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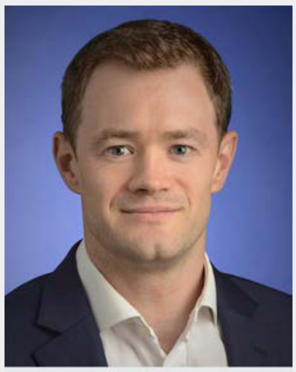
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In this article, the authors consider the implementation of the pillar 2 global anti-base-erosion rules and ways in which revisions to them may create more consistency with policy objectives.

From December 31 the pillar 2 — or global anti-base-erosion (GLOBE) — rules will come into effect in jurisdictions around the world. These rules seek to ensure that in-scope multinational enterprise groups pay a minimum effective tax rate of 15 percent in every jurisdiction where they operate.

This article explains how the rules can impose additional tax on MNE groups when the ultimate parent entity (UPE) is a flow-through entity, a common structure in the asset management industry, even when the owners of the group are already subject to tax on this income at rates that are well over 15 percent. The article explains how this outcome, which seems inconsistent with the policy objectives of pillar 2, could be addressed through revisions to the rules.

Background

In December 2021 the OECD published the GLOBE Model Rules[1] as approved by the OECD/G-20 Inclusive Framework. The GLOBE Rules aim to ensure that in-scope MNE groups pay a minimum level of tax in each jurisdiction in which they operate by imposing a top-up tax when the ETR for a given jurisdiction, as computed under said rules, falls below 15 percent. Countries around the world (other than the United States) are now implementing the GLOBE Rules into their own domestic tax laws, taking effect for fiscal years beginning on or after December 31.

The GLOBE Rules apply to MNE groups that report annual revenue of €750 million or more in the consolidated financial statements of the group's UPE (generally, the parent entity of a group of entities that file consolidated financial statements) in at least two of the preceding four

[1] OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Global Anti-Base Erosion Model Rules (Pillar Two)" (2021).

fiscal years. Each entity whose financial results are consolidated line-by-line in the UPE's consolidated financial statements (as well as each permanent establishment of any such entity) is referred to as a constituent entity (CE). The GLOBE Rules do not apply to certain entities that would otherwise be CEs, like governmental entities, international organizations, real estate investment vehicles that are UPEs, investment funds that are UPEs, nonprofit organizations, and pension funds.[2]

The GLOBE Rules compute an ETR for each jurisdiction in which the MNE group operates by aggregating the separate entity financial statement income or loss (subject to numerous adjustments, "GLOBE Income or Loss") of each CE in a jurisdiction and comparing it with the aggregate amount of adjusted covered taxes calculated for each CE. Adjusted covered taxes of each CE include not only current and deferred tax expenses accrued in the separate entity financial statement of a CE itself but also include taxes paid or accrued by a direct or indirect parent entity of the CE on the CE's taxable income if, and only if, the parent entity is also a CE of that MNE group. So, taxes paid by a CE that is a direct or indirect U.S. shareholder of a CE that is a controlled foreign corporation under the United States' subpart F or global intangible low-taxed income regimes are allocated to the relevant CE and included in its adjusted covered taxes to determine the relevant jurisdictional ETR. U.S. federal income tax (USFIT) paid on income of a foreign branch, PE, or an entity disregarded from its owner entity for USFIT purposes (a "disregarded entity," or DRE) is also allocated to the respective branch, PE or DRE when the U.S. taxpayer is a CE of the same group.

If the jurisdictional ETR of a MNE group falls below 15 percent, the GLOBE Rules impose a "top-up tax" on other CEs of the MNE group regarding the GLOBE Income of each CE in the low-taxed jurisdiction (in other words, a low-taxed CE). The GLOBE Rules include two charging mechanisms to collect the top-up tax, an income inclusion rule and a UTPR, formerly called the undertaxed profits rule. An enacting country's IIR imposes tax on a resident-parent of a low-taxed CE and is functionally equivalent to a CFC regime. If the MNE group's total top-up tax for a low-taxed CE is not fully collected under an IIR, an enacting country's UTPR collects top-up tax from a resident CE by denying deductions of the resident CE or otherwise creating "phantom" income.

