

Pillar 2 Technical Series

MNE Group Determination

Meet Today's Presenters



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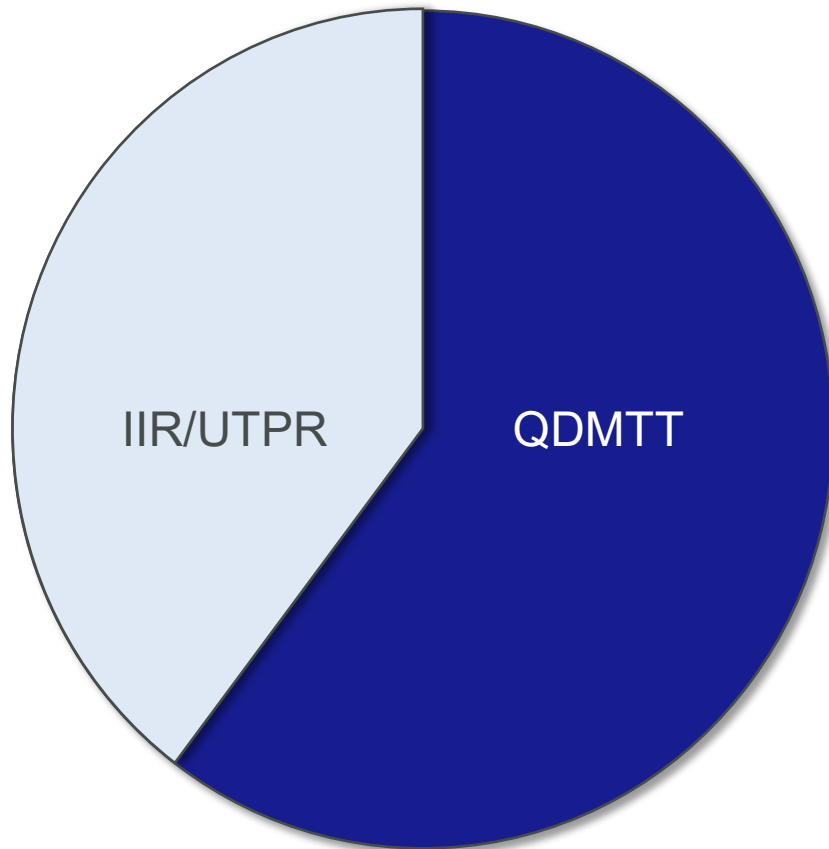
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Top-Up Tax & Charging Provisions – Generally

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

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.

Summary Application of the GloBE Rules

The below topics are covered under Article 1 of the **GloBE Model Rules** released in December 2021.

GloBE rules apply to Constituent Entities that are members of a multinational enterprise group (**MNE Group**) that has annual revenue of ***EUR 750 million or more*** according to the Consolidated Financial Statements of the Ultimate Parent Entity (**UPE**) in at least two of the four Fiscal Years immediately preceding the Fiscal Year in question.

Defining Multinational Groups (MNE Groups)



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 Groups

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 Group

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.

