

Pillar two: Global anti-base erosion [GloBE] proposal

CA Pritin Kumar

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BEPS actions

Action 1: Address the tax challenges of the digital economy		
"Gaps"	"Frictions"	"Transparency"
i. Establishing international coherence of corporate income taxation	ii. Restoring the full effects and benefits of international standards	iii. Ensuring transparency while promoting increased certainty and predictability
Action 2: Neutralise the effects of hybrid mismatch arrangements	Action 6: Prevent treaty abuse	Action 11: Establish methodologies to collect and analyse data on BEPS and the actions to address it
Action 3: Strengthen controlled foreign company (CFC) rules	Action 7: Prevent the artificial avoidance of PE status	Action 12: Require taxpayers to disclose their aggressive tax planning arrangements
Action 4: Limit base erosion via interest deductions and other financial payments	Assure that transfer pricing outcomes are in line with value creation	Action 8: Intangibles
Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance		Action 9: Risk and capital
	Action 10: Other high-risk transactions	Action 13: Re-examine transfer pricing documentation
		Action 14: Make dispute resolution mechanisms more effective
Action 15: Develop a multilateral instrument		

Backdrop

The journey till date

October 2015

OECD released final report on Action 1: 'Addressing the tax challenges of Digital Economy'

March 2018

OECD released a document 'Tax Challenges Arising from Digitisation – Interim Report 2018'

January 2019

OECD released a Policy Note introducing two pillars for addressing digital economy challenges and addressing other BEPS concerns

February 2019

A public consultation document describing two pillar proposal at high-level seeking public comments

May 2019

OECD released an Inclusive Framework on BEPS – Programme of Work to develop a consensus solution

October 2019

OECD released a public consultation document whereby 'unified approach' was proposed under pillar one to facilitate negotiation among countries

November 2019

OECD released a public consultation document seeking comments on pillar two proposal

January 2020

OECD released a statement on progress of work on pillar one and pillar two

February 2020

OECD released an update on the economic analysis and impact assessment

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Two pillar approach



Pillar 1

Allocation of taxing rights, seeking to undertake a coherent and concurrent review of the profit allocation and nexus rules



Pillar 2

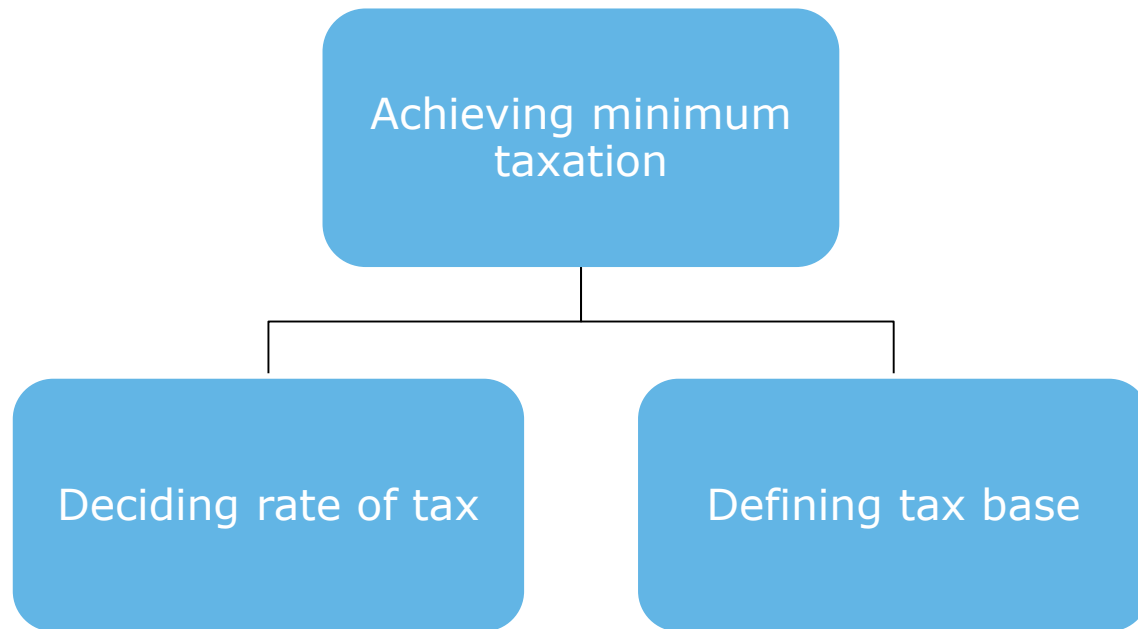
Remaining BEPS issues, seeking to develop rules that would provide jurisdictions with a right to 'tax back' where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation

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'Minimum tax' on multinational enterprises [MNEs]

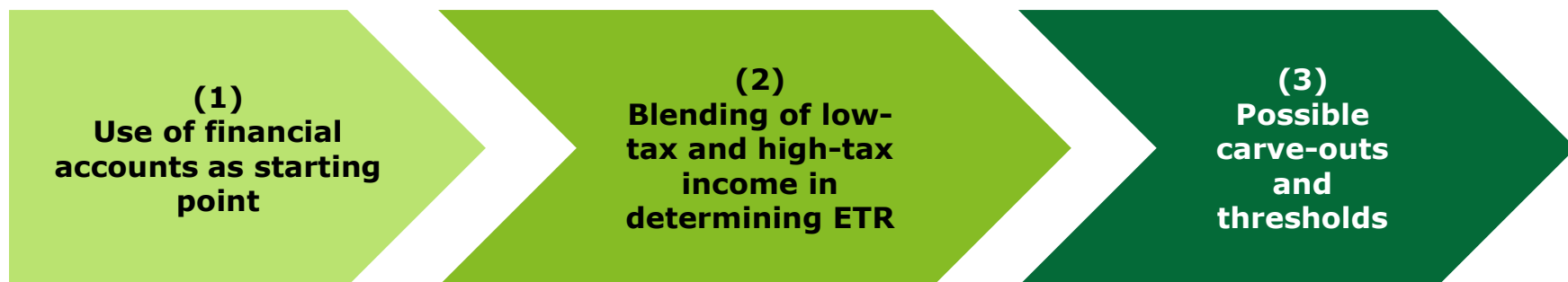
- Pillar two: GloBE proposal goes beyond BEPS to address the need for global action to stop a 'harmful race to the bottom' on corporate taxes amongst countries
- Seeks to develop rules that would provide jurisdictions with a right to 'tax back' where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise taxed at an effective tax rate [ETR] below a 'minimum rate'
- The proposal will operate as a top-up to an agreed fixed minimum rate



