POLICY BRIEF

GloBE Administrative Guidance – The QDMTT and GILTI Allocation

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On 2 February 2023, the OECD/G20 Inclusive Framework released a package of Administrative Guidance (***AG***) for the Pillar Two GloBE Rules.[1] The package addressed a variety of key outstanding issues which had been subject to ongoing negotiations by the Inclusive Framework's Working Party 11. This Policy Brief addresses the following three developments/clarifications:

1) the GILTI regime is a CFC Tax Regime;
2) the QDMTT applies before CFC Taxes; and
3) there is a new allocation mechanism of GILTI as a Blended CFC Tax.[2]

The document contains three Appendices. The first sets out the ordering priority rules created by the GloBE Rules as clarified in the AG. The second is a step-by-step example of allocating GILTI as a blended CFC Tax. The third demonstrates the impact of the allocation mechanism on incentives to adopt a QDMTT.

<u>The GILTI Regime is a CFC Tax</u>

First, and most simply, the GILTI regime will be treated as a CFC Tax and not as 'equivalent' to the IIR. This means that US headquartered MNEs will generally be subject to the GloBE Rules. The GloBE Rules are generally designed to give the undertaxed jurisdiction the first opportunity to impose the minimum top-up tax under the QDMTT. If the undertaxed jurisdiction itself does not impose the top-up tax, the next priority will go to the ultimate parent entity under the IIR. For US MNEs, this would generally mean that the US would be entitled to impose the top-up tax under the IIR (if the US adopted one).

As the GILTI regime will not be treated as an IIR, Jurisdictional Top-up Tax amounts will be imposed on US headquartered MNEs either under an intermediate IIR or under the UTPR in other states. However, the additional tax from the GILTI regime will be taken into account as a CFC Tax and therefore reduce the amount of Intermediate IIR or UTPR which would have been paid in the absence of the GILTI regime.

<u>The QDMTT applies before CFC Taxes</u>

The headline is that the QDMTT applies *before* any CFC Taxes. This can be thought of as the QDMTT not 'crediting' any CFC Taxes when calculating the jurisdictional top-up tax.[3] The undertaxed jurisdiction can

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[1] OECD (2023), 'Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS' ('Administrative Guidance'), OECD, Paris (available at https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf).

[2] This Policy Brief does not address the impact of the AG on Subpart-F Income or the Corporate Alternative Minimum Tax (CAMT).

[3] Technically, the QDMTT calculation will exclude cross-border taxes which would be allocated to the jurisdiction from the Covered Taxes for the undertaxed jurisdiction (the ETR numerator).

itself claim the minimum top-up tax without reducing that top-up tax for any CFC Tax paid with respect to the jurisdiction.[4]

The drafting of the AG indicates that the exclusion of cross-border taxes is not an optional element of the QDMTT but is required.[5] If correct, this would mean that states cannot adopt a QDMTT which does take into account CFC Taxes.

Allocation of Blended CFC Taxes

The AG also addressed the allocation rule for 'Blended CFC Tax Regimes'.[6] While drafted in terms which could apply to any country, this mechanism is clearly directed at the GILTI regime (and refers to it explicitly throughout). This mechanism is designed to solve an allocation problem which arises from trying to integrate a globally blended regime (GILTI) with a jurisdictionally blended regime (GloBE). The AG applies a temporary rule which only applies to financial years beginning before 2026. Accordingly, these are not permanent rules and the Inclusive Framework has left open how it would treat GILTI if the US were not to amend the GILTI regime to make it an equivalent of the IIR by 2026.

The allocation mechanism does not attempt to allocate the GILTI tax to individual CFCs relying purely upon US tax principles. Instead, it operates by (a) determining the total amount of additional tax arising from the CFC regime (under US tax principles) and then (b) allocating that between undertaxed jurisdictions using an allocation key based on GloBE principles. When calculating the total pool of additional tax from GILTI ('GILTI Tax'), the GloBE Rules include the additional tax which is paid due to the US 'haircut' on foreign tax credits as well as the foreign tax credit limitation rules.[7] The allocation mechanism for this additional tax is complicated (a detailed step-by-step guide is in Appendix 2). However, at its essence:

> *The GloBE Rules allocate the additional tax from GILTI between the respective CFCs in proportion to the amount of additional tax the shareholder would need to pay to raise the ETR on their share of the CFC's income to 13.125%.*[8]

Once the GILTI tax has been allocated to the respective CFCs, this tax will be included in the Covered Taxes of that jurisdiction for the purposes of calculating any top-up tax due under the IIR or UTPR. As noted above, this allocation will ***not*** reduce the amount of QDMTT because the QDMTT applies before CFC Taxes.

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[4] This avoids a 'feedback loop' under which the QDMTT attempts to credit the CFC regime and the CFC regime attempts to credit the QDMTT. The Administrative Guidance refers to this problem in paragraph [118.30]. For further explanation, see Heydon Wardell-Burrus, 'Should a Foreign Tax Credit be given for QDMTT?', *Tax Notes International*, 27 June 2022).

[5] See Administrative Guidance, paragraph [118.30].

[6] Note that the Administrative Guidance also addressed the interaction between domestic losses in the Parent Entity and CFC Regimes, including GILTI (AG, Art. 2.8). This interaction issue is not addressed in this Policy Brief.

[7] This is important because it involves allocating CFC Tax where that CFC Tax arises because of expenses allocated under US tax law to GILTI income despite the fact that those expenses have not reduced the respective CFC's profits under transfer pricing rules. For further discussion see Heydon Wardell-Burrus, 'GILTI and the GloBE', *Oxford Centre for Business Taxation Working Paper 23/1,* 2 February 2023 (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4345960).

[8] The rules calculate an 'Applicable Rate' which is the tax rate at which *if full tax credits were available* there would be no additional CFC tax with respect to the undertaxed jurisdiction. For GILTI, this rate will be 13.125% for all MNEs.

Interaction between the QDMTT and CFC Allocation Rules

The adoption of a QDMTT by an undertaxed jurisdiction can impact the allocation of Blended CFC Taxes. The AG achieves this result by adding any QDMTT amounts to the Covered Taxes of the CFC *but only for the purposes of calculating the allocation of the CFC Taxes.* The result of this rule is that where there is a QDMTT applicable in a jurisdiction, the 'ETR' for that jurisdiction will be increased for the purposes of allocating the CFC Tax. This will generally mean that the 'GILTI Tax' will be (re)allocated[9] away from the QDMTT jurisdiction to jurisdictions without QDMTTs.

