LOYENS LOEFF

4. Case Study

Case study

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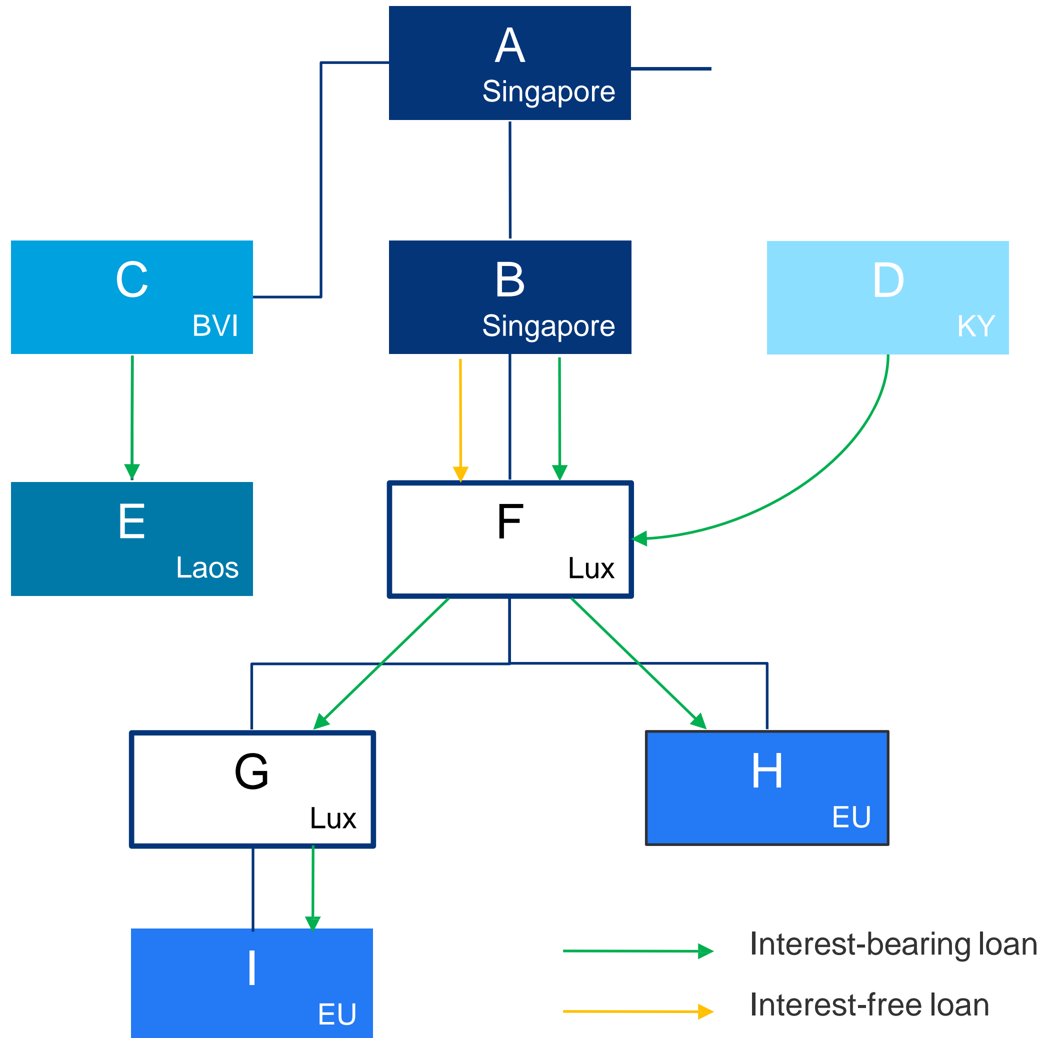
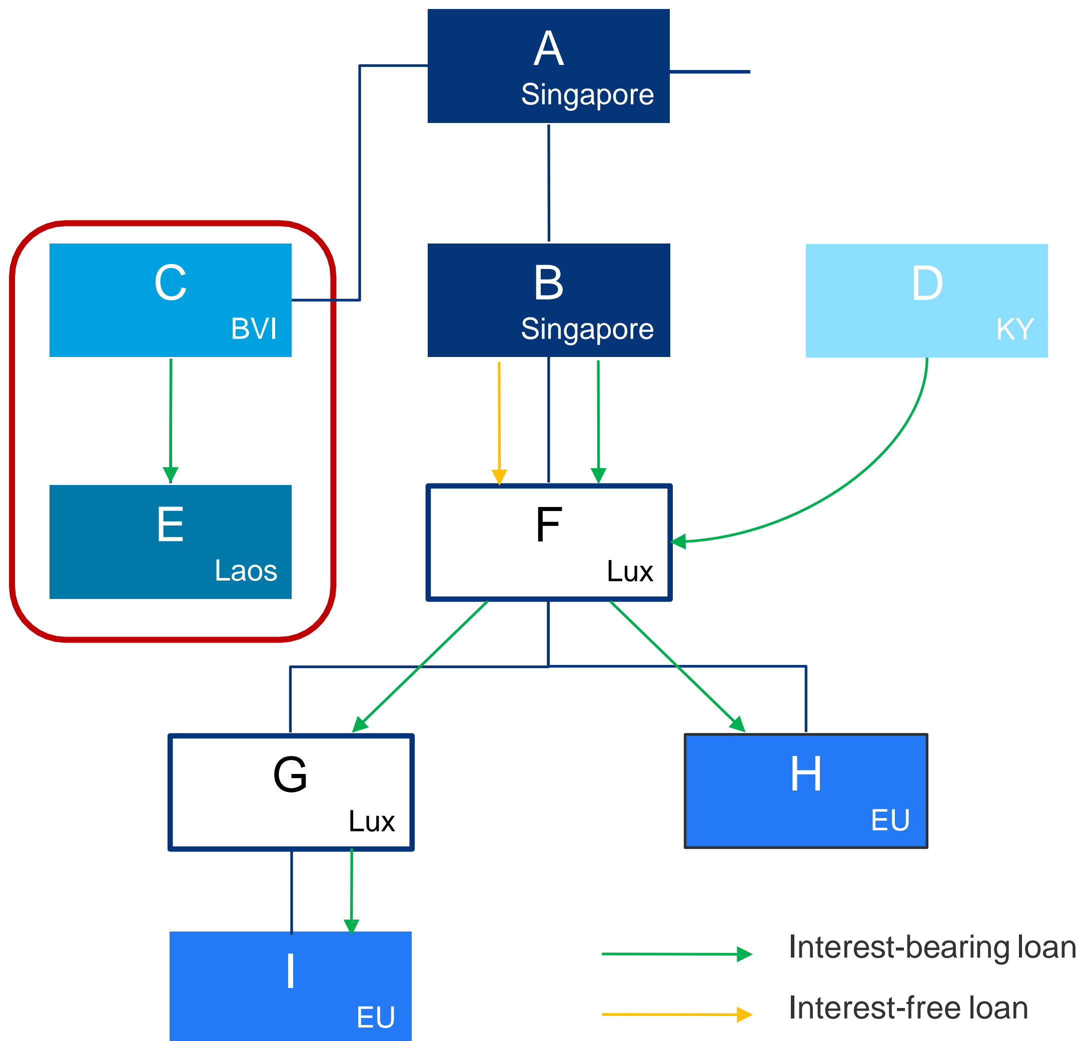


