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ERFA Tax Conference  
11 October 2022  
PILLAR II Observations



2022 CORIT



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# Agenda

- Overview
- Practical observations on selected issues
  - by Mette Mellemgard Jakobsen and Karl Berlin
- Latest developments on implementation and timing
- How does the Undertaxed Payments Rule (UTPR) work?



# Overview

The OECD report  
*Addressing Base  
Erosion and Profit  
Shifting* was  
released.

OECD and G20  
countries  
adopted a 15-  
point action plan  
to address BEPS

Final reports on  
the Actions were  
published

The Two-Pillar Solution  
OECD/G20 Inclusive Framework  
(137 countries)

OECD released  
Model Rules

Proposal EU Directive

OECD Commentary and  
Examples released

Report on tax incentives  
and the Global Minimum  
Corporate Tax

(Initial) Expected  
implementation  
(OECD)



## Purpose

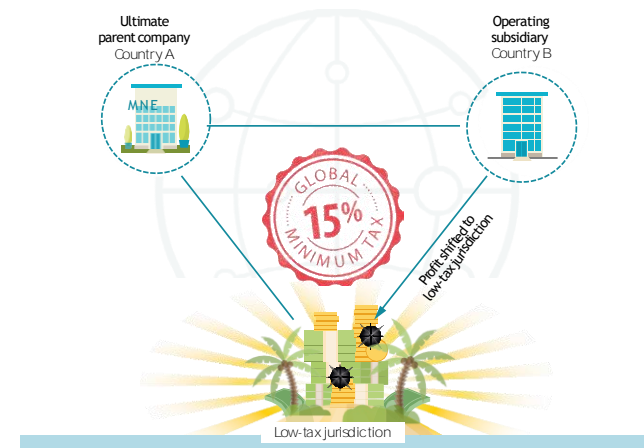
- Reduce the incentive for MNE's to profit shift
- Reduce tax competition

# Overview

## GloBE rules in a nutshell

- Calculate ETR (Low tax jurisdiction requirement)

$$\frac{\text{Adjusted Covered Taxes (jurisdictional)}}{\text{Net GloBE Income (jurisdictional)}}$$



- If ETR below 15 %
  - Income Inclusion Rule (“IIR”): Top-up Tax is attributed to parent entities (ultimate or intermediate)
  - Undertaxed Payments Rule (“UTPR”): Denial of deduction or equivalent measures (back stop rule)

$$\text{Top-up Tax: } \underbrace{(15\% - ETR)}_{\text{Top-Up Tax Percentage}} \cdot \underbrace{(\text{Net GloBE Income} - \text{Substance Based Income Exclusion (jurisdictional)})}_{\text{Excess Profits}}$$



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# Observations on selected issues

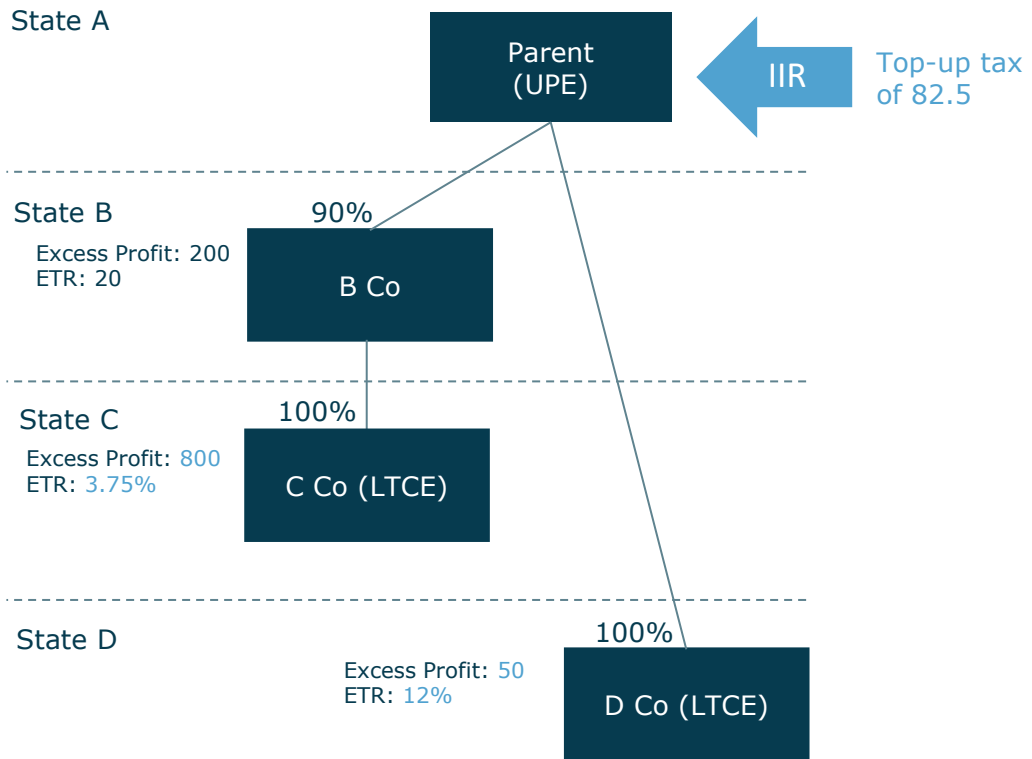
Practical business observations by  
Mette Mellemgaard Jakobsen &  
Karl Berlin



