Africa Tax Symposium – Webinar Edition

Trends in International Taxation: An African Perspective

An Overview of the International Tax Landscape

Prof. Dr Craig West

Agenda

- MLI update and take up
- Key tax developments in selected African countries
- The Two Pillar Solution, with focus on the key issues for Africa

MLI update and take up

- **MLI Uptake by 21 April 2022**
- **Impact on intra-African network (is "matching" in the MLI a failure?)**
  - Impact of Mauritius and South Africa
- **South African approval soon?**

Key developments in selected African countries

- **Recent treaties in force (since 2021)**
  - Estonia- - Mauritius and Lesotho – Mauritius
- **Recently concluded (2022)**
  - Angola – Rwanda; Comoros Islands – Morocco; Burundi – Turkey; Cabo Verde – Luxembourg
- **Lesotho submits its MLI Reservations and Notifications**

Key developments in selected African countries

- **Selected unilateral (direct tax) developments for the digital economy:**
  - Nigeria: Substantial Economic Presence (SEP)
    - Tax Treaties need to be renegotiated to accommodate new nexus rule
  - Kenya: DST proposed to rise from 1.5% to 3%

Key developments in selected African countries

- **Selected indirect tax developments for the digital economy:**
  - Ghana – 1.5% levy on electronic money transfers
  - Ivory Coast – VAT on e-commerce now effective
  - Egypt – 14% VAT to start on e-commerce; bloggers and youtubers to also register for VAT when threshold crossed (yet to commence)
  - Cabo Verde – VAT on e-commerce expected Sept 2022
  - Rwanda – plans introduction of VAT for non-resident vendors of digital service

Two Pillar take up in Africa

- **Two African hold-outs on Two Pillar Solution in Africa**
  - Significant concerns
- **A reminder on its aims**
- **Timelines**
  - 2023 realistic?
- **The African response so far**

The Two Pillar Solution – Some brief comments

- **Some (current and) future concerns**
  - Sufficient economic impact assessments by jurisdiction?
  - Local context and legislative processes
  - Tax incentives
  - Tax sparing
  - Sector exclusions:
    - Pillar 1 – extractives
      - 21 reports received (no African inputs)

The Two Pillar Solution – Some brief comments

- **Some (current and) future concerns**
  - If the Pillars prove to not be beneficial
    - Can alternative action be taken?
    - Risk of (funding) repercussions?
  - What happens for the rest of Africa?
  - Do the pillars address the fundamental concerns?
    - Training versus actual allocation of taxing rights
    - Are we building two pillars on a shaky foundation?

Africa Tax Symposium – Webinar Edition

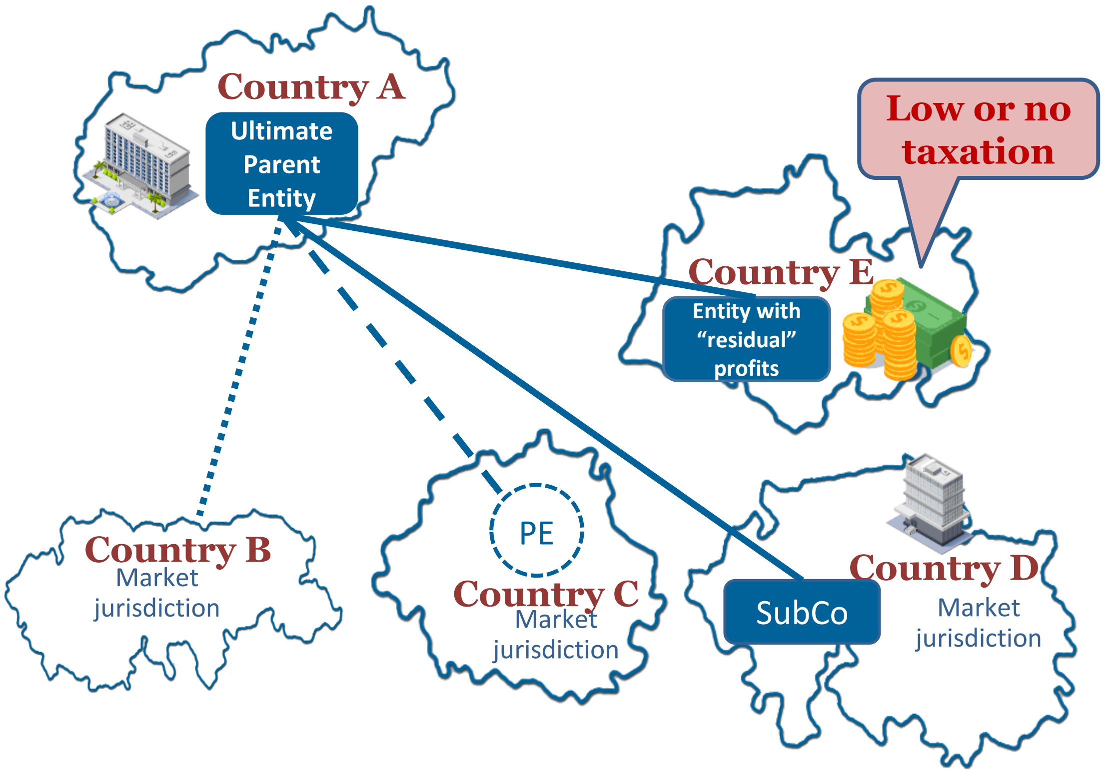
Trends in International Taxation: An African Perspective

An Overview of the International Tax Landscape

Néstor Venegas

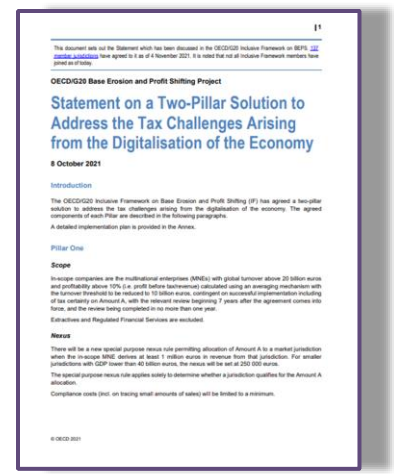
Overview of the Two-pillar solution to address the tax challenges arising from the digitalisation of the economy

Context



What are the tax challenges arising from the digitalisation of the economy?

Why is it a "two-pillar" solution?