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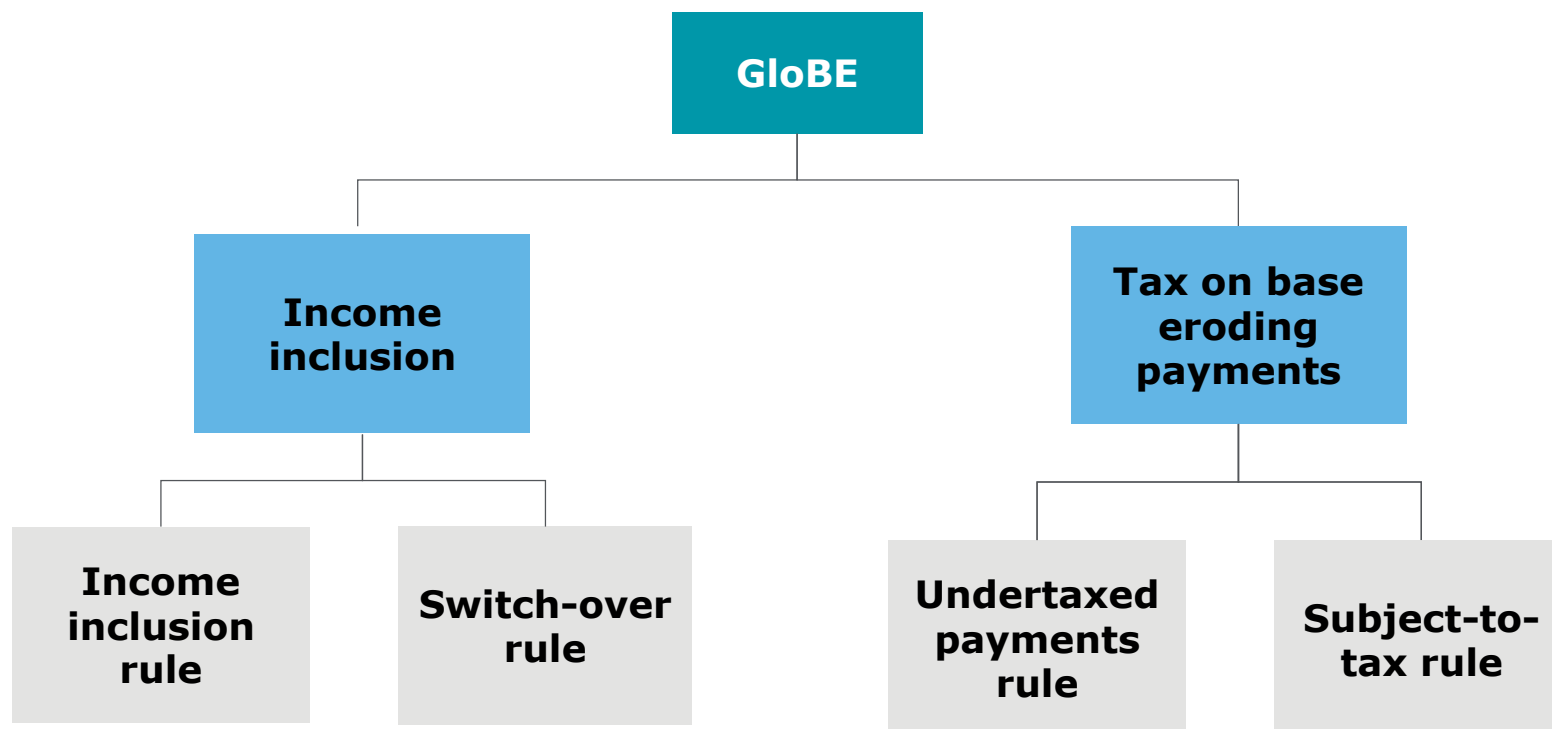
Technical design aspects

Though the consultation document specified that comments are welcomed from various stakeholders on all parts of the proposal, the consultation document seeks comments specifically on three technical design aspects of the GloBE proposal, which are as under:



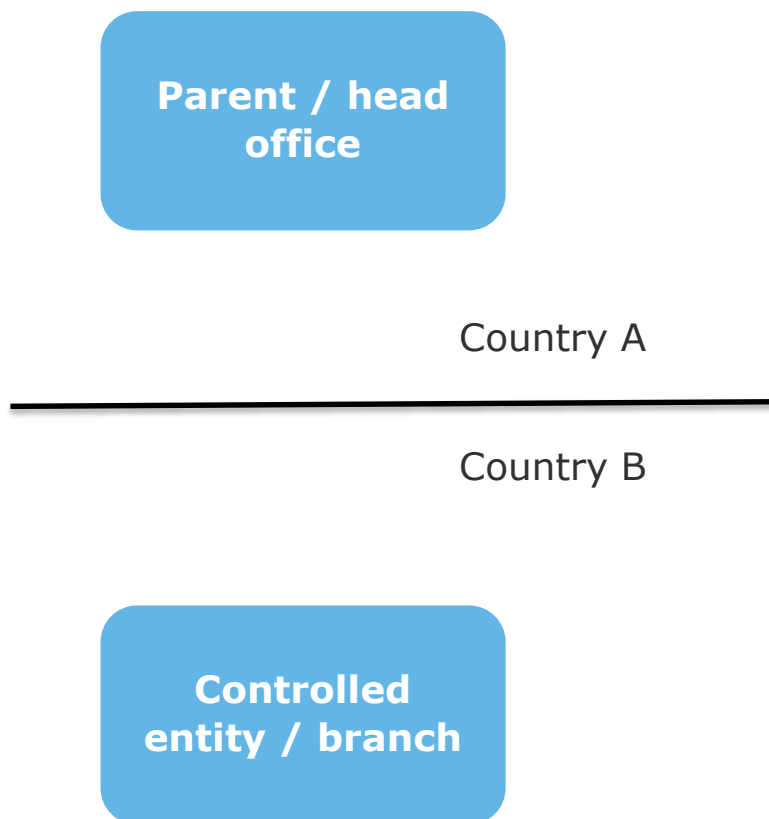
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Proposed rules



