



# Triangular Cases

In application of Tax Treaties

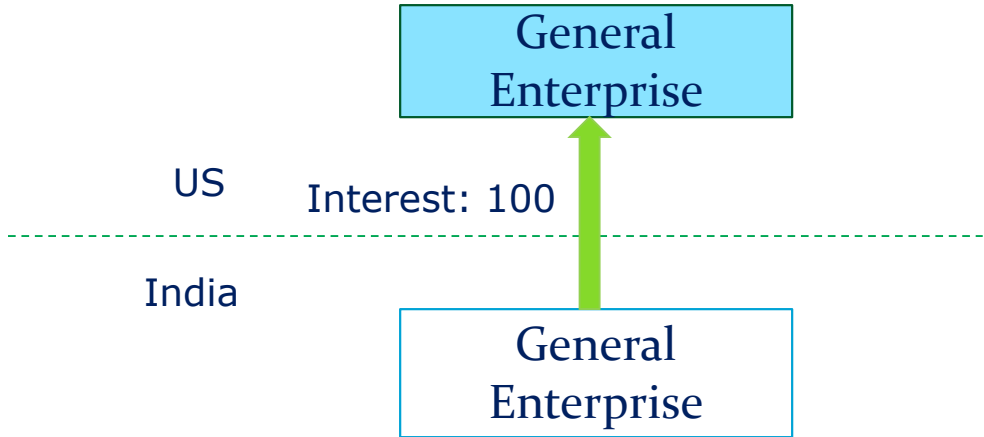
*Arpit Jain*



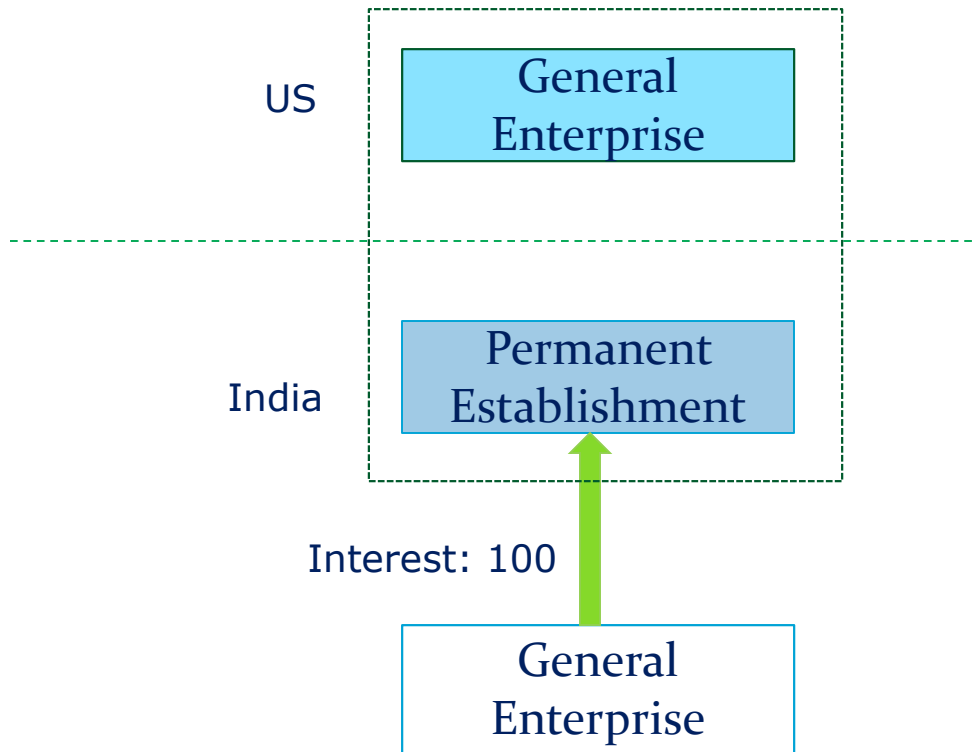
# Bilateral Cases



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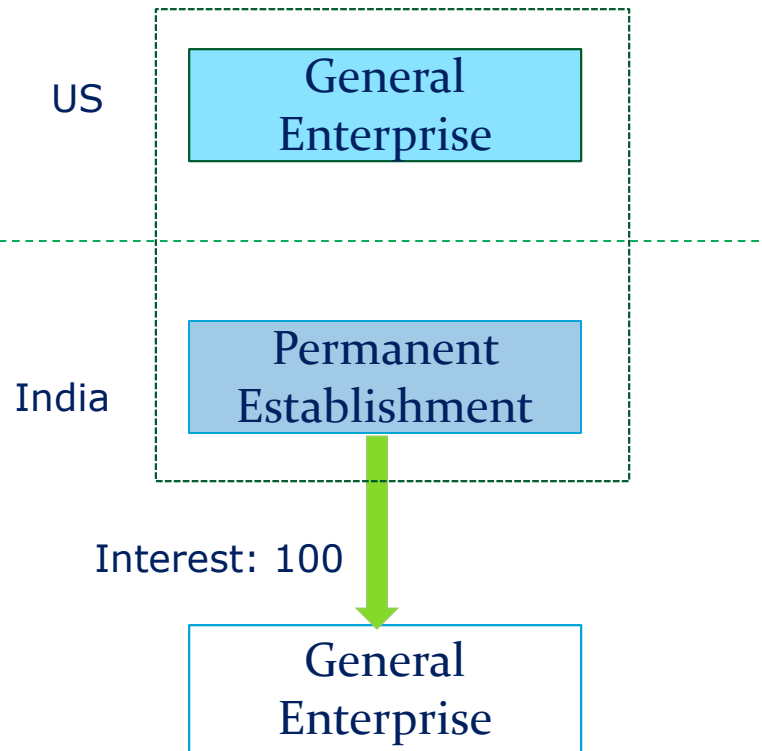