While there is a detailed example in the Appendix, at a high-level, this rule limits the 'waste' of CFC taxes. It does not help the MNE to have CFC Tax allocated to a jurisdiction with a QDMTT. This is because the QDMTT is calculated without taking into account any CFC Tax allocation. It also does not generally reduce the amount of IIR or UTPR tax which would be paid with respect to the jurisdiction. This is because the QDMTT is already expected to reduce the IIR or UTPR tax to nil. It is much better for the MNE if the CFC Taxes are allocated to jurisdictions without QDMTTs. This will reduce the amount of IIR or UTPR which would otherwise be imposed.

There is an important caveat to the above rule. The allocation of CFC Taxes will only be modified by the QDMTT if the CFC regime gives a tax credit for QDMTT.[10] If the CFC regime does not credit the QDMTT, then the QDMTT amount will not be added to the ETR calculation for the purposes of allocating CFC Tax. This will mean that more CFC Tax will be allocated to the jurisdiction with the QDMTT and therefore more CFC Tax would 'wasted'.[11] This would increase the total tax on the MNE. Accordingly, this limitation rule operates as an entrenching mechanism which creates an incentive for the CFC regime to credit the QDMTT.[12]

Four ETRs

This means that there are (up to) four different GloBE ETRs for each jurisdiction. These are:

1) 'Regular' GloBE ETR – this is for determining the top-up tax under the IIR/UTPR. It has all Covered Taxes in the numerator (including CFC Taxes) but not any amounts of QDMTT.

[9] The term 'reallocated' is misleading and should be contested. From a conceptual perspective, a regular 'allocation' is occurring which is properly taking into account the fact that there is a creditable foreign tax being paid on the income. Clearly the amount of foreign taxes paid on underlying income is relevant to the allocation of any blended CFC Tax and, if the QDMTT is a creditable tax which applies ahead of the CFC Tax, it should be taken into account. Nevertheless, the idea of 'reallocation' may be considered helpful when thinking about the introduction of a QDMTT. In this preliminary analysis, I have adopted the term '(re)allocate' in an attempt to be helpful whilst acknowledging the pitfalls of the term 'reallocate'.

[10] Importantly, this only requires a credit be given on the same terms as other creditable taxes. This wording indicates that the foreign tax credit for QDMTT must be treated equally – not that it must be an *allowed* foreign tax credit. The GILTI regime would still meet this requirement if it gave a credit for QDMTT *even if that credit could not be used due to the foreign tax credit limitation rules.* See further below.

[11] However, failure to give a credit for QDMTT could also result in more CFC Tax (compared to giving a credit for that tax). This would not apply if the US shareholder was in an excess foreign tax credit position. In effect, this rule is only willing to give a CFC jurisdiction the reallocation benefit if it accepts the priority of the QDMTT over the CFC regime (at least insofar as granting a credit is seen as accepting priority).

[12] This rule can clearly be rationalized on grounds other than creating an incentive to give a credit for the QDMTT but it also has this effect.

2) QDMTT ETR – this is for determining the top-up tax under the QDMTT. It does not include any CFC Taxes in the ETR numerator (nor does it include any QDMTT amount).
3) Blended CFC Tax Allocation ETR – this is for determining the allocation key for Blended CFC Tax Regimes.
    a. If the CFC tax regime gives a credit for QDMTT, this includes amounts of QDMTT but does not include amounts of CFC Taxes for the jurisdiction.
    b. If the CFC tax regime does not give a credit for QDMTT, this does not include amounts of QDMTT nor amounts of CFC Taxes which are allocated to the jurisdiction.
4) Transitional CBCR Safe Harbour ETR – this is used for determining whether the jurisdiction qualifies for the transitional CBCR safe harbour. It relies upon a 'Simplified Tax Calculation' which uses the Income Tax Accrued under CBCR Regulations.[13]

To what extent will GILTI reduce GloBE top-up taxes on US MNEs?

The different rules announced/clarified in the AG pull roughly in opposing directions. First, the QDMTT applies ahead of CFC Taxes (and thus, the GILTI regime). The GloBE Rules also create an incentive for the GILTI regime to give a foreign tax credit for any amounts of QDMTT. For present purposes, I assume that the US grants a foreign tax credit for QDMTT as required to gain the allocation benefit for US MNEs.

Where a QDMTT is applicable in a jurisdiction, there will (generally[14]) be no IIR or UTPR owed with respect to that jurisdiction. The QDMTT effectively eliminates the IIR or UTPR with respect to that jurisdiction. Accordingly, the question is whether the QDMTT will apply in addition to the GILTI regime. The answer depends upon whether the US shareholder is in an excess foreign tax credit position. If so, the additional tax credits from the QDMTT will not reduce the amount of US tax under the GILTI regime and the QDMTT will apply in addition to the GILTI tax. So, as a starting point, GILTI would not reduce the QDMTT for a jurisdiction. However, the GloBE allocation mechanism for the GILTI Tax gives an important benefit to the US MNE which can offset this effect.

As the IIR and UTPR already do not apply with respect to a jurisdiction with a QDMTT, any GILTI Tax allocated to that jurisdiction will not reduce the total top-up tax under the GloBE regime with respect to that jurisdiction. What the AG's allocation rules allow is for this GILTI tax to be (re)allocated to another undertaxed jurisdiction (one without a QDMTT). Accordingly, the GILTI tax which would have been allocated to the jurisdiction which adopted the QDMTT (if it did not adopt a QDMTT) will be allocated to a different jurisdiction without a QDMTT. This reduces the IIR/UTPR payable with respect to that other jurisdiction. Accordingly, at least part of the cost of the QDMTT and GILTI which were imposed with respect to one jurisdiction will reduce the amount of IIR/UTPR which is imposed. This is demonstrated in the Appendix.

Where the US shareholder is not in an excess foreign tax credit position, the QDMTT tax will reduce the GILTI tax which would otherwise fall due (because of the availability of additional allowable tax credits).

[13] The author thanks Jason Yen for reminding him of this fourth ETR which was not listed in the preliminary analysis released on 4 February 2023.

[14] Technically there can be cases where the QDMTT amount does not match the jurisdictional top-up tax amount due to a non-alignment of the QDMTT and the Jurisdictional top-up tax calculations. For instance, the QDMTT can adopt another set of accounting standards as its starting tax base.

However, due to the 20% 'haircut' on foreign tax credits, the GILTI Tax will not be reduced by the full amount of the QDMTT.[15] The remaining GILTI Tax would then be allocated as described above.[16]

Putting this together, the fact that the QDMTT goes before CFC Rules increases the chances that GILTI and QDMTT will be imposed with respect to the same income. However, this is not fundamentally different from the undertaxed jurisdiction raising its corporate income tax. Once the QDMTT goes before the CFC Rules,[17] the allocation mechanism for Blended CFC Taxes can significantly mitigate the cost for the MNE of this ordering rule.