Pillar two: GloBE proposal

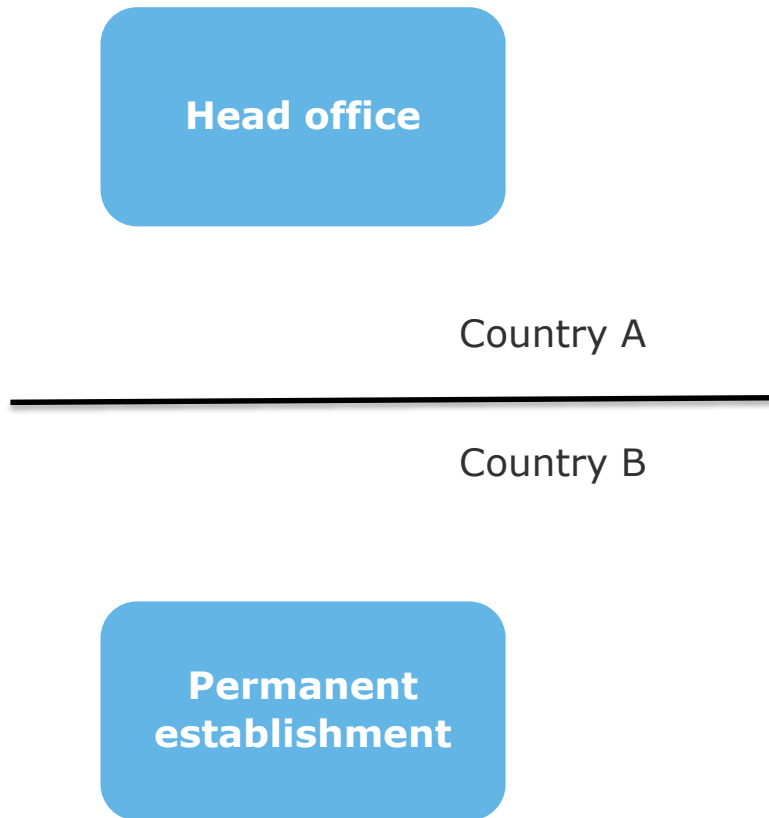
Income inclusion rule



- Trigger
If income earned by the branch or the controlled entity is subjected to tax in Country B at a rate below the 'minimum rate'
- Result
Such income to be taxed in Country A as income of HO / parent
- How to achieve the desired result
Changes to domestic law

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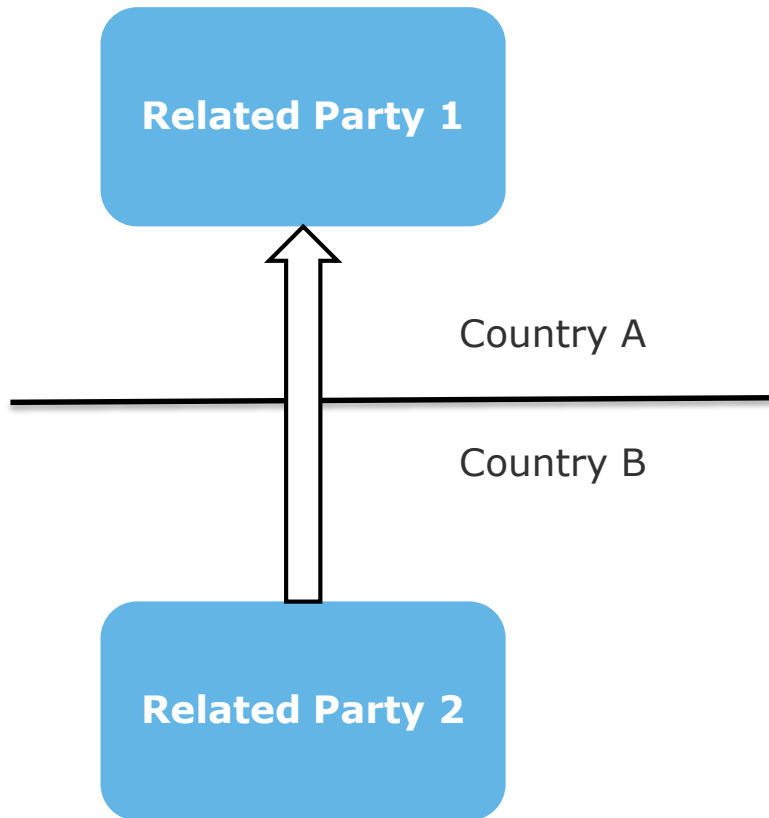
Switch-over rule



