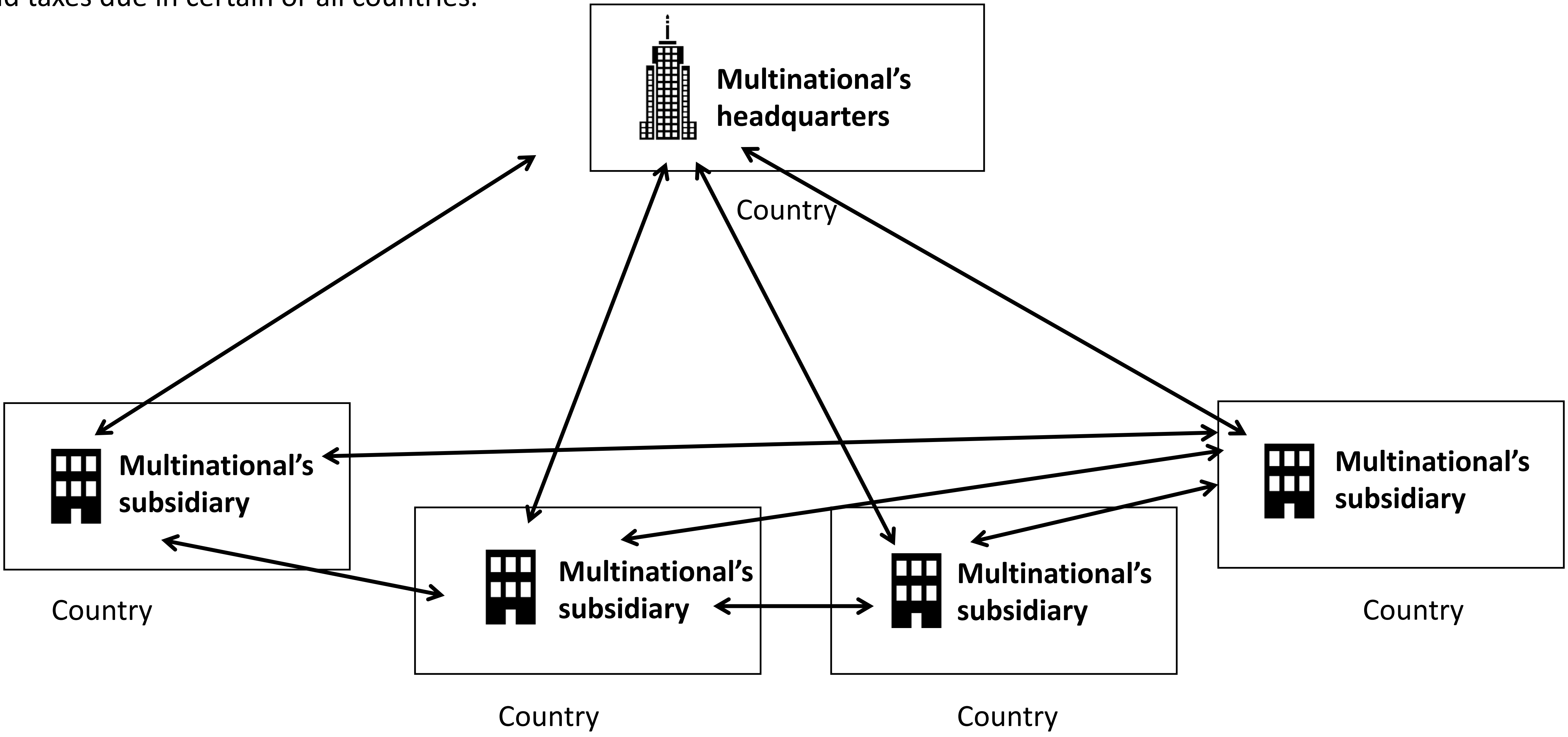
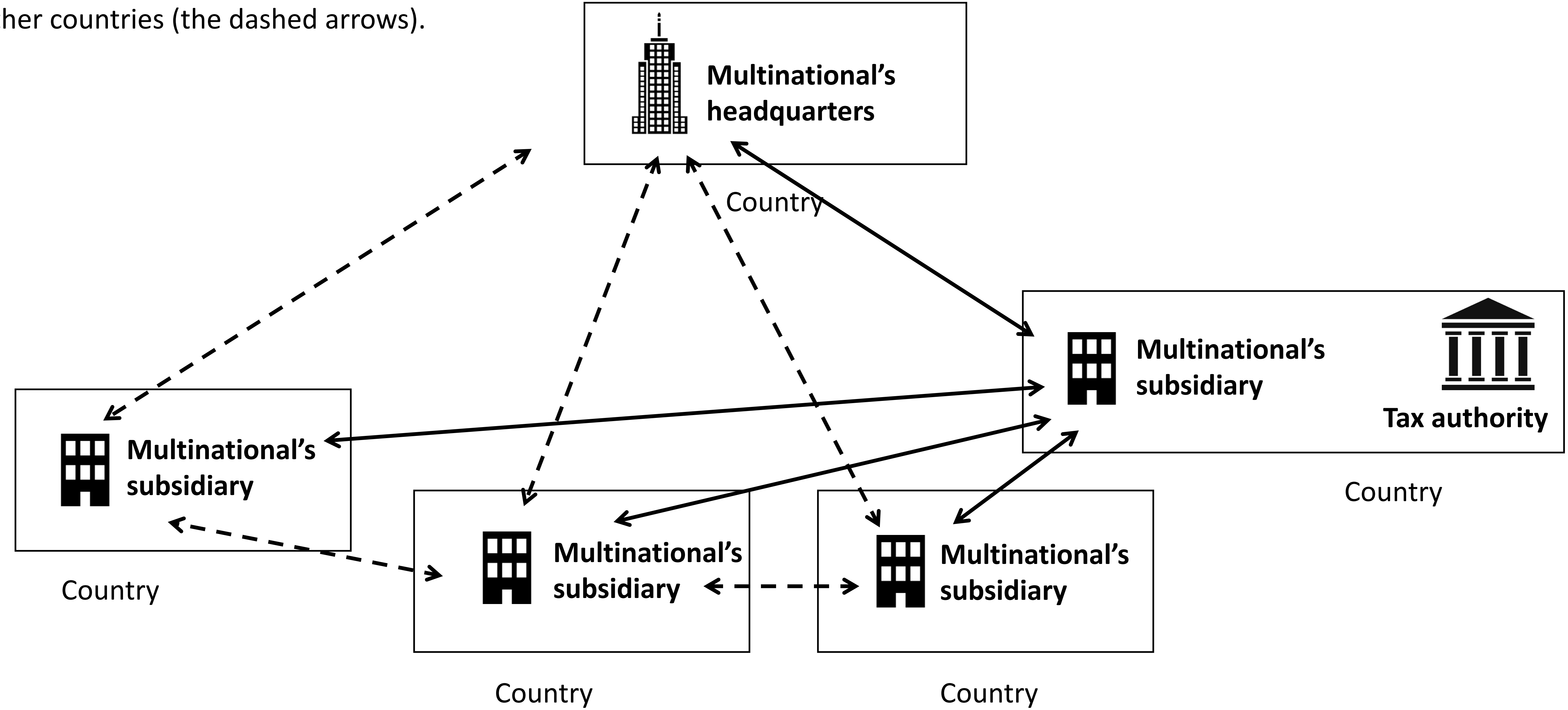
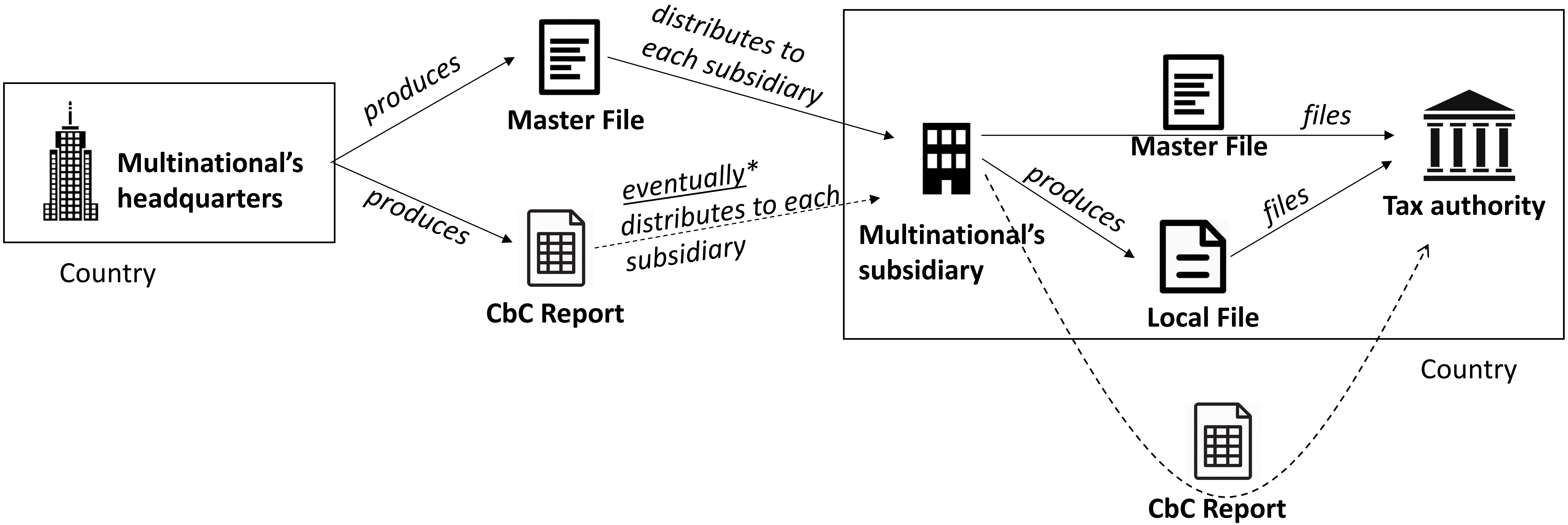
Multinationals engage in many intra-group transactions between the headquarter and all subsidiaries. These transactions may involve exchange of goods, services and/or money. Some of these transactions are real and necessary for the business, while others may serve only tax avoidance purposes. In the latter case, multinationals