The Platform for Collaboration on Tax

Toolkit for Addressing the Taxation of Offshore Indirect Transfers (OITs)

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Overview of the OIT Toolkit

Toolkit's structure:

I. INTRODUCTION

II. ANALYSING OFFSHORE INDIRECT TRANSFERS

III. THREE ILLUSTRATIVE CASES

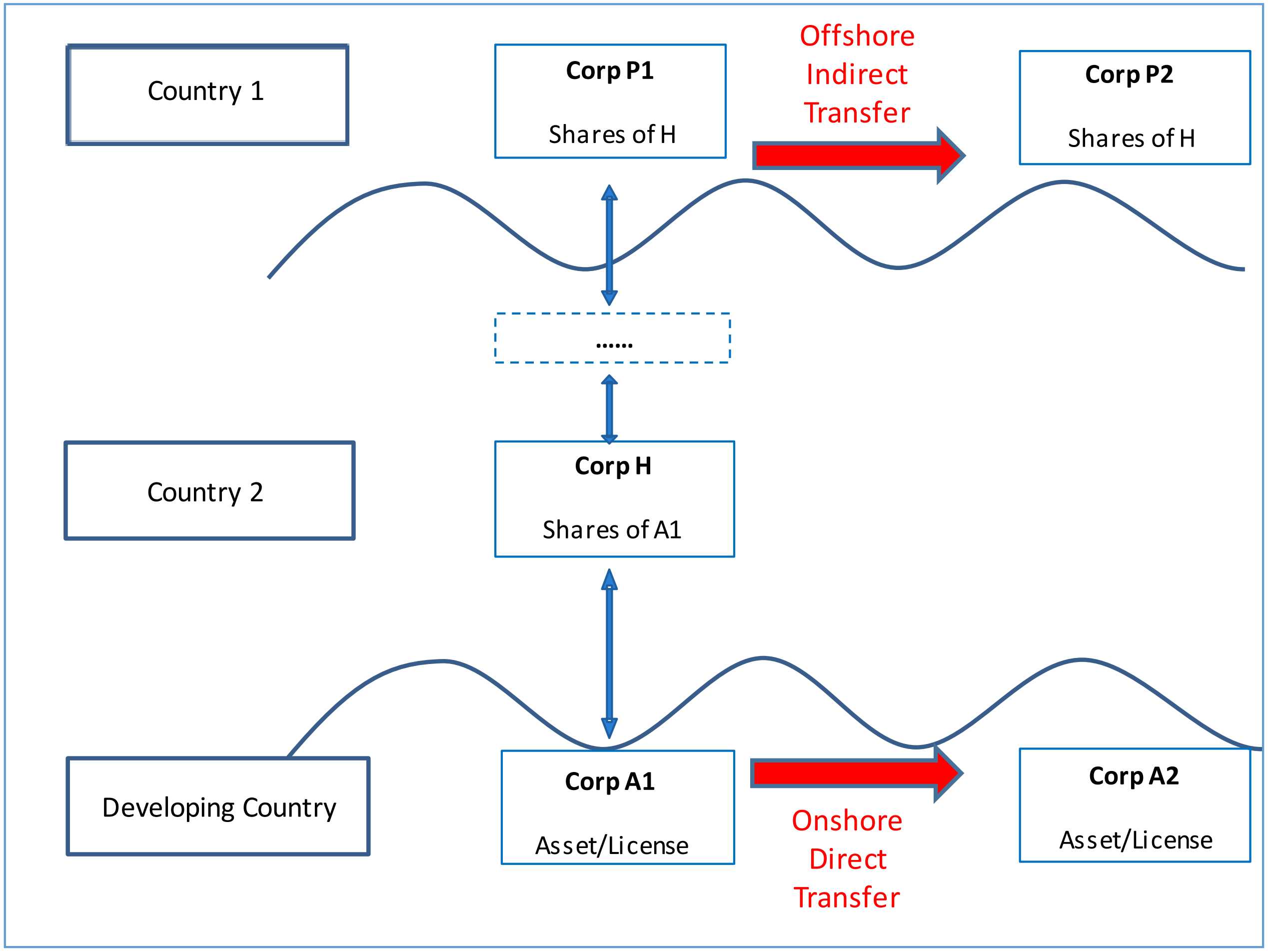
IV. TAX TREATIES AND OFFSHORE INDIRECT TRANSFERS