# Latest developments on implementation

EU Directive?		OECD Pillar II?		Increased tax rates?	
	Proposal agreed by 26 MS. Hungary still appears to make use of its veto. Expected implementation 2024		Released draft legislation, however Liz Truss has announced that she intends to reverse the planned rise in Corporation Tax to 25% next year		Taking steps towards implementation of Pillar II and establish corporate income tax rates varying from 0-9% up to a CIT in compliance with the GMT
	Joint statement reaffirming the implementation of the GMT – also on a unilateral level. Expected implementation 2023		The Inflation Reduction Act includes a Corporate Alternative Minimum Tax. The amendment of GILTI still uncertain (mid-term election)		Remains open whether and how Singapore will implement. On 20 Sep 2022 closed-door consultation was initiated
	Expresses concern on the additional administrative pressure		Released consultation paper on Oct 2022		Will implement a minimum tax rate for in-scope MNEs (QDMMT) as of 1 January 2024
			In April 2022 it was announced, that the government anticipates implementation of IIR with effect of 2023 and UTPR with effect of 2024		Intends to introduce a QDMMT
			In July 2022 the introduction of GMT was announced		Launched public consultation on QDMMT

# How does the UTPR work?



## Top-up Tax attributed to UPE

- C Co:  $800 \times (15\% - 3.75\%) \times 90\% = 81$
- D Co:  $50 \times (15\% - 12\%) \times 100\% = 1.5$

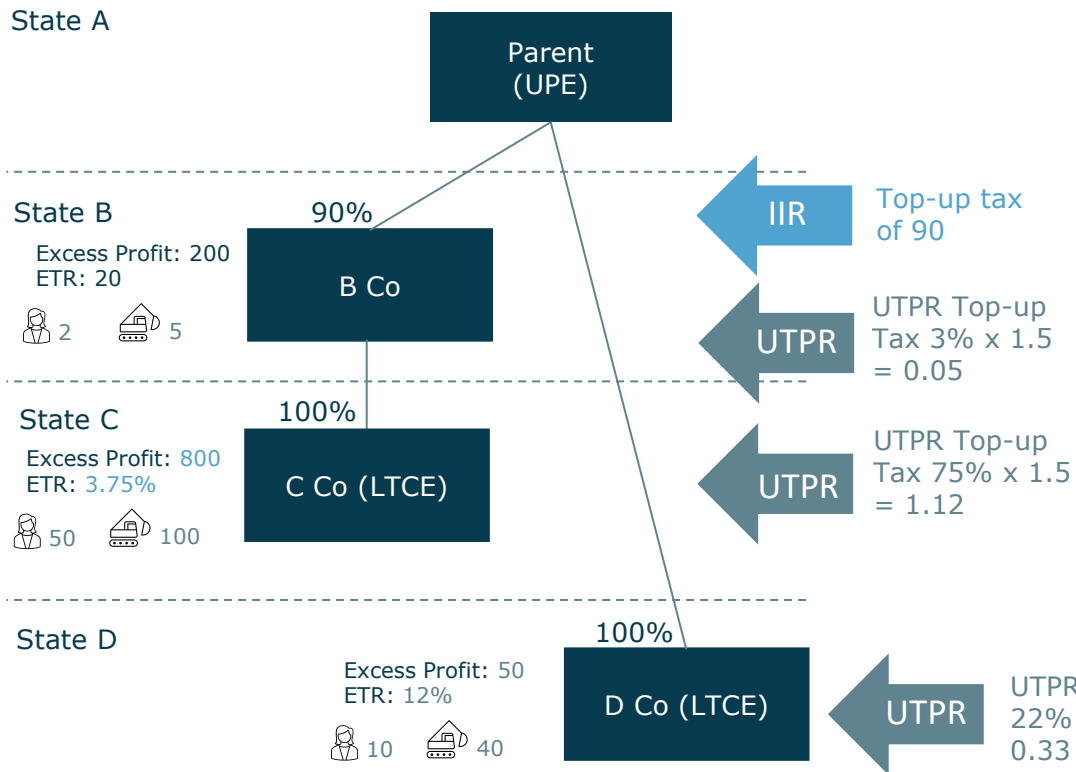
**Total Top-up tax 82.5**

## UTPR

- Top-up Tax attributable to the UPE's Ownership Interests in C Co and D Co is fully brought into charge under State A's IIR
- If State A's IIR is a Qualified IIR, the UTPR does not apply