- A and B are tax resident in a territorial tax jurisdiction (Singapore).
- C and D are resident in low-/no-tax jurisdictions (BVI and Cayman Islands, respectively).
- F is the EU platform holding and financing company of the group, established and tax resident in Luxembourg.
- E is in Laos, a country that is not amongst the 137 members of the BEPS Inclusive Framework.
- E, H and I are operational companies.
- All subsidiaries are included in the consolidated financial statements prepared by A.

Case study – applying the STTR



- **Effect:** Allow the source jurisdiction to tax the gross amount of the payment up to an agreed minimum rate.
- **How?** Imposition of a WHT
- **Rate:** difference between the agreed minimum rate and the payee jurisdiction's rate.

Impact on the base case structure

Payment from E to C

Step 1: Scope

- Interest is a covered type of payments.
- C and E are connected persons.
- Interest is most likely not subject to agreed minimum rate in the BVI -> the payment would in principle be in the scope of the STTR.
- However, as E is in a country which is not part of the Inclusive Framework, we may expect that the STTR will not apply to this payment.

Case study – applying the STTR

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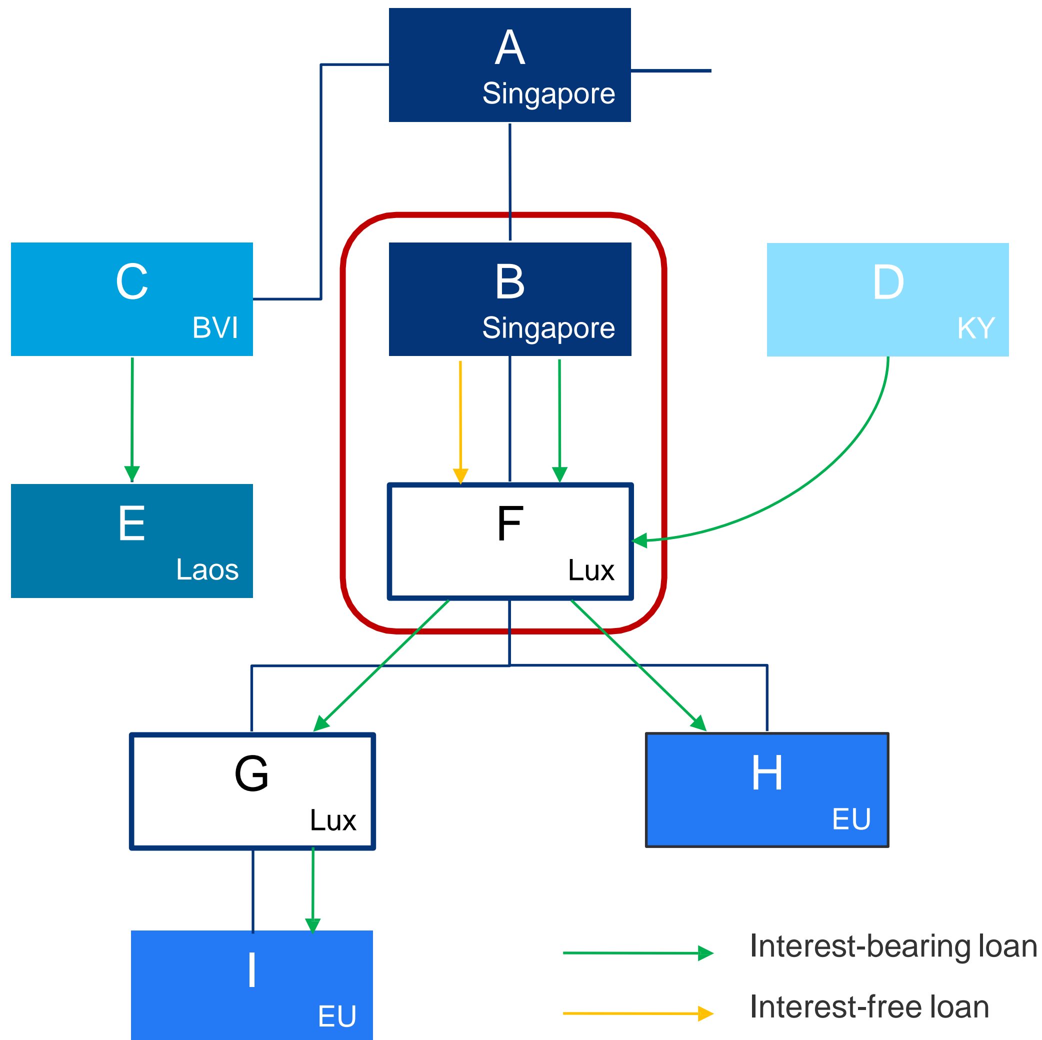

- **Effect:** Allow the source jurisdiction to tax the gross amount of the payment up to an agreed minimum rate.
- **How?** Imposition of a WHT
- **Rate:** difference between the agreed minimum rate and the payee jurisdiction's rate.

Impact on the base case structure

Payment from F to B

Step 1: Scope

- Interest is a covered type of payments.
- B and F are connected persons.
- Arguably, adjustments under the IFL are not payments and thus not caught → only interest payments under the IBL would be caught.

Case study – applying the STTR

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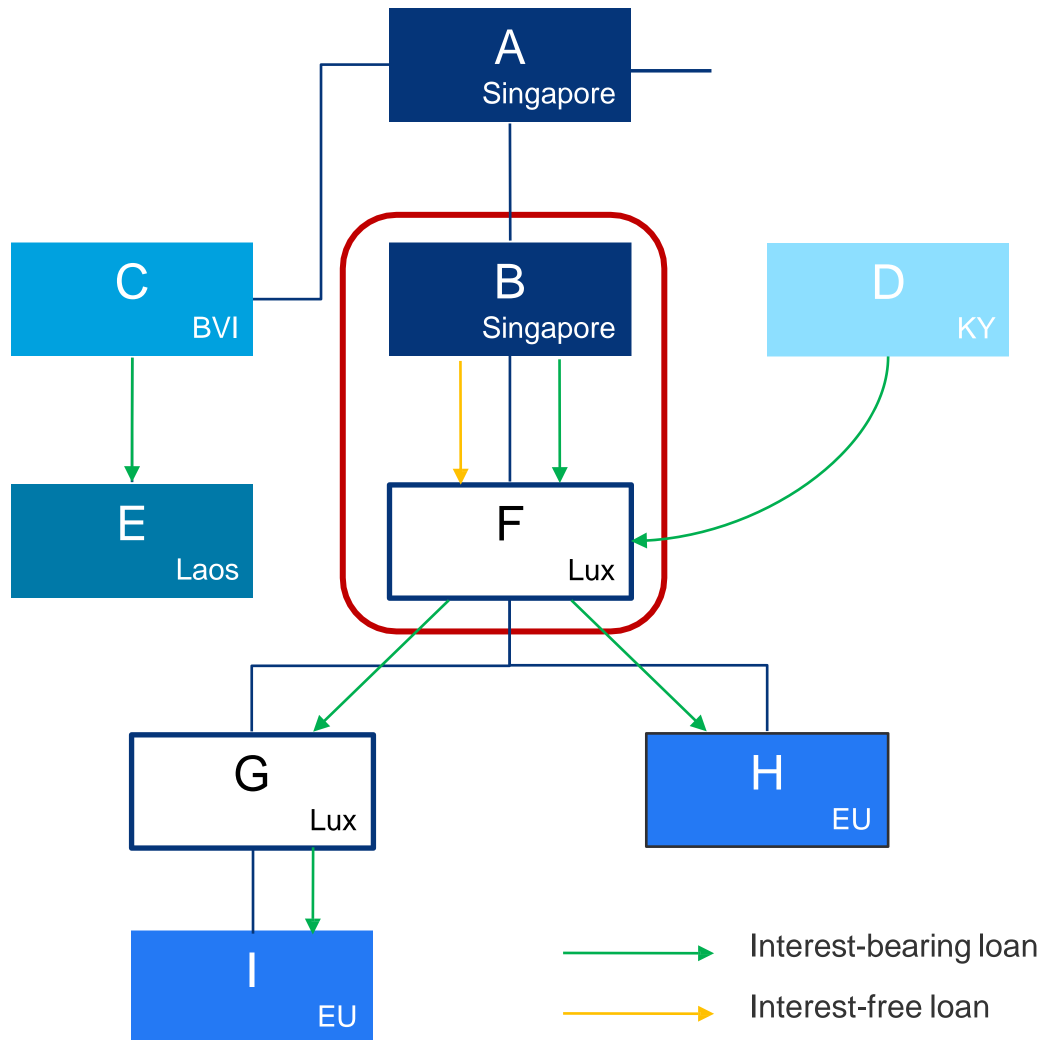