The allocation rule effectively means that GILTI Tax will be allocated to the jurisdictions where it will most substantially reduce the top-up tax for the MNE under the IIR/UTPR. This allocation generally maximises the value of the GILTI allocation for the MNE.[18] However, it is important to recall that the CFC Tax can only ever be a Covered Tax for the relevant jurisdiction (and therefore does not generally reduce the amount of IIR/UTPR with respect to that jurisdiction by an equal amount).[19]

The above description should not be read to suggest that this allocation mechanism is inappropriate. Any allocation mechanism for the GILTI regime needs to take into account the respective tax credits provided by different CFCs. If the QDMTT applies before the CFC regimes (and is credited by such regimes), there is a clear logic in taking the QDMTT tax into account in determining the allocation of the Blended CFC Tax.

What does this mean for states' incentives to adopt a QDMTT?

The fundamental issue for states considering the adoption of a QDMTT is managing the trade-off between the benefit of raising additional revenue and the competitive disadvantage of increasing the cost for MNEs operating in their jurisdiction (compared to not adopting a QDMTT).[20] Of course, the state must consider these trade-offs with respect to all in-scope MNEs which may operate in the jurisdiction (and not just those headquartered in the United States and are subject to the GILTI regime). The AG has provided important clarifications of the GloBE Rules which impact on this evaluation.

Without purporting to be comprehensive, this note attempts to make some contributions regarding the incentives for states to consider in adopting a QDMTT. In considering the impact of the AG's treatment of

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[15] One would also assume that the full amount of QDMTT would not generally be available as a result of the GILTI regime's substance-based carve-out 'Net Deemed Tangible Income Return' (NDTIR). NDTIR is similar to the substance-based income exclusion (SBIE) under the GloBE Rules but is only calculated with respect to tangible assets (Qualified Business Asset Investment (QBAI)) rather than also taking into account payroll expenditure.

[16] Note that this additional GILTI Tax could (theoretically) reduce the amount of IIR/UTPR tax which is owed on a dollar-for-dollar basis (if allocated to a jurisdiction with Excess Profit and no substance).

[17] This is not particularly surprising considering a QDMTT is a profit-based tax imposed by the residence jurisdiction of the undertaxed entity.

[18] Subject to the caveat that the allocation mechanism for GILTI does not take into account the respective amounts of SBIE in the underlying jurisdictions. This means that there can be an allocation to jurisdictions with low ETRs but also low Excess Profits which would not be the most efficient allocation.

[19] There is a 'dilution effect' which comes from the fact that the Covered Taxes are then effectively allocated pro rata between the amounts of SBIE and Excess Profit in the jurisdiction. They are not treated like the QDMTT (which is treated as having been imposed only on the Excess Profit and thus reduces the amount of IIR/UTPR dollar-for-dollar).

[20] Note that this is different to comparing the adoption of a QDMTT to a non-Pillar Two world. For the purposes of this analysis, the baseline comparison is a world in which the UTPR has been adopted by a critical mass of states.

blended CFC taxes, it is helpful to split consideration into cases where the impacted MNEs are in an excess foreign tax credit position and cases where they are not.

First, consider the case where a US MNE is in an excess foreign tax credit position. For such MNEs, an additional dollar of QDMTT will not reduce their US tax liability.[21] Accordingly, as a starting point, each additional dollar of QDMTT is an additional dollar of tax for the MNE. However, the allocation mechanism outlined above means that some of this cost can be offset. The additional dollar of QDMTT does not reduce the amount of US CFC Tax but that same total amount of US CFC Tax will be (re)allocated towards jurisdictions without QDMTTs and for which there would otherwise be an IIR or UTPR tax liability (assuming temporarily that there are such jurisdictions).

This means that an additional dollar of tax under the QDMTT may not be an additional dollar of tax overall for the MNE (compared to the jurisdiction not adopting a QDMTT). Some portion of that dollar can reduce amounts of IIR or UTPR which would otherwise be payable. This means that the burden of an additional dollar of QDMTT tax may not be borne entirely by the MNE but can instead be borne in part by the IIR or UTPR jurisdictions which would otherwise have received additional tax. How much of the burden will fall on the IIR/UTPR jurisdiction will depend upon how much the new allocation reduces the IIR tax which would otherwise be paid compared to the allocation if the QDMTT was not adopted. This is demonstrated in Appendix.

Second, consider the case where a US MNE is not in an excess foreign tax credit position. MNEs in this position will have their GILTI Tax reduced by a portion of the amount of additional QDMTT. This will be up to a maximum of 80% (as a result of the 20% 'haircut' for foreign tax credits). In such cases, the 'benefit' of the allocation mechanism will be reduced because there will be less CFC Tax allocated amongst the CFC jurisdictions. However, this reduction only arises because there is less US tax paid (compared to the non-adoption of the QDMTT and to the above case where the US MNE is in an excess foreign tax credit position). Accordingly, the additional QDMTT cost to the MNE is offset by a reduction in US GILTI Tax and a reduction in other IIR/UTPR with respect to non-QDMTT jurisdictions in the MNE group.

It follows from the above that if an undertaxed state imposes additional QDMTT, the burden of that additional tax will fall in some ratio between (a) the MNE, (b) the IIR/UTPR jurisdictions and (c) the US revenue (which only occurs where the US MNE is not in an excess foreign tax position). Putting to one side the extent to which the QDMTT is borne by the US revenue, the extent to which the additional burden of the QDMTT would fall on the MNE will depend upon the extent to which there are other undertaxed jurisdictions to which the additional CFC tax will be helpfully (re)allocated. This produces an iterative game with complex interactions between jurisdictions in determining whether or not to adopt a QDMTT.

If adopting a QDMTT results in the (re)allocation of the relevant CFC Tax to a different undertaxed jurisdiction which would otherwise be subject to the UTPR, then there may be relatively little of the additional tax borne by the MNE. This is particularly the case where the US Parent is in an excess foreign tax credit position (as the QDMTT would not change the amount of GILTI Tax which is paid). Accordingly, an increase in QDMTT tax paid in one CFC jurisdiction may be offset by a reduction in IIR/UTPR taxation with respect to another CFC jurisdiction. This is because the addition of the QDMTT in one jurisdiction

[21] The GILTI regime does not have a carry-forward of excess foreign tax credits (unlike the CFC regime applicable to 'Subpart-F Income' which does allow a carry forward of unused foreign tax credits.

effectively (re)allocates the CFC Tax to another low tax jurisdiction and thereby reduces the IIR/UTPR tax paid with respect to that other jurisdiction.

This can work as long as there is enough IIR/UTPR tax which would otherwise be payable with respect to low taxed jurisdictions in the group. However, if there is not (for instance, if all jurisdictions adopt a QDMTT), then this effect goes away. Any increase in QDMTT is an increase in the total tax of the MNE. These effects are shown in a worked example in Appendix 3.