- Trigger
If income earned by branch is subjected to tax in Country B at a rate below the 'minimum rate' and tax treaty between A and B adopts exemption method
- Result
Country A to switch over from exemption method to credit method
- How to achieve the desired result
Changes to the tax treaty

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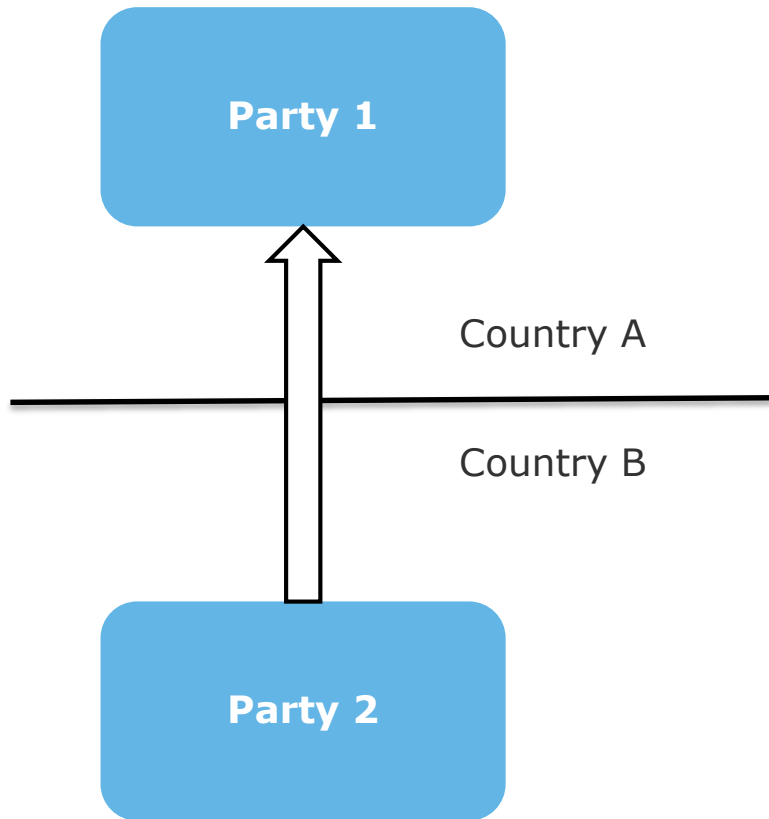
Undertaxed payments rule



- Trigger
If the payment by Related Party 2 is taxed in Country A at a rate below the 'minimum rate'
- Result
Country B to deny deduction for the payment to Related Party 2
Or
Country B to impose source based taxation (including withholding tax) on the payment
- How to achieve the desired result
Changes to domestic law

Pillar two: GloBE proposal

Subject to tax rule



- Trigger
If the payment by Party 2 is taxed in Country A at a rate below the 'minimum rate'
- Result
Country B to subject payment to withholding or other taxes
And
Country B to adjust treaty eligibility of certain items of income
- How to achieve the desired result
Changes to domestic law and tax treaty

Way forward

Way forward

Open issues

01

Proposal does not mention about what the minimum rate would exactly be

02

MNE groups to re-assess their financing and operational structuring before rules become effective

03

May not be feasible for countries with inadequate resources to manage this level of complexity

04

Undermines the attractiveness of various capital gain exemption or other tax concessions / schemes operating in individual countries

05

Substantial changes to be incorporated in existing domestic tax law and tax treaties

06

Increase in MNE group's current ETR, increase in compliance costs, risk of double taxation



Way forward

Update on key issues on OECD's discussions held on 29-30 Jan

Overall policy design

- Suggestions on improving policy design to keep it simple
- Focus should be restricted to BEPS issues as pillar two goes beyond digital economy
- Risk of over-complicating international tax
- Order in which rules will be applied