OECD/G20 Base Erosion and Profit Shifting Project

Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy

8 October 2021

Introduction

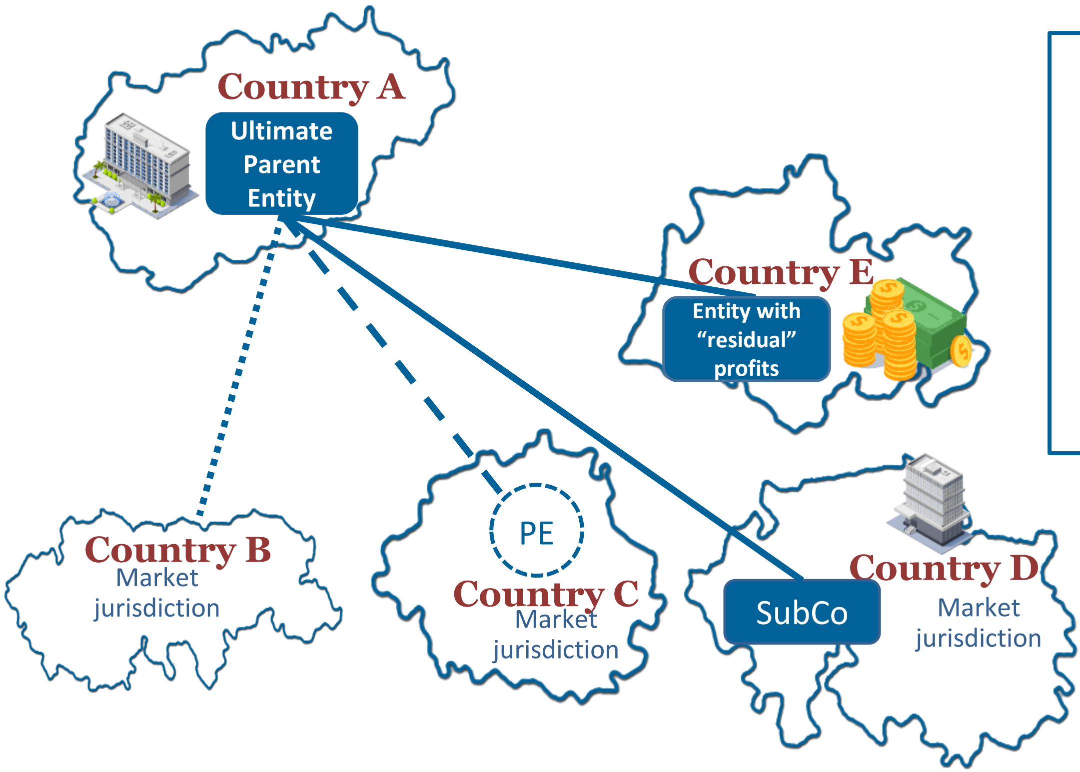
Pillar One

Scope

Nexus

OVERVIEW OF PILLAR ONE

Overview of the Pillar One building blocks



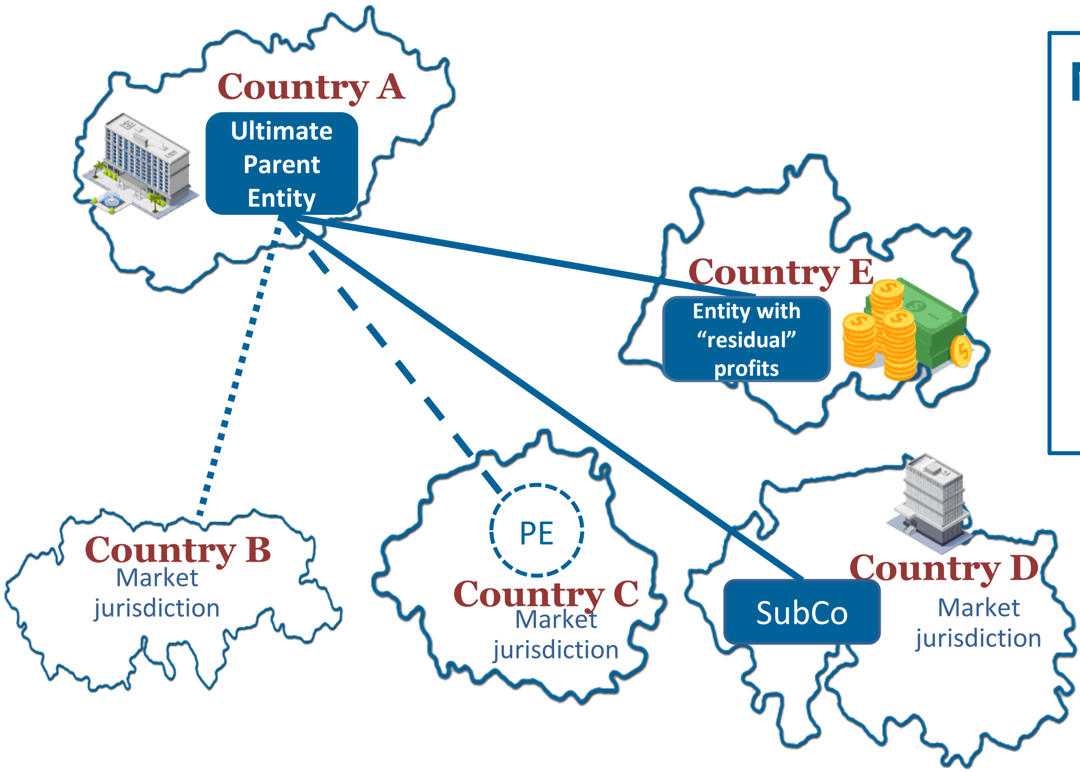
Scope: Which MNEs?

Turnover: 20 billion euros

Profit: 10% +

Conditional revision in 7 years

Overview of the Pillar One building blocks

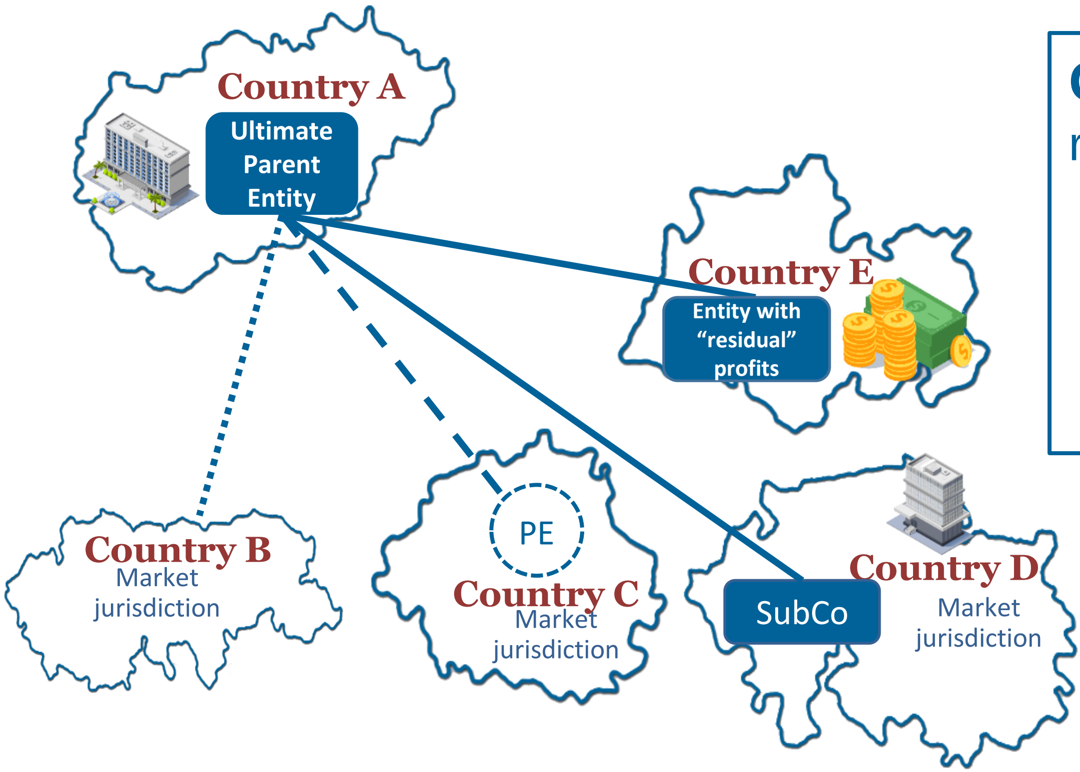


Nexus: Which market jurisdictions?