V. IMPLEMENTATION CHALLENGES AND OPTIONS

VI. CONCLUSIONS

APPENDICES A, B, C, D

PCT Toolkit: OITs



- Addresses a critical issue for resource rich low income countries.
- Adopts current thinking on treatment of "immovable property" (see OECD and UN MTCs), with discussion of possible expansion to additional "location specific rents" (e.g. telecom licenses granted by government).
- Demonstrates "standard setting feedback loop": PCT identifies problem faced by developing countries; a standard setter (here, the OECD) facilitates an approach to target the problem (see MLI).
- Provides proposed language and methods to adopt such source country taxation under two different models.

OIT Toolkit – Main features

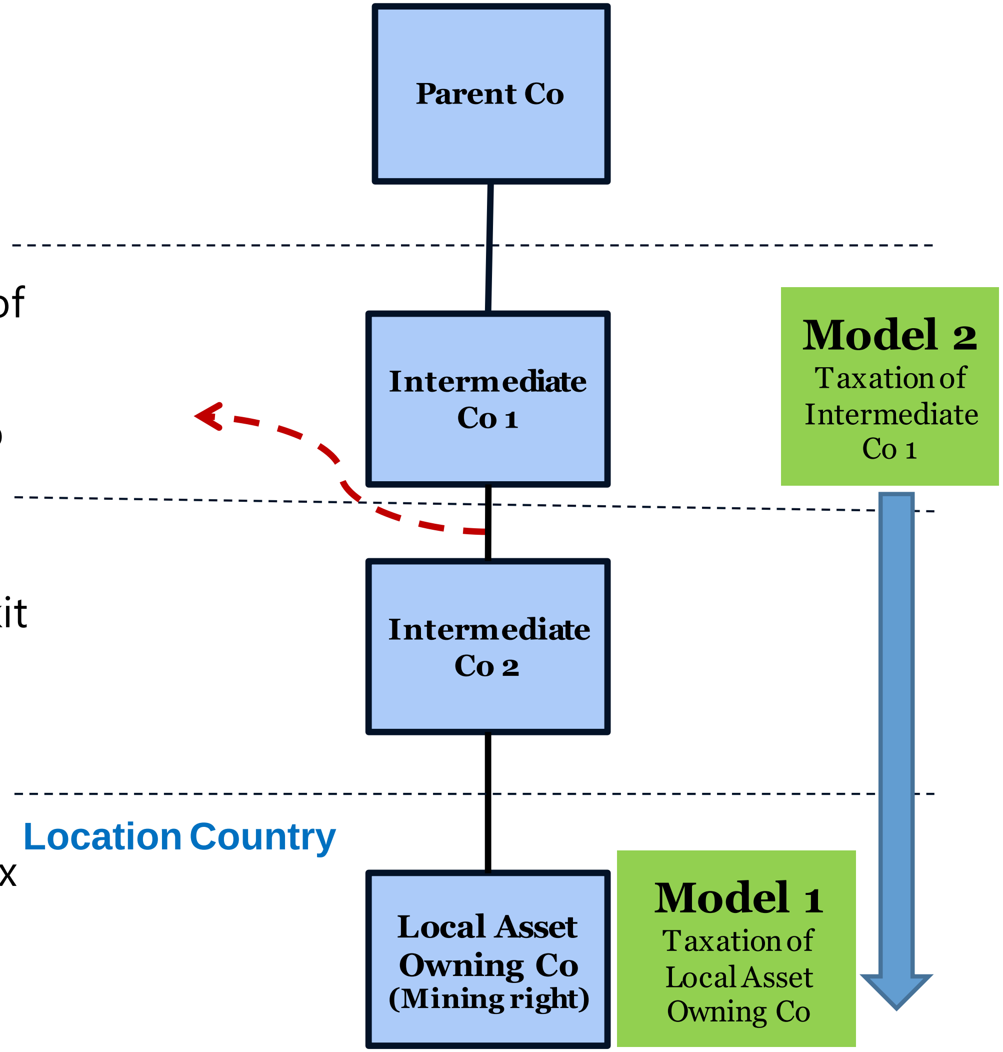
- Focus of the OIT toolkit is on…
  - …the country where the asset is located – the ‘source’ country
  - …capital gains on the transfer of ‘immovable property’
  - …practicable options, rather than single approach

