Pillar 2 Technical Series

Complex MNE Groups

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Recap of Charging Provisions

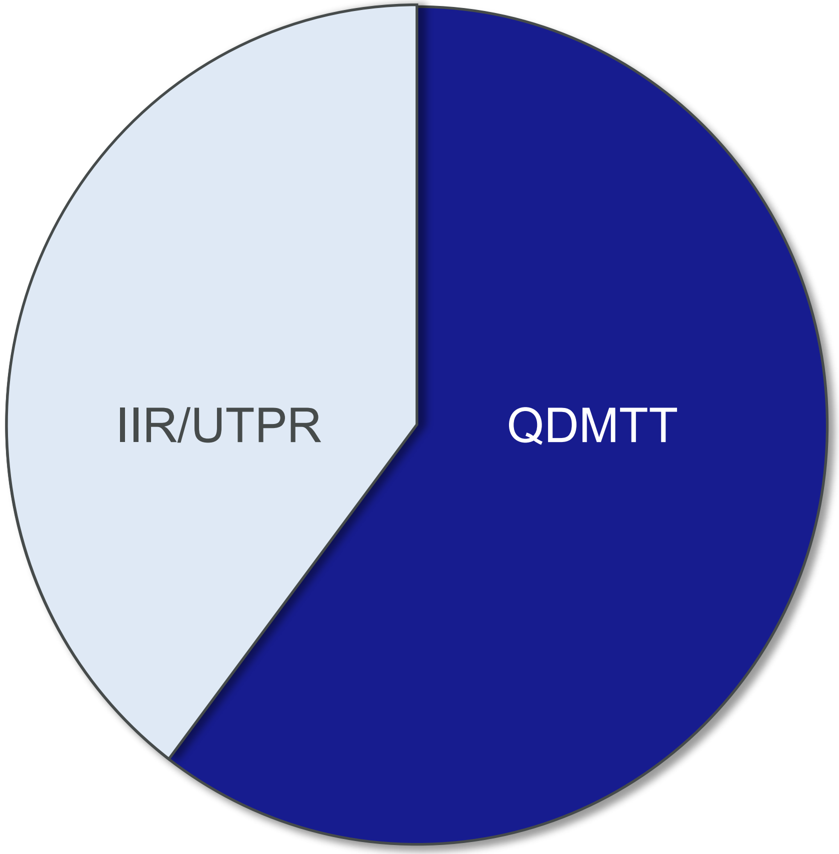
Application of the Consolidated Revenue Threshold

Where the MNE Group has EUR 750 Million or more of reported revenue in at least two Fiscal Years in the four-year period immediately preceding the tested Fiscal Year, the Constituent Entities that make up the MNE Group will be within the scope of the GloBE Rules.

- Note the consolidated revenue for the current year (the tested Fiscal Year) is not factored into the four-year calculation.
- Proportional adjustments are considered for purposes of testing applicability where one or more Fiscal Years of an MNE Group consists of a period other than 12 months & special consideration is given to the effect of mergers & de-mergers on the determination of consolidated revenue.

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

Org Chart Example of Charging Provisions

Legend

UTPR Application

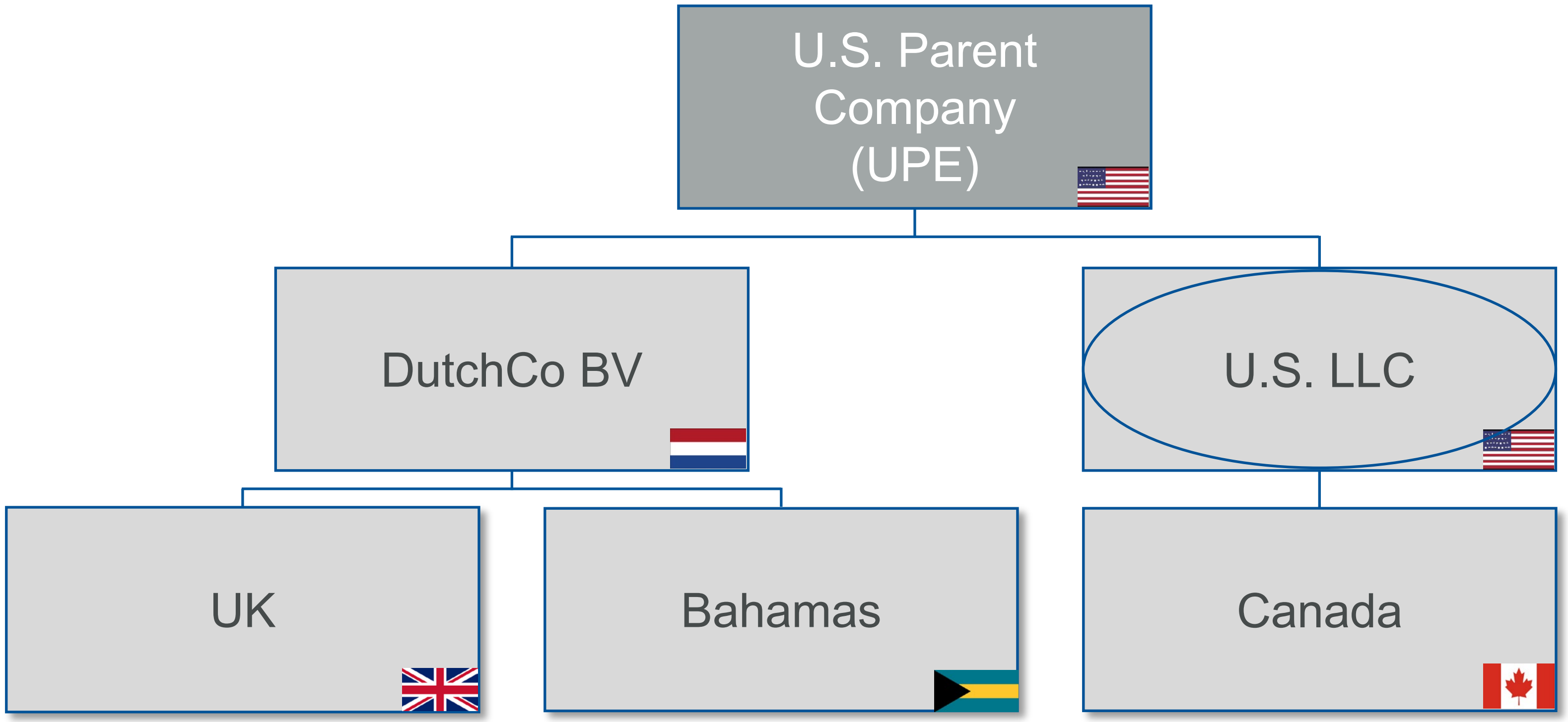
IIR Application

QDMTT Application

Assumptions:

Netherlands, UK, and Canada adopts QDMTT, IIR, and UTPR

U.S. and Bahamas do not adopt an IIR, QDMTT, or UTPR

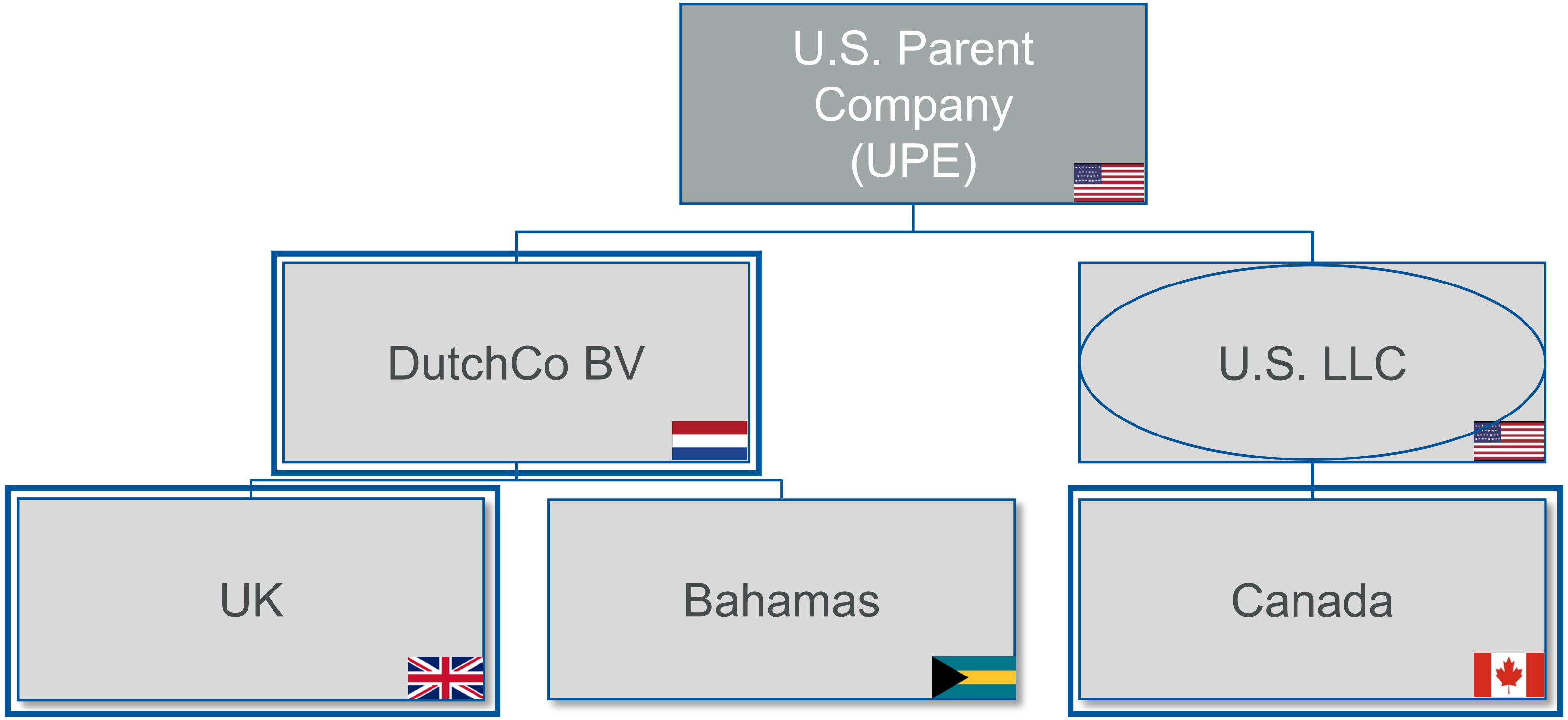


Org Chart Example – QDMTT

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.

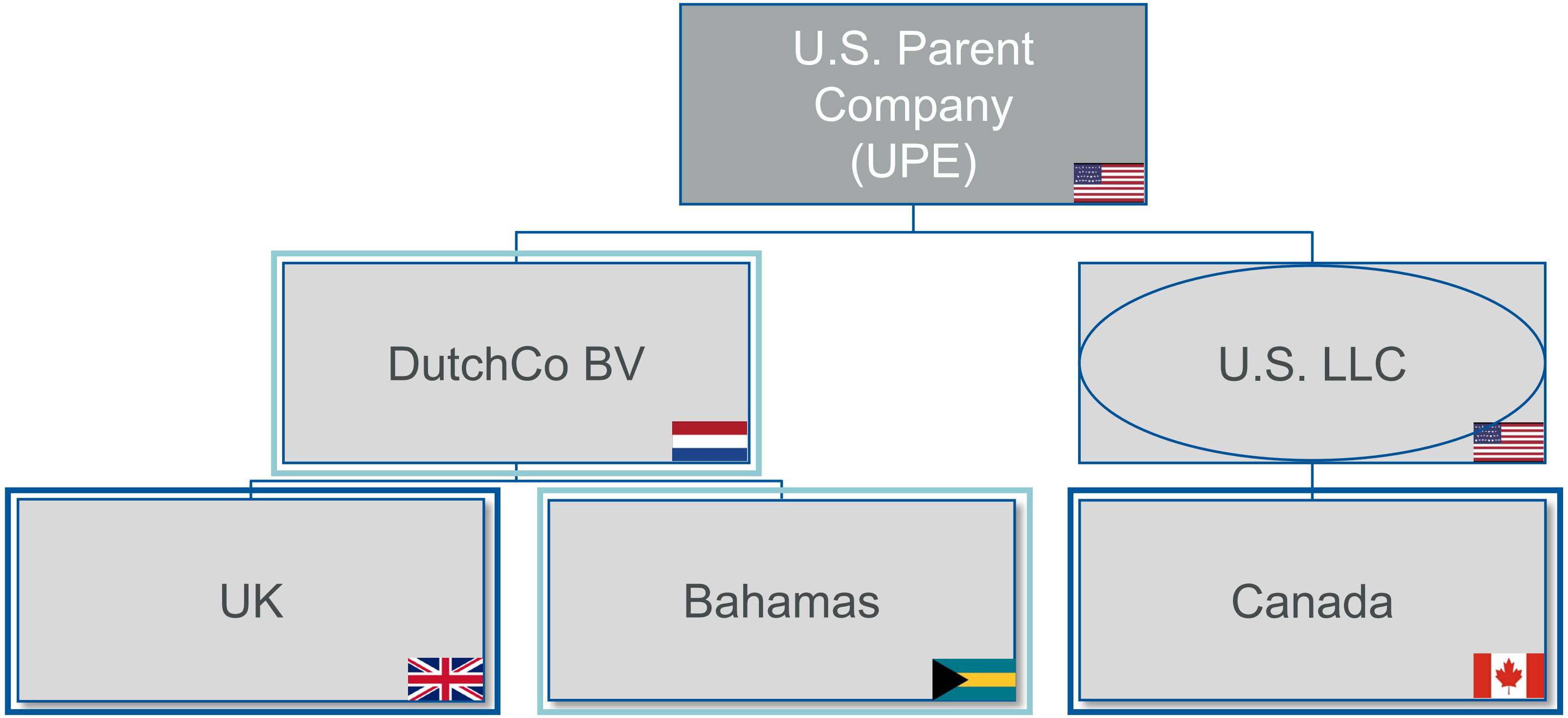


Org Chart Example – IIR

Legend

- UTPR Application
- IIR Application
- QDMTT Application

- DutchCo BV, Canada, and 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 and U.S. LLC will have outstanding Top–Up Tax.



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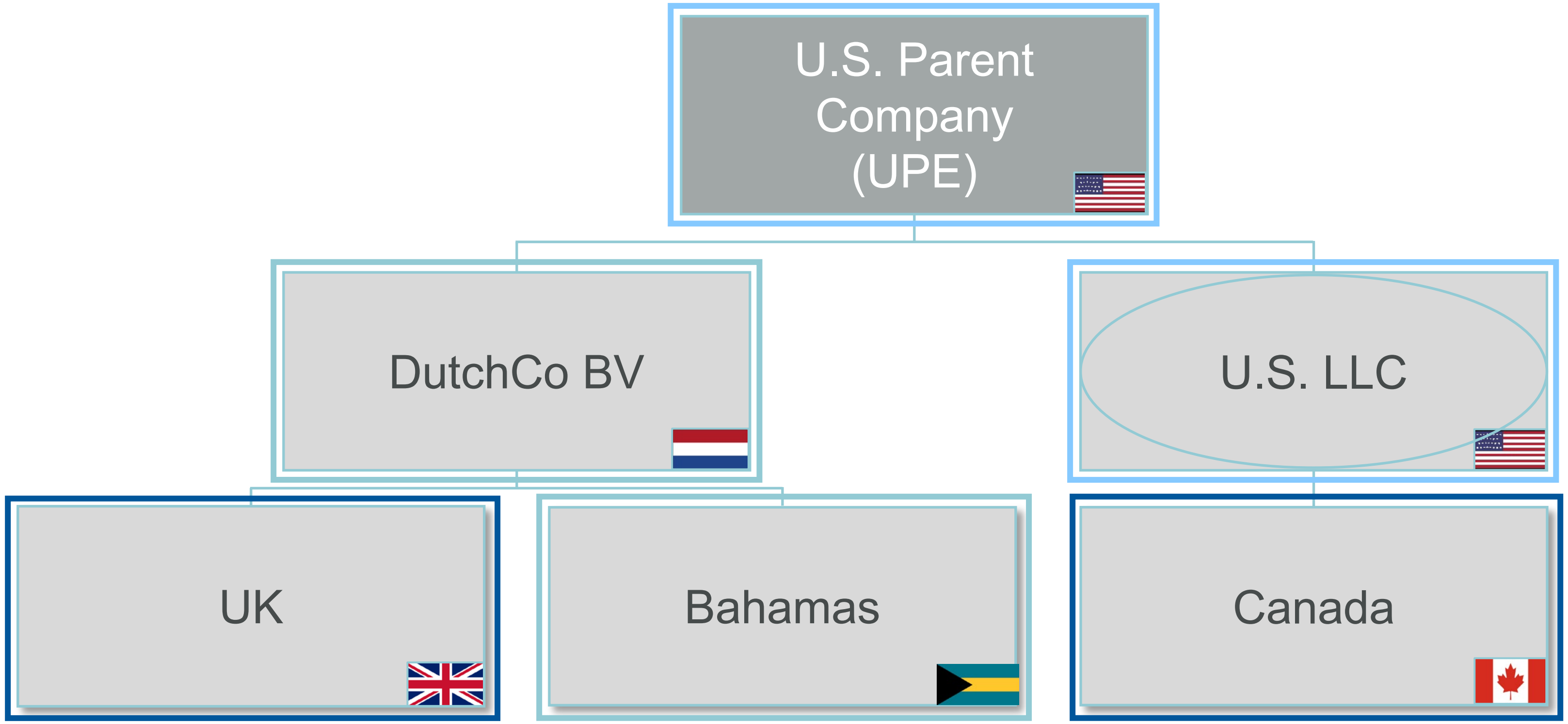
Org Chart Example – UTPR

Legend

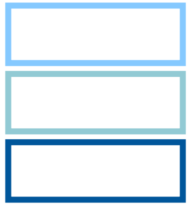
	UTPR Application
	IIR Application
	QDMTT Application

- DutchCo BV, Canada, and 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 and U.S. LLC's Top–Up Tax will not be collected by either Canada or DutchCo BV's IIR.
- DutchCo BV, Canada, and UK will make adjustments to their deductions to collect the shares of Top–Up Tax at UPE and U.S. LLC by application of their UTPRs.