This creates a 'brinkmanship' dynamic whereby some low tax jurisdictions can raise revenue under QDMTTs without substantially increasing the total tax on US MNEs operating in their jurisdictions which are in an excess foreign tax credit position. However, if too many low tax jurisdictions try to do so by adopting a QDMTT, then the effect goes away. US MNEs in an excess foreign tax credit position could be indifferent to being subject to QDMTTs in some jurisdictions as long as they were not subject to a QDMTT on a sufficient amount of other undertaxed excess profit. The result of this effect is that there can be a significant advantage for US MNEs to have excess profits in jurisdictions which do not have QDMTTs. These incentives are effectively the dynamics of global blending (without the haircut effect).

In considering which strategy to adopt, all states are not created equal. The value to the MNE is maximized by having the GILTI tax allocated to the undertaxed jurisdictions with the least SBIE – the tax havens. Accordingly, this mechanism is likely to encourage jurisdictions with substance to adopt a QDMTT (at limited cost to the MNE) while tax havens may be incentivised not to adopt a QDMTT in order to retain the undertaxed profits of the MNEs.

Furthermore, this dynamic also limits the disincentive for states to be a 'first mover' in adopting the QDMTT. As an early adopter of the QDMTT, it is more likely that a substantial portion of the relevant Blended CFC Tax will be (re)allocated to undertaxed jurisdictions without a QDMTT. While there is a pool of undertaxed profit within the MNE, adopting a QDMTT continues to operate as a soak-up tax not just because it limits the application of UTPR to the jurisdiction adopting the QDMTT but because it ensures that the relevant GILTI Tax is not wasted by (re)allocating it to other low tax jurisdictions.

The above analysis needs to remain in context. These incentives only apply to the extent that the operations within the state are subject to GILTI Tax from US MNEs (and particularly where they are in an excess foreign tax credit position). This is likely to be only a subset of the total capital investment into a state (albeit, an important one). When considering the trade-offs involved in adopting a QDMTT, the state must take into account the revenue impact with respect to investment from states which do not have blended CFC Regimes. It may be that the lost revenue with respect to such investments from not adopting a QDMTT would outweigh the competitive benefit which can be provided to US MNEs operating in the jurisdiction.

What does this mean for states which adopt an IIR?

As outlined above, the allocation rule for Blended CFC Taxes creates incentives for low tax jurisdictions with substance to adopt QDMTTs while limiting the incentive for tax havens (low tax jurisdictions without much substance) to adopt a QDMTT. These dynamics are likely to have flow-on effect for the revenue impact on headquarter jurisdictions which have adopted the IIR. MNEs which are subject to the IIR but not the GILTI regime may be indifferent as to whether or not such havens adopt a QDMTT – they will be subject to the same minimum tax on their profits either way. However, if a low tax jurisdiction does not

adopt the QDMTT, then the UPE jurisdiction will receive the revenue (under the IIR) rather than the low tax jurisdiction itself. Accordingly, creating the incentive for (at least some) low tax jurisdictions _**not**_ to adopt the QDMTT is likely to increase the revenue of IIR jurisdictions which have MNEs with profits in those undertaxed jurisdictions.

This result is somewhat counterintuitive. The Blended CFC Tax allocation rule adopted under the GloBE Rules is likely to increase the revenue for IIR jurisdictions[22] on MNEs which are not subject to a Blended CFC Tax. In essence, how much revenue UPE jurisdictions receive depends upon the uptake of the QDMTT in jurisdictions with low taxes. As the Blended CFC Tax allocation rule limits the incentive for (at least some) low tax, low substance jurisdictions to adopt a QDMTT, there is likely to be an increase in revenue under the IIR compared to an allocation rule which provided no competitive benefit to low tax jurisdictions which did not adopt a QDMTT.

This allocation mechanism may mitigate a potential political downside risk of the GloBE Rules – providing a substantial revenue 'windfall' to low tax, low substance jurisdictions which have historically attracted significant excess profits by offering low tax rates. If all low tax jurisdictions with limited substance were fully incentivised to impose the QDMTT and MNEs did not have a substantial incentive to reallocate those profits quickly to higher tax jurisdictions, the low tax, low substance jurisdictions could have benefited substantially from the adoption of the GloBE Rules. In effect, a substantial portion of the additional tax raised by the GloBE Rules in the short term could have gone to states which have used low (or nil) tax rates to attract profit up until this point.

By retaining an incentive for low tax, low substance jurisdictions not to adopt the QDMTT in the short term, the AG makes it more likely that low tax, low substance jurisdictions do not substantially benefit from the additional revenue raised by the GloBE Rules in the short term. Instead, this additional revenue would go to jurisdictions which have adopted the IIR (or UTPR where there is no IIR applicable). In summary, the Blended CFC Tax allocation rule uses GILTI allocation to incentivise certain nil tax jurisdictions not to adopt a QDMTT, allowing the top-up tax to be imposed by the US (under GILTI) and other headquarter jurisdictions (under the IIR).

This dynamic is subject to an important caveat. This allocation rule only provides revenue benefits to IIR jurisdictions to the extent that their multinationals and US MNEs locate their excess profits in the same low (or nil) tax jurisdictions. If IIR jurisdiction MNEs located their excess profits in low tax jurisdictions which had no investment from the US, this effect would not arise. These low tax jurisdictions would not receive a competitive benefit by not adopting a QDMTT (because they do not have investment from MNEs subject to a Blended CFC Tax regime). Accordingly, low tax jurisdictions used solely by non-US MNEs may have a sufficient incentive to adopt the QDMTT and receive the additional revenue. Importantly, the MNEs themselves would have no financial incentive to relocate these profits to non-QDMTT states because they would be subject to the same amount of tax under the IIR in either case.

Finally, it is important to recall that this allocation rule only applies to financial years commencing before 2026. There has been no agreement as to how Blended CFC Taxes would be treated after that time. At that time, the United States and/or the Inclusive Framework could remove this as an ongoing incentive. First, GILTI could be amended such that it was calculated on a jurisdiction-by-jurisdiction basis and did not

[22] This would also increase the revenue raised under the UTPR for MNEs which are subject to neither the GILTI regime nor the IIR. However, this is likely to be a more limited category.

apply a haircut. Second, the Inclusive Framework could revise the allocation mechanism for Blended CFC Taxes such that the allocation did not provide a blending benefit.[23] In both cases, the result would be that there was no incentive not to adopt a QDMTT.