Key issues addressed

- Should capital gains on OITs be taxed in the location country?
  - Toolkit offers policy guidance
- What are the implementation challenges?
  - Toolkit provides policy guidance and legal drafting suggestions
- What to do with tax treaties?
  - Toolkit discusses Article 13(4) in MTCs

Implementation approaches

- **Tax liability rules** – toolkit offers guidance and drafting samples:
  - Model 1 – taxation of a deemed direct sale by a resident
  - Model 2 (mostly used) – taxation of the non-resident seller
  - Both models – critical how wide to define 'immovable property' (example)
- **Enforcement/collection issues** – toolkit offers practical examples:
  - Detect – notification/reporting requirements
  - Collect – withholding; imposing tax payment obligation
  - Enforce – legal protections



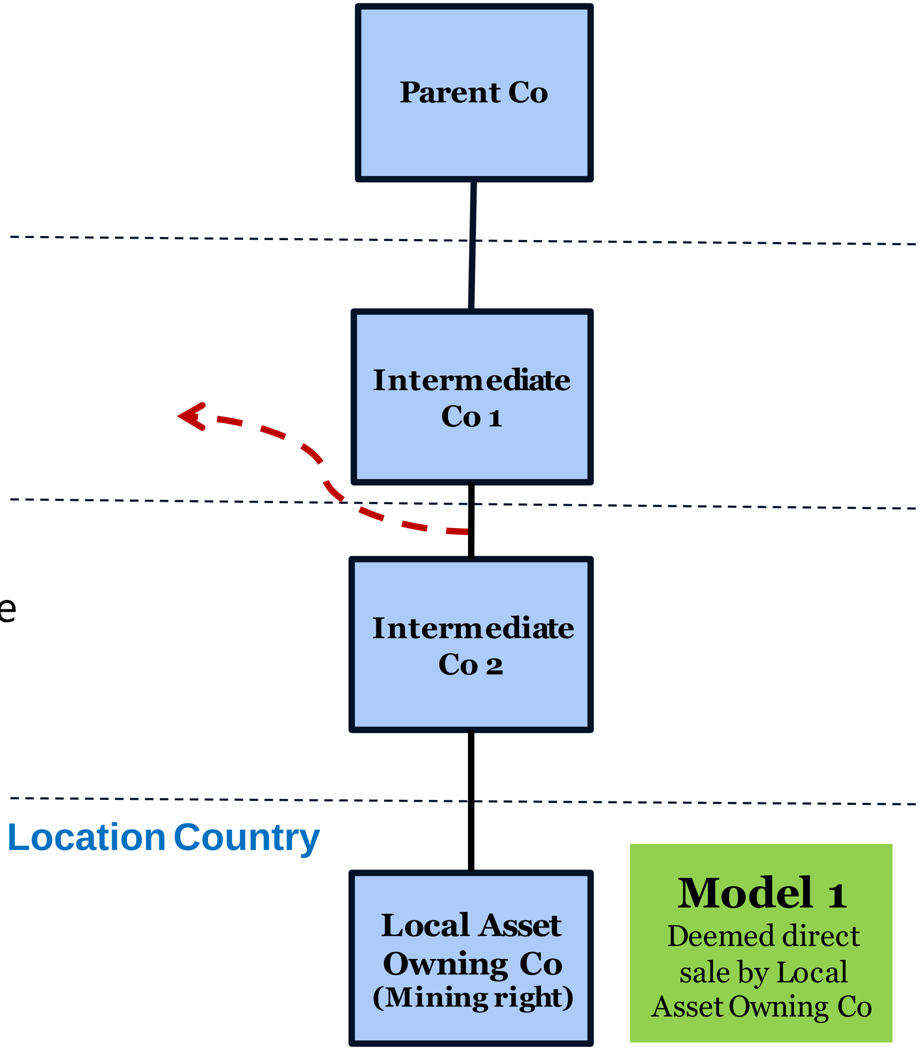
Overview of Model 1

- Taxes the local asset owner on the basis that the asset it holds has undergone a change of control because of an offshore sale of an entity that owns the local asset owner, directly or indirectly.

- The tax liability with respect to the gain triggered for the local resident asset-owning entity (deemed disposal).

