

Geographically Expansive Taxation

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Tax Law – Contemporary Issues









Bergen

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What are the limits on states' jurisdiction to tax in a globalised world?

Should states exercise restraint when employing their jurisdiction to tax?



UK		France	
1.	 <i>Resident</i>	 <i>No activity</i>	Any tax?
2.	 <i>Resident</i>	 <i>Owens real estate</i>	Transaction Rental income Wealth /inheritance Capital gains Share of worldwide income?
3.	 <i>Resident</i>	 <i>1 month skiing holiday</i>	Consumption 1/12 of worldwide income?
4.	 <i>Resident</i>	 <i>Resident</i>	Tax wife's worldwide income?



The OECD Global Tax Deal supported under the prior administration not only allows extraterritorial jurisdiction over American income but also limits our Nation's ability to enact tax policies that serve the interests of American businesses and workers.

Because of the Global Tax Deal and other discriminatory foreign tax practices, American companies may face retaliatory international tax regimes if the United States does not comply with foreign tax policy objectives. This memorandum recaptures our Nation's sovereignty and economic competitiveness by clarifying that the Global Tax Deal has no force or effect in the United States.

International tax

Trump threatens tax war over US multinationals

US president orders officials to draw up retaliatory measures against 'extraterritorial' taxes

● UPDATED 3 MINUTES AGO



Trump latest: Citizens of countries with 'deficient' security checks face US ban

● LIVE

Trump threatens 25% tariff within days for Mexico and Canada

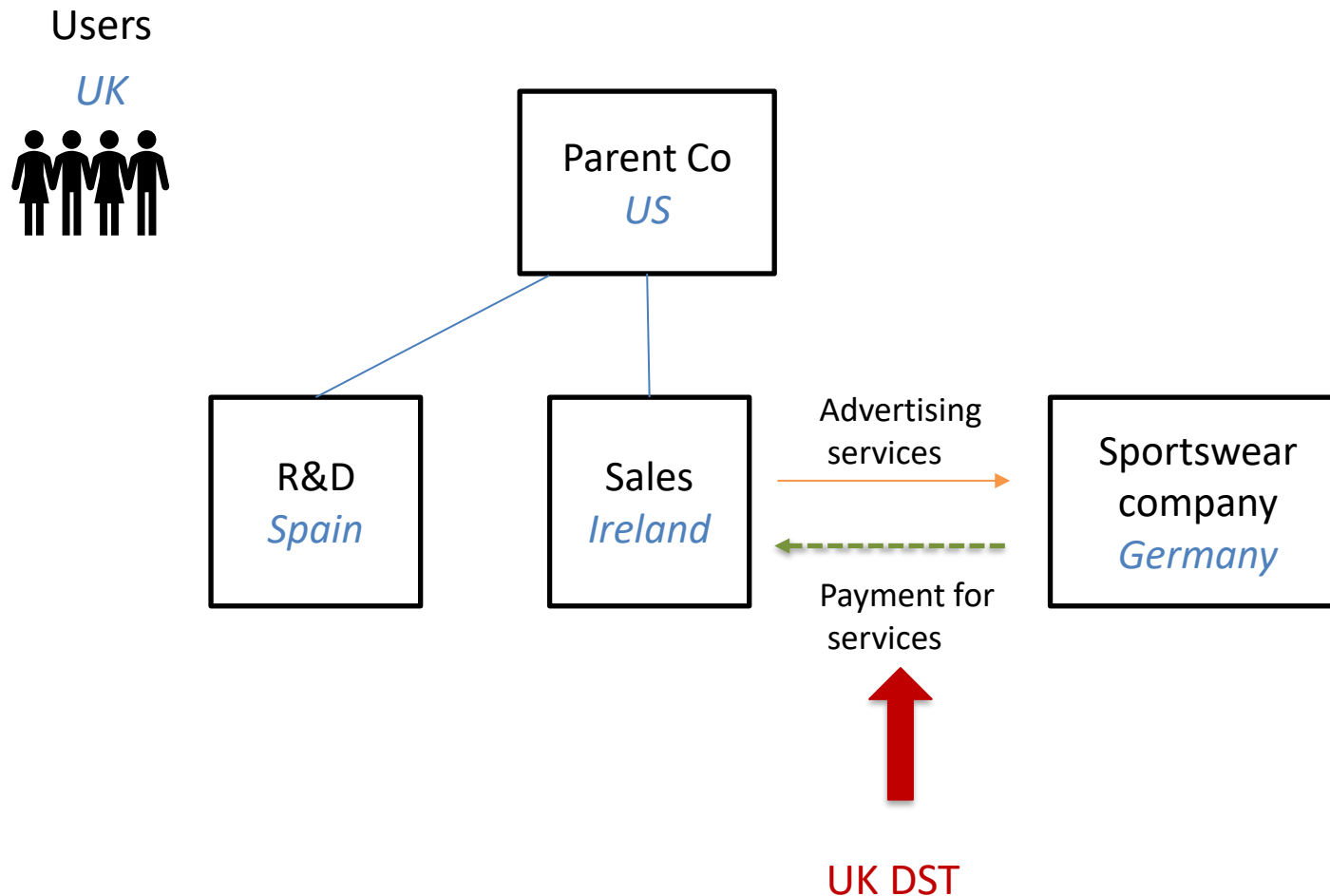
US banks 'in go-mode' under Trump, says JPMorgan executive

● UPDATED 17 MINUTES AGO

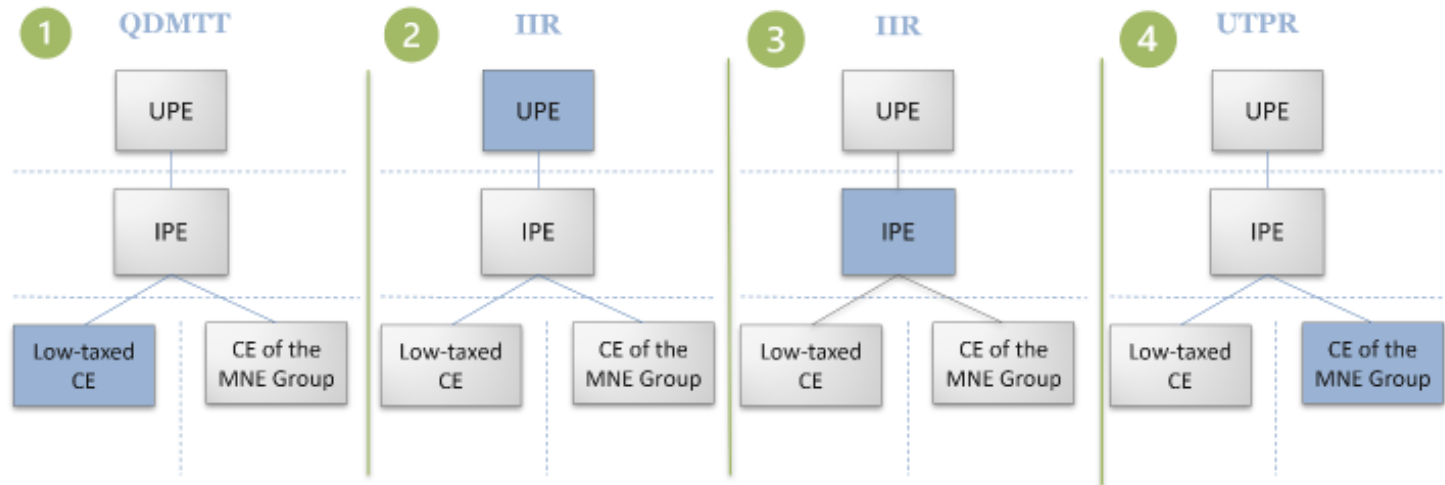
TOP STORIES

What was Trump upset about?

UK Digital Services Tax



UTPR



OECD 2023

Geographically expansive taxes

- Questions about strength of link between state imposing tax and:
 - the person / activity being taxed, and/or
 - the tax base

Geographically expansive taxes

Taxes	Proposals
Digital Services Taxes	EU Commission Financial Transaction Tax
UTPR	G20 coordinated minimum effective taxation standard for UHNW individuals
UK Inheritance Tax Tail	Zucman's Oligarch Tax
UK Offshore Receipts in respect of Intangible Property rules (ORIP)	Brain Drain Tax
German IP Registry cases	
Offshore Indirect Transfer of Assets Regimes	

...and enthusiastic calls to go further...

- “rather than fearing extraterritoriality, countries should embrace it as a tool for enforcing minimum standards, curbing inequality, preventing tax evasion, and promoting sustainability.”
 - Gabriel Zucman, ‘America’s Oligarchs are Trump’s Achilles Heel’, Project Syndicate, 28 February 2025

This paper (eventually)

- **Will offer a taxonomy of geographically expansive taxes**
- **Research questions**
 - 1. What are the limits on states' jurisdiction to tax in a globalised world?**
 - Public International Law (and Constitutional Law)
 - 2. Should states exercise restraint when employing their jurisdiction to tax?**
 - Political/legal philosophy and some practical considerations



Presentation Outline



- I. Examples of Geographically Expansive Taxation
- II. What are the limits on states' jurisdiction to tax?
- III. Should states exercise restraint when employing their jurisdiction to tax?
- IV. Conclusion

