International Fiscal Association

ASIA PACIFIC REGIONAL TAX CONFERENCE

“GLOBALISATION OF TAX RULES IN A DE-GLOBALISING WORLD”

Pillar 2: Where are we, and how to deal with the staggered implementation around the world?

Marina Bay Sands Hotel
August 16-17, 2023

For every tax problem, there is a solution that is straightforward, uncomplicated, and wrong!

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Overview

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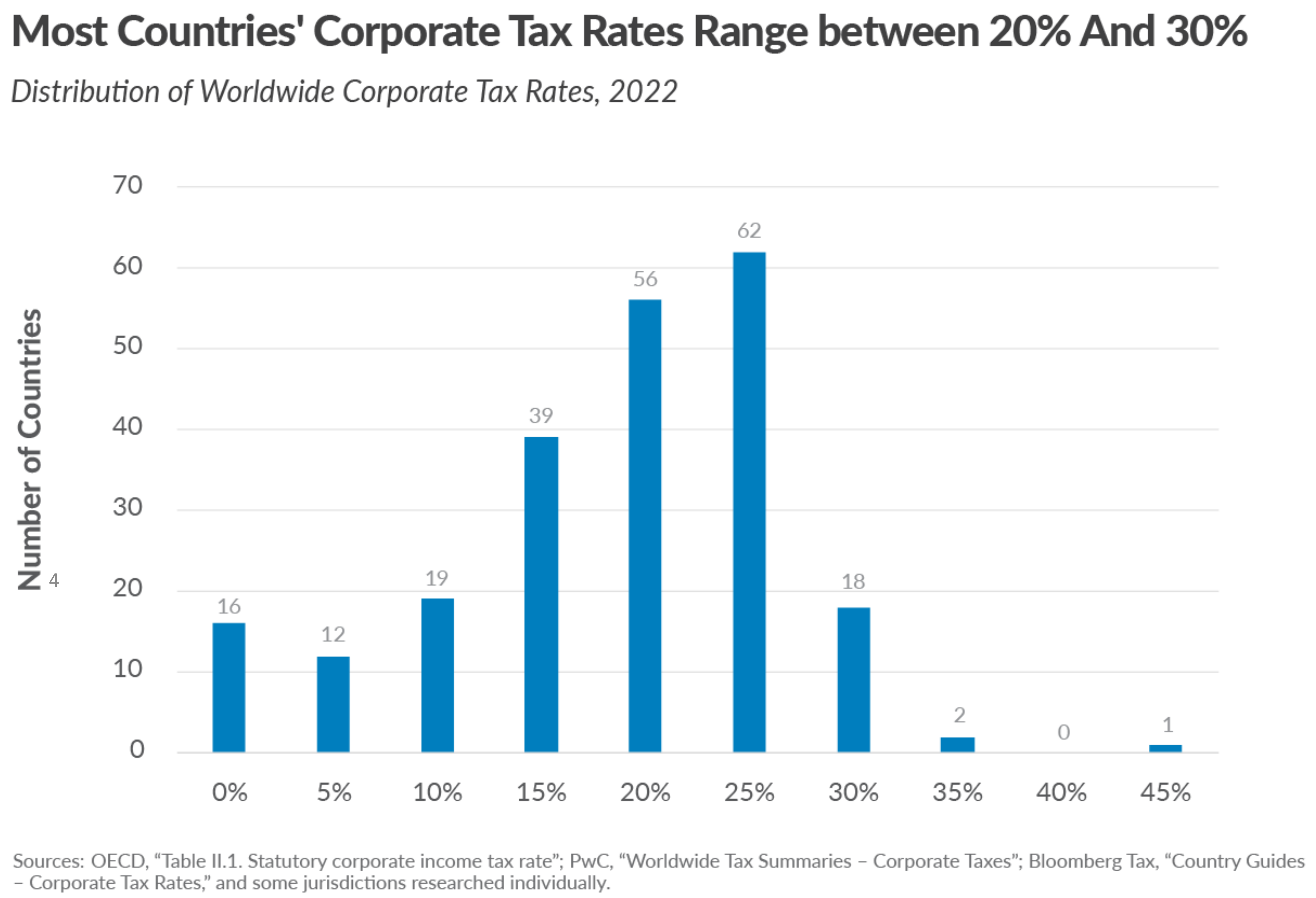
Global minimum tax of 15% - Current state of play

47 countries have tax rates below 15% - Of these, 14 are not members of Action Plan 1 of the BEPS Inclusive Framework

Notable names not signed up: Cyprus, Kuwait, Iraq

Other countries – smaller economies



Source: Taxfoundation.org and OECD.org

Report from G20 Finance Ministers (July 2023)
"By 2025, almost 90% of MNEs will be subject to an effective minimum tax of 15% in every market jurisdiction."

Pillar 2 Developments - July 2023

- July 2023 Outcome Statement on Two-Pillar – Canada notably did not sign (for DST) but has announced Pillar 2 implementation

- STTR released – MLI to open up for signature on 2 October 2023.
  - Significant increase in complexity of computation mechanism
  - Payments covered expanded at behest of developing countries
  - Ex-post annualised charge

- GloBE Information Return released
  - Transitional simplified jurisdictional framework (till 2028 but no later 2030)
  - Applicable where no top-up tax arises, or Top-up Tax liability arises but it does not need to be allocated on a CE-by-CE basis.

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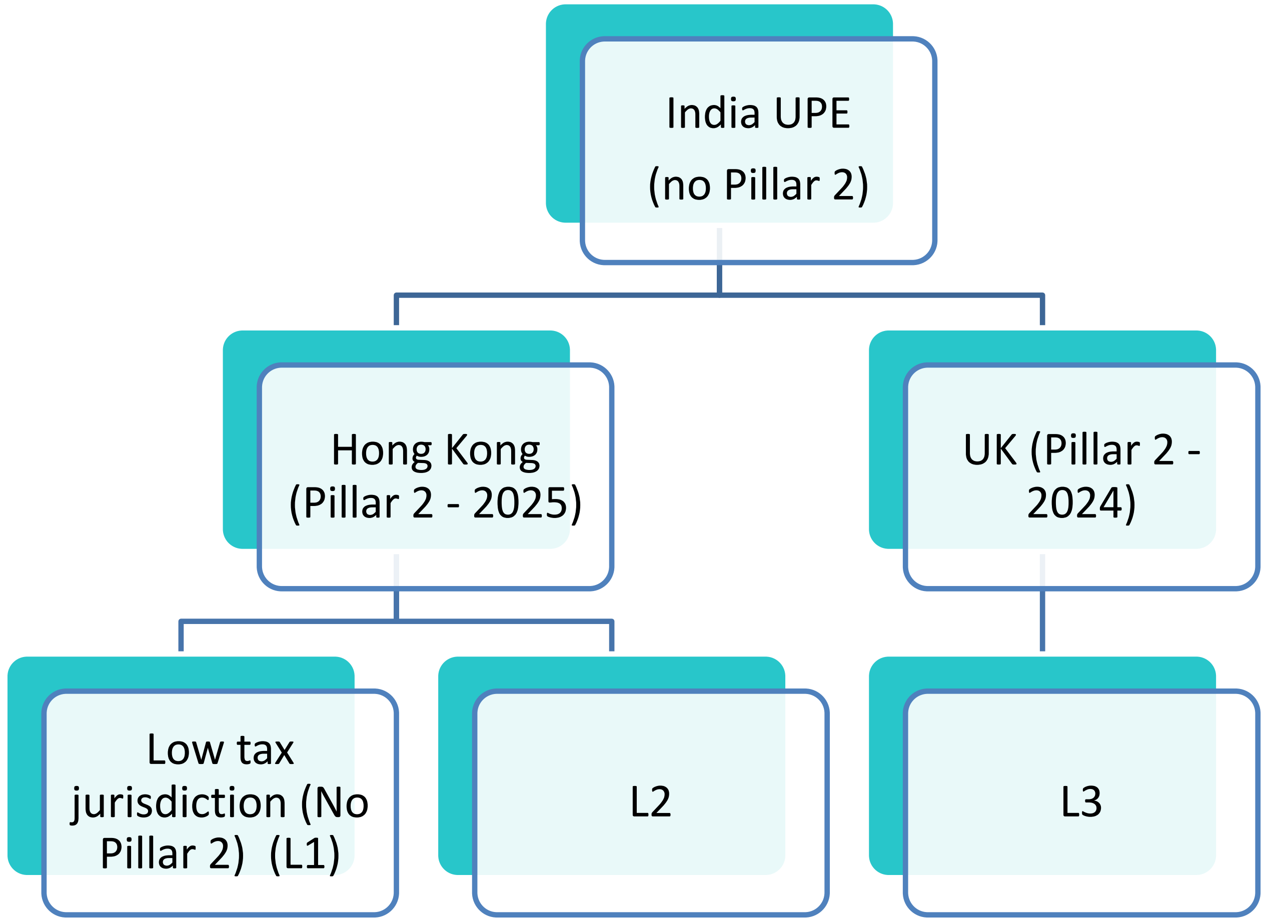
- Agreed administrative guidance for GloBE rules released
  - Draft Rules released – December 2021 (to be replaced in late 2023); Commentary released – March 2022
  - Administrative Guidance released in Feb 2022; Update in July 2023 – now includes guidance on currency conversion rules when performing GloBE calculations, tax credits, application of the Substance-based Income Exclusion (SBIE), further guidance on the design of Qualified Domestic Minimum Top-up Taxes (QDMTT), QDMTT Safe Harbour, Transitional UTPR Safe Harbour.

