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In this article, the authors summarize the qualified domestic minimum top-up tax rules in Canada, France, Germany, Italy, Spain, and the United Kingdom, providing examples of typical mergers and acquisitions transactions to illustrate their application.

Introduction

The model rules for the globally coordinated system of taxation developed by the OECD set out provisions for allocating top-up tax arising under both the income inclusion rule and the UTPR (commonly assumed to mean the undertaxed profits rule) to individual constituent entities (CEs) in a multinational enterprise group. The model rules also mention qualified domestic minimum top-up tax (QDMTT) but do not contain equivalent provisions for its allocation.[1]

The reason why a QDMTT must be allocated to individual CEs is that, with certain specific exceptions, top-up tax is calculated on an aggregated basis across all the CEs in a given jurisdiction, not on an entity basis. This is the well-known "jurisdictional blending" concept. The exceptions set out in the model rules are for stateless CEs,[2] investment entities,[3] and minority-owned CEs.[4] The QDMTT for these entities is computed separately from that for other CEs in that jurisdiction (either on a stand-alone basis or together with other entities that are excluded from the main calculation).[5] For the purposes of this article, it is assumed that the CEs discussed do not fall within any exceptions.

When one or more CEs — referred to in this article as the "target entities" — are sold by an MNE group, it is important for both the seller and the purchaser to understand the liability for QDMTT that could arise for the target entities. In a typical transaction, the price for shares of target entities is determined as the enterprise value of the target entities adjusted by their net debt and the difference between their actual working capital and normalized working capital. The adjustment can be calculated at a balance sheet date that is in the past (the "locked box" pricing mechanism) or at completion of the transaