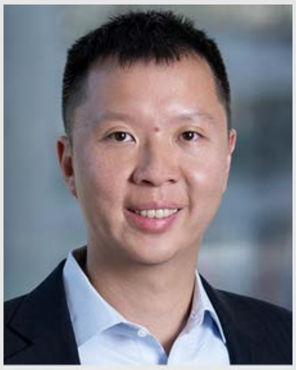
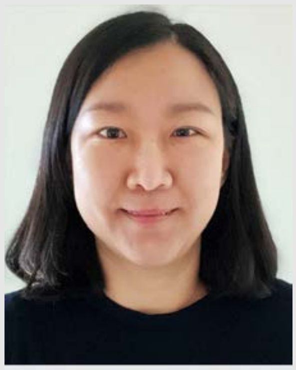
Treatment of U.S. Multinational IP Transfers in a Pillar 2 World

by Jason Yen and Bona Chung



Jason Yen



Bona Chung

Jason Yen is a principal and Bona Chung is a senior manager in the international tax and transaction services group in EY's National Tax Department. They thank Alain Horat, Angela Evans, Barbara Angus, Brian Foley, David Wachutka, Jordan Pittman, Maureen Sanelli, Shivani Mehra, and Stephen Bates for their helpful contributions.

In this article, Yen and Chung provide examples that highlight the complexities of analyzing IP transactions under pillar 2 and explore questions that require further guidance.

The views expressed are those of the authors and do not necessarily reflect the views of EY or any other member firm of the global EY organization.

Introduction

A company's intangible property is often its most valuable asset, driving economic growth and business success. U.S. multinational enterprises frequently engage in transactions that involve IP, including acquisitions, dispositions, and restructurings, to ensure their "crown jewels" are managed as efficiently as possible from business and tax perspectives.

IP transactions require extensive analysis under several U.S. federal income tax provisions, including section 338, section 367(d), section 901(m), and section 951A (global intangible low-taxed income). From a foreign tax perspective, exit taxes (including nonresident capital gains taxes and withholding taxes), transfer taxes, and local tax basis adjustments are typically considered.

In addition to tax consequences, IP transactions have U.S. generally accepted accounting principles — which we assume to be followed by U.S. MNEs at the consolidated level — and local statutory accounting consequences, including tax accounting effects (i.e., current and deferred tax) that must be recorded and applicable financial statement disclosures that must be made.

While tax and accounting professionals often are accustomed to dealing with these topics, the implementation of pillar 2 legislation[1] in various countries has introduced a new dimension to the accounting and tax analysis of IP transactions. It is crucial for U.S. MNEs to understand the pillar 2 implications of various types of domestic and cross-border IP transactions.

Applying the global anti-base erosion rules to IP transactions is especially complex because the rules governing these types of transactions are spread across various guidance. Notably, the timing of a transaction (that is, whether the transaction takes place in a pre-GLOBE or post-GLOBE year, or even whether the transaction takes place before or after November 30, 2021) can greatly affect the GLOBE consequences. The analysis also depends on whether the transitional country-by-country reporting safe harbor applies for the jurisdiction in which an acquiring, or

[1]Pillar 2 refers to a global taxation mechanism proposed by the OECD/G20 inclusive framework and designed to ensure that MNEs pay a minimum level of tax. It consists of two interlocking rules: the income inclusion rule and the UTPR (commonly known as the undertaxed profit rule). Pillar 2 also includes a qualified domestic minimum top-up tax.

disposing, entity is located. In addition, because the GLOBE rules often rely on financial accounting concepts, the consequences of a transaction may change based on the relevant accounting standard. For example, U.S. MNEs are generally expected to use U.S. GAAP to compute tax under an income inclusion rule or UTPR (commonly known as the undertaxed profits rule), but may be required to use International Financial Reporting Standards or local statutory accounting standards to compute a qualified domestic minimum top-up tax (QDMTT). The different standards, in turn, can result in different GLOBE implications for IP transactions.

In this article, we endeavor to sort through various common fact patterns around IP transactions and examine how each transaction may be treated for GLOBE purposes based on the current OECD/G20 inclusive framework guidance (including the most recent OECD administrative guidance issued June 17, 2024).[2]

Summary of Relevant GLOBE Rules

To aid this discussion, an overview of the GLOBE rules relevant to IP transactions is below.

Article 6.2 — Transfers of Entities

Article 6.2 of the model rules governs the acquisition and disposition of controlling interests in constituent entities (for example, stock transfers).[3] In relevant part, article 6.2.1(c) provides that if a target leaves or joins an MNE group because of a direct or indirect disposition or an acquisition of its ownership interest, the target must determine its GLOBE income or loss and adjusted covered taxes using the same carrying values of its assets and liabilities preceding the transfer (that is, the historical carrying values). According to the commentary on article 6.2.1(c), the effect of any purchase accounting adjustments[4] in such a transfer is generally ignored, irrespective of whether the acquisition occurs before or after the applicability date of the GLOBE rules.[5] A limited exception exists for certain transactions occurring before December 1, 2021.[6] The commentary on article 6 further stipulates that to prevent distortive GLOBE effective tax rates, any deferred tax assets (DTAs) or deferred tax liabilities (DTLs) related to purchase accounting adjustments are also excluded from the computation of adjusted covered taxes.[7]

Article 6.2.2 provides a deemed asset transfer rule, which requires the transfer of a controlling interest in a constituent entity to be treated as a transfer of its assets and liabilities if the jurisdiction where the target is located, or in the case of a tax transparent entity, the jurisdiction where the assets and liabilities are located:

i. treats the acquisition or disposal of the controlling interest in the target "in the same or similar manner as" an acquisition or disposition of its underlying assets and liabilities for tax purposes; and
ii. imposes a covered tax on the seller based on the difference between (1) the tax basis of the target's assets and the tax amounts of its liabilities and (2) the consideration paid or the fair value of the assets and liabilities.

[2] OECD, "Tax Challenges Arising From the Digitalization of the Economy — Global Anti-Base Erosion Model Rules (Pillar Two)" (Dec. 21, 2021); OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Commentary to the Global AntiBase Erosion Model Rules (Pillar Two), First Edition" (Mar. 14, 2022); OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)" (Feb. 2, 2023); OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), July 2023" (July 14, 2023); OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024" (June 17, 2024).

[3] Constituent entities that are acquired or disposed of are referred to as "targets" in article 6.2.

[4] For financial accounting purposes, if a member of a consolidated group acquires a controlling interest in the stock of an unrelated entity in a business combination transaction, the acquired entity's assets and liabilities are consolidated into the group's financial statements at fair market value as of the date of the acquisition (commonly referred to as "purchase accounting"). Some accounting standards (for example, U.S. GAAP) permit these FMV adjustments to be pushed down to the financial accounts of the acquired entity as a policy election by the acquiring company ("pushdown accounting"). *See* Financial Accounting Standards Board, "Business Combinations (Topic 805): Pushdown Accounting," ASU 2014-17 (Nov. 2014).

[5] Commentary on article 6.2.1(c), para. 50 and 51. *See also* commentary on article 3.1.2, para. 3.

[6] The exception to this rule applies if: (1) the financial accounting standard used by the ultimate parent entity in preparing its consolidated financial statements permits the UPE to push down fair-value adjustments to the separate accounts of the acquired constituent entity; (2) the acquisition occurred before December 1, 2021; and (3) the MNE group does not have sufficient records to determine its financial accounting net income or loss with reasonable accuracy based on the unadjusted carrying values of the acquired assets and liabilities. *See* commentary on article 6.2.1(c), para. 51; commentary on article 3.1.2, para. 4.

[7] Commentary on article 6, para. 17.

Summary of Common IP Transactions

Acquisition of Target Holding IP, With or Without Subsequent Intragroup Transfer of Underlying IP			
Ex. 1		Pre-GLOBE	Pre-GLOBE, U.S. constituent entity acquires U.S. target (U.S. disregarded entity or U.S. corporation for which section 338(h)(10) election is made)
Ex. 2	Ex. 2-1		Same as Ex. 1, except that immediately after transaction (and on or before Nov. 30, 2021), U.S. target makes intragroup, outbound transfer of IP to entity that is later subject to IIR/UTPR
	Ex. 2-2		Same as Ex. 1, except that immediately after transaction (and on or before Nov. 30, 2021), U.S. target makes intragroup, outbound transfer of IP to entity that is later subject to QDMTT following local accounting standard
	Ex. 2-3		Same as Ex. 2-1, except that initial target acquisition and subsequent IP transfer occur post-Nov. 30, 2021 (but pre-GLOBE)
	Ex. 2-4		Same as Ex. 2-2, except that initial target acquisition and subsequent IP transfer occur post-Nov. 30, 2021 (but pre-GLOBE)
Ex. 3	Ex. 3-1		Pre-GLOBE, U.S. CE acquires non-U.S. target (controlled foreign corporation for U.S. tax purposes)
	Ex. 3-2		Pre-GLOBE, U.S. CE acquires non-U.S. target (disregarded entity for U.S. tax purposes)
Ex. 4	Ex. 4-1		Same as Ex. 3-1, except that immediately after transaction (and on or before Nov. 30, 2021), non-U.S. target makes intragroup, cross-border transfer of IP to entity that is later subject to IIR/UTPR
	Ex. 4-2		Same as Ex. 3-1, except that immediately after transaction (and on or before Nov. 30, 2021), non-U.S. target makes intragroup, cross-border transfer of IP to entity that is later subject to QDMTT following local accounting standard
	Ex. 4-3		Same as Ex. 4-1, except that initial target acquisition and subsequent IP transfer occur post-Nov. 30, 2021 (but pre-GLOBE)
	Ex. 4-4		Same as Ex. 4-2, except that initial target acquisition and subsequent IP transfer occur post-Nov. 30, 2021 (but pre-GLOBE)
Ex. 5	Ex. 5-1	Post-GLOBE	Post-GLOBE, U.S. CE acquires U.S. target (U.S. disregarded entity or U.S. corporation for which section 338(h)(10) election is made)
	Ex. 5-2		Post-GLOBE, U.S. CE acquires U.S. target (U.S. corporation for which section 338(h)(10) election is made) and neither art. 6.2.2 nor art. 6.3.4 applies
	Ex. 5-3		Post-GLOBE, U.S. CE acquires non-U.S. target (CFC for U.S. tax purposes)
	Ex. 5-4		Post-GLOBE, U.S. CE acquires non-U.S. target (disregarded entity for U.S. tax purposes)
Transfer of Self-Developed IP			
Ex. 6	Ex. 6-1	Pre-GLOBE	On or before Nov. 30, 2021, non-U.S. CE makes intragroup, cross-border transfer of self-developed IP to entity that is later subject to IIR/UTPR
	Ex. 6-2		On or before Nov. 30, 2021, non-U.S. CE makes intragroup, cross-border transfer of self-developed IP to entity that is later subject to QDMTT following local accounting standard
Ex. 7	Ex. 7-1		Post-Nov. 30, 2021 (but pre-GLOBE), non-U.S. CE makes intragroup, cross-border transfer of self-developed IP to entity that is later subject to IIR/UTPR
	Ex. 7-2		Post-Nov. 30, 2021 (but pre-GLOBE), non-U.S. CE makes intragroup, cross-border transfer of self-developed IP to entity that is later subject to QDMTT following local accounting standard