At least 1 million euros of revenues from that jurisdiction

250,000 euro threshold for smaller jurisdictions

Overview of the Pillar One building blocks

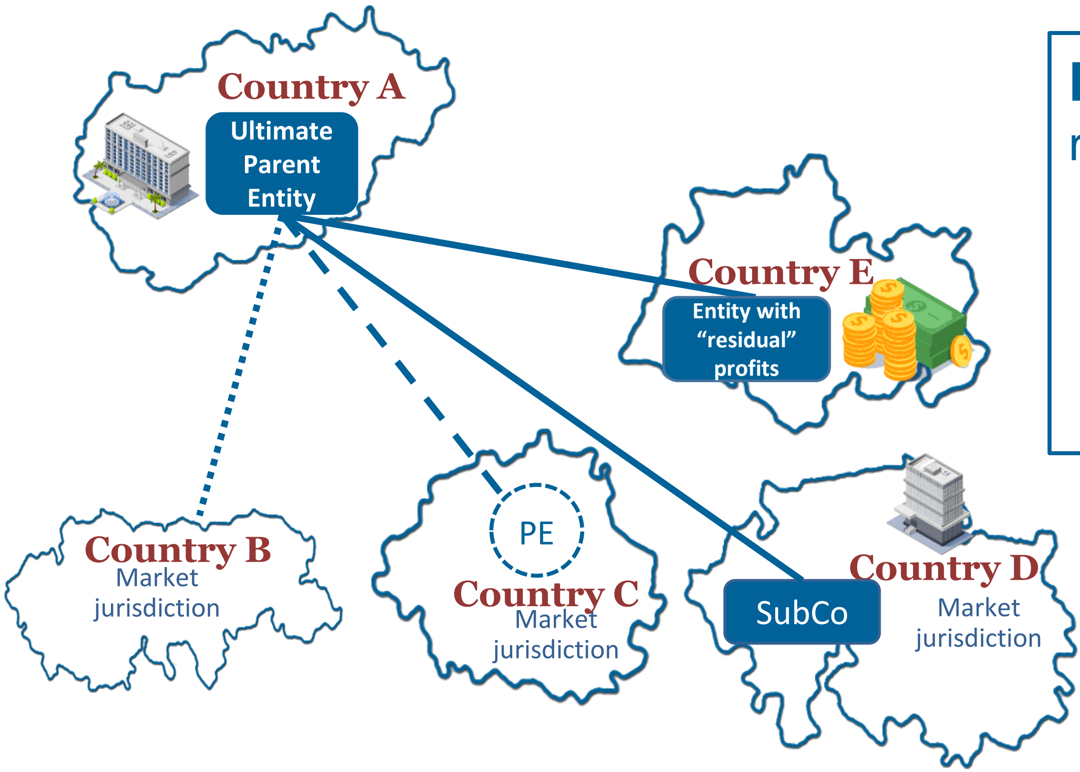


Quantum: How much will be reallocated?