# How does the UTPR work?



## Top-up Tax attributed to B Co

- C Co:  $800 \times (15\% - 3.75\%) \times 100\% = 90$

## UTPR

- Total UTPR Top-up Tax = 91.5
  - C Co:  $800 \times (15\% - 3.75\%) \times 100\% = 90$
  - D Co:  $50 \times (15\% - 12\%) \times 100\% = 1.5$
- Allocable UTPR Top-up Tax = 1.5
  - Total UTPR Top-up Tax - Top-up Tax under a Qualified IIR

**Total Top-up tax 91.5**

- Allocation (per jurisdiction with QUTPR):

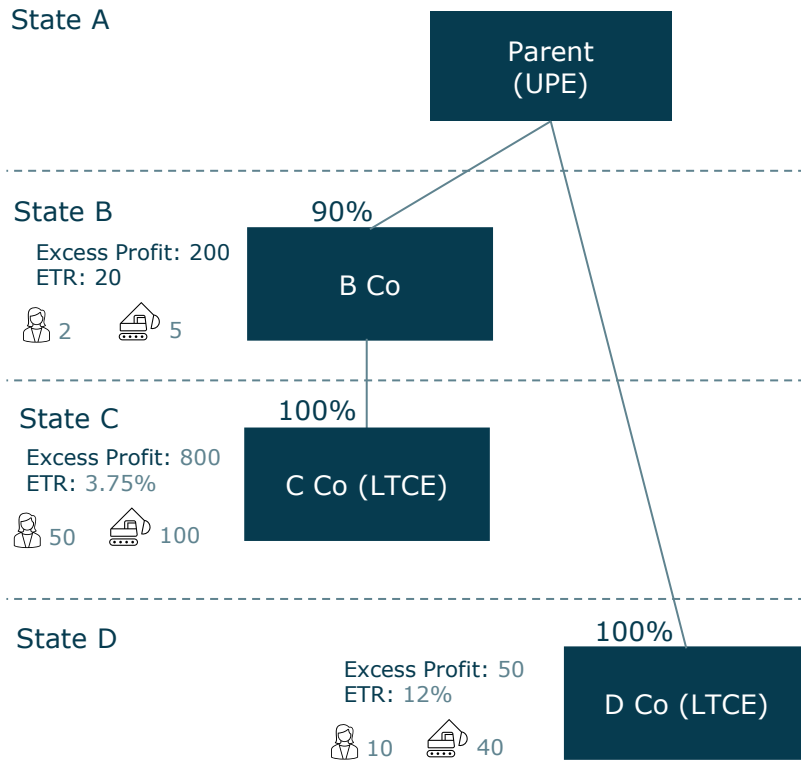
$$50\% \times \frac{\text{Employees (jurisdictional)}}{\text{Employees in all QUTPR}} + 50\% \times \frac{\text{Tangible Assets (jurisdictional)}}{\text{Tangible Assets in all QUTPR}}$$

## UTPR Percentage

	B Co	C Co	D Co	Total
👤	2	50	10	62
🏠	5	100	40	145
%	3%	75%	22%	100%



# How does the UTPR work?



## How devilish is the architecture of the UTPR?

### UTPR

- Total UTPR Top-up Tax = 91.5
- Allocable UTPR Top-up Tax = **91.5**
  - Total UTPR Top-up Tax – Top-up Tax under a Qualified IIR
  - Allocated to jurisdictions with QUTPR
- Denial of deduction or *equivalent adjustments*
  - *Could include an additional amount of deemed income representing a reversal of deductible expenses incurred in current prior period.*
  - *Could take form of an additional Tax levied directly on a resident taxpayer in an amount equal to the allocated UTPR Top-up Tax Amount.*

UTPR • EU Directive: MS shall ensure that its CE are subject to a UTPR top-up tax for an amount allocated to that MS.

### Considerations

- Treaty obligations
  - Relevant whether linked to “participation” as CFC rules?
- How to treat non-qualified UTPR / non-qualified IIR?

# Policy considerations on implementation

In a recent report published by the World Bank Group, the policy options are:

Status quo	Level 1 Protecting the tax base		Level 2 Implementing the core GMT rules		Level 3 Consider broader CIT reform	
Do nothing	Introduce a QDMTT	Evaluate and reform tax incentive regime	Implement IIR	Implement UTPR	Broader CIT rate reform	Optimizing tax incentive offering to the GMT rules

- The incentive to implement the core GMT rules (to some extent) depends on how to understand the architecture of the UTPR
  - Can the back-stopper be the knock-on creating the domino effect?



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