Summary of Common IP Transactions *(Continued)*

Ex. 8	Ex. 8-1	Post-GLOBE	Post-GLOBE, non-U.S. CE makes intragroup, cross-border transfer of self-developed IP to entity subject to IIR/UTPR
	Ex. 8-2		Post-GLOBE, non-U.S. CE makes intragroup, cross-border transfer of self-developed IP to entity subject to QDMTT following local accounting standard
	Ex. 8-3		Post-GLOBE, non-U.S. CE with self-developed (or acquired) IP is liquidated/merged into U.S. in tax-free liquidation/reorganization for U.S. tax purposes

Article 6.2.2 is expected to apply to a transaction in which a U.S. seller disposes of a U.S. entity that is treated as a disregarded entity for U.S. tax purposes because the jurisdiction where the target's assets and liabilities are located (i.e., the United States) would treat the transaction as a sale of the target's assets and liabilities and impose tax on the U.S. seller.

Although it is unclear, a section 338(h)(10) transaction also may be treated as an article 6.2.2 transaction when the U.S. target and its U.S. shareholder are part of the same U.S. consolidated group. While the target, not its shareholder, is deemed to sell the assets for U.S. tax purposes and thus is technically subject to U.S. tax, the shareholder may be liable for the tax in the context of the U.S. consolidated tax regime. Therefore, arguably the "seller," within the meaning of article 6.2.2, refers to the shareholder.

For a section 754 election transaction involving a U.S. partnership (i.e., a transfer of a U.S. partnership interest for which a section 754 election is made, resulting in certain basis adjustments for the partnership's assets under section 743(b)), article 6.2.2 does not appear to apply because the transaction is not treated as an asset transfer for U.S. tax purposes.[8]

Article 6.3 — Transfers of Assets

Article 6.3 of the model rules governs acquisitions and dispositions of assets and liabilities (as opposed to ownership interests in an entity). Article 6.3.1 requires the disposing constituent entity to include the gain or loss on the disposition of assets and liabilities when computing its GLOBE income or loss; the acquiring entity must use the adjusted carrying value (under the relevant accounting standard) of the acquired assets and liabilities to compute its GLOBE income or loss going forward.

The commentary notes that article 6.3.1 follows the accounting treatment for both the disposing entity and the acquiring entity.[9] This provision initially raised a question as to whether a disposing entity in an intragroup asset transfer would recognize any gain or loss for GLOBE purposes if it accounts for the transfer at cost for its financial accounting (most notably under U.S. GAAP's "common control transaction" rules).[10] The February 2023 administrative guidance explains that the disposing entity must base its gain or loss under GLOBE on the arm's-length price (i.e., fair value) determined under article 3.2.3.[11] While the February 2023 guidance was silent on the GLOBE consequences for the acquiring entity in this case, the June 2024 administrative guidance explains that the acquiring entity must compute its basis in the acquired asset based on the fair value determined for the disposing entity — even though, for U.S.

[8]For a discussion on this issue, see also Jason Yen, Adam Becker, and Bona Chung, "Top 10 Most Common Pillar 2 Surprises for U.S. Multinationals," *Tax Notes Int'l*, Nov. 27, 2023, p. 1201, at 1205. Uncertainties also arise under article 6.2.2 in relation to the transfer of 100 percent of a partnership by the partnership's partners to a single person, as described under Rev. Rul. 99-6, 1999-1 C.B. 432, situation 2. That ruling bifurcates the treatment of buyers and sellers: The buyer is treated as acquiring assets (from the sellers received in a deemed liquidation) while each seller is respected as selling its equity interest (consistent with the form).

[9]Commentary on article 6.3.1, para. 71.

[10]For general discussions on U.S. GAAP common control transactions, see Angela Evans, Colleen O'Neill, and Jason Yen, "Mind the GAAP! U.S. Multinationals May Struggle With Pillar Two Treatment of Intercompany IP Transfers," 51(7) *Tax Mgmt. Int'l J.* (July 1, 2022).

[11]February 2023 guidance, Section 2.1.2, para. 4, para. 73.1 to be added to commentary on article 6.3.1. This treatment is generally expected to apply only for cross-border (intragroup) asset transfers. For a same-country asset transfer, the disposing entity may not be required to recognize any GLOBE gain because the commentary on article 3.2.3 provides that same-country transactions are not subject to the arm's-length principle under article 3.2.3 (other than transactions producing a loss for financial accounting purposes). *See* commentary on article 3.2.3, paras. 106 and 107.

GAAP purposes, the acquiring entity would take historical cost basis in the asset.[12] As explained below, the June 2024 guidance also provides that when GLOBE asset or liability basis diverges from financial reporting asset or liability basis, the acquiring entity determines GLOBE DTAs or DTLs related to the asset or liability based on fair value (i.e., GLOBE basis), notwithstanding that the GLOBE DTAs or DTLs may be different than the DTAs or DTLs for financial accounting purposes.[13]

Article 6.3.2 allows an MNE group to avoid recognizing GLOBE income or loss from an asset transfer (instead of being subject to article 6.3.1) if the transfer qualifies as a GLOBE reorganization as defined under article 10.1.1: a "transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation, or similar transaction," in which (as relevant):

i. the consideration for the transfer is equity interests issued by the acquiring constituent entity or a related constituent entity, or, for a liquidation, equity interests of the target;
ii. the disposing constituent entity is exempt from tax on its gain or loss on those assets; and
iii. the jurisdiction of the acquiring constituent entity requires the acquiring constituent entity to compute taxable income, after the transaction, using the disposing constituent entity's tax basis in the assets (subject to certain adjustments).[14]

It is unclear to what extent the last prong of the GLOBE reorganization rule can ever be met in a cross-border transaction.

Article 6.3.4(a) allows MNE groups to adjust the basis of their assets and liabilities to fair value for GLOBE purposes when those assets and liabilities have been "stepped-up" to fair value for tax purposes as a result of a "triggering event." Upon election by the relevant filing constituent entity, article 6.3.4(a) requires a constituent entity of an MNE group to include gain or loss for each of its assets and liabilities when computing GLOBE income or loss if it is "required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes" in the jurisdiction of its location. The gain or loss equals the difference between the carrying value for financial accounting purposes of the asset or liability immediately before, and the fair value of the asset or liability immediately after, the triggering event.[15] Article 6.3.4(b) requires the constituent entity to use the asset's or liability's fair value for financial accounting purposes immediately after the triggering event to determine its GLOBE income or loss going forward.

Article 6.3.4 is expected to apply to a transfer of a U.S. corporation's stock for which a section 338(h)(10) election is made because the U.S. corporation would be required to adjust its asset basis to fair value for U.S. tax purposes. The language of article 6.3.4, however, raises numerous unanswered questions about the election's consequences. For example, it is unclear whether the target's GLOBE income or loss incurred because of the article 6.3.4 treatment is taken into account for the seller group's GLOBE computation or, alternatively, the buyer group's GLOBE computation. If the rule, as applied by implementing countries, attributes income to the buyer group, there could be a mismatch between the locations of the GLOBE income (the buyer's group) and covered taxes (the seller's group).[16]

Whether article 6.3.4 applies to a section 754 election transaction (as described above in the context of article 6.2.2) is less certain. In a section 754 transaction, the basis of the partnership's assets is adjusted based on the difference between the transferee partner's basis in the partnership interest and its proportionate share of the basis of the partnership assets. In other words, any basis adjustment may not be up to FMV, but rather only to a fraction of it. Therefore, a question may arise

[12] June 2024 guidance, section 2.1.3, para. 43, para. 73.2 to be added to commentary on article 6.3.1.

[13] *Id.*

[14] Model rules, article 10.1.1 (definition of GLOBE reorganization).

[15] Article 6.3.4(a).

[16] For a detailed discussion on this topic, see Yen, Becker, and Chung, *supra* note 8 at 1205-1206. If article 6.2.2 instead applies to a section 338(h)(10) transaction, there should be no GLOBE income-tax mismatch because both GLOBE income and covered taxes associated with the transaction should accrue in the seller's group. It is also unclear whether both a buyer and seller in a section 338(h)(10) election must make the election under article 6.3.4.

as to whether a section 754 transaction meets article 6.3.4's condition to adjust the asset basis to "fair value for tax purposes." Moreover, because the basis adjustment is made for the transferee partner only, it's unclear whether the requirement that the target constituent entity (i.e., the partnership) adjust the asset basis is satisfied.[17]

Before the June 2024 guidance was released, there was no clear indication of whether — and to what extent — articles 6.2 and 6.3 (other than article 6.2.1(c)) apply to pre-GLOBE transactions. The June 2024 guidance clarifies that, with exception to article 6.2.1(c), articles 6.2 and 6.3 are only relevant for post-GLOBE transactions and that pre-GLOBE asset transfers and associated DTAs and DTLs are governed under article 9.1.[18] While a welcome clarification from an administrative standpoint, this means that transactions that could otherwise qualify as an article 6.2.2 or 6.3.4 transaction do not benefit from GLOBE basis step-ups in the hands of the target if they occur in a pre-GLOBE year (although the ability to create a GLOBE-specific DTA under the June 2024 guidance may mitigate a potential negative GLOBE ETR effect, as discussed below).[19] However, it remains unclear how article 6.2.2 or 6.3.4 should apply when either the seller or buyer (but not both) are within GLOBE; the June 2024 guidance does not address this.

Article 9.1

Article 9.1 introduces transition rules that apply when an MNE group first becomes subject to the GLOBE rules. Under article 9.1.1, the MNE group takes into account all DTAs and DTLs reflected or disclosed in the financial accounts of all the constituent entities in a jurisdiction in its first GLOBE year (the "transition year"). The DTAs and DTLs imported into GLOBE must be determined at the lesser of the minimum rate of 15 percent or the applicable domestic tax rate.[20] Note that pre-GLOBE DTAs carried over into the GLOBE years generally serve as beneficial attributes for taxpayers. When these pre-GLOBE DTAs are generated, there should be no negative GLOBE consequences because the taxpayer is not yet subject to the GLOBE rules. Once these pre-GLOBE DTAs are carried into a GLOBE year and subsequently reversed for GLOBE purposes, additional covered taxes are created.

Article 9.1.2 provides an exception to the general rule in article 9.1.1, requiring any DTAs arising from items excluded from the computation of GLOBE income or loss also to be excluded for article 9.1.1 purposes if those DTAs were generated in a transaction that occurred after November 30, 2021.

For an intragroup asset transfer after November 30, 2021, and before a transition year, article 9.1.3 requires the basis of the acquired assets to be based on the disposing constituent entity's carrying value of the transferred assets upon the transfer (i.e., a basis step-up is disallowed for GLOBE purposes). Further, any financial accounting DTAs or DTLs arising from the transfer must be also ignored for GLOBE purposes. The February 2023 guidance provides an exception to this rule for transactions in which the disposing constituent entity pays tax on the transaction (or certain other conditions are met).[21] In those cases, the acquiring constituent entity may have a DTA for GLOBE purposes equal to the tax paid by the seller, not to exceed 15 percent

[17] For a discussion on the applicability of article 6.3.4 to a section 754 transaction, see also Yen, Becker, and Chung, *supra* note 8 at 1205. Assuming article 6.3.4 does not apply to a section 754 transaction and further assuming that a DTA arises, there are also uncertainties as to how these DTAs should be taken into account for GLOBE purposes (e.g., does the treatment differ depending on whether DTAs are determined by comparing U.S. GAAP basis to the outside tax basis in the partnership versus the inside tax basis in the partnership assets? And to what extent must DTAs booked regarding outside basis interests be excluded under article 4.4.1(a)?).

[18] June 2024 guidance, section 2.1.3, para. 39, para. 46.1 to be added to commentary on article 6.2; section 2.1.3, para. 41, para. 70.1 to be added to commentary on article 6.3.

[19] For a detailed discussion on this issue prior to it being clarified by the June 2024 guidance, see Yen, Becker, and Chung, *supra* note 8 at 1203-1204.

[20] Commentary on article 9.1.1, para. 5. However, a DTA recorded at a rate lower than 15 percent may be recast at 15 percent if it can be demonstrated that the DTA is attributable to a loss that would have been a GLOBE loss had the MNE group been subject to GLOBE in the year of the loss. *Id.*

[21] February 2023 guidance, section 4.3.3, para. 10, para. 10.9 to be added to commentary on article 9.1.3.

multiplied by the difference between the local tax basis and the GLOBE carrying value of the asset.[22]

It was previously unclear whether the GLOBE DTA arising from tax paid by the seller was also capped based on the statutory rate in the acquiring jurisdiction.[23] The June 2024 guidance clarifies that the GLOBE DTA is "determined without reference to a deferred tax asset that would otherwise have been recognized by the acquiring Constituent Entity in the absence of Article 9.1.3,"[24] so the acquiring entity's local tax rate is irrelevant; instead, the GLOBE DTA is determined based on the tax paid by the seller, subject to the cap described previously. However, it remains unclear how the rule would apply if the local acquiring jurisdiction did not allow for any tax basis in the asset or had no corporate income tax system. The June 2024 guidance notes that the OECD will conduct further work on this issue.[25]

To apply article 9.1.3, the July 2023 guidance explains that the relevant transition year is determined by reference to the disposing constituent entity.[26] Thus, so long as the disposing constituent entity is subject to the GLOBE rules, whether the acquiring constituent entity is also subject to the GLOBE rules does not affect the application of article 9.1.3.

Divergences Between GLOBE and Accounting Basis

The June 2024 guidance addresses situations in which a constituent entity must alter its GLOBE income or loss and adjusted covered taxes when the carrying value of an asset for GLOBE purposes (GLOBE basis) differs from its carrying value for financial accounting purposes (book basis). These differences could arise, for example, because of article 6.2.1(c) reversing out purchase accounting adjustments, article 6.2.2 or 6.3.4 requiring adjustments for deemed asset transfers, article 6.3.1 requiring transactions to be accounted for at fair market value, or article 9.1.3 disallowing asset basis step-ups. In these cases, the MNE group must generally determine the DTAs and DTLs for GLOBE purposes based on the GLOBE basis (GLOBE DTAs and GLOBE DTLs), which may bear little to no resemblance to the actual DTAs or DTLs reflected in the MNE group's balance sheet.[27] The deferred tax expense or benefit for these GLOBE DTAs or DTLs and their later movement are used to compute the total deferred tax adjustment.[28]

Commonly Expected GLOBE Consequences

To illustrate the application of the GLOBE rules and associated pillar 2 guidance in practice, below are some common examples of transactions involving the acquisition or disposition of IP and the GLOBE implications of each transaction. Examples 1 through 5 address scenarios in which a target company holding IP is acquired — with or without a subsequent intragroup transfer of that IP. Examples 6 through 8 address scenarios in which self-developed IP is transferred in an intragroup transaction.

The following abbreviated entity names are used throughout the examples:

- Acquiring CE: A U.S. constituent entity of a U.S.-parented MNE group preparing consolidated financial statements under U.S. GAAP (U.S. MNE Group).
- U.S. Target: A U.S. constituent entity of another U.S.-parented MNE group.
- Foreign Target: A non-U.S. constituent entity (located in Country T) of another MNE group.
- Country A CE: A non-U.S. constituent entity (located in Country A) of U.S. MNE Group.

[22] *Id.* The February 2023 guidance permits an acquiring entity that records an asset at FMV for accounting purposes to choose to use the FMV basis in the asset acquired for GLOBE purposes, instead of a GLOBE DTA, if it could otherwise take a DTA equal to the difference between the local tax basis and GLOBE basis in the asset, multiplied by the minimum rate under article 9.1.3. *Id.*, section 4.3.3, para. 10, para. 10.10 to be added to commentary on article 9.1.3.

[23] Under the United Kingdom's and Canada's legislation, it appeared that the DTA in the acquiring entity was capped based on any "actual" DTA, but the 2024 guidance was unclear on this point.

[24] Section 2.1.3, para. 50, para. 10.8.2 to be added to commentary on 9.1.3.

[25] June 2024 guidance, section 2.1.2, para. 18: "the Inclusive Framework will consider providing further guidance in relation to the limitation on the amount of the deferred tax asset determined under Article 9.1.3 in situations where the jurisdiction of the acquiring Constituent Entity is located in a jurisdiction that does not have a corporate income tax system."

[26] July 2023 guidance, section 4, para. 53, para. 10.2.1 to be added to commentary on article 9.1.3.

[27] June 2024 guidance, section 2.1.3, para. 35, para. 68.3 to be added to commentary on article 4.4.

[28] *Id.*

- Country B CE: A non-U.S. constituent entity (located in Country B) of U.S. MNE Group.

The United States, Country T, Country A, and Country B represent different jurisdictions. The United States' corporate income tax rate is 21 percent; Country T's, Country A's, and Country B's respective corporate income tax rates are 10 percent.

