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QDMTT for Me, No Allocation for Thee: Recent Guidance on Allocating GILTI Taxes Under Pillar Two

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INTRODUCTION

For U.S. multinational enterprises ("MNEs") that have been waiting to see whether Pillar Two will become a reality, the wait is over. The European Union, South Korea, Japan, and the UK are on track to implement Pillar Two starting in 2024, with the ranks of Pillar Two adopters expected only to grow. As of today, however, it seems clear that the United States will not be among them. In the minds of at least some members of Congress (as well as this author), the United States already adopted Pillar Two in the form of GILTI. From this perspective, the right political answer is for the rest of the Inclusive Framework to accept that GILTI is in fact a qualifying Income Inclusion Regime ("IIR"), such that CFC income is only subject to tax at the ultimate U.S. parent level, and not at the level of an intermediate parent under an IIR, or an affiliate under the Undertaxed Payments Rule("UTPR").[1] After all, the Inclusive Framework's 2020 Pillar Two Blueprint intimated that GILTI - itself a progenitor of Pillar Two - would be grandfathered in as a qualifying IIR,[2] but memories in the Inclusive Framework appear to fade quickly.

Given Congress's recent track record of passing necessary tax legislation, it is anybody's guess as to whether the United States will transform GILTI into what the rest of the world views as a qualifying IIR - noting, again, that some members of the U.S. political establishment and the U.S. tax community already believe that we are there. Yet, U.S. MNEs will continue to pay U.S. tax on GILTI, subpart F income, and corporate alternative minimum tax ("CAMT") income attributable to CFCs, even after the rest of the world adopts Pillar Two and potentially taxes that same profit. Accordingly, one of the many lingering questions about the interaction of GILTI and Pillar Two has been whether U.S. MNEs will be allowed to effectively credit U.S. tax they pay on GILTI against their Pillar Two liability. Administrative guidance from the Inclusive Framework in February of this year suggests that the answer is yes, but (i) only for two years, and (ii) not against liability for tax under qualified domestic minimum top up tax ("QDMTT") regimes. In addition, the guidance does not address the treatment of taxes on CFC income under subpart F or the CAMT. I discuss the implications of the guidance below.

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[1] *See* SFC- Letter from Sen. Mike Crapo et al. to Treasury Secretary Janet Yellen (Dec. 14, 2022), SFRC-WM-R letter to Secretary Yellen (senate.gov).

[2] *See* Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint, Section 1.3 (2020).

GILTI TAXES ARE COVERED TAXES . . . BUT NOT ALWAYS, AND NOT FOREVER

Allocating CFC Taxes Generally

As noted above, the Inclusive Framework recently issued a document entitled, ''Tax Challenges Arising from the Digitalisation of the Economy - Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)'' (the ''Guidance''). Section 2.10 of the Guidance is entitled, ''Allocation of taxes arising under a Blended CFC Tax Regimes [*sic*].'' The impetus for this guidance is Article 4.3 of the model Pillar Two rules that the Inclusive Framework issued in 2021, which addresses the allocation of ''Covered Taxes'' from one entity in the group to another entity.

The term, ''Covered Taxes,'' is critical to the operation of Pillar Two, because Pillar Two determines whether a jurisdiction falls below the Pillar Two 15% minimum effective tax rate based on the percentage that the quotient of ''Adjusted Covered Taxes'' over ''Net GloBE Income'' in a given jurisdiction yields. Generally speaking, and oversimplifying, ''Covered Taxes'' are taxes on income or profits of entities in a given jurisdiction that are included in the ultimate parent's consolidated financials (each, a ''Constituent Entity''),[3] and ''Adjusted Covered Taxes'' are Covered Taxes as adjusted pursuant to the Pillar Two rules.[4] ''Net GloBE Income'' is the net positive amount, if any, of the sum of financial accounting income or loss of Constituent Entities in a given jurisdiction, as adjusted pursuant to the Pillar Two rules.[5]

Article 4.3.2(c) of the Pillar Two model rules requires taxes under a ''CFC Tax Regime'' to be allocated from the person that is subject to the CFC tax to the Constituent Entity in respect of which the income arises for purposes of determining that entity's Covered Taxes. If, for example, Country A has a tax rate of 25% and a CFC Tax Regime that subjects low-taxed sales income of Entity A's subsidiary CFCs to that tax rate, even if CFC B in Country B pays no taxes to Country B, tax that Entity A pays to Country A in respect of CFC B's sales income ought to be treated as part of CFC B's Covered Taxes for purposes of computing the Country B Pillar Two effective tax rate.