engage in so-called “transfer mispricing”: they set the prices of intra-group transactions (e.g. financing, consulting) artificially so as to avoid profits arising and taxes due in certain or all countries.



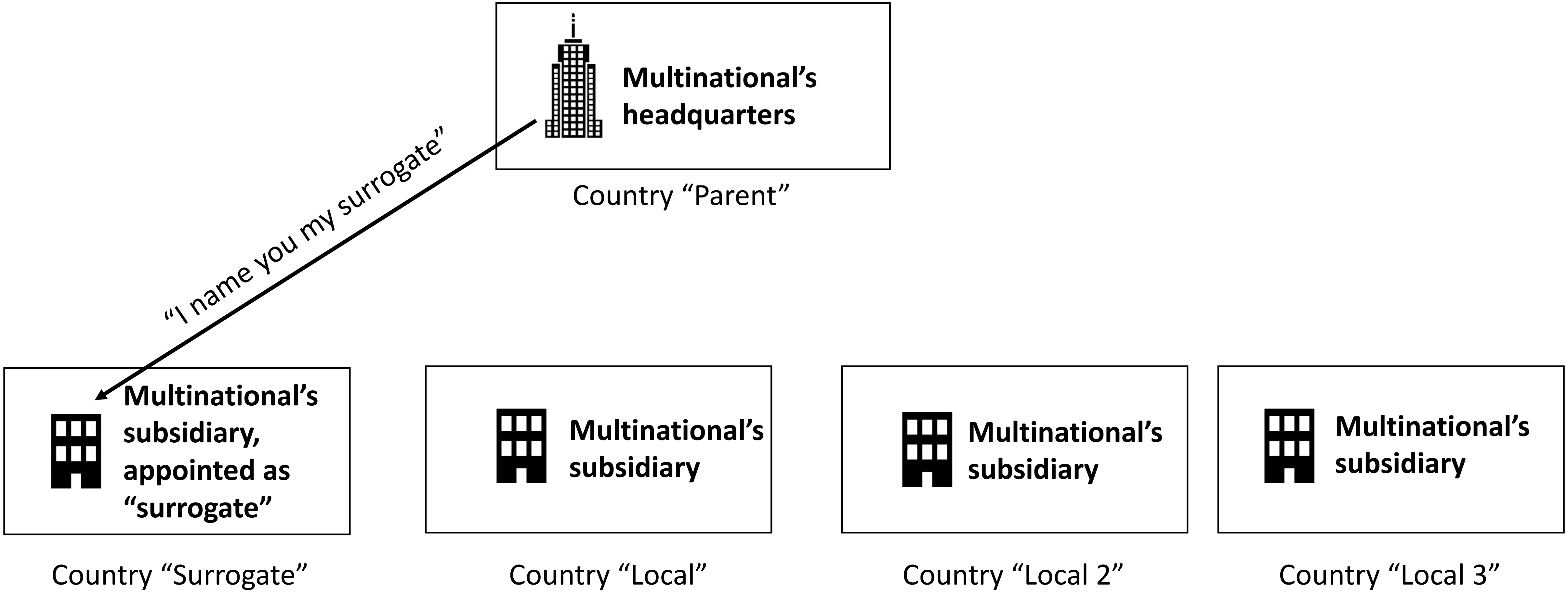
Any tax authority suffering from transfer mispricing (profit shifting and tax avoidance) by a multinational may only challenge intra-group transactions in case it can prove that these transactions do not comply with the arm's length principle (transactions that would take place with independent unrelated parties). However, for a tax authority it is often very hard to challenge a specific transaction, for instance because there is no data on similar transactions with unrelated parties to compare both of them. In addition, the tax authority has no idea of the operations and transactions of that multinational in other countries (the dashed arrows).



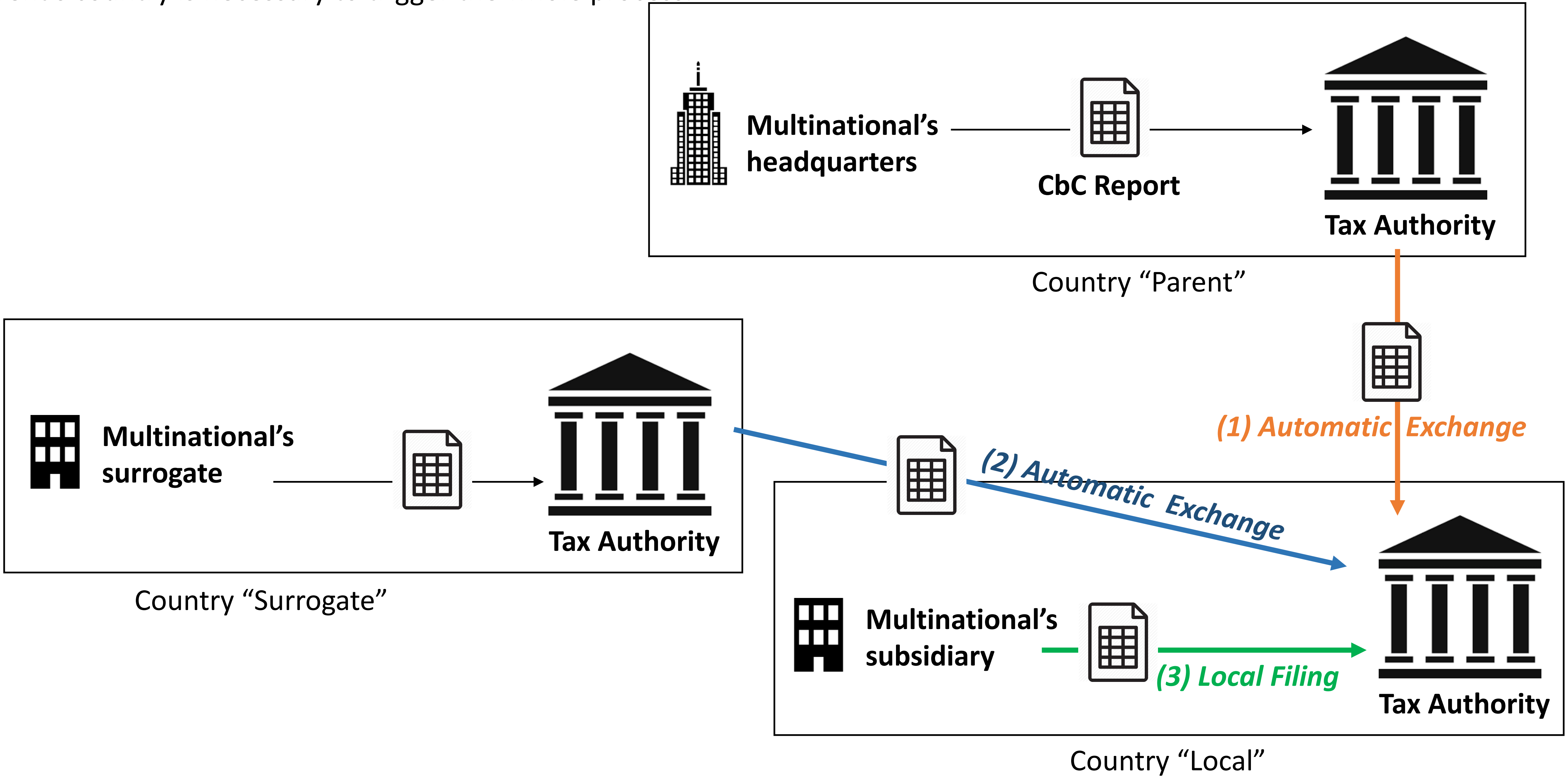
BEPS Action 13 tries to tackle transfer mispricing (profit shifting and tax avoidance) by increasing transparency by requiring very large multinationals to produce and file 3 documents: a Master file (describing the whole multinational), a Local file (describing the specific subsidiary's transactions) and the Country-by-Country Report or CbC Report (a map showing each country where multinationals have operations and how many assets, employees, profits and taxes, etc. are in each country). Both the Master file and CbC Report are produced by the headquarter. The local file is produced by each subsidiary. The Master and Local files are filed directly by each subsidiary to their domestic tax authority. The CbC Report however is exchanged among countries under specific conditions, and it could <u>eventually</u> be directly filed by the local subsidiary to its domestic tax authority.