Example 1

Pre-GLOBE acquisition of U.S. Target (a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election has been made), with no subsequent transfer of the underlying IP.[29]

Facts

In a pre-GLOBE year (e.g., 2020), Acquiring CE acquires U.S. Target. U.S. Target is either treated as (i) a disregarded entity for U.S. tax purposes[30] or (ii) a corporation for U.S. tax purposes, for which a section 338(h)(10) election has been made[31] (the "initial target acquisition" or the "acquisition"). Immediately before the initial target acquisition, U.S. Target owned IP with a book basis of 0 and an FMV of 100.[32]

Upon the acquisition, U.S. MNE Group applies pushdown accounting to the assets of U.S. Target; as a result, U.S. Target's book basis in its IP equals its FMV (i.e., 100).[33] Because U.S. Target's book basis in the IP equals its tax basis, U.S. Target does not record a DTA or DTL for the IP for U.S. GAAP purposes upon acquisition. The IP is subject to a 15-year amortization period for U.S. tax purposes but is nonamortizable for U.S. GAAP purposes because it is an indefinite life asset.

U.S. Target is later subject to an IIR or UTPR beginning from its transition year (this is the first year in which the GLOBE rules apply for all U.S. entities in U.S. MNE Group, including U.S. Target and for which no transitional safe harbor is elected or applicable). As of the first date of the transition year, U.S. Target's tax basis in the IP is 53.3. The FMV of the IP is assumed to be unchanged throughout all relevant years (i.e., it remains 100).

GLOBE Analysis

Under article 6.2.1(c), the pushdown accounting adjustments related to U.S. Target's IP must be reversed.[34] Also, as the June 2024 guidance clarifies, neither article 6.2.2 nor article 6.3.4 applies to the transaction because the initial target acquisition occurred in a pre-GLOBE year. As a result, U.S. Target's GLOBE basis in the IP is 0 (i.e., U.S. Target is not allowed a basis step-up for GLOBE purposes). Moreover, although U.S. Target did not record a DTA or DTL on the IP at the time of the acquisition for U.S. GAAP purposes, U.S. Target has a GLOBE DTA of 15 (the difference between U.S. Target's tax basis in the IP (100) and its GLOBE basis (0), multiplied by the lesser of the minimum rate of 15 percent or the domestic tax rate of 21 percent) at the time of the acquisition.[35]

As of the first date of the transition year for the United States, U.S. Target will have a GLOBE DTA of 8 (the difference between its tax basis in the IP (53.3) and its GLOBE basis (0), multiplied by the lesser of 15 percent or 21 percent), which can be imported into GLOBE under article 9.1.1. The reversal of this GLOBE DTA in the transition year

29 This example is generally consistent with the example illustrated in June 2024 guidance, section 2.1.3, para. 47, para. 6.0.3 to be added to commentary on article 9.1.1.

30 In this scenario, Acquiring CE will be treated as purchasing the underlying assets and liabilities of U.S. Target for U.S. tax purposes and, as a result, U.S. Target's tax basis in the IP after the transaction equals FMV.

31 In this scenario, for U.S. tax purposes, U.S. Target will be deemed to sell its assets, subject to its liabilities, to a new target and be liquidated into its corporate parent before the close of the transaction date. As a result of this transaction, the U.S. tax basis in the IP equals FMV. The U.S. GAAP accounting treatment of a section 338(h)(10) election can vary based on the facts, particularly when there is contingent consideration. These accounting issues are beyond the scope of this article. For purposes of all examples in this article, we assume no contingent consideration exists.

32 For illustration purposes, assume U.S. Target's only asset is its IP.

33 In some circumstances, an MNE group acquiring an ownership interest of an entity may treat the acquisition as an asset acquisition, rather than a business combination transaction, for U.S. GAAP purposes. In this case, no purchase accounting applies and the purchase price for the acquisition would then be expensed or capitalized. The treatment of these transactions is beyond the scope of this article.

34 In all examples, we assume the acquirer cannot apply the narrow exception to article 6.2.1(c) (for situations when a company does not have sufficient records to determine its financial accounting net income or loss with reasonable accuracy). As a result, the GLOBE analysis is the same regardless of whether the transaction occurs before or after November 30, 2021.

35 As discussed, this point has been clarified by the June 2024 guidance. Before this guidance, whether a GLOBE DTA would be created in this context was a major open question.

and in subsequent fiscal years gives rise to adjusted covered taxes for GLOBE purposes and therefore mitigates the GLOBE ETR effect otherwise resulting from tax amortization in the United States.[36]

The GLOBE outcome should be the same if U.S. MNE Group followed IFRS instead of U.S. GAAP for accounting purposes. As IFRS does not permit pushdown accounting for a business combination, it is expected that an actual DTA would be recorded for U.S. Target in this scenario. As a result, the GLOBE rules appear generally to equalize the GLOBE treatment of pre-GLOBE stock acquisitions accounted for under U.S. GAAP and IFRS.

Example 2

Pre-GLOBE acquisition of U.S. Target (a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election has been made), with a subsequent intragroup transfer of the underlying IP.[37]

Example 2-1

Pre-November 30, 2021 intragroup, outbound transfer of IP to an entity that is later subject to an IIR or UTPR.

Facts

The facts are the same as in Example 1 (i.e., Acquiring CE's 2020 acquisition of U.S. Target, a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election is made), except that immediately after the initial target acquisition (and within the same year), U.S. Target transfers the IP to Country A CE in a taxable, intragroup transaction. For U.S. tax purposes, U.S. Target (or its regarded parent if U.S. Target is a disregarded entity) recognizes no gain on the IP transfer because its basis in the IP was stepped-up to FMV upon the initial target acquisition. Because Country A CE's tax basis in the IP is 100, and its book basis is also 100 under U.S. GAAP (because of the stepped-up basis arising from the pushdown accounting in the initial target acquisition), Country A CE does not record a DTA or DTL for U.S. GAAP purposes.

Country A CE is subject to an IIR or UTPR beginning from its transition year.

GLOBE Analysis

Upon U.S. Target's subsequent transfer of the IP to Country A CE, the GLOBE DTA generated from the initial target acquisition in the hands of U.S. Target (as discussed in Example 1) should be reversed.

As for the GLOBE consequences for Country A CE, the reversal of the pushdown accounting under article 6.2.1(c) carries over to the subsequent IP transfer, meaning that Country A CE's GLOBE basis in the IP is adjusted from 100 to 0. This is because no basis step-up would have arisen for U.S. GAAP purposes in a common control transaction absent pushdown accounting. Although Country A CE did not record DTA or DTL associated with the IP for U.S. GAAP purposes, it has a GLOBE DTA of 10 (the difference between its tax basis in the IP (100) and its GLOBE basis (0), multiplied by the lesser of the minimum rate of 15 percent or the domestic tax rate of 10 percent). Once Country A CE is subject to an IIR or UTPR, this GLOBE DTA (based on the tax basis and GLOBE basis as of the first date of the transition year) will be imported into GLOBE under article 9.1.1, and its annual reversal will give rise to an increase in covered tax for GLOBE purposes.

Example 2-2

Pre-November 30, 2021, intragroup, outbound transfer of IP to an entity that is later subject to QDMTT.

Facts

The facts are the same as Example 2-1 (i.e., Acquiring CE's 2020 acquisition of U.S. Target, a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election is made, immediately followed by U.S. Target's transfer of its IP to Country A CE, which would be subject to an IIR or UTPR beginning from the transition year), except that Country A CE would be subject to Country A's QDMTT regime (which is expected

[36]If the acquisition of U.S. Target had occurred after November 30, 2021 (but before the transition year for the United States), rather than in 2020, there is a question whether article 9.1.2 applies to disregard any DTA that would otherwise be generated for GLOBE purposes. This issue is outside the scope of this article.

[37]The GLOBE consequences of the initial target acquisition in Examples 2-1 through 2-4 are the same as the GLOBE consequences of the initial target acquisition discussed for Example 1. For simplicity, we discuss only the implications of the subsequent IP transfer for Examples 2-1 through 2-4.

to switch off any IIR or UTPR) starting from the transition year. Country A's QDMTT rules are consistent with the GLOBE rules in all aspects except that the Country A QDMTT is based on a local accounting standard (e.g., IFRS), rather than the ultimate parent entity's financial accounting standard, which the July 2023 guidance required in certain circumstances (as discussed below).[38] The applicable local accounting standard accounts for intragroup asset transfers at fair value.[39] Therefore, Country A CE steps up its book basis in the IP to FMV as a result of the IP transfer (importantly, this is because the transaction is recorded at fair value for book purposes, not because of pushdown accounting).

GLOBE Analysis

Upon U.S. Target's subsequent transfer of the IP to Country A CE, the GLOBE DTA generated from the initial target acquisition in the hands of U.S. Target should be reversed.

As for the GLOBE consequences for Country A CE, neither article 6.3.1(a) nor article 9.1.3 applies to disregard the basis step-up because (i) Country A CE's basis step-up under the applicable local accounting standard does not result from pushdown accounting, and (ii) the transaction occurred before November 30, 2021. Country A CE thus may use 100 as its basis in the IP for Country A QDMTT purposes (resulting in no GLOBE DTA at Country A CE because GLOBE basis and tax basis are both 100).

In this case, if the IP's amortization period for local accounting purposes is longer than for Country A tax purposes, a GLOBE DTL would be created, which might be subject to the DTL recapture rule under article 4.4.4.[40] This makes evaluating the amortization rules under different QDMTT local accounting standards an important consideration in determining the location of IP. For example, certain jurisdictions' local GAAPs may allow for the IP's amortization, which would not otherwise be amortizable under U.S. GAAP or IFRS. If that local GAAP were used for QDMTT purposes, it could mitigate DTL recapture issues related to IP.

