

# Navigating the changing landscape of international taxation

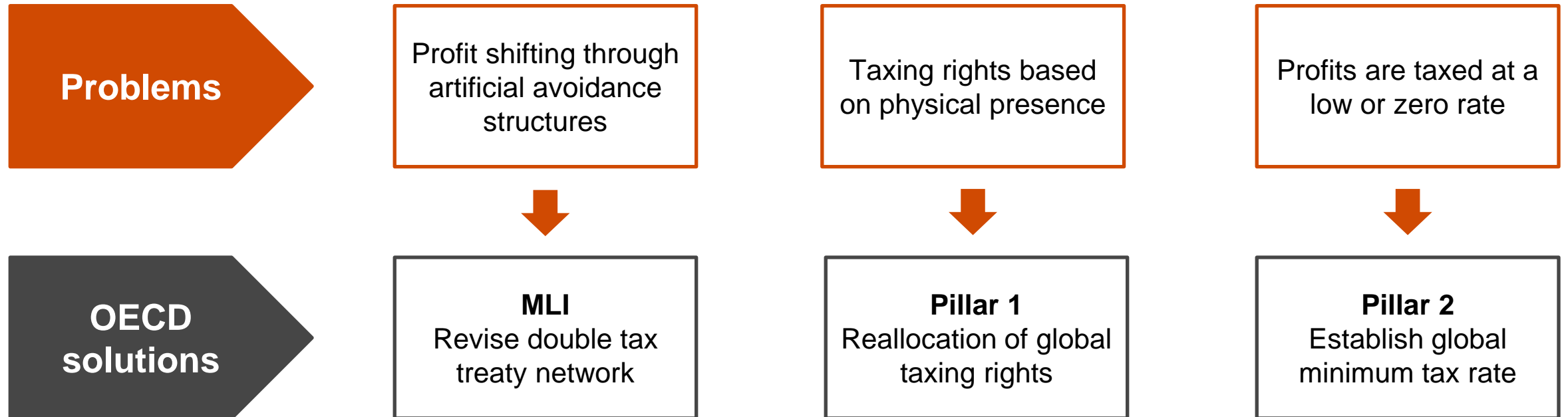
Presentation by PwC Thailand  
14 November 2023



# Agenda

- |    |   |    |
|----|---|----|
| 1. | <b>MLI</b> and the impact on tax treaties             | 04 |
| 2. | <b>Pillar One</b> : the reallocation of taxing rights | 11 |
| 3. | <b>Pillar Two</b> : the global minimum tax            | 22 |