Finally, the GLOBE Rules provide that any top-up tax owing under an IIR or UTPR is reduced dollar-for-dollar by amounts collected from a low-taxed CE under a qualified domestic minimum top-up tax (QDMTT) enacted by the low-taxed jurisdiction. OECD Administrative Guidance released in July[3] provides a safe harbor that deems top-up tax payable for a jurisdiction under an IIR or UTPR to be zero if the jurisdiction has implemented a QDMTT that satisfies certain requirements.

Implementing jurisdictions have targeted fiscal years beginning on or after December 31, 2023, to apply the IIR, and fiscal years beginning on or after December 31, 2024, to apply the UTPR. Numerous jurisdictions have announced plans to implement a QDMTT to apply starting in 2024 or 2025.

No Double Taxation for U.S. Corporate UPEs

Because the United States also taxes the worldwide income of a U.S. taxpayer, overtaxation may result for U.S. MNE groups in scope of pillar 2 absent either the GLOBE Rules or the USFIT system providing a credit mechanism for taxes imposed under the other. The GLOBE Rules attempt to eliminate double taxation differently for tax imposed under an IIR or UTPR on the one hand, and a QDMTT on the other hand. These mechanisms work well, in theory, for an MNE group whose UPE is a U.S. corporation.[4]

The GLOBE Rules seek to eliminate the potential for double taxation under an IIR or

[2]A subsidiary of a real estate investment vehicle or investment fund that is a UPE may also be an excluded entity if certain ownership requirements are satisfied, and the subsidiary's activities are limited to holding investments on behalf of the UPE or the performance of services that are ancillary to the activities of the UPE.

[3]OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), July 2023" (2023).

[4]Avoiding double taxation when top-up tax is imposed under a QDMTT depends on whether the U.S. taxpayer can use a foreign tax credit for tax imposed under the QDMTT.

UTPR by allocating cross-border taxes paid by a CE for income of another CE to such other CE under article 4.3.2; however, article 4.3.2 only applies if the CE paying the tax is a member of the same MNE group as the CE earning the subject income. For example, if a U.S. corporation ("U.S. Co.") has a subpart F inclusion for a CE that is a CFC for USFIT purposes, and U.S. Co. and CFC are CEs of the same MNE group, U.S. Co.'s USFIT related to its subpart F inclusion (reduced by foreign tax credits used against this income) is allocated to such CFC under article 4.3.2(c) and included in the GLOBE ETR calculation of the CFC jurisdiction under an IIR or UTPR. If the CFC earned tested income causing a GILTI inclusion for U.S. Co., GILTI taxes would also be allocated to the CFC, though special allocation rules apply to determine the amount of GILTI tax allocated to the CFC.[5] Similarly, USFIT paid by U.S. Co. for a branch, PE, or "hybrid entity"[6] (for example, foreign DRE) is also allocated to the relevant branch or hybrid entity under article 4.3.2. Because these U.S. taxes may reduce the amount of top-up tax owing under an IIR or UTPR, the Commentary to the GLOBE Rules provides a blanket statement that the United States should not provide an FTC for top-up tax owing under an IIR or UTPR.[7] This avoids the circularity that would result if the U.S. taxes initially considered to determine the top-up tax under an IIR or UTPR were subsequently reduced by an FTC for these top-up taxes, thereby requiring iterative recomputations of the top-up tax.[8] However, top-up tax will only arise under an IIR or UTPR to the extent USFIT allocations to CEs operating in a given jurisdiction are insufficient to bring the jurisdictional ETR to 15 percent.