# Bilateral Cases

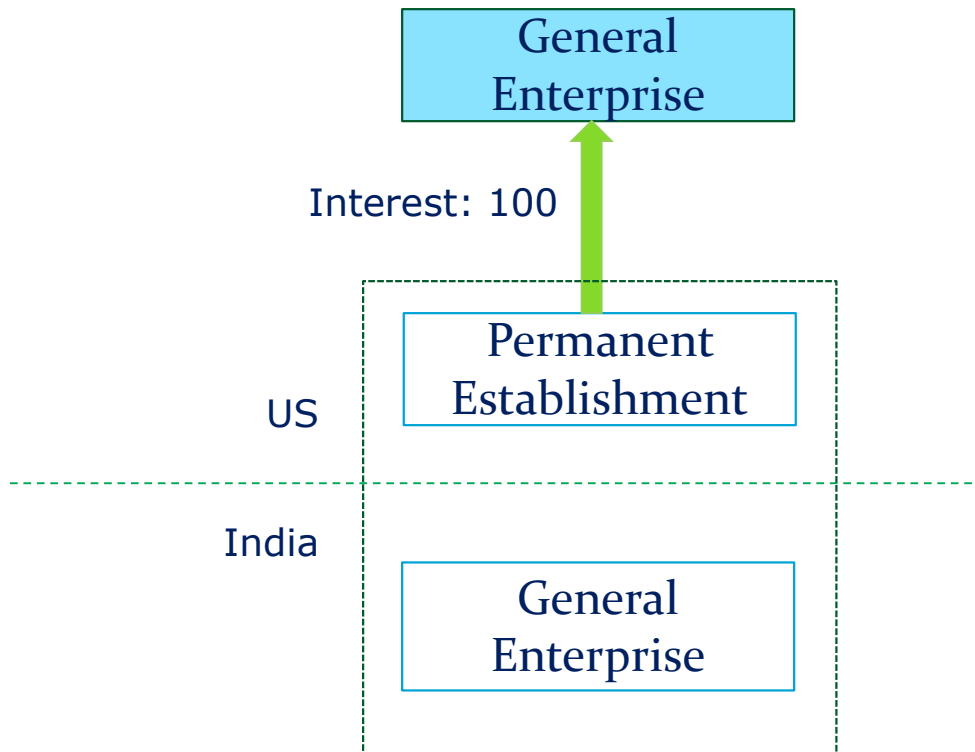




# Bilateral Cases

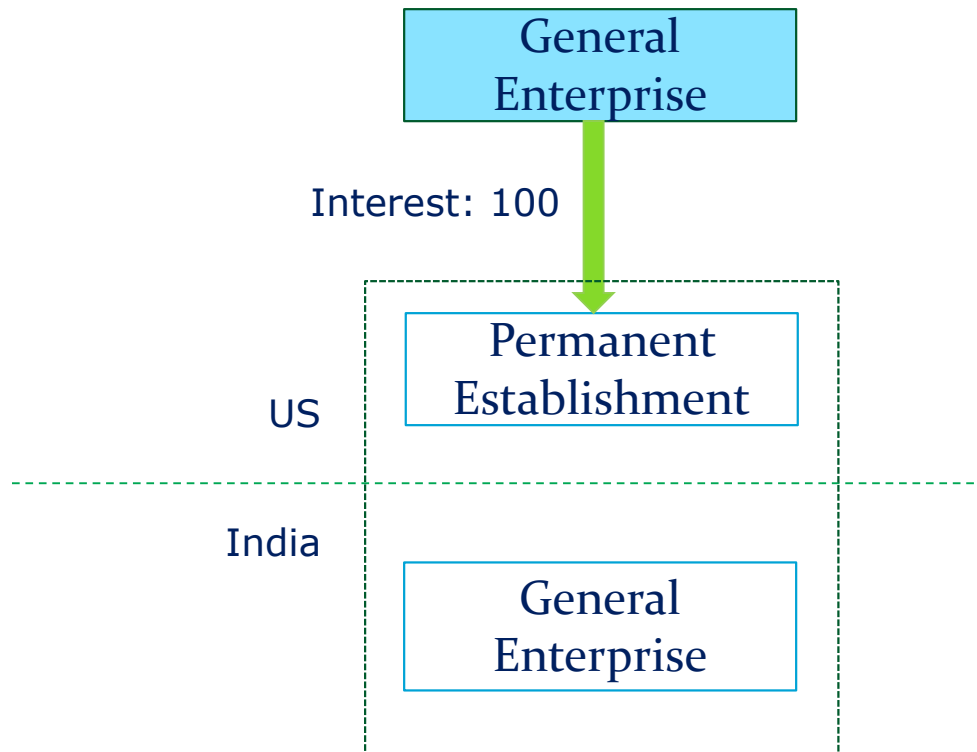


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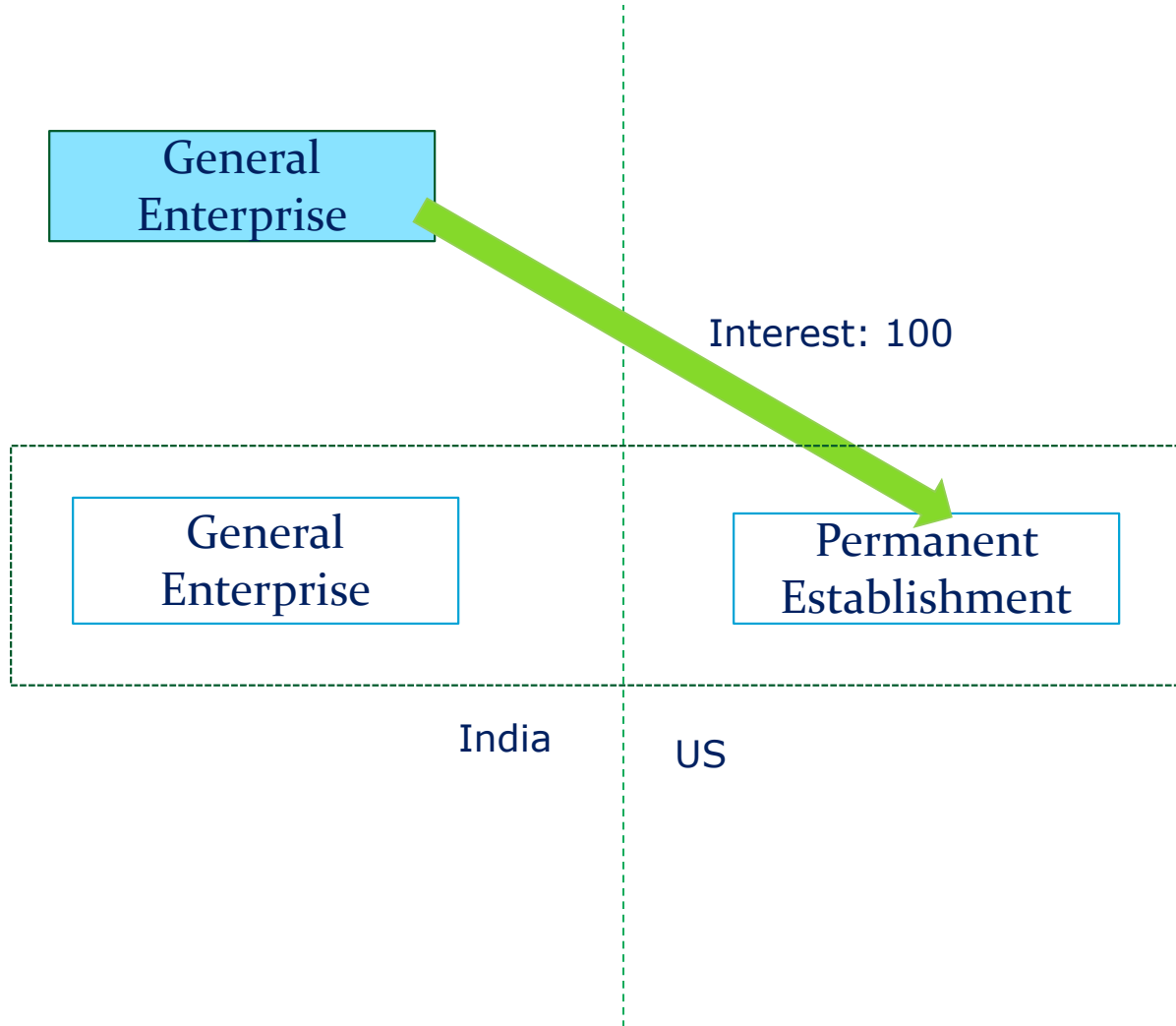