OECD Pillar 2 Developments - Asia Pacific

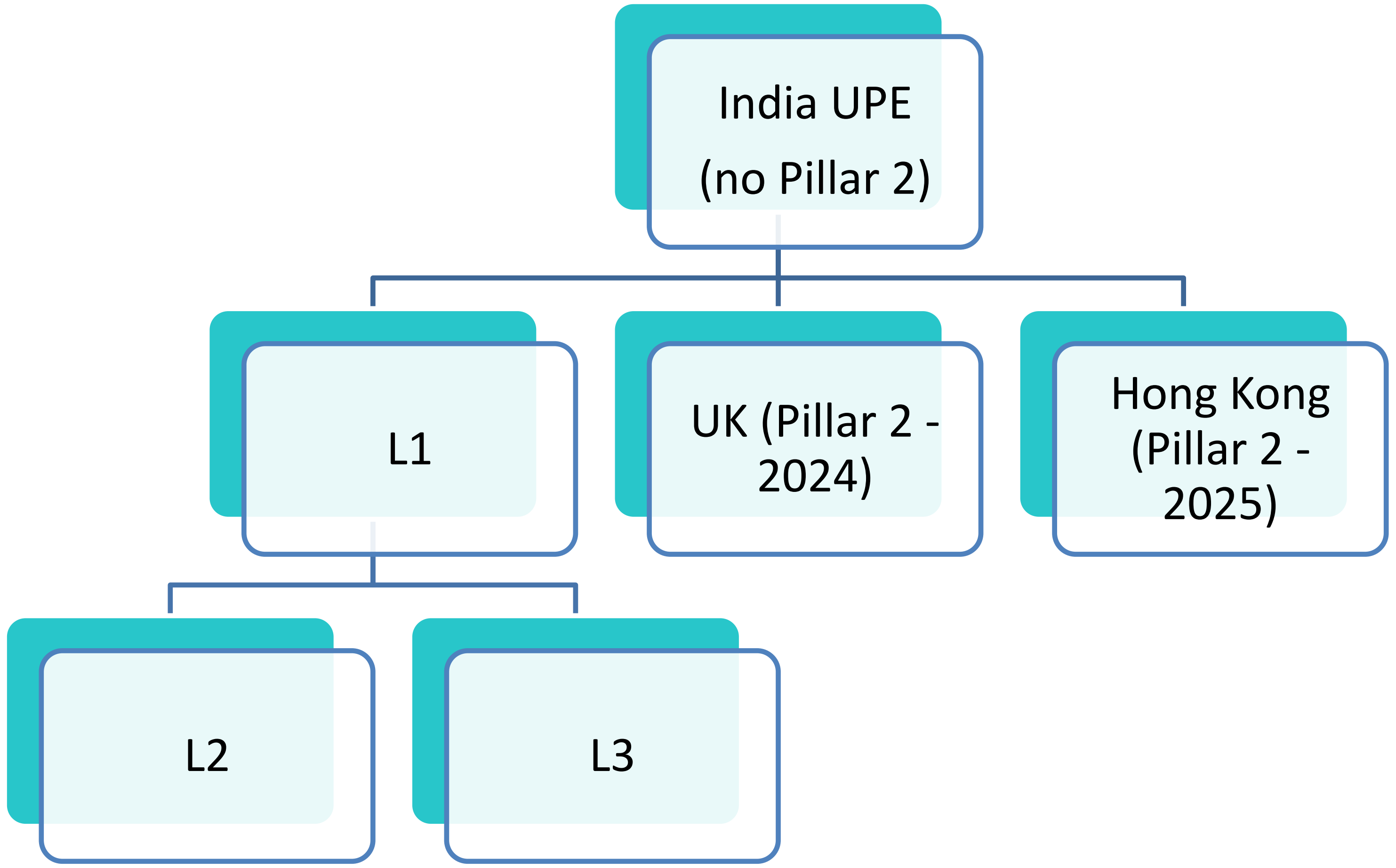
Country	Status of Adoption	IIR	UTPR	QDMTT
Japan	IIR	April 2024	April 25 (estimated)	April 2025 (estimated)
South Korea	Full adoption	2024	2025	NA
New Zealand	Consultation ends on draft law	2024 or later	2025 or later	NA
Australia	Plan released	2024	2025	2024
Hong Kong	Plan released	2025	2025 or later	2025
Singapore	Plan released	2025	2025	2025
Thailand	Plan released	2025	2025	2025
India	Silence. No official statement	NA	NA	NA

*NA -Not Available

Staggered / No Implementation



Original Group Structure



Restructured Group

NA*-Not Available

Economic Impact Assessment: Key findings

OECD	Independent Sources	IMF Study
• Pillar 2 will reduce global low-taxed profit by **70%** • Average ETR will rise across all jurisdictions • Reduced profit shifting globally will mean increased tax revenues of up to USD 200 billion globally each year	<u>Tax Foundation</u> • The Pillar Two revenue estimates of these nine countries (Australia, Belgium, Canada, Denmark, France, Germany, the Netherlands, Switzerland, and the UK) represent **USD 17.6 Bn** of the total annual **USD 200 Bn** OECD estimate for additional tax revenue—**or 8%.**	• In aggregate, the STTR would bring additional CIT revenue of up to **0.14%** for source countries.

India

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India and Pillar 2

India supports the Two-Pillar Solution, however, firm on key design aspects:

Pillar Two – Taxing at a minimum rate (15%):

- STTR key to Pillar 2; corporate tax rates at 25% +
- No enabling CFC legislation for Income Inclusion Rule – Wait and Watch!

Domestic tax incentives:

- 30% additional deduction for new employees – substance-based carveout (employees)?
- 20% deduction from profits for investments in newly established undertakings (low-cost housing etc.) or hospitality business in low-income states - substance-based carveout (assets)?
- Patent box regime – patent income taxed at 10% (may be offset in jurisdictional blendi

Australia / New Zealand

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Implementation of Pillar Two

- In the 2023 Federal Budget, Australian Government announced that it will implement key aspects of Pillar Two. No draft legislation has been released to date.