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

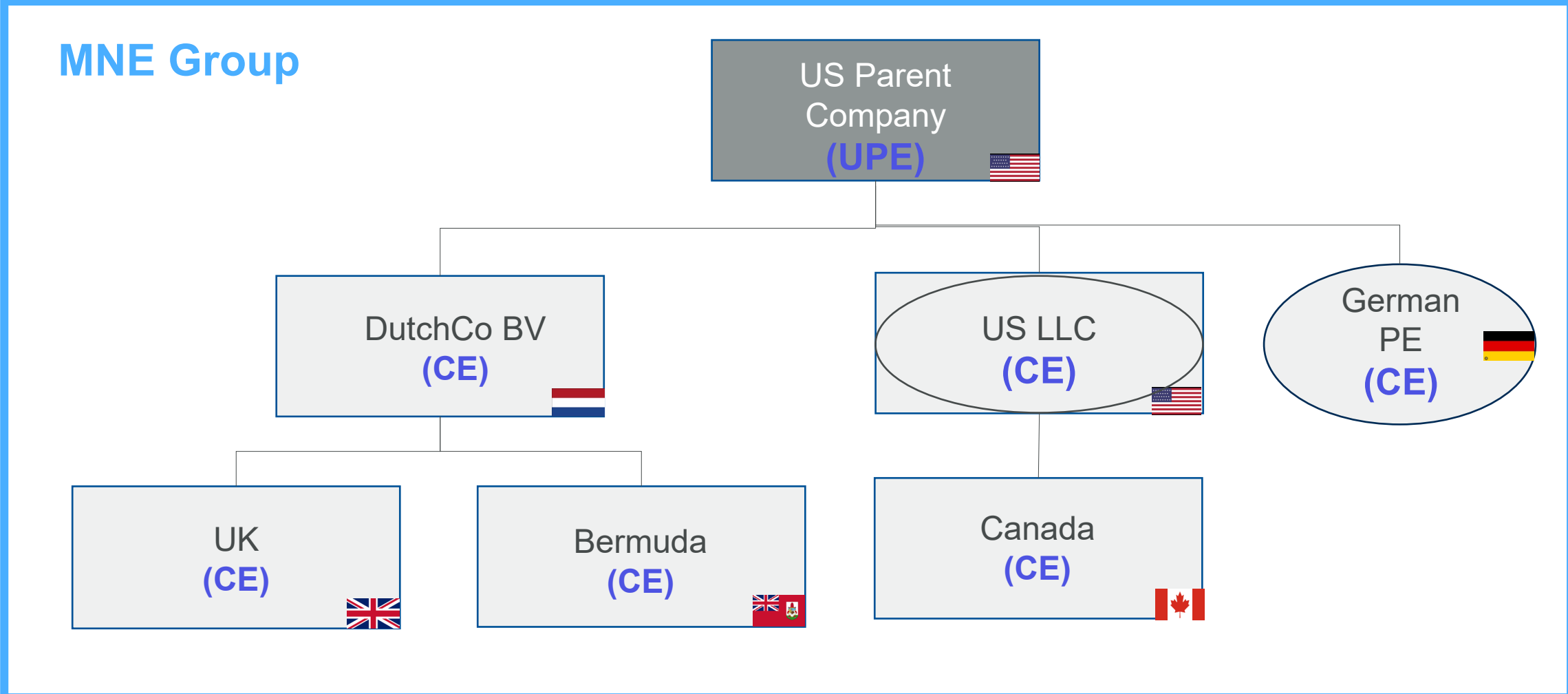
Non-Flow Through Entities – Location determined looking to:

- **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**.

MNE Group - Abbreviated Example



Excluded Entities



Excluded Entities

Excluded Entities are excluded from the definition of Constituent Entities & therefore not included in the scope of the GloBE Rules

- The Income Inclusion Rule (**IIR**) & Undertaxed Payment Rule (**UTPR**) do not apply to Excluded Entities
- The GloBE attributes of Excluded Entities are removed from various computations under the GloBE Rules, except for the application of the EUR 750 Million Consolidated Revenue Threshold test.
- Excluded Entities do not have administrative obligations under the GloBE Rules, *i.e.*, filing of a GloBE Information Return (**GIR**).

Charging Provisions

- **Income Inclusion Rule (IIR)** – Charging provision that imposes top-up tax on the Ultimate Parent Entity (UPE) of a multinational enterprise group with respect to its low taxed income at its constituent entities (in all jurisdictions).
- **Undertaxed Payments Rule (UTPR)** – The application of a UTPR in a UTPR jurisdiction results in that jurisdiction imposing an additional cash tax on the Constituent Entities of a multinational enterprise group that is equal to the UTPR portion of the top-up tax amount.