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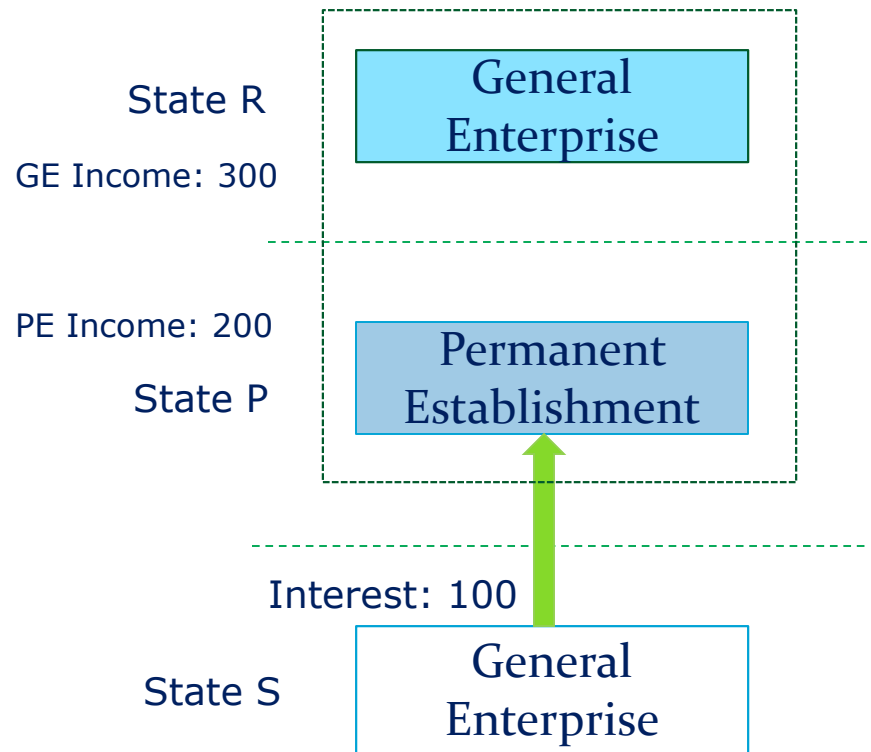






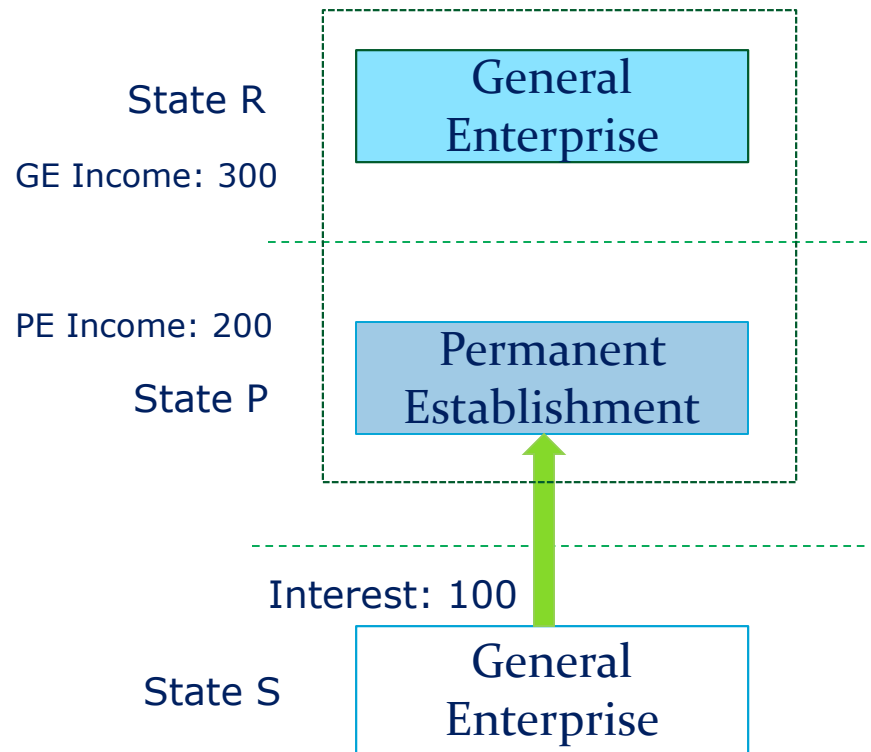
# Permanent Establishment Cases

# Case Study 1



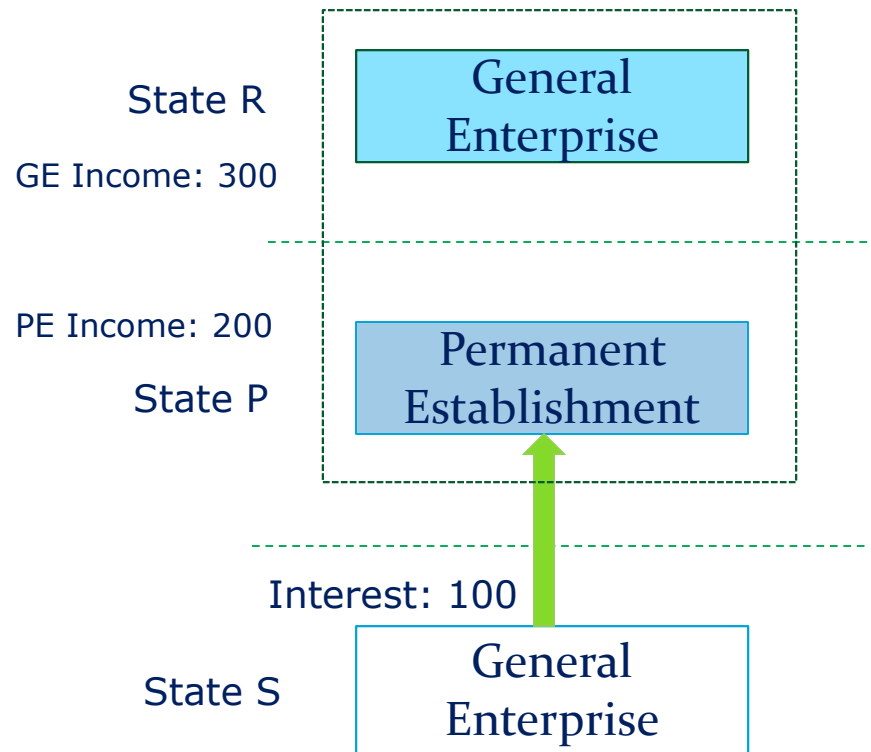
- In which country is interest taxable?

# Case Study 1



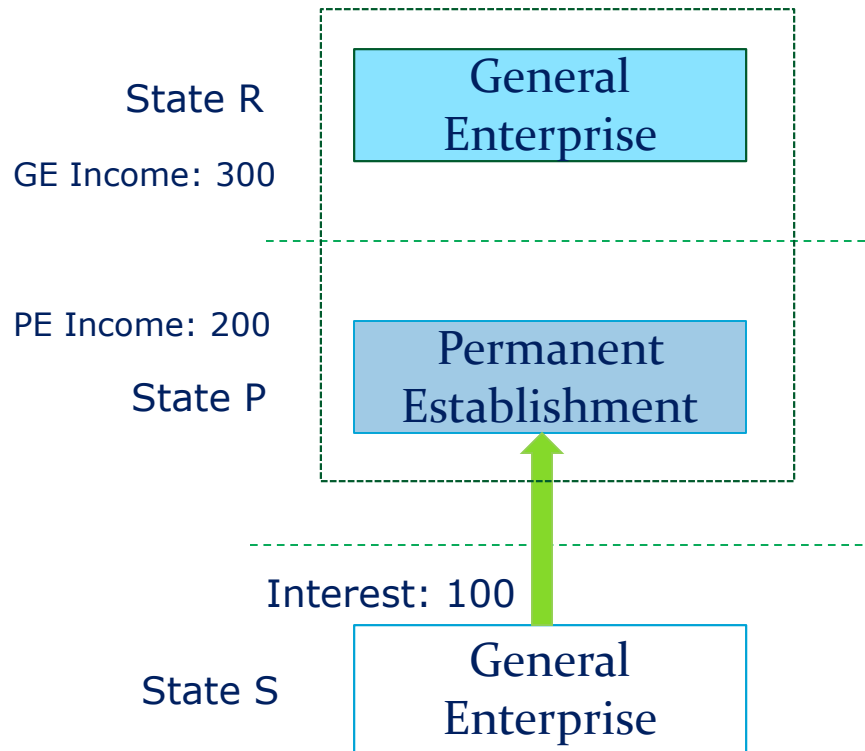
- Triple Taxation
  - State S: Source
  - State P: PE Income
  - State R: Residence
- Whether any Double Tax relief available in each of the State?