In contrast, OECD Administrative Guidance released on February 1 provides that cross-border taxes may not be taken into account in computing a jurisdiction's ETR under a QDMTT.[9] Instead, the guidance provides that a jurisdiction may wish to allow an FTC for amounts paid under a QDMTT. In Notice 2023-80, 2023-52 IRB 1, the IRS announced that Treasury's intent to issue proposed regulations that would allow a U.S. taxpayer to claim an FTC for an amount of QDMTT that is a foreign income tax because the QDMTT does not take into account USFIT liability of the U.S. taxpayer. If the U.S. taxpayer has sufficient FTC capacity to claim a credit against its U.S. tax liability for the QDMTT (after considering U.S. FTC limitation rules), no double taxation should result from a QDMTT.[10]

It is anticipated that the QDMTT will become the primary mechanism by which top-up tax is paid because many jurisdictions have announced their intention to enact a QDMTT, though many important jurisdictions, like Singapore, only plan on implementing their QDMTT from 2025. Some jurisdictions, like the Bahamas, Bermuda, and the Cayman Islands have not announced plans to enact a QDMTT; though Bermuda is introducing a corporate income tax, and the Bahamas is consulting on corporate tax reform.

[5]In February the OECD released administrative guidance providing temporary rules for the allocation of GILTI tax as a "blended CFC tax." Under these rules, GILTI taxes are generally allocated to CEs that otherwise have a GLOBE ETR below 13.125 percent on a pro rata basis (considering each entity's amount of tested income and the shortfall of its ETR compared to 13.125 percent).

[6]Article 10.2.5 generally defines a hybrid entity as an entity that is treated as fiscally transparent in its owner's jurisdiction but as a separate taxable entity in its own jurisdiction.

[7]However, pursuant to Notice 2023-80, 2023-52 IRB 1, Treasury intends to issue proposed regulations providing that a taxpayer may take an FTC for top-up tax imposed under an IIR that is a "foreign income tax" (within the meaning of reg. section 1.901-2) if USFIT tax paid by that taxpayer would not be taken into account in determining the amount of top-up tax under the IIR (that is, because the taxpayer is not a member of the MNE group). The notice does not provide guidance with respect to tax paid under a UTPR.

[8]OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition" (2022): "It is intended that the GLOBE Rules apply after the application of the Subject to Tax Rule and domestic tax regimes, including regimes for the taxation of PEs or CFCs. Therefore, to preserve the intended rule order, domestic tax regimes should not provide a foreign tax credit for any tax imposed under a Qualified UTPR or IIR which is implemented in a foreign jurisdiction, otherwise the application of that domestic tax regime would create circularity issues since those Taxes have already been determined prior to applying the Qualified UTPR or IIR."

[9]OECD (2023), *supra* note 3.

[10]Taxpayers often have insufficient FTC limitation in the branch and GILTI baskets, rendering FTCs for QDMTTs paid with respect to branch basket and GILTI basket income useless.

Double Taxation on GLOBE Income of Flow-Through UPEs

As noted above, USFIT tax paid for operations of a MNE group by a U.S. person that is not a CE of the group are not taken into account to determine top-up tax owing under an IIR or UTPR, increasing the likelihood that top-up tax is owed under an IIR or UTPR. This scenario may commonly arise for industries that typically operate within flow-through structures, like the asset management industry. In the asset management industry, it is common for U.S. individuals to invest through a partnership or tiered partnership structure, and USFIT is thereby imposed on the income earned through the partnership at the level of the individual investor who is not a CE of the MNE group. In these circumstances, USFIT paid by the individual is not taken into account when determining whether top-up tax is owed on the direct and indirect profits of the partnership under an IIR or UTPR. A similar result occurs for a U.S. Co. that holds a minority interest in a foreign corporation that is a CE of a MNE group in which the U.S. Co. is not a CE of the same MNE group by virtue of its minority ownership.

As described above, Notice 2023-80 announces Treasury's intent to propose regulations that would allow a U.S. taxpayer to claim an FTC for a QDMTT that is a foreign income tax, as well as for top-up tax under an IIR that is a foreign income tax when the computation of top-up tax under the IIR would not take into account any USFIT liability of that particular U.S. taxpayer (that is, in circumstances in which no circularity arises as no U.S. tax paid by that taxpayer is allocated to the relevant low-taxed jurisdiction in applying the IIR because the taxpayer is a non-MNE group member). If such U.S. taxpayer has sufficient FTC capacity to credit top-up tax arising under the IIR, double taxation would be avoided. However, the U.S. taxpayer may not have sufficient FTC capacity to credit the top-up tax, leaving this U.S. taxpayer disadvantaged in comparison to a U.S. taxpayer that is a member of the MNE group. Moreover, Notice 2023-80 does not provide guidance as to the creditability of top-up tax imposed under a UTPR. A UTPR does not accord with traditional notions of a net income tax because it is calculated through the broad disallowance of business deductions of, or the attribution of phantom income to, the payee. Therefore, tax imposed under a UTPR may not be creditable if it does not qualify as a foreign income tax, circular or not.

