THE WESTERN INDIA REGIONAL COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

BEPS 2.0:
Pillar Two- India Impact

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BEPS 2.0 - Two Pillar Approach

PILLAR ONE

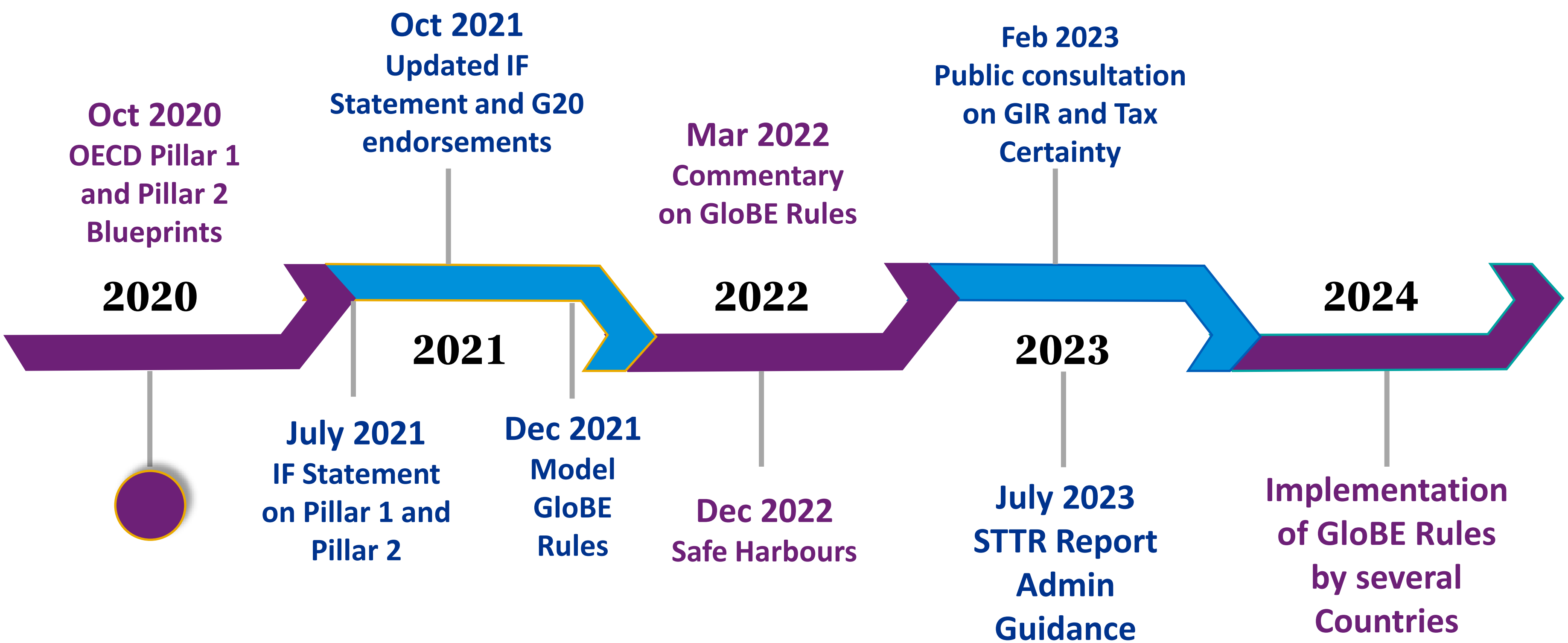
- Intent to levy tax on large MNE in the market jurisdiction
- Amount A – New nexus rule for allocating a portion of residual profits to market jurisdiction
- Amount B – Fixed return for routine marketing and distribution activities in the market jurisdiction
- Removal of DSTs and similar levies

Two Pillar Approach

PILLAR TWO

- Disincentivize tax driven cross border structures
- Aims to end "race to bottom" in corporate tax
- Co-ordinated set of rules to address profit shifting and unhealthy tax competition
- Global Minimum Tax – to subject MNE Groups to a minimum tax of 15% in each jurisdiction
- STTR – additional tax on payer on certain related party payments – if payee is not subject to 9% tax