# Case Study 1



- Relief Granted by
  - State S: R – S Treaty
  - State P: R – P Treaty
  - State R: R – P Treaty & R – S Treaty
- Withholding Tax Rates
  - R – S Treaty: 20%
  - P – S Treaty: 10%
- Corporate Tax Rate
  - State S: 25%
  - State P: 30%
  - State R: 40%
- Calculation of Double Tax Relief?

# Case Study 1



- Taxation in State S

- Income 100
- Withholding **20**

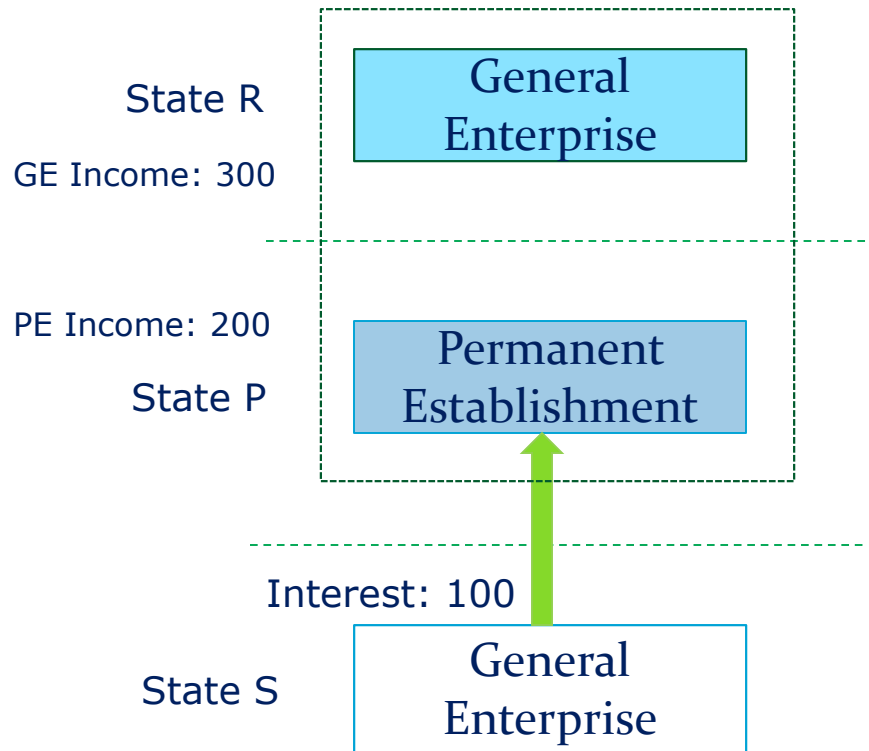
Restriction under R – S Treaty

- Taxation in State P

- Income 200
- CIT @ 30% 60
- FTC 10
- Net Tax Payable **50**

FTC under R – P Treaty  
Application of ND Clause

# Case Study 1

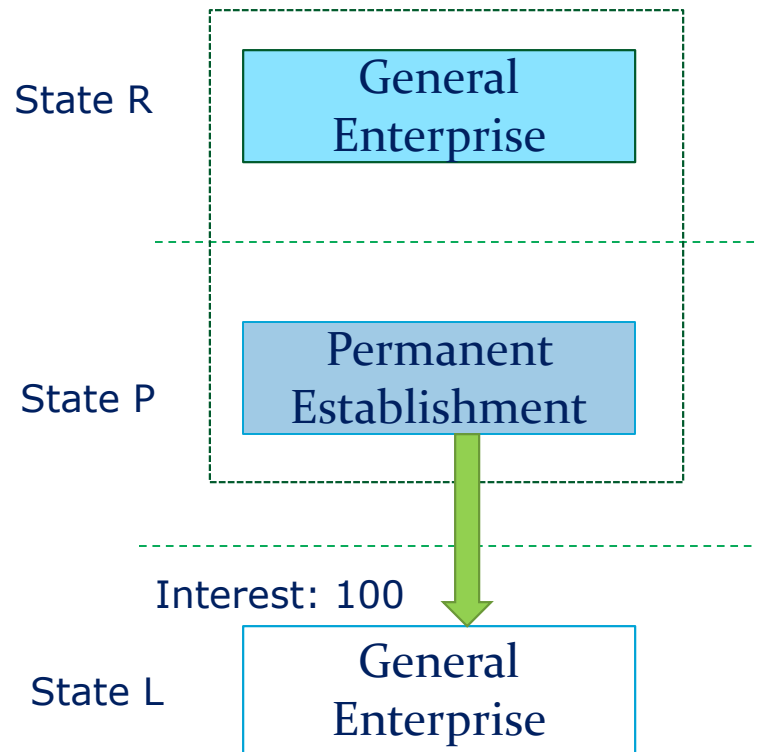


- Taxation in State R
  - Income 300
  - CIT @ 40% 120
  - FTC (State S) 20
  - FTC (State P) 60
  - Net Tax Payable **40**

FTC under R – P Treaty  
& R – S Treaty

# Case Study 2

- In which country is interest taxable?



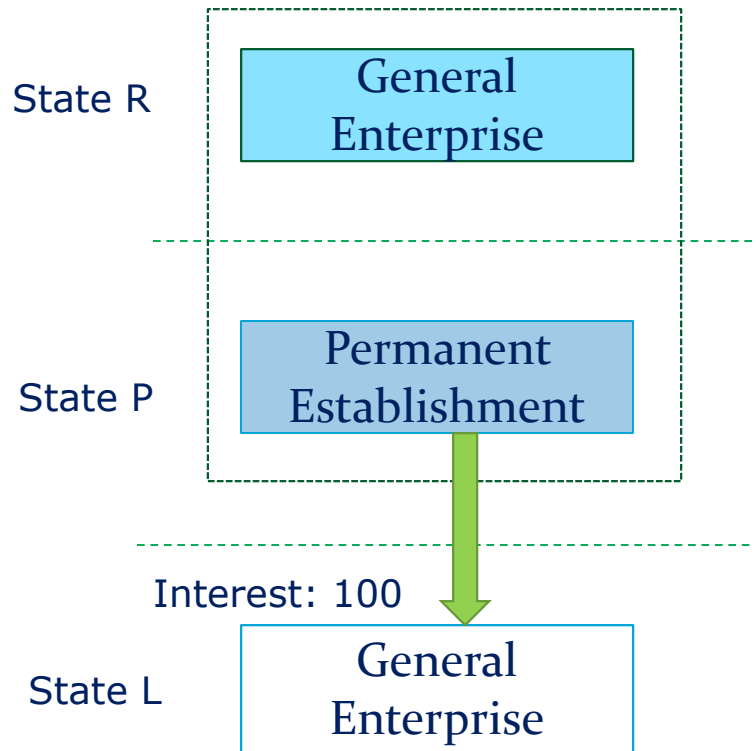


# Article 11(5) of OECD Model

Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, **has in a Contracting State a permanent establishment** in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