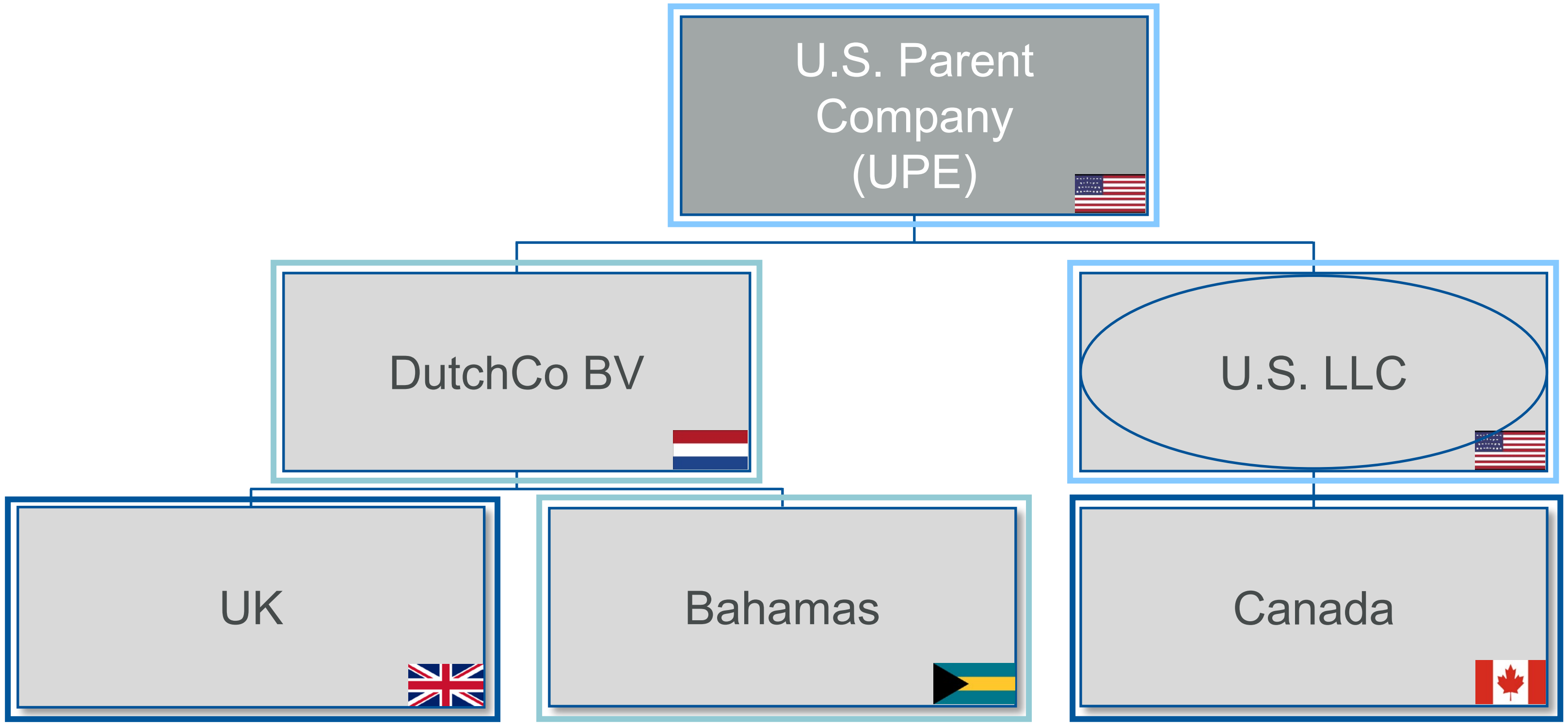


Org Chart Example – Summary

Legend



- DutchCo BV, Canada, and 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, and UK will collect Top–Up Tax on behalf of UPE and U.S. LLC through their UTPR.



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.

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Key Definitions

Defining MNE Group

An **MNE Group** is any Group that includes at least one Entity or Permanent Establishment that is not located in the jurisdiction of the Ultimate Parent Entity (UPE).

Group means:

- A collection of Entities that are related through ownership or control such that the assets, liabilities, income, expenses, & cash flows of those Entities are either:
  - Included in the Consolidated Financial Statements of the UPE; or
  - Excluded from the Consolidated Financial Statements of the UPE solely on size or materiality grounds, or on the grounds that the Entity is held for sale
- An Entity that is located in one jurisdiction & has one or more Permanent Establishments located in other jurisdictions (provided that the Entity is not a part of another Group).

Defining MNE Group

Constituent Entities (**CEs**) & Ultimate Parent Entity (**UPE**)

Entity:

- Any legal person (other than an individual) or an arrangement that prepares separate financial accounts, such as a partnership or trust.

Constituent Entity (CE):

- An Entity that is included in a Group
- Any Permanent Establishment of a Main Entity
- Does not include any entity that is an Excluded Entity

Ultimate Parent Entity (UPE):

- An entity that:
  - Owns directly or indirectly a Controlling Interest in any other Entity; &
  - Is not owned, with a Controlling Interest, directly or indirectly by another Entity; or
- The Main Entity of a Group that owns one or more permanent establishments
  - A Main Entity is the Entity that includes the financial accounting net income or loss of a Permanent Establishment in its financial statements.

Defining MNE Groups

Permanent Establishments (PE) & Joint Ventures (JV)

Permanent Establishment (PE):

- A place of business (including a deemed place of business) situated in a jurisdiction & treated as a PE in accordance with an applicable Tax Treaty in force provided that such jurisdiction taxes the income attributable to it in accordance with OECD model Treaty.

Joint Venture (JV):

- JVs are not CEs of an MNE Group because their income, expenses, assets, & liabilities are not consolidated with the rest of an MNE Group on a line-by-line basis.
- However, the low-taxed income of a JV may be brought within the scope of the GloBE Rules if its financial results are reported under the equity method in the Consolidated Financial Statements of the UPE provided that the UPE holds directly or indirectly at least 50% of its ownership interests.

JV Subsidiary:

- An Entity whose assets, liabilities, income, expenses, & cash flows are consolidated by a JV under an Acceptable Financial Accounting Standard.

JV Group:

- Comprised of a JV & its JV Subsidiaries

Defining MNE Groups

Determining Location of CEs & identifying Stateless Entities

Permanent Establishment – Location determined looking to:

- **Treaty Jurisdiction** – if PE is a place of business situated & treated as a PE based on an applicable tax treaty, jurisdiction is the PE jurisdiction dictated by the tax treaty.
- **Taxable Presence Jurisdiction** – if PE is located in a jurisdiction with no tax treaty but has income subject to tax by a jurisdiction on a net basis, jurisdiction is location where it is taxed on net basis.
- **OECD Deemed Jurisdiction** – if PE is located in jurisdiction with no corporate income tax system & is PE in accordance with the OECD Model Tax Convention, jurisdiction is the jurisdiction with no corporate income tax that meets PE definition in OECD Model Tax Convention.
- **Stateless Entity Designation** – If PE isn't situated in a location where it has Treaty Jurisdiction, Taxable Presence Jurisdiction, or OECD Deemed Jurisdiction, the Entity is treated as a Stateless Entity.

Defining MNE Groups

Determining Location of CEs & Identifying Stateless Entities

Non-Flow-Through Entities – Location determined looking to:

- **Tax Residency** – tax residency in a jurisdiction based on place of management, creation, or similar criteria.
- **Creation Jurisdiction** – If cannot be determined based on Tax Residency, location based on jurisdiction where it was created.

Flow-Through Entities

- **Flow-Through Entity** – An Entity is a Flow-Through Entity to the extent it is fiscally transparent with respect to its income, expenditure, profit, or loss in the jurisdiction where it was created unless it is a tax resident & subject to a Covered Tax on its income or profit in another jurisdiction.
- Location determined looking to:
  - **UPE Status/Intermediate Parent Entity** – if UPE of MNE Group or entity is required to apply IIR as an intermediate parent entity, jurisdiction where entity was created.
  - **Stateless Entity Designation** – If no UPE or IIR requirement, entity is treated as a **Stateless Entity**.

Defining MNE Groups

Other Definitions

Controlling Interest:

An Ownership Interest in an Entity such that the interest holder:

- Is required to consolidate the assets, liabilities, income, expenses, & cash flows of the Entity on a line-by-line basis in accordance with an Acceptable Financial Accounting Standard; or
- Would have been required to consolidate the assets, liabilities, income, expenses, & cash flows of the Entity on a line-by-line basis if the interest holder had prepared the Consolidated Financial Statements.