- **Effect:** Allow the source jurisdiction to tax the gross amount of the payment up to an agreed minimum rate.
- **How?** Imposition of a WHT
- **Rate:** difference between the agreed minimum rate and the payee jurisdiction's rate.

Impact on the base case structure

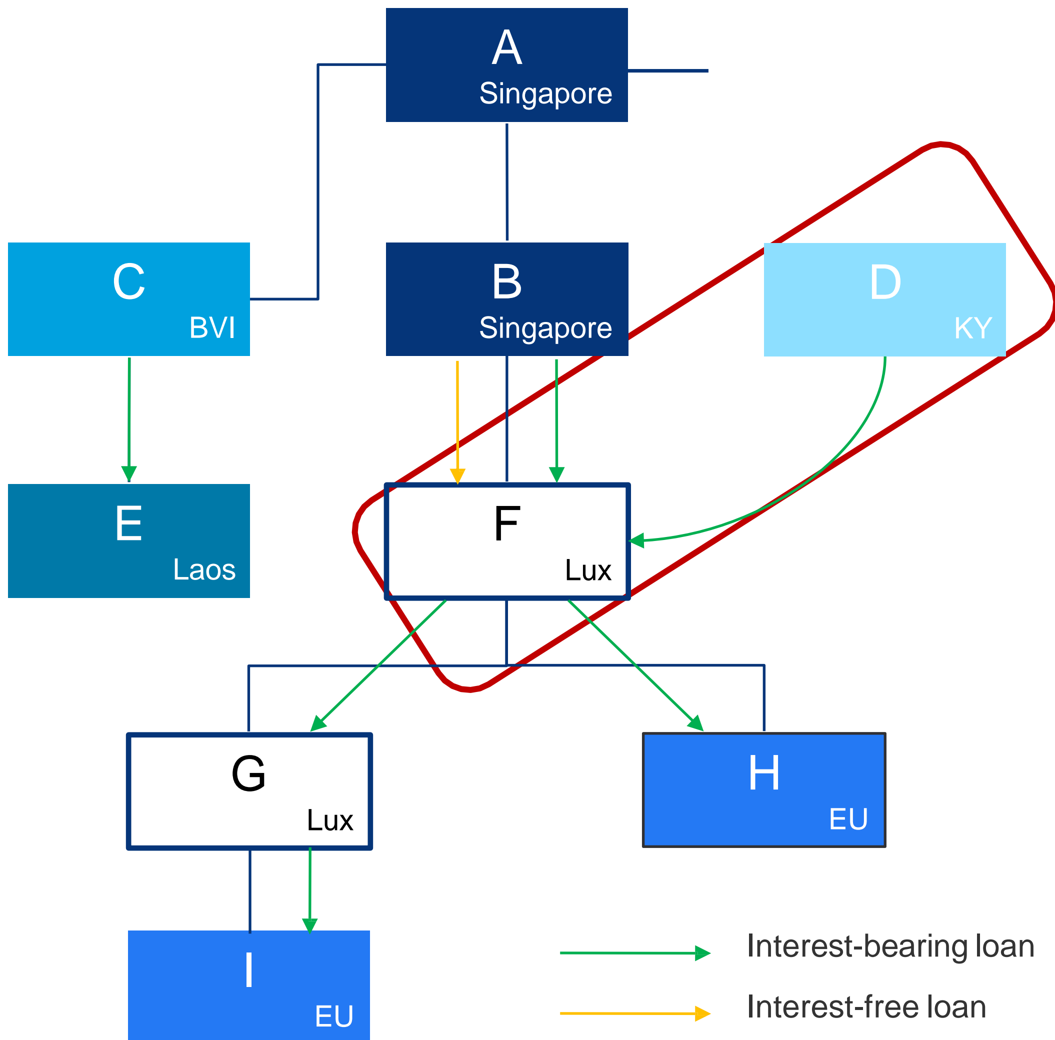
Payment from F to B

Step 2: Application of the rule

The application of a territorial regime means that B is taxed at a rate below the one agreed (unless the interest is remitted into Singapore)

- Luxembourg may subject the payment to WHT (if Luxembourg implements the STTR)
- WHT rate = agreed minimum rate (for STTR purposes) -/- tax rate applied to the interest income in Singapore

Case study – applying the STTR



