

SEZs Facing the Challenges of International Taxation: BEPS Action 5, EU Code of Conduct, and the Future

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Web seminar: Special Economic Zones in
International Economic Law: Towards Unilateral
Economic Law?



Universiteit
Leiden
The Netherlands



GLOBTAXGOV
A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



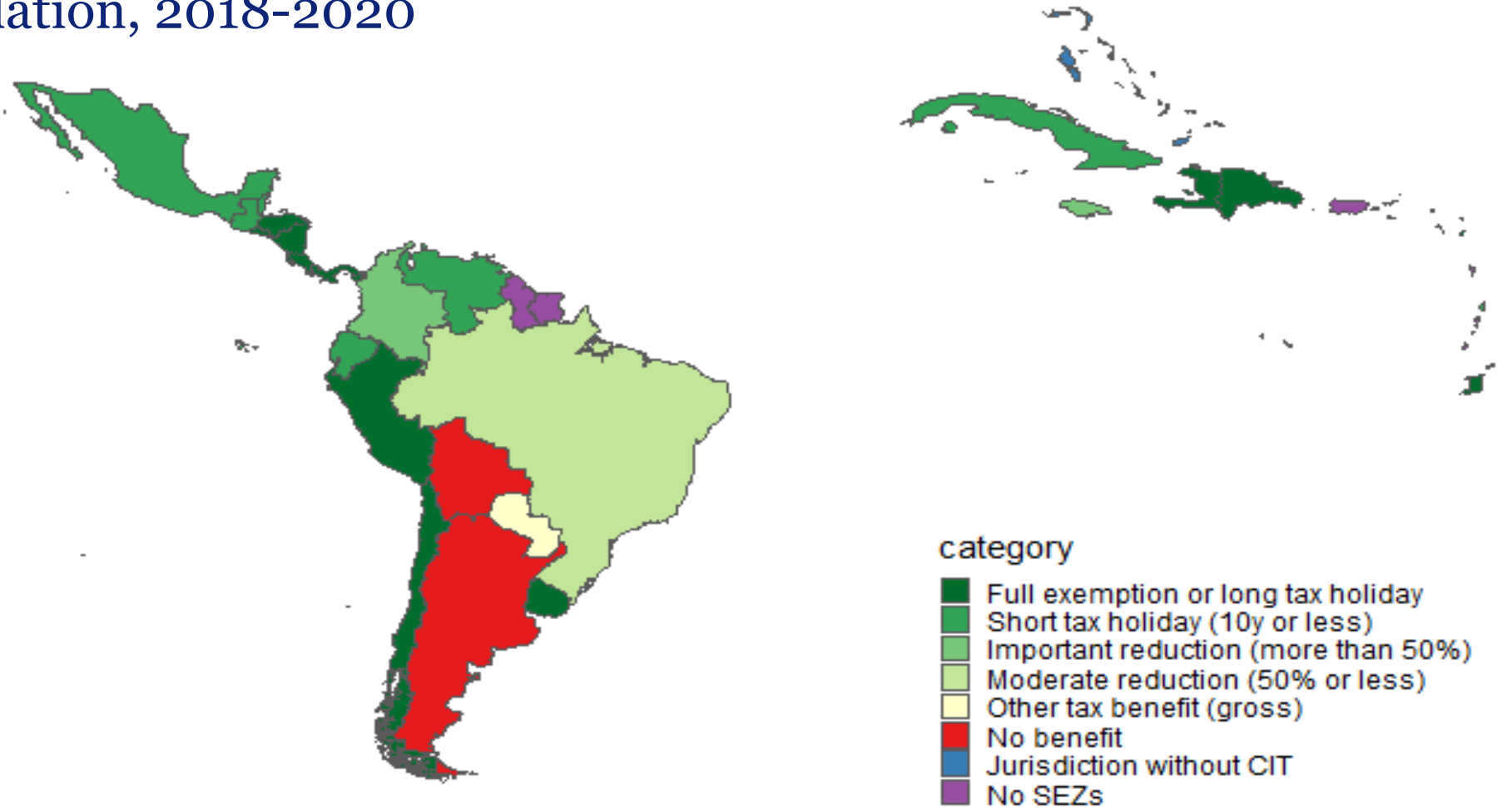
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Table of Content

1. Facts about corporate income tax rules in SEZs
2. Coordination issues in the taxation of cross-border investment and SEZs
3. A closer look: SEZs and aggressive tax planning
4. Impact of the BEPS project and EU Code of Conduct on SEZs
5. The potential impact of the GloBE project on SEZs

Special Economic Zones: CIT incentives in Latin America and the Caribbean

- Data: Own compilation, based on UNCTAD, IBFD, CIAT, KPMG, national legislation, 2018-2020



Coordination issues in the taxation of cross-border investment

Issue	Cause	Solutions	Nature of solution
Double taxation	Competing claims by two countries on the same income	Unilateral credit / exemption <ul style="list-style-type: none"> • By residence country • By source country 	Liberalizing
		Bilateral / multilateral double tax treaty	
Aggressive tax planning	“Harmful tax practices”: Low tax rate / tax exemption w/o economic substance requirement	(Coordinated) unilateral anti-avoidance measures	Re-embedding
		Agreement to phase out harmful tax practices	
Tax competition	Inefficiently low tax rates / generous tax incentives, race to the bottom	(Coordinated) unilateral minimum tax	Re-embedding
		Multilateral treaty	