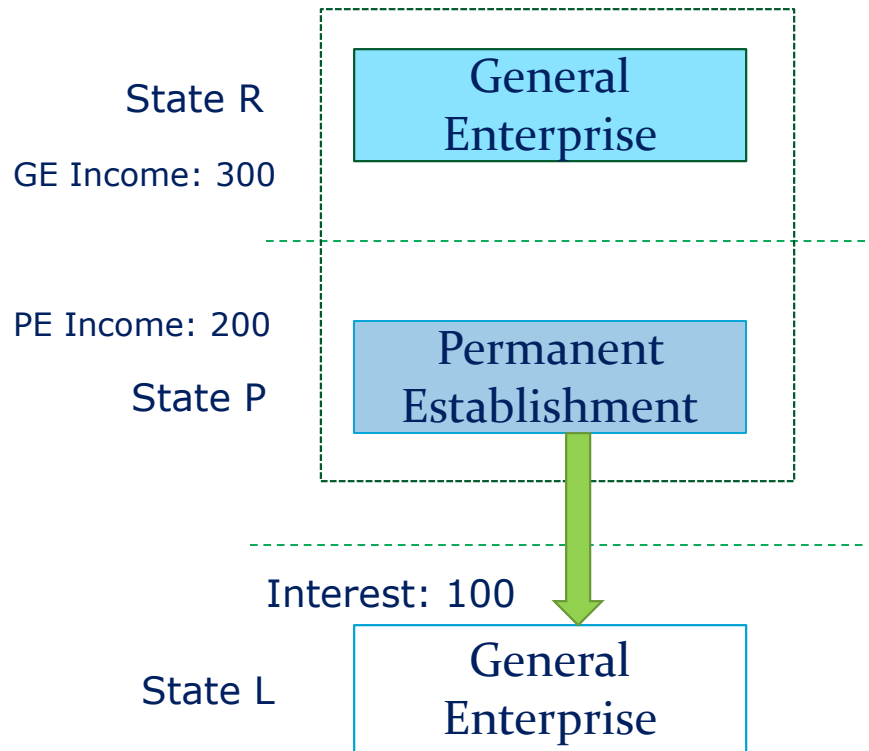


# Case Study 2



- Triple Taxation
  - State L: Residence
  - State P: Source based on PE
  - State R: Source based on GE
- Whether any Double Tax relief available in each of the State?

# Case Study 2



- Relief Granted by
  - State R: R – L Treaty
  - State P: L – P Treaty
  - State L: L – P Treaty & L – R Treaty

State L is bound to provide relief under L – R & L – P Treaty



## Typical Clause under Australian Treaties

Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in one of the Contracting State **or outside both Contracting States** a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

See India – Australia DTAA

Source Rule similar to Section 9

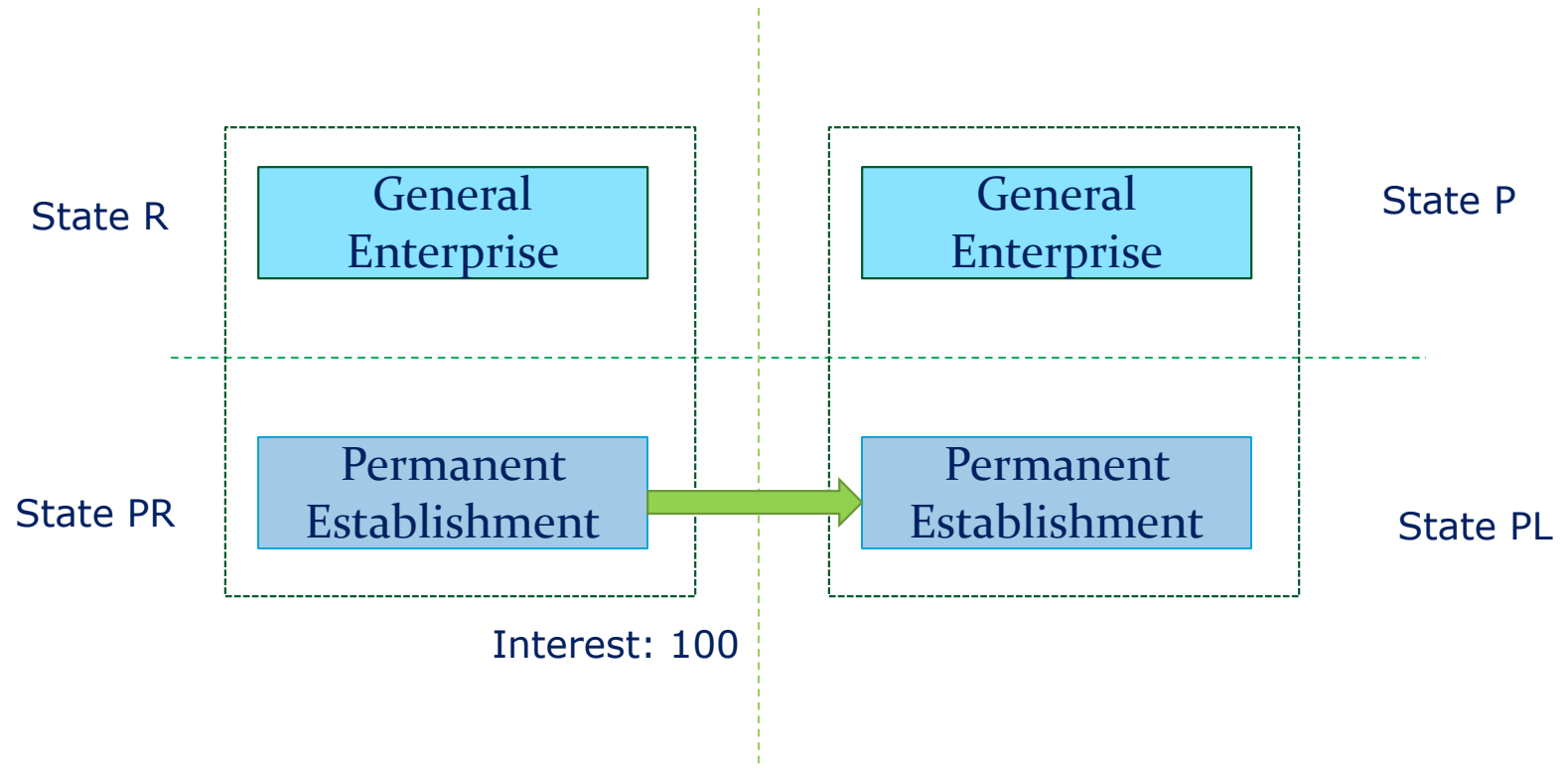
OECD also suggests Australian clause

Alternatively, Multilateral Treaties may resolve this



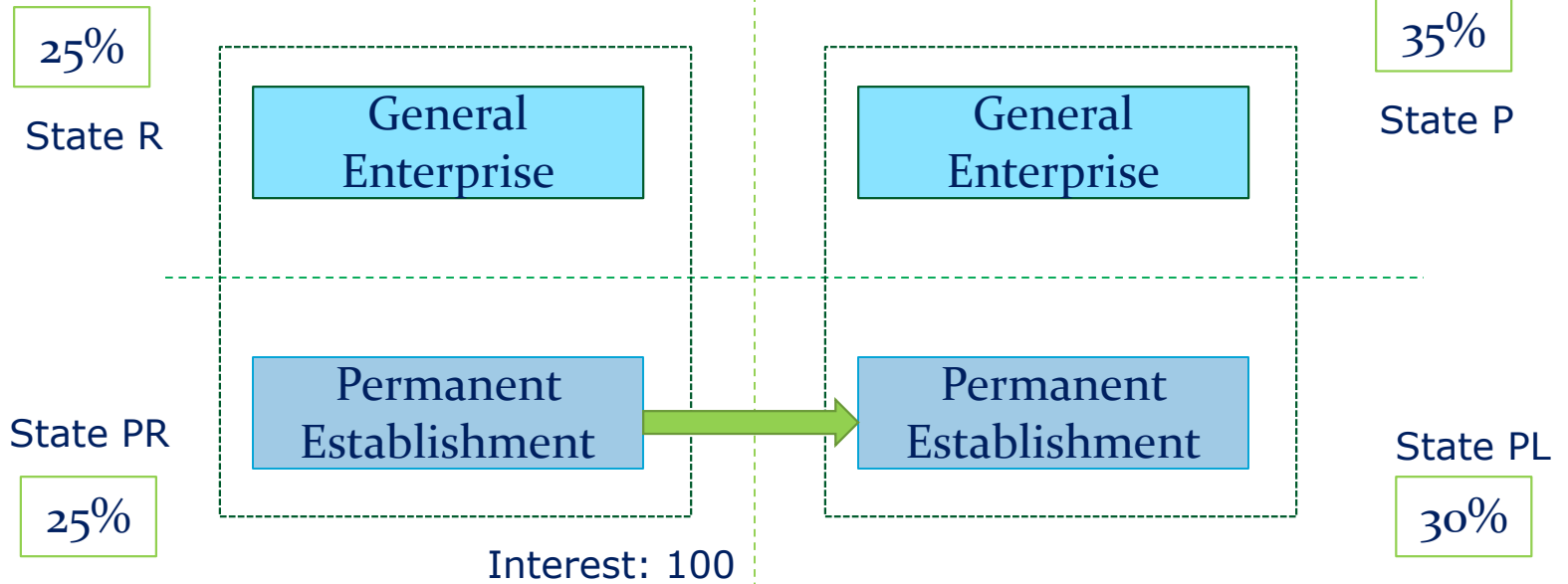
# Quadrangular Case

# Case Study 3



In which country is interest taxable?