- Proposed timeline:
  - Income Inclusion Rule (IIR) to apply from 1 January 2024.
  - 15% Qualified Domestic Minimum Top-Up Tax (QDMTT) to apply from 1 Jan 2024.
  - Undertaxed Profits Rule (UTPR) to apply from 1 January 2025.

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- New Zealand
  - Recently introduced draft legislation to implement Pillar Two.
  - A 'Multinational Top-Up Tax', which consists of an IIR and UTPR.
  - Domestic Income Inclusion Rule (DIIR) for NZ headquartered MNE Groups (not the same as a QDMTT).
  - No fixed implementation date – no earlier than 1 January 2024 for the IIR and 1 January 2025 for the UTPR.

Unilateral measure - intangibles

- Australian Government has issued draft legislation to deny deductions for payments relating to intangible assets connected with “low corporate tax jurisdictions”.

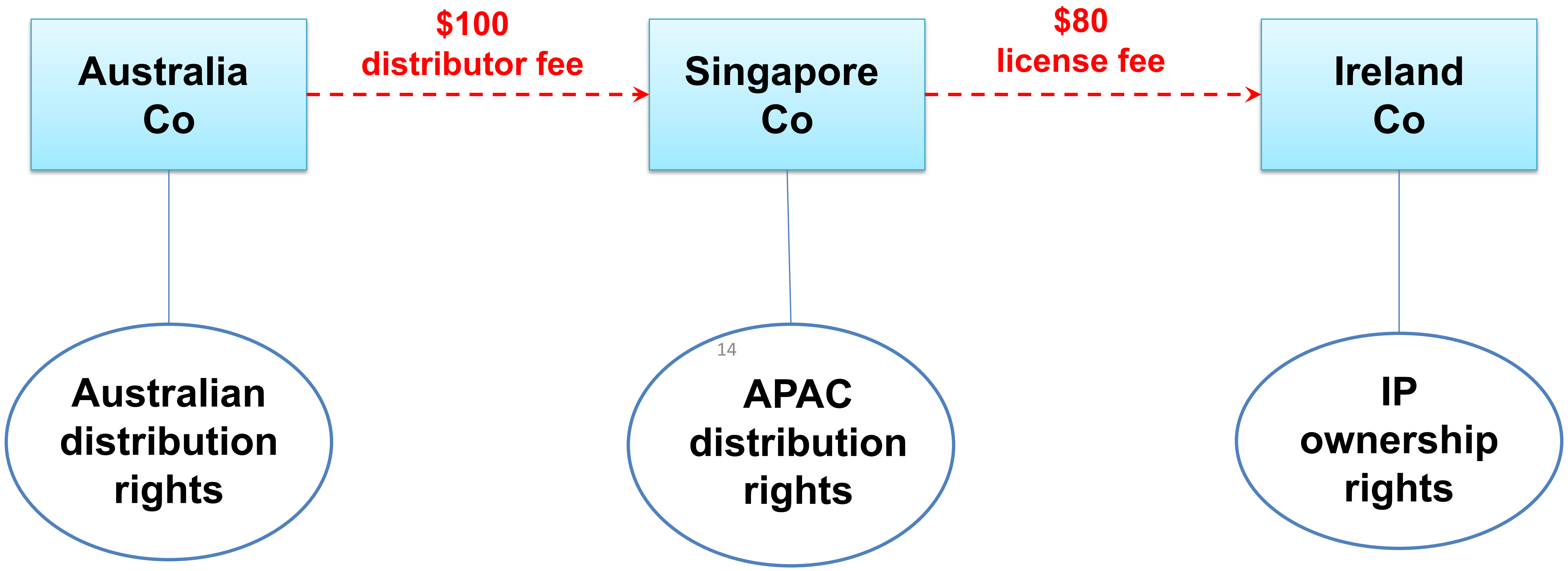
- A “low corporate tax jurisdiction” is a country with a headline corporate tax rate of less than 15%.

- Exclusion where the payment is actually subject to “foreign income tax” at a rate of 15% or more.

- Retrospective effect from 1 July 2023.

- Pillar Two interaction: These measures are similar in effect to the UTPR and are likely to be a temporary measure before the Pillar Two legislation comes into effect in Australia.