25% of residual profit

Residual profit: profit in excess of 10% of revenue

Overview of the Pillar One building blocks

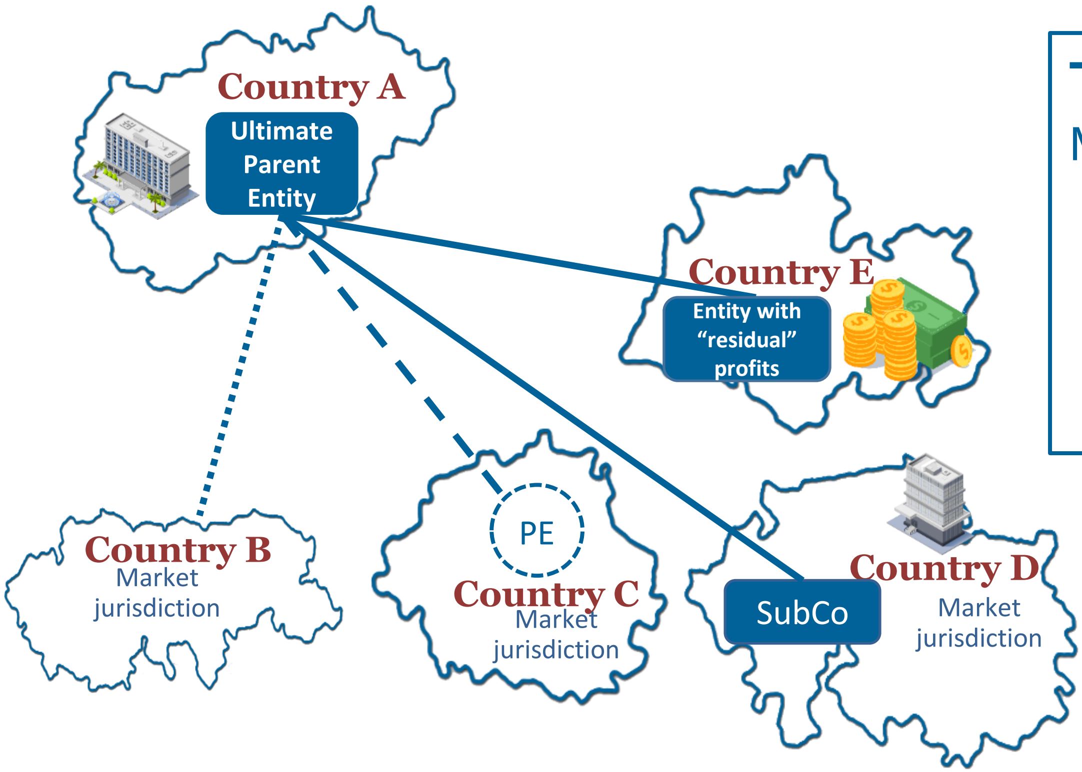


Revenue sourcing: Identifying revenue "from" a market

Place of final use or consumption

Reliable method

Overview of the Pillar One building blocks

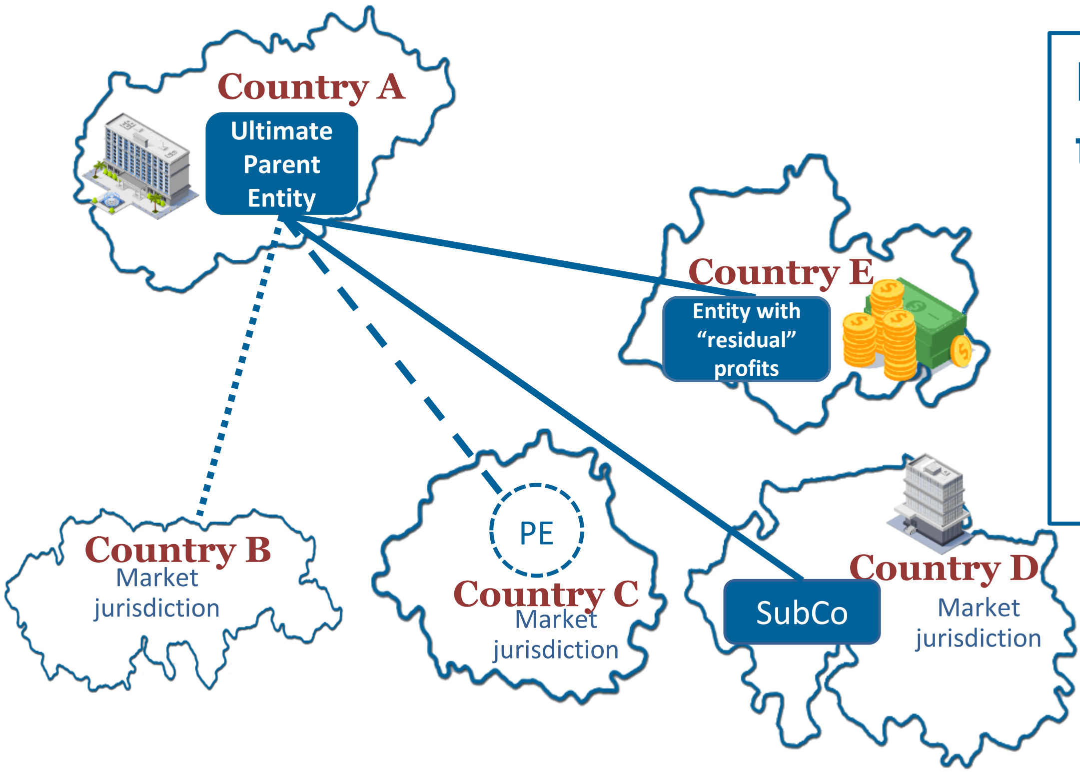


Tax base determination:
Measuring profits or losses

Financial statements

Minor adjustments

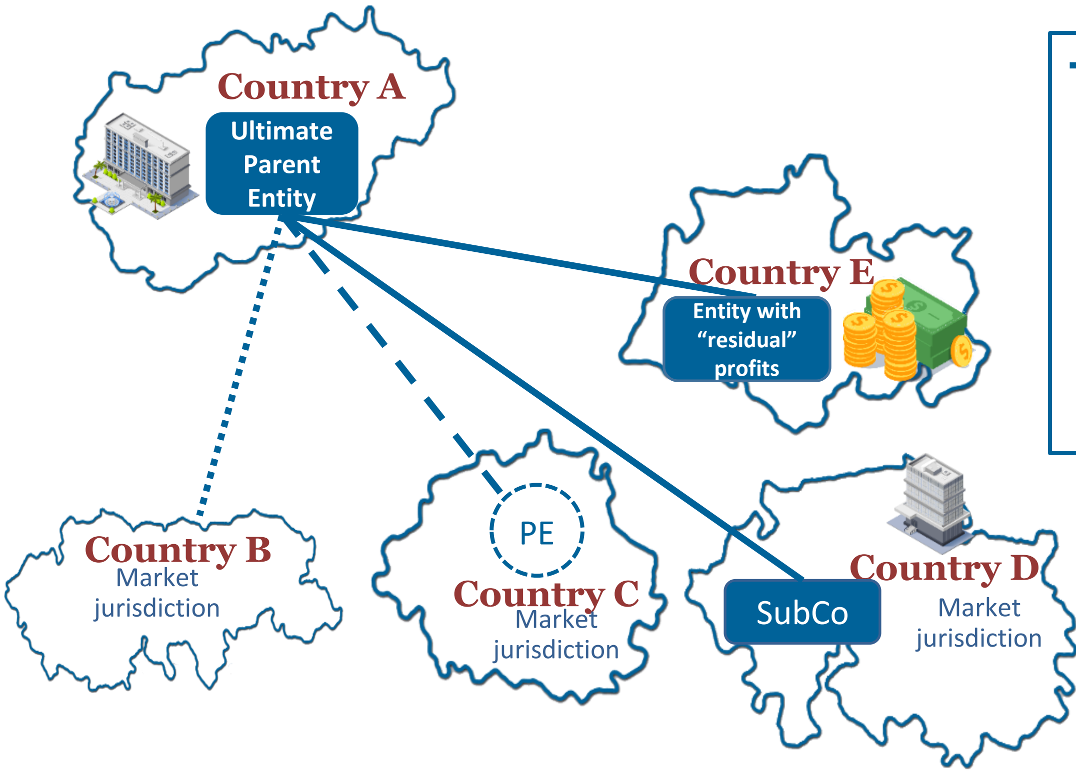
Overview of the Pillar One building blocks



Elimination of double taxation:

- Identifying relieving jurisdiction
- Identifying liable entity
- Exemption or credit method

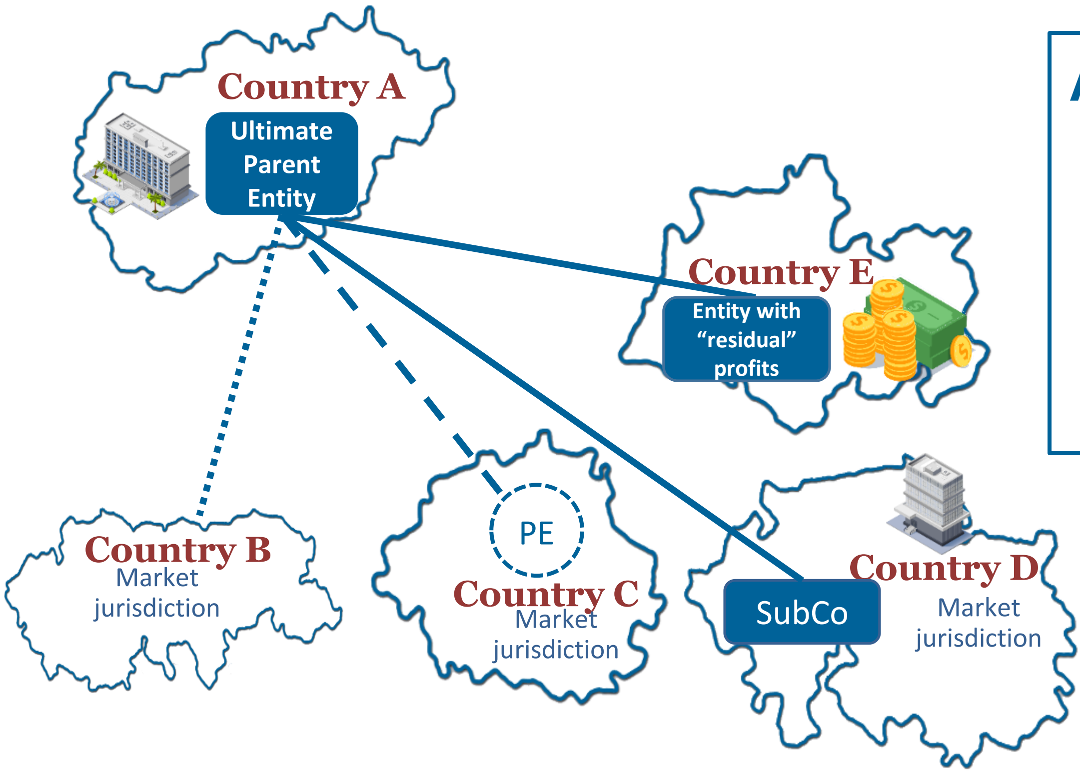
Overview of the Pillar One building blocks



Tax certainty:

- **Dispute prevention & resolution (mandatory & binding)**
- **Selected developing economies: elective mechanism**

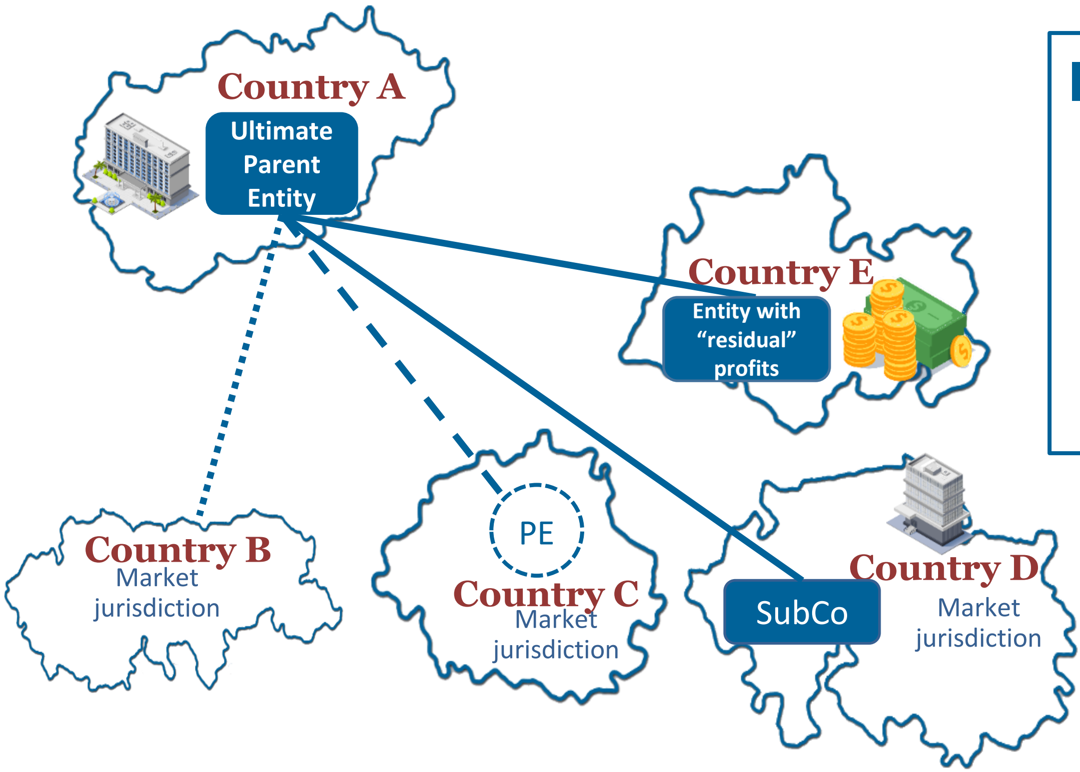
Overview of the Pillar One building blocks