# Three main tax problems for cross-border business



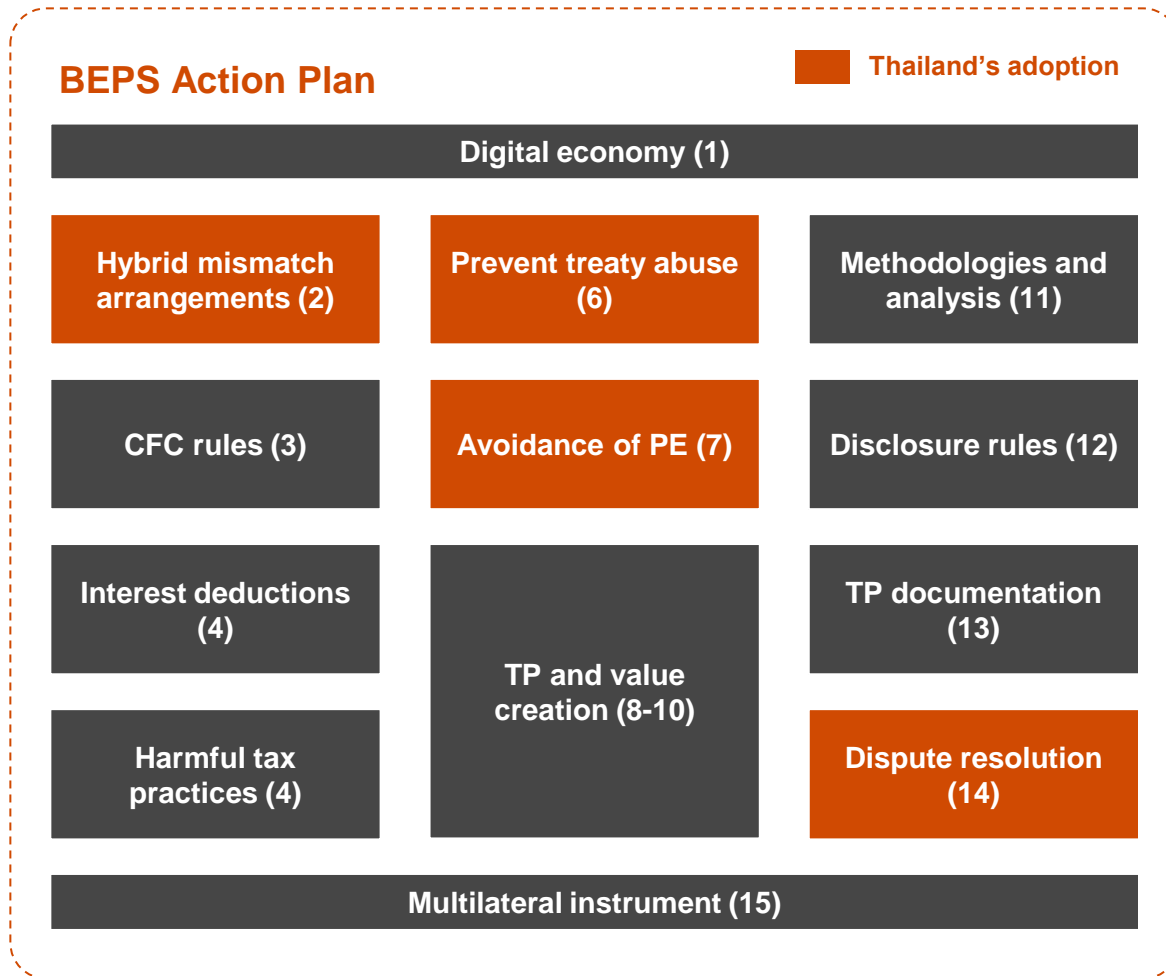


1

# **MLI** and the impact on tax treaties



# BEPS Action Plan – Thailand MLI adoption



**Thailand's adoption of MLI**

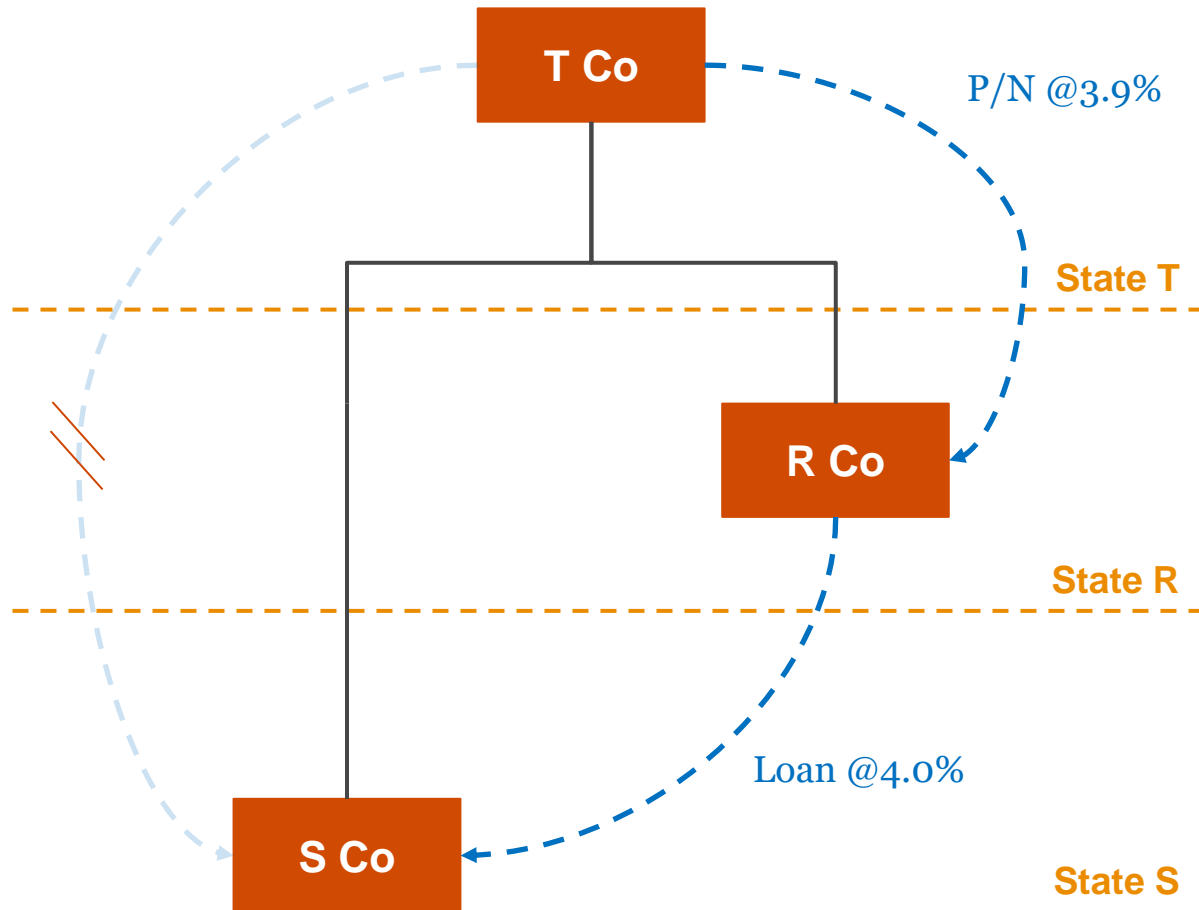
- Thailand signed the MLI on 9 February 2022.
- The instrument of ratification was submitted to the OECD on 31 March 2022.
- The MLI became effective in Thailand on 1 July 2022.

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What is the Principal Purpose Test and how does it address treaty abuse?



# Preventing treaty abuse: Principle Purpose Test (PPT)

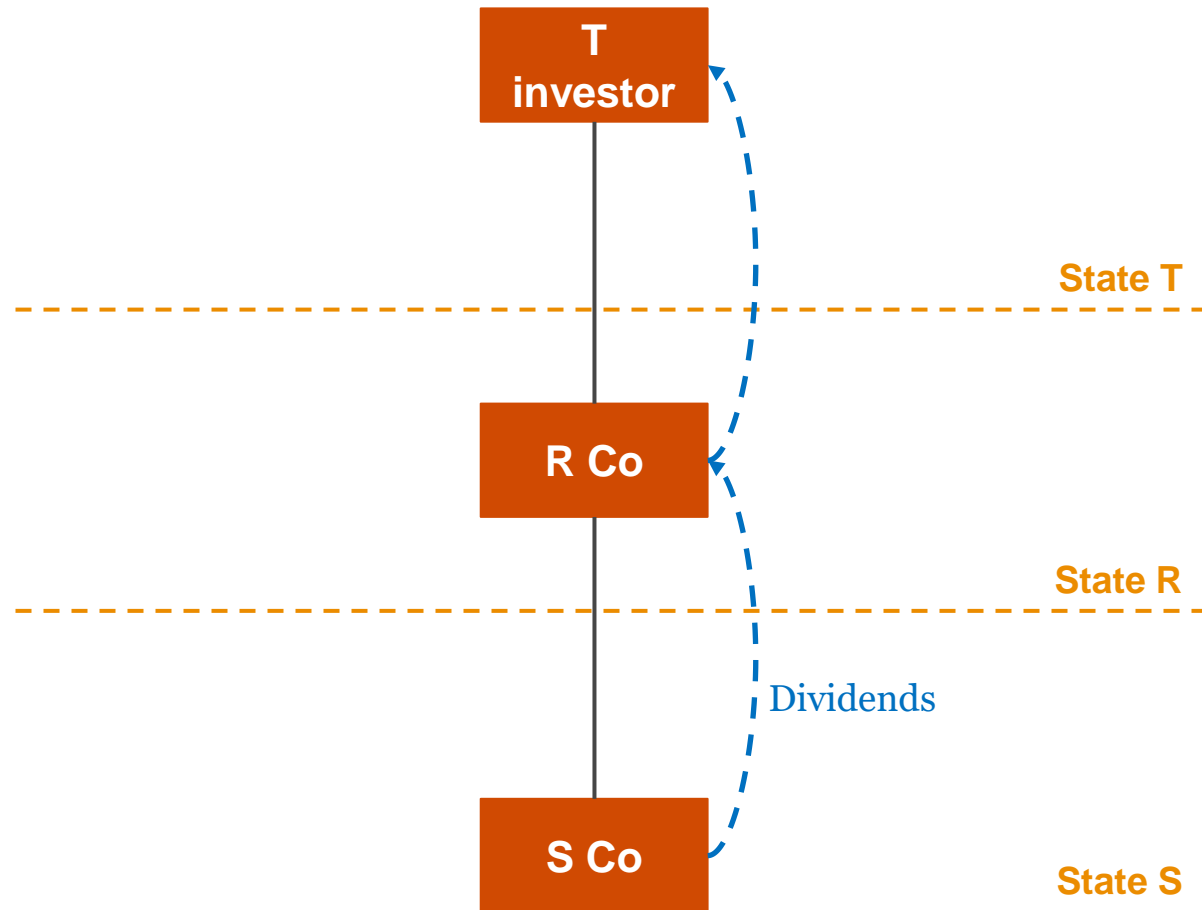


## Facts

- T Co has acquired all the shares and debts of S Co, including a loan made to S Co at 4% interest.
- State T does not have a DTA with State S, so any interest paid from S Co to T Co is subject to a withholding tax at a rate of 25%.
- Under the State R-State S DTA, however, the withholding tax on interest is reduced to 5%.
- T Co decides to transfer the loan to R Co, in exchange for promissory notes payable on demand on which interest is payable at 3.9%.

