial implementation years (*i.e.*, mathematical errors or transposition errors);
  - The requirements of the rule are unclear & the MNE’s actions are based on a reasonable interpretation of the rule; or
  - The MNE’s actions do not result in a reduction of the Top-Up Tax liability in the current or future year



# Meet Your Presenters



**Justin Metcalfe**

Director (Forvis Mazars US)

980.729.7446

[justin.metcalfe@us.forvismazars.com](mailto:justin.metcalfe@us.forvismazars.com)

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Justin is a director with the International Tax Services team. Justin has more than nine years of experience overseeing international tax planning, compliance, and provision projects for complex, public, and private multinational organizations. He is also the developer of the Forvis Mazars Plexus International Tax Model and the Forvis Mazars Pillar Two Prism Model. He is a frequent conference speaker and panelist on topics related to GILTI, Subpart F Income, foreign-derived intangible income, the base erosion and anti-abuse tax, as well as foreign tax credits. Justin also works extensively in mergers, acquisitions, and divestitures and is one of Forvis Mazars' lead consultants on the OECD's BEPS Pillar Two initiative.

He is a licensed attorney in the states of Florida and South Carolina, as well as Washington, D.C.



**Neil Rolfe**

Partner – Global Head of Insurance Tax (Forvis Mazars UK)

+44 (0)79 7670 6289

[neil.rolfe@mazars.co.uk](mailto:neil.rolfe@mazars.co.uk)

Neil has over 25 years of professional experience of advising international insurance groups on their taxation affairs both in practice and in industry. He has 15 years of Big 4 experience including at Associate Partner level advising insurance groups on capital and tax optimisation, reinsurance transfer pricing, restructuring, M&A, tax compliance and audit. Neil spent 12 years at Swiss Re and associated firms prior to joining Mazars with a range of finance and tax roles including divisional Head of Finance and Tax M&A, Head of Tax and also as CFO of one of the three Swiss Re insurance companies regulated in Switzerland. Since joining Forvis Mazars UK as Head of Insurance Tax in September 2021, Neil has continued to advise multinational insurance groups on all relevant tax and cross line of service issues.

Neil is a member of the Forvis Mazars Pillar 2 – GloBE Executive Committee covering FS and non-FS clients and is responsible for the technical and training workstream along with Justin Metcalfe in the US. Neil's clients value the combination of his very strong technical ability and his commercial awareness. As a result, he has been able to develop and create new tax practice areas at Forvis Mazars in Pillar 2 and in Bahamas Corporate Income Tax over the last 2 years. One of Neil's main strengths is the ability to convert legislation as enacted into a pro-forma calculation, an agreed position and then to help clients (or historically Swiss Re in industry) turn that new legislation into an operational calculation with appropriate controls.

# Contact

## Forvis Mazars

### **Justin Metcalfe**

Director, International

[justin.metcalfe@us.forvismazars.com](mailto:justin.metcalfe@us.forvismazars.com)

### **Neil Rolfe**

Partner, Global Head of Insurance Tax

[neil.rolfe@mazars.co.uk](mailto:neil.rolfe@mazars.co.uk)

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