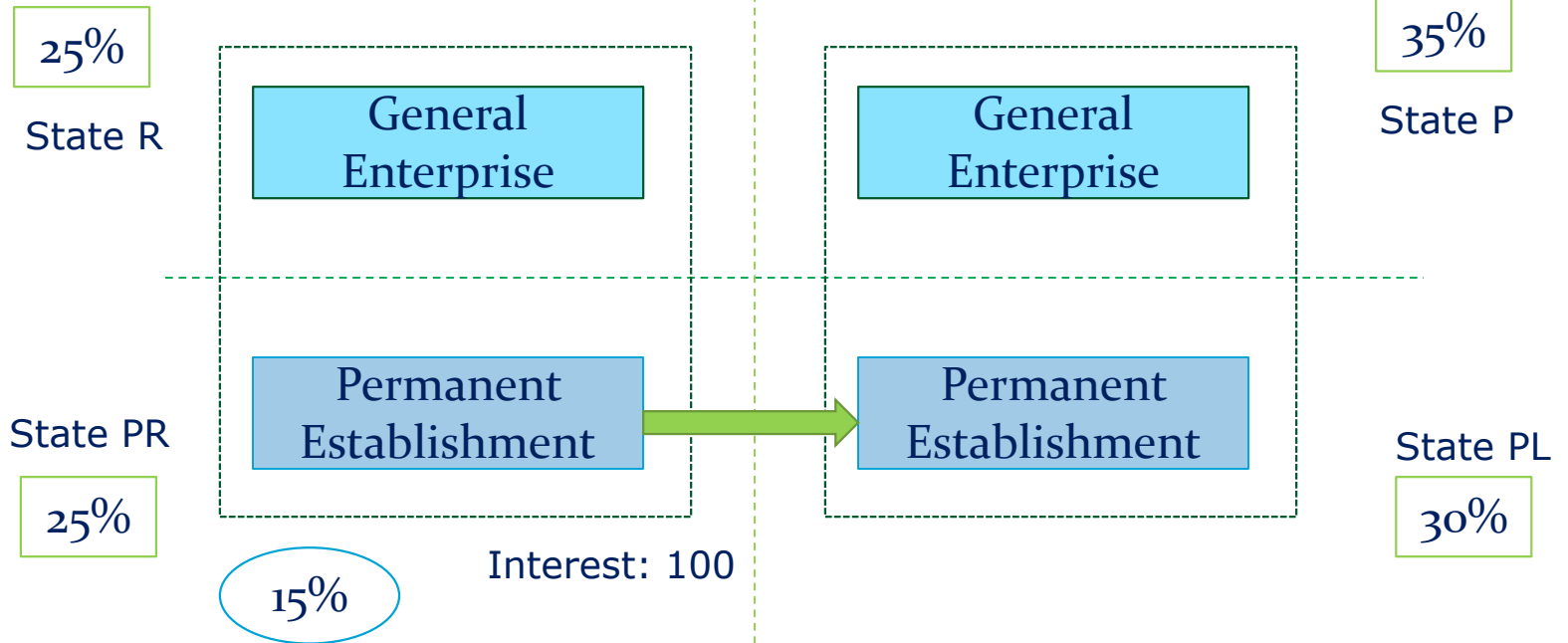
# Case Study 3



R – P DTAA: 10%  
 PR – P DTAA: 15%

R – PL DTAA: 5%  
 PR – PL DTAA: 15%

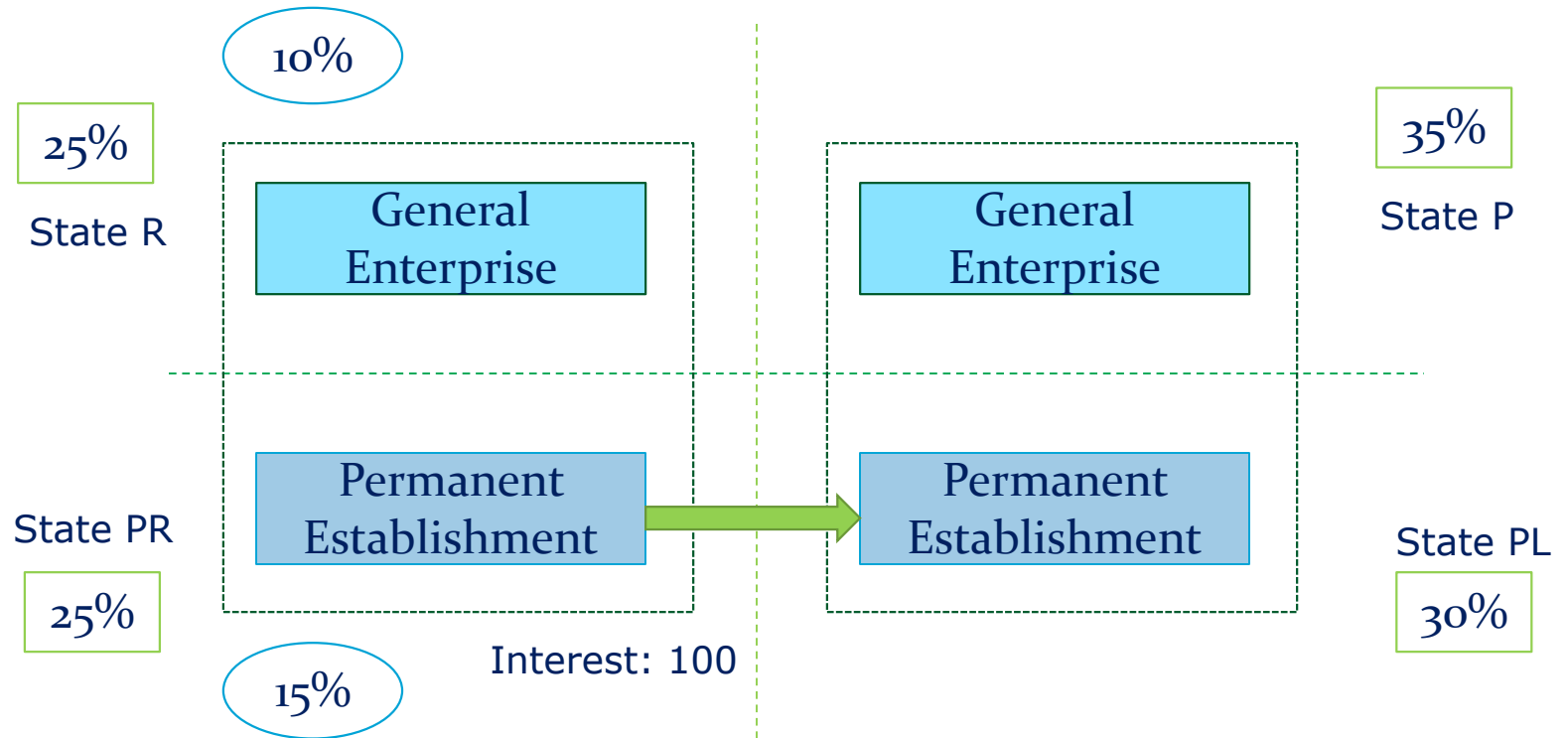
# Case Study 3



R – P DTAA: 10%  
 PR – P DTAA: 15%

R – PL DTAA: 5%  
 PR – PL DTAA: 15%

# Case Study 3

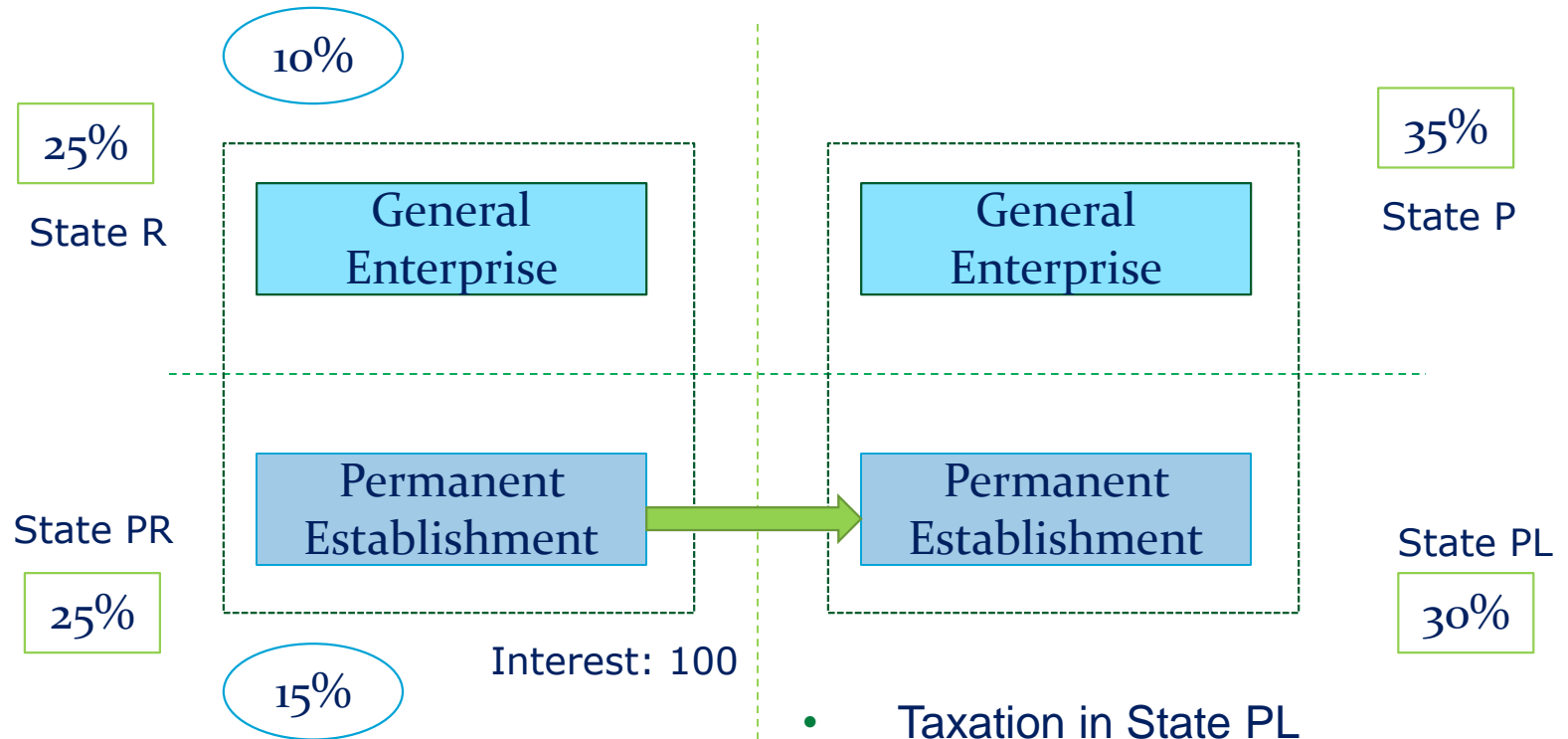