Excluded Entities

Excluded Entities are excluded from the definition of Constituent Entities & therefore not included in the scope of the GloBE Rules

- A Governmental Entity;
- an International Organization;
- a Nonprofit Organization;
- a Pension Fund;
- an Investment Fund that is an Ultimate Parent Entity; or
- a Real Estate Investment Vehicle that is an Ultimate Parent Entity

Excluded Entities

The OECD has provided specific guidance to acknowledge & address situations where Excluded Entities may be required, for regulatory or commercial reasons, to hold assets or carry out specific functions through separate controlled entities.

Ownership & Activities Test

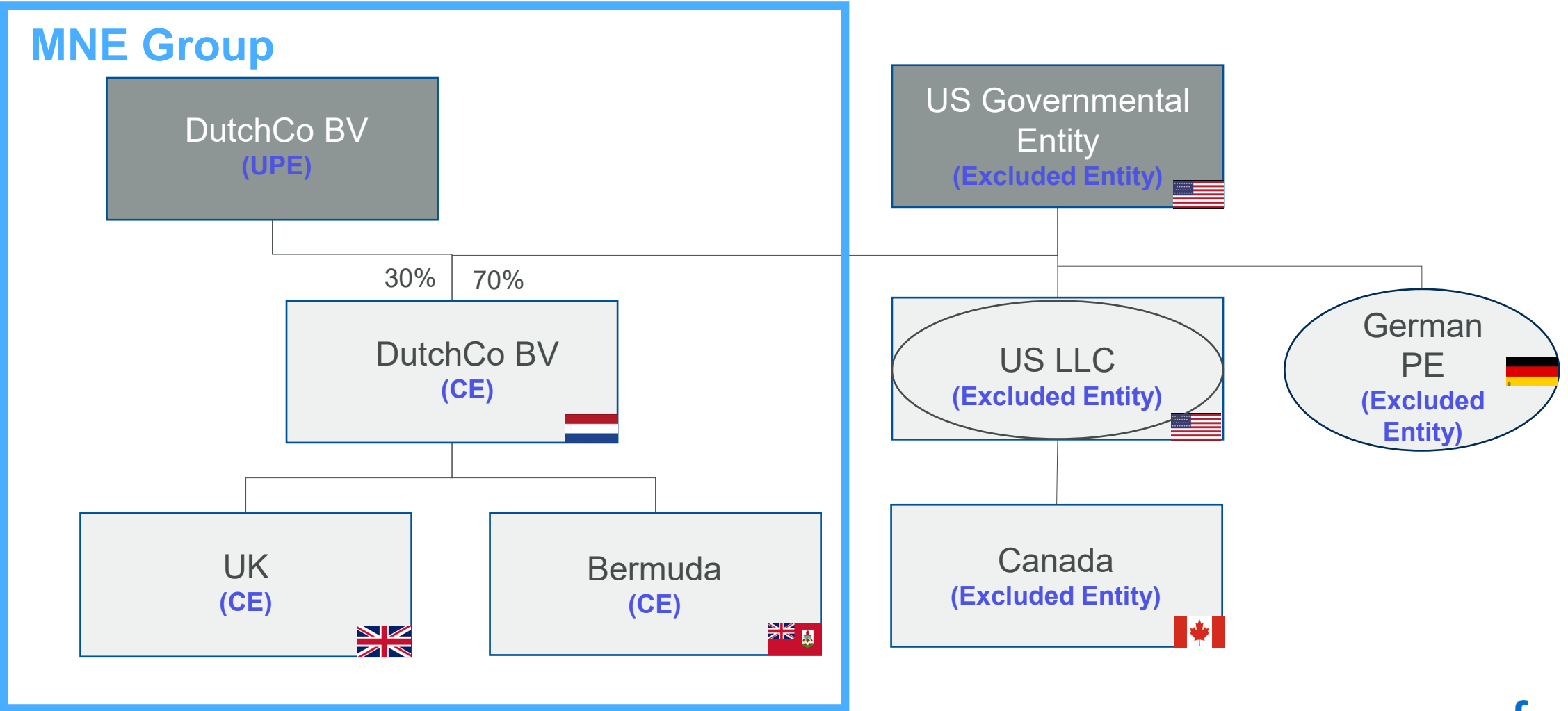
Entities owned by Excluded Entities may qualify as Excluded Entities themselves if they meet an Ownership Test & an Activities Test:

An Entity where at least **95% of the value** of the Entity is owned (directly or through a chain of Excluded Entities) by one or more Excluded Entities (other than a Pension Services Entity) & where that Entity:

- Operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the Excluded Entity or Entities; or
- Only carries out activities that are ancillary to those carried out by the Excluded Entity or Entities

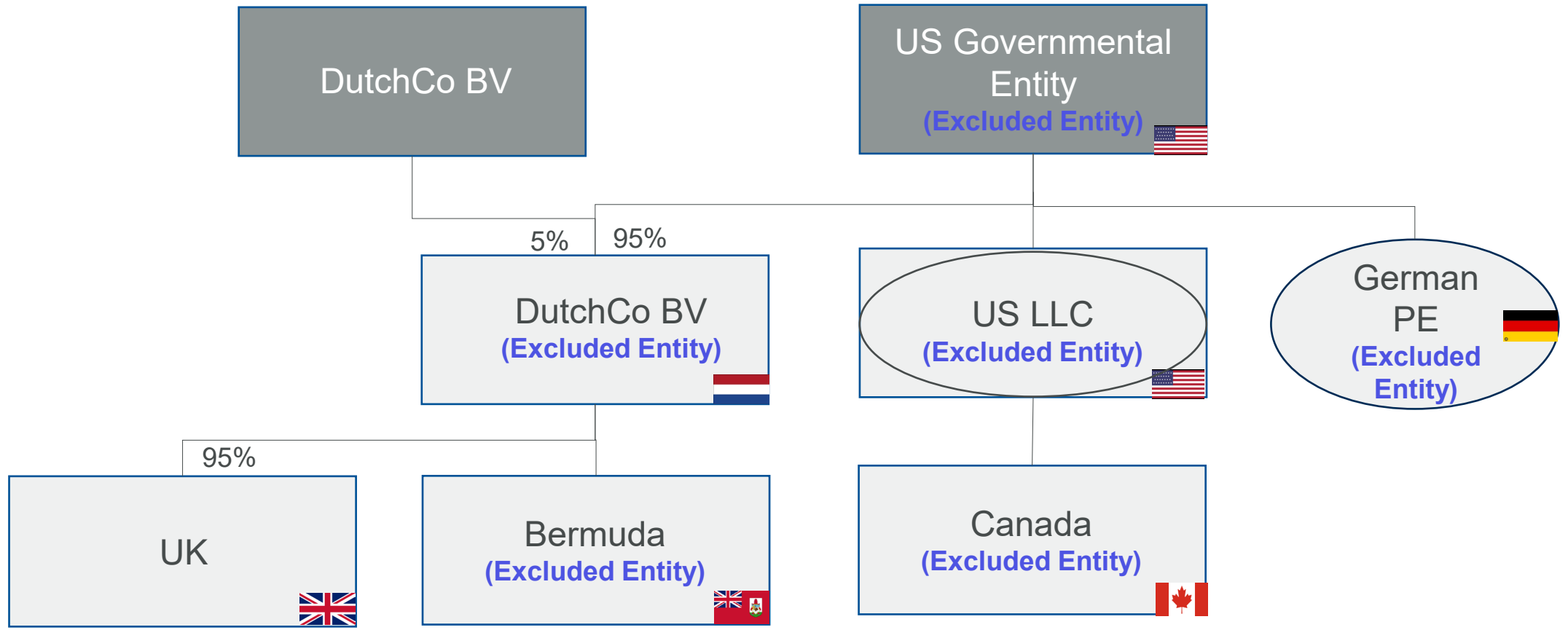
Excluded Entities

Example – Ownership Test



Excluded Entities

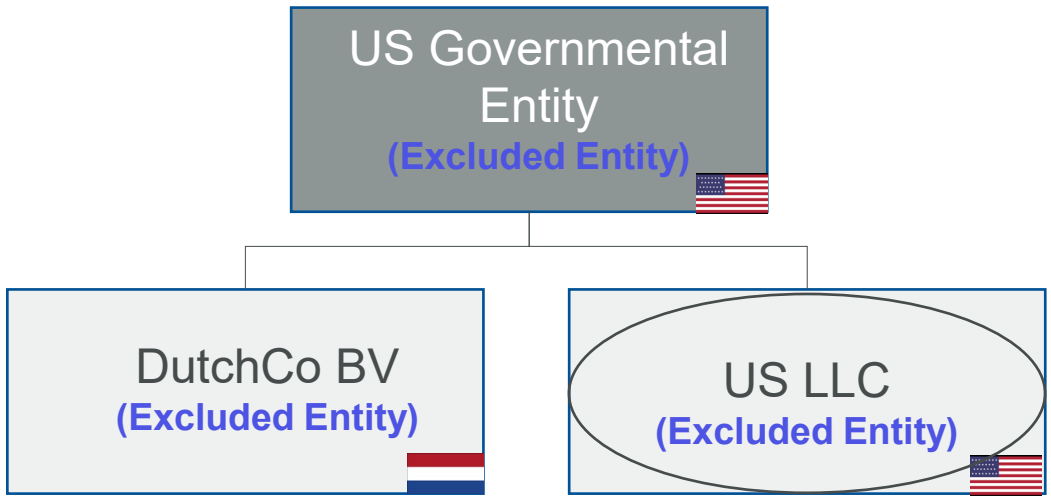
Example – Ownership Test (Diluted Ownership)



Excluded Entities

Example – Activities Test

- DutchCo BV provides technical support services to the US Governmental Entity
- US LLC holds US Real Property for exclusive use by the US Governmental Entity



Excluded Entities

Bright Line Test for Nonprofit Organizations

A bright-line test may be applied to determine when activities of a 100% owned subsidiary of a nonprofit organization is considered ancillary.

The activities of a 100% owned subsidiary will be deemed ancillary if the aggregate revenue of all group entities (excluding revenue from Excluded Entities) is less than EUR 750M OR 25% of the revenue of the MNE Group (if lower) for the Fiscal Period.

Where the aggregate revenue of all Group Entities equals or exceeds 25% of the revenue of the MNE Group or EUR 750M for the Fiscal Period, all relevant subsidiaries that fail to meet the test will not be Excluded Entities.

Excluded Entities

Entities whose income is primarily composed of Excluded Dividends or Excluded Equity Gains or Losses may be considered Excluded Entities.

An Entity where at least 85% of the value of the Entity is owned (directly or through a chain of Excluded Entities) by one or more Excluded Entities (other than a Pension Services Entity), provided that substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or Loss that are excluded from the computation of GloBE Income or Loss.

Excluded Entities

5 Year Election to treat as a Constituent Entity (CE)

5 Year Election to not treat an entity as an Excluded Entity is permissible. When this election is made, GloBE Rules will apply to the Entity in the same manner that they apply to any other Constituent Entity of an MNE Group.

Charging Provisions

- **Income Inclusion Rule (IIR)** – Charging provision that imposes top-up tax on the Ultimate Parent Entity (UPE) of a multinational enterprise group with respect to its low taxed income at its constituent entities (in all jurisdictions).
- **Undertaxed Payments Rule (UTPR)** –The application of a UTPR in a UTPR jurisdiction results in that jurisdiction imposing an additional cash tax on the Constituent Entities of a multinational enterprise group that is equal to the UTPR portion of the top-up tax amount.