While both the GLOBE DTA of 10 in Example 2-1 and the basis step-up of 100 in Example 2-2 benefit Country A CE from a GLOBE perspective, the former may not be as valuable as the latter: the GLOBE DTA is based on the 10 percent Country A corporate income tax rate, but the basis step-up will provide a 15 percent benefit (either in the form of amortization or when the IP is later sold). Therefore, subject to the DTL recapture consideration discussed above, companies that undertook pre-GLOBE asset transfers resulting in a local tax basis step-up may be better off if (i) the jurisdiction of the relevant constituent entity uses local accounting standards that account for intragroup asset transfers at fair value (rather than the UPE's U.S. GAAP financial accounting standard) to calculate their QDMTT and (ii) this jurisdiction's corporate income tax rate is below 15 percent. It is perhaps no surprise then that Ireland, Switzerland, and Singapore, which are popular IP holding company jurisdictions, have adopted the use of local GAAPs for their QDMTTs.

This example, as described above, assumes that Country A CE's QDMTT is determined under the applicable local accounting standard. Under the July 2023 guidance, for a jurisdiction's QDMTT to meet the QDMTT safe harbor, it must be computed based on the local accounting standard if, among other things, all of the constituent entities in that jurisdiction have financial accounts based on that standard.[41] If, however, the local accounting fiscal year for at least one constituent entity in the QDMTT jurisdiction differs from the fiscal year of the UPE's consolidated financial statements, the QDMTT must be computed based on the UPE's consolidated financial statements under provisions equivalent to articles 3.1.2 and 3.1.3 of the model rules.[42] An MNE group that frequently undertakes M&A transactions may encounter a

[38] *See* July 2023 guidance, section 5.1, paras. 14-26.

[39] Under IFRS or other GAAPs, transaction may sometimes be recorded at net book value. However, for local tax purposes, we will assume that the transaction is recorded at FMV under the transfer pricing/arm's-length principle.

[40] Under article 4.4.4 of the model rules, if a DTL is taken into account but is not reversed within five subsequent fiscal years, then, subject to certain exceptions, it must be recaptured. The June 2024 guidance provides additional guidance on the application of article 4.4.4, including a clarification that DTLs imported pursuant to article 9.1.1 are not subject to the DTL recapture rule.

[41] July 2023 guidance, section 5.1, paras. 17-18.

[42] July 2023 guidance, section 5.1, para. 21.

temporary situation in which not all entities in a QDMTT jurisdiction have the same fiscal year under their local accounting standard. This could result in the MNE group being required to apply the UPE's accounting standard for QDMTT purposes until the fiscal years of all constituent entities in the QDMTT jurisdiction are aligned. The MNE group could even move between the UPE's accounting standard versus local accounting standard every year. It is unclear if this result was intended — clarity from the OECD/G20 inclusive framework would be welcome.

Example 2-3

Post-November 30, 2021 (but pre-GLOBE), intragroup, outbound transfer of IP to an entity that is later subject to an IIR or UTPR.

Facts

The facts are the same as in Example 2-1 (i.e., Acquiring CE's 2020 acquisition of U.S. Target, a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election is made, immediately followed by U.S. Target's transfer of its IP to Country A CE, which would be subject to an IIR or UTPR beginning from the transition year), except that the initial target acquisition and the subsequent IP transfer take place in 2022 (i.e., after November 30, 2021) instead of in 2020.

GLOBE Analysis

Because the IP transfer is an intragroup asset transfer that occurs after November 30, 2021 (but before the transition year for the United States, which is where U.S. Target, the disposing constituent entity, is located), article 9.1.3 applies. Under article 9.1.3, Country A CE's GLOBE basis in the IP is determined based on U.S. Target's pretransfer book basis (after application of article 6.2.1(c)), which in this case is 0. Further, the exception to article 9.1.3 provided in the February 2023 guidance does not apply because U.S. Target (or its regarded parent if U.S. Target is a disregarded entity) does not pay tax on the IP transfer (because of the stepped-up asset basis resulting from the initial target acquisition treated as a deemed asset acquisition for U.S. tax purposes). Accordingly, Country A CE does not generate a GLOBE DTA in the intragroup transfer.

However, the GLOBE DTA generated at the level of U.S. Target from the initial target acquisition (as discussed in Example 1) should carry over to Country A CE for purposes of article 9.1.1. As the February 2023 guidance clarifies, any deferred taxes from the transferred assets that existed before the transaction triggering article 9.1.3 are taken into account and carry over to the acquiring entity.[43] However, it is unclear whether the GLOBE DTA to be carried over is subject to adjustment when the acquiring jurisdiction's local tax rate is below the rate at which the disposing entity determined the GLOBE DTA. Any GLOBE DTA carried over to Country A CE would generate covered tax expenses in Country A CE's transition year and later fiscal years as the DTA reverses.

Example 2-4

Post-November 30, 2021 (but pre-GLOBE), intragroup, outbound transfer of IP to an entity that is later subject to QDMTT.

Facts

The facts are the same as in Example 2-3 (i.e., Acquiring CE's 2022 acquisition of U.S. Target, a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election is made, immediately followed by U.S. Target's transfer of its IP to Country A CE, which would be subject to an IIR or UTPR beginning from the transition year), except that Country A CE would be subject to Country A's QDMTT regime (which is expected to switch off any IIR or UTPR) from the transition year. Country A's QDMTT regime is based on Country A's local accounting standard, which accounts for intragroup transfers at fair value.

GLOBE Analysis

Like Example 2-2, Country A CE's basis in the IP for local accounting standard purposes is 100 upon the intragroup IP transfer; however, because the transaction occurs after November 30, 2021, a QDMTT provision equivalent to article 9.1.3 applies to disallow this basis. Further, no GLOBE DTA should be generated by Country A CE itself because U.S. Target (or its regarded parent if U.S. Target is a disregarded entity) does not pay tax on the IP transfer. Still, for the same reason discussed under Example 2-3, the GLOBE DTA that U.S. Target determined for the initial target acquisition

[43] February 2023 guidance, section 4.3.3, para. 10.8 to be added to commentary on article 9.1.3.

ought to carry over to Country A CE for purposes of article 9.1.1.

Note that the February 2023 guidance provides that an acquiring entity recording an acquired asset at fair value for financial accounting purposes may choose to use an FMV GLOBE basis "if it would otherwise be entitled to take into account a [DTA] equal to the Minimum Rate [i.e., 15 percent] multiplied by the difference in the local tax basis in the asset and the [GLOBE] carrying value of the asset determined under Article 9.1.3."[44] Because the GLOBE DTA of U.S. Target (determined at the minimum rate of 15 percent) ought to otherwise be carried over to Country A CE, arguably Country A CE, if it chooses, is entitled to a GLOBE basis equal to the FMV of the IP instead of the GLOBE DTA discussed above.

Example 3

Pre-GLOBE acquisition of Foreign Target (with no subsequent transfer of the underlying IP) resulting in potential shadow deferred tax accounting.

U.S.-parented MNE groups generally calculate deferred taxes for a CFC's book-tax differences that arise in the country where the CFC is located. U.S. MNE groups with foreign hybrid entities or foreign branches first calculate the entity's or branch's deferred taxes for local book-tax differences and then calculate deferred taxes based on differences between book and U.S. tax (so-called shadow accounting or branch accounting).[45] Also, U.S. GAAP filers may elect to compute deferred taxes with respect to GILTI.

Under the June 2024 guidance, deferred taxes arising from shadow accounting on hybrid entities, permanent establishments, and CFCs must be pushed down to the relevant constituent entity. An exception is provided for deferred taxes for GILTI — these amounts are fully excluded for GLOBE purposes.

The following examples raise questions about the interaction of shadow accounting and the pillar 2 rules that require computing GLOBE DTAs and DTLs when basis differences arise in the acquisition context.

Example 3-1

Pre-GLOBE acquisition of Foreign Target (a CFC for U.S. tax purposes).

Facts

In a pre-GLOBE year (e.g., 2020), Acquiring CE acquires Foreign Target. Foreign Target is treated as a corporation for U.S. tax purposes (for which a section 338(g) election may or may not be made[46]) and becomes a CFC (the initial target acquisition). Immediately before this acquisition, Foreign Target owned IP with a book basis of 0, a Country T tax basis of 0, a U.S. tax basis of 0, and a FMV of 100.[47] Acquiring CE did not elect to apply deferred tax accounting rules to GILTI.

As a result of pushdown accounting, Foreign Target's book basis in its IP equals its FMV (i.e., 100). However, Foreign Target does not receive a basis step-up for Country T tax purposes (i.e., its tax basis is 0).[48] Under U.S. GAAP, a DTL is recorded for the book-to-tax basis difference, although that DTL is recorded in goodwill and does not affect tax expense.

Foreign Target is subject to an IIR or UTPR beginning from its transition year.

GLOBE Analysis

As in Example 1, the pushdown accounting adjustments for Foreign Target's IP must be reversed under article 6.2.1(c). Because Foreign Target's GLOBE basis equals its tax basis in the IP (i.e., 0), no GLOBE DTA (or DTL) exists; meaning, no GLOBE deferred tax attributes are considered under article 9.1.1 (even though a DTL exists for U.S. GAAP purposes).

When Foreign Target becomes subject to an IIR or UTPR in its transition year, there is no GLOBE book-tax difference. The lack of any U.S. GAAP amortization would not materially affect

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[44] February 2023 guidance, section 4.3.3, para. 10, para. 10.10 to be added to commentary on article 9.1.3.

[45] Some accounting firms also allow U.S. GAAP filers to calculate deferred taxes for full-inclusion CFCs generating subpart F income.

[46] Assuming a section 338(g) election is made, Foreign Target will be deemed, for U.S. tax purposes, to have sold its assets, subject to its liabilities, to a new target and liquidated into its corporate parent before the close of the transaction date. As a result, the U.S. tax basis in the IP equals the FMV.

[47] For illustration purposes, again assume Foreign Target's only asset is its IP.

