DESIGNING TAX INCENTIVES IN A POST-GMT WORLD

Bali – 24 September 2024

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Key messages

- **The Global Minimum Tax establishes minimum level of effective taxation at 15% for large MNEs**
  - Places a floor under tax competition
  - Reduces incentive to shift profit into low tax jurisdictions
  - Increases tax revenues
  - Shifts focus to the role of non-tax factors for investment
- **The Global Minimum Tax might limit the effectiveness of certain tax incentives**, where they push the effective tax rate (ETR) for GMT purposes below 15%
  - Not all jurisdictions, taxpayers and tax incentives are affected to the same extent
    - Scope
    - Income / expenditure-based incentives
    - Subsidies / reduction in taxes
- **OECD Handbook on GloBE rules -** Jurisdictions should assess the impact of the GMT on their tax system and define courses of action.

GLOBE CALCULATIONS AND THE IMPACT ON TAX INCENTIVES

Top-up Tax calculation

Covered Taxes calculated on a jurisdictional basis

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GloBE Income calculated on jurisdictional basis

= Jurisdictional Effective Tax Rate (ETR)

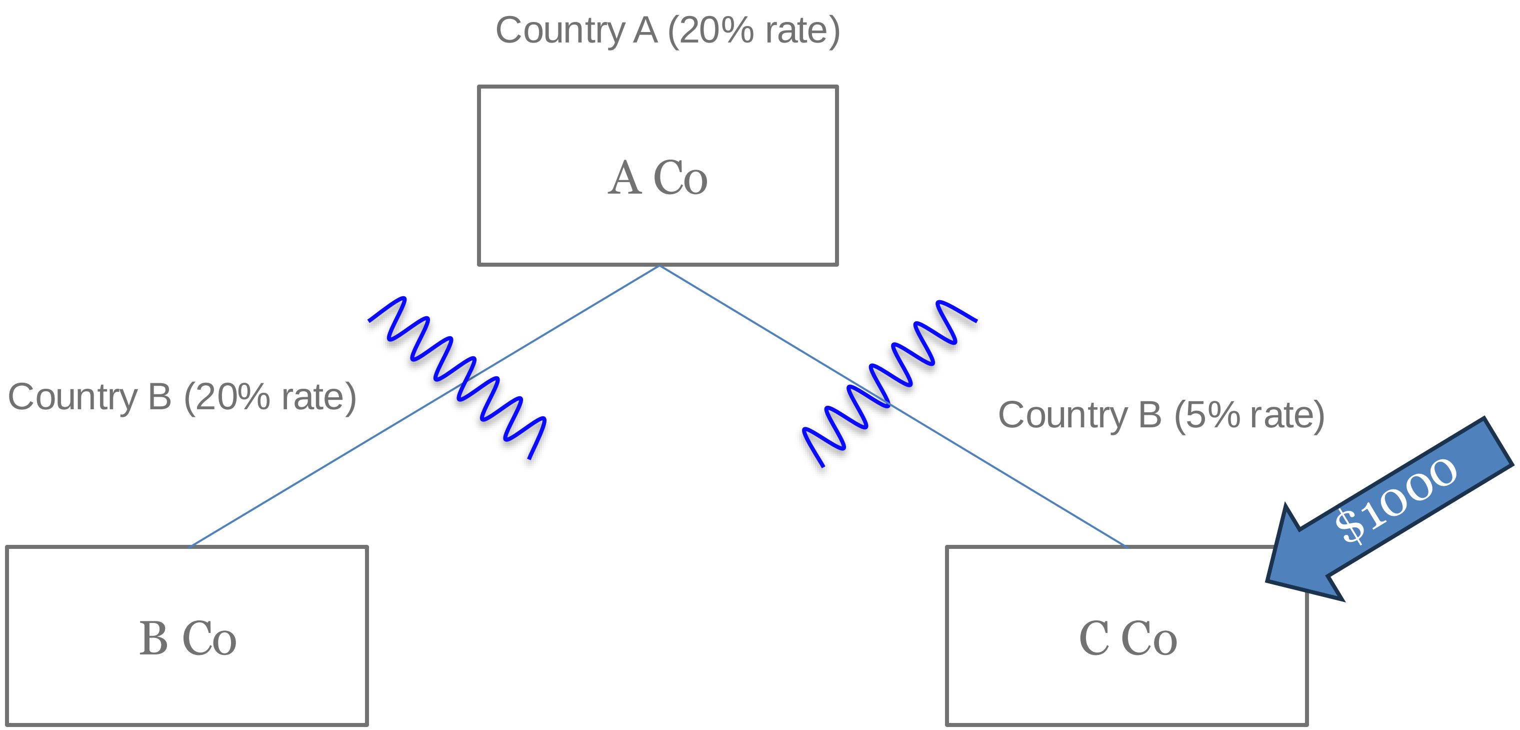
Jurisdictional Excess Profit = GloBE Income – Substance Based Income Exclusion

x

Top-up Tax % = Minimum rate - Jurisdictional ETR

Jurisdictional Top-up Tax = (Top-up Tax % x Excess Profit) – Qualified Domestic Minimum Top-up Tax