Administration:

- Streamlined compliance
- Single entity

Overview of the Pillar One building blocks

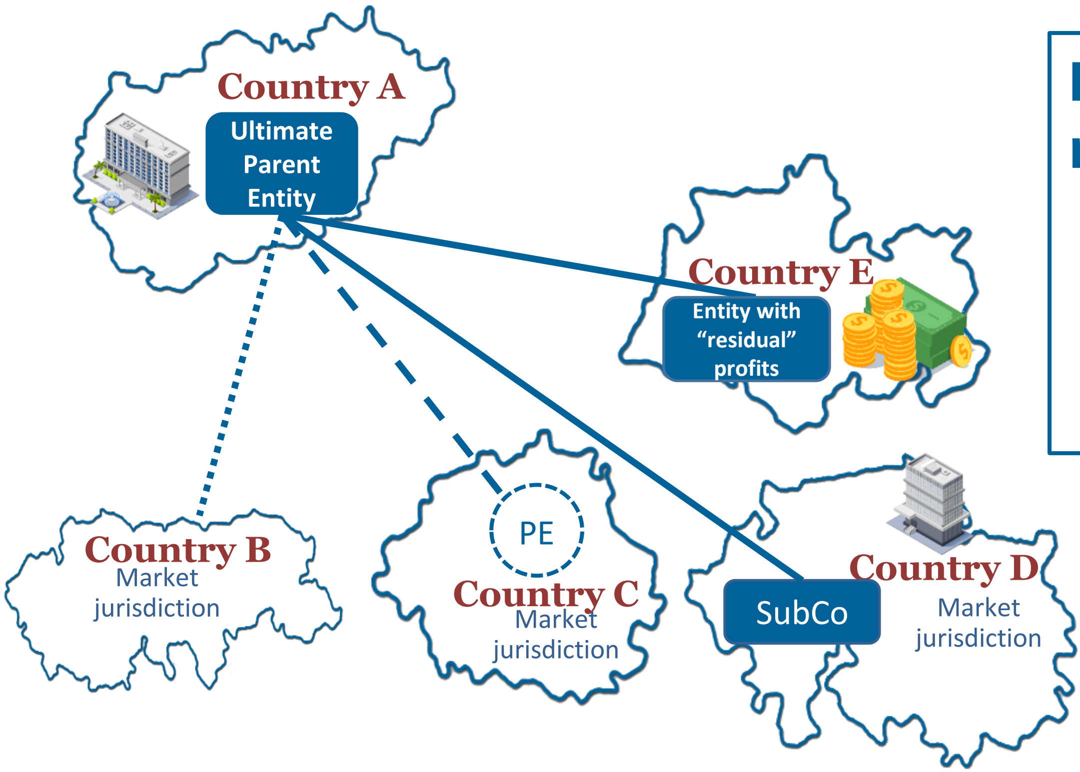


Implementation:

Multilateral Convention (2022)

Model rules

Overview of the Pillar One building blocks

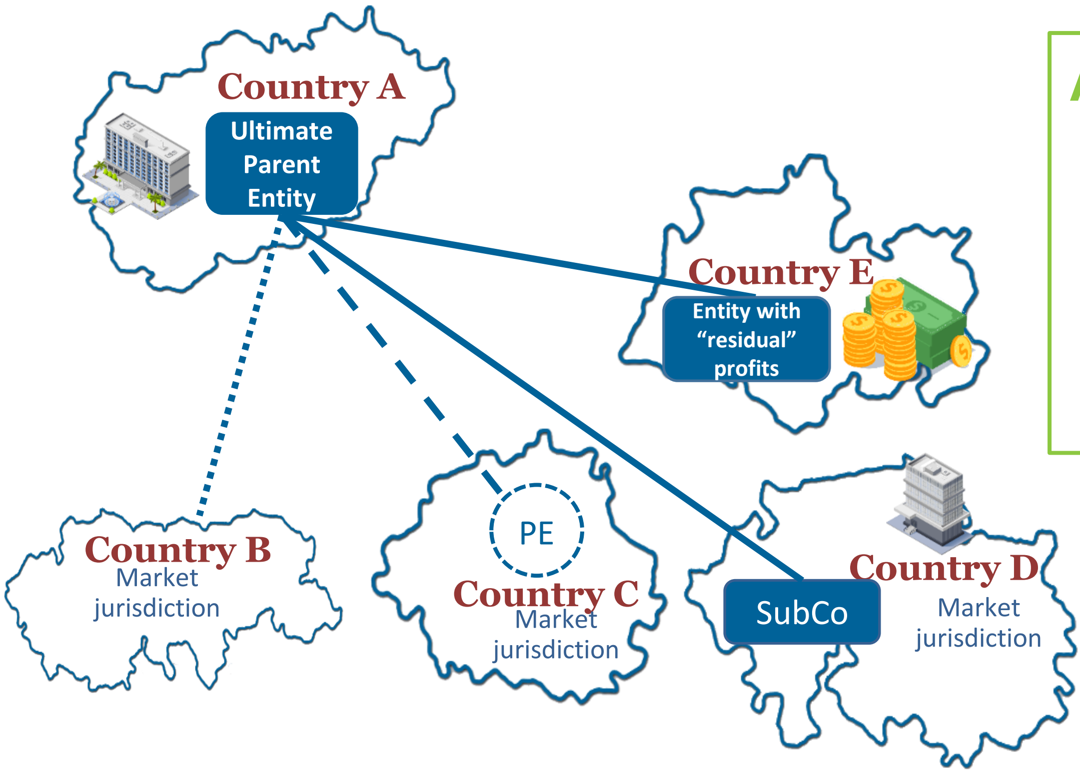


Removal of unilateral measures:

DSTs and similar

All companies

Overview of the Pillar One building blocks



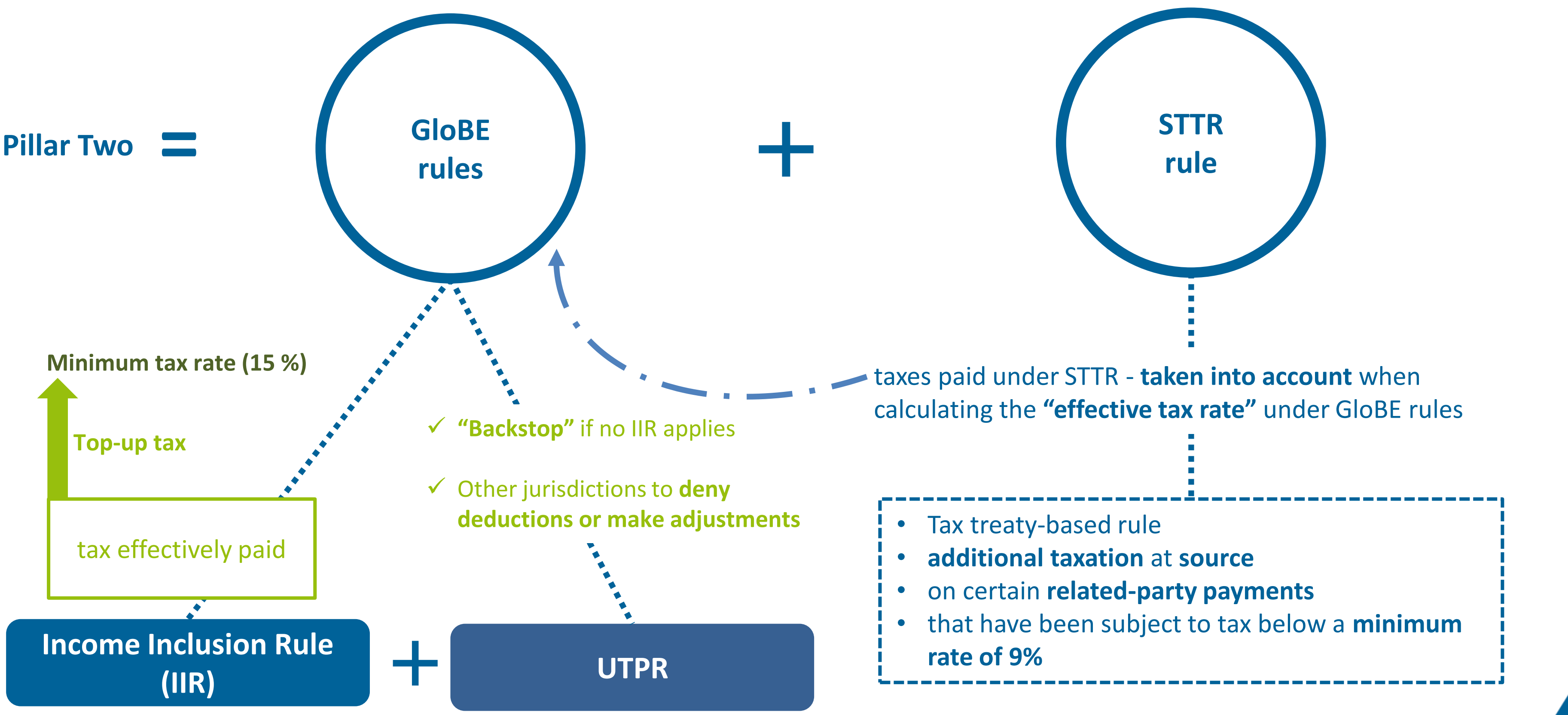
Amount B

Simplified application of ALP on:

in-country baseline marketing and distribution activities

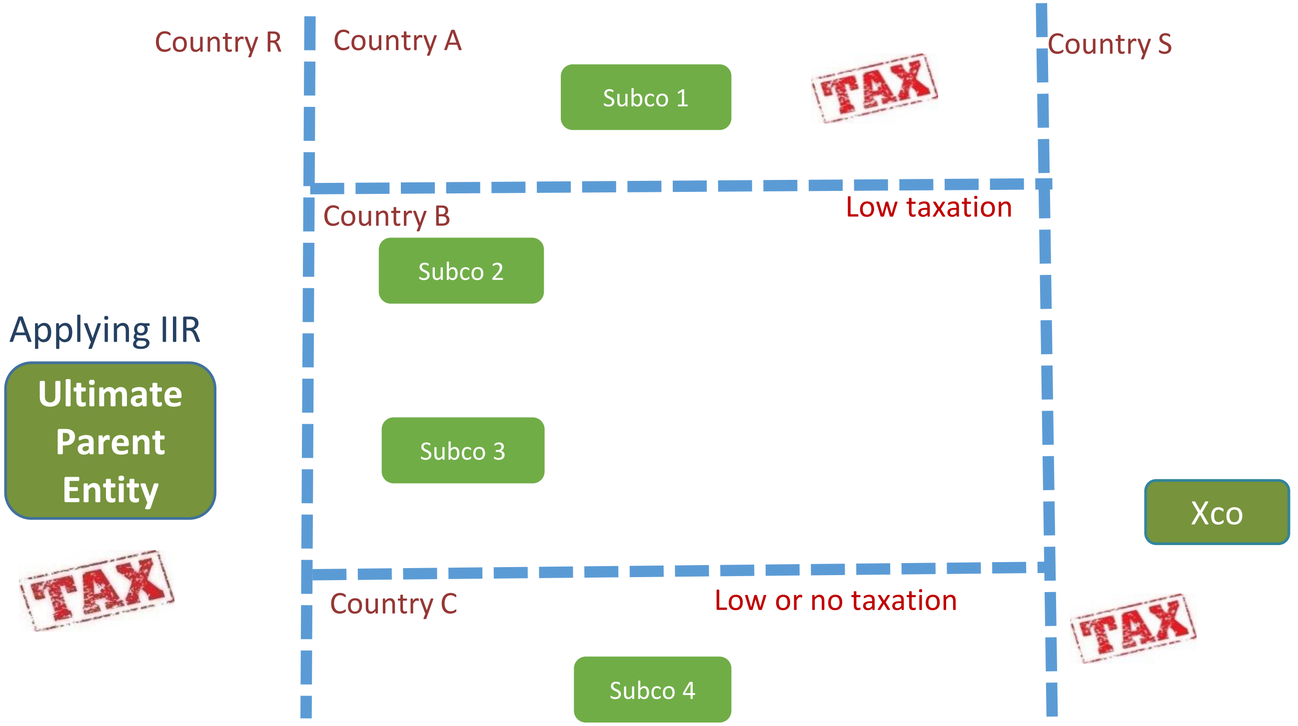
OVERVIEW OF PILLAR TWO

Pillar Two rules



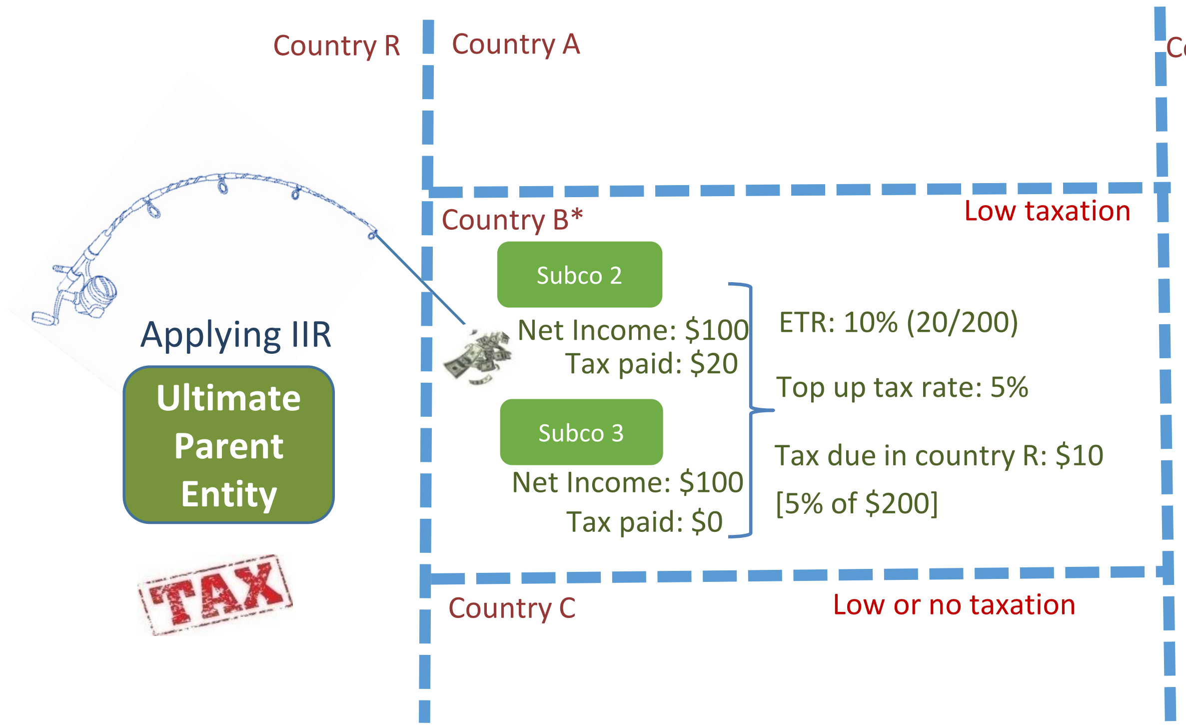
Overview of Pillar Two (GloBE + STTR)

Global minimum tax of 15%



Overview of Pillar Two (GloBE + STTR)