Draft Intangible Measures - Example



Indonesia

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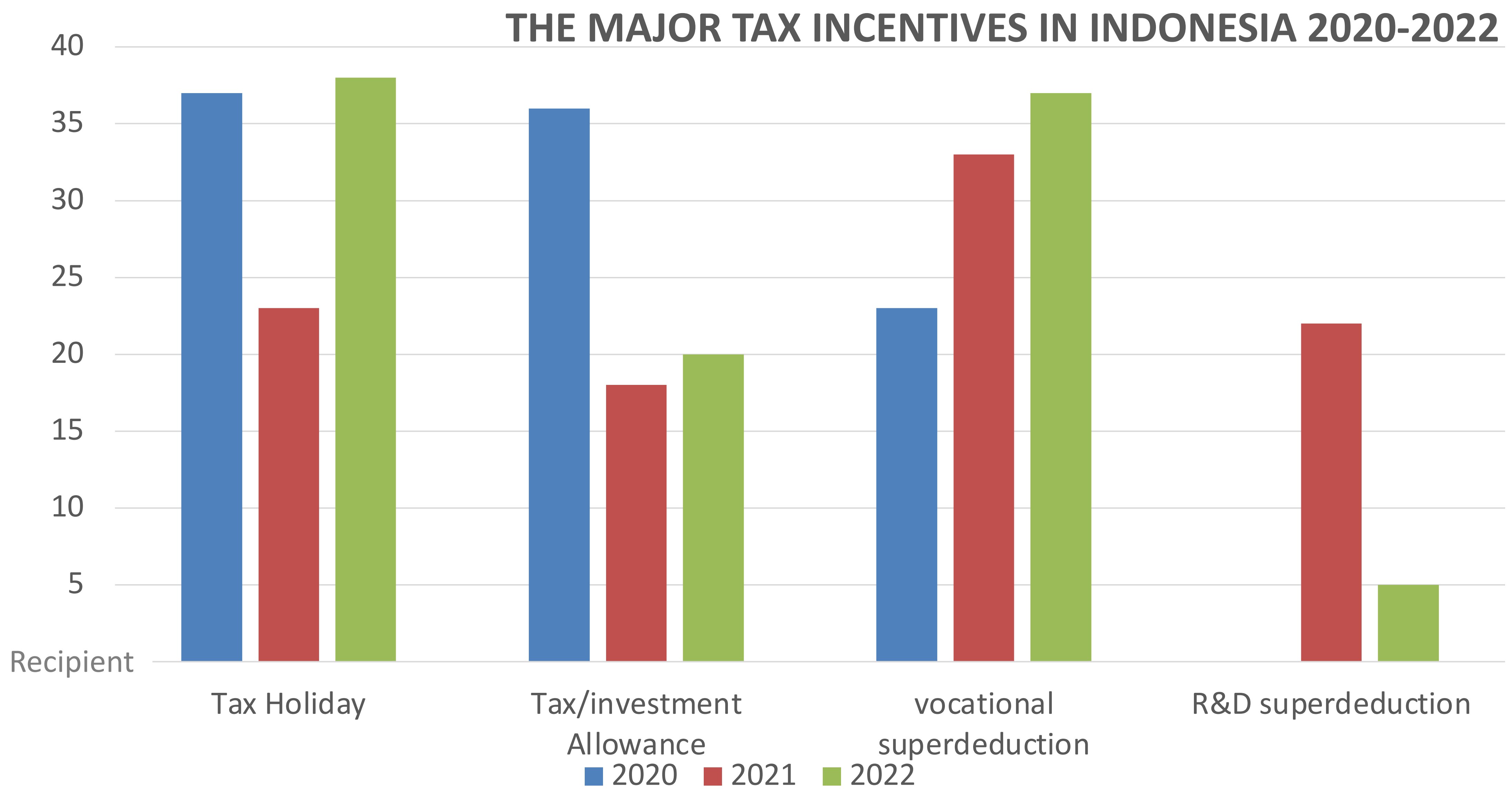
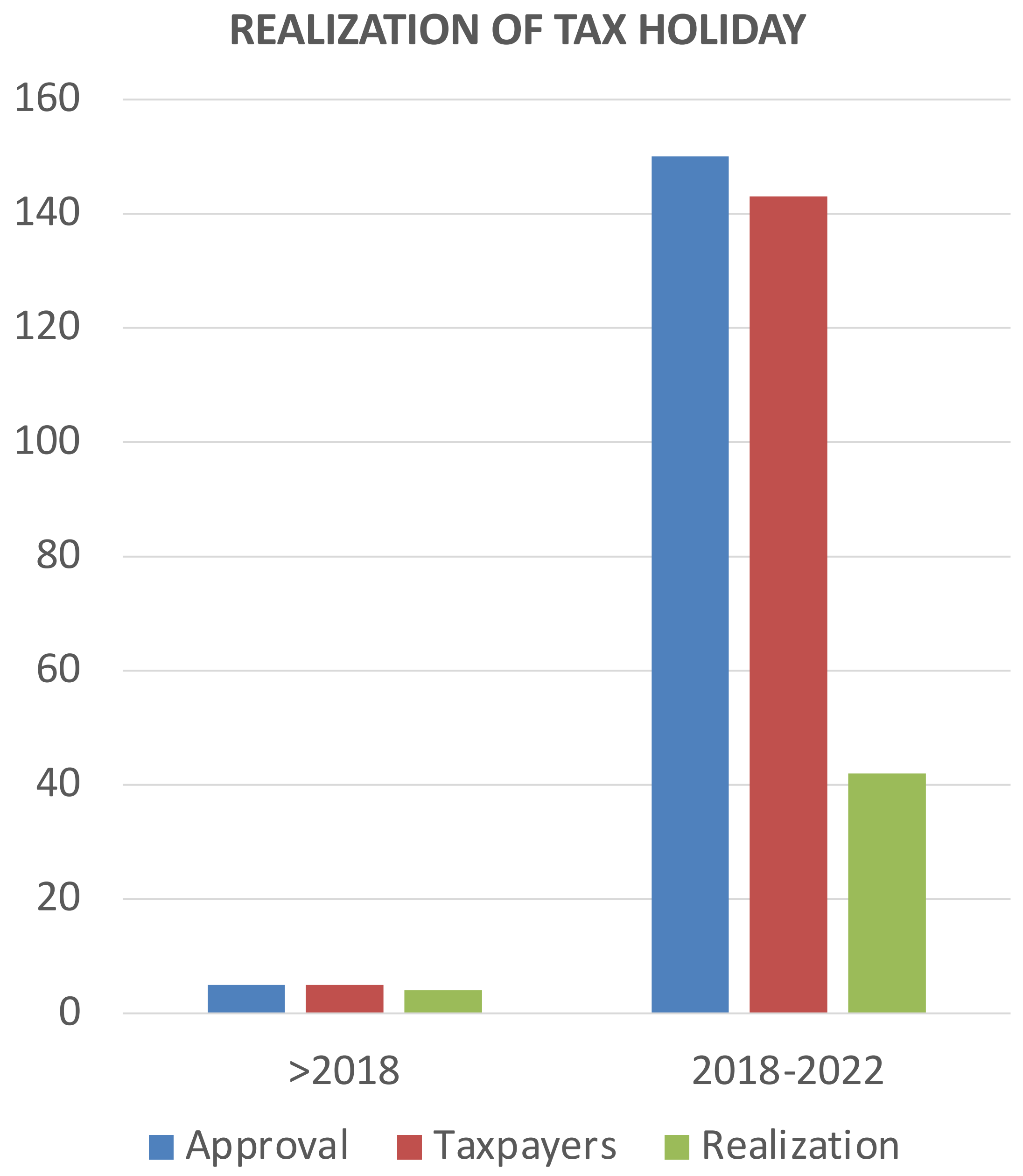
IMPACT OF PILLAR TWO FOR INDONESIA

