The Platform for Collaboration on Tax

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

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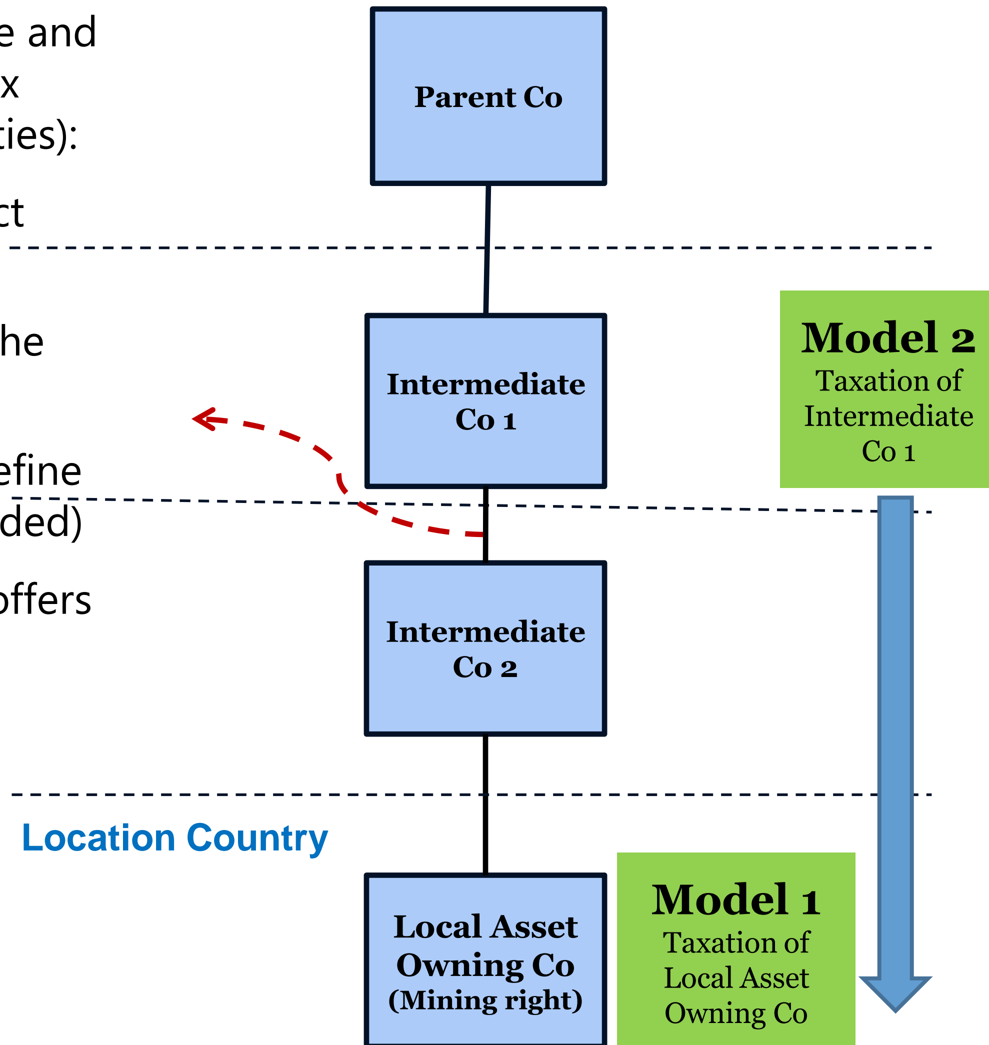
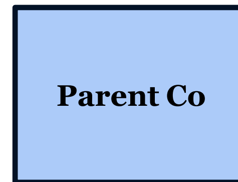
OIT Toolkit – Recap

- **Tax liability rules** – toolkit offers guidance and drafting samples (if countries resolve to tax OITs under international norms in tax treaties):
  - 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 provided)
- **Enforcement/collection issues** – toolkit offers practical examples:
  - Detect – notification/reporting requirements
  - Collect – withholding; imposing tax payment obligation
  - Enforce – legal protections



Assessing pros and cons (Model 1 vs Model 2)

Ultimate Residence Country (High Tax)



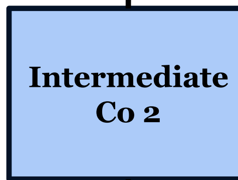
Pros:
- Better preserves separate legal entity distinction (i.e., non-resident seller versus local asset owning company)
- Better preserves any foreign tax credit relief

Intermediate Country (Low Tax)

Cons:
- Enforcement and collection challenges given liability imposed on non-resident
- Taxation right can be limited by terms of tax treaty (e.g,. absence of Art 13(4))
- Double taxation issues on other intermediate shareholdings

Model 2
Taxation of Intermediate Co 1

Intermediate Country (Low Tax)



Pros:
- Greater ability to collect and enforce tax liability
- Better manages risk of double taxation on other intermediate shareholdings
- Taxing right arguably not limited by tax treaty

Location Country

Cons:
- Limited foreign tax credit relief if gain also taxed in Intermediate Country
- Risk of unfunded tax liability
- Undermines separate legal entity distinction
- Requires knowledge of ownership changes

Model 1
Deemed direct sale by Local Asset Owning Co

To answer (some) of your questions, the OIT Toolkit…

- …assists developing countries to decide whether they wish to tax OITs with no preferred approach (need to weigh pros and cons).
- …enables policy decision to be made before needing to make last minute decisions when faced with exigent circumstances (allows pro-active policy making).
- …focuses on two common domestic legislative (rules-based) approaches for taxing OITs (preference to use anti-avoidance rules as a fallback).
- …facilitates a consistent approach (enhancing tax certainty) but does not provide binding rules or authoritative provisions, nor does it aim to establish new standards.
- …discusses how Model 1 should be consistent with tax treaties (no modifications needed), but provides guidance to adopt Article 13(4) in tax treaties (especially for Model 2).
- …notes how the UN MTC on certain OITs goes further than the OECD MTC (e.g., Article 13(5) and 13(7)). Need to consider in context of tax treaty policy.