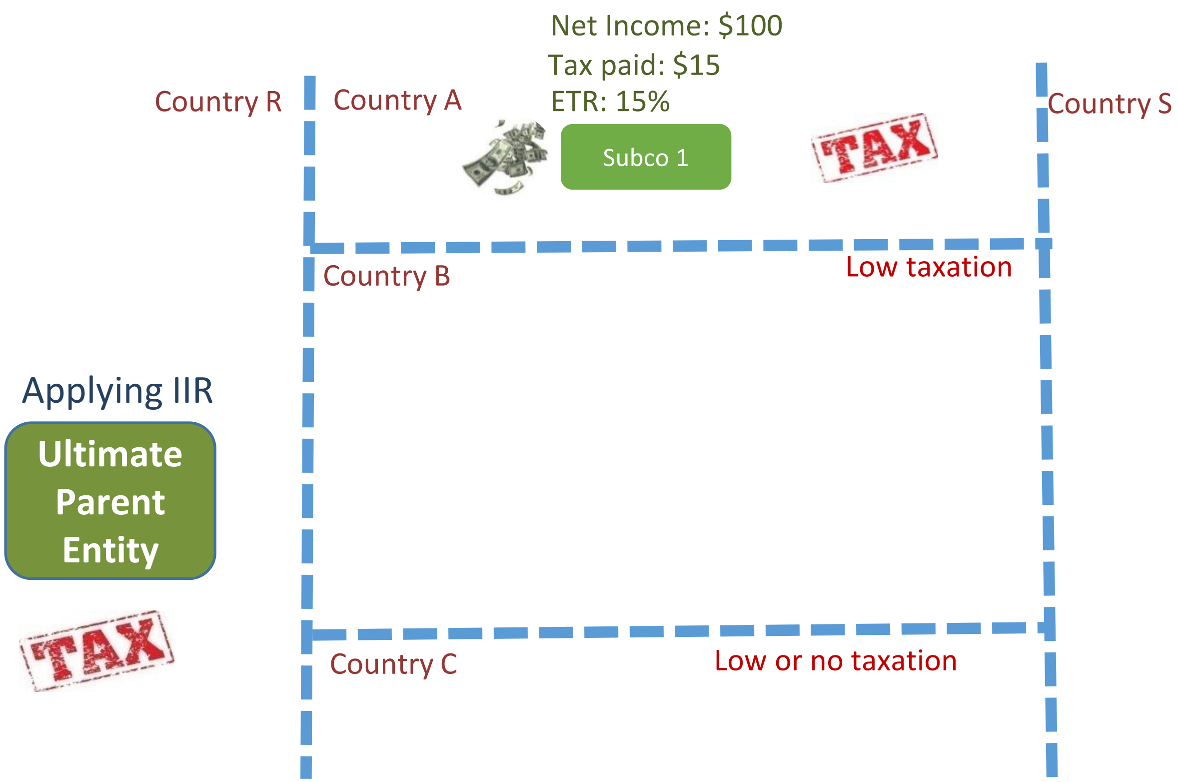
Global minimum tax of 15%



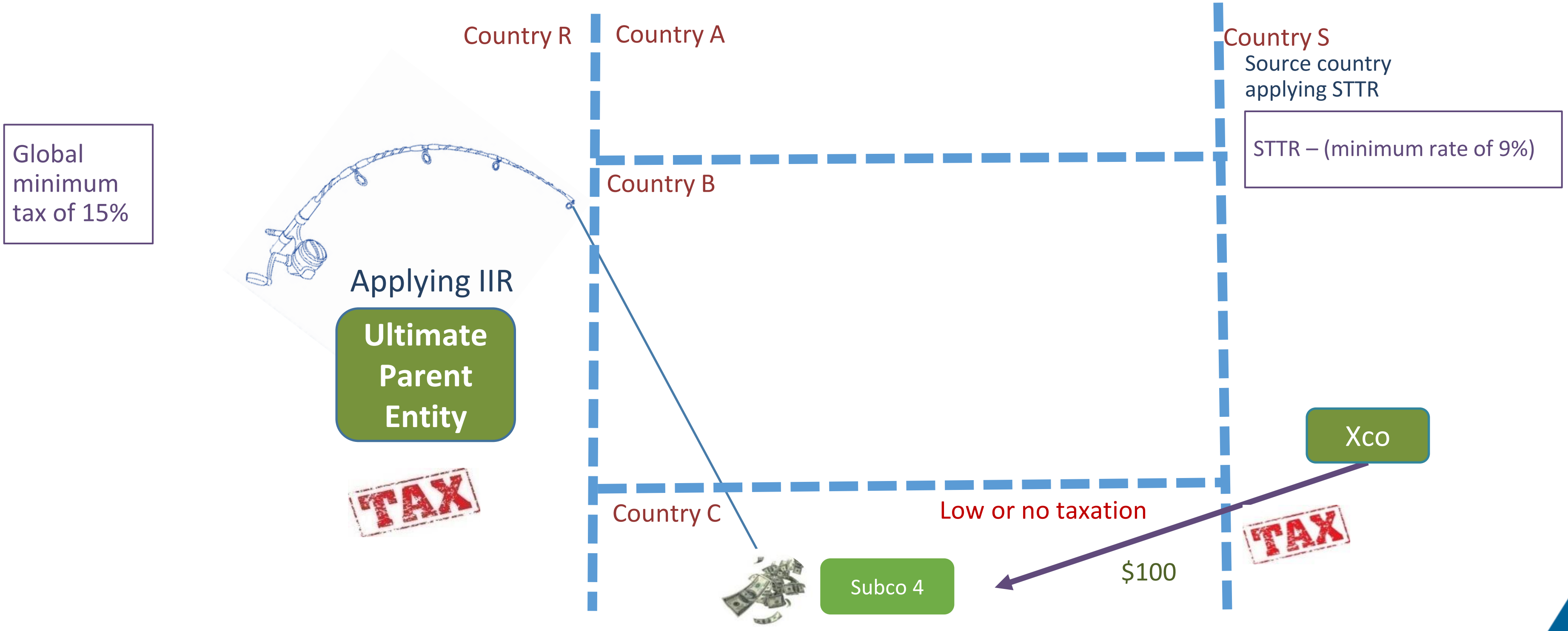
*asume no QDMTT nor “substance carve-out”

Overview of Pillar Two (GloBE + STTR)