In the definition of a ''CFC Tax Regime,'' the Pillar Two Commentary explains that ''CFC taxes imposed on a CFC shareholder are computed by reference to the shareholder's proportionate share of the income (or a specific item of income) derived by any CFC.''[6] In the very simple example above, Entity A pays tax in respect of CFC B's sales income, so those taxes seem to fall within the scope of taxes that are imposed pursuant to a CFC Tax Regime and are properly allocable to CFC B. But what if Country A were the United States, and, instead of CFC B, the example featured CFCs B through D, all of whose income and taxes were aggregated to determine Entity A's income inclusion? The language in the Pillar Two Commentary regarding taxes imposed by reference to a proportionate share of *the* income derived by *any* CFC could be construed to suggest that CFC regimes that blend CFC income are not within the scope of a CFC Tax Regime.

The Guidance acknowledges this concern and admits that tracing CFC tax to a specific Constituent Entity in a regime like GILTI ''becomes significantly more complex because the CFC tax is not generated by the inclusion of income and taking into account the taxes from a specific CFC, but rather by all CFCs.''[7] The Guidance nevertheless states that the Inclusive Framework has agreed that GILTI is a CFC Tax Regime and that a ''simplified allocation'' methodology for taxes arising under GILTI and similar regimes will apply ''for a limited time period.''[8] The Guidance notes that the Inclusive Framework will assess ''[w]hether to allow a special allocation methodology . . . after that limited time period.''[9] The Guidance then sets forth content to be added to the Pillar Two Commentary (the ''New Commentary'') regarding the allocation of ''Allocable Blended CFC Tax'' that arises under a ''Blended CFC Tax Regime.''

Before getting into the mechanics of the rules, the New Commentary notes that the rules for allocating an ''Allocable Blended CFC Tax'' apply only with respect to fiscal years beginning on or before December 31, 2025, and not ending after June 30, 2027. Accordingly, the rules apply to calendar-year taxpayers' 2024 and 2025 taxable years (i.e., the two years that begin, respectively, on January 1, 2024, and January 1, 2025). The rules apply to fiscal-year taxpayers' 2025 and 2026 taxable years (i.e., the two years beginning at some point in 2024 and 2025, respectively, and generally ending at some point in 2025 and 2026, with the June 30, 2027, date capturing taxpayers that

[3] *See* Tax Challenges Arising from the Digitalisation of the Economy - Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) (''Pillar Two Commentary''), Art. 1, ¶¶ 22 & 28; Art. 4, ¶ 25 (2002).

[4] *See* Pillar Two Commentary, Art. 4, ¶ 4.

[5] *See, e.g.*, Pillar Two Commentary, Art. 3, ¶ 2, and Art. 5, ¶ 91.

[6] *See* Pillar Two Commentary, Art. 10, ¶ 6.

[7] *See* Guidance, Art. 2.10, ¶ 2.

[8] *See* Guidance, Art. 2.10, ¶ 5.

[9] *See* Guidance, Art. 2.10, ¶ 5.

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may be allowed a fiscal year in excess of 12 months).[10]

The New Commentary includes a useful illustration of the equations that govern the allocation of tax in a Blended CFC Tax Regime to a CFC:[11]

Blended CFC Tax Allocated to an Entity:

$$\frac{\textit{Blended CFC Allocation Key}}{\textit{Sum of All Blended CFC Allocation Keys}} \times \textit{Allocable Blended CFC Tax}$$

Blended CFC Allocation Key:

$$\textit{Attributable Income of Entity} \times (\textit{Applicable Rate} - \textit{GloBE Jurisdictional ETR})$$

Allocable Blended CFC Tax

The term, "Allocable Blended CFC Tax," refers to the amount of tax that a Constituent Entity-owner incurs under the relevant Blended CFC Tax Regime. It is this tax that is available to be added to all Constituent Entities' Covered Taxes. In the context of GILTI, the New Commentary observes that this amount is equal to the U.S. shareholder's GILTI amount, less the §250 deduction, multiplied by 21% and reduced by the foreign tax credit allowed in the GILTI category.[12] The foreign tax credit point is critical for U.S. MNEs that have high-taxed and low-taxed income and little or no residual GILTI tax liability because of foreign tax credits attributable to taxes in the high-tax jurisdictions. Those MNEs may have little or no Allocable Blended CFC Tax to allocate to their low-taxed Constituent Entities, leaving those entities' profits subject to tax under an intermediate company IIR or an affiliate UTPR. Perhaps counterintuitively, this rule appears to reward U.S. MNEs with the lowest taxed operations, as those MNEs are likely to have limited GILTI category foreign tax credits, and therefore are equally likely to be able to use U.S. federal income tax on GILTI to mitigate the impact of Pillar Two. By contrast, a U.S. MNE that has high-taxed operations and an amount of high- and low-taxed income equal to the solely low-taxed income of another U.S. MNE will likely pay more in total tax because that U.S. MNE will pay tax to the high-taxed jurisdictions and also will likely pay tax on the low-taxed income under Pillar Two.

To illustrate, assume that a U.S. MNE, USP, owns two CFCs. CFC A is in jurisdiction A, which imposes tax at a rate of 30%, and CFC B is in jurisdiction B, which does not impose tax. CFC A and CFC B each earn $100 of tested income, net of expenses other than tax. CFC A pays $30 of tax in jurisdiction A, and USP does not pay any U.S. federal income tax on GILTI attributable to CFC A and CFC B. CFC B's $100 of income is nevertheless notionally subject to an additional $15 of tax under Pillar Two (assuming, for the sake of simplicity, that the jurisdiction B Net GloBE Income is exactly equal to CFC B's tested income). The USP group's total potential tax burden in respect of CFC A and CFC B is therefore $45. If instead CFC A were in a jurisdiction similar to jurisdiction B, USP would pay $21 of tax on the CFC A and CFC B tested income, taking into account the §250 deduction, and that tax would be allocated to CFC A and CFC B, leaving only $9 to be "topped up" under an IIR or UTPR - i.e., ($21 + $9) / $200 = 15%. The second group would therefore pay one-third less tax on foreign income than the first group as a result of keeping its operations solely in low-taxed jurisdictions. That, of course, assumes that jurisdiction B does not adopt a QDMTT, as we discuss below.

Blended CFC Allocation Key

As the equation set forth above shows, allocating Allocable Blended CFC Tax turns on the determination of one or more "Blended CFC Allocation Keys." A Blended CFC Allocation Key is the result of a computation that multiplies "Attributable Income" by the difference between "Applicable Rate" and "GloBE Jurisdictional ETR." Attributable Income, Applicable Rate, and GloBE Jurisdictional ETR are discussed below.

Attributable Income

The term, "Attributable Income," refers to the Constituent Entity-owner's proportionate share of a CFC's income. In the context of GILTI, the New Commentary observes that the Attributable Income of a given entity is a U.S. shareholder's proportionate share of the tested income of a CFC, or a tested unit of a CFC, unreduced by foreign income taxes and as determined based on the shareholder's U.S. federal income tax return. Although the New Commentary does not define the term, "tested unit," the specific use of that term suggests that the drafters have in mind the definition in Treas. Reg. §1.951A-2(c)(7)(iv), which includes disregarded subsidiaries of CFCs.[13] The New Commentary also does not explain how the proportionate share of CFC/tested unit tested income is determined based on the shareholder's U.S. federal income tax return, but the drafters likely have in mind Form 5471, Schedule I-1, *Information for Global Intangible Low-Taxed Income*, line 6, for CFCs, and Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and*

[10] *See* Guidance, Art. 2.10, ¶ 8.

[11] *See* Guidance, Art. 2.10, ¶ 8.

[12] *See* Guidance, Art. 2.10, ¶ 8.

[13] *See* Treas. Reg. §1.951A-2(c)(7)(ix).

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Foreign Branches (FBs), with respect to disregarded subsidiaries of CFCs.

Applicable Rate

The term, ''Applicable Rate,'' is what the drafters view as the ''minimum rate at which foreign taxes on CFC income generally fully offsets [*sic*] the CFC tax.''[14] Given the 20% haircut on GILTI taxes, and the current 10.5% rate of tax on GILTI, the drafters view the Applicable Rate for GILTI to be 13.125% (i.e., 13.125% = 10.5% / (1 - 20%)). While the actual operation of GILTI is more complex than the New Commentary suggests, this simplified approach is both consistent with the legislative history of GILTI,[15] and aligns with the interim nature of the Blended CFC Tax Regime rules.