Complexities Arising From The Deemed Consolidation Test

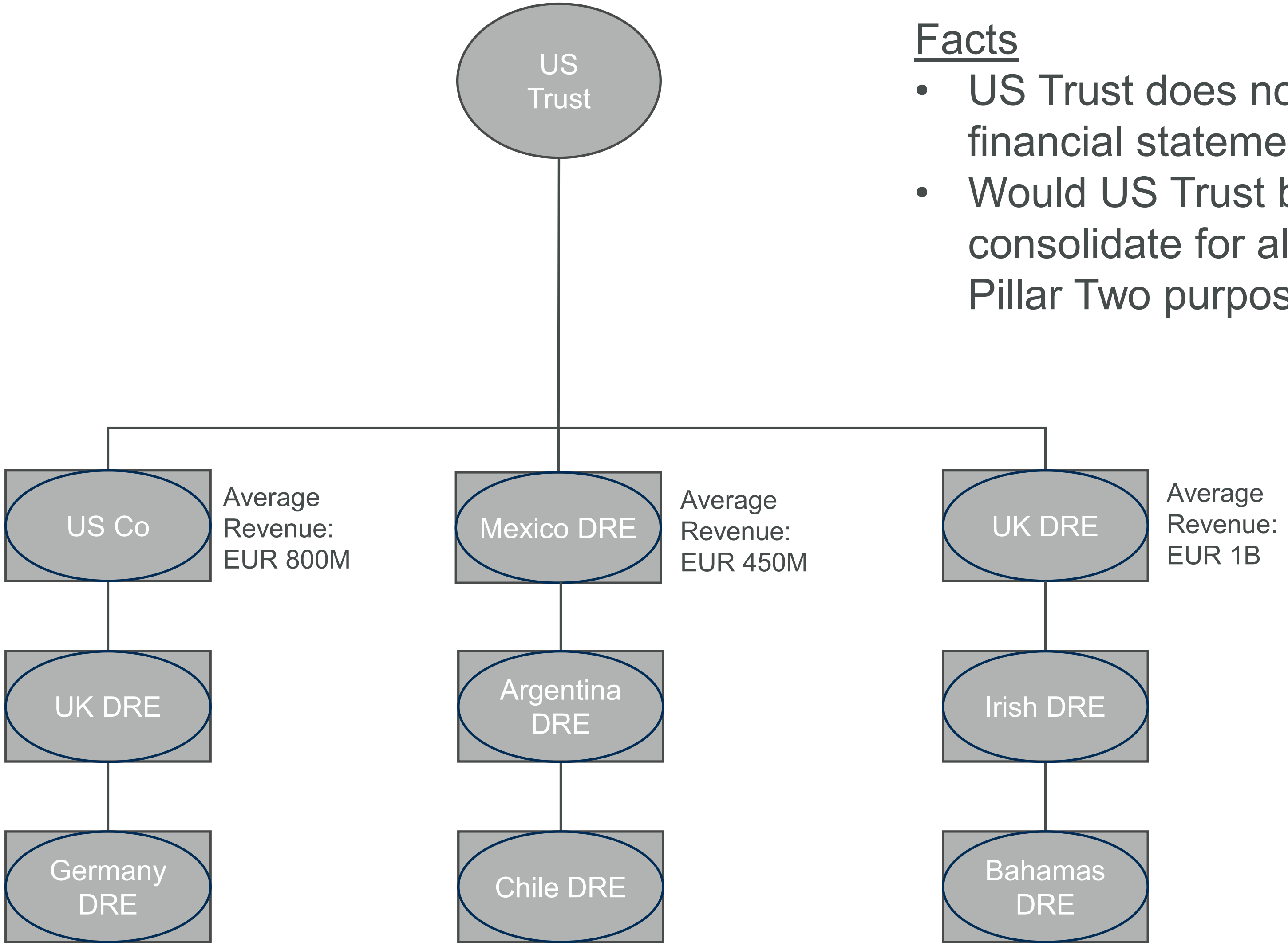
Deemed Consolidation Test

Under the deemed consolidation test, even if the group does not have Consolidated Financial Statements, it would be required to prepare them if the application of the accounting standard was compulsory in accordance with a law or regulations.

- Model Rules Article 10.1 provides a deemed consolidation test in:
  - The paragraph (d) of the definition of Consolidated Financial Statements: "**where the Ultimate Parent Entity does not prepare financial** statements (…), the Consolidated Financial Statements of the Ultimate Parent Entity are **those that would have been prepared** if such Entity were required to prepare such statements **in accordance with an Authorised Financial Accounting Standard** that is either an **Acceptable Financial Accounting Standard** or another financial accounting standard that is adjusted to prevent any Material Competitive Distortions"
  - The paragraph (b) of the definition of Controlling Interests "Ownership Interest in an Entity such that the interest holder would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the Entity on a line-by-line basis if the interest holder had prepared Consolidated Financial Statements."
- **Acceptable Financial Accounting Standard** means International Financial Reporting Standards (IFRS) and the generally accepted accounting principles of Australia, Brazil, Canada, Member States of the European Union, Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom, and the United States of America.

Deemed Consolidation Test

Example 1

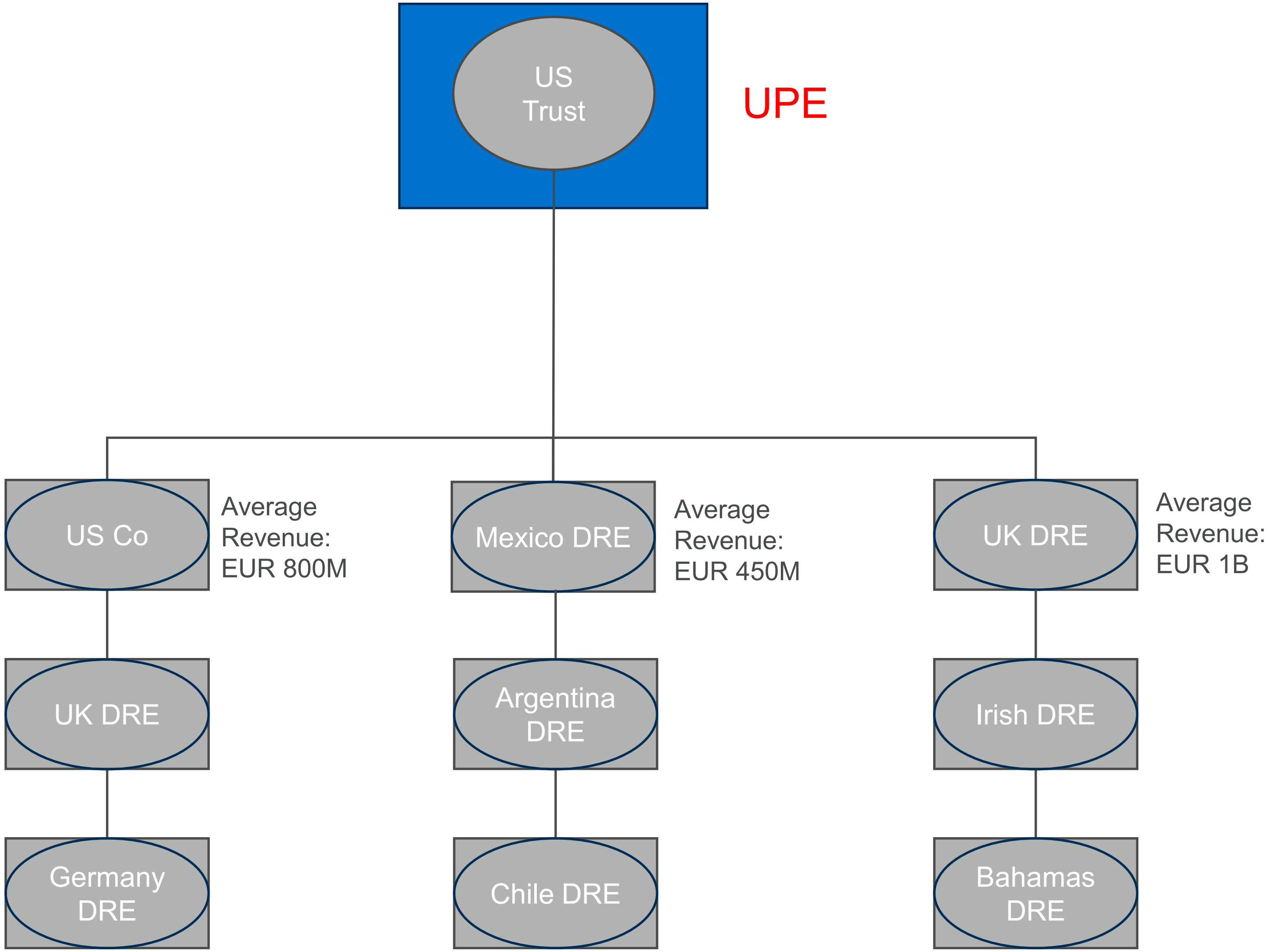


Facts

- US Trust does not file consolidated financial statements today.
- Would US Trust be deemed to consolidate for all CEs below it for Pillar Two purposes?