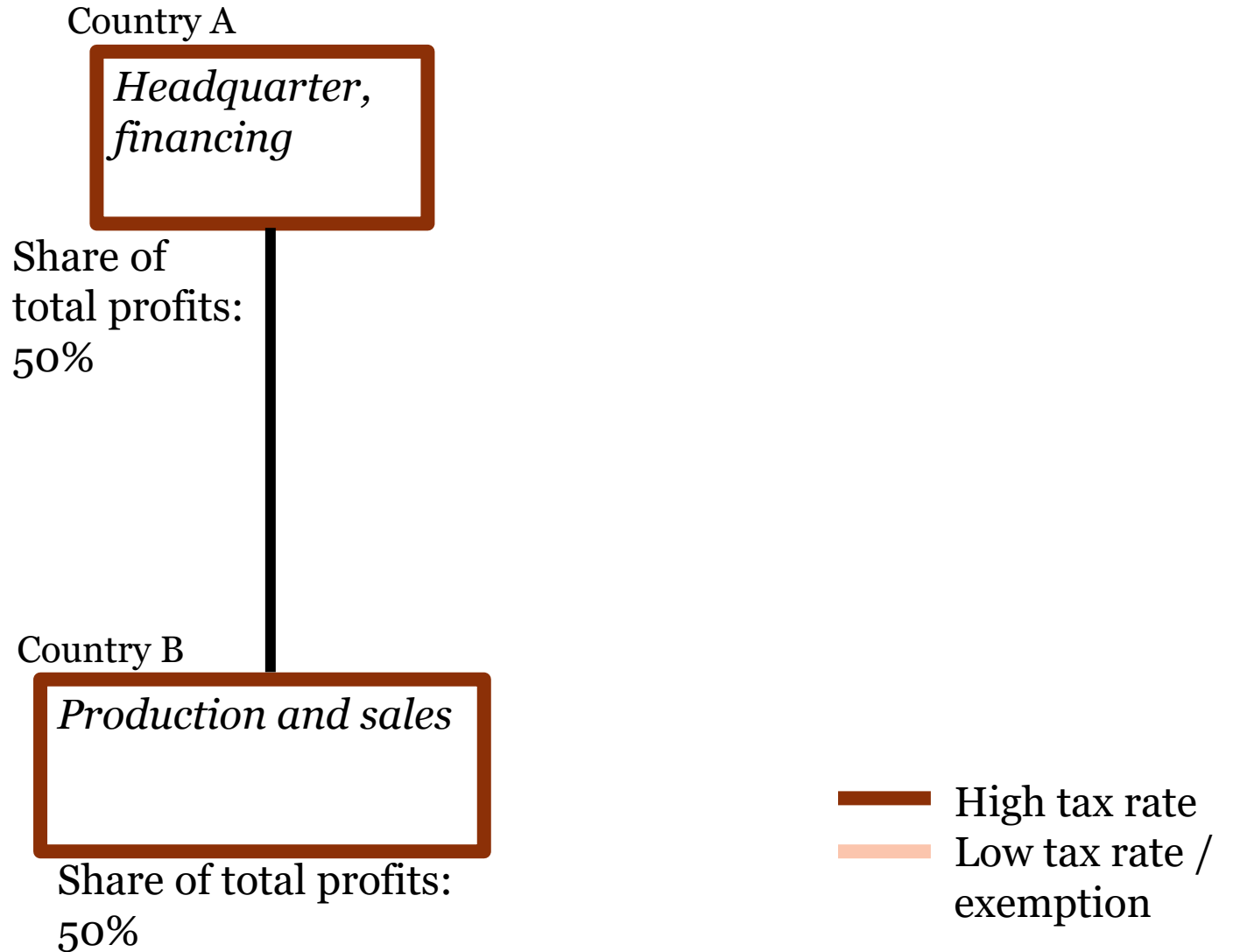
SEZs: Solution and problem at the same time

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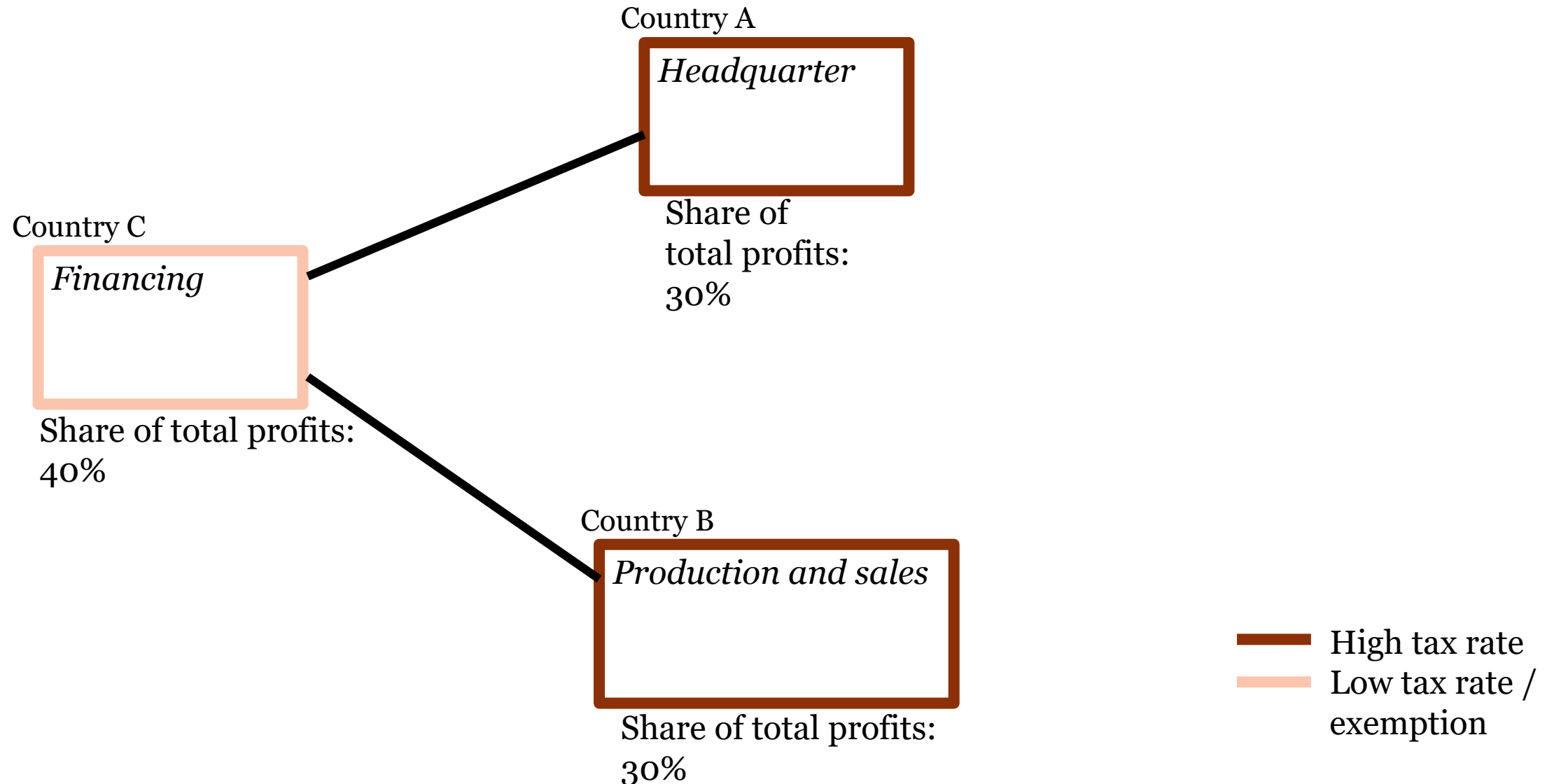
Historical evolution