- Pillar Two will lessen the effectiveness of tax incentives. However, Pillar Two will only impact entities part of MNE group in scope of Pillar Two. Therefore, tax incentives provided to out-scope MNEs will not be affected by Pillar Two and can still remain
- Pillar Two tends to shift the corporate tax competition from tax holiday or tax allowance to refundable tax credit.
- Not all entities part of MNE group in scope of Pillar Two have an ETR below 15% and have to pay top-up tax.
- The tax revenue potential from the implementation of IIR, UTPR, STTR, and QDMTT might not be significant in Indonesia

THE PROVISION OF TAX INCENTIVES IN INDONESIA



Source: Central Govt. Financial Statement; 2023)



Source: MoF Indonesia: 2023

Implementation of Pillar Two

INDONESIA

2021	2022	2023	2024	2025
The legal basis to sign the Multilateral agreement on 2P and to implement 2P is included in the amendment of Income Tax Law	The implementing regulation of 2P is included in the Govt. Regulation No. 55/2022 in high level	• the formulation of MoF Decree to incorporate Pillar Two model rules • economic analysis on the impact of Pillar Two on Indonesia's tax incentives and tax revenue • Signing of STTR?	• GloBE rules and QDMTT enter into effect • Redesign the current incentives provided for MNEs impacted by Pillar Two	UTPR enters into effect?

ASIA PASIFIC

- Some countries have announced plans to implement Pillar Two on 2024 (Australia, Korea, Japan, UAE, Vietnam, Malaysia)
- Some countries delay the application by 2025 (Singapore, Hong Kong, Thailand)

Implementation Challenges

- strict timeline
- legal challenges on the implementation of QDMTT
- limited resources to provide QRTC or cash subsidy
- limited resources with specified competence
- limited information system

Malaysia

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Pillar 2: Global Minimum Tax (GMT) - Where Is Malaysia Heading?

2017

Malaysia joins the OECD/G20 Inclusive Framework on BEPS

2021

Malaysia joins Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy

June & Aug 2022

- Ministry of Finance issued a pre-budget statement – **GMT** rules under Pillar 2 being reviewed
- Public consultation paper (PCP) on **Global Anti-Base Erosion (GloBE) Rules**

Oct 2022

- 2023 Budget announcement
- Malaysia will implement **GMT** rules and plans to implement **Qualified Domestic Minimum Top Up Tax (QDMTT)** in **2024**

Feb 2023

- 2023 Budget Touchpoints (re-tabled)
- Re-confirmed the plans for GMT & QDMTT

* GloBE Rules set out the manner in which top-up taxes are collected under the GMT regime

Public Consultation Paper - Key Issues & Request For Feedback

Amendments to domestic tax legislation

- How should GloBE rules be incorporated into the domestic tax legislation?

Thresholds for GloBE Rules

- Global annual turnover for Malaysian-headquartered groups
- Whether OECD's recommended Pillar 2 threshold of €750 million should be followed?

Timing of implementation

- Is 2024 too soon?