R – P DTAA: 10%  
 PR – P DTAA: 15%

R – PL DTAA: 5%  
 PR – PL DTAA: 15%

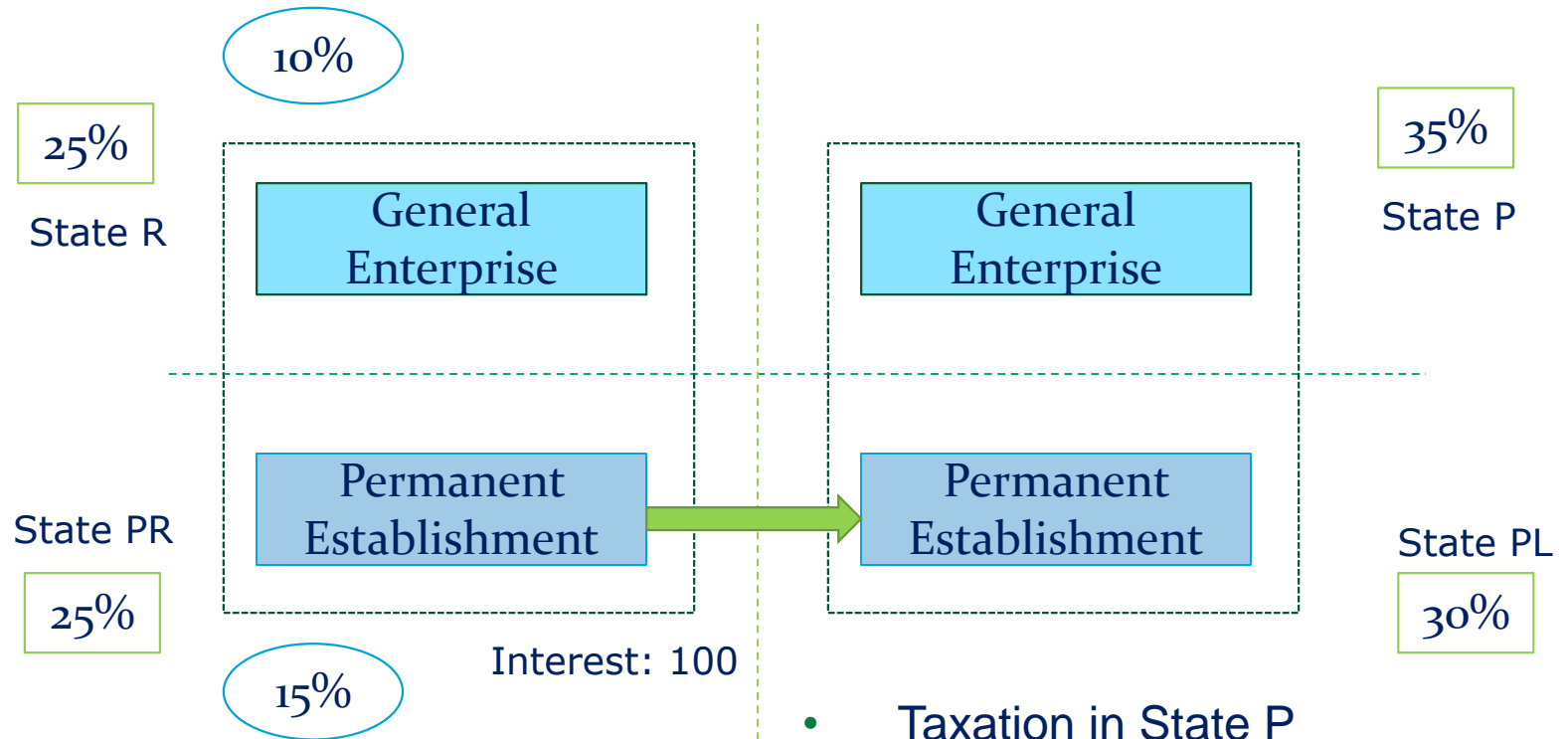


# Case Study 3



- Taxation in State PL
  - CIT @ 30%            30
  - FTC (State PR)      15 [PL – PR]
  - FTC (State R)        5 [PL – R]
  - Net Tax Payable      **10**
- Invoking ND Clause under P – PL DTAA