Conclusion

Ultimately, the fact that the QDMTT applies before CFC Regimes means that there can be a competitive downside to adopting a QDMTT. The imposition of tax under a QDMTT may not operate as a 'pure soak-up tax' in the sense that the QDMTT may not reduce taxes which would otherwise be owing dollar-for-dollar. If the subsidiary of a US Parent is subject to a QDMTT and the US Parent is not in an excess foreign tax credit position, then there will be additional GILTI Tax as a result of the 20% haircut on foreign tax credits. If the US Parent is in an excess foreign tax credit position, there may not be a change in the total amount of GILTI Tax. Whether or not there will be an increase in tax overall depends upon other jurisdictions in the MNE group (as well as the amount of NDTIR/SBIE in each jurisdiction).

The allocation mechanism for GILTI Tax substantially mitigates the downside for US MNEs of the QDMTT applying ahead of CFC Taxes (and could theoretically remove it entirely). It operates to (re)allocate the GILTI tax towards jurisdictions without QDMTTs and therefore reduces the amount of IIR/UTPR which would otherwise be paid. This limits the additional tax on US MNEs as a result of QDMTTs being adopted (at least up to a point). It can also limit the reason why states might not adopt a QDMTT where there is other undertaxed profit in the group. This can mitigate the *disincentive* for being an early adopter of the QDMTT.

The flip side of this is that there can be an incentive for low tax states with limited substance not to adopt QDMTTs where they have excess profits of US MNEs. In effect, another state adopting a QDMTT can (re)allocate the US GILTI Tax which is applied to such an undertaxed jurisdictions. This (re)allocated GILTI Tax then limits the amount of top-up tax which would be paid with respect to these jurisdictions under the IIR/UTPR. However, it does not limit the amount of top-up tax if such a jurisdiction adopted a QDMTT. Accordingly, there can be an incentive not to adopt a QDMTT.[24]

These dynamics are similar to those that exist in a globally blended CFC Tax regime. The allocation mechanism adopted in the AG largely defers to the US GILTI regime and will allocate the GILTI Tax to the lowest taxed jurisdictions after taking into account any QDMTT. While there is a clear logic to this allocation mechanism, it can produce outcomes which are similar to US MNEs retaining cross-jurisdictional blending for the duration of this rule (which runs until 2026).

Finally, a counterintuitive outcome of the allocation rule is that it may increase the revenue raised under the IIR and UTPR (but most likely under the IIR). If the allocation mechanism for Blended CFC Taxes creates

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[23] See further Wardell-Burrus, 'GILTI and the GloBE', above n 7.

[24] It is worth noting that this incentive would not have arisen if the QDMTT design allowed for optionality such that the adopting jurisdiction could choose whether or not to calculate the QDMTT without taking into account CFC Taxes in the ETR numerator. If there was an option to calculate the QDMTT including CFC Taxes in the ETR numerator, low tax jurisdictions could have adopted this type of QDMTT without disadvantaging MNEs in an excess foreign tax credit position operating in the jurisdiction. However, this option would either lead to the 'spiral' and 'cliff' effects or the CFC Regime would need to refuse to grant a tax credit for QDMTTs which took the CFC Taxes into account in the ETR numerator. See further Wardell-Burrus, 'Should a Foreign Tax Credit be given for QDMTT?', above n 4.).

an incentive for certain low tax, low substance jurisdictions not to adopt a QDMTT, then there will likely be additional tax imposed under the IIR. As a result, a greater portion of the (short-term) revenue gain from the GloBE Rules is likely to go to IIR or UTPR jurisdictions (rather than the low tax, low substance jurisdictions) than otherwise would have. Importantly, this additional revenue could be raised from MNEs that are not subject to a Blended CFC Tax regime at all. However, as the Blended CFC Tax allocation rule is time limited, this may only be a transitional effect which is altered by either the US or the Inclusive Framework from 2026.

Appendix 1

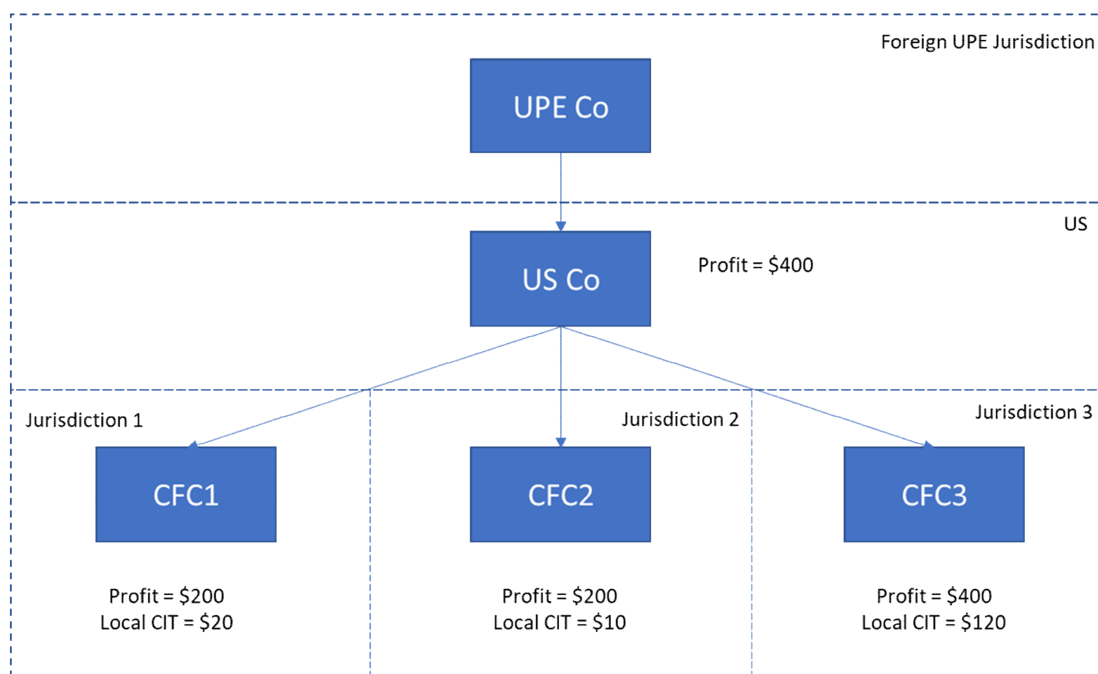
Priority Ordering Rules

	No QDMTT Applicable	**QDMTT Applicable**
1.	**Withholding taxes**	**Withholding taxes**
2.	**Corporate Income Tax** of Constituent Entity	**Corporate Income Tax** of Constituent Entity
3.	N/A	**QDMTT** Only credits WHT and CIT (not CFC Taxes). It generally imposes the minimum tax (switching off the IIR and UTPR)
4.	**CFC Taxes** Credits CIT and WHT subject to the FTC (and other important) limitations.	**CFC Taxes** Credits CIT and WHT subject to the FTC (and other important) limitations. If the CFC Regime does not credit the QDMTT, CFC Taxes will be 'wasted' by being allocated to jurisdictions with a QDMTT.
5.	**IIR** Credits all above taxes with CFC Taxes allocated as described above.	**IIR** Will generally not be applicable due to QDMTT
6.	**UTPR**	**UTPR** Will generally not be applicable due to QDMTT

Appendix 2 – A Worked Example of GILTI Allocation

This example adapts the example from a previous working paper on the interaction between the GILTI and the GloBE Rules which was drafted prior to the release of the AG.[25] The example uses an MNE with a foreign UPE to avoid addressing the UTPR allocation issues. However, the allocation analysis would apply equally to US headquartered MNEs.[26]

Consider the following example:



An MNE is headquartered in a foreign jurisdiction and is subject to a qualified IIR. The Ultimate Parent Entity (UPE Co) has a US subsidiary (US Co) which itself has three foreign subsidiaries – CFC1 (located in Jurisdiction 1), CFC2 (Jurisdiction 2) and CFC3 (Jurisdiction 3). US Co has $400 of profit (all figures in this simplified example assume that there is no difference between the GloBE and US tax base). CFC1 has derived $200 of profit within Jurisdiction 1 and is subject to $20 of regular Corporate Income Tax in Jurisdiction 1. CFC2 has derived $200 of profit within Jurisdiction 2 and is subject to $10 of regular Corporate Income Tax in Jurisdiction 2. CFC3 has $400 of profit in Jurisdiction 3 and is subject to $120 of regular Corporate Income Tax. For simplicity, this example assumes there is no SBIE or 'Net Deemed Tangible Income Return' (the US substance-based carve-out) in the CFCs.[27]

[25] Wardell-Burrus, 'GILTI and the GloBE', above n 5, 18.

[26] If one prefers to think of a US MNE, assume that US Co is the Ultimate Parent Entity (there is no UPE Co) and that Jurisdiction 3 has adopted the UTPR and therefore will impose the required Jurisdictional top-up tax.

[27] It also assumes that the MNE has not made the High Tax Exclusion election.

The US GILTI Regime applies as follows:

	US 'Source'	GILTI	GILTI FTC Limitation Calculation.
Profit / GILTI Income	400[28]	650	650
Section 78 Gross-up[29]	0	150	150
Total Gross Income	400	800	800
US Allocated Expenses		N/A	(100)
Section 250 Deduction		(400)	(400)
Taxable Income	800[30]		300
Tax @ 21%	168		63
Foreign Tax Credits			[150 foreign taxes]
Gross FTC (80% of FTC)	120 (0.8*150)		
Allowed FTC	63 (reduced by FTC limitation)		
US Tax	105		
Total World Tax	255		

In this case, the US GILTI regime has increased the total amount of tax on US Co. If there had been no CFCs at all,[31] the US entity would have paid 21% tax on its $400 of profit ($84). Compared to this baseline, the CFC regime has imposed an additional $21 in taxes on the $800 of CFC income. It has reached this outcome by including the income of the CFCs but (a) giving a 50% deduction on that income, (b) giving a foreign tax credit equal to 80% of the foreign taxes paid and (c) restricting the use of foreign tax credits based on expense allocation rules.[32] The foreign tax credit limitation is calculated (see final column) by applying a similar calculation but also taking into account expenses which were incurred in the US but are allocated

[28] Note that this $400 in US 'profit' includes a deduction for expenses which are incurred in the US and are deductible in the US. However, they are allocated to the CFCs for the purposes of the FTC limitations under the US Regulations. Despite this expense allocation, these expenses do not reduce the profit of the foreign CFCs on a proper arm's length basis. This choice is for ease of setting out the example. However, it does not change the outcomes if the figures were described differently.

[29] The GILTI rules operate by including as GILTI income the *after-tax* amount as GILTI Income. It then provides a 'section 78 gross-up' which adds back the foreign tax credit amounts (not subject to the 20% haircut). See IRC § 78.

[30] $800 = ($400 + $800) - $400. For clarity, this is 400 of US source profit plus 800 of (post-section 78 gross-up) GILTI Income, reduced by the $400 section 250 deduction.

[31] Assuming that this did not impact the expenses in the US.

[32] In this example, I have simply posited that 100 of expenses have been allocated to the CFCs. This would be determined under the relevant regulations for allocating the relevant expenses.

to the foreign income for the purposes of the FTC limitation calculation. In this case, the FTC limitation is $63.[33] The result of this calculation is a total US tax liability of $105.[34] The question for the GloBE Rules is to determine how much of the $105 US tax liability is a relevant 'CFC Tax' and then how to allocate the CFC Tax between CFC1, CFC2 and CFC3.

The Administrative Guidance would apply as follows:

Example 1: No QDMTT

Step 1: Calculate the 'Allocable Blended CFC Tax'

- 'Allocable Blended CFC Tax is the amount of tax charge incurred bythe Constituent Entity-owner under the Blended CFC Tax Regime'. For GILTI (where no domestic loss), this is the amount of GILTI (after the section 250 deduction) multiplied by 21%, less the foreign tax credit allowed in the GILTI basket.
- In the above example this is $21.

GILTI Income (assuming they are including the section 78 gross-up)	$800
Section 250 deduction	($400)
Pre-FTC tax liability	$84 = ($800 - $400)*21%
Available Foreign Tax Credits	($63) [See calculation above, far right column]
Allocable Blended CFC Tax	$21 = $84 - $63

Step 2: Calculate the 'GloBE Jurisdictional ETR' for each jurisdiction.

- This is the GloBE ETR taking into account Covered Taxes.
- It also takes into account the amount of any QDMTT *but only in certain circumstances.* For present purposes, we will assume no subsidiary jurisdiction has a QDMTT. The alternative will be addressed below in Example 2.

	CFC1	**CFC2**	**CFC3**
Profit	$200	$200	$400
Corporate Income Tax	$20	$10	$120
GloBE ETR	10%	5%	30%

[33] The 'cap' on foreign tax credits is $63. This is reached by taking into account total GILTI income (post-section 78 gross-up) of $800, subtracting the $400 section 250 deduction and then further subtracting the allocated expenses of $100. The resulting income figure ($300) is multiplied by the US corporate tax rate of 21% to reach $63.

[34] This figure is reached as follows. There is total profit of $1200 (including both US source and CFC profit), reduced by a section 250 deduction of $400 and multiplied by the 21% rate ($168 = ($1200 - $400) * 21%). This figure is reduced by total allowable tax credits of $63. The result is a total US tax liability of $105 ($168-$63).

Step 3: Calculate the '**Blended CFC Allocation Key**' for each CFC:

- The '**Blended CFC Allocation Key**' is equal to:
  - Attributable Income of the Entity x (Applicable Rate – GloBE Jurisdictional ETR)
- '**Attributable Income of the Entity**' is the owner's proportionate share of the income (as calculated under the GILTI regime).
  - In this case, all subsidiaries are 100% owned and so it will just be the profit of the underlying entities.
- '**Applicable Rate**' is 13.125% for the GILTI Regime.
- '**GloBE Jurisdictional ETR**' is in Step 2 above.