Pillar 2 - Journey and Timelines



GloBE Rules – Building Blocks

10 Chapters…..

- 01 Scope
- 02 Charging Provisions
- 03 GloBE Income (or Loss)
- 04 Adjusted Covered Tax
- 05 ETR and Top-up Tax
- 06 Corporate restructuring and holding structures
- 07 Special regimes including distribution regimes
- 08 Administrative aspects
- 09 Transitional rules
- 10 Definitions

Broad Steps – Determination & payment of TUT

01

MNE Group & Constituent Entities

Identify Groups within Scope and the location of each Constituent Entity within the Group

02

Globe Income

Determine Income of Constituent Entity qua each jurisdiction

03

Covered Taxes

Determine taxes attributable to Income of a Constituent Entity qua each jurisdiction

04

Effective Tax Rate & Top-Up Tax

Calculate ETR of all Constituent Entities located in same jurisdiction and determine resulting Top-up Tax

05

Allocation – QDMTT, IIR & UTPR

Impose Top-up Tax under QDMTT or IIR or UTPR in accordance with agreed rule order

MNE Group In-Scope

1

Identify MNE Group within Scope

Consolidated revenue >= Euro 750 Million in atleast 2 out of 4 fiscal years immediately preceding the tested fiscal year

2

Identify Constituent Entities

IIR-UTPR applies

3

Remove Excluded Entities

IIR-UTPR doesn't apply

4

Identify location of each Constituent Entity for Jurisdictional blending

What if no foreign operations?

Whether Individual / Promoter covered?

Joint Venture? Associates? Portfolio Cos?

Branch?

Liason Office?

Project Office?

Permanent Establishment?

LLP? PF?

Trust?

Excluded Entities examples:

-Governmental entities

-NPO

-Pension Funds, etc

For determining location:

-Residency test of the entity?

-if POEM and incorporation in diff jurisdiction?

GloBE Income and Covered Taxes - Elements

GloBE Income:

1. Starting Point – Net income / loss of a Constituent Entity as per fit for consolidation accounts

2. Adjustments (selected examples)

- Excluded Dividends
- Excluded equity gain or loss
- Stock based compensation,
- No deductions for bribes, penalties, etc.

Short term / Long Term?
Portfolio Investment / Non Portfolio Investment?

Covered Taxes:

Covered Taxes Include:

- Corporate Income-tax
- Deferred Tax upto 15%
- CFC taxes
- WHT
- Taxes from STTR and Pillar1, etc.

Covered Taxes exclude:

- TUT
- DST / Equalisation Levy
- Payroll taxes and Property Taxes
- Excise taxes and Indirect taxes
- Deferred tax above 15%, etc.

Computation of Top-up Tax

GloBE income
Calculated on jurisdictional basis

Adjusted covered tax
Calculated on jurisdictional basis

Jurisdictional ETR
Adjusted covered tax/ GloBE income

Top-Up Tax Percentage
15% - Jurisdictional ETR

x

Excess Profit
GloBE income – Substance based income exclusion (SBIE)**

+

Additional Current Top-Up Tax

–

Domestic Minimum Top-Up Tax (DMTT)

Jurisdictional TUT

Constituent Entity TUT
Jurisdictional TUT x (GloBE income of CE/ Aggregate GloBE income of all CEs in LTJ, having positive GloBE income for fiscal year)****

****excluding constituent entities with GloBE loss for fiscal year

****SBIE for a jurisdiction**	=	10%* of eligible payroll costs of eligible employees located in that jurisdiction	+	8%* of average (i.e. opening + closing) net book value of eligible tangible assets located in that jurisdiction

These percentages are for fiscal year beginning in 2023 (article 9.2.1). They decline gradually over 10 years to reach 5% for fiscal year beginning 2033 and later