**What are the tax implications on the interest paid from S Co to R Co?**

# Preventing treaty abuse: Principle Purpose Test (PPT)

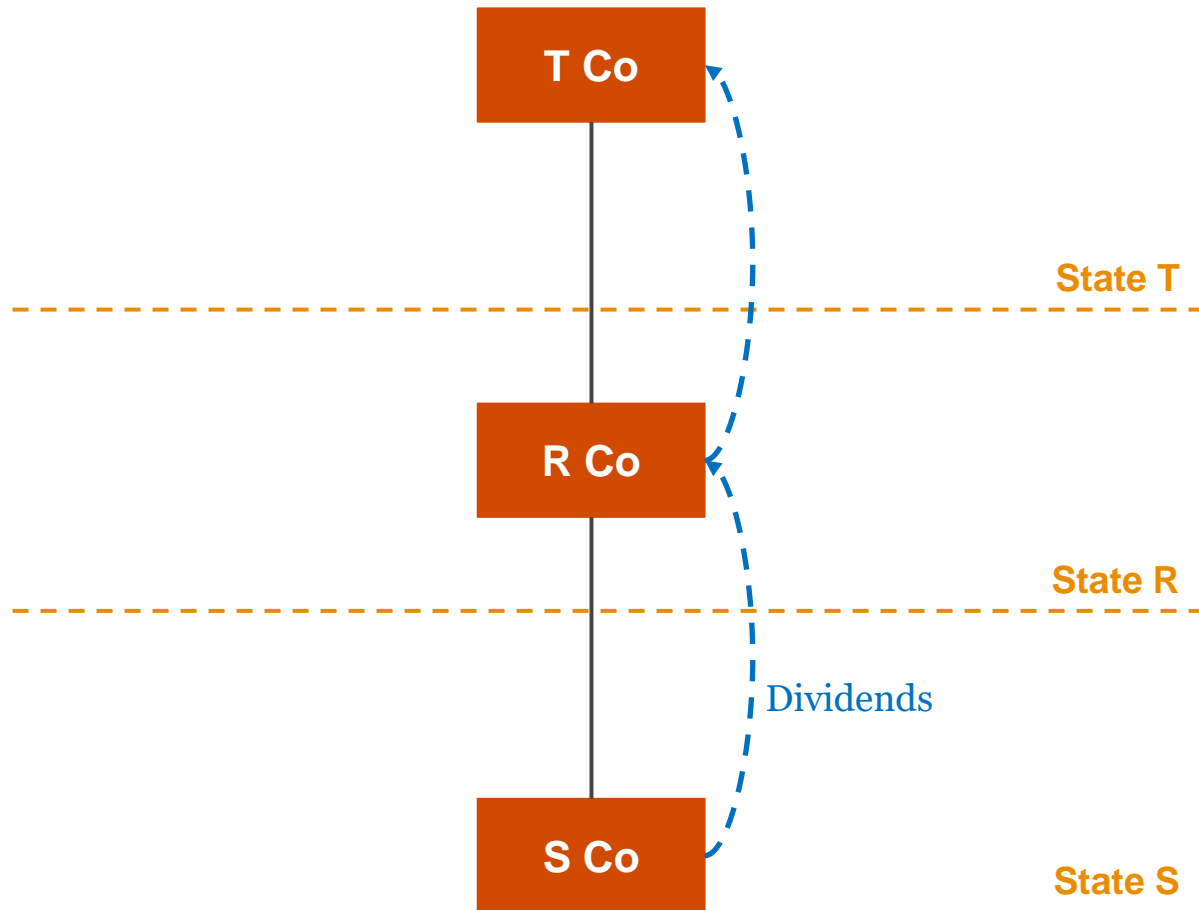


## Facts

- R Co, an investment vehicle, manages a portfolio of investments in the international financial market.
- R Co holds 15% of its portfolio in shares of companies resident in State S, where it receives annual dividends.
- Under the DTA between State R and State S, the withholding tax rate on dividends is reduced from 30% to 10%.
- R Co's investment decisions take into account the existence of tax benefits provided under State R's tax treaty network.
- A majority of investors in R Co are residents of State R, but some are residents of States with which State S does not have a tax treaty.
- R Co's investment strategy is not driven by the tax position of its investors. R Co annually distributes almost all of its income to its investors.

**What are the tax implications on the dividends paid from S Co to R Co?**

# Preventing treaty abuse: Principle Purpose Test (PPT)



## Facts

- T Co is contemplating the investment in S Co but knows State T and State S does not have a tax treaty, resulting in a 30% withholding tax on dividends.
- Under the DTA between State R and State S, the withholding tax rate on dividends is reduced from 30% to 10% and State R does not impose any withholding tax on dividends paid.
- T Co establishes a pure holding company in R Co for the purpose of acquiring S Co.

**What are the tax implications on the dividends paid from S Co to R Co?**

# Takeaways: MLI



With DTAs amended, taxpayers need to consider synthesised texts (if available) or read the DTA alongside the MLI positions of both countries.



Previous beneficial ownership and substance rules are no longer sufficient in availing benefits.



Taxpayers need to assess current structures and transactions set up and consider potential risks of the MLI impact to treaty benefits.



2

# **Pillar One**

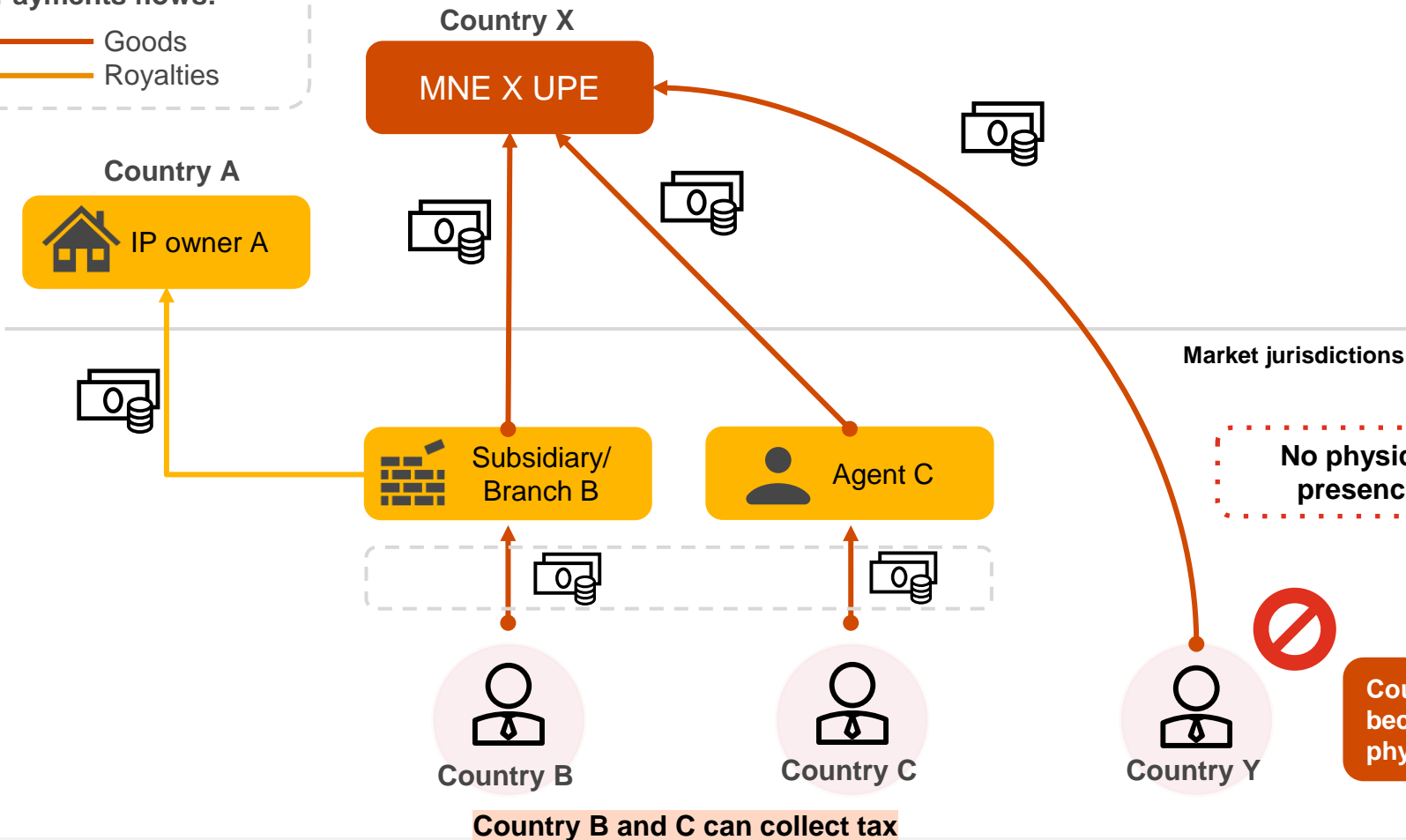
## The reallocation of taxing rights



# What is the problem?

## Payments flows:

- Goods
- Royalties



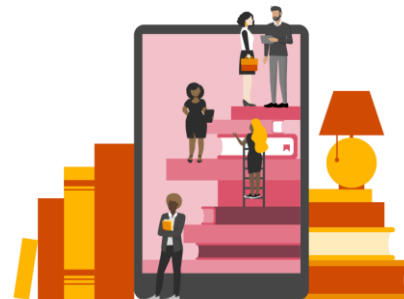
Profit of a foreign company can only be taxed in another country where it has a physical presence.