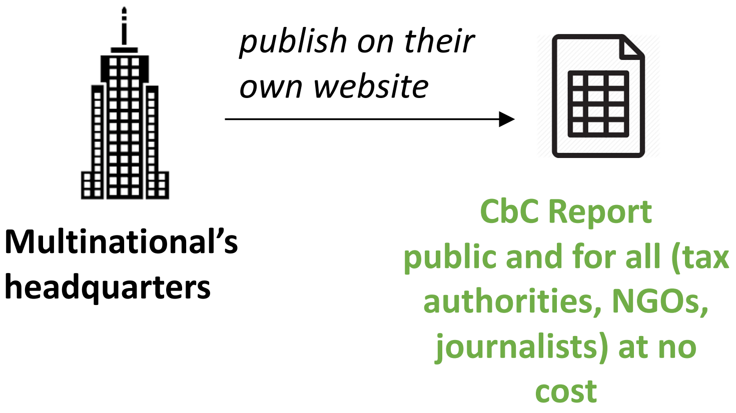
For BEPS Action 13 purposes, a Multinational Company will have a headquarters (the Parent) and many subsidiaries with operations in other countries. While all subsidiaries are equal for CbC exchange purposes, the Parent may appoint one as a "surrogate" for CbC Report exchange purposes.

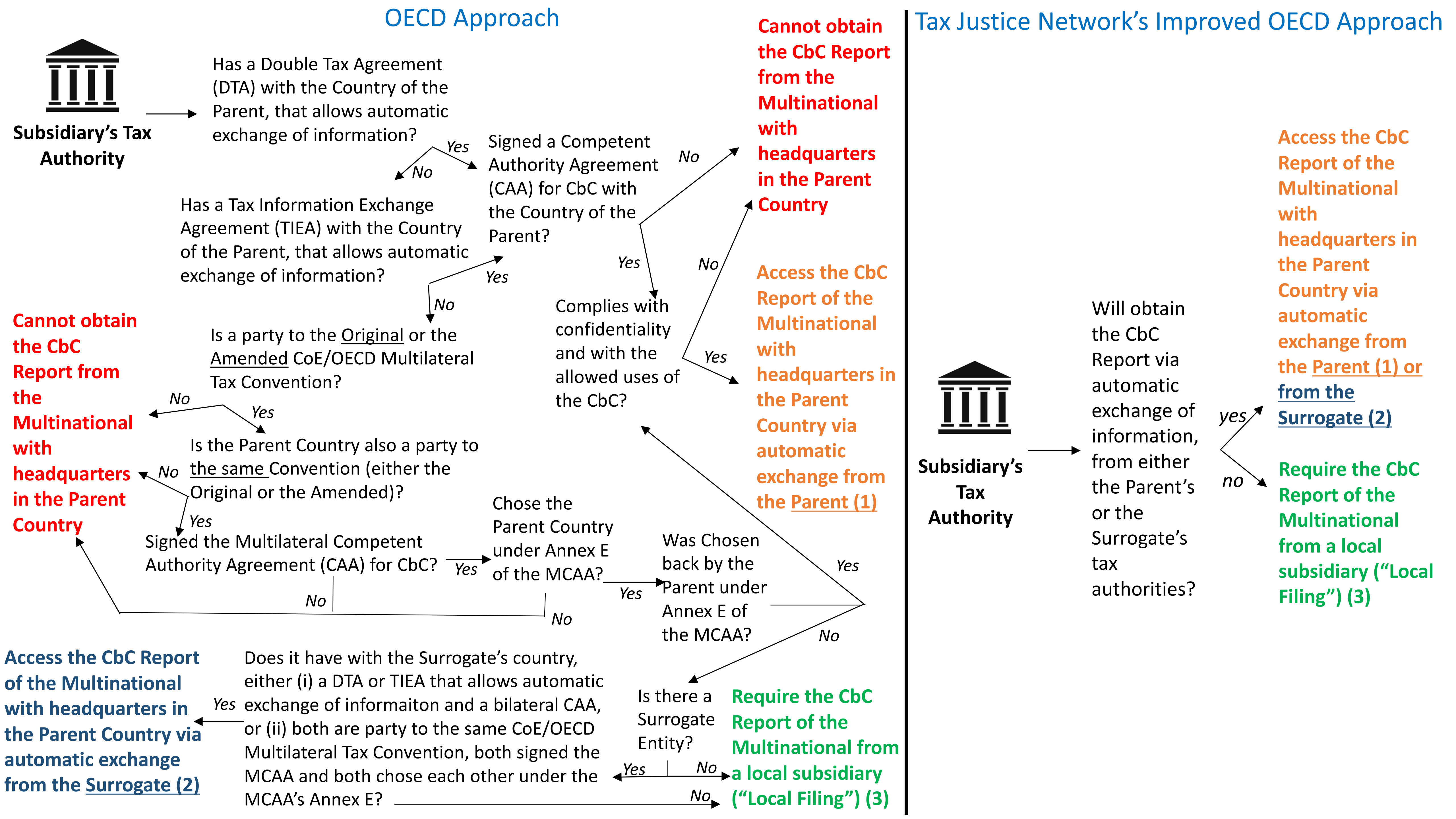


There are 3 ways for the Local's Tax authority to get the CbC Report: (1) automatically from the Parent's tax authority, (2) automatically from the Surrogate's tax authority, or (3) directly from the multinational's subsidiary resident in country Local (called "local filing"). They work as a cascade. However, an international agreement between the Subsidiary's country and the Parent's country is necessary to trigger the whole process.



Tax Justice Network's Proposal




OECD Approach
Tax Justice Network's Improved OECD Approach
Subsidiary's Tax Authority
Has a Double Tax Agreement (DTA) with the Country of the Parent, that allows automatic exchange of information?
Yes
No
Signed a Competent Authority Agreement (CAA) for CbC with the Country of the Parent?
No
Cannot obtain the CbC Report from the Multinational with headquarters in the Parent Country
Has a Tax Information Exchange Agreement (TIEA) with the Country of the Parent, that allows automatic exchange of information?
Yes
No
Yes
No
Complies with confidentiality and with the allowed uses of the CbC?
Yes