[48] In most jurisdictions, stock transfers do not result in basis step-ups for inside assets; in some jurisdictions (like Canada and Australia), however, inside asset basis step-ups may be permitted or required.

the GLOBE ETR because, lacking any tax amortization of the IP in Country T, there would be no GLOBE-to-tax basis differences to distort the GLOBE ETR.[49]

Example 3-2

Pre-GLOBE acquisition of Foreign Target (a disregarded entity for U.S. tax purposes).

Facts

The facts are the same as those under Example 3-1 (i.e., Acquiring CE's 2020 acquisition of Foreign Target treated as a CFC for U.S. tax purposes, with pushdown accounting applied), except:

- Foreign Target is treated as a disregarded entity for U.S. tax purposes;
- the seller of Foreign Target is a U.S. corporation and pays U.S. tax on the sale (which is treated as the seller's sale of the IP for U.S. tax purposes) based on the difference between the purchase price (equal to the FMV of the IP, i.e., 100) and its U.S. tax basis in the IP (0), multiplied by the 21 percent U.S. corporate tax rate;
- after the initial target acquisition, Foreign Target is a hybrid entity for Acquiring CE, and it owns IP with a Country T tax basis of 0 and a FMV of 100;[50] and
- the U.S. GAAP basis in the IP is 100 (because of purchase accounting) and Acquiring CE's U.S. tax basis in the IP is also 100; as a result, Acquiring CE does not record a DTL or a DTA for U.S. GAAP purposes for Foreign Target's U.S. basis in the IP. Because the Country T tax basis is still 0, a DTL is recorded in goodwill for the book-to-tax basis difference in Country T.

GLOBE Analysis

GLOBE implications at the level of Foreign Target are consistent with those under Example 3-1 (subject to the GLOBE DTA pushdown point discussed below).

Acquiring CE, which is a U.S. entity, has a U.S. tax basis in Foreign Target's IP equal to 100, whereas the GLOBE basis of the IP is 0. It is unclear whether, under the June 2024 guidance, Acquiring CE should create a "shadow" GLOBE DTA of 15 for the IP (determined based on the difference between its GLOBE basis and the U.S. tax basis in the IP, multiplied by the lesser of the minimum rate of 15 percent or the domestic tax rate of 21 percent). If a shadow GLOBE DTA were created, then we would expect post-GLOBE movements in the DTA to be pushed down to Foreign Target under the rules in the June 2024 guidance for pushing down deferred taxes under article 4.3.2.[51] Similar questions arise if a U.S. company acquires a CFC (like Example 3-1), which then makes an entity classification election to convert to a disregarded entity, making itself a hybrid entity (similar to the end result in this example).[52]

Clarity from the OECD/G20 inclusive framework regarding the necessity of shadow GLOBE DTAs/DTLs would be welcome.

Example 4

Pre-GLOBE acquisition of Foreign Target, with a subsequent intragroup transfer of the underlying IP.[53]

Example 4-1

Pre-November 30, 2021, intragroup, cross-border transfer of IP to an entity that is later subject to an IIR or UTPR.

Facts

The facts are the same as Example 3-1 (i.e., Acquiring CE's 2020 acquisition of Foreign Target treated as a corporation for U.S. tax purposes, with pushdown accounting applied), except that immediately after the initial target acquisition, Foreign Target transfers its IP to Country A CE in

[49] Whether or not a section 338(g) has been made for the foreign target in a pre-GLOBE transaction generally is not expected to have a GLOBE effect, except for purposes of allocating U.S. GILTI or subpart F taxes to the target and other constituent entities (under article 4.3.2(c) and the February 2024 guidance) once the GLOBE rules come into effect. For companies that apply deferred tax accounting on GILTI, these deferred taxes are excluded under the June 2024 guidance (section 4.2.1, para. 24).

[50] Under article 10.2.5, a hybrid entity is an entity that is treated as a separate taxable person for tax purpose in its own jurisdiction but is treated as a fiscally transparent entity in its owner's jurisdiction.

[51] *See* June 2024 guidance, section 4.2.

[52] This transaction also raises questions regarding article 9.1.2 and 9.1.3 that are beyond the scope of this article.

[53] The GLOBE consequences of the initial target acquisition in Examples 4-1 through 4-4 are the same as the GLOBE consequences of the initial target acquisition discussed for Example 3-1. For simplicity, we discuss only the implications of the subsequent IP transfer for Examples 4-1 through 4-4.

a taxable, intragroup transaction. For Country T tax purposes, Foreign Target recognizes a 100 gain on the IP transfer and pays 10 of Country T corporate income tax on the gain. Upon the subsequent IP transfer, Country A CE's tax basis in the IP is 100 and its book basis of the IP is also 100 (because of the carryover of the stepped-up basis arising from the pushdown accounting in the initial target acquisition); therefore, Country A CE does not record any DTA or DTL for U.S. GAAP purposes.

Country A CE is subject to an IIR or UTPR beginning from its transition year.

GLOBE Analysis

Country A CE may have a GLOBE DTA of 10, determined based on the difference between its tax basis in the IP (100) and its GLOBE basis (0) (with pushdown accounting being reversed), multiplied by the lesser of the minimum rate of 15 percent or the domestic tax rate (which is 10 percent). The result is similar to a situation (such as Example 1) in which a tax basis step-up is allowed upon the initial target acquisition because the local tax rules (i.e., U.S. tax rules) treat the acquisition as a deemed asset acquisition.

Example 4-2

Pre-November 30, 2021, intragroup, cross-border transfer of IP to an entity that is later subject to QDMTT.

Facts

The facts are the same as Example 4-1 (i.e., Acquiring CE's 2020 acquisition of Foreign Target treated as a corporation for U.S. tax purposes, with pushdown accounting applied, immediately followed by Foreign Target's transfer of its IP to Country A CE, which would be subject to an IIR or UTPR beginning from the transition year), except that Country A CE would be subject to Country A's QDMTT regime (which is expected to turn off any IIR or UTPR) from its transition year. Country A's QDMTT regime is based on Country A's local accounting standard, which accounts for intragroup transfers at fair value.

GLOBE Analysis

Because neither article 6.3.1(a) nor article 9.1.3 applies to disregard the basis step-up under the applicable local accounting standard, Country A CE may take into account a GLOBE carrying value of 100 in the IP for Country A QDMTT purposes. As explained in the Example 2-2 analysis, this could provide a more favorable result compared with Example 4-1, when the Country A tax rate is below 15 percent. However, the benefit associated with the GLOBE basis may be offset if the local accounting standard does not allow for IP amortization (or the IP amortizes faster for tax purposes than for local accounting purposes), thereby giving rise to a GLOBE DTL and potential DTL recapture issues.

Example 4-3

Post-November 30, 2021 (but pre-GLOBE), intragroup, cross-border transfer of IP to an entity that is later subject to an IIR or UTPR.

Facts

The facts are the same as Example 4-1 (i.e., Acquiring CE's 2020 acquisition of Foreign Target treated as a corporation for U.S. tax purposes, with pushdown accounting applied, immediately followed by Foreign Target's transfer of its IP to Country A CE, which would be subject to an IIR or UTPR beginning from the transition year), except that the initial target acquisition and IP transfer take place in 2022 instead of 2020.

GLOBE Analysis

Regarding the subsequent IP transfer, article 9.1.3 applies because the intragroup asset transfer takes place after November 30, 2021 (but before the transition year for Country T, where Foreign Target, the disposing constituent entity, is located); in this case, however, the exception to article 9.1.3 in the February 2023 guidance also applies because Foreign Target paid tax on the IP transfer. Therefore, Country A CE has a GLOBE DTA equal to the tax paid (10), not to exceed the difference between its tax basis in the IP (100) and its GLOBE basis (0), multiplied by the minimum rate of 15 percent (15). Therefore, the GLOBE DTA is 10.[54]

Example 4-4

Post-November 30, 2021 (but pre-GLOBE), intragroup, cross-border transfer of IP to an entity that is later subject to QDMTT.

[54]As noted above, summary of relevant GLOBE rules, the local tax rate of Country A CE is irrelevant to determine the GLOBE DTA.

Facts

The facts are the same as Example 4-3 (i.e., Acquiring CE's 2022 acquisition of Foreign Target treated as a corporation for U.S. tax purposes, with pushdown accounting applied, immediately followed by Foreign Target's transfer of its IP to Country A CE, which would be subject to an IIR or UTPR beginning from the transition year), except that Country A CE would be subject to Country A's QDMTT (which is expected to turn off any IIR or UTPR) from its transition year. Country A's QDMTT regime is based on Country A's local accounting standard, which accounts for intragroup transfers at fair value.

GLOBE Analysis

Upon the subsequent IP transfer, Country A CE's book basis of the IP is 100 (irrespective of any pushdown accounting) but a QDMTT provision equivalent to article 9.1.3 applies to disallow that basis. However, the exception to article 9.1.3 in the February 2024 guidance would apply for the same reason discussed in Example 4-3, so Country A CE would have a GLOBE DTA of 10. The rule that permits an acquiring entity to elect stepped-up basis if a transaction is accounted for at fair value does not appear to apply because the GLOBE DTA that Country A CE would otherwise be entitled to have is determined at 10 percent, not the minimum rate of 15 percent.

Example 5

Post-GLOBE acquisition of U.S. Target or Foreign Target.

Example 5-1

Post-GLOBE acquisition of U.S. Target (a disregarded entity or a U.S. corporation for which a section 338(h)(10) election has been made).