GloBE Jurisdictional ETR

The term, ''GloBE Jurisdictional ETR,'' means a jurisdiction's effective tax rate as computed under the Pillar Two rules without regard to the allocation of any Covered Taxes under a CFC Tax Regime. If that rate is higher than the Applicable Rate *or* the Pillar Two ''Minimum Rate'' (currently 15%), then the Blended CFC Allocation Key for that jurisdiction is zero. In this regard, the GloBE Jurisdictional ETR rules are generally favorable, as they try to prevent Allocable Blended CFC Taxes from being allocated to high-tax jurisdictions, where they will not offset any tax that could be imposed under an IIR or UTPR.

In addition, tax expense attributable to a QDMTT is included in the computation of GloBE Jurisdictional ETR, *but only if* the Blended CFC Tax Regime ''allows a foreign tax credit for the QDMTT on the same terms as any other creditable Covered Tax.'' Setting aside for now the question of whether a QDMTT is a creditable foreign tax for U.S. federal income tax purposes, the GloBE Jurisdictional ETR rules take a step towards mitigating double taxation by excluding tax expense attributable to a QDMTT from the GloBE Jurisdictional ETR if the QDMTT is not creditable. In that case, Blended CFC Tax Regime tax could be imposed on profits that have already been subject to the QDMTT, and it would be equitable, and logical, to allow for the Blended CFC Allocation Key to allocate that tax back to the CFC in question.

[14] *See* Guidance, Art. 2.10, ¶ 8.

[15] *See* Joint Explanatory Statement of the Committee of Conference on the Tax Cuts and Jobs Act of 2017, p. 498 fn. 1526.

Examples

The Guidance includes two examples to illustrate the application of the rules.[16] The examples are similar, except that the second example addresses circumstances in which a non-Constituent Entity that is in the same jurisdiction as a Constituent Entity earns income that is subject to a Blended CFC Tax Regime. The takeaway is that CFC tax is still allocated to the non-Constituent Entity, but the tax is excluded from Covered Taxes for purposes of the Adjusted Covered Taxes over Net GloBE Income computation that determines the extent to which an IIR or UTPR can apply with respect to the jurisdiction in question.[17] I therefore focus on the first example, as this example provides a more straightforward walk-through of the operative rules.

The example effectively addresses the GILTI regime. Specifically, the example starts off by noting that an Ultimate Parent Entity (''UPE'') in jurisdiction X is subject to a jurisdiction X Blended CFC Tax Regime. The New Commentary explains:

> Under the jurisdiction X Blended CFC Tax Regime, shareholders of CFCs aggregate their proportionate share of the income and taxes of all CFCs in which they hold an Ownership Interest. The foreign effective tax rate must be 13.125% in order to generate sufficient foreign tax credits to prevent the imposition of a CFC charge under this Blended CFC Tax Regime. This is without reference to impacts of any foreign tax credit limitation formulas applicable in jurisdiction X.[18]

Sound familiar?

The example continues. UPE owns 100% of three CFCs in jurisdictions A, B, and C - A Co (10% GloBE Jurisdictional ETR), B Co (20% GloBE Jurisdictional ETR), and C Co (5% GloBE Jurisdictional ETR), respectively. A Co generates 100 of Attributable Income, B Co generates 50 of Attributable Income, and C Co generates 25 of Attributable Income. UPE incurs 20 of Blended CFC Tax Regime tax with respect to the blended income of A Co, B Co, and C Co.

The example computes each CFC's Blended CFC Allocation Key as follows:

[16] *See* Guidance, Art. 2.10.4.

[17] *See* Guidance, Art. 2.10.3 and 2.10.4, ¶ 3.

[18] *See* Guidance, Art. 2.10.4, ¶ 1.