Access the CbC Report of the Multinational with headquarters in the Parent Country via automatic exchange from the Parent (1)
Cannot obtain the CbC Report from the Multinational with headquarters in the Parent Country
Is a party to the Original or the Amended CoE/OECD Multilateral Tax Convention?
No
Yes
Is the Parent Country also a party to the same Convention (either the Original or the Amended)?
No
Yes
Signed the Multilateral Competent Authority Agreement (CAA) for CbC?
Yes
No
Chose the Parent Country under Annex E of the MCAA?
Yes
No
Was Chosen back by the Parent under Annex E of the MCAA?
Yes
No
Is there a Surrogate Entity?
Yes
No
Require the CbC Report of the Multinational from a local subsidiary ("Local Filing") (3)
Does it have with the Surrogate's country, either (i) a DTA or TIEA that allows automatic exchange of informaiton and a bilateral CAA, or (ii) both are party to the same CoE/OECD Multilateral Tax Convention, both signed the MCAA and both chose each other under the MCAA's Annex E?
Yes
No
Access the CbC Report of the Multinational with headquarters in the Parent Country via automatic exchange from the Surrogate (2)
Subsidiary's Tax Authority
Will obtain the CbC Report via automatic exchange of information, from either the Parent's or the Surrogate's tax authorities?
yes
Access the CbC Report of the Multinational with headquarters in the Parent Country via automatic exchange from the Parent (1) or from the Surrogate (2)
no
Require the CbC Report of the Multinational from a local subsidiary ("Local Filing") (3)