Facts

The facts are consistent with those under Example 1 (Acquiring CE's 2020 acquisition of U.S. Target (a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election is made), with pushdown accounting), except that the U.S. Target acquisition occurs in a post-GLOBE year both for Acquiring CE and the seller of U.S. Target.

GLOBE Analysis

Because article 6.2.1(c) applies to the acquisition, pushdown accounting for U.S. Target's IP is reversed for GLOBE purposes. If U.S. Target is a disregarded entity, however, section 6.2.2 should apply, so that U.S. Target has stepped-up GLOBE basis in the IP, consistent with the pushdown accounting adjustments. If U.S. Target is alternatively a corporation for which a section 338(h)(10) election is made, article 6.2.2 may apply (or article 6.3.4 may apply if the election to apply article 6.3.4 is made), resulting in a GLOBE basis step-up.[55] When GLOBE basis is stepped up, pushdown accounting adjustments are not reversed.[56]

Because the GLOBE basis and tax basis in the IP would equal (100), no GLOBE deferred tax attributes would be created because of the transaction. However, if the amortization period of the IP for accounting purposes is longer than that for tax purposes, a GLOBE DTL is created, which may be subject to the DTL recapture rule under article 4.4.4.

If U.S. MNE Group does not apply pushdown accounting, the result is unchanged because the target could take a step-up GLOBE basis in the IP because of the application of article 6.2.2 or 6.3.4.

If immediately after the initial target acquisition U.S. Target transfers the IP outside the United States in an intragroup transaction, article 6.3.1 would apply. In that case, U.S. Target should not recognize a gain for GLOBE purposes because of the stepped-up GLOBE basis obtained in the target acquisition; the acquiring constituent entity would obtain a stepped-up GLOBE basis in the IP received.

Example 5-2

Post-GLOBE acquisition of U.S. Target (a U.S. corporation for which a section 338(h)(10)

[55]In this scenario, there are uncertainties as to which MNE group — U.S. MNE Group or the disposing MNE group — should include GLOBE income or loss from applying article 6.3.4. For a detailed discussion on this issue, see Yen, Becker, and Chung, *supra* note 8 at 1205-1206.

[56]*See* commentary on article 6, para. 18: "In some cases it is appropriate to reflect purchase accounting adjustments in the GLOBE income or loss. Purchase accounting adjustments arising in connection with transactions governed by Article 6.2.2, Article 6.3.1 and Article 6.3.4 should be taken into account even if those adjustments are reflected in the financial accounts at the consolidated level, rather than the Constituent Entity level."

election is made) where neither article 6.2.2 nor 6.3.4 applies.

Facts

The facts are the same as those under Example 5-1 (Acquiring CE's post-GLOBE acquisition of U.S. Target (a U.S. disregarded entity or a U.S. corporation for which a section 338(h)(10) election is made), with pushdown accounting applied), except that (i) U.S. Target is a corporation for U.S. tax purposes only (i.e., there is no alternative scenario in which U.S. Target is a disregarded entity) and (ii) an argument that article 6.2.2 applies to this transaction fails and no article 6.3.4 election is made (there is no GLOBE basis step-up).

GLOBE Analysis

Because article 6.2.1(c) applies to the acquisition, pushdown accounting adjustments made for U.S. Target's IP are reversed for GLOBE purposes. Because the GLOBE basis and tax basis in the IP now differ, it appears under the June 2024 guidance that a DTA is created for GLOBE purposes. The DTA is 15, determined based on the difference between the tax basis (100) and the GLOBE basis (0), multiplied by the lesser of the minimum rate of 15 percent or the domestic tax rate of 21 percent.

A question arises as to whether this GLOBE DTA, when generated, should be treated as a deferred tax benefit for GLOBE purposes that reduces U.S. Target's adjusted covered taxes in the year of the transaction. Under U.S. GAAP, in a business combination, any DTA or DTL that is created would normally be recorded through equity rather than giving rise to an amount that would affect the tax expense line. This treatment is acknowledged by the commentary on article 6, which states that "unlike most [DTAs and DTLs], the ones created in connection with a business combination *do not affect the income tax expense computation* when they arise because the net effect of recognition of such [DTAs or DTLs] is recorded in accounting goodwill and not as income tax expense" (emphasis added).[57] However, in a transaction that is not accounted for as a business combination, the creation of a DTA would, under normal deferred tax accounting principles, create a deferred tax benefit that affects the income tax computation (meaning, from a GLOBE perspective it would reduce adjusted covered taxes).

The June 2024 guidance explains that hypothetical GLOBE DTAs are to be determined "in accordance with the relevant accounting standard." Presumably this means the general rules required for business combination accounting would continue to apply. In that case, creating the foregoing GLOBE DTA does not affect the target's covered tax. However, it is unclear whether the June 2024 guidance should be read as requiring taxpayers to ignore the accounting that generally applies to a business combination, in which case the generation of the GLOBE DTA results in a deferred tax benefit that will reduce the target's GLOBE ETR in the year of acquisition (solely because of the acquisition, not any book or tax amortization).[58]

Clarity from the OECD/G20 inclusive framework on the correct treatment in this scenario would be welcome.

Example 5-3

Post-GLOBE acquisition of Foreign Target (a CFC for U.S. tax purposes).

Facts

The facts are the same as those under Example 3-1 (i.e., Acquiring CE's acquisition of Foreign Target, a CFC, with pushdown accounting applied), except that the acquisition occurs in a post-GLOBE year both for Acquiring CE and the seller of Foreign Target.

GLOBE Analysis

With pushdown accounting being reversed under article 6.2.1(c), the GLOBE basis and tax basis in the IP should be the same (0). Therefore, no GLOBE DTA should arise at the Foreign Target level. However, without any tax amortization for the IP in Country T, there would be no material GLOBE-to-tax basis differences distorting the GLOBE ETR.

[57] Commentary on article 6, para. 12.

[58] This effect could result in the GLOBE ETR becoming negative, which would trigger the excess negative tax carryforward rule under article 5.2.1, which is discussed in the February 2023 guidance, section 2.7.

Example 5-4

Post-GLOBE acquisition of Foreign Target (a disregarded entity for U.S. tax purposes).

Facts

The facts are the same as Example 3-1 (i.e., Acquiring CE's acquisition of Foreign Target, a disregarded entity for U.S. tax purposes, with pushdown accounting applied), except that the acquisition occurs in a post-GLOBE year both for Acquiring CE and the seller of Foreign Target.

GLOBE Analysis

At the Foreign Target level, with pushdown accounting reversed under article 6.2.1(c), the GLOBE basis and tax basis in the IP should be the same (0), resulting in no GLOBE DTA.

For Acquiring CE, the U.S. GAAP basis in the IP is 100 (because of purchase accounting) and its U.S. tax basis in the IP is also 100; as a result, Acquiring CE does not record a DTL or a DTA for U.S. GAAP purposes for Foreign Target's IP. Here, there would be a question of whether a shadow GLOBE DTA arises at the Acquiring CE level.[59] If a GLOBE DTA were created, it would be pushed down to Foreign Target under article 4.3.2 (assuming no QDMTT applies in Country T), as discussed in Example 3-2. In this case, U.S. MNE Group may alternatively make a five-year election in the United States (i.e., the jurisdiction where Acquiring CE is located, as opposed to where Foreign Target is located) to exclude allocations of deferred tax expenses and benefits under article 4.3.2 arising under U.S. tax rules, with the election applying to all U.S. constituent entities of U.S. MNE Group.[60]

Example 6

Pre-November 30, 2021, intragroup transfer of self-developed IP.

Example 6-1

Pre-November 30, 2021, intragroup, cross-border transfer of self-developed IP to an entity that is later subject to an IIR or UTPR.

Facts

In 2020 Country A CE transfers IP it developed in Country A (with a book basis of 0 and an FMV of 100) to Country B CE. Under local tax rules, the transfer is effectuated at FMV. After the transfer, Country B CE's book basis is 0 because the transaction is accounted for at cost (under U.S. GAAP common control rules); for Country B tax purposes, however, Country B CE obtains a stepped-up basis in the IP equal to its FMV (100). Because of the book-to-tax basis difference, Country B CE records a book DTA of 10 (the difference between 100 and 0, multiplied by Country B's tax rate of 10 percent).

Country B CE is subject to an IIR or UTPR beginning its transition year.

GLOBE Analysis

Because the intragroup IP transfer occurred before November 30, 2021, the transfer is not subject to article 9.1.3. Therefore, Country B CE's book DTA of 10 resulting from the IP transfer in 2020 is respected for GLOBE purposes under article 9.1.1 (no recasting would be required because Country B's tax rate is below 15 percent).

Example 6-2

Pre-November 30, 2021, intragroup, cross-border transfer of self-developed IP to an entity that is later subject to QDMTT.

Facts

The facts are the same as Example 6-1 (Country A CE's 2020 transfer of self-developed IP to Country B CE, which would be subject to an IIR or UTPR beginning from Country B CE's transition year), except that Country B CE would be subject to Country B's QDMTT (which is expected to turn off any IIR or UTPR) beginning from its transition year. Country B's QDMTT regime is based on Country B's local accounting standard, which accounts for intragroup transfers at fair value.

GLOBE Analysis

Because article 9.1.3 does not apply to the 2020 IP transfer, Country B CE could take into account

[59] Unlike an acquisition of a U.S. disregarded entity, article 6.2.2 should not apply to this transaction because Country T, where the target is located, does not treat this transaction as an acquisition of the target's assets.