Issue	Cause	Solutions	Nature of solution	Evolution
Double taxation	Competing claims by two countries on the same income	Unilateral credit / exemption <ul style="list-style-type: none"> By residence country By source country 	Liberalizing	<ul style="list-style-type: none"> 1913: US Foreign Tax Credit SEZs, other CIT exemptions
		Bilateral / multilateral double tax treaty		Growing network of bilateral treaties, few multilateral treaties, esp. since 1990s
Aggressive tax planning	“Harmful tax practices”: Low tax rate / tax exemption w/o economic substance requirement	(Coordinated) unilateral anti-avoidance measures	Re-embedding	Anti-avoidance rules. Since 2015: Coordination through BEPS Project
		Agreement to phase out harmful tax practices		<ul style="list-style-type: none"> Since 1998: OECD Harmful Tax Competition / EU Code of Conduct Since 2015: BEPS Action 5/ worldwide application EU Code of Conduct
Tax competition	Inefficiently low tax rates / generous tax incentives, race to the bottom	(Coordinated) unilateral minimum tax	Re-embedding	Since 2019: discussions on GloBE project
		Multilateral treaty		

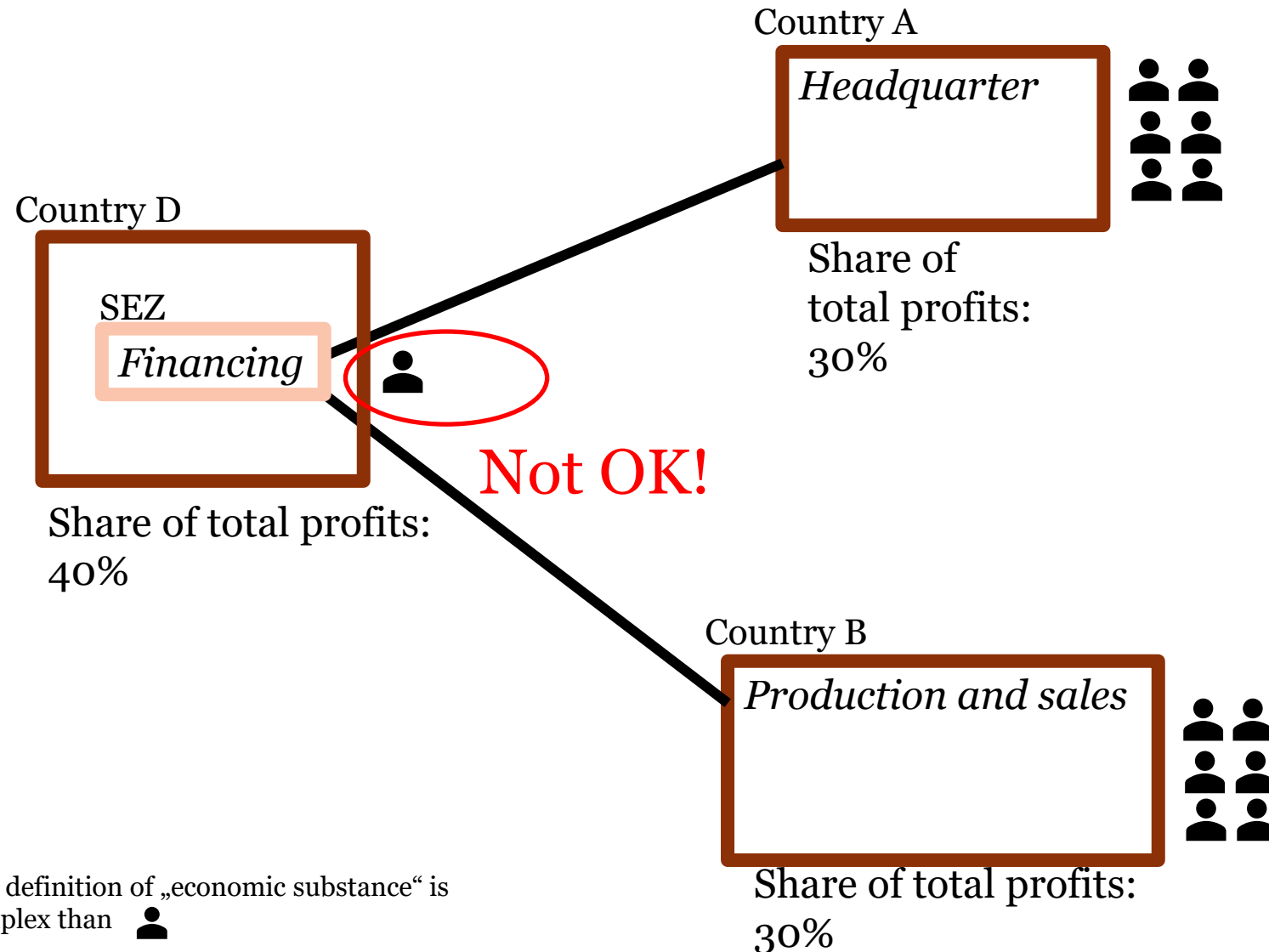
SEZs, Aggressive Tax Planning, OECD, EU



SEZs, Aggressive Tax Planning, OECD, EU




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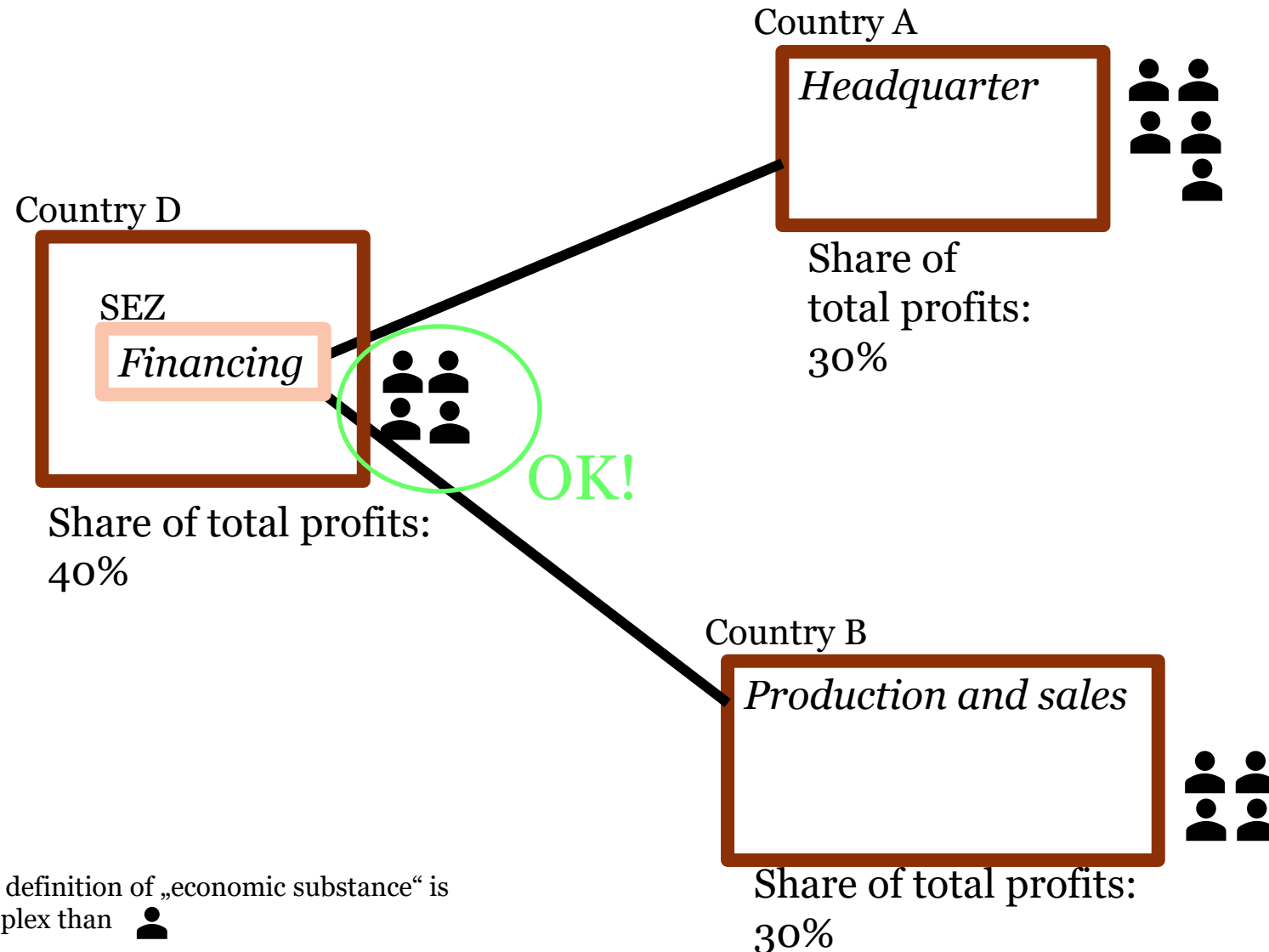


BEPS Action 5 / EU
Code of Conduct:
„OK, but only with
economic substance!“

High tax rate
Low tax rate /
exemption

Note: The definition of „economic substance“ is
more complex than 

SEZs, Aggressive Tax Planning, OECD, EU

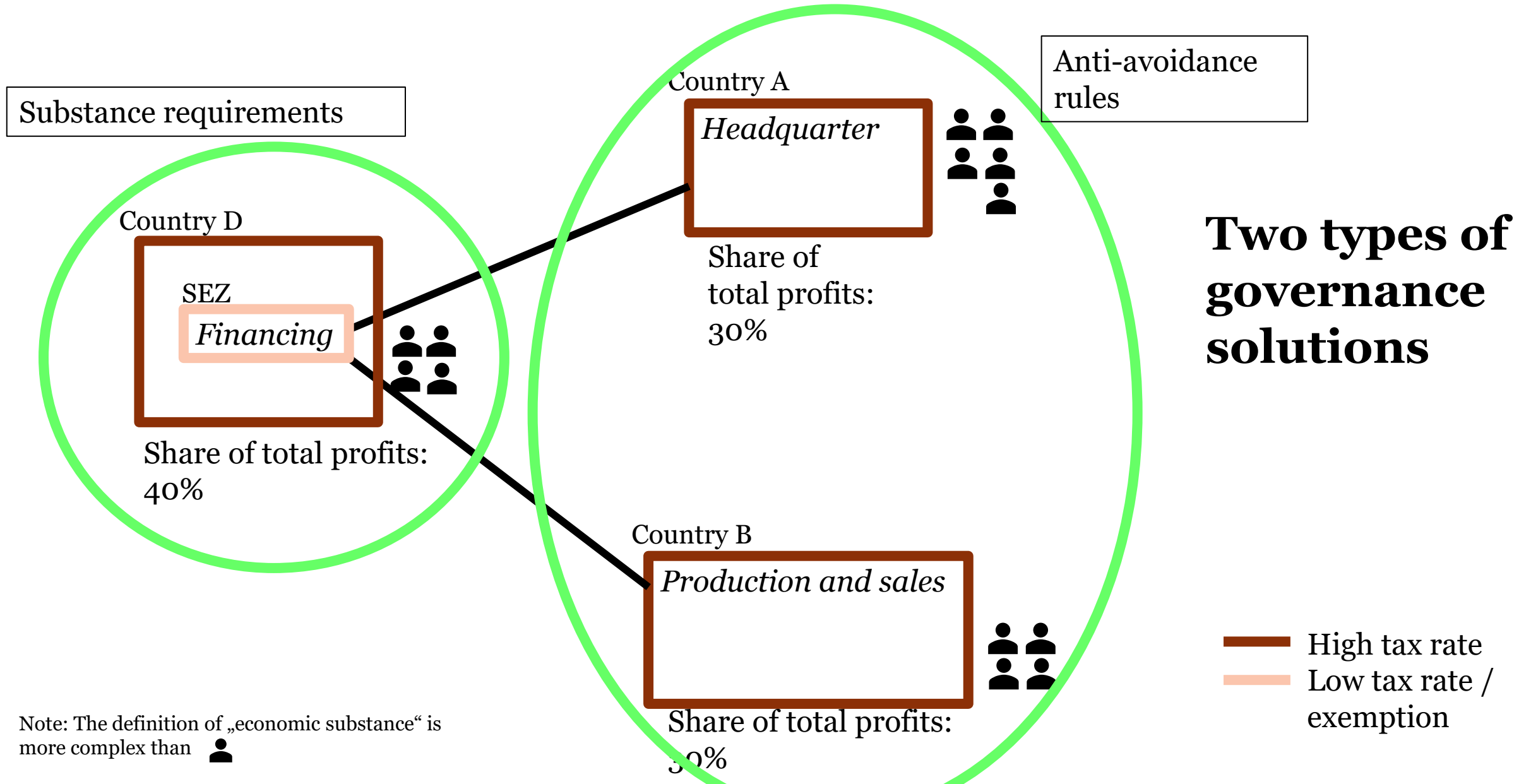


BEPS Action 5 / EU
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SEZs, Aggressive Tax Planning, OECD, EU



BEPS Action 5 and Code of Conduct



Source: Flyer BEPS Inclusive Framework

POLÍTICA ECONÓMICA

OCDE exige reforma a zonas francas para dar acceso al país a ese bloque

Director de centro de política tributaria señala que reforma fiscal es necesaria pero no es condición para ingreso

Marvin Barquero. 18 septiembre, 2017

San José.

Costa Rica debe aprobar una reforma a las zonas francas mediante la cual se evite el refugio en el país de ganancias obtenidas en el exterior con el fin de evitar el pago de impuestos, para poder ingresar a la Organización para la Cooperación y el Desarrollo

Source: <https://www.nacion.com/economia/politica-economica/ocde-exige-reforma-a-zonas-francas-para-dar-acceso-al-pais-a-ese-bloque/RFM3UHK2RNHBTG273WXB2EP7MY/story/>

LO MÁS LEIDO

- 1 Manifestantes de Rescate Nacional hieren a 11 policías frente a Casa Presidencial; 28 detenidos

This article is more than 2 years old

EU blacklist names 17 tax havens and puts Caymans and Jersey on notice

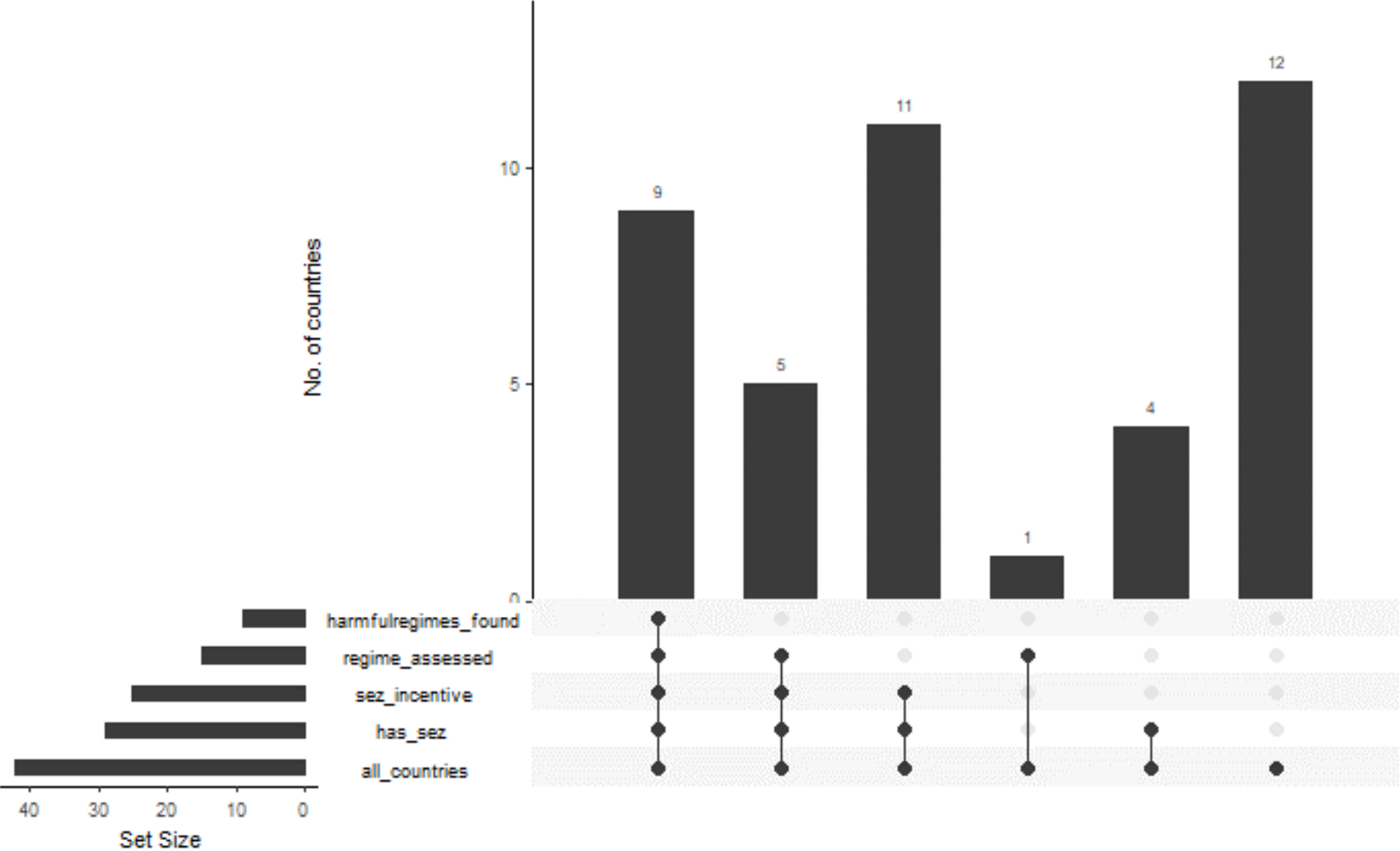
Brussels identifies 17 countries including South Korea, Barbados, Panama and UAE with 47 others such as the Isle of Man and Bermuda warned