Example – Reduced CIT rate



Example – Reduced CIT rate

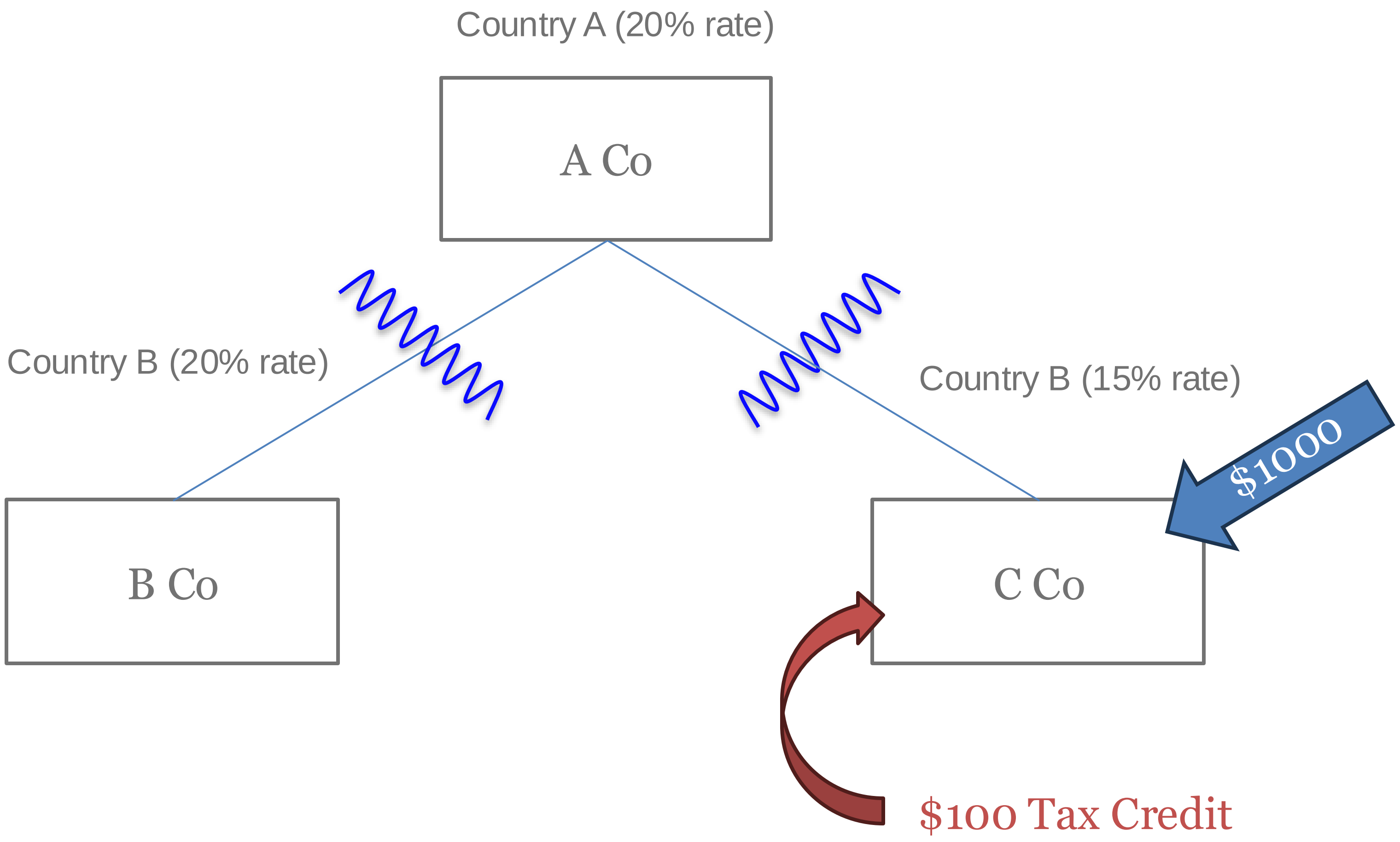
Country C CIT		
A. Income		1000
B. CIT Rate		5%
C. Total Tax due	A x B	50

GloBE Tax		
F. GloBE Income		1000
G. SBIE		0
H. Jurisdictional Excess Profit	F – G	1000
I. Top-up Tax %	15%-(C/F)	10%
J. Jurisdictional Top-up Tax	I x H	100
K. Total Tax liability (post-GloBE)	E + J	150

GloBE Top-up Tax paid either:

- In Country C (QDMTT)
- In Country A (IIR)
- In Country B (UTPR)

Example – Ordinary Tax Credit



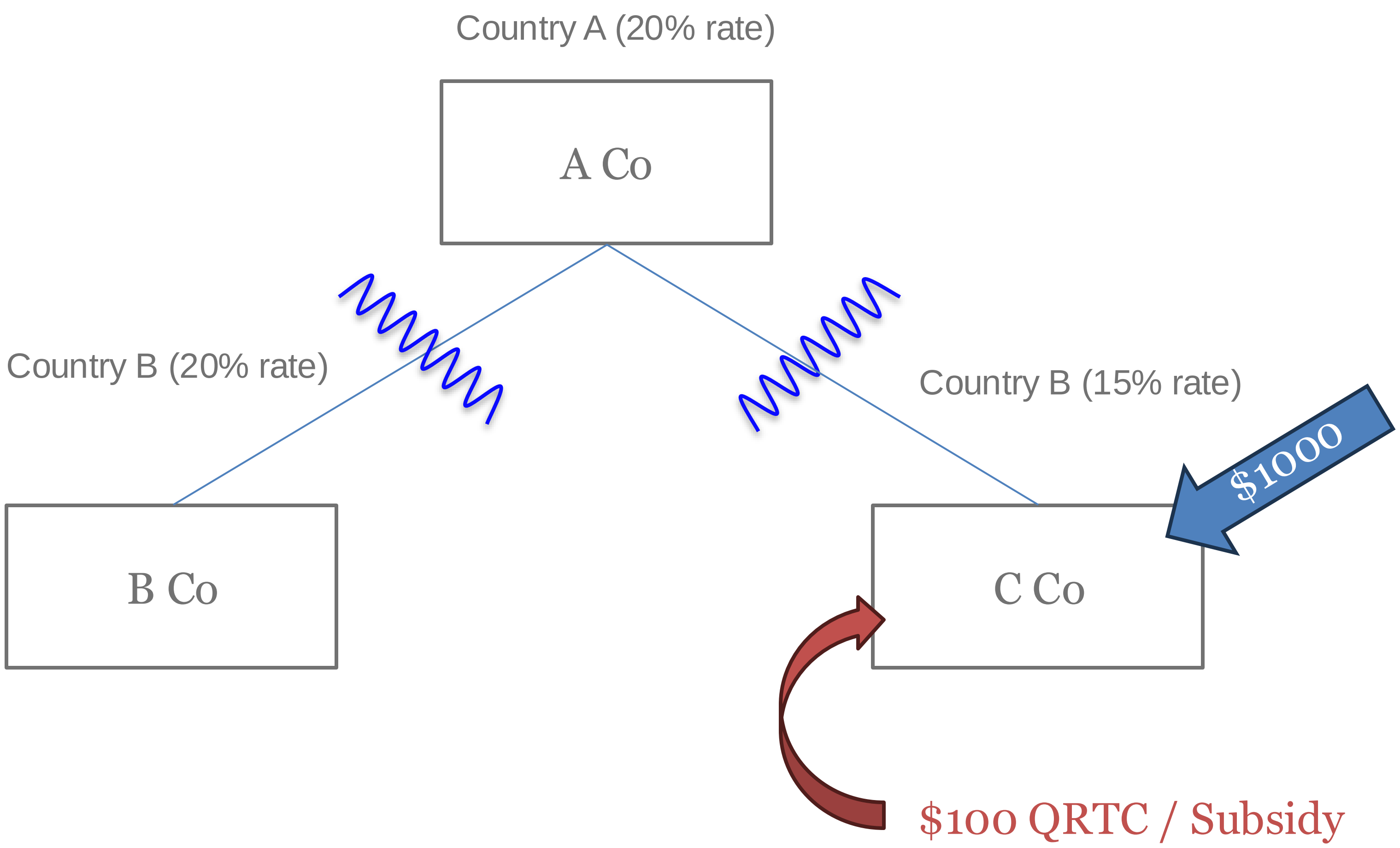
Example – Ordinary tax credit

Country C CIT		
A. Income		1000
B. CIT Rate		15%
C. Total Tax due	A x B	150
D. Credit		100
E. Covered Tax*		50

GloBE Tax		
F. GloBE Income		1000
G. SBIE		0
H. Jurisdictional Excess Profit	F – G	1000
I. Top-up Tax %	15%-(E/F)	10%
J. Jurisdictional Top-up Tax	I x H	100
K. Total Tax liability (post-GloBE)	E + J	150

GloBE ETR calculation based on ratio of Covered Taxes to GloBE Income

Example – Impact of QRTC / Subsidy



Example – Impact of subsidy

Country C CIT		
A. Income		1000
B. CIT Rate		15%
C. Total Tax due	A x B	150
D. Credit		-
E. Covered Tax*		150

GloBE Tax		
F. GloBE Income		1100
G. SBIE		0
H. Jurisdictional Excess Profit	F – G	1100
I. Top-up Tax %	15%-(E/F)	1.364%
J. Jurisdictional Top-up Tax	I x H	15
K. Total Tax liability (post-GloBE)	E + J	165

Subsidy / QRTC may not treated as additional income for local tax purposes

Subsidy / QRTC treated as additional income for GloBE

ETR in Country C is 150/1100 = 13.636%

Net cost to taxpayer is 65 after subsidy / QRTC.