Top-up Tax Calculation - Illustration

Particulars	Amount
Covered Taxes	100
GloBE Income	1000
ETR of a Jurisdiction	10%
TUT%	5%
SBIE	200
Excess Profit	800
Excess Profit * TUT%	40
Jurisdictional TUT	40

Pillar 2 – Rule Order

1
- STTR

2
- GloBE Rules

2a
- Qualified Domestic Minimum Top up Tax

2b
- IIR

2c
- UTPR

Two Interlocking GloBE Rules – IIR and UTPR

Income Inclusion Rule(IIR)

- **TUT to be paid in jurisdiction of UPE**
- **Top-down approach to be followed– Except in case of Split ownership**
- **Credit to be given for DMTT**
- **De minimis threshold to be applied for smaller jurisdictions:**
  - **Average GloBE Revenue <Euro 10 million**
  - **Average GloBE Income < Euro 1 million**

Undertaxed Payment Rule(UTPR)

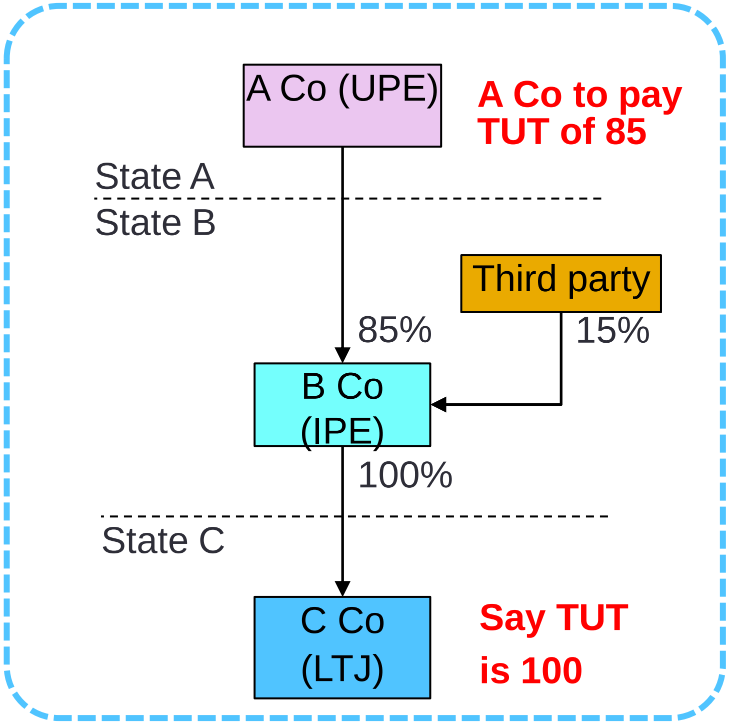
- **Back stop to IIR**
- **Denial of deduction or similar adjustments**
- **Not limited to ‘related party payment’**
- **Can mop up TUT not captured under IIR**
- **Allocation Key based on two factors:**

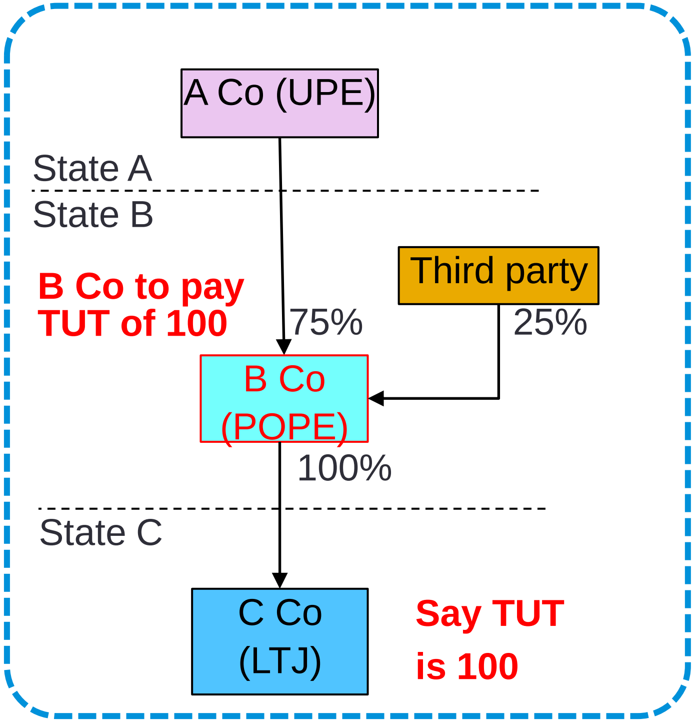
$$50\% \times \frac{\text{No. of Employees in a State}}{\text{No. of Employees in all UTPR implementing States}} + 50\% \times \frac{\text{Total value of Tangible Assets in a State}}{\text{Total value of Tangible Assets in all UTPR implementing States}}$$