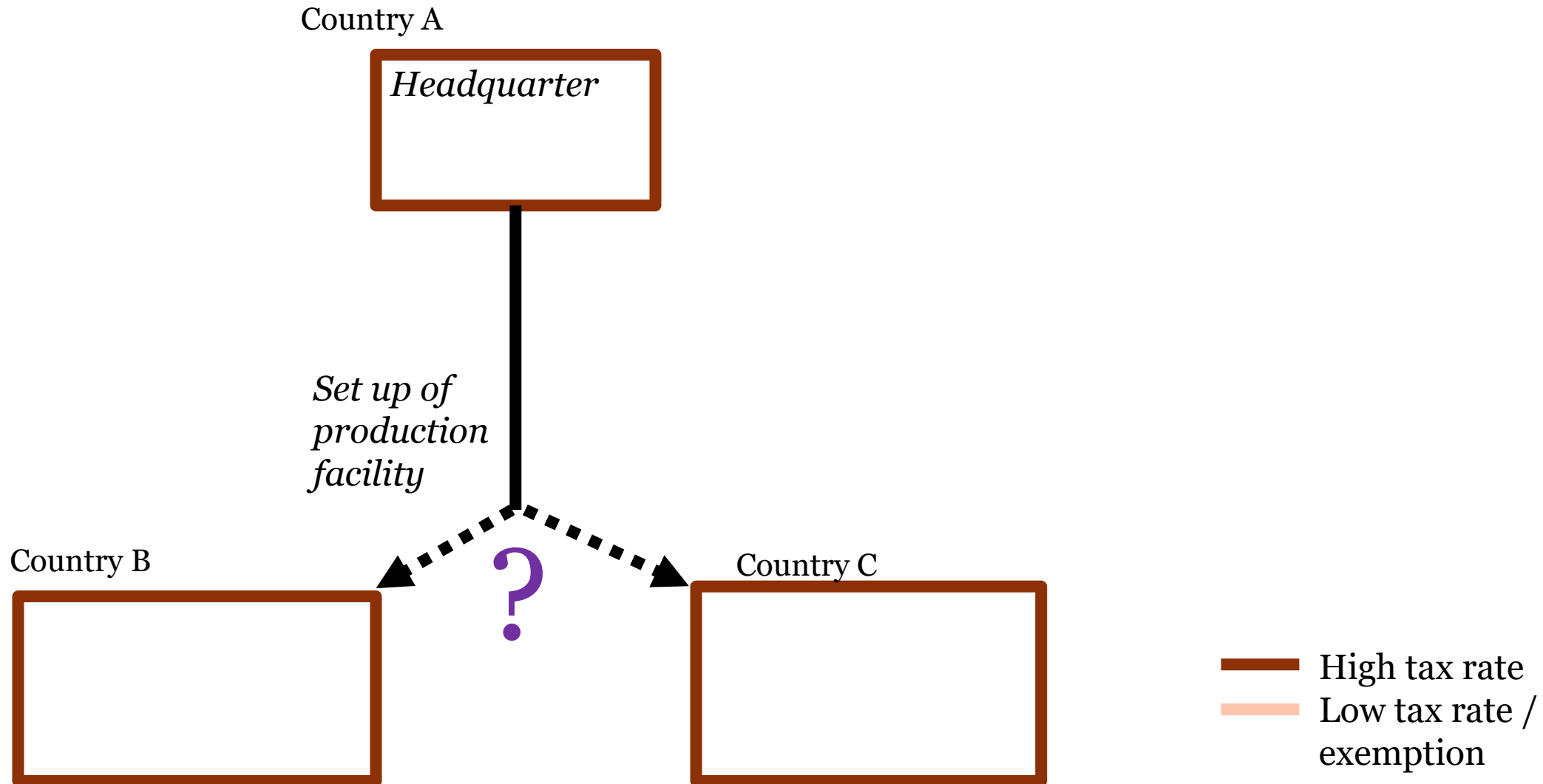
Screenshot:

<https://www.theguardian.com/business/2017/dec/05/eu-blacklist-names-17-tax-havens-and-puts-caymans-and-jersey-on-notice>