	CFC1	**CFC2**	**CFC3**
Attributable Income of the Entity	$200	$200	$400
Applicable Rate	13.125%	13.125%	13.125%
GloBE ETR	10%	5%	30%
Blended CFC Allocation Key	$6.25 = $200 * (13.125% - 10%)	$16.25 = $200 * (13.125% - 5%)	N/A (<0) = $200 * (13.125% - 30%)

Step 4: Calculate the Blended CFC Tax Allocated to an Entity:

- This is allocated under the formula:
  - $= \frac{Blended\ CFC\ Allocation\ Key}{Sum\ of\ All\ Blended\ Allocation\ Keys} * Allocable\ Blended\ CFC\ Tax$
- '**Blended CFC Allocation Key**' is determined in Step 3
  - Here the 'Sum of All Blended Allocation Keys' is $22.50 = ($6.25 + $16.25)
- '**Allocable Blended CFC Tax**' is determined in Step 1.
  - In this case, $21.

	CFC1	**CFC2**	**CFC3**
Blended CFC Allocation Key	$6.25	$16.25	N/A
Blended CFC Tax Allocation	$5.83 =($6.25/$22.50)*$21	$15.17 =($16.25/$22.50)*$21	0 ($0/$22.50)*21

This completes the allocation of the CFC Tax. However, it remains to show the top-up tax which would be imposed under the IIR.

Step 5: Calculate the 'Jurisdictional Top-up Tax' for each jurisdiction

- This is the amount which will be imposed under the IIR (recall that there is no QDMTT in this example).

	CFC1	**CFC2**	**CFC3**
Profit	$200	$200	$400
Corporate Income Tax	$20	$10	$120
CFC Allocated Tax	$5.83	$15.17	$0
Covered Taxes	$25.83	$25.17	$120
GloBE ETR (for IIR/UTPR)	12.915%	12.585%	30%
Top-up Tax Percentage	2.085%	2.415%	N/A
SBIE	$0	$0	$0
Excess Profit	$200	$200	$400
QDMT	N/A	N/A	N/A
Jurisdictional Top-up Tax	$4.17 ($200*2.085%)	$4.83 ($200*2.415%)	$0
Total Tax	$30	$30	$120

As the above shows, there is zero wastage in this case. In each case, the ETR for the jurisdiction has been raised to 15% ($30 / $200). All of the GILTI tax has been allocated to jurisdictions where it can be used completely. However, this result only follows because there is no SBIE in the example. Where there is an SBIE amount, allocated CFC Tax would not reduce IIR/UTPR taxation dollar-for-dollar.[35]

[35] This is because allocated CFC Tax is a Covered Tax which is effectively treated as a tax both on SBIE and Excess Profit. The result is that the tax is 'diluted' and does not reduce top-up tax under the IIR/UTPR on a dollar-for-dollar basis. For further discussion on the 'dilution' effect see Wardell-Burrus, 'GILTI and the GloBE', above n 5, section 3.4 and Michael Devereux, John Vella and Heydon Wardell-Burrus, 'Pillar 2's Impact on Tax Competition', *World Tax Journal* (forthcoming), (Working Paper available on SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4203395), section 5.1.

Example 2: QDMTT Variation

In this example, we will assume that CFC2 is subject to a QDMTT while CFC1 is not. This is addressed through Step 2A which has been inserted below.

Step 1: Calculate the 'Allocable Blended CFC Tax'

- As per Example 1 – in this case, $21

Step 2A: Calculate the QDMTTs for any applicable jurisdiction.

- The QDMTT for CFC2 must be calculated first because it applies without including any CFC Tax which may be allocated to it. Furthermore, the QDMTT amount is necessary to determine the allocation of the CFC Tax to the CFC jurisdictions.

	CFC1	**CFC2**	**CFC3**
Profit	$200	$200	$400
Corporate Income Tax	$20	$10	$120
CFC Tax	(Not Allocated)	(Not Allocated)	(Not Allocated)
Covered Taxes	$20	$10	$120
GloBE ETR (for IIR/UTPR)	10%	5%	30%
Top-up Tax Percentage	5%	10%	N/A
SBIE	$0	$0	$0
Excess Profit	$200	$200	$400
QDMTT	No QDMTT	$20	N/A
Total Tax in CE Jurisdiction	$20	$30	$120

Step 2B: Calculate the 'GloBE Jurisdictional ETR' for each jurisdiction.

- This is the GloBE ETR taking into account Covered Taxes and any **QDMTT**.
- The QDMTT is only taken into account in this step if the CFC Regime gives a foreign tax credit for the amounts of QDMTT. Importantly, this does not require that the tax credit can actually be used – merely that it is given under the same conditions as other credits.
- In this case, the use of foreign tax credits under the GILTI regime is limited by the foreign tax credit limitation. Therefore, there is *no change in the amount of GILTI Tax* as a result of this additional credit for the QDMTT amount.
    - This will be the case for any US MNE which is in an excess foreign tax credit position

	CFC1	CFC2	CFC3
Profit	$200	$200	$400
Corporate Income Tax	$20	$10	$120
QDMTT	N/A	$20	N/A
GloBE Jurisdictional ETR for CFC Allocation	10%	15%	30%

Step 3: Calculate the '**Blended CFC Allocation Key**' for each CFC:

- Description in Example 1. Table updated for new GloBE Jurisdictional ETR for CFC Allocation

	CFC1	CFC2	CFC3
Attributable Income of the Entity	$200	$200	$400
Applicable Rate	13.125%	13.125%	13.125%
GloBE Jurisdictional ETR for CFC Allocation	10%	15%	30%
Blended CFC Allocation Key	$6.25 = $200 * (13.125% - 10%)	N/A (<0) = $200 * (13.125% - 15%)	N/A (<0) = $200 * (13.125% - 30%)

Step 4: Calculate the Blended CFC Tax Allocated to an Entity:

- Description in Example 1. Table updated for new Blended CFC Allocation Keys

	CFC1	CFC2	CFC3
Blended CFC Allocation Key	$6.25	N/A	N/A
Blended CFC Tax Allocation	$21 =($6.25/$6.25)*$21	0 = (0/$6.25)*$21	0 = ($0/$22.50)*21

The result is that all of the CFC Tax is allocated to CFC1 (which has not adopted a QDMTT).

Step 5: Calculate the 'Jurisdictional Top-up Tax' for each jurisdiction.

- This is the amount which will be imposed under the IIR (or UTPR).