The remainder of this article focuses on the potential for overtaxation inherent in the GLOBE Rules that arises when the UPE is a "flow-through entity" (that is, an entity that is treated as fiscally transparent in the jurisdiction where it was created or organized,[11] or a "flow-through UPE"); the incomplete solution provided in the GLOBE Rules under Chapter 7 to alleviate this excess taxation; and a proposed solution that would bring the treatment of a U.S. MNE group with a flow-through UPE in line with the treatment of a U.S. MNE group with a corporate UPE.

Incomplete Solution for Flow-Through UPEs

When an MNE group has a flow-through UPE, its GLOBE Income may not be subject to any tax because the taxpayer for the income is usually the owner(s) of the UPE. Because taxes paid by a UPE's owners are not allocated to the UPE under article 4.3.2, income earned by the UPE may have an ETR of zero, triggering top-up tax at a 15 percent rate, in addition to the tax already paid by the interest holder. A U.S. individual holding an interest in a flow-through UPE may already pay USFIT on this income at a rate in excess of 37 percent, and if a non-creditable top-up tax is assessed on this income, the combined ETR would be in excess of 52 percent. The Model Rules acknowledge this inherent mismatch between income and taxes for a flow-through UPE and provide limited relief in Chapter 7.

Under article 7.1.1, GLOBE Income or Loss of a flow-through UPE may be reduced to zero (together with a corresponding reduction to any covered taxes of the UPE) if the holder of an interest in the UPE includes the income of the UPE in its taxable income on a current basis at a rate of 15 percent or greater (and certain other conditions are met) or when the holder is a natural person that is resident in the UPE jurisdiction and has ownership interests of no more than 5 percent (based on rights to the flow-through UPE's profits

[11] *See* OECD GLOBE Model Rules, article 10.2.1.

and assets).[12] Importantly, the Model Rules do not specify if article 7.1 may take into account taxes paid by an indirect holder of the flow-through UPE or whether the taxpayer must be a direct owner. The United Kingdom analog to article 7.1 is explicit in its consideration of taxes paid by an indirect holder.[13]

Article 7.1.1 is essential to avoid the overtaxation that would otherwise result if top-up tax were imposed on the income of a flow-through UPE whose profits were already subject to tax in the hands of an interest holder (at a rate in excess of 37 percent for U.S. individuals). However, article 7.1.1 only applies to GLOBE Income of the UPE, not subsidiary CEs of the UPE, even when the subsidiary is a flow-through entity owned by the UPE, meaning its income is taxable only in the hands of the interest holder of the UPE. To address this issue, the Model Rules provide that the income earned by a subsidiary CE can be reduced under article 7.1.1 if it is allocated from the subsidiary to the UPE under article 3.5.

Under article 3.5.1(b), a flow-through entity's financial statement income that is not attributable to a PE of the entity is allocated to its owners if the flow-through entity is a "tax transparent entity" (that is, also treated as fiscally transparent in the jurisdiction where its direct owner is located).[14] However, this rule does not apply if the flow-through entity is the UPE of the MNE group (necessitating article 7.1 in the first place) or if it is a "reverse hybrid."[15] Article 3.5.1(b) may apply successively to GLOBE Income of a tax transparent entity that is not owned directly by the flow-through UPE as long as all intermediate entities between the lower-tier tax transparent entity and the UPE are also tax transparent entities.

[12]Note that article 7.1.1 may also apply to reduce the GLOBE Income of a flow-through UPE if the holder of the ownership interest is a government entity, an international organization, a nonprofit, or a pension fund (and other conditions are met). *See* OECD GLOBE Model Rules, article 7.1.1(c).