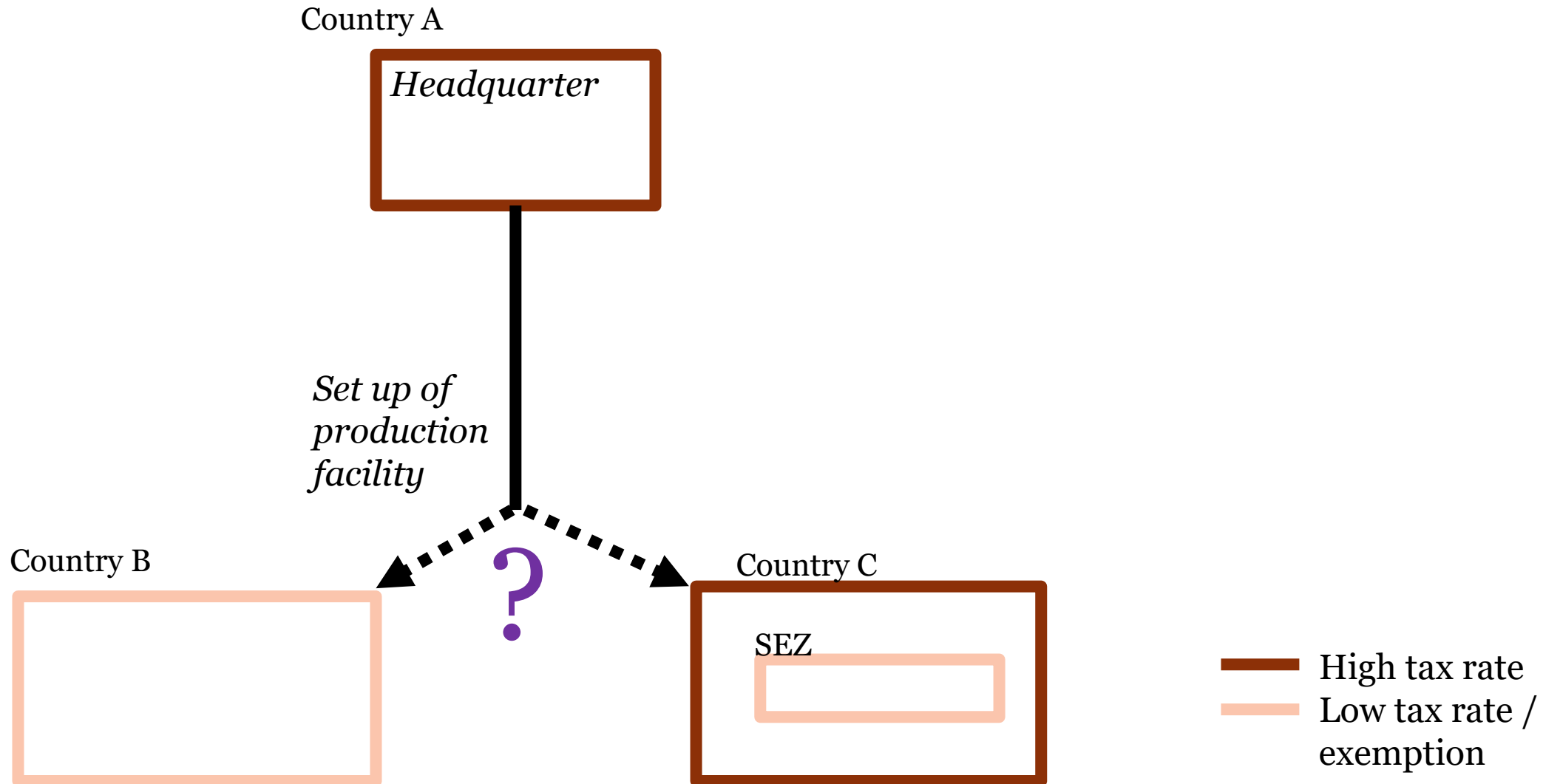
BEPS Action 5 and Code of Conduct: The practical impact in Latin America and the Caribbean



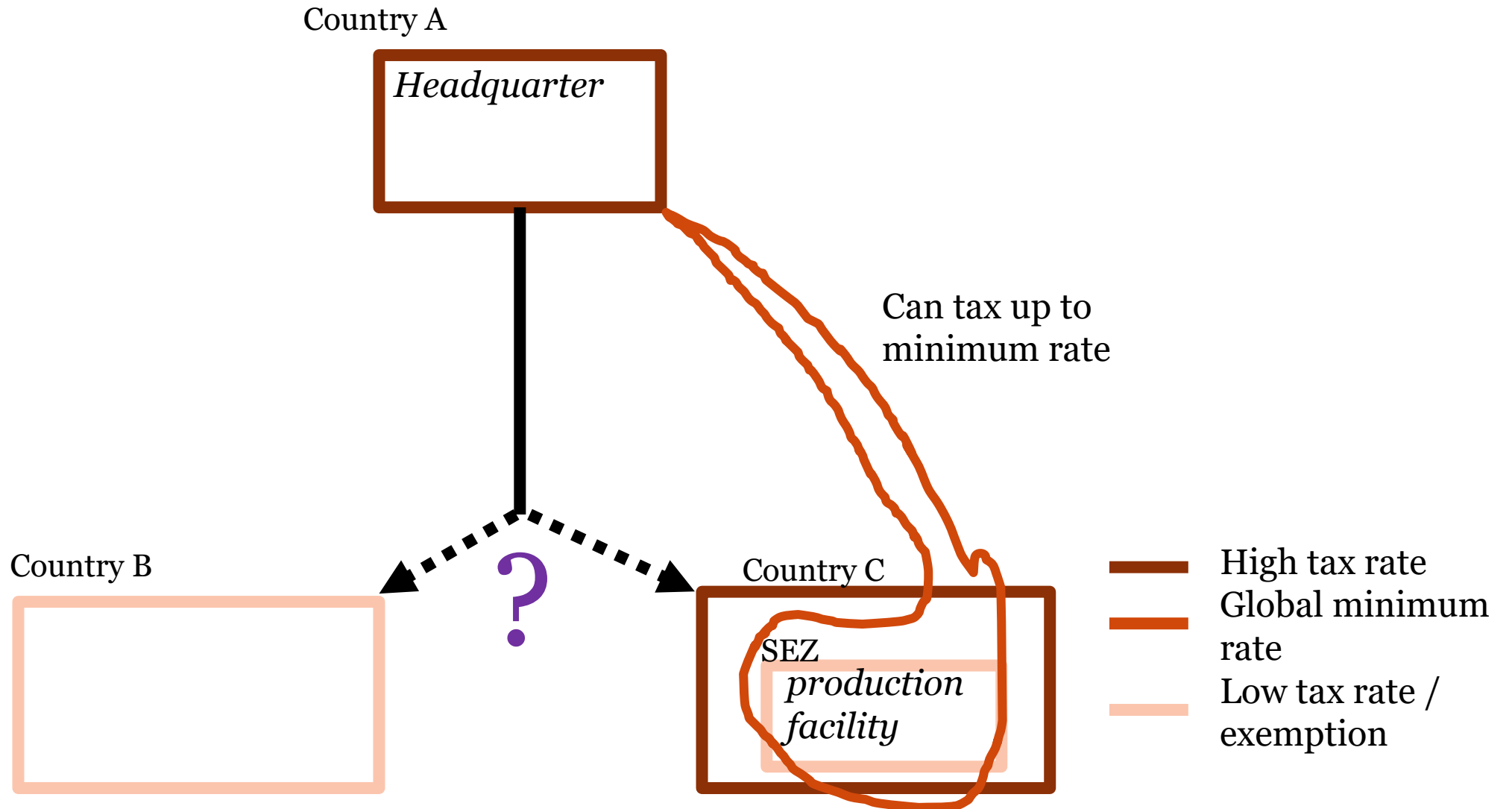
SEZs and the GloBE (Pillar 2) discussion (1)