	CFC1	CFC2	CFC3
Profit	$200	$200	$400
Corporate Income Tax	$20	$10	$120
CFC Allocated Tax	$21	$0	$0
Covered Taxes	$41	$10	$120
GloBE ETR (for IIR/UTPR)	20.5%	5%	30%
Top-up Tax Percentage	N/A	10%	N/A
SBIE	$0	$0	$0
Excess Profit	$200	$200	$400
QDMTT	N/A	$20	N/A
Jurisdictional Top-up Tax*	$0	$0 = ($200*10%) - $20	$0

*Recall that Jurisdictional Top-up Tax is equal to (Excess Profit * Top-up Tax Percentage) *less QDMTT*.

The result of CFC2 adopting a QDMTT is that all of the CFC Tax has been allocated to CFC1. This is enough to raise the ETR of CFC1 over the minimum and therefore there is no remaining IIR or UTPR.

Comparison of Examples 1 and 2

If we compare Example 1 and Example 2. The MNE's tax burdens are as follows:

	Example 1 (No QDMTTs)	Example 2 (CFC2 with QDMTT)
Total CIT	$150	$150
QDMTT	$0	$20
CFC Tax	$21	$21
IIR Tax	$9	$0
Total Tax	$180	$191

By the jurisdiction of CFC2 adopting a QDMTT, the total taxation of the MNE has increased by $11 ($191 - $180). It is important to break down this impact into two separate components.

First, there is the rule that the QDMTT goes ahead of the CFC Regime. In this case, this meant that an extra $20 of QDMTT was paid by CFC2. However, because the US MNE is in an excess foreign tax credit position, this additional QDMTT tax *even if creditable in the US* does not reduce the total US CFC Tax. If the adoption

of the QDMTT did not impact the allocation of CFC Taxes,[36] there would have been additional $15.17 ($20 - $4.83) tax on the MNE as a result of Jurisdiction 2 adopting a QDMTT. This is because the QDMTT would have reduced the IIR with respect to CFC2 (by $4.83) but would have left the $4.17 of IIR with respect to CFC1 in place.

Second, there is the impact on the allocation mechanism as a result of the QDMTT. In the example, this allowed for all of the CFC Tax which had been allocated to CFC2 to be (re)allocated to CFC1. This meant that the QDMTT on CFC2 not only reduced the IIR with respect to CFC2 ($4.83) to nil but also reduced the IIR with respect to CFC1 ($4.17) to nil. As a result, when compared to neither jurisdiction having a QDMTT, the total IIR top-up tax is reduced from $9 to nil.

Accordingly, this allocation mechanism has ***softened*** the impact on the MNE of the QDMTT applying ahead of the CFC Rules as outlined above. The jurisdiction of CFC2 has imposed $20 of additional taxes under a QDMTT but this has only resulted in a $11 increase in the total tax of the MNE. The remaining $9 has been taken from the IIR/UTPR jurisdiction. The burden of the additional $20 of QDMTT is therefore split between the MNE and the IIR/UTPR jurisdiction.

[36] That is, the QDMTT was not taken into account in allocating the Blended CFC Tax.

Appendix 3: 'Brinkmanship' Example

A US MNE has three subsidiaries CFC1, CFC2 and CFC3 in Jurisdictions 1, 2 and 3 respectively. The US MNE is in an excess foreign tax credit position and pays $100 in 'Blended CFC Tax' for the purposes of the GloBE Rules. Jurisdictions 1 and 2 are both nil tax jurisdictions. CFC1 and CFC2 are identical operations and both have $1000 in GloBE profit and no SBIE. CFC3 is a high tax jurisdiction and is subject to the UTPR (its only function in this example is as a mechanism for imposing the top-up tax).

At first, neither CFC1 nor CFC2 have a QDMTT. Accordingly, $100 of Blended CFC Tax from the US Parent is allocated equally between CFC1 and CFC2 ($50 each). Accordingly, when calculating the UTPR, both CFC1 and CFC2 have ETRs of 5% (=$50/$1000) and Jurisdictional Top-up Tax of $100.[37] As there is no applicable IIR, CFC3 pays $200 in UTPR. The total tax paid with respect to CFC1 and CFC2 is $300 (nil CIT, $100 in GILTI Tax and $200 in UTPR).

Jurisdiction 1 then adopts a QDMTT. Accordingly, it imposes $150 of QDMTT tax on CFC1 (as per calculation above). This does not impact the amount of US Parent's tax liability because it the US Parent is in an excess foreign tax credit position. However, it does change the allocation of that tax between CFC1 and CFC2. None of the 'GILTI Tax' is now allocated to CFC1. All $100 of 'GILTI Tax' is allocated to CFC2. Accordingly, the ETR of CFC2 is now 10% (=$100/$1000) and the Jurisdictional Top-up Tax is $50.[38] As there is still no applicable IIR, CFC3 now pays $50. The total tax paid with respect to CFC1 and CFC2 is still $300 (nil CIT, $150 in QDMTT, $100 in GILTI Tax, and $50 in UTPR). In this case, Jurisdiction 1 has imposed a QDMTT of $150 *without increasing the total tax paid by the US MNE at all*. This is pure upside for Jurisdiction 1 as it has raised revenue without harming its competitive position.

What happens if Jurisdiction 2 then adopts a QDMTT? If Jurisdiction 2 were to impose a QDMTT as well, then the total tax with respect to CFC1 and CFC2 would rise to $400 (nil CIT, $150 in QDMTT for both CFC1 and CFC2, and $100 in GILTI Tax).

What this shows is that if only Jurisdiction 1 <u>or</u> Jurisdiction 2 imposes a QDMTT, there is no increase in tax for this MNE. However, if they both do it, then there is an increase in the total taxes for the MNE. Accordingly, the MNE has a strong interest in keeping CFC2's operations in a low (or nil) tax jurisdiction which does not have a QDMTT. This means that there can be an incentive for certain jurisdictions not to adopt the QDMTT. What is happening is that the allocation key is 'redirecting' the Blended CFC Tax amounts to non-QDMTT jurisdictions. These jurisdictions can then use these (re)allocated amounts to continue to offer below-minimum taxation which will not be subject to GloBE top-up tax under the UTPR.

This example has been extreme in using identical jurisdictions, neither of which have any SBIE. In reality, there are likely to be a mix of ETRs and SBIE amounts in different jurisdictions. In such cases, the MNEs have a vested interest in the jurisdictions with the lowest ETRs and no SBIE (that is, the most tax haven-like) not adopting the QDMTT. This way the CFC Taxes will be (re)allocated to the jurisdictions where they will be most valuable. The allocated CFC Tax will not be substantially 'diluted' because there is very limited SBIE in these jurisdictions.

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[37] This is (15% - 5%) * $1000 = $100.

[38] This is (15% - 10%) * $1000 = $50.