Top-down approach and Split ownership approach

Scenario 1: Top-down approach – applies if third party ownership in intermediate parent is ≤ 20%

Scenario 2: Split ownership approach i.e. POPE - applies if third party ownership in intermediate parent is > 20%





Impacts a Country's right to tax and the amount that can be collected as Top-up Tax

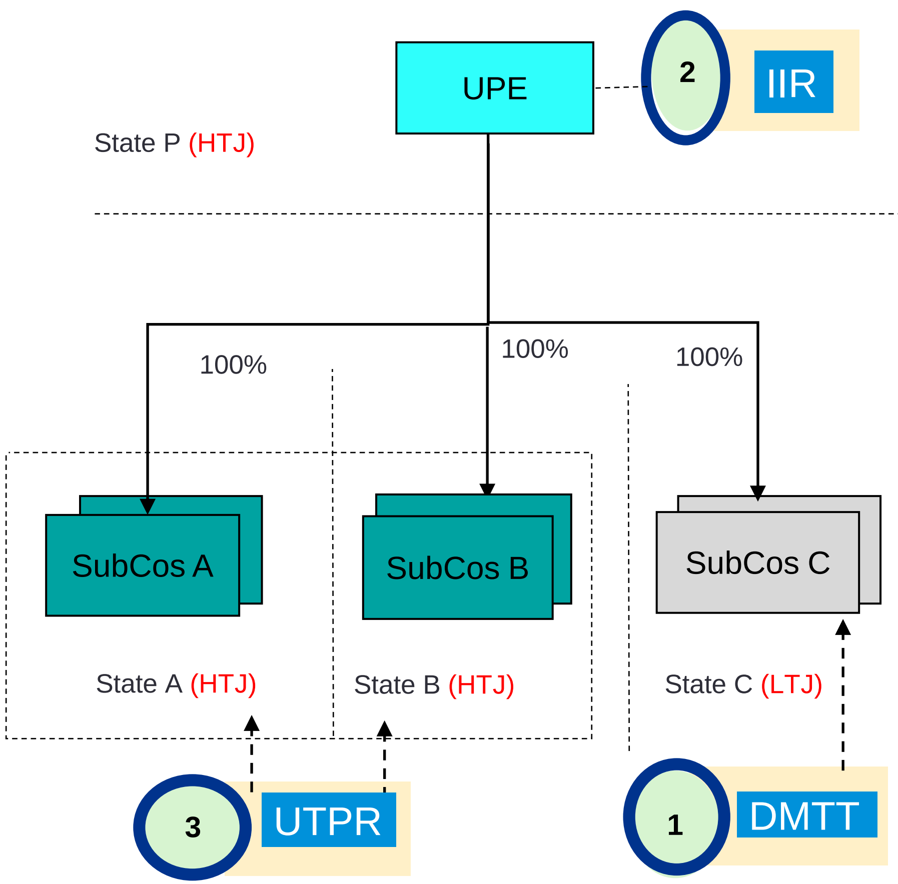
Transitional Safe Harbour

Satisfaction of one of the conditions can help you get exemption for the jurisdiction	**Transitional Safe harbour** (based on Qualified CbC Report)
	(Applicable beginning on or before 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028 – Once our always out)
1. De Minimis	**Total Revenue < EUR 10m and** **Total Income/ Profit before tax < EUR 1m**
Comments	**Total revenue/income:** As reported in Qualified CbC Report
2. Effective Tax Rate (ETR)	**ETR $\geq$ Transitional rate**