[13]*See* United Kingdom Finance (No. 2) Act 2023, Part 3, Ch. 4, Clause 170(2) (specifically referring to "the holder of an ownership interest (direct or indirect) in the ultimate parent").

[14]*See* OECD GLOBE Model Rules, article 10.2.1(a).

[15]The Model Rules define "reverse hybrid" as an entity that is treated as fiscally transparent in the jurisdiction where it was created but not in the jurisdiction where its owner is located. *See* OECD GLOBE Model Rules, article 10.2.1(b).

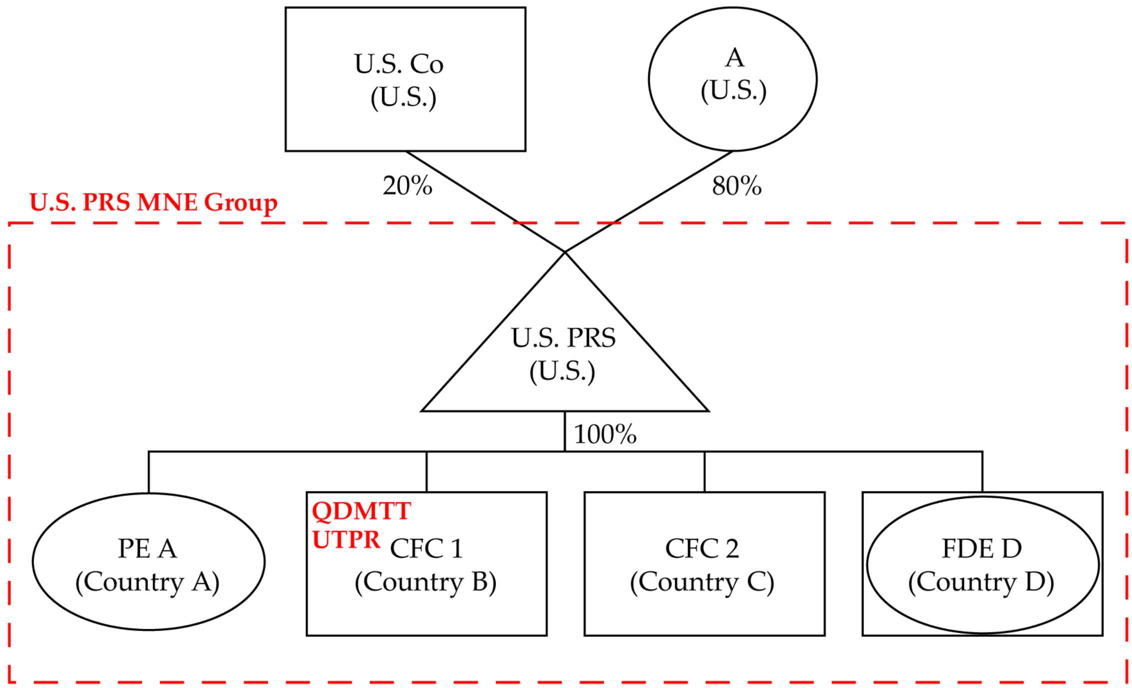
Income of a flow-through entity attributable to a PE operated by this entity is allocated to the PE under article 3.5.1(a). Because this income is not allocated to a flow-through UPE, article 7.1.4 extends the application of article 7.1.1 to a PE, provided that the flow-through UPE either operates directly through the PE or owns an interest in the income generated by the PE solely through tax transparent entities. So, article 7.1.1 may apply to reduce GLOBE Income earned directly by a flow-through UPE, income allocated to the flow-through UPE under article 3.5.1(b) when the income is earned solely through a chain of tax transparent entities, or income earned through a PE operated by the flow-through UPE or earned indirectly through a chain of tax transparent entities. However, no relief is provided for income earned by a corporate entity, a hybrid entity, or any subsidiary thereof, even though holders of the flow-through UPE may have otherwise satisfied the conditions under article 7.1.1 (including that the income is subject to tax in the hands of the holder on a current basis).