**Nexus = Physical presence**

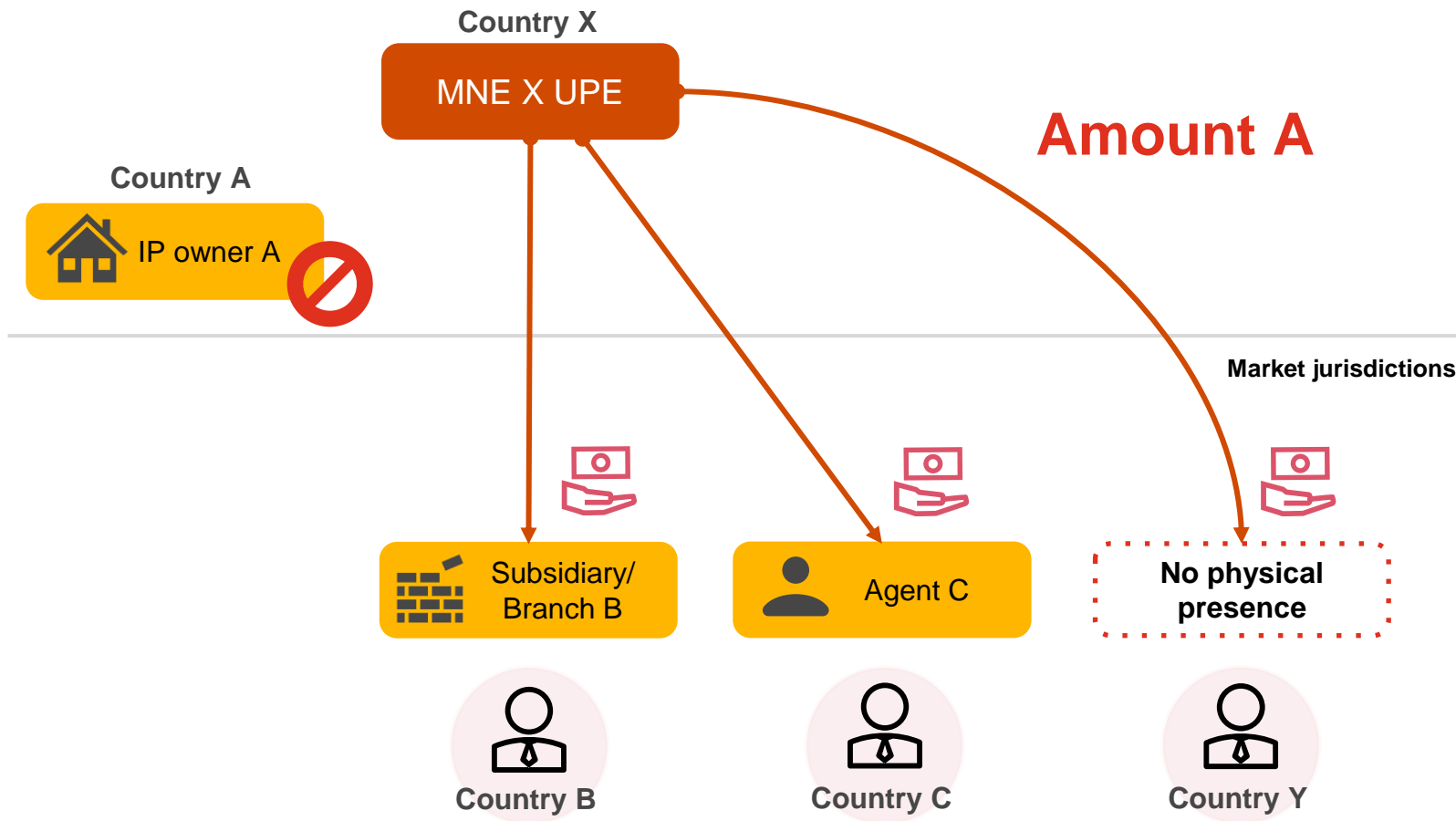
No physical presence

Country Y can't collect tax because there is no physical presence

Country B and C can collect tax

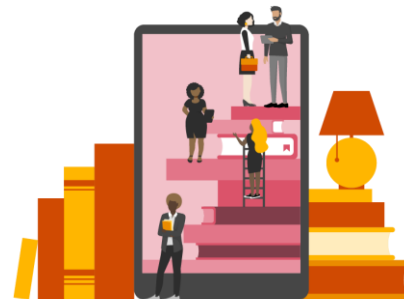


# What is the solution?

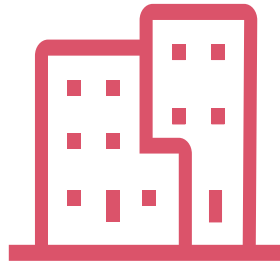


Pillar One gives market jurisdictions new taxing rights over an MNE's profit, whether or not there is a physical presence (referred to as Amount A).

**Nexus = Revenue arising in market jurisdiction**



# Amount A: Who is in scope?



Consolidated adjusted  
revenue

**> EUR 20,000m**

**&**



Consolidated pre-tax  
profit margin

**> 10%**

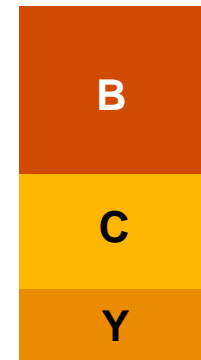
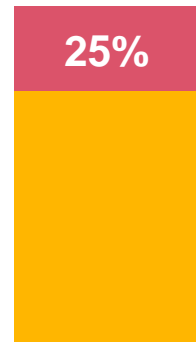
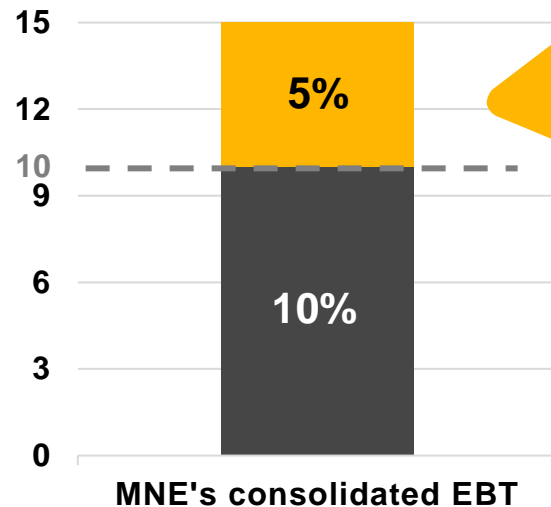
## Excluded businesses:

- Extractives
- Regulated financial services
- Autonomous domestic business
- Defence

# Amount A: Determining the profit to be allocated

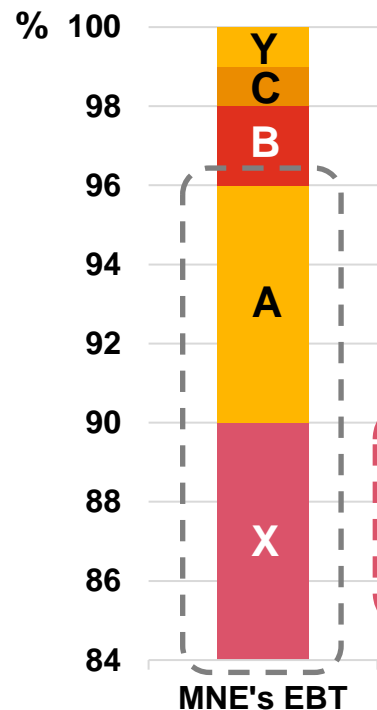


25% of the excess over 10% of the MNE's consolidated EBT will be allocated to market jurisdictions in a proportion of revenue sourced in those countries (third-party sales)