Example – Impact of taxable QRTC / subsidy

Country C CIT		
A. Income		1100
B. CIT Rate		15%
C. Total Tax due	A x B	165
D. Credit		-
E. Covered Tax*		165

GloBE Tax		
F. GloBE Income		1100
G. SBIE		200
H. Jurisdictional Excess Profit	F – G	900
I. Top-up Tax %	15%-(E/F)	0%
J. Jurisdictional Top-up Tax	I x H	0
K. Total Tax liability (post-GloBE)	E + J	165

Subsidy / QRTC is treated as additional income for local tax purposes

ETR in Country C is 165/1100 = 15%

CRITERIA FOR QRTC

Qualified Refundable Tax Credits – criteria

Refundable

- Refundable tax credit should be payable as cash or cash equivalent within **four years**, and include an **offset-ability with other taxes**
- This means that if the taxpayer has losses and no other taxes to offset the credit against, they will actually get a cash refund
- This is evaluated based on the legislation, and not the facts of the particular taxpayer

Practical significance

- The refund mechanism should have **practical significance**, meaning that it cannot be designed in a way that no taxpayer would actually get a refund (e.g. when the QRTC is designed such that it only arises when the taxpayer has sufficient tax liability to utilise it)

BENEFITS

Related Benefits

Integrity of the Global Minimum Tax

- GMT ensures large MNEs pay tax of 15% on excess profit in each jurisdiction where they operate
- A refund of the top-up tax paid in the jurisdiction would undermine the integrity of the rules

Implementing and non-implementing jurisdictions

- Definitions of Qualified IIR, Qualified UTPR and Qualified DMTT include that no Related Benefits can be provided
- However, benefits can also be provided in relation to a Covered Tax in a non-implementing jurisdiction, for example when a CIT was introduced or the rate was raised, but the amount was refunded to the taxpayer

Governmental bodies

- Related Benefits may be provided national or sub-national governments, including by government agencies other than Ministry of Finance of Tax Administration

Further work

- The Inclusive Framework is currently exploring further guidance on the identification of Related Benefits, and developing an ongoing monitoring process to preserve the integrity of the rules

Identifying potential Related Benefits

To prevent jurisdictions from providing benefits related to the imposition of the global minimum tax that have the effect of returning taxes paid and undermining the integrity of the global minimum tax

Scope

- If reliefs are provided only to in-scope MNE Groups, this creates a risk that there is compensation for the top-up tax / covered tax
- The same principle could apply when reliefs are targeted to in-scope MNES in a way that has effect of undermining the GloBE rules

Calculation by reference to income/taxes

- When the amount of relief is calculated based on the income, covered taxes or top-up tax, there is a risk that this is a refund of the top-up tax / covered tax (in whole or in part)

Other factors

- Some factors (such as the ability to exercise discretion) may raise the risk of Related Benefits.
- Other factors (such as expenditure-based incentives to encourage investment in assets and jobs) may reduce the risk of Related Benefits

PEER REVIEW PROCESS

Qualified status

- The agreed rule order under GloBE (i.e. QDMTT → IIR → UTPR) is premised on each jurisdiction's rules having "Qualified" status
  - i.e. the rules are consistent with / functionally equivalent to the agreed Model Rules, and the jurisdiction does not provide Related Benefits
- This is important as implementing jurisdictions are required to recognise the GloBE Rules of other implementing jurisdictions in assessing the tax due, e.g. by de-activating their own rules or by taking into account GloBE taxes already paid on the income elsewhere

Peer review process for GloBE Rules

Transitional qualification mechanism

- Qualified status for a transitional period
- Legislative review needs to be initiated within 2 years
- 2024 first reviews

Legislative review

- Full review of the legislation
- Terms of reference and assessment methodology still being developed
- First reviews to start in 2025

Ongoing monitoring process

Ongoing monitoring on benefits

- Working Party 11 is currently considering an ongoing monitoring process to support the identification of Related Benefits, and to support the coordinated functioning of the Anti-Related Benefit Rule
- Design proposals are based on:
  - Ensuring a transparent process
  - Balancing need for implementing jurisdictions to swiftly neutralise Related Benefits and need to ensure that rule does not apply when it should not
  - Dialogue and feedback on how Related Benefits can be addressed where needed

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