- **Effect:** Allow the source jurisdiction to tax the gross amount of the payment up to an agreed minimum rate.
- **How?** Imposition of a WHT
- **Rate:** difference between the agreed minimum rate and the payee jurisdiction's rate.

Impact on the base case structure

Payment from F to D

Step 1: Scope

- Interest is a covered payment.
- D and F are connected persons.

Step 2: Application of the rule

- D is resident in a low-/no-tax jurisdiction.
- Luxembourg (if it applies the STTR) shall levy a WHT at a rate corresponding to the difference between the agreed minimum rate and the KY rate applied to the payment.

Case study – applying the GloBE rules

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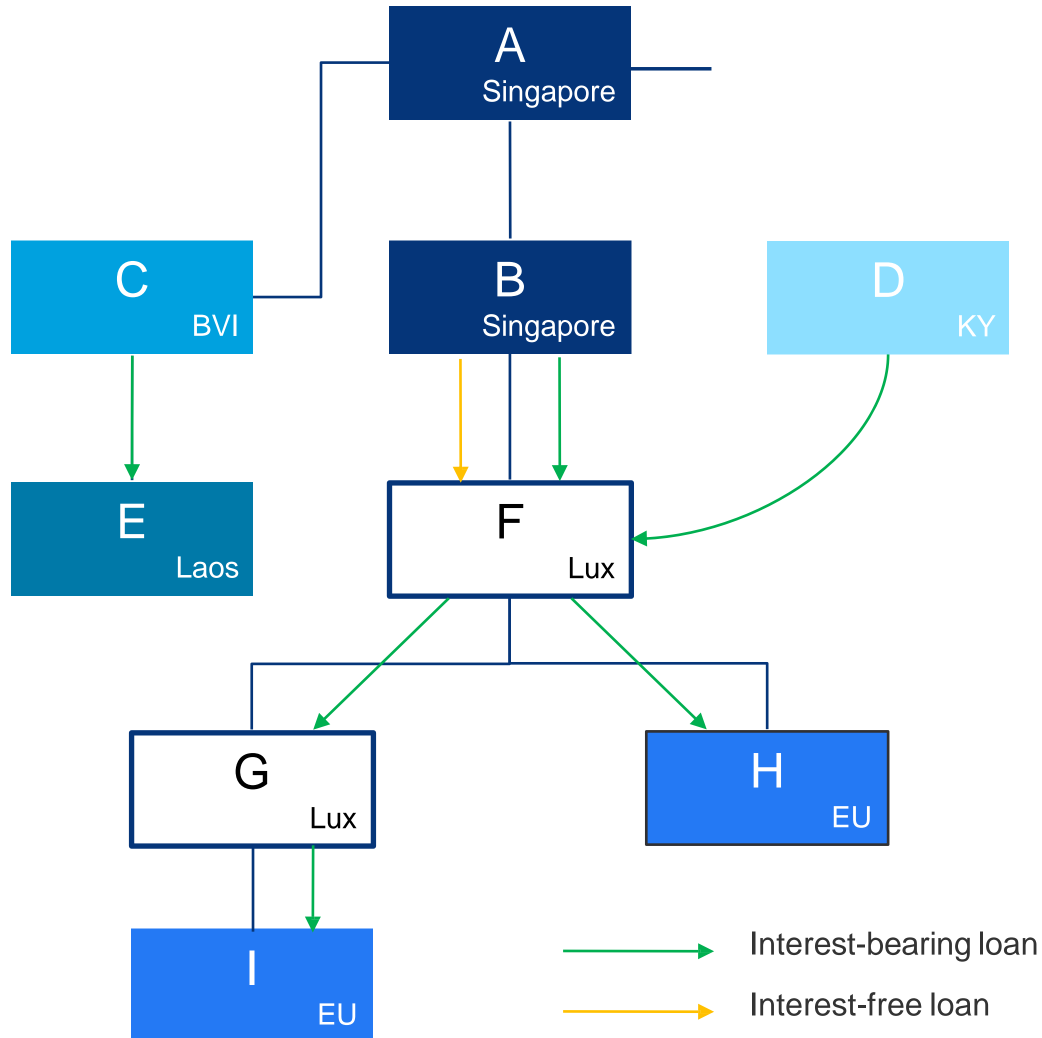