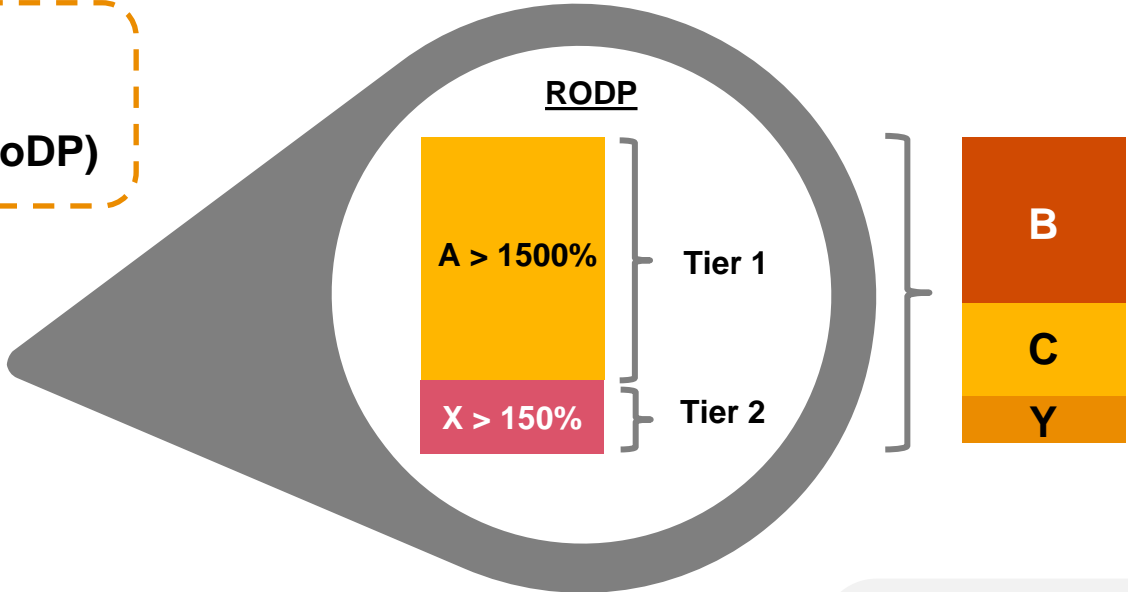


# Amount A: Allocating the profit

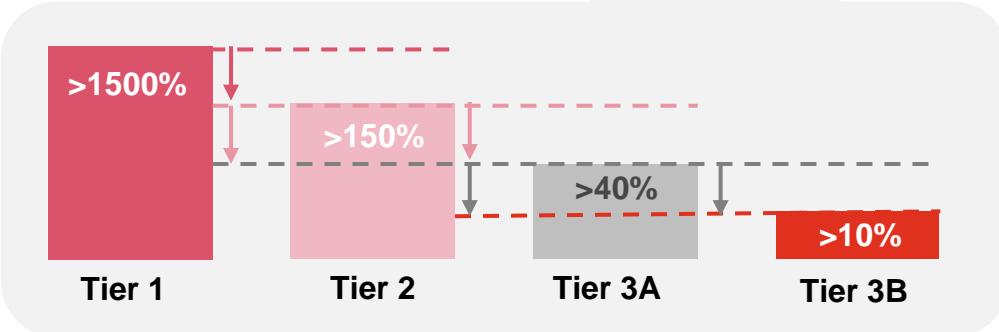
“ Allocate from highly profitable entities (in terms of EBT & RoDP)



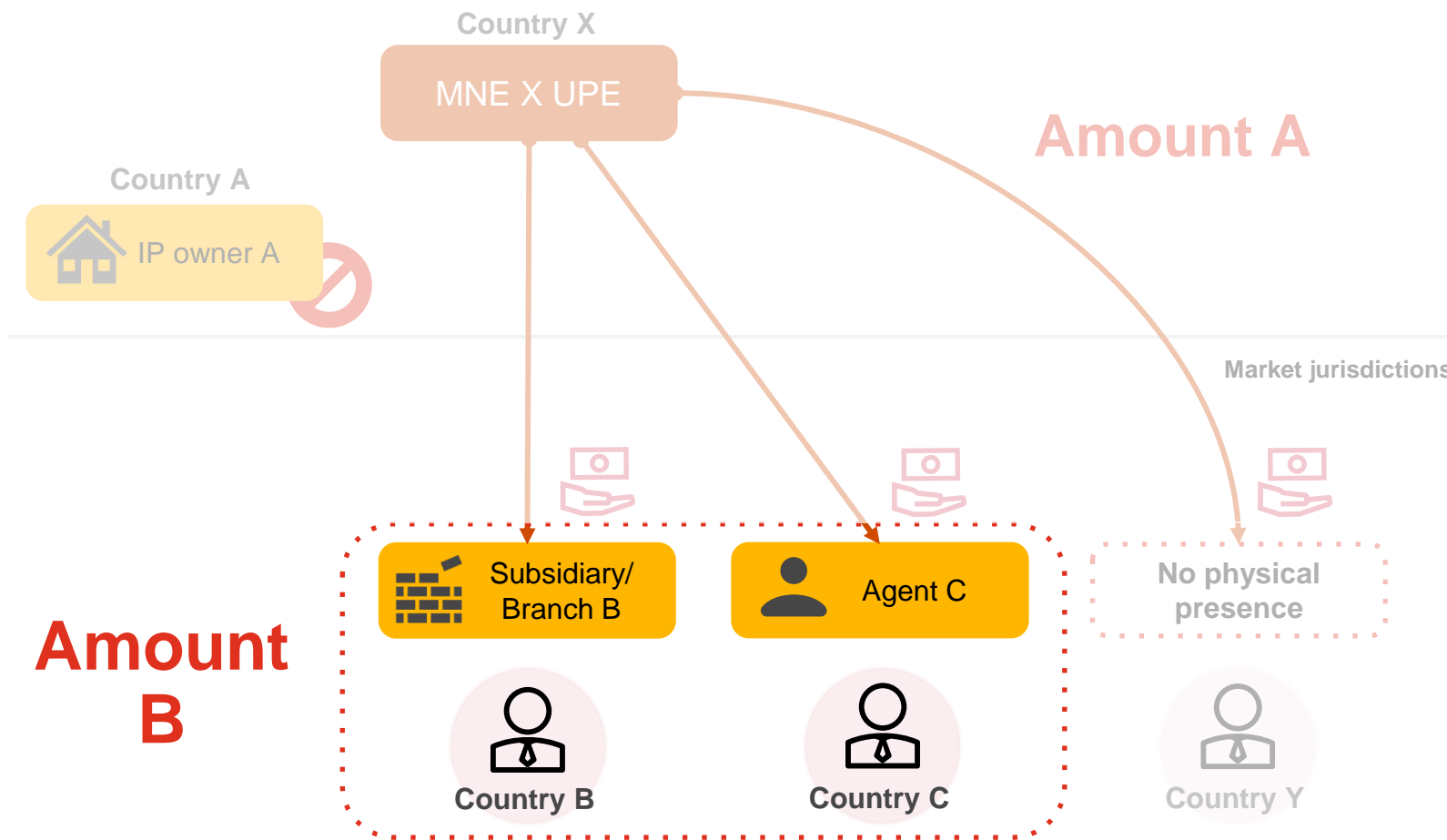
Countries with absolute EBT accounted for 95% of the total EBT and countries which earn EBT ≥ EUR 50 million