I. Examples of Geographically Expansive Taxation

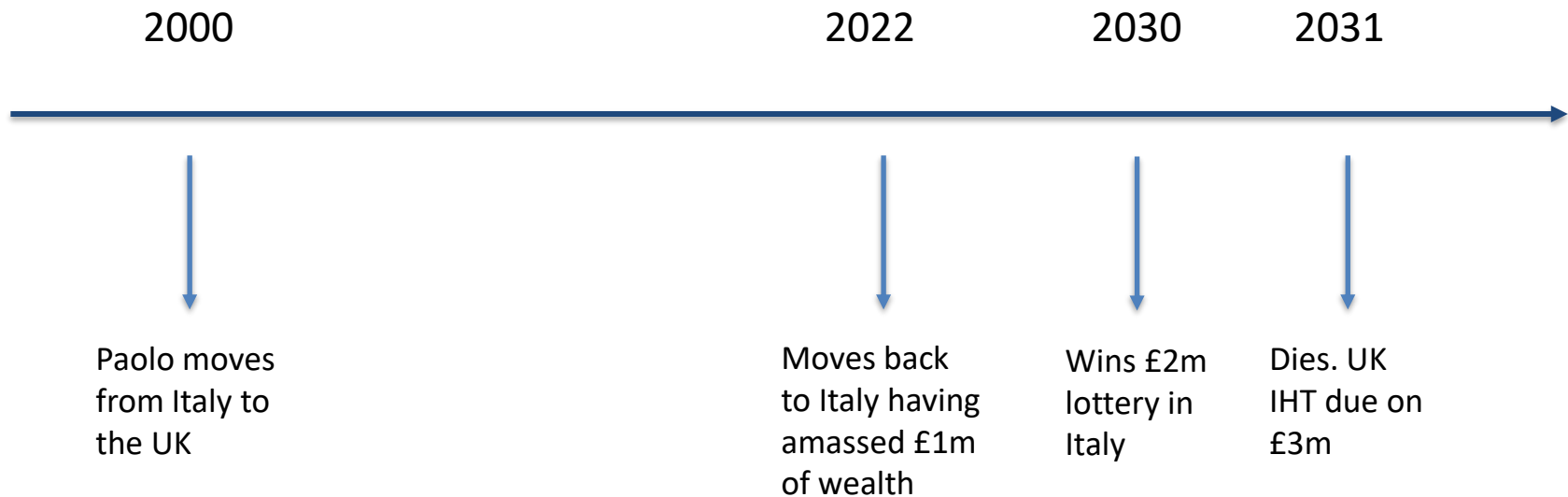
UK Inheritance Tax Tail

- From 06.06.25 long-term residents (LTR) liable to IHT on **world-wide assets**
- Standard rate of **40%** above available nil-rate bands, exemptions, and reliefs
- LTR: resident for 10 out of 20 yrs immediately preceding year in which charge arises
- If LTR leaves UK, remains within the IHT net for a **“tail period”**
- NB no citizenship required

Residency	Tail
10-13	3
14	4
15	5
16	6
17	7
18	8
19	9
20	10

UK Inheritance Tax Tail

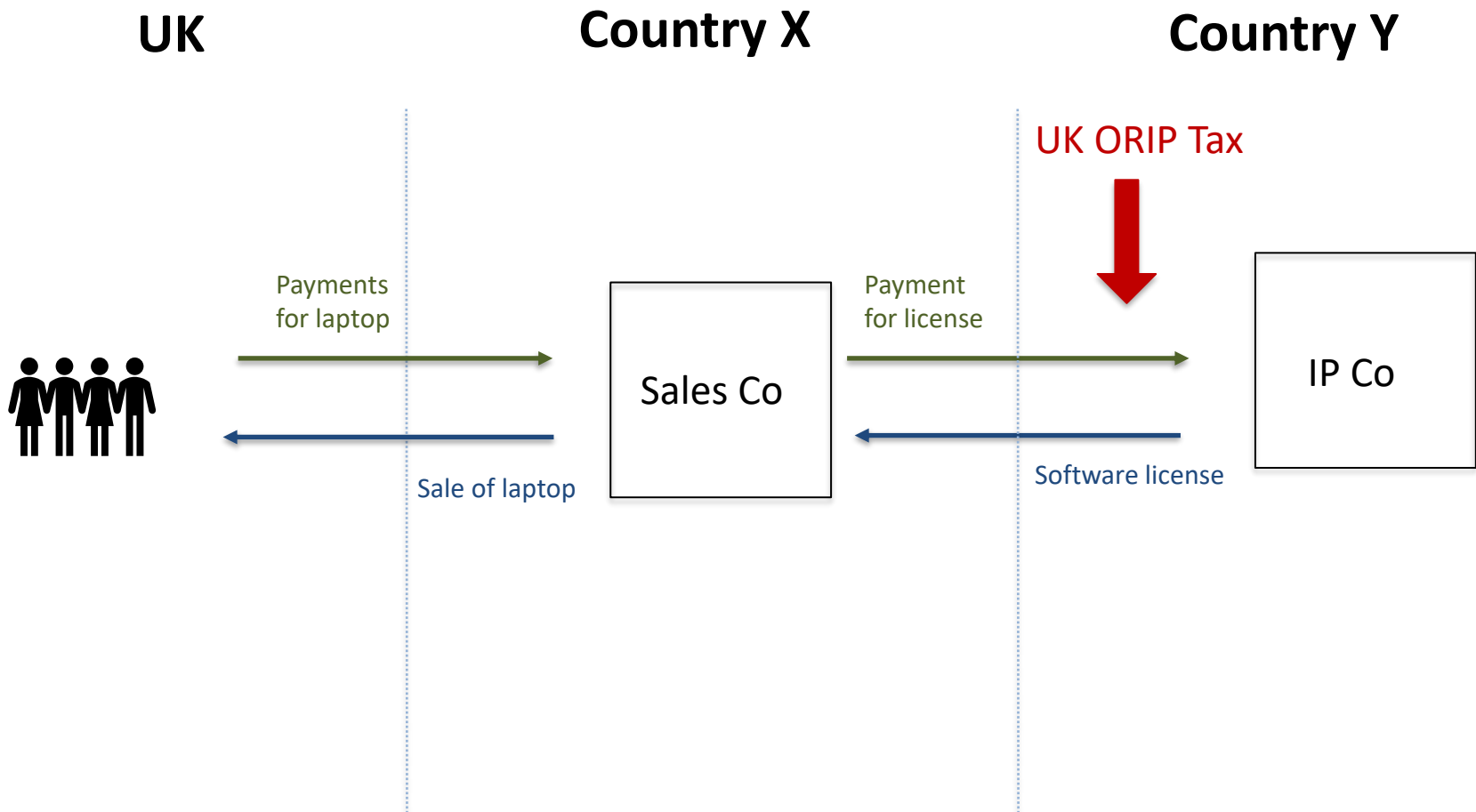
Example

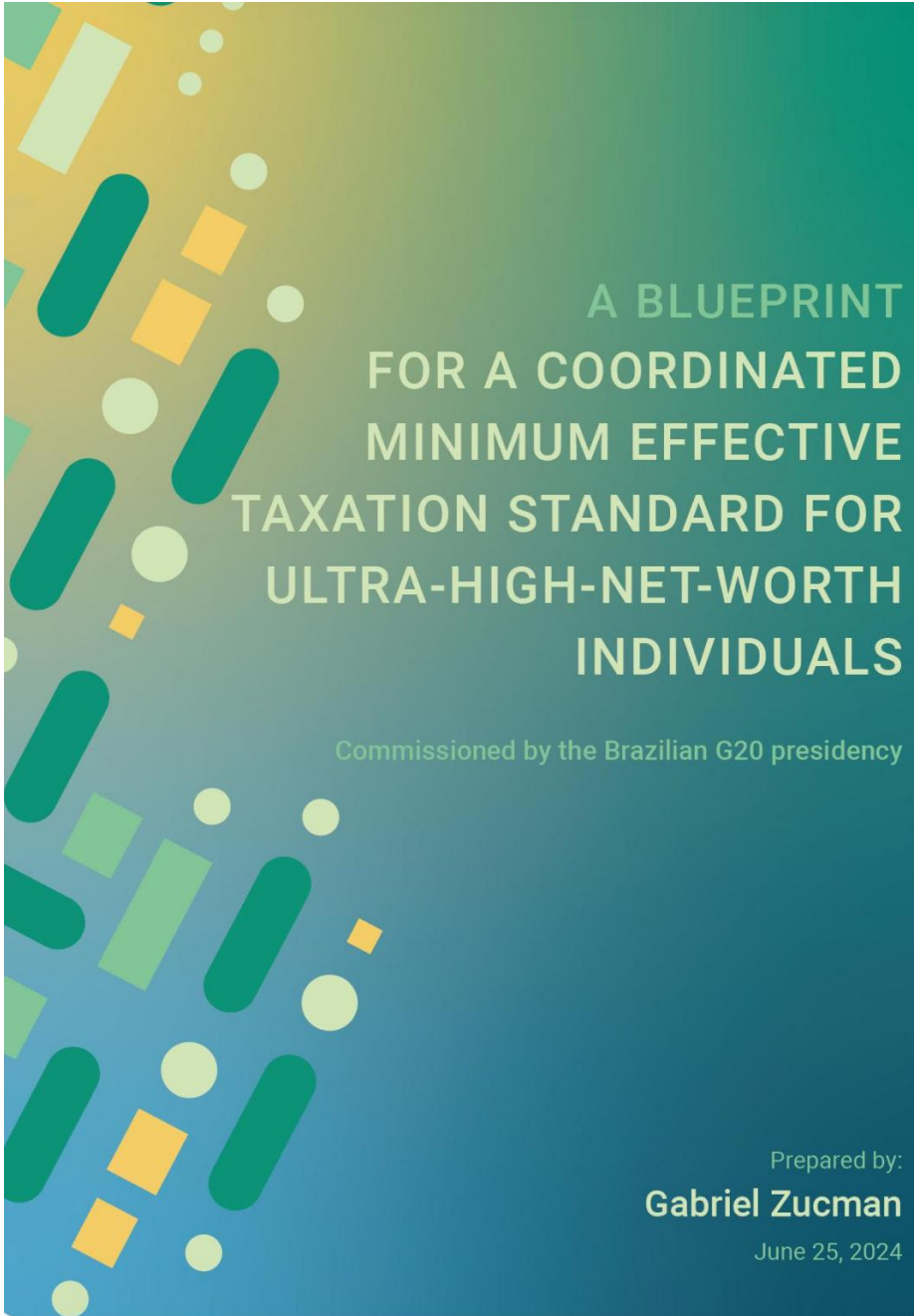


UK Receipts in respect of Intangible Property regime (ORIP)

- 2019-2024
- Tax on amounts received by person for making IP available to another, who uses IP to make sales in UK.
- Applied to persons who were neither UK residents nor residents of “full treaty territory”
- Tax on “UK-derived amounts”: amounts of revenue or capital nature in respect of enjoyment of IP rights that directly or indirectly enable, facilitate or promote UK sales.
- Liability on person receiving or entitled to the UK-derived amounts.

UK Receipts in respect of Intangible Property regime (ORIP)





A BLUEPRINT FOR A COORDINATED MINIMUM EFFECTIVE TAXATION STANDARD FOR ULTRA-HIGH-NET-WORTH INDIVIDUALS

Commissioned by the Brazilian G20 presidency

Prepared by:

Gabriel Zucman

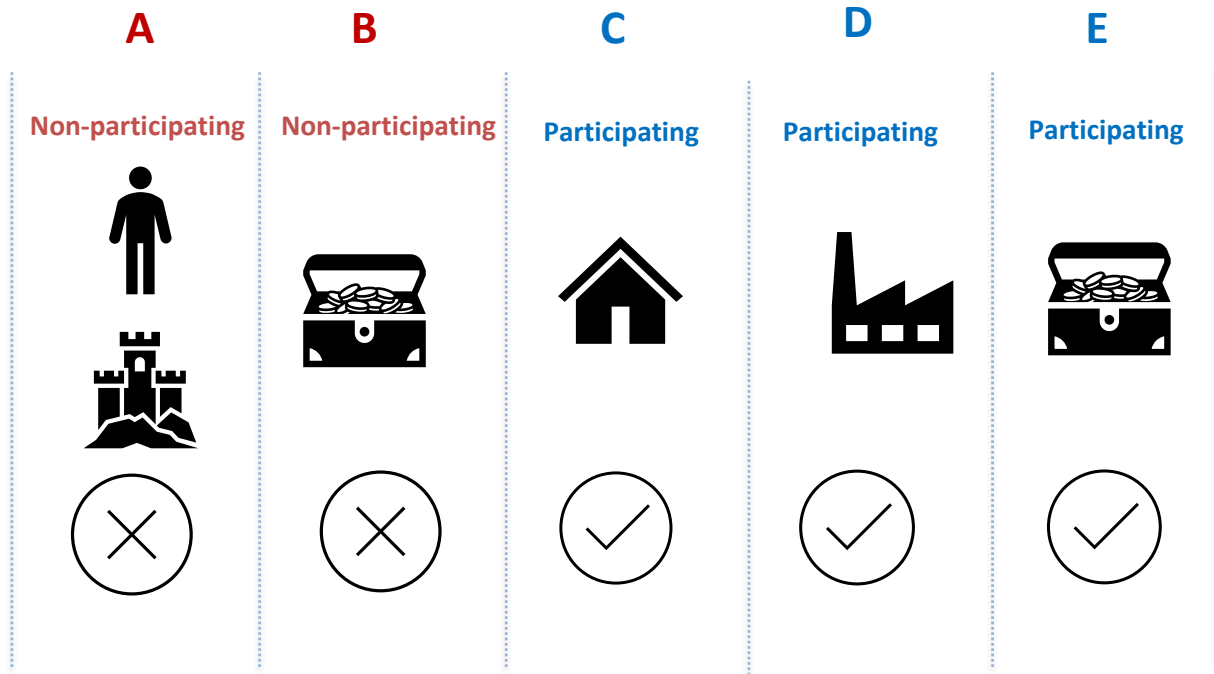
June 25, 2024

G20 UHNWI Report Proposals

- Proposes coordinated minimum standard to ensure that \$ billionaires pay at least 2% of wealth in individual tax each year
- Up to each *participating* country how to collect tax: presumptive PIT, broad PIT, wealth tax etc
- Existing individual taxes credited against it
- Concern with: individuals relocating & countries not participating
 - Inspired by UTPR: goal is to be effective as long as adopted by critical mass of countries
 - Proposals of increasing creativity sketched out to “illustrate the realm of possibilities”

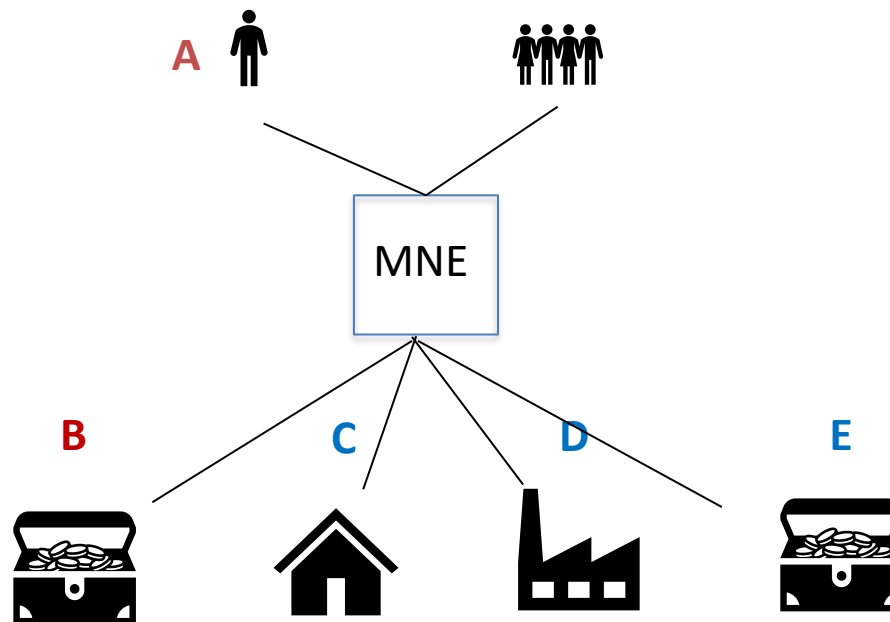
G20 UHNWI Report Proposals

Tax non-residents on a share of world-wide wealth based on assets found in territory