Income inclusion rule

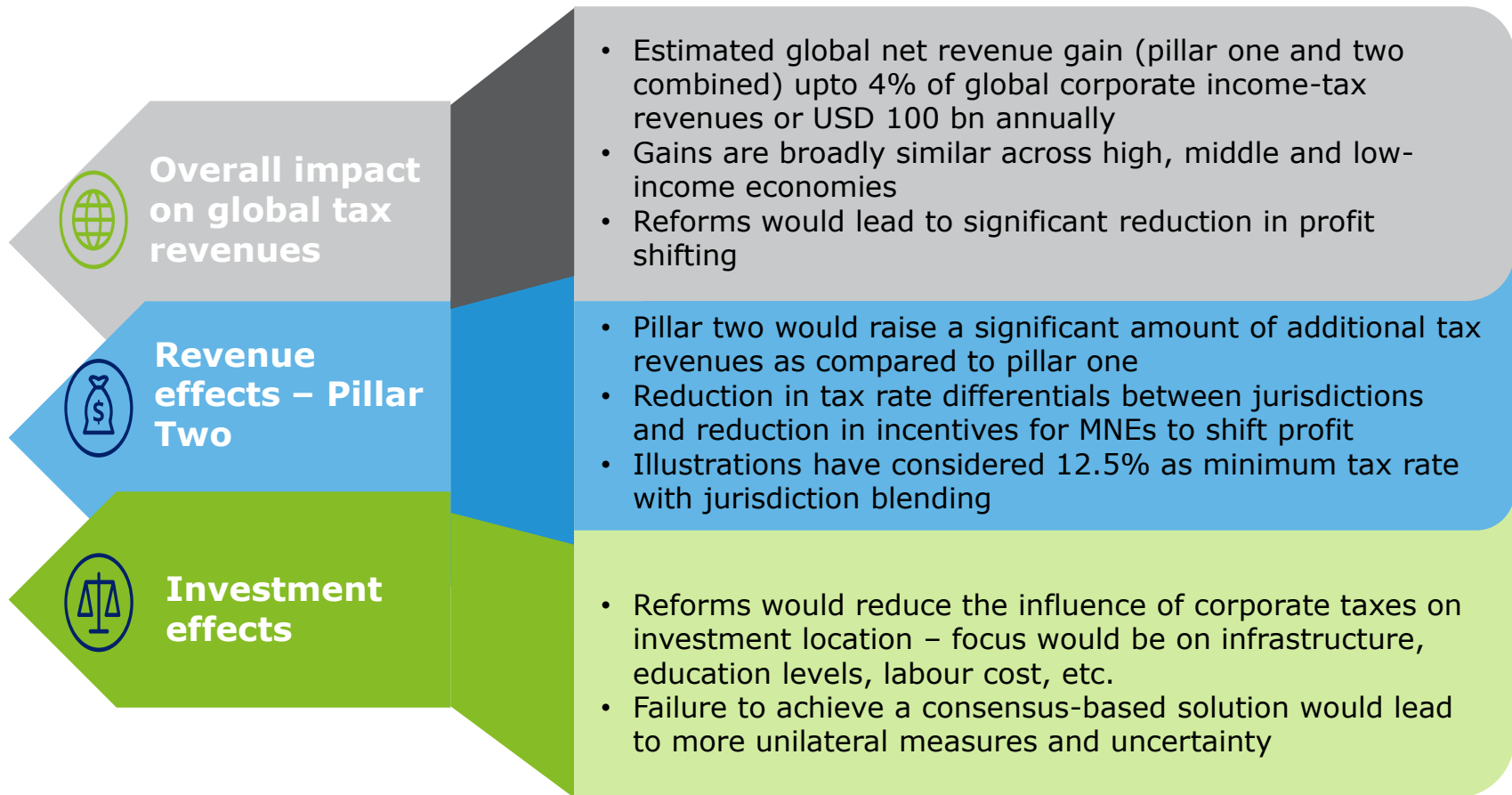
- Different mechanisms are being worked out to address temporary differences between tax and financial accounting
- Design and compliance challenges for blending of low-tax and high-tax income
- Substance carve-outs necessary to ensure focus is on BEPS issues
- Simpler switch-over rule

Tax on base-eroding payments

- Need to refine undertaxed payment rule which is less complex
- Role of subject to tax rule vis-à-vis undertaxed payment rule
- Scope of payments covered, minimum tax rate test, extent of adjustment required

Way forward

13 Feb update on economic analysis and impact assessment



Thank you!!