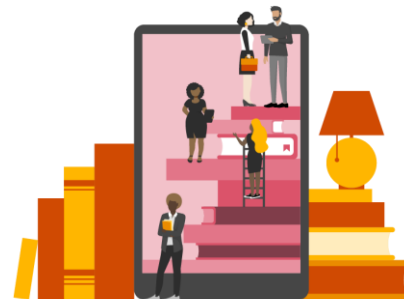
Profits are allocated (deducted) using a “waterfall” approach



# Another aspect: In-country distribution activities

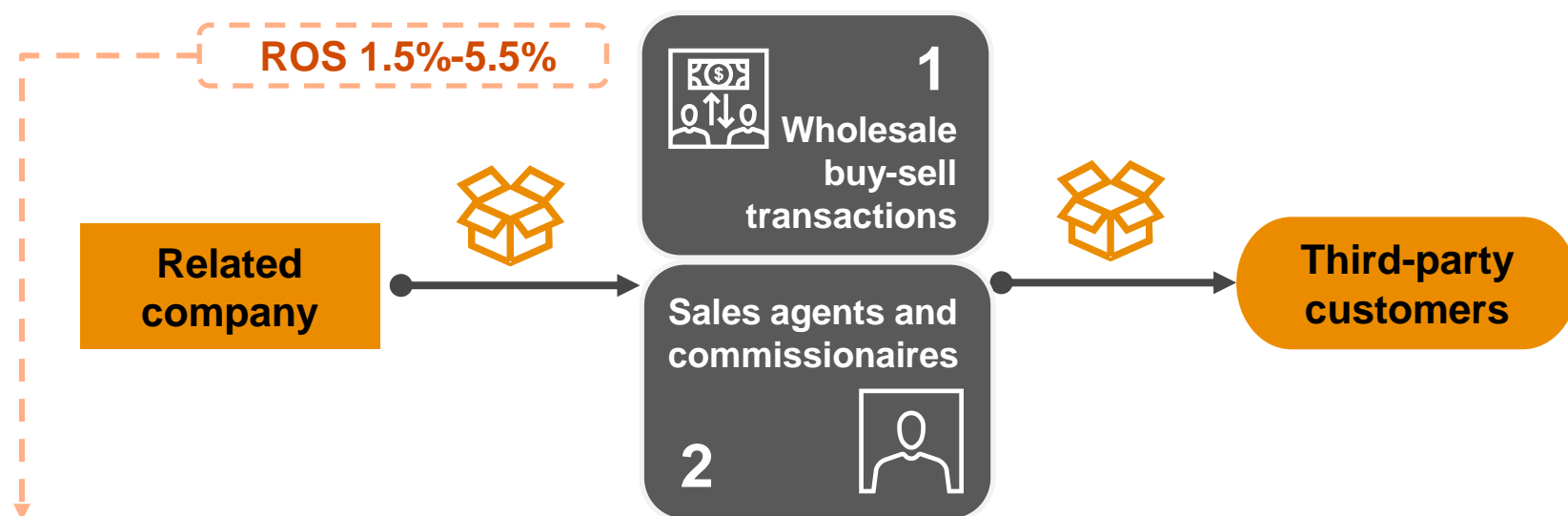


”  
Simplify pricing of baseline marketing and distribution activities in accordance with the arm's length principle (referred to as Amount B).



# Amount B – Simplifying distribution return

Pre-determined arm's length return for baseline marketing and distribution activities



Pricing matrix (ROS)	Industry group 1	Industry group 2	Industry group 3	(Berry ratio)
A (high OAS >45% / any OES)	3.50%	5.25%	5.50%	1.50 ↑ ↓ 1.05
B (med-high OAS 30-44.99% / any OES)	3.25%	3.50%	4.50%	
C (med-low OAS 15-29.99% / any OES)	2.75%	3.25%	4.25%	
D (low OAS <15% / non-low OES >=10%)	2.00%	2.25%	3.00%	
E (low OAS <15% / low OES <10%)	1.50%	1.75%	2.25%	

# Amount B – The benefits



**Simplification means:**



**Reduce  
compliance burden**



**Increase  
certainty**



**Promote  
consistency**

# Targeted timeline

**Amount A**

**2025**

(through multilateral convention)

**Amount B**

**2024**

(through OECD Transfer Pricing Guidelines)



# Takeaways: Pillar One



## Deviation from the arm's length principle

Pillar One's profit reallocation is applied as an overlay (i.e. on top) of the arm's length principle



## Potential restructuring needs

Businesses should revisit their existing business model and see if they need to adjust their model/value chain



## Increased administrative burdens

Data collection, tax filing requirements, etc. to comply with Pillar One will become additional burdens to businesses



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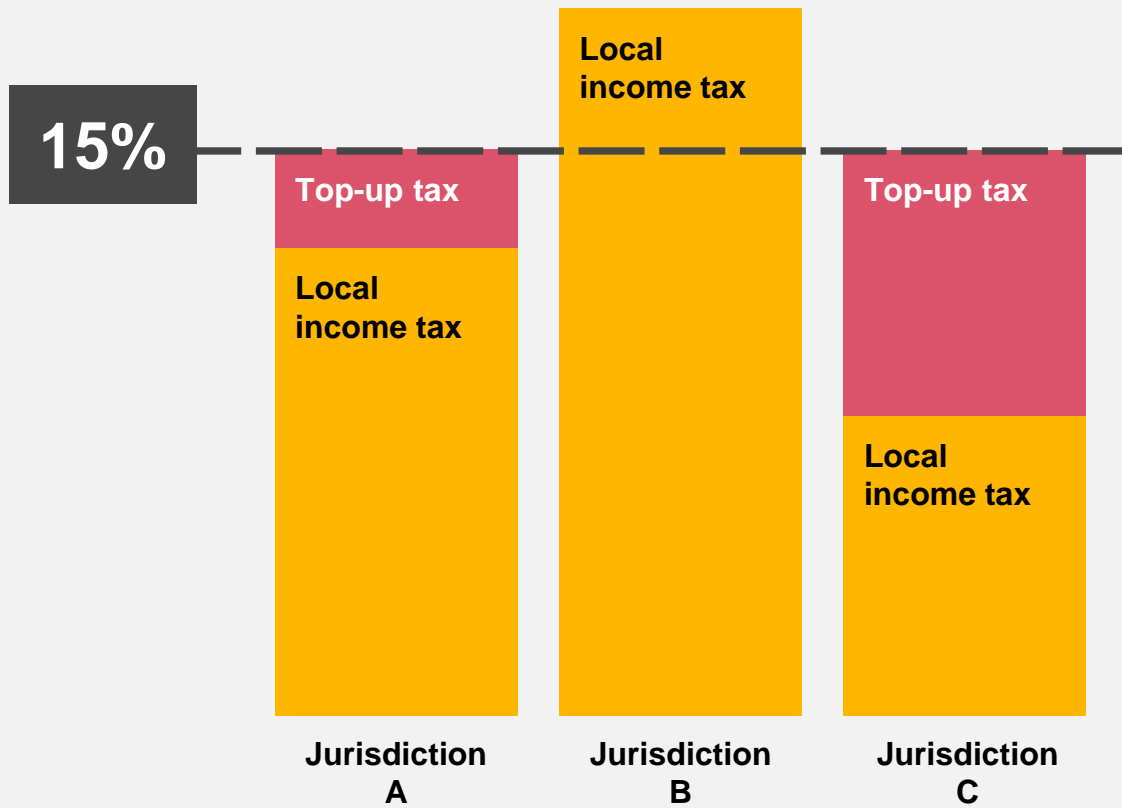
## **Pillar Two**