Impact on tax incentives

- Malaysia needs to establish forward looking incentive packages to meet investor needs
- To consider other non-tax incentives to complement the reformed tax incentive framework

Potential introduction of QDMTT

- Policy design
- Threshold – same as GloBE rules?
- Other concerns

GMT's Impact on Malaysian Businesses

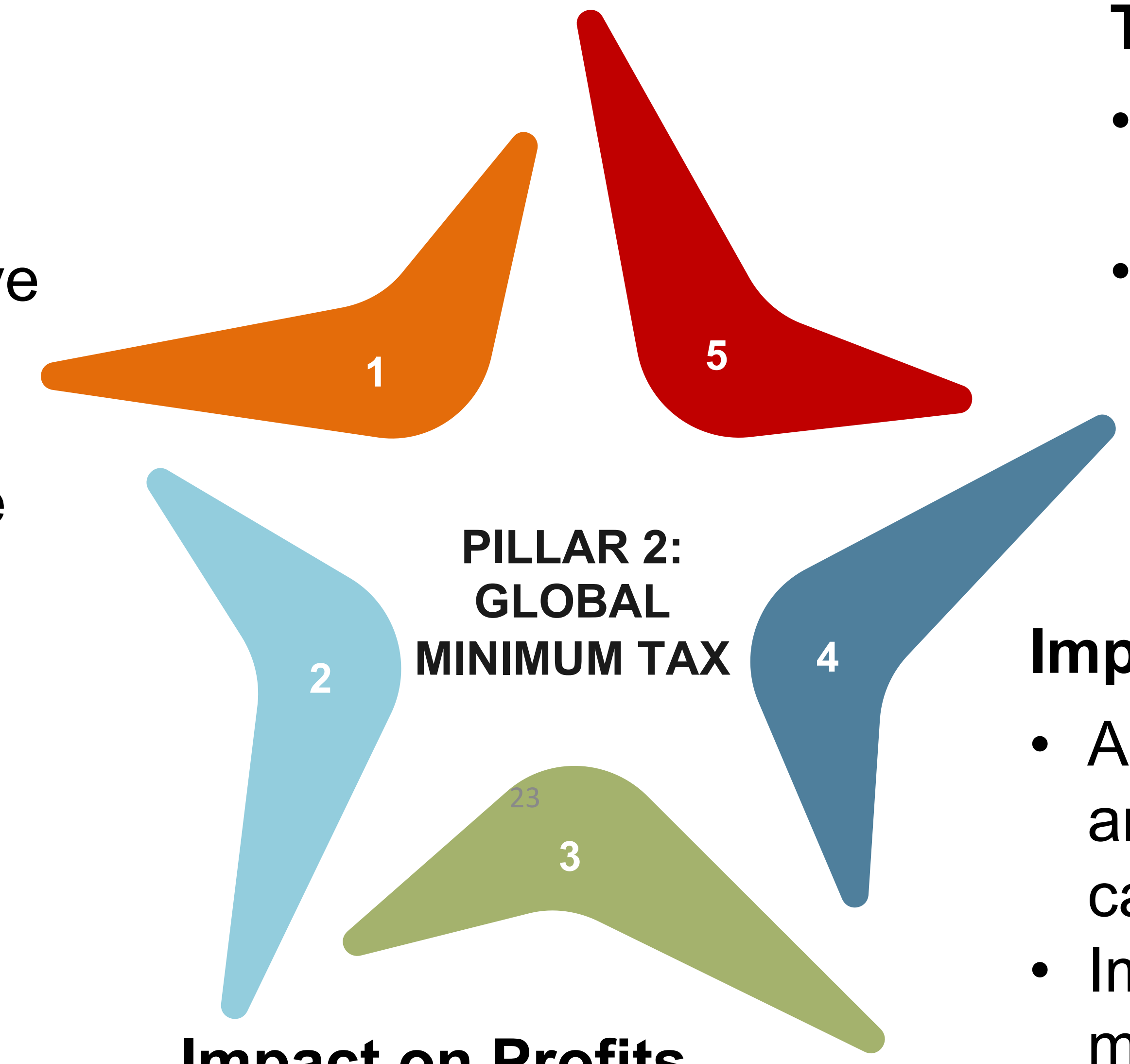
Implementation Timeline

- Targeted to be implemented in 2024
- Detailed domestic GMT rules have not been issued-expected in Oct 2023 (2024 budget)
- Are businesses ready to navigate complexities of the GMT regime?

Compliance Obligations

Businesses need to consider:

- System readiness
- Availability of resources
- Expertise – outsourcing vs in-house



Impact on Profits

- Additional compliance costs and top-up taxes
- Impact on business strategies, financial budgeting etc.

Impact on Cash Flows

- Additional compliance costs and top-up taxes would impact cash flows
- Impact on cash flow management and cash repatriation strategies

Tax Incentives

- Are tax incentives still relevant?
- Potential reform on existing tax incentive framework – comparison with other countries

Key Takeaways

1 Malaysia is committed to adhere to internationally agreed tax standards but will keep an eye on how the UN develops its line of thought

2 The implementation of GloBE rules and QDMTT will broaden Malaysia's tax base and protect its taxing rights over profits generated domestically.

3 Tax incentives to be reviewed in order to continue attracting FDIs into Malaysia

4 Amendments to domestic tax legislation to incorporate GloBE rules are expected over time…….though the cost of compliance is an issue for taxpayers

Singapore

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Implementation of Pillar Two

- In the Singapore Budget 2022, the Singapore government announced that it will adjust the tax system in response to Pillar Two GloBE Rules, and it is exploring a domestic top-up tax regime.