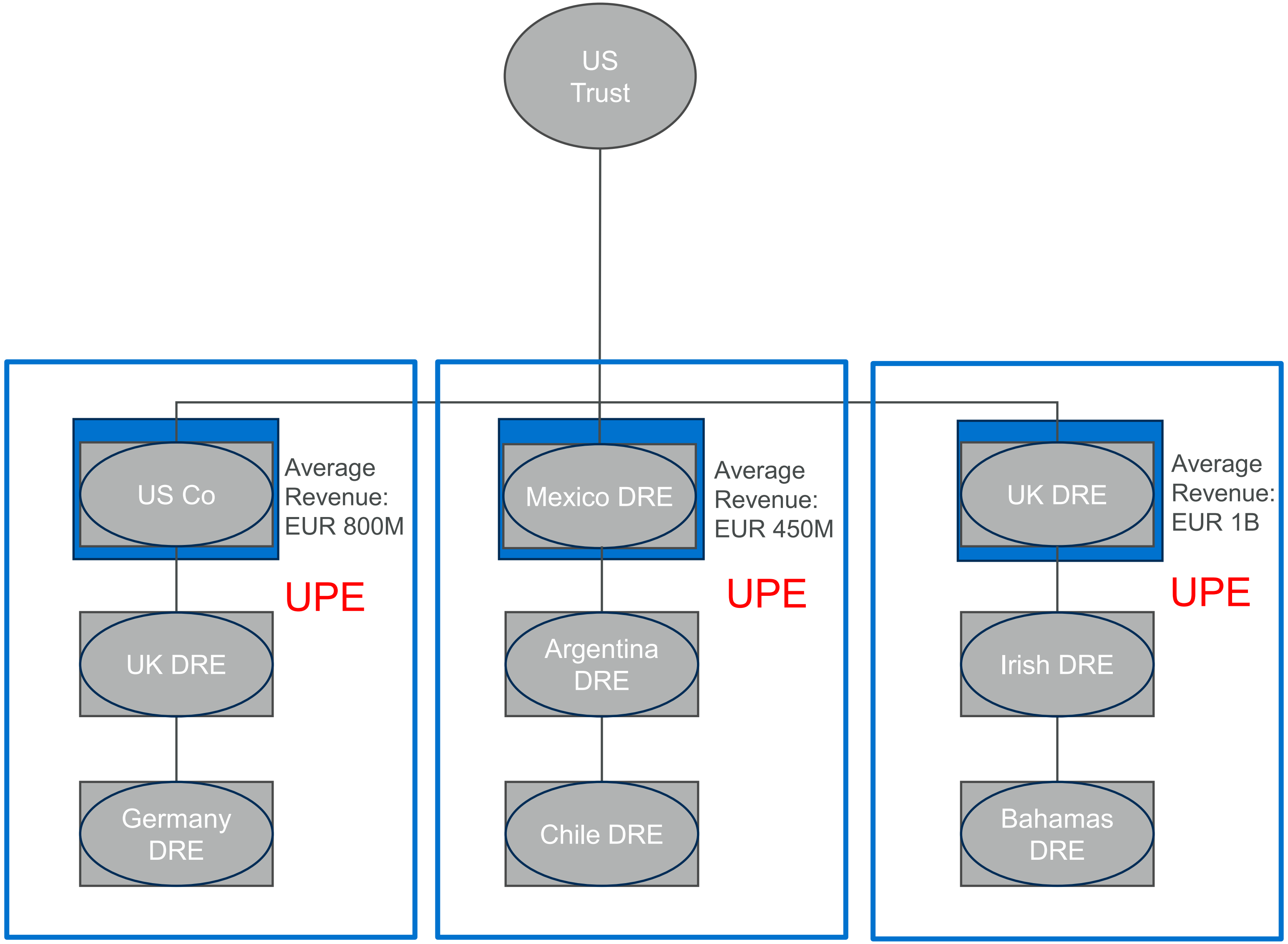
Deemed Consolidation Test

Example 1



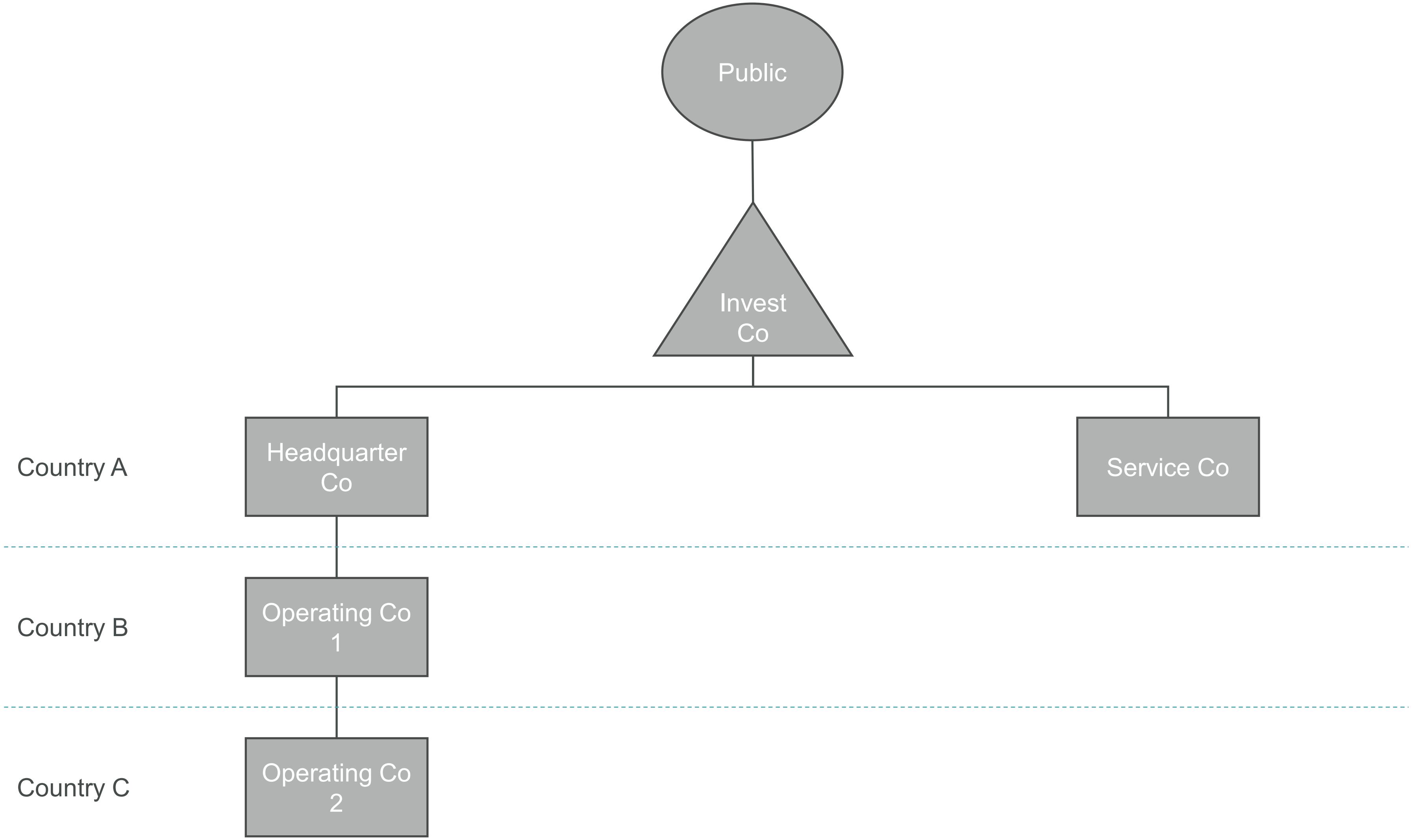
Deemed Consolidation Test

Example 1



Deemed Consolidation Test

Example 2



Multi-Parented MNE Group

It refers to the situation in which two or more Groups prepare Consolidated Financial Statements in which the financial performance of these Groups is presented as a single economic unit in accordance with a Dual-listed Arrangement or a Stapled Structure.

- The **Article 10.1 of the Model Rules** provides a definition of multi-parented MNE Group. It means two or more Groups where:
  - The Ultimate Parent Entities of those Groups enter into an arrangement that is a Stapled Structure or a Dual-listed Arrangement; and
  - At least one Entity or Permanent Establishment of the combined Group is located in a different jurisdiction with respect to the location of the other Entities of the combined Group.