### The global minimum tax

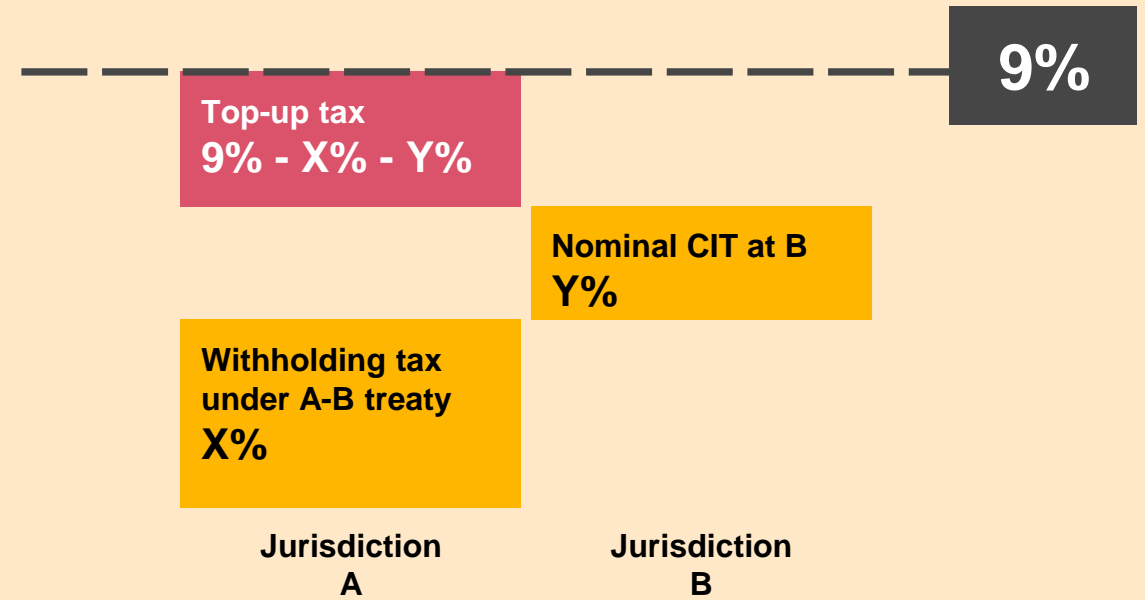


# What is Pillar Two?

## GloBE rules

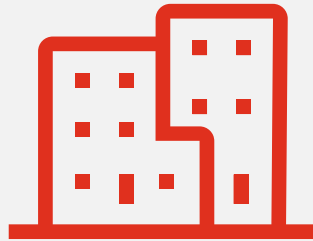


## Subject to tax rule (STTR)



# Who is in scope?

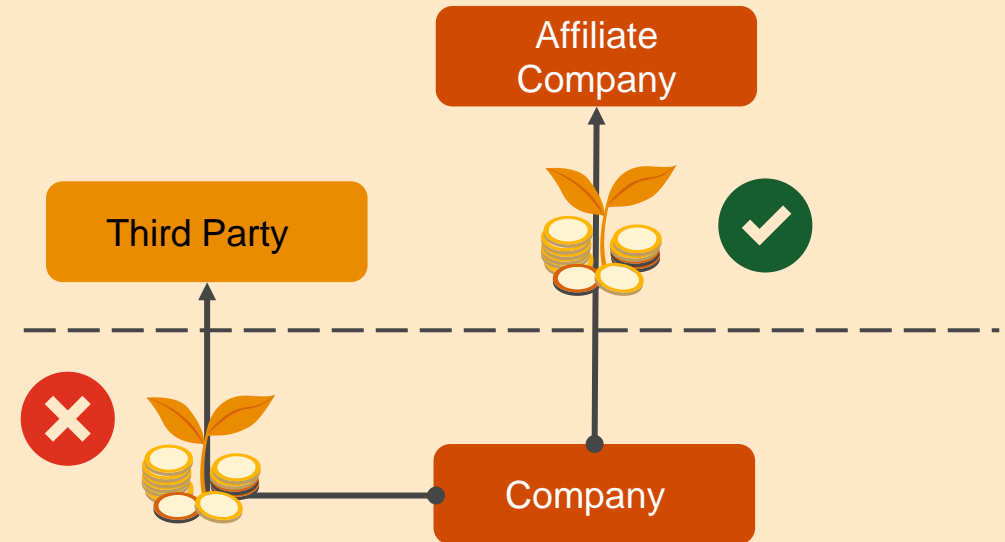
## GloBE rules



Multinational groups  
with consolidated  
revenue of more than

**EUR 750m**

## Subject to tax rule (STTR)

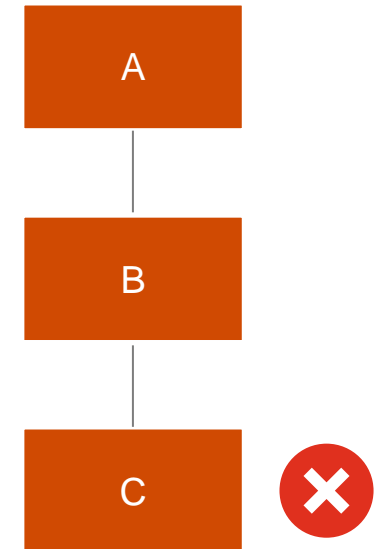


# GloBE rules: Who pays the tax?

You need to consider the applicable charging provisions:

## Income Inclusion (IIR)

- **Main rule**
- Applies top-down approach – i.e. ultimate parent gets taxing rights, then intermediary holding companies
- Does not look inward domestically (only downwards)
- Does not capture all potential top up taxes



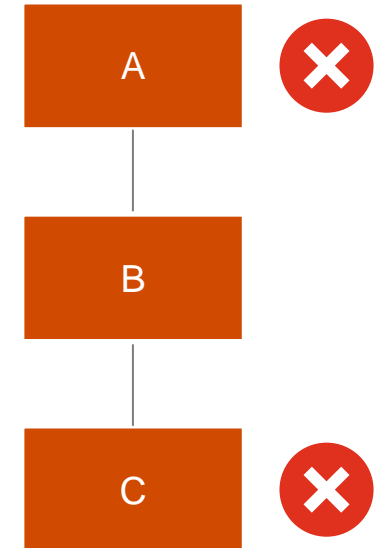
# GloBE rules: Who pays the tax?

You need to consider the applicable charging provisions:

Income Inclusion  
(IIR)

Undertaxed  
Payment  
(UTPR)

- **Backstop rule**
- Captures top-up tax that is uncollected by IIR
- Looks in all directions
- All countries with UTPR have equal claim, but the allocation is divided based on substance
- Mechanism works by UTPR country having to deny expenses



# GloBE rules: Who pays the tax?

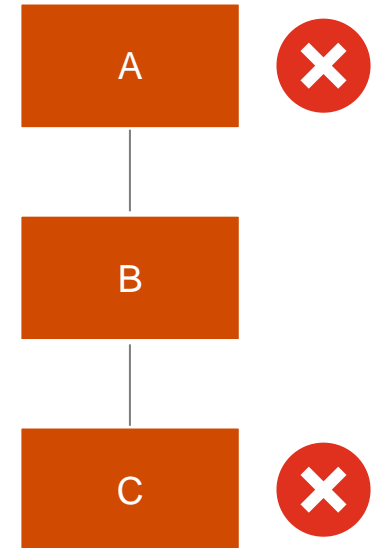
You need to consider the applicable charging provisions:

Income Inclusion  
(IIR)

Undertaxed  
Payment  
(UTPR)

Qualified Domestic  
Minimum Top-Up  
Tax (QDMTT)

- **Domestic override**
- QDMTT applied before IIR or UTPR
- Only captures domestic shortfall



# GloBE rules: How does this affect tax incentives?

Years	1	2	3	4	5	6	7	8	9	10	Subtotal
Profit before tax	100	100	100	100	100	100	100	100	100	100	1,000
Tax exemption (BOI)	Y	Y	Y	Y	N	N	N	N	N	N	
Tax	-	-	-	-	20	20	20	20	20	20	120
Simple ETR	0%	0%	0%	0%	20%	20%	20%	20%	20%	20%	
Potential Pillar Two Top-up Tax	15	15	15	15	-	-	-	-	-	-	60
Total Tax	15	15	15	15	20	20	20	20	20	20	180