Comments	**ETR: Tax/ Profit before tax** **Tax:** Income tax expense from the Qualified FS **Profit before tax:** As reported in Qualified CbC Report **Transitional Rate:** 15% for 2023/ 2024 16% for 2025 17% for 2026
3. Routine profits Test	**Total Income/ Profit before tax $\leq$ Substance Based Income Exclusion (SBIE)**
Comments	**Profit before tax:** As reported on Qualified CbC Report **SBIE:** Calculated using GloBE rules

GloBE Information Return and Scrutiny

- Designated Filing Entity and Jurisdiction
- Filing – 15 months from end of tested period
- Scrutiny - 36 months

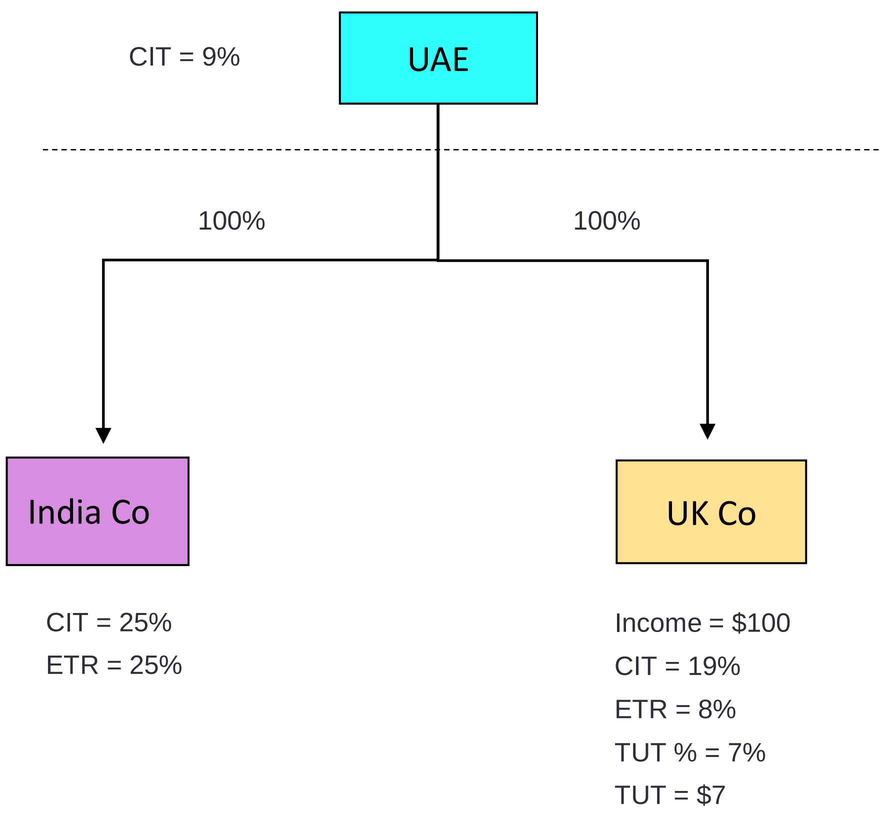
Case 1 - How GloBE can significantly impact ETR



Jurisdiction	Profit/ (Loss) as per CFS	Tax rate	Tax (Pre GloBE)	GloBE tax impact	Total tax (Post GloBE)
UPE	1,000	30%	300	NIL	300
A Co	2,500	25%	625	NIL	625
B Co	(5,000)	20%	NIL	NIL	NIL
C Co	4,000	NIL	NIL	600	600
Total	2,500		925	600	1,525
ETR			37%	24%	61%