Example

The following example illustrates the GLOBE Rules' failure to eliminate overtaxation regarding the GLOBE Income or Loss of a MNE group with a flow-through UPE whose holders are subject to USFIT on all the income of the MNE group on a current basis. Under the facts of the example, the MNE group operates in the United States, as well as Country A, Country B, Country C, and Country D, and the UPE of the MNE group is a U.S. partnership (U.S. PRS) owned directly by U.S. Co. and an individual who is a U.S. citizen (A). Under the facts of the example, Country B has adopted a QDMTT, IIR, and UTPR into its domestic legislation, and no other countries have enacted the pillar 2 regime. For simplicity, the substance-based income exclusion[16] for all jurisdictions is assumed to be zero.

[16]The "substance-based income exclusion" provided in article 5.3 of the GLOBE Rules reduces the amount of income of a CE subject to top-up tax when the MNE group has substance in such jurisdiction, measured through payroll and tangible asset basis.

U.S. PRS MNE Group



	U.S. PRS (U.S.)	PE A (Country A)	CFC 1 (Country B)	CFC 2 (Country C)	FDE D (Country D)
GLOBE Income	$100	$100	$160	$120	$200
Local CIT Rate	-	<15%	<15%	<15%	<15%

PE (Country A)

Under article 3.5.1(a), the $100 of GLOBE Income attributable to PE A is allocated under article 3.5.1(a) (not U.S. PRS). However, because U.S. Co. and A are subject to current USFIT on the full amount of PE A's GLOBE Income of $100, PE A's GLOBE Income (and covered taxes) are reduced to zero under articles 7.1.4 and 7.1.1, meaning no top-up tax results for income earned by PE A. As a result, U.S. PRS's income attributable to PE A is only subject to USFIT at the level of U.S. PRS's holders, and the application of article 7.1 avoids overtaxation.

CFC 1 (Country B) and CFC 2 (Country C)

Articles 3.5 and 7.1 do not apply to reduce CFC 1's or CFC 2's GLOBE Income because neither is a flow-through entity. Further, none of the CFC tax paid by U.S. Co. or A would be allocated to CFC 1 or CFC 2 under article 4.3.2(c) because neither are members of the U.S. PRS MNE group.

It is worth noting that if U.S. Co. and A *were* members of the MNE group, the outcome would be the same for CFC 1 because cross-border taxes (like GILTI paid by a U.S. shareholder) are not considered in determining the ETR for Country B's QDMTT. As, in line with Notice 2023-80, tax imposed under a QDMTT is expected to be creditable, this top-up tax does not result in an increased worldwide tax burden for U.S. Co. or A if both have sufficient FTC limitation (and A makes a section 962 election and becomes eligible for an FTC for foreign taxes paid by CFC 1).

No USFIT paid by U.S. Co. or A is considered to calculate the Country C ETR because neither is a member of the U.S. PRS MNE group; therefore, a top-up tax is imposed under Country B's UTPR for low-taxed CFC 2. If either U.S. Co. or A were a member of the U.S. PRS MNE group, top-up tax owing for CFC 2 would be reduced (potentially to zero) because of USFIT paid by U.S. Co. or A. Assuming that FTCs will not be permitted in the U.S. for the amount of top-up tax collected by Country B under its UTPR, U.S. Co. and A are subject to overtaxation by operating in both Country B and Country C. As mentioned, the combined rate of tax for A may be in excess of 52 percent, and U.S. PRS may be encouraged to relocate operations out of one or both countries.

FDE D (Country D)

Because foreign disregarded entity D (FDE D) is a hybrid entity, FDE D's GLOBE Income is not allocated to U.S. PRS under article 3.5.1, and therefore article 7.1 cannot reduce the GLOBE Income to zero. Like CFC 2, top-up tax is collected from CFC 1 under the Country B UTPR because FDE D's ETR is below 15 percent. Again, as with CFC 2, top-up tax may have been avoided if U.S. Co. or A were a member of the U.S. PRS MNE group and USFIT tax paid by either was allocated to FDE D to compute the Country D ETR determined under the Country B UTPR.