Step 1: computing the jurisdictional ETR

- Covered Taxes in this example:
  - Taxes on income and profits in the various jurisdictions
  - WHT on interest paid

- GloBE tax base
  - Start from consolidated group financial statements
  - Make permanent adjustments (e.g., participation exemption for dividends, exclusion of certain gains or losses on subsidiaries, non-deductibility of Covered Taxes, TP adjustments, etc.).
  - Apply carve-out for low return from substantive activities
  - Take into account carry-forwards (for losses or "excess taxes" paid in a prior year) and other adjustments for timing differences

ETR =

$$\frac{\textit{Covered taxes of all Constituent Entities in Jurisdiction A}}{\textit{GloBE tax base of all Constituent Entities in Jurisdiction A}}$$

Case study – applying the GloBE rules

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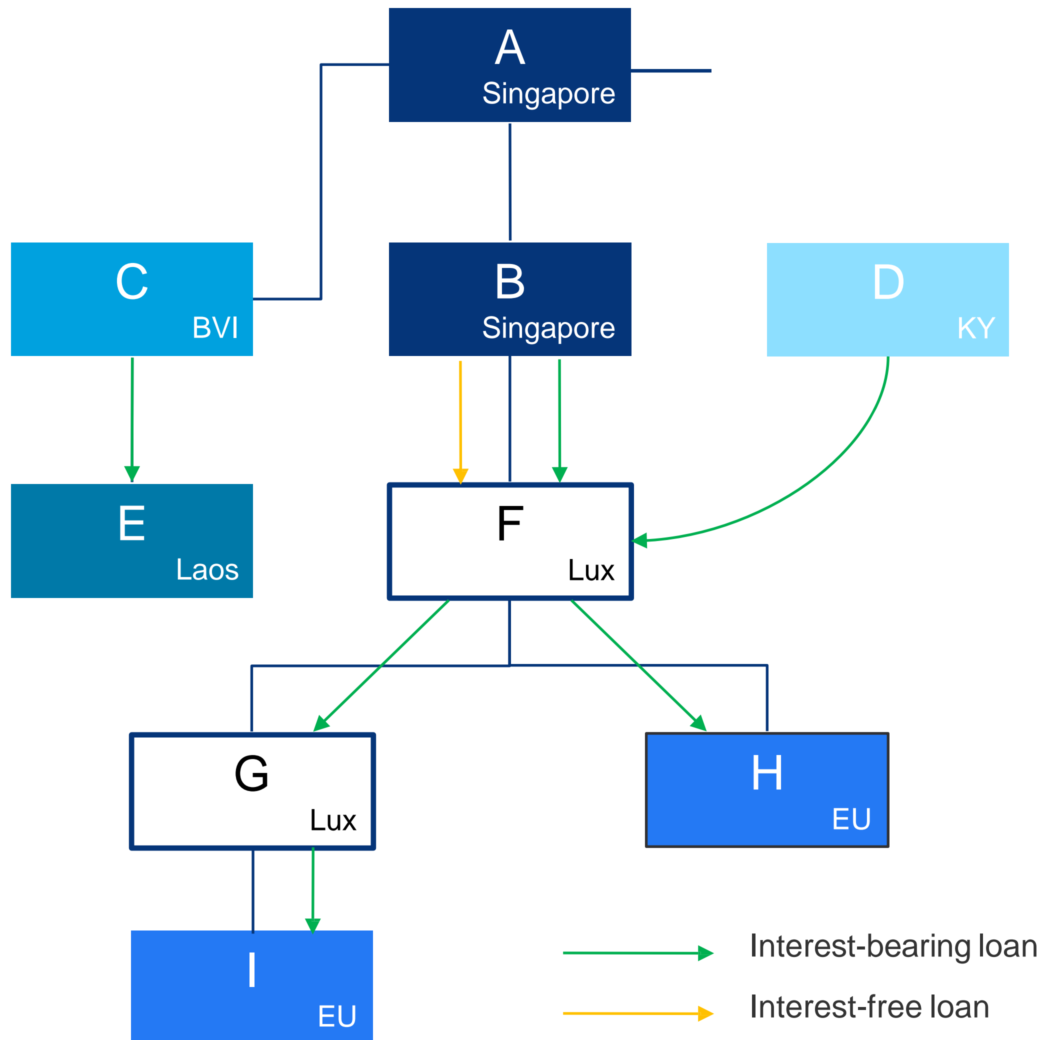