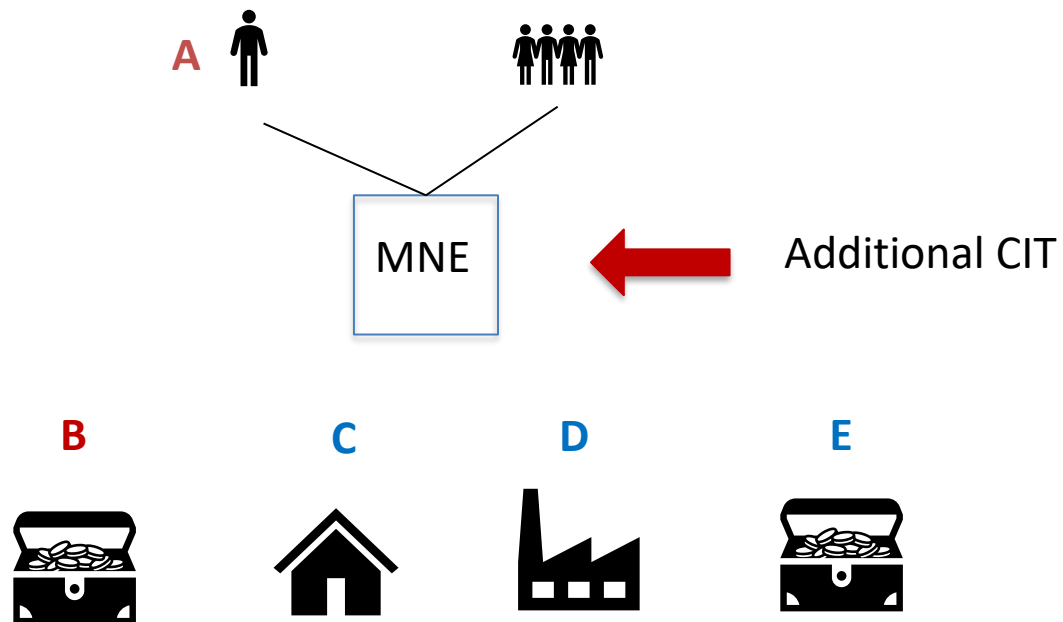
G20 UHNWI Report Proposals

Tax non-residents with ('large') stake in MNE on share of world-wide wealth based on assets owned by MNE in territory. Participating jurisdiction taxes a share of the minimum tax in proportion to the share of MNE's global assets held in that jurisdiction.