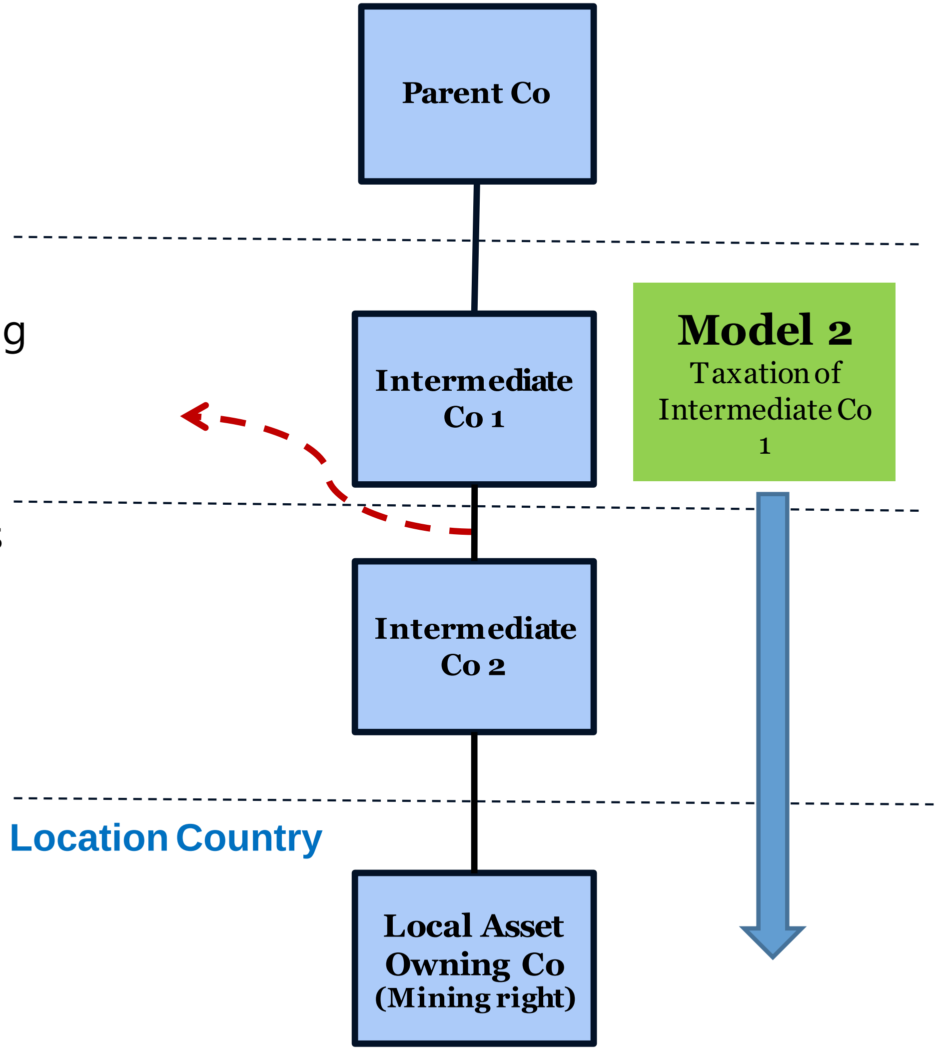
- Achieve through domestic legislative provisions, without primary reliance on the international source of income or broader international taxation rules (such as tax treaty allocation rules).

- This approach has been adopted in a number of source countries, such as Mongolia, Nepal, Ghana and Tanzania.



Overview of Model 2

- Seeks to impose tax on the non-resident seller on the basis that the transfer gives rise to a gain with a local source.
- Model more commonly adopted.
- Source rules become critical for triggering the tax liability in the location country.
- Non-resident ordinarily only subject to taxation on income derived from sources in the particular location country.
- Source rule may be combined with a taxable asset rule (e.g. full and pro rata taxation).
- Taxing right can be limited by tax treaty (e.g. absence of Article 13(4)).



Key takeaways and next steps

- Toolkit assists developing countries decide whether they wish to tax offshore indirect transfers relating to immovable property.

- Enables a coherent policy making framework to be in place to avoid the need to make last minute decisions when faced with exigent circumstances.

- Focuses on two common domestic legislative approaches to improve consistency for greater tax certainty.

- New policy decisions should be implemented prospectively.

- Enables broader thinking about expansion of immovable property to additional location specific rents (returns exceeding the minimum required by investors), especially post-COVID-19.