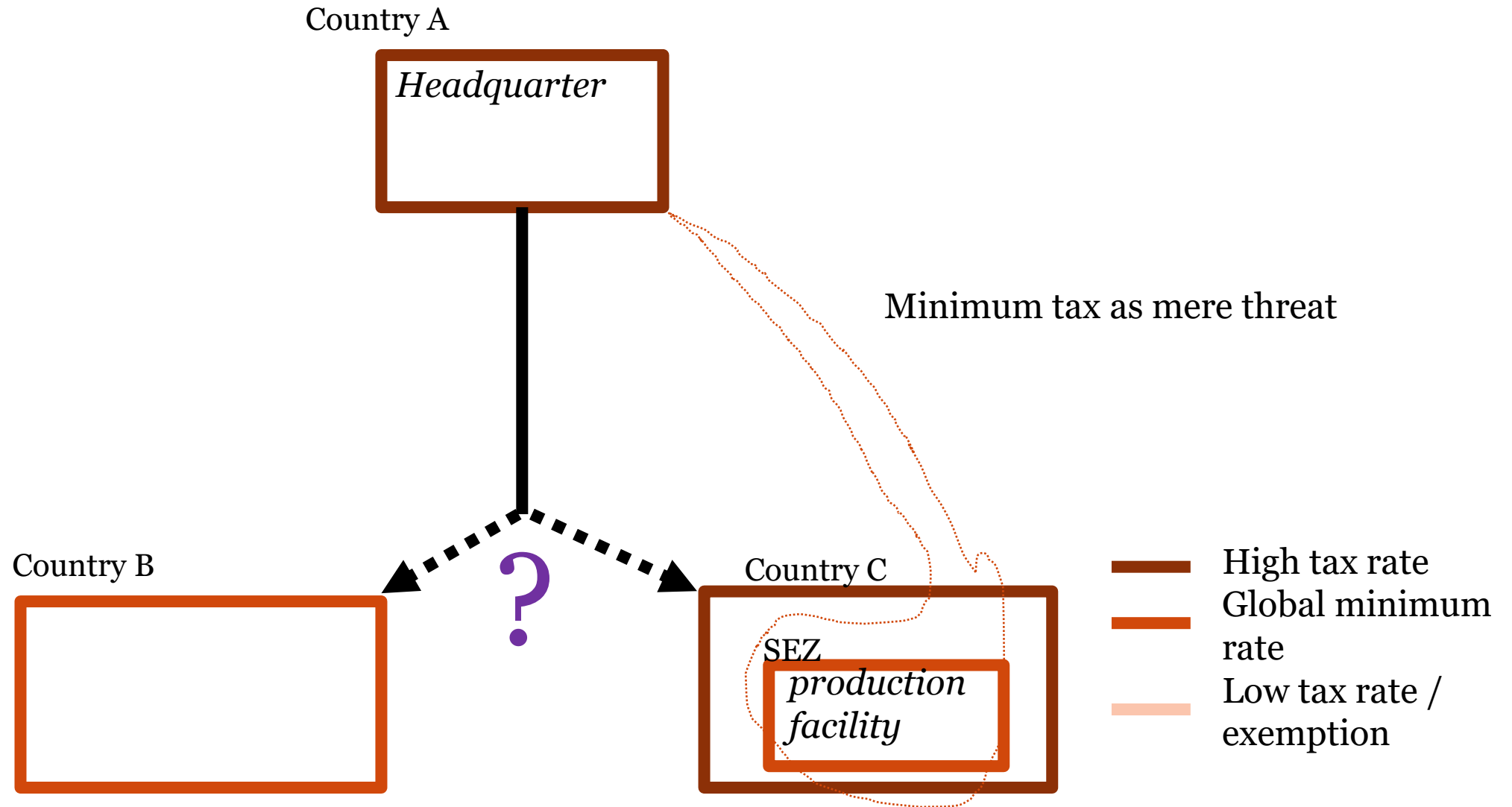
SEZs and the GloBE (Pillar 2) discussion (2)



SEZs and the GloBE (Pillar 2) discussion (3)



SEZs and the GloBE (Pillar 2) discussion (4)



SEZs and the GloBE (Pillar 2) discussion (5)

- Fighting tax competition: Beneficial to whom?
- Substance carve outs
- Worldwide blending
- Complexity

Conclusions

- SEZ unilateralism in taxation is widespread across the globe
- Since ~ 10 years, international regime building focused on re-embedding
→ SEZ unilateralism sometimes at odds
- Tangible impact in studied case of Latin America and the Caribbean
- Yet, regime building is slow and final outcome uncertain
→ SEZ unilateralism persists

Open questions

- Granular data on development of SEZ unilateralism across the world
- Economic impact of reforms

Thank you!

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www.universiteitleiden.nl
<https://globtaxgov.weblog.leidenuniv.nl/>

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