Although ETR at global level as per CFS is > 15% (i.e. 37%), GloBE Rules can still apply if jurisdictional ETR is < 15%

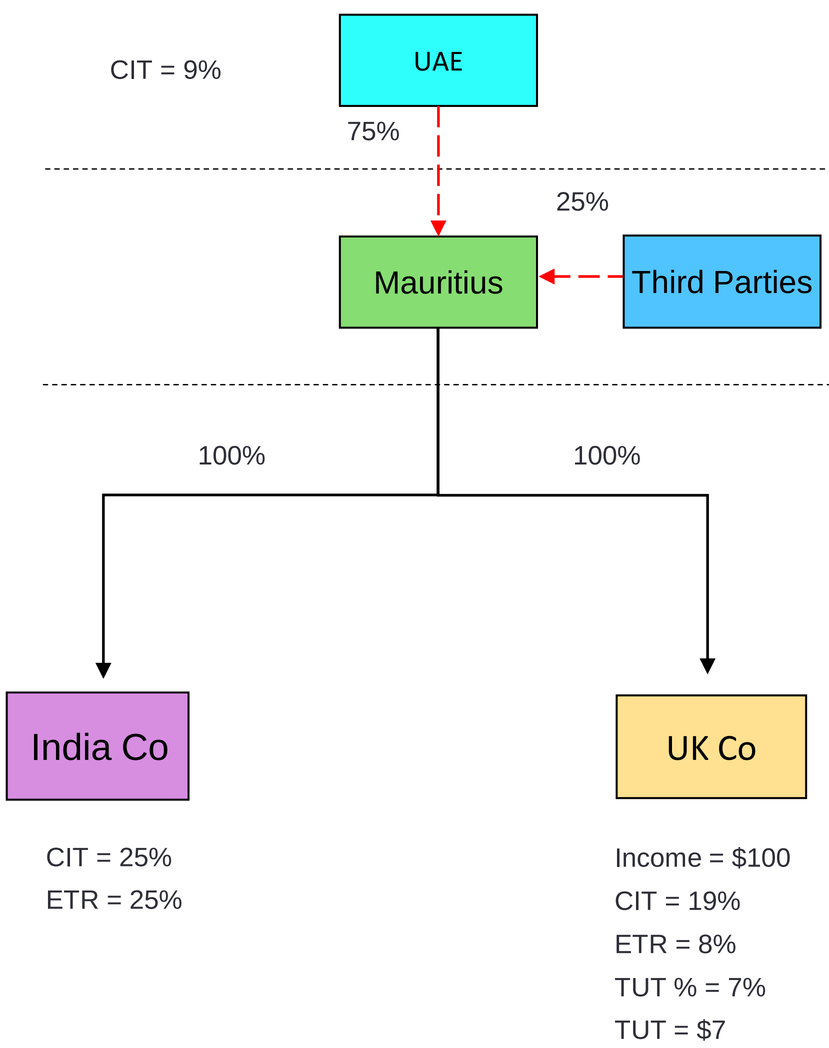
Case 2 - Interplay of QDMTT, IIR and UTPR



Which Country gets right to collect TUT?

- Scenario 1- If UK imposes DMTT
- Scenario 2- If UK does not impose DMTT and UAE imposes IIR
- Scenario 3- If UK does not impose DMTT and UAE does not impose IIR?

-Case 3 - Interplay of QDMTT, IIR and UTPR



Which Country gets right to collect TUT?

- Scenario 1- If UK imposes DMTT
- Scenario 2- If UK does not impose DMTT and UAE and Mauritius imposes IIR
- Scenario 3- If UK does not impose DMTT and UAE and Mauritius does not impose IIR?