Step 2: Allocating the right to levy top-up tax

- IIR has priority over UTPR
- Top-down approach -> Singapore should levy top-up tax at A's level
  - If Singapore has no IIR, go to lower tiers (BVI/KY unlikely to apply IIR, but Lux may likely to join, being an OECD and EU member state)
  - In case of split-ownership (UPE has less than [90]% of low-taxed constituent entity (directly or indirectly), apply IIR at partially-owned intermediate parent level
  - Special rules for Associates (entities in which a minority shareholder owns at least 20%, so that it applies the equity consolidation method) & JVs

Case study – applying the GloBE rules

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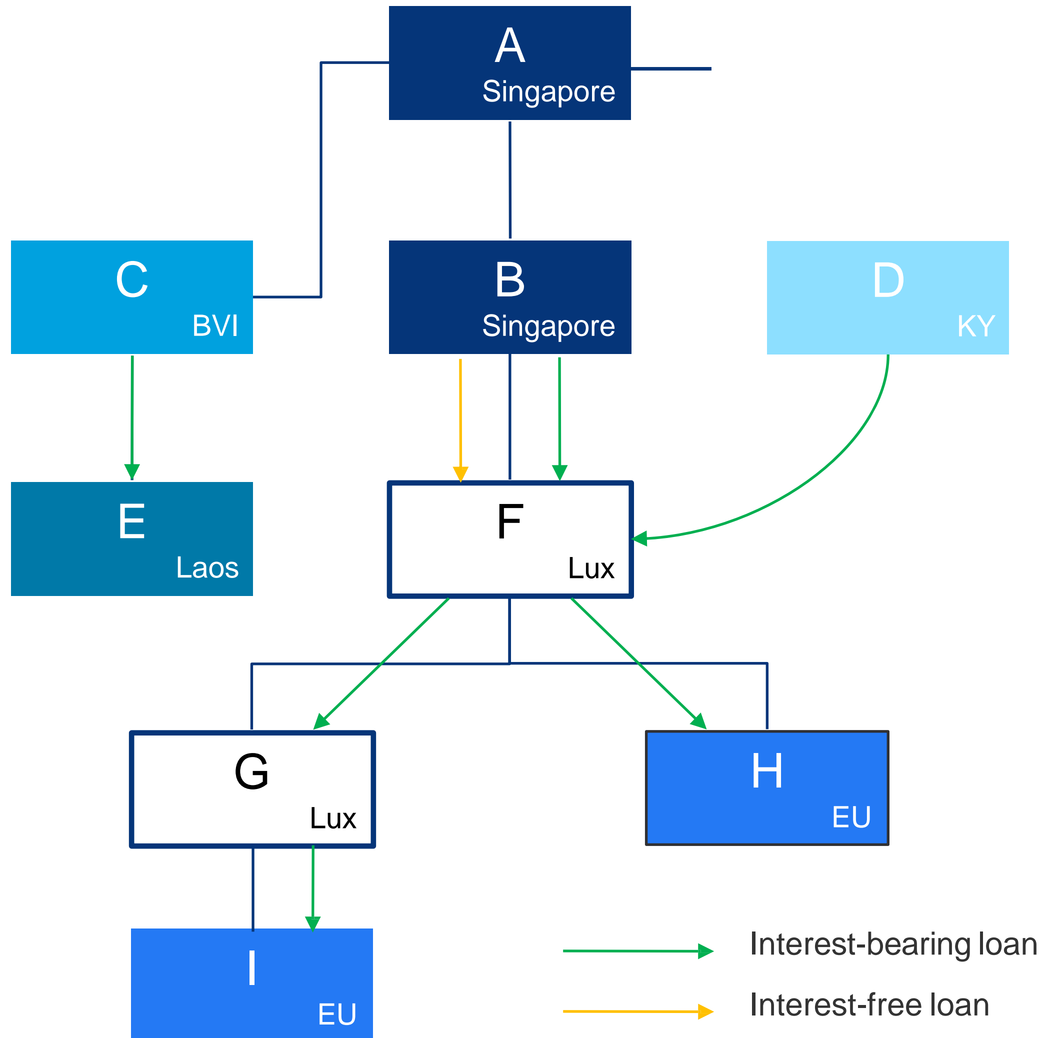

Step 2: Allocating the right to levy top-up tax

- If IIR not sufficient to resolve the insufficient taxation (likely in the example, if Singapore does not have an IIR), then apply the UTPR