[60] *See* June 2024 guidance, section 4.2.3, para. 44, para 71.16 to be added to commentary on article 4.4.1.

the 100 book basis (as determined under Country B's local accounting standard) after the transaction for GLOBE purposes. As discussed under Example 2-2, this GLOBE basis in the IP may be more beneficial than the GLOBE DTA under Example 6-1 because the former would give rise to a benefit at the rate of 15 percent (either in the form of amortization or when the IP is later transferred). However, if the local accounting standard does not allow for amortization of IP, thereby giving rise to a GLOBE DTL for the IP, the company would need to examine the effect of the article 4.4.4 DTL recapture rule.

Example 7

Post-November 30, 2021 (but pre-GLOBE), intragroup transfer of self-developed IP.

Example 7-1

Post-November 30, 2021 (but pre-GLOBE), intragroup, cross-border transfer of self-developed IP to an entity that is later subject to an IIR or UTPR.

Facts

In 2022, Country A CE transfers self-developed IP (with a book basis of 0 and an FMV of 100) to Country B CE. Under local tax rules, the transfer is effectuated at FMV. After the transfer, Country B CE's book basis is 0 because the transaction is accounted for at cost under U.S. GAAP; for Country B tax purposes, however, Country B CE obtains a stepped-up basis in the IP equal to its FMV (100). Because of the book-to-tax basis difference, Country B CE records a book DTA of 10.

Country B CE is first subject to an IIR or UTPR in its transition year.

GLOBE Analysis

Because the IP transfer is subject to article 9.1.3, Country B CE's book DTA created by the IP transfer is disregarded for GLOBE purposes. However, under the exception to article 9.1.3 in the February 2023 guidance, if Country A CE paid tax on the IP transfer (or if some other conditions are met), a GLOBE DTA may be generated in the hands of Country B CE, which may then be carried into the transition year.[61]

Example 7-2

Post-November 30, 2021 (but pre-GLOBE), intragroup, cross-border transfer of self-developed IP to an entity that is later subject to QDMTT.

Facts

The facts are the same as Example 7-1 (Country A CE's 2022 transfer of self-developed IP to Country B CE, which would be subject to an IIR or UTPR beginning from Country B CE's transition year), except that Country B CE would be subject to Country B's QDMTT (which is expected to turn off any IIR or UTPR) from its transition year. Country B's QDMTT regime is based on Country B's local accounting standard, which accounts for intragroup transfers at fair value.

GLOBE Analysis

Article 9.1.3 applies to this transaction, so the book stepped-up basis obtained by Country B CE under the local accounting standard is disregarded for GLOBE purposes. Like Example 7-1, however, the exception to article 9.1.3 in the February 2023 guidance may give rise to a GLOBE DTA if the requirements under the exception are met.

Example 8

Post-GLOBE intragroup transfer of self-developed IP.

Example 8-1

Post-GLOBE intragroup, cross-border transfer of self-developed IP to an entity subject to an IIR or UTPR.

Facts

In a post-GLOBE year for Country A CE, Country A CE transfers self-developed IP (with a

[61]If Country A CE was a U.S. entity and Country B CE was a non-U.S. entity, and the intragroup IP transfer was a transaction subject to section 367(d) for U.S. tax purposes (where the U.S. entity generally must recognize annual payments commensurate with the IP's productivity, use, or disposition over its useful life), questions arise as to how the article 9.1.3 exception for tax paid by the transferor is applied to take into account tax arising from section 367(d) deemed royalties, and whether the result changes depending on the transfer's form or when boot is included.

book basis of 0 and an FMV of 100) to Country B CE. Under local tax rules, the transfer is effectuated at FMV. After the transfer, Country B CE's book basis is 0 because the transaction is accounted for at cost under U.S. GAAP; for Country B tax purposes, however, Country B CE obtains a stepped-up basis in the IP equal to its FMV (100). Because of the book-to-tax basis difference, Country B CE records a book DTA of 10.

Country B CE is subject to an IIR or UTPR in the year of the transaction.

GLOBE Analysis

Because this transaction occurs in a post-GLOBE year for Country A CE (the disposing constituent entity), article 9.1.3 is irrelevant.[62] Instead, article 6.3.1 applies. Even though this transaction generally is accounted for at cost as a common control transaction under U.S. GAAP, in a cross-border transaction, Country A CE would recognize GLOBE gain for the FMV of the IP determined under article 3.2.3. Country B CE obtains a GLOBE basis equal to the FMV of the IP determined for Country A CE (although, for U.S. GAAP purposes, it generally would have a historical cost basis of 0 in the IP). As similar examples noted above, if the IP's amortization period for accounting purposes is longer than its period for tax purposes, a GLOBE DTL would be created, potentially subject to the DTL recapture rule under article 4.4.4.

If the transaction had occurred between two entities in the same jurisdiction, the FMV requirement generally would not apply because article 3.2.3 does not apply to same-country transfers unless the transfer generates a loss for financial accounting purposes. Instead, the U.S. GAAP common control rules generally would apply as normal and result in a carryover of historic carrying value (as well as U.S. GAAP deferred tax adjustments in the acquiring entity for a local tax basis step-up).[63]

[62] As discussed, whether the acquiring constituent entity is or is not subject to the GLOBE rules in the year of the transaction is not relevant for purposes of applying article 9.1.3.

[63] An election under article 3.2.8 (which applies when entities are within a tax consolidation) may eliminate the GLOBE effects of these intercompany transfers.

Example 8-2

Post-GLOBE intragroup, cross-border transfer of self-developed IP to an entity subject to QDMTT.

Facts

The facts are the same as those under Example 8-1 (Country A CE's post-GLOBE transfer of self-developed IP to Country B CE, which is subject to an IIR or UTPR), except that Country B CE is subject to Country B's QDMTT (which is expected to switch off any IIR or UTPR) in the year of the transaction. Country B's QDMTT regime is based on Country B's local accounting standard, which accounts for intragroup transfers at fair value.

GLOBE Analysis

Because the transaction is effectuated at FMV and would be recorded at fair value for local accounting standard purposes, Country A CE would recognize a GLOBE gain on that basis and Country B CE would obtain a fair value GLOBE basis in the IP acquired. The same GLOBE DTL implications discussed under Example 8-1 are applicable.

Therefore, the GLOBE consequences between Example 8-1 and Example 8-2 would be consistent, although there would be more administrative burdens placed on the parties under Example 8-1 because they would need to determine GLOBE consequences using basis and deferred tax attributes different from those under U.S. GAAP.

As noted previously, the FMV requirement may not apply to a transaction between two entities in the same jurisdiction because article 3.2.3 generally does not apply to same-country transfers. Nonetheless, local accounting rules apply. To the extent the transfer is reflected in the seller/acquirer's books at net book value (instead of FMV) under the local accounting standard, there may not be any gain to consider for GLOBE purposes.

Example 8-3

Post-GLOBE inbound liquidation of a CFC holding IP to the United States.

Facts

In a post-GLOBE year for Country A CE, Country A CE liquidates into its U.S. corporate shareholder in U.S. MNE Group. Immediately before the liquidation, Country A CE had IP (self-developed or acquired) with an FMV of 100, a tax basis of 0 for U.S. tax purposes, and a U.S. GAAP basis of 0. For U.S. tax purposes, the liquidation is treated as a tax-free transaction, meaning that Country A CE's tax basis in the IP (0) carries over to the U.S. shareholder. The liquidation is exempt from tax in Country A (either because it does not have a corporate income tax or because it exempts capital gains in liquidation).

GLOBE Analysis

For this liquidation to qualify as a GLOBE reorganization under article 6.3.2, Country A CE's shareholder must compute taxable income, after the liquidation, "using [Country A CE's] tax basis in the assets." The U.S. tax basis in the IP (0) that is to be used for U.S. tax computation after the liquidation may differ from Country A's tax basis (or Country A may have no relevant tax basis if it has no corporate income tax). Even if the U.S. tax basis happens to equal the Country A tax basis, it is unclear whether this transaction would meet the GLOBE reorganization requirements because for U.S. tax purposes, the carryover basis is not determined "using" Country A's basis as computed under Country A tax law. Therefore, even though the liquidation is otherwise a tax-free one, it is unclear if the transaction qualifies as an article 6.3.2 GLOBE reorganization.

If the liquidation is governed under article 6.3.1, a 15 percent top-up tax on the value of the IP would arise (assuming the GLOBE basis in the IP is minimal and there are no other items of GLOBE income or covered tax in Country A) from the IP's transfer out of Country A, even though the acquiring U.S. entity does not receive a U.S. tax basis step-up. The U.S. acquiring entity would receive a stepped-up GLOBE basis of 100, resulting in a GLOBE DTL of 15 in the United States. This GLOBE DTL would increase covered taxes in the Unites States in the acquisition year, although it may provide no practical benefit if the U.S. GLOBE ETR is already over 15 percent.

A narrow application of the GLOBE reorganization rule results in a mandatory exit tax under pillar 2 and makes it difficult for companies to achieve tax-efficient, business-motivated reorganizations, including when the IP is being moved to the United States. Clarity from the OECD/G20 inclusive framework on the proper interpretation of the GLOBE reorganization definition would be welcome.

Conclusion

The examples in this article highlight the complexities of analyzing IP transactions under pillar 2. Even using the simplistic scenarios outlined here, the rules leave many questions unanswered, particularly in the context of deemed asset acquisitions, partnership transactions, reorganizations, shadow accounting, transfers governed under section 367(d), and transfers when either a seller or buyer (but not both) are within GLOBE.

Despite the enormous volume of administrative guidance (four rounds and counting) from the OECD/G20 inclusive framework, more attention is needed on the pillar 2 treatment of M&A-related transactions, because they are both common and highly impactful to many U.S. MNEs. We welcome additional clarity from the OECD/G20 inclusive framework and hope this article will generate more attention to these transactional issues. ■