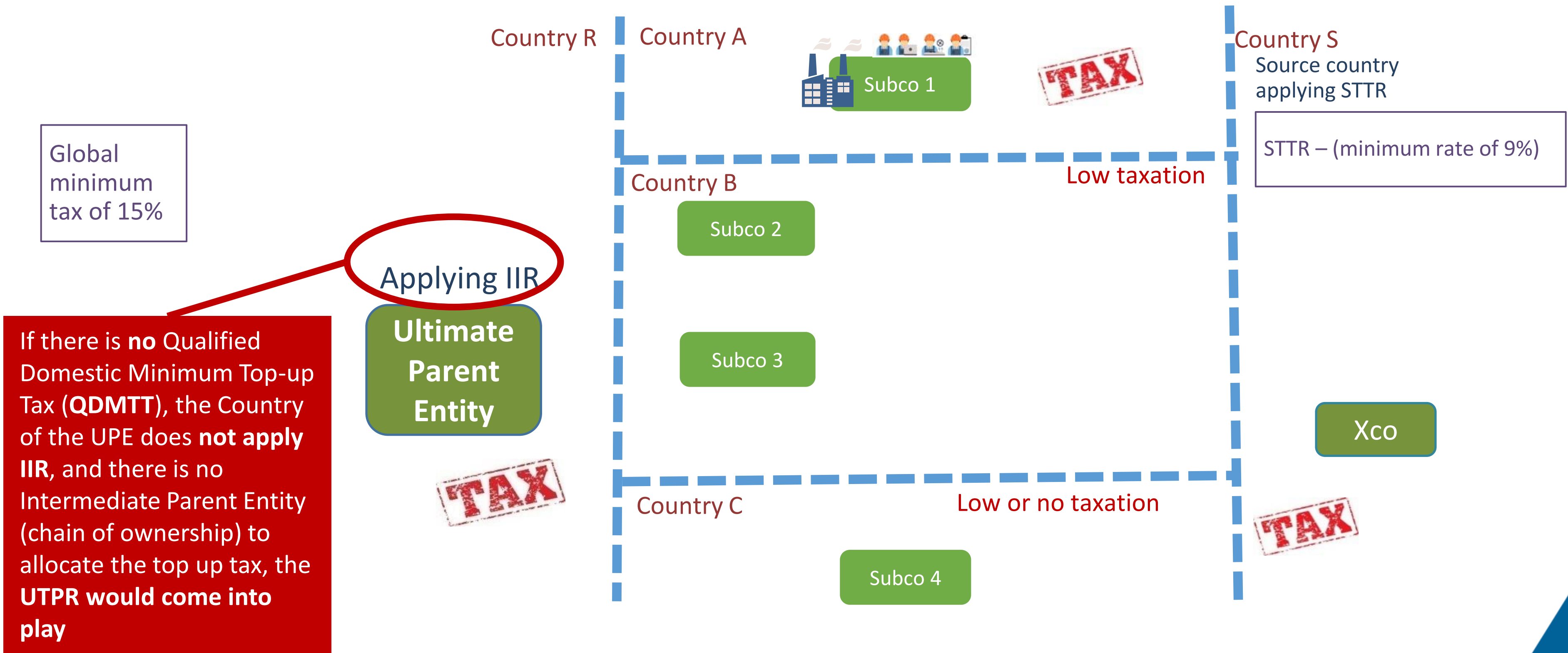
Global minimum tax of 15%



Overview of Pillar Two (GloBE + STTR)



Overview of Pillar Two (GloBE + STTR)



Implementation

GloBE

- 2022 into law - effective in 2023
- UTPR into effect in 2024

- Supplemented by **commentary** and **examples**

- End of 2022: **implementation framework**

STTR

- **Model treaty provision + commentary** + process to assist in its implementation

- **Multilateral instrument** being developed

Africa Tax Symposium – Webinar Edition

Trends in International Taxation: An African Perspective

Africa and the Pillar Two Model Rules

Professor Annet Oguttu
University of Pretoria

Pillar Two Model Rules

- 20 December 2021 - OECD published Pillar Two Model rules
- Floor on corporate tax competition and the race to the bottom
- Global minimum corporate tax rate - 15%
- Could potentially rebalance allocation of taxing rights
  - Complexity and administrative difficulties

Pillar Two Model Rules

- May not be of much benefit to host countries
- 15% minimum tax rate - too low to deter profit shifting
- Developing country concerns largely ignored
- Final Model rules introduced new provisions not in Blue print
  - Domestic Minimum Top-up Tax, favours low tax jurisdictions
  - Rule order – Income Inclusion Rule (IIR) takes priority over the Under Taxed Payment Rule (UTPR)

Implications for Africa

- Limited application in many African countries
  - Threshold - 750 million Euros in consolidated revenues
  - Various exclusions
    - Reduced ability to counter tax competition

- Applicable in African countries with MNEs that submit CbCR
  - Considerations on whether on how to implement
  - Status of the rules - common approach
  - Implementation & administration - consistently with Model rules

Implications for Africa

- Common approach – alternatives in line with GloBE aims
  - USA Global Intangible Low Tax Income (GILTI) to co-exist with GloBE rules
  - UK Consultation paper on GloBE rules
  - Possible approach for African countries
    - Alternative minimum corporate taxes
  - ATAF advice:
    - Implementation must be done responsibly
    - No political pressure to adopt rules or join OECD IF

Tax treaty implications for African countries

- Implications for DTAs with tax sparing provisions
  - spared taxes are not “covered taxes”
- Implications for “bilateral investment agreements”
  - stabilisation clauses
- Political commitment: Subject to Tax Rule (STTR) – 9% rate
  - Low rate – treaty rates higher
  - STTR applies to interest, royalties & defined set of payments
    - G-24: include payments for services & capital gains
    - UN MTC: Articles 12, 12A & 12B

Implications for Africa – Concluding remarks

- Model rules should not be set in stone
- Scope for further development to remedy complexities
- Scope to ensure a more equitable international tax system
- Should be reviewed, modified and updated regularly

Africa Tax Symposium – Webinar Edition

Trends in International Taxation: An African Perspective

The United States perspective on the Two Pillar Solution

Michael Lebovitz, Partner, Mayer Brown

US Implementation of Pillar One and Two

- The US compromise on Pillar One
- Pillar One will require statutory and treaty changes to implement
- Pillar Two will require statutory changes
- Treaty changes require 2/3 vote in Senate
- Statutory changes require Congress to agree

US Tax Reform – Build Back Better/Something

- **May, 2021 - Initial ambition – FY22 Green Book - $3.5 trillion in spending**
  - Increase in corporate rate to 26%
  - Increase individual rate
  - Wealth tax
- **October, 2021 - Reality sets in - $1.75 trillion in revised Build Back Better Act (BBBA)**
  - Book income AMT
  - High income surtax
  - International tax fixes including Pillar Two conformity
- **November, 2021 – House passes BBBA, bill moves to Senate**
- **December, 2021 – Senator Manchin announces he will not support BBBA**
- **January, 2022 – Biden regroups, will split up BBBA into Build Back "Something"**
- **March, 2022 – Biden releases FY23 Green Book**
- **April, 2022 – Easter Recess**
- **May, 2022 – Memorial Day Recess**
- **November, 2022 – Midterm elections**

BBBA – Global Intangible Low-taxed Income (GILTI) Conformity

- **Jurisdictional blending**
    - Currently, GILTI is calculated at the US shareholder level so that the GILTI inclusions of all CFC's are aggregated
    - This allows GILTI losses to offset GILTI income to determine a net GILTI inclusion
- BBBA would calculate GILTI on a country-by-country basis with no offsetting of profits and losses
    - GILTI losses at country level carried over by country
    - Foreign tax credits on GILTI would also be calculated on a per-country basis – consistent with change to general per-country limitation

BBBA – Base Erosion Anti-abuse Tax (BEAT) Conformity

- **BEAT currently functions as a minimum tax**
- **10% tax on taxable income adjusted by removing deductible payments to related parties**
  - 10% rate currently scheduled to increase to 12.5% in 2026
- **Applicable to taxpayers with:**
  - Average gross receipts of at least USD 500 million; and
  - Base eroding payment of at least 3% of total deductible payments
- **BBBA changes to BEAT:**
  - Rate increased to 12.5% in 2023, 15% in 2024 and 18% in 2025
  - Elimination of 3% floor
  - 10 year taint if considered an applicable taxpayer
  - Expanded definitions of base eroding payments

Green Book

- Corporate rate increased to 28%
- GILTI rate increased to 20%
- “Adjusted baseline” – assumes enactment of BBBA
- BEAT converted to Undertaxed Payments Rule (UTPR)
  - Does not apply if income subject to an Income Inclusion Rule (IIR : i.e., CFC, GILTI, etc)
    - As a result, US UTPR would be applicable to US inbounds only
  - Rate “at least” 15%
  - Complex allocation rules to determine US portion of UTPR
  - Undefined mechanism to ensure continued availability of US tax credits
  - Effective TYBA December 31, 2023
- Credit for bringing jobs into the US, denial of deductions for offshoring

Legislative Outlook

- Bipartisan consensus to remove DST's but this consensus is hampered by legislative gridlock
- Pillar One is the agreed trade-off for DST removal
- General consensus to implement Pillar Two changes
- Impact of linkage/de-linkage between Pillar One and Pillar Two
- Who goes first? US or EU?
- Pillar One/Two changes require a legislative "vehicle" for enactment
- No consensus on which vehicle to use
- Expectation is continued gridlock

Impact on African Investment

- DST’s will be around for several years
- Will Pillar One result the same or better tax revenues?
- GILTI will limit application of a Subject to Tax Rule (STTR)
- Will complexity of Pillar One and Two cause the initiative to collapse?