- **The Article 6.5. of the Model rules** means the following provisions:
  - The Entities and Constituent Entities of each Group are treated as members of a single MNE Group for purposes of the GloBE Rules (the Multi-Parented MNE Group),
  - An Entity (other than an Excluded Entity) shall be treated as a Constituent Entity if it is consolidated on a line-by-line basis by the Multi-Parented MNE Group or its Controlling Interests are held by Entities in the Multi-Parented MNE Group,
  - The Consolidated Financial Statements of the Multi-Parented MNE Group shall be the Consolidated Financial Statements referred to in the definition of Stapled Structure or Dual-listed arrangement (as relevant) prepared under an Acceptable Financial Accounting Standard, which is deemed to be the accounting standard of the Ultimate Parent Entity,

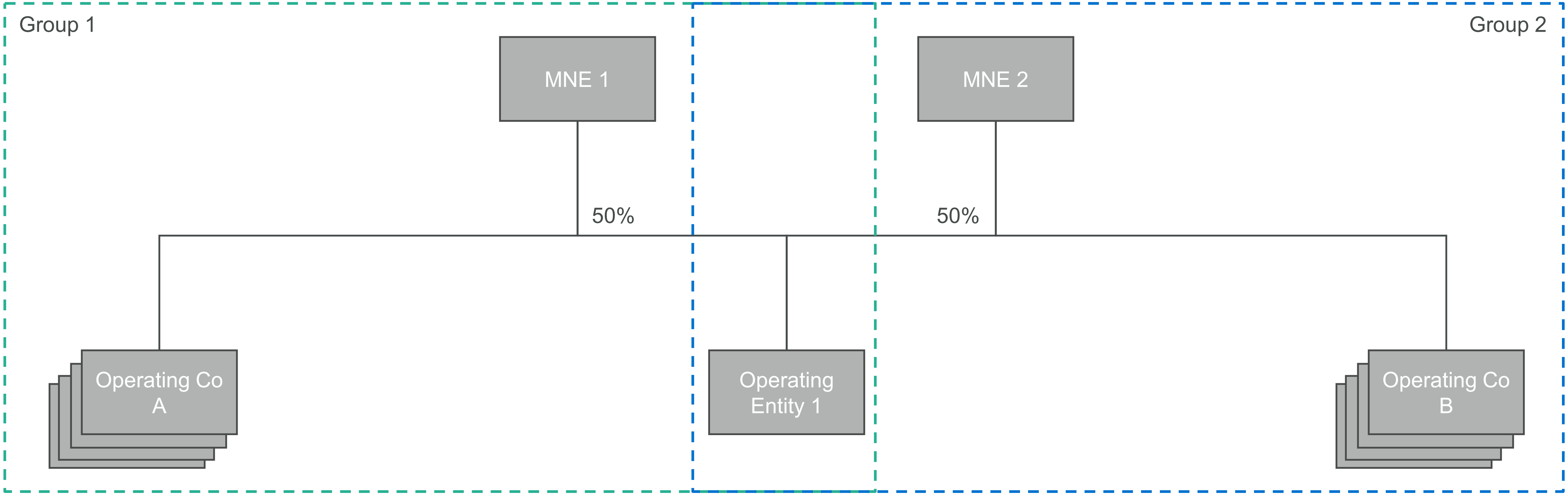
Multi-Parented MNE Group

It refers to the situation in which two or more Groups prepare Consolidated Financial Statements in which the financial performance of these Groups is presented as a single economic unit in accordance with a Dual-listed Arrangement or a Stapled Structure.

- The Article 6.5. of the GloBE rules means the following provisions (next):
  - The Ultimate Parent Entities of the separate Groups that comprise the Multi-Parented MNE Group shall be the Ultimate Parent Entities of the Multi-Parented MNE Group (when applying the GloBE Rules in respect of a Multi-Parented MNE Group, references to an Ultimate Parent Entity shall apply, as required, as if they were references to multiple Ultimate Parent Entities),
  - The Parent Entities of the Multi-Parented MNE Group shall apply the IIR in accordance with Article 2.1 to Article 2.3 with respect to their Allocable Share of the Top-up Tax of the Low-Taxed Constituent Entity,
  - All of the Constituent Entities of the Multi-Parented MNE Group shall apply the UTPR in accordance with Article 2.4 to Article 2.6 taking into account the Top-up Tax of each Low-Taxed Constituent Entity of the Multi-Parented MNE Group; and
  - The Ultimate Parent Entities are required to submit the GloBE Information Return in accordance with Article 8.1, unless they appoint a single Designated Filing Entity and that return shall include the information concerning each of the Groups that comprise the Multi-Parented MNE Group.

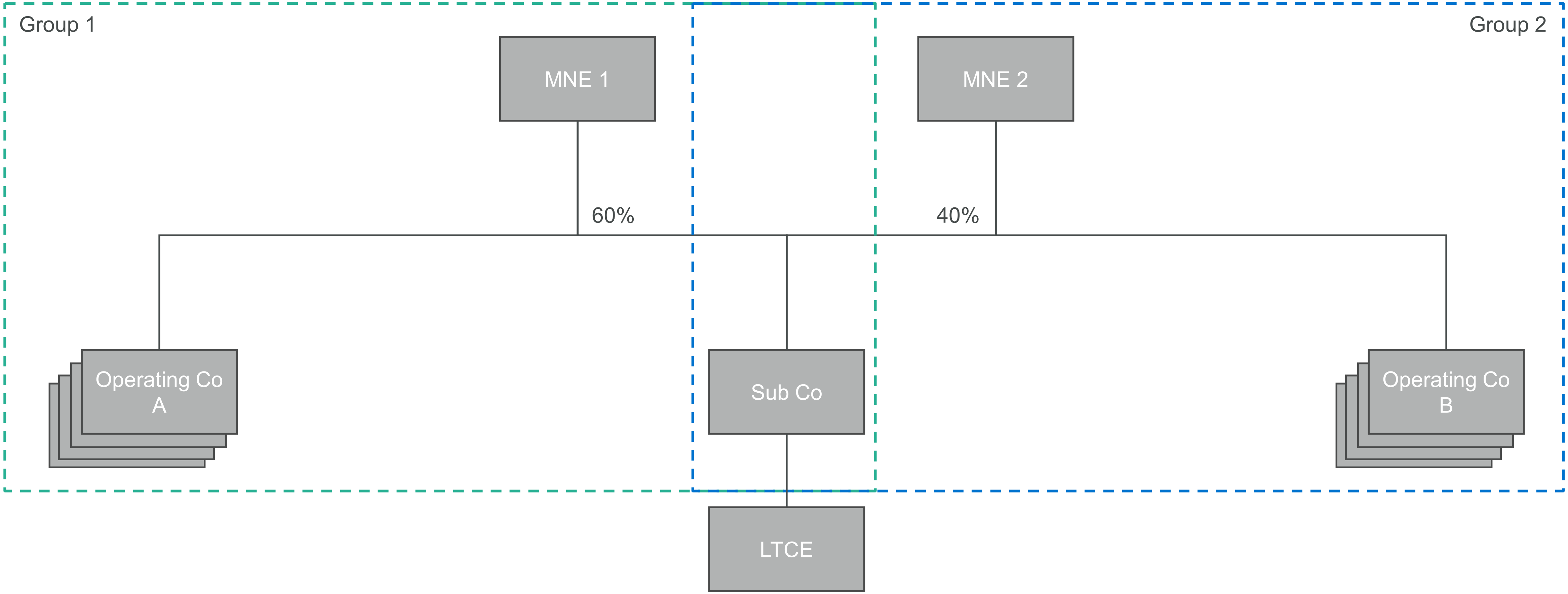
Multi-Parented MNE Group

Example – Entity treated as a Constituent Entity consolidated by the Multi-Parented MNE Group or its Controlling Interests are held by Entities in the Multi-Parented MNE Group



Multi-Parented MNE Group

Example – IIR application



Deductible Dividend Regimes & MNE Groups

Deductible Dividend Regime

A Deductible Dividend Regime (DDR) is one where a tax deduction is given to a company paying a dividend, with the dividend then being fully taxable in the hands of the recipient.

- Under the Article 7.2. of the GloBE rules, an Ultimate Parent Entity that is subject to a Deductible Dividend Regime shall reduce (but not below zero) its GloBE Income for such Fiscal Year by the amount that is distributed as a Deductible Dividend within 12 months of the end of the Fiscal Year if:
  - The dividend is subject to tax in the hands of the dividend recipient for a taxable period that ends within 12 months of the end of the MNE Group's Fiscal Year, and: (i) the dividend recipient is subject to tax on such dividend at a nominal rate that equals or exceeds the Minimum Rate; (ii) it can be reasonably expected that the aggregate amount of Adjusted Covered Taxes of the Ultimate Parent Entity and Taxes paid by the dividend recipient on the dividend income equals or exceeds the amount that results from multiplying the full amount of such income by the Minimum Rate; or (iii) the dividend recipient is a natural person and the dividend is a patronage dividend from a supply Cooperative; or
  - The dividend recipient is a natural person that: (i) is a tax resident in the UPE Jurisdiction; and (ii) holds Ownership Interests that, in the aggregate, are a right to 5% or less of the profits and assets of the Ultimate Parent Entity.
  - The dividend recipient is resident in the UPE Jurisdiction and is: (i) a Governmental Entity, (ii) an International Organisation, (iii) a Non-profit Organisation, or (iv) a Pension Fund that is not a Pension Services Entity.

Deductible Dividend Regime

A Deductible Dividend Regime (DDR) is one where a tax deduction is given to a company paying a dividend, with the dividend then being fully taxable in the hands of the recipient.