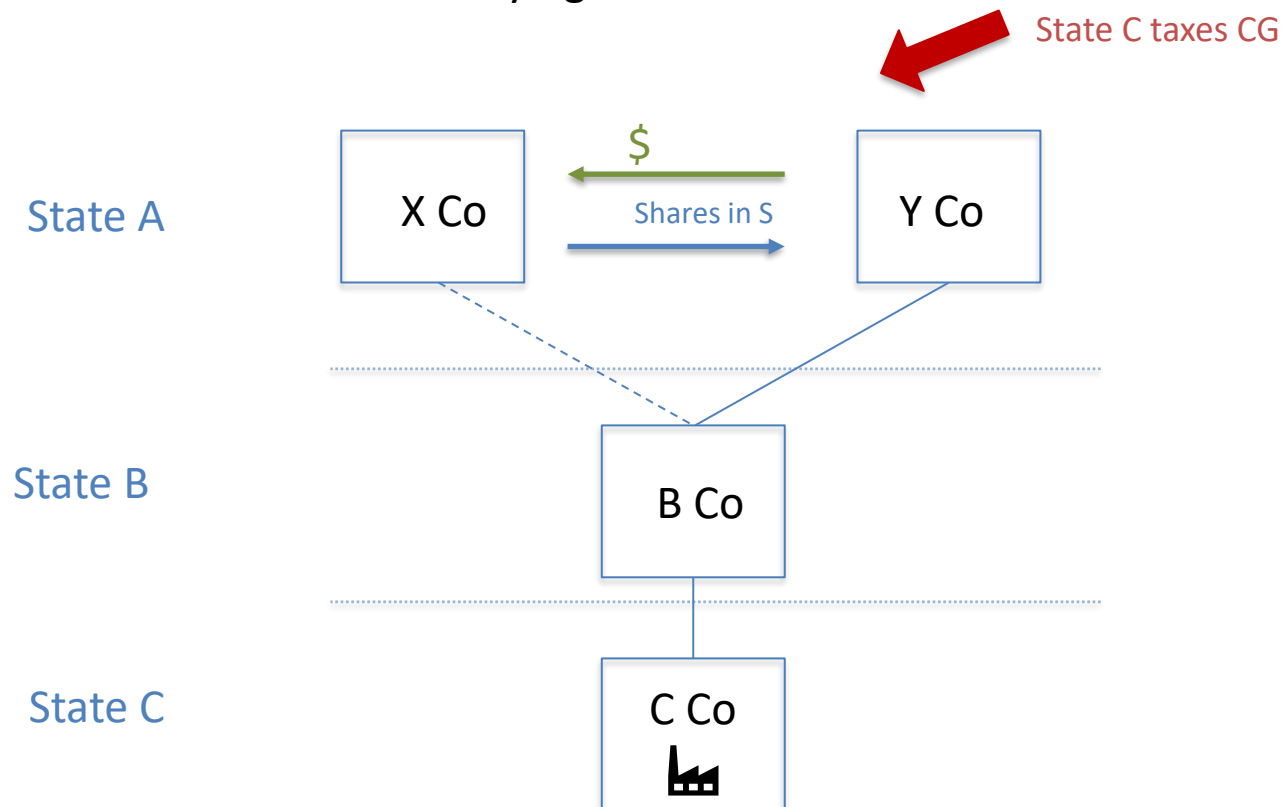
G20 UHNWI Report Proposals

Impose additional corporation tax on MNE if non-resident refuses to pay



Offshore Indirect Transfer of Assets

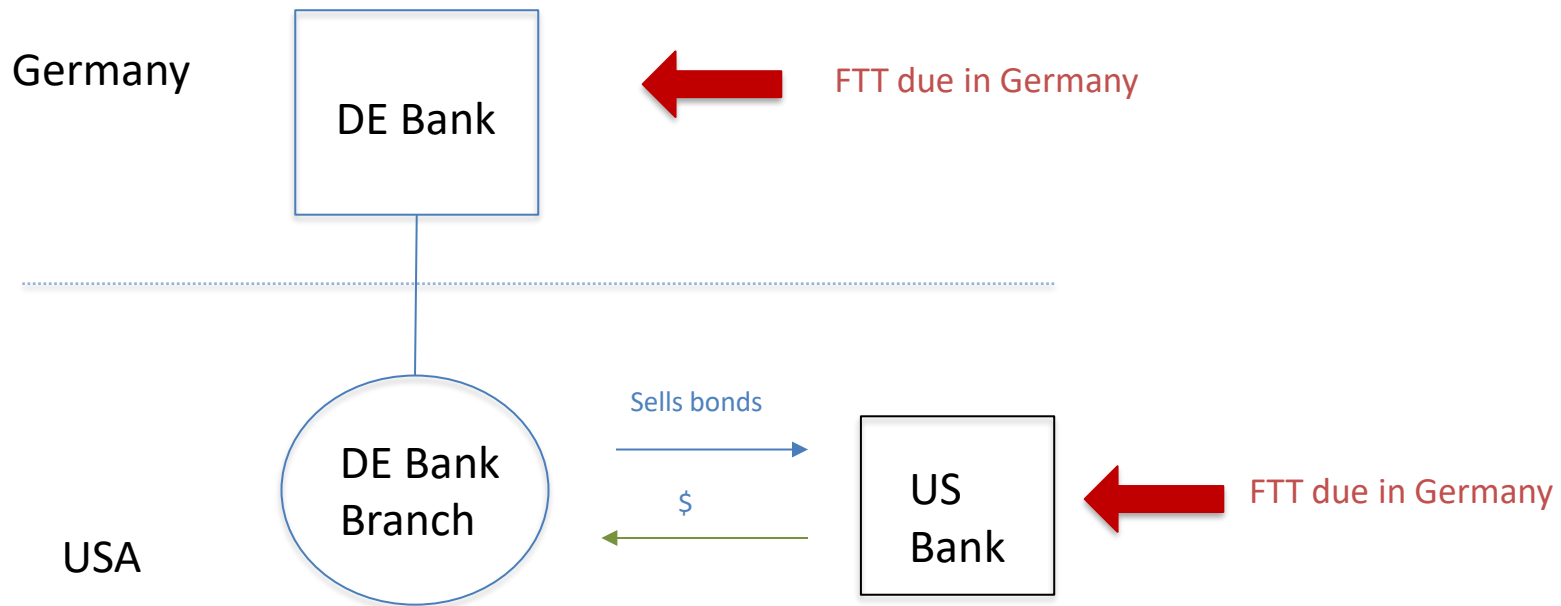
OIT of assets regimes cover situations where a transaction relating to certain foreign assets (shares or interest in companies abroad) between non-residents is subject to taxation due to an underlying domestic asset



EU Commission Financial Transaction Tax

- Proposed in 2011 and again in 2013. Just withdrawn
- *Financial Transactions* involving *Financial Instruments* involving at least one *Financial Institution*
- 0.01 % for financial transactions related to derivative instruments and 0.1 % for all other transactions.
- Following the residence principle, a financial institution is subject to FTT if “established” in a MS, i.e. authorised, has its registered seat, its permanent address, its usual residence, or a branch in that MS.
- If non-MS FI party to a transaction with a person or entity established in a MS, it would be deemed to be established in that MS for the purposes of the tax.

EU Commission Financial Transaction Tax



II. What are the limits on state's jurisdiction to tax?

Public International Law

- **State sovereignty**: customary – even foundational – principle of PIL.
- Corollary: **jurisdiction** (pf exclusive) over *territory* and *permanent population living there*, and duty of non-intervention in area of exclusive jurisdiction of others
- **Jurisdiction**: state's competence under PIL to regulate conduct of persons:
 - **Prescriptive**, enforcement and adjudicative jurisdiction.
- Jurisdiction requires **nexus**: “if there is a cardinal principle emerging, it is that of genuine connection” (Crawford)
 - Most widely recognised nexuses are ***territorial*** and ***personal***

Public International Law



1. Does CIL require state to have “genuine connection” to tax?

- Minority: no - e.g. Quershi, Piccioto
- Majority: yes - e.g. Ryngaert, Baker, Gadžo, Braumann, Englisch

2. Must the connection have certain qualities?

- *Genuineness*: must connection have substance?
 - (e.g. UK IHT tail)
- *Appropriateness*: must connection be commensurate with the tax base?
 - (e.g. UTPR)
- **Difficult to answer**
 - Not even clear at what level we are asking this question

Public International Law



- Formation of customary international law
 - ***State practice***: practice of states that is uniform, consistent, widespread, representative
 - ***Opinio juris***: belief by states that their practice is carried out from a sense of legal obligation, not merely out of comity, convenience, or habit.
- Should be applied (i) generally *or* (ii) to each specific tax/proposal
 - E.g. UTPR
 - (i) SP and OJ confirm that nexus required under CIL
 - Then ask is nexus in UTPR genuine? (Perhaps also) is it appropriate?
 - (ii) Do SP and OJ show that nexus in UTPR is acceptable?
- Option (ii) is problematic.
 - Cannot form view on proposal or new tax
 - France taxes UK residents on share of world-wide income if holiday for 1 month?
 - If no, why?
 - Is it because we observe that countries don't do this?
 - But what can we conclude if something never done?