Case 4 - Revenue Test for New Group

Say, India adopts GloBE Rules w.e.f from FY 24-25. Evaluate applicability of GloBE Rule to X Co MNE Group in each of the following Scenarios

Scenario 1: Say, X Co Group formed in FY 19-20 (5 years available prior to tested year)

Scenario 1A:	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
Revenue	810	720	700	780	800
Scenario 1B:	**FY 19-20**	**FY 20-21**	**FY 21-22**	**FY 22-23**	**FY 23-24**
Revenue	810	720	700	730	800

Scenario 2: Say, X Co Group formed in FY 21-22 (3 years available prior to tested year)

Scenario 2A:	FY 21-22	FY 22-23	FY 23-24
Revenue	700	780	800
Scenario 2B:	**FY 21-22**	**FY 22-23**	**FY 23-24**
Revenue	780	730	800

Scenario 3: Say, X Co Group formed in FY 22-23 (2 years available prior to tested year)

Scenario 3A:	FY 22-23	FY 23-24
Revenue	780	800
Scenario 3B:	**FY 22-23**	**FY 23-24**
Revenue	730	800

Scenario 4: Say, X Co Group formed in FY 23-24 (1 year available prior to tested year)

Scenario 4A:	FY 23-24
Revenue	800
Scenario 4B:	**FY 23-24**
Revenue	730

Case 5 - Is Excluded Entity’s Revenue considered?

Whether Revenue from Excluded entity is to be considered for determination of consolidated revenue test of MNE Group?

- Whether Excluded Entity is a Constituent Entity?
- Whether Excluded Entity is subject to GloBE Rules?
- Whether Excluded Entity will qualify as a Group Entity?

Subject to Tax Rule (STTR)

- **Top-up withholding tax on certain 'covered payments' to 'connected persons' – subject to nominal rate of tax in recipient jurisdiction below 9%**
- **Treaty based implementation by way of MLI**

Covered Payments

- Interest
- Royalties
- Franchise fees or other similar payment for use or right to use intangibles
- Insurance or reinsurance premiums
- Guarantee, brokerage or financing fee
- Rent or other payment for use or right to use moveable property
- Any kind of services

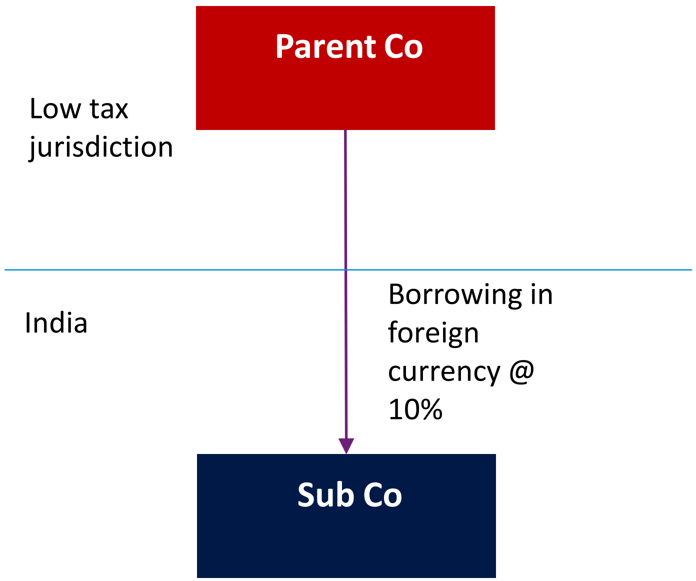
Connected Persons

A person or enterprise would be connected to another person if:

- one possesses greater than 50% of beneficial interest, or aggregate vote and share-value, or beneficial equity interest in the other
- a third person possesses the above requirements in both persons

Capital Gains?
Dividend?

Case 6 - STTR Impact



- Borrowing by Indian Sub Co in foreign currency from Parent Co
- Parent Co located in low tax jurisdiction where say, no tax on interest income
- Assumed:
  - ECB compliant under FEMA
  - Thin-capitalization as per Sec 94B of the IT Act
- Current withholding in India @5% u/s 194LC

Impact of STTR?

Thank You

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