- An Ultimate Parent Entity that reduces its GloBE Income shall reduce its Covered Taxes (other than the Taxes for which the dividend deduction was allowed) proportionally and shall reduce its GloBE Income by the same amount.
- If the Ultimate Parent Entity holds an Ownership Interest in another Constituent Entity subject to the Deductible Dividend Regime (directly or through a chain of such Constituent Entities), the regime shall apply to each other Constituent Entity in the UPE Jurisdiction that is subject to the Deductible Dividend Regime to the extent that its GloBE Income is further distributed by the Ultimate Parent Entity to recipients that meet the requirements.

Deductible Dividend Regime

Example

Accounting net income: 90

Accrued covered tax expense: 10

Dividend distributed: 90

UPE Accounting treatment	
P&L treatment	
Net income	90
(+) Accrued covered tax expense	10
Financial accounting net income	**100**
Balance sheet impact	
Net income	90
Deductible Dividend Regime	-90
Total	**0**
GloBE income	
Financial accounting net income	100
(-) Accrued covered tax added back	10
Net GloBE income	**90**

The Role of Non-Material Constituent Entities

Defining Non-Materials Constituent Entity (NMCE)

A NMCE is an Entity that is not consolidated on a line-by-line basis in the UPE's Consolidated Financial Statements based solely on size or materiality grounds and is considered a Constituent Entity

- Model Rules Article 1.2.2 (b) NMCEs are included in the MNE Group even though they "are excluded from the Consolidated Financial Statements of the Ultimate Parent Entity solely on size or materiality grounds."
- GloBE Commentary Article 1.2.2 (24) a Group is also comprised of Entities that are not consolidated on a line-by-line basis because they are excluded from consolidation based on size or materiality grounds. This type of Entity is also treated as part of the Group as long as it remains sufficiently within the control of the UPE to fall within the general consolidation requirements of the relevant Acceptable Financial Accounting Standard.
- Permanent Safe Harbor Simplified Calculation for NMCE determines revenue and covered taxes according to the relevant CcCR.
- An entity will only be considered a NMCE if:
  1) an external auditor has agreed the entity does not meet materiality standards and has been excluded from the consolidation process
  2) the Total Revenue exceed EUR 50 million, its financial accounts that are used to complete the CbC Report are prepared in accordance with an Acceptable Financial Accounting Standard
- The Simplified Calculations Safe Harbour for NMCEs
  1) is an annual election made for each NMCE individually
  2) determine the GloBE income or loss, GloBE Revenue, and Adjusted Covered Taxes
- Given the broader definition of income and the narrower definition of taxes, the Simplified Income, Revenue, and Tax Calculations for NMCEs are expected to generally result in a higher income and lower ETR than that provided under the GloBE Rules

Example Page 42/43

Jurisdiction A

2 NMCEs

+

No other Constituent Entities

Total Revenue NMCEs: EUR 250,000
Income Tax Accrued NMCEs: EUR 50,000

ETR test: (50,000/250,000) 20%

Top-up Tax: 0

Jurisdiction B

3 NMCEs

+

50 Constituent Entities

Net GloBE Income 52 CEs: EUR 10 million
Adjusted Covered Taxes 52 CEs: EUR 1.6 million
Simplified Income NMCE: EUR 100,000
Simplified Tax NMCE: EUR 10,000