- In the Singapore Budget 2023, the Singapore government announced that it will implement both the **GloBE Rules (including IIR)** and **Domestic Top-up Tax ("DTT")** from businesses' financial year starting on or after **1 January 2025**. This is subject to adjustments as needed, if there are delays internationally.

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- No draft legislation has been publicly released to date.

Broader Policy Considerations

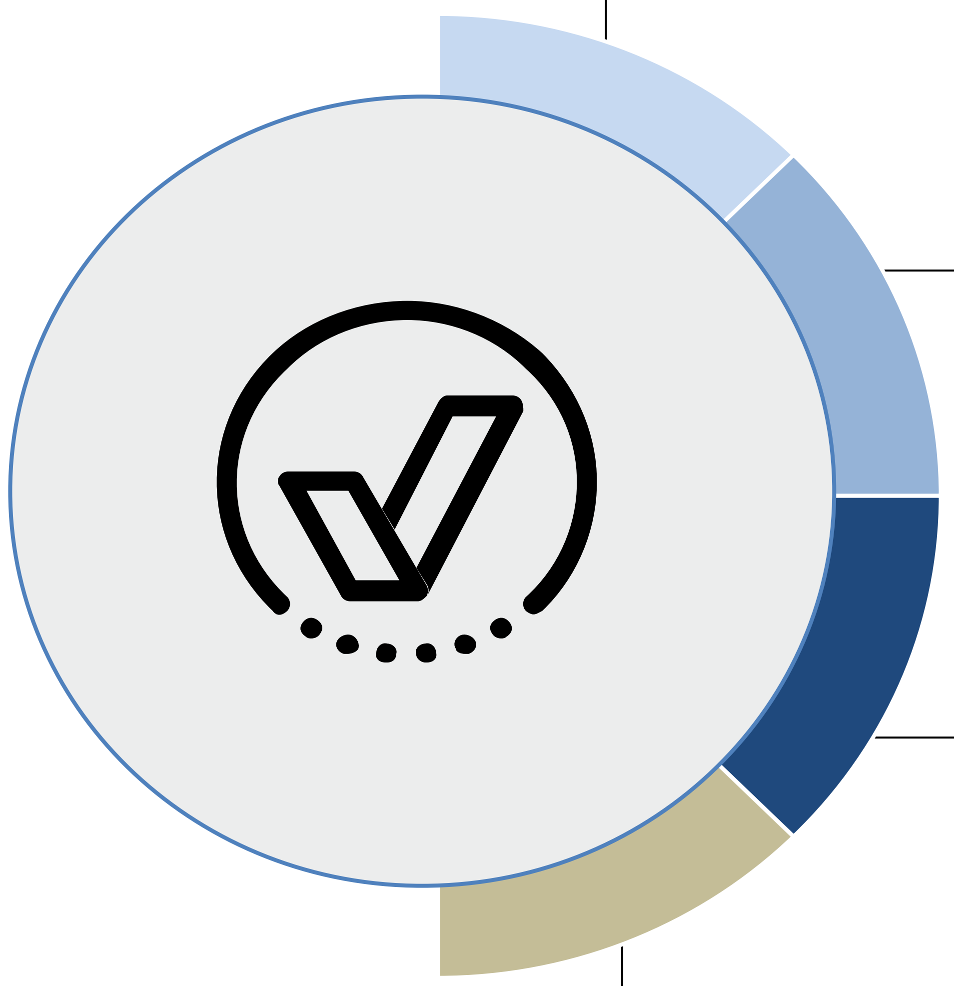
- The Singapore Government has also commented on the broader considerations around Pillar 2:

  - BEPS 2.0 may reduce the scope for tax competition, but has not reduced global competition for investments.

  - Additional corporate tax revenue that can be generated from BEPS 2.0 will need to be **reinvested to maintain and enhance Singapore's competitiveness**. Singapore will need to strengthen **non-tax factors** and reinvest to stay competitive.

  - Singapore will review and update its broader suite of industry development schemes to ensure that Singapore remains competitive in attracting and retaining investments. However, we will not have enough money to outbid the big boys and match the competition.

Observations on the Ground



- Interaction with other jurisdictions' implementation dates
- Whether DTT will be creditable in the US

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- Reconsider the effectiveness of tax incentives that provide for a reduced rate of tax, and engage with the relevant economic agencies
- Whether the transitional safe-harbour rules apply

Panel Discussion

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Panel Discussion Questions

- How does staggered implementation play out in the context of adopting reporting requirements, given that several MNCs now operate on a universal ERP?
- Given that the MLI was signed in 2017, and is yet being ratified by some countries, won’t jurisdictions that are earliest to implement lose tax attractiveness if all countries don’t ratify?
- More challenges similar to the Boskalis challenge to EU directive likely to further delay Pillar 2 implementation?
- What happens if a challenge to the constitutional validity of Pillar 2 is upheld by the Court of a country? How would onward tax computations work?
- Views on UTPR? Challenging the boundaries of territorial taxation?

THANK YOU