# Case Study 3



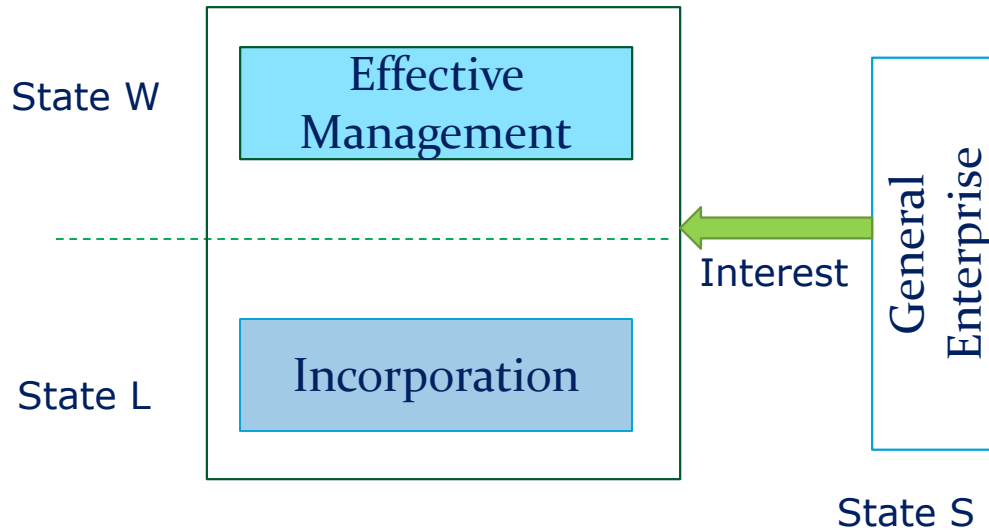
R – P DTAA: 10%  
 R – PL DTAA: 5%  
 PR – P DTAA: 15%  
 PR – PL DTAA: 15%

- **Taxation in State P**
  - CIT @ 35%      35
  - FTC (State PR)    15 [P – PR]
  - FTC (State R)      10 [P – R]
  - FTC (State PL)    10 [P – PL]
  - Net Tax Payable    0



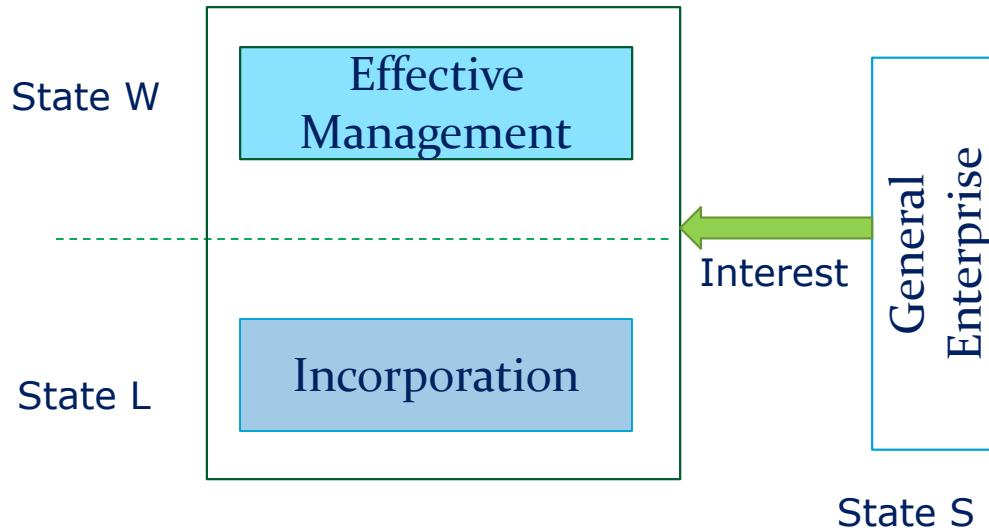
# Dual Residence Cases

# Case Study 4



- In which country is interest taxable?

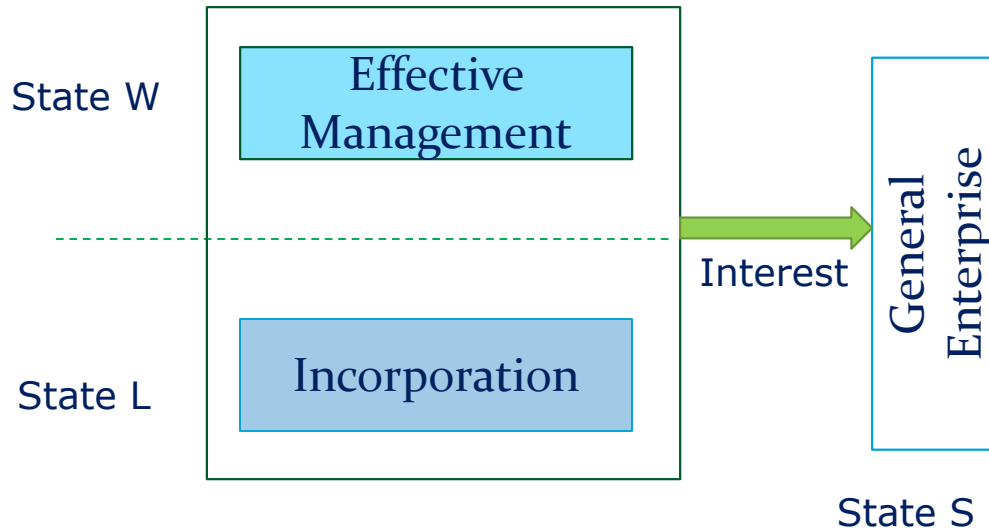
# Case Study 4



## Potential Solution

- Source country will have to apply two treaties simultaneously
- W – L Treaty
  - Applying Tie Breaker, it will be treated as Resident of State W as it holds place of effective management.
- Recipient is resident of State W only as for State L it is not considered as 'liable to tax' on its global income
  - Para 8.2 of OECD Commentary
- Hence, S – W Treaty to be applied.

# Case Study 5



## Potential Solution

- W – L Treaty
  - Applying Tie Breaker, it will be treated as Resident of State W as it holds place of effective management.
- Not taxable in State L as it is not resident and therefore Article 11(5) is not satisfied
- Hence, S – W Treaty to be applied.



# Case Study 6

- Mr. A
  - US Citizen
  - ROR as per India
  - Resident of US under Tie Breaker Rule
- Examine taxability of following income
  - Interest income from Bank Deposit in India, US, Hongkong & Singapore
  - Capital Gains on shares of company situated in India, US, Hongkong, Singapore

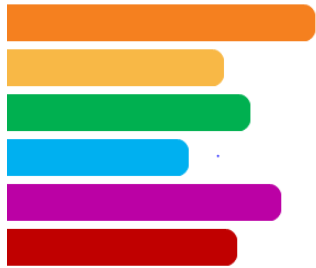


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