Application of the Consolidated Revenue Threshold



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.

Application of the Consolidated Revenue Threshold

The Consolidated EUR 750M Threshold

Because some standards provide more flexibility than others, revenues as defined in the financial accounting standard may be presented in different ways by different MNE Groups.

- For purposes of the EUR 750M Threshold, revenues include the inflow of economic benefits arising from delivering or producing goods, rendering services, or other activities that constitute the MNE Group's ordinary activities. If different types of revenue are separately presented in the consolidated profit & loss statement of the consolidated financial statements, they must be aggregated.
- In addition, net gains from investments (whether realized or unrealized) reflected in the profit & loss statement of the consolidated financial statements are included in the threshold calculation.
- If the presentation currency of an MNE Group's Consolidated Financial Statements is not the Euro, the MNE Group would use the average exchange rate in translating its revenue to local currency to apply the relevant threshold.

Application of the Consolidated Revenue Threshold

The consolidated revenue threshold applies to the revenue that is reported in the Consolidated Financial Statements of the MNE Group

Consolidated Financial Statements are defined as:

- The financial statements prepared by an Entity in accordance with an Acceptable Financial Accounting Standard, in which the assets, liabilities, income, expenses, & cash flows of that Entity & the Entities in which it has a Controlling Interest are presented as those of a single economic unit
- Where an Entity meets the definition of a Group under Article 1.2.3, the financial statements of the Entity that are prepared in accordance with an Acceptable Financial Accounting Standard

Application of the Consolidated Revenue Threshold

Acceptable Financial Accounting Standard

- International Financial Reporting Standards (IFRS)
- Generally Accepted Accounting Principles (GAAP) 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, & the United States of America.

Application of the Consolidated Revenue Threshold

The consolidated revenue threshold applies to the revenue that is reported in the Consolidated Financial Statements of the MNE Group

Where UPE has financial statements described in paragraph (a) or (b) that are not prepared in accordance with an Acceptable Financial Accounting Standard, the financial statements are those that have been prepared subject to adjustments to prevent any Material Competitive Distortions; &

Where the UPE does not prepare financial statements described in the paragraphs above, the Consolidated Financial Statements of the UPE are those that would have been prepared if such Entity were required to prepare such statements in accordance with an Authorized Financial Accounting Standard that is either an Acceptable Financial Accounting Standard or other financial accounting standard that is adjusted to prevent any Material Competitive Distortions.

Application of the Consolidated Revenue Threshold

Authorized Financial Accounting Standard & Material Competitive Distortions

Authorized Financial Accounting Standard:

- A set of generally acceptable accounting principles permitted by an Authorized Accounting Body in the jurisdiction where that Entity is located

Material Competitive Distortions:

- An application that results in an aggregate variation greater than EUR 75 million in a Fiscal Year as compared to the amount that would have been determined by applying the corresponding IFRS principle of procedure.

Application of the Consolidated Revenue Threshold

The Fiscal Year for purposes of the GloBE Rules is generally the accounting period used by the UPE in preparation of its consolidated financial statements.

- An MNE Group may maintain the financial accounts of some Constituent Entities based on a different Fiscal Year than the UPE's Fiscal Year. The GloBE computations for the UPE's Fiscal Year will be based on the method to address the discrepancy in the fiscal years that is used by the MNE Group in its Consolidated Financial Statements.

Meet Your Presenters



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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.



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Carolyn is a Managing Consultant with the International Tax Services team. She has been with the Forvis Mazars for two years, following several years of Big 4 experience. Carolyn focuses on international tax planning, compliance, and provision projects for complex, public, and private multinational organizations and also specializes in tax-deferred mergers, acquisitions, and divestitures and related planning. Carolyn is one of Forvis Mazars' lead consultants on the OECD's BEPS Pillar Two initiative. She is a licensed CPA in the states of Florida and North Carolina.



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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 optimization, 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.

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