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Entity	Allocation Key Computation (Attributable Income of Entity * (Applicable Rate - GloBE Jurisdictional ETR))	Blended CFC Allocation Key (Result of Allocation Key Computation)
A Co	100 * (13.125% - 10%)	3.125
B Co	50 * (13.125% - 20%)	No Allocation
C Co	25 * (13.125% - 5%)	2.031
Sum of All Blended Allocation Keys		5.156

The example then allocates the 20 of Blended CFC Tax Regime tax as follows:

Entity	Allocation Amount Computation ((Blended CFC Allocation Key / Sum of All Blended CFC Allocation Keys) * Allocable Blended CFC Tax)	Blended CFC Tax Allocated (Result of Allocation Amount Computation)
A Co	3.125 / 5.156 * 20	12.12
B Co	No Allocation	No Allocation
C Co	2.031 / 5.156 * 20	7.88
Total Blended CFC Tax Allocated		20.00

The UPE tax is therefore allocated based on a combination of income in a given jurisdiction and the difference between that jurisdiction's GloBE Jurisdictional ETR and 13.125% with a view to approximating how much of the UPE tax is in fact a tax on income from that jurisdiction that should be taken into account for purposes of Pillar Two. With this objective in imind, the methodology in the Guidance makes sense. Although A Co has four times as much income as C Co, the rate in jurisdiction A is sufficiently high that A Co ought not to be allocated four times as much tax as C Co to bring jurisdictions A and C's GloBE Jurisdictional ETRs comparably closer to 15%. Similarly, even though jurisdiction C's GloBE Jurisdictional ETR is half jurisdiction A's, C Co ought not to be allocated twice as much tax as A Co because doing so would likely push jurisdiction C's GloBE Jurisdictional ETR well over 15% while jurisdiction A's GloBE Jurisdictional ETR would likely to continue to fall well below 15%.

QDMTT For Me, No Allocation For Thee

As we note above, the GloBE Jurisdictional ETR takes into account QDMTT that a jurisdiction imposes as if that QDMTT were an organic part of the jurisdiction's Covered Taxes. Readers who are familiar with the Pillar Two Commentary will no doubt find this result surprising. That is because the Pillar Two Commentary is explicit about excluding QDMTT from Covered Taxes, and the Commentary takes into account the QDMTT only after determining Adjusted Covered Taxes, including CFC Tax Regime taxes.[19] Thus, prior to the Guidance, taxpayers might have thought that CFC Tax Regime taxes could be allocated to a Constituent Entity and mitigate or prevent the imposition of a QDMTT. Not so, per the Guidance, which states that "[a] QDMTT shall exclude tax paid or incurred by a Constituent Entity-owner under a CFC Tax Regime that is allocable to a domestic Constituent Entity under Article 4.3.2(c) of the GloBE Rules[.]"[20] The rationale for this approach is the Inclusive Framework's concern that crediting CFC taxes under a QDMTT could potentially result in taxation in a given jurisdiction below the 15% Pillar Two rate - perhaps because certain foreign tax credit rules could end up achieving a result whereby tax that is notionally taken into account for Pillar Two purposes is ultimately not paid.[21] The drafters of the Guidance are not clear at all on this point, however.

The practical consequence of the approach in the Guidance is that a QDMTT takes priority over the GILTI rules. Assume that a jurisdiction operates an incentive regime that offers some taxpayers a 5% rate on qualifying income. Absent Pillar Two, a CFC in that jurisdiction that earns $200 of tested income, net of expenses other than tax, could give rise to a total tax burden of $23 - i.e., $10 of local tax, and $21 of U.S. federal income tax on GILTI (taking into account the §250 deduction and the §78 gross-up), less a foreign tax credit for 80% of $10, or $21 - $8 = $13. If that jurisdiction introduces a QDMTT, the local tax burden could first increase to $30 - i.e., $10 of local tax under the incentive regime plus $20 of top-up tax. If the QDMTT is not a creditable foreign income tax, the post-QDMTT GILTI tax burden could remain similar to the pre-QDMTT GILTI tax burden. If tested income declines by $20 to account for the QDMTT expense, the GILTI tax burden remains $10.9 - i.e., ($200 - $10 of local tax - $20 of QDMITT expense +

[19] *See* Pillar Two Commentary, Art. 4, ¶¶ 37-38; Art. 5, ¶ 20.

[20] *See* Guidance, Art. 5, ¶ 11 (adding ¶ 118.30 to the Commentary to Art. 10.1).

[21] *See* Guidance, Art. 5, ¶ 11 (adding ¶ 118.30 to the Commentary to Art. 10.1).

$10 §78 gross-up)/2 * 21% = $18.9, less an $8 foreign tax credit. The Pillar Two rules could therefore cause the tax burden to nearly double, from $23 to $40.9.