- UTPR top-up tax may be levied
  1) By jurisdictions of Constituent Entities making direct deductible payments to the low-taxed constituent entities (here: Laos, Lux)
  2) On a subsidiary basis, by jurisdictions of Constituent Entities having a net deductible intragroup expenditure position (here: EU countries where H & I (operating entities with some intragroup interest expenditure) are established

  provided, however, that these jurisdictions themselves have an ETR at least equal to the GloBE minimum ETR

Case study – applying the GloBE rules

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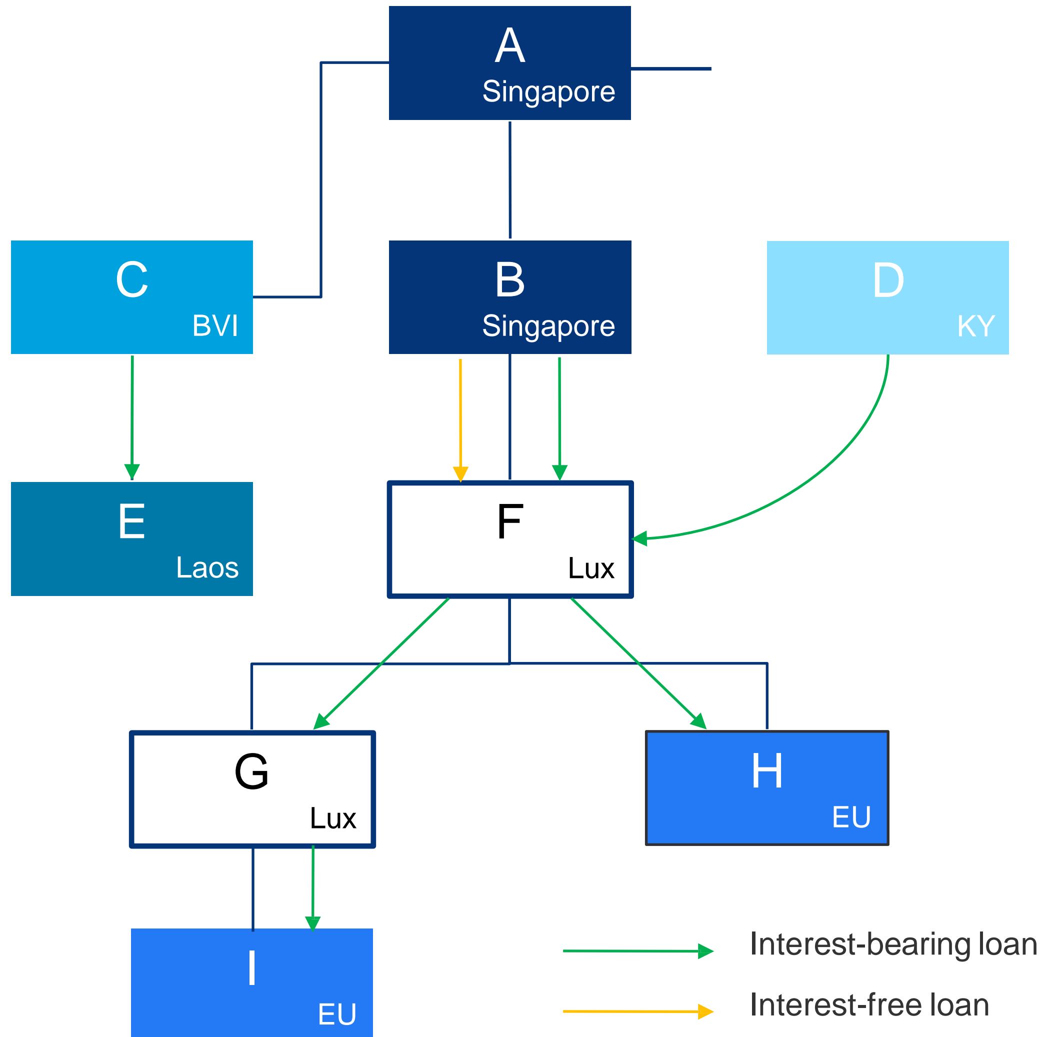

Step 3: Levying the top-up tax

- UTPR: denied deduction (or equivalent adjustment) to increase the tax liability by an amount equal to the top-up tax
- Take UTPR top-up tax cap into account
  1) Case 1 cap = domestic covered tax rate in jurisdiction of UTPR taxpayer * deductible direct payments to low-taxed constituent entities
  2) Case 2 cap = domestic covered tax rate in jurisdiction of UTPR taxpayer * *gross* amount of deductible intragroup payments
- Pro rata allocation of top-up tax

Case 1

$$\frac{\textit{UTPR Taxpayer's deductible payment to LTCE A}}{\textit{Total deductible payments made by UTPR Taxpayers to LTCE A}}$$

Case 2

$$\frac{\textit{UTPR Taxpayer's deductible net intragroup expenditure}}{\textit{Total net deductible intragroup expenditure of all UTPR Taxpayers}}$$