# GloBE rules: How does this affect tax incentives?

Years	1	2	3	4	5	6	7	8	9	10	Subtotal
Profit before tax	100	100	100	100	100	100	100	100	100	100	1,000
New BOI measure	Y	Y	Y	Y	Y	Y	Y	Y	N	N	
Tax	10	10	10	10	10	10	10	10	20	20	120
Simple ETR	10%	10%	10%	10%	10%	10%	10%	10%	20%	20%	
Potential Pillar Two Top-up Tax	5	5	5	5	5	5	5	5	-	-	40
Total Tax	15	15	15	15	15	15	15	15	20	20	160

# Where are we today?

**2024**

IIR (with some QDMTT)

UK  
EU  
Canada  
Australia  
South Korea  
Japan  
Vietnam

**2025**

IIR (with some QDMTT)

Singapore  
Hong Kong  
Thailand  
Malaysia

UTPR

**Beyond 2025**

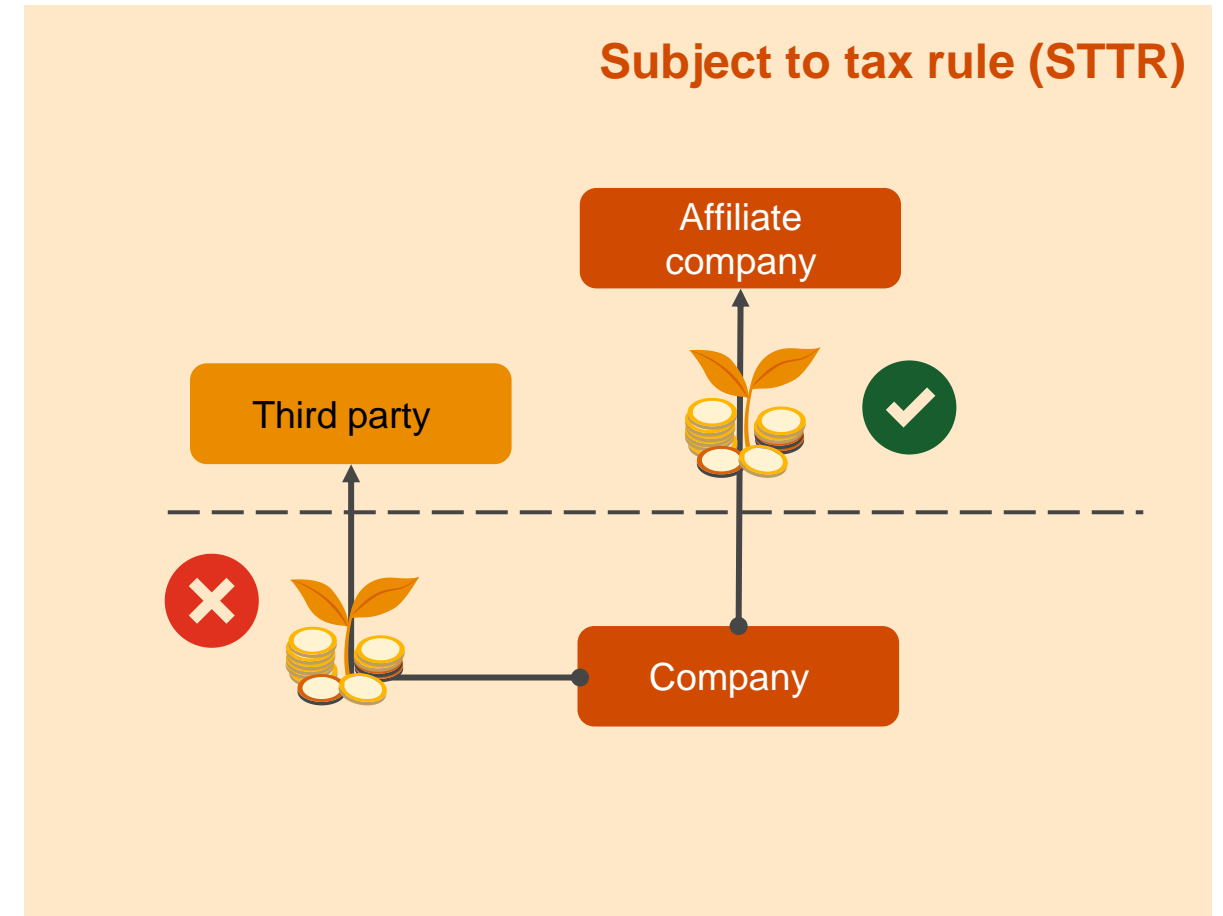
Many countries still in the process of evaluating the rules and considering domestic adoption

# What about STTR?

## A treaty-based rule

- Applies to **covered Income** for all related-party transactions
- Scope is larger than GloBE rules
- Aggregate sum of covered income paid in a fiscal year exceeds a threshold of EUR1m
- Taxes imposed under the STTR are levied after the end of the fiscal year
- No elimination of double taxation required

**Implementation would need to be through a new MLI to amend DTAs**



# More than just tax



**Pillar Two** will affect various stakeholders

Cash management

M&A?

Data and operational readiness for compliance

# What are the financial reporting implications?

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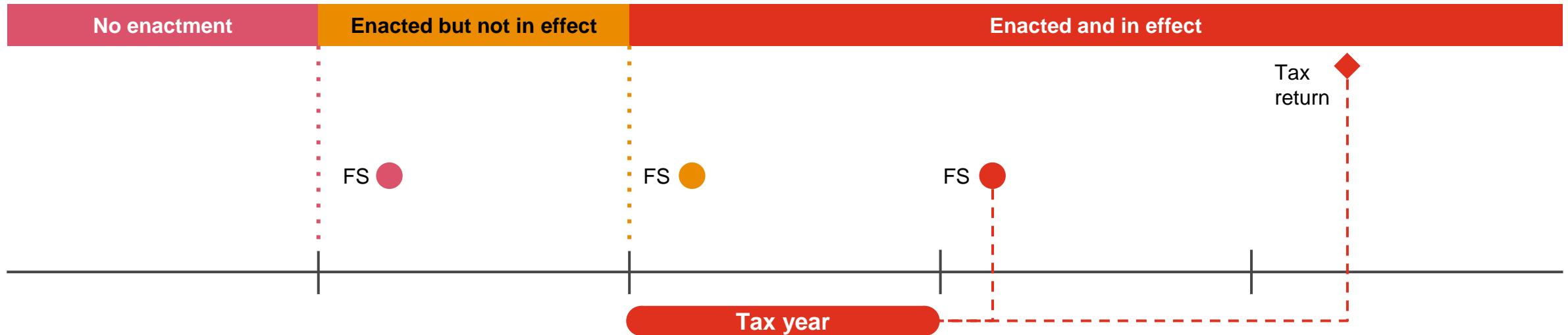
No enactment

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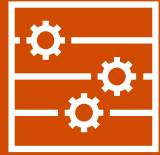
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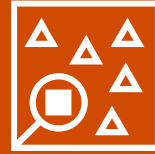
Enacted and in effect



# Takeaways: Pillar Two



With Pillar Two coming into effect on 1 January 2024, Thai MNCs should assess their data and operational readiness and financial impact on the group of complying with the rules



BOI companies in scope should assess whether it's necessary to opt for the new measure, and to what extent



Pillar Two will require a robust and coordinated team within MNCs to stay on top of complex and evolving legislation globally and to manage numerous stakeholders internally



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Taxpayers should evaluate these new rules and assess the impact as soon as possible, given the pace at which many of them are being implemented.

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# Thank you

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