U.S. PRS

Because U.S. PRS is a flow-through UPE, article 3.5.1(b) would not apply to allocate its income to its owners. However, article 7.1.1 applies to reduce its GLOBE Income to zero because U.S. Co. and A are subject to USFIT on the full amount of U.S. PRS's income at a nominal rate of at least 15 percent, resulting in no top-up tax imposed on its income under Country B's UTPR.

Indirect Holders

This example is simplistic, and perhaps unrealistic, because both U.S. Co. and A own their interest in U.S. PRS directly. Often, an investor in a flow-through UPE will own its interest indirectly through another U.S. tax transparent entity, like a partnership or U.S. limited liability company. For example, investors in the asset management sector often invest through a fund-of-funds, or individual investors may hold their interests through an employee partnership (important components of compensation for fund employees). Absent clarification in future OECD administrative guidance that article 7.1.1 takes into account taxes paid by indirect holders, the utility of article 7.1 may be limited. That the United Kingdom's legislation implementing the GLOBE Rules allows taxes paid by an indirect holder of a flow-through UPE to be taken into account provides hope that similar clarification will be provided under the Model Rules.

Proposed Solutions to Achieve Parity

For article 7.1 to have meaningful application, it should be clarified that it accounts for taxes paid by an indirect holder of a flow-through UPE. Absent this, taxpayers may have to undergo uneconomic restructurings to hold their interests in the flow-through UPE directly to qualify for the relief that the Model Rules seek to provide. Further, restructurings may not even be possible if the taxpayer invests through an employee partnership or fund-of-funds.

Aside from clearly extending article 7.1 to an indirect holder, the most obvious way to achieve parity with an MNE group whose UPE is a U.S. Co. would be to extend the allocation (under article 4.3.2) of taxes paid by the owner of a CE to cases in which the owner is not a member of the MNE group, but it is nonetheless administratively possible for the UPE to verify the taxes paid by the owner. However, the OECD Commentary to article 7.1 expressly objects to this approach.

An analogous outcome could be achieved by extending article 7.1.1 to GLOBE Income earned by any CE of an MNE group with a flow-through UPE, including when the CE is a corporate entity, hybrid entity, or a subsidiary thereof. This result could be achieved without requiring changes to article 3.5.1(b) to allocate such an entity's income to the flow-through UPE. Instead, article 7.1.4, which currently allows application of article 7.1.1 directly to income of a PE (because GLOBE Income of a PE is also ineligible to be allocated to a UPE under article 3.5.1(b)) could be extended to apply to GLOBE Income of any CE that is not allocated to a flow-through UPE under article 3.5.1(b), as long as the UPE is able to demonstrate the taxes paid by its direct and indirect holders. This extension of article 7.1.4 would achieve analogous outcomes (that is, no collection of top-up tax) when the income of a hybrid entity or corporate entity is subject to current taxation in the hands of its indirect owner at a rate of at least 15 percent, regardless of whether the owner is a member of the MNE group. Without this extension, groups operating through a flow-through UPE are materially disadvantaged compared with MNE groups with a U.S. corporate parent, a particularly problematic issue for the asset management industry. This proposed extension could be limited to the application of the IIR and UTPR, preserving a CE's home jurisdiction the "first bite" at the minimum tax apple if it chooses to implement a QDMTT.

Why is this extension important? Without it, participants in the asset management industry may reconsider their operations in jurisdictions that enact the pillar 2 rules. In an industry whose key revenue generating asset is often a relatively small number of high value people, shutting up shop and moving operations (for example, back to the United States) is not out of the question. In some instances, the additional tax costs created by imposing a top-up tax of 15 percentage points on income that is already taxed at rates above 37 percent could mean that operations in jurisdictions that implement pillar 2, particularly the UTPR, are no longer economically viable. This restructuring would be suboptimal for businesses and countries, which would lose well-paid jobs and the accompanying tax revenue. It is for these reasons that we remain optimistic that a solution for this outcome — like that outlined above, which we believe to be unintended and unjustified — will ultimately be found.[17] ■

[17] The foregoing information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the author(s) only and does not necessarily represent the views or professional advice of KPMG LLP.