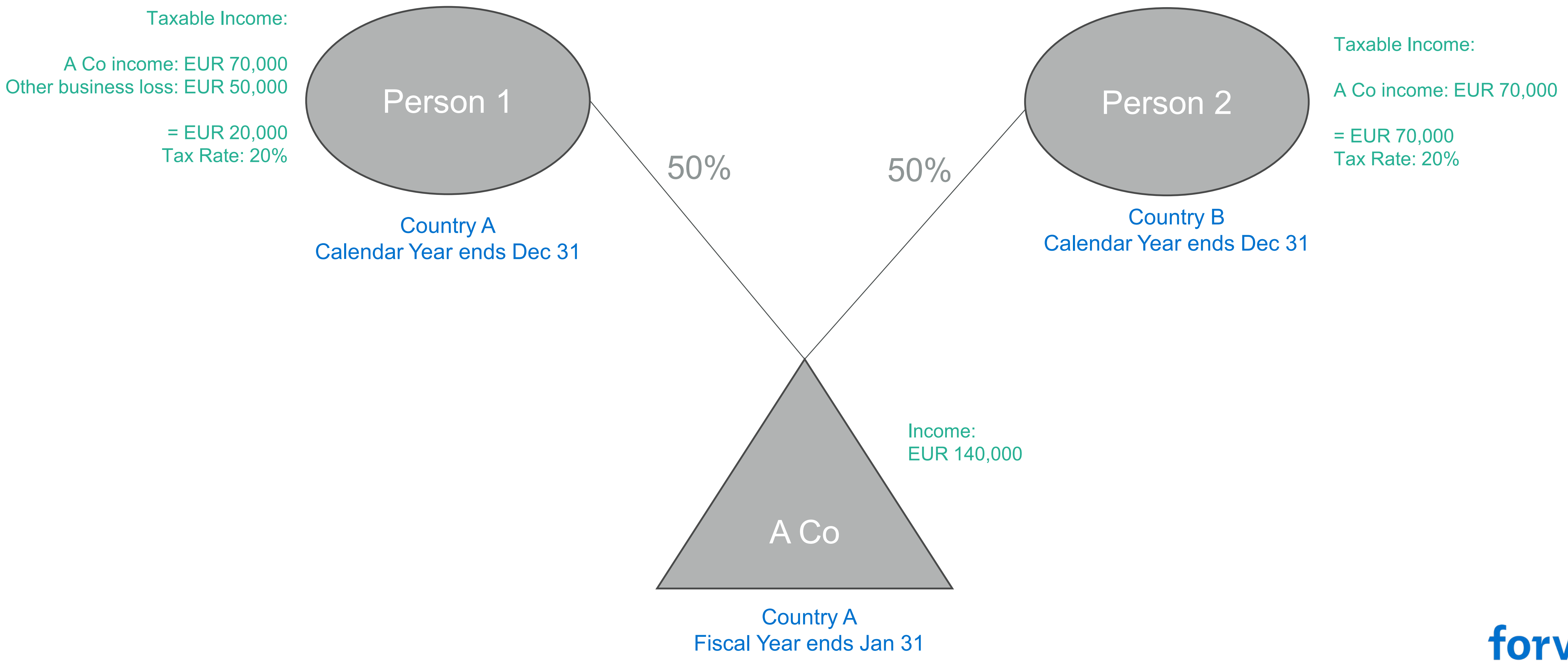
ETR test: (1,610,000/10,100,000) 15.94%

Top-up Tax: 0

Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023, Example page 42/43

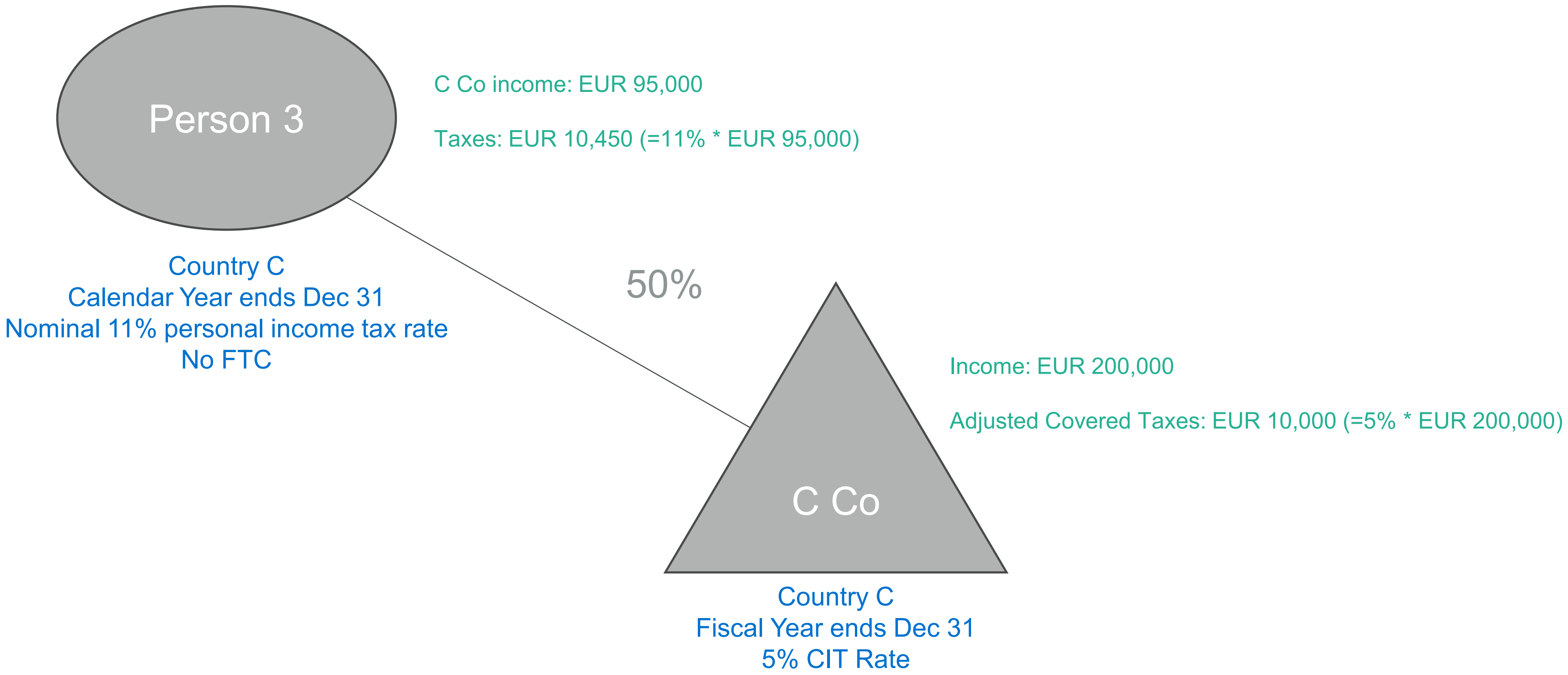
Example 7.1.1(a)-1

Ultimate Parent Entity that is a Flow-through Entity



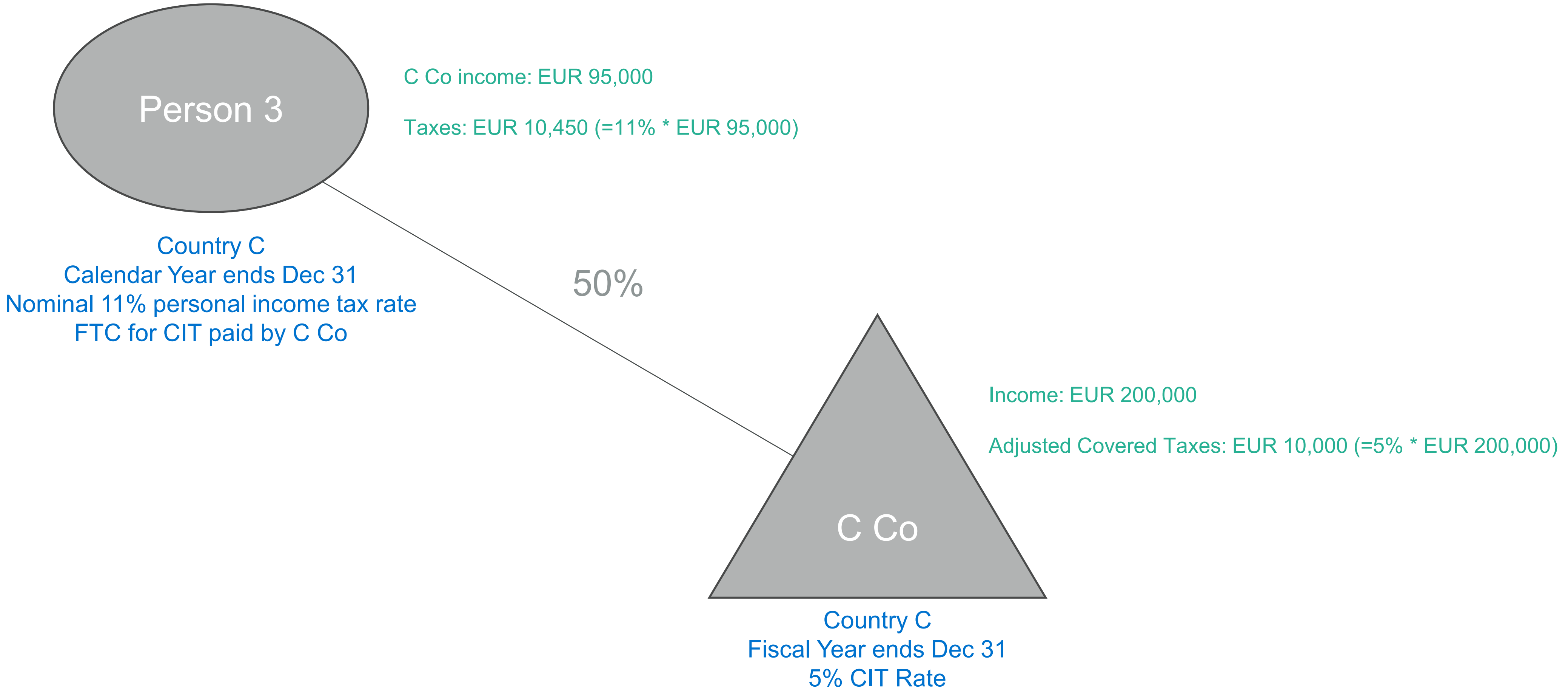
Example 7.1.1(a)-2

UPE that is a Flow-through Entity



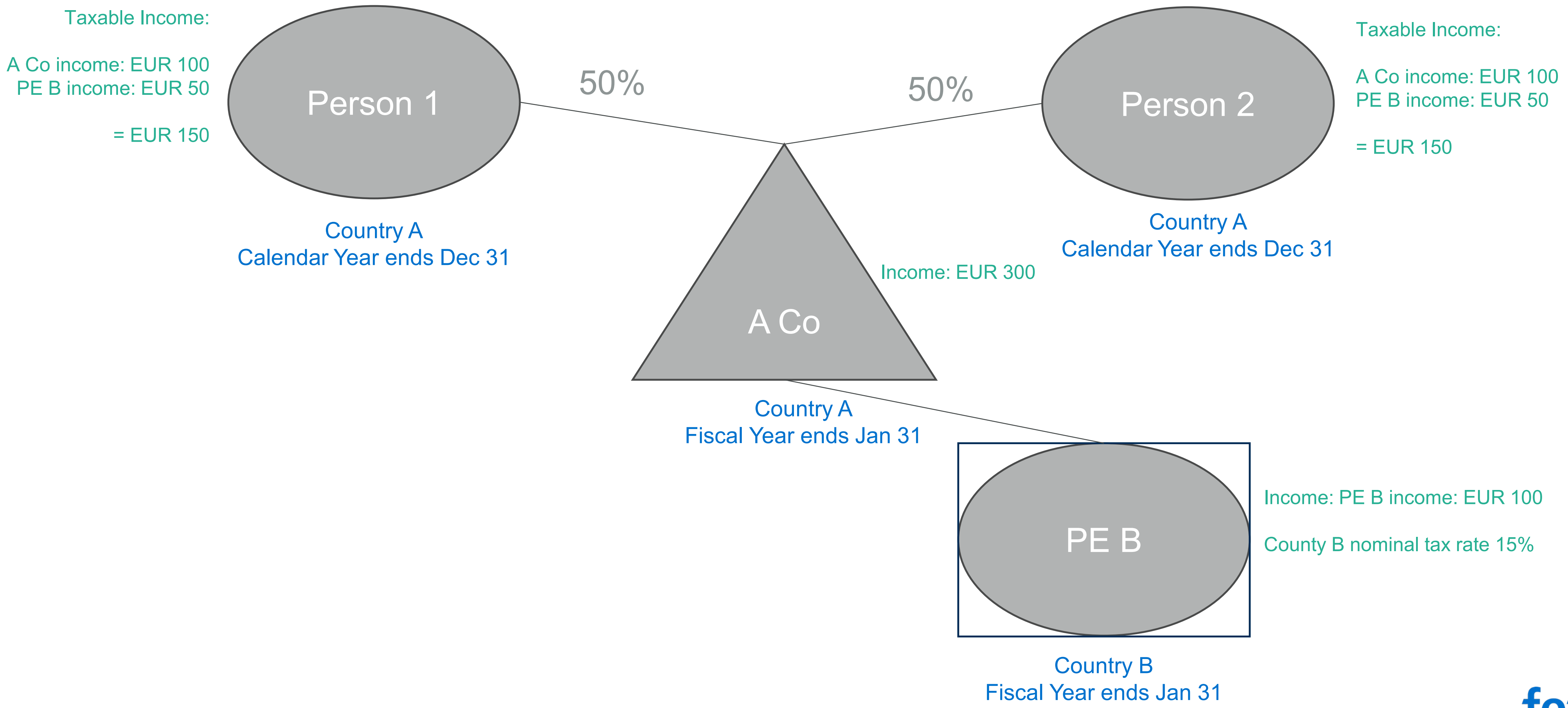
Example 7.1.1(a)-3

UPE that is a Flow-through Entity



Example 7.1.4 - 1

Ultimate Parent Entity that is a Flow-through Entity



Meet Your Presenters

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Ramy provides groups with a strong Pillar Two expertise acquired through dual training in tax and accounting. He provides centralized coordination for Pillar 2 project. He takes active part of Forvis Mazars Global team to address Pillar Two and assists his clients in the measurement of Pillar Two tax consequences and deployment of appropriate reporting and technology solutions. Ramy has strong expertise in the determination and management of the effective tax rate and implementation of tax reporting. He has a Masters degree in Tax Law, Paris-Dauphine, Diplôme supérieur de comptabilité et de gestion (DSCG), and a Masters degree in Finance, IAE de Bordeaux.

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