Of course, if the QDMTT is not creditable, then the tax is excluded from the GloBE Jurisdictional ETR for purposes of determining the Blended CFC Allocation Key. But what good is that if the QDMTT operates independent of the allocation of CFC taxes? What room is left for those taxes to offset tax under Pillar Two?

Although outside the scope of this column, a QDMTT would generally seem to satisfy the foreign tax credit regulations' attribution requirement for taxes on residents in Treas. Reg. §1.901-2(b)(5)(ii), especially since the Pillar Two Commentary incorporates an arm's-length requirement for cross-border transactions.[22] On the theory that the relevant financial accounting rules do not deviate too dramatically from the local tax rules with respect to realization, cost recovery, and gross receipts, it seems that a QDMTT ought to satisfy the net gain requirement in Treas. Reg. §1.901-2(b) in the much the same manner as its companion local corporate income tax. Given the alternative scenario described above, a favorable conclusion on creditability would be a positive outcome.

MUCH ADO ABOUT GILTI, BUT WHAT ABOUT SUBPART F AND THE CAMT?

The Guidance tells taxpayers how to deal with Blended CFC Tax Regimes like GILTI but is silent on how to deal with regimes like subpart F, which also blend income and, to some extent, foreign taxes - just not in the way that the GILTI regime does. To illustrate, if CFC A in jurisdiction A recognizes $100 of foreign base company sales income, net of expenses other than tax, that is subject to 30% tax, and CFC B in jurisdiction B recognizes $100 of foreign base company services income, net of expenses other than tax, that is subject to 5% tax, the CFCs' U.S. shareholder does not pay $16 of tax on the CFC B income ($21 of tax on $95 of general category subpart F income plus $5 of §78 gross-up less a $5 foreign tax credit); rather, and subject to the complexities of an actual U.S. MNE tax computation, the U.S. shareholder may pay $7, because the U.S. shareholder may be able to credit $35 of total foreign tax against the $42 of U.S. federal income tax on the $200 of general category income ($165 of general category subpart F income plus $35 of §78 gross-up) that the shareholder recognizes, leaving only a $7 U.S. federal income tax burden remaining.

The new CAMT raises a similar issue. First, is the CAMT a CFC Tax Regime? Given that §56A(c)(3) includes in a taxpayer's adjusted financial statement income its pro rata shares of ''items taken into account in computing the net income or loss set forth on the applicable financial statement'' of each CFC with respect to which the taxpayer is a U.S. shareholder, and §59(l) allows the taxpayer to use the aggregate of CFC foreign taxes (capped at 15% of the CFC income inclusion) as a credit against CAMT liability, it certainly resembles one. Assuming that a taxpayer can trace after credit CAMT to CFC income, is the taxpayer entitled to allocate that tax to Constituent Entities? Both the Pillar Two Commentary and the Guidance are silent.

In the absence of any other guidance, it seems reasonable to apply an approach similar to the allocation methodology for Blended CFC Tax Regimes to both subpart F and the CAMT.

CONCLUSION

Setting aside their limited shelf life, the Blended CFC Tax Regime rules are a positive development - in the absence of a raft of QDMTT regimes, that is. As more QDMTT regimes enter into force, the rules' significance will likely diminish because QDMTTs will make the allocation of CFC taxes less and less relevant. That may be precisely what the drafters of the Guidance intend, and why the Blended CFC Tax Regime rules are expressly temporary. If every relevant jurisdiction enacts a QDMTT regime in the next few years, and every CFC regime jurisdiction agrees that QDMTTs are creditable, the Blended CFC Tax Regime rules will presumably become obsolete.

Absent an eruption of global unanimity and conformity, it seems likely that there will still be a role for allocating GILTI taxes after the Blended CFC Tax Regime rules expire. At that point, and with the benefit of a few years of practical experience with the application of Pillar Two, the Inclusive Framework should reconsider the decision to exclude CFC regime taxes from the Covered Taxes that a QDMTT computation takes into account unless there is a global agreement to treat QDMTTs as creditable taxes. Achieving a global minimum tax rate should not come at the risk of double taxation. Similarly, in addition to making the Blended CFC Tax Regime rules permanent, the Inclusive Framework should provide comparable guidance for other CFC and CFC-like regimes, such as the subpart F and CAMT regimes. Unless and until that happens, tax competition will continue, as U.S. MNEs strive to suffer less double taxation, and achieve a more equitable global rate, than their peers.

[22] *See* Pillar Two Commentary, Art. 3.2.3.

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