Public International Law



- Our view at this point:
 - There is a CIL requirement of nexus
 - Unclear whether general or specific
 - One way of reconciling them
 - General requirement, but SP and OJ may show that a nexus is or is not satisfactory
 - In either case seems to be light constraint

III. Should countries exercise restraint in employing their jurisdiction to tax?

The second research question



- Research question:
 - CIL appears to impose light constraints on jurisdiction to tax
 - But even if *no* constraints *should* countries exercise restraint? *Why? How?*
- Analytic framework to answer these questions:
 - Identify objectives of the tax
 - Weigh them against broader normative considerations

GET objectives

- Ultimately, most responses to challenges posed by globalization and digitalization
 1. *Address deficiencies in the system*
 - E.g. DST
 2. *Address profit shifting (tax avoidance)*
 - E.g. (to some extent) UTPR, OIT, ORIP
 3. *Address real behaviour*
 - Might or might not be due to tax
 - E.g. Brain drain tax, UTPR, UK IHT tail, UHNWI proposals, FTT
 4. *Pressure countries to make change*
 - E.g. UTPR and UHNWI individuals
 - Countries not driven by revenue collection (cf brain drain tax)
 - Global perspective – even if indirectly helps them

Counterbalancing normative considerations

1. Balanced against interest of other states

→ ***State sovereignty***

- Contested concept – questioned and reinterpreted
- If states are equal, they should be sovereign
- *As a starting point*, states should have exclusive authority over territory and population, and independence from external control.

2. Balanced against interests of individuals

→ ***Individual autonomy***

- “people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives”
- Long and contested political philosophy literature
- Raz – perfectionist/substantive view
- G. Dworkin – neutral/procedural view
 - Differences in content, relation to social contract, justification of coercive powers of the state
- How does it relate to the right to exit?
 - Central in Kukathas’s conception of autonomy: “the key protection of liberty”
 - Raz? Dworkin?

Counterbalancing normative considerations

- At this stage we argue that exit (subject to conditions) is central to our preferred conception of autonomy
 - “[t]he fundamental reason for thinking exit necessary is to fulfil the protective and expressive functions that enhance the capacity for a self-directed life, including the capacity to form, revise, and pursue our ends. Exit is necessary, not for stability, utility, or even tolerance, but to secure individual autonomy. The interest in self-direction is so important and central that it warrants holding others duty-bound to respect it. That is the ground of exit rights.” (Green, 1998)
3. Balance against the interest of system as a whole
- ***The proper functioning of the international tax system***
- Preference against increasing the system’s incoherence, inconsistency, complexity, onerousness, and multiple layers of taxation.

Balancing exercise

i. Addressing deficiencies in the system

- Can be respectful of other countries' sovereignty
- Can be a problem if:
 - disagreement on deficiency (sovereignty)
 - hinders cooperative solutions (proper functioning)
 - creates problems for the system (proper functioning)
- Must be properly targeted and proportionate
 - E.g. UK DST tail partly meant to address deficiency (benefit) but goes way beyond

ii. Addressing tax avoidance

- Provides strongest rationale for geographically expansive taxation
- Can be respectful of other countries' sovereignty
- Must be properly targeted and proportionate
 - E.g. ORIP partly addresses avoidance but goes way beyond

Balancing exercise

iii. *Addressing real responses*

- More problematic
- May impinge on state sovereignty
 - E.g. UTPR
- May impinge on individual autonomy
 - E.g. Brain drain tax, UK IHT tail, UHNWI proposals

iv. *Pressure countries to change*

- Even more problematic
- Arguments that this enhances sovereignty?
- Competing for real activity is harmful for all in long run
- But:
 - (1) in shorter run can be unfair if countries at different stages of development
 - (2) competition takes many forms – unclear that fair to stop only some

Balancing exercise

Three final normative concerns with geographically expansive taxation:

- Makes it easier for small number of *powerful* states to impose on *weaker* states (state sovereignty)
 - E.g. UTPR, HNWI proposals
- May allow countries to tax with muted consequences (individual autonomy)
 - E.g. Brain drain tax style proposals – why not crank rate right up?
- Currently used to promote progressive goals, what if creates precedent for use for problematic goals?
 - E.g. US imposes tax on worldwide wealth of individuals owning assets in the US, if they reside in countries with strong environmental laws

Statist vs Cosmopolitan view on Global Justice

- Different conceptions of global justice but two important : statist vs cosmopolitan
- For statist (e.g. Thomas Nagel) international obligations are limited (e.g. to human rights or minimal duties), and do not extend to full distributive justice. Justice only requires redistribution within a country but not across countries
- For cosmopolitans (e.g. Thomas Pogge) justice applies to **individuals everywhere**. They thus hold that national borders do not by themselves limit the reach of distributive justice or fundamental moral concern.
- Which view one takes can impact the balancing exercise.
 - Cosmopolitans may give more weight to addressing avoidance and real competition and less to sovereignty and autonomy
 - But ultimately their concern is with each individual irrespective of which state they reside in
 - Expansive taxation is problematic from this lens too because:
 - Prevents states at different stages of development to compete using tax and that could deprive them of revenue
 - Allows a small group of powerful states to impose their will on weaker states

Conclusions

- Increased use of GET and enthusiastic calls to go further
 - *Can they?*
 - Significant uncertainty on CIL constraints – exist but limited
 - *Should they?*
 - Suggest an analytical framework
 - Balance objectives of the tax with broader normative considerations
 - General points:
 - Addressing avoidance seems least problematic
 - Addressing real activity and pressuring countries to change appear most problematic when counterbalanced against broader normative considerations
- Therefore:
- Restraint shown by countries in the past is valuable
 - Enthusiastic calls to cast it aside should not be heeded

Further examples



I would be very grateful if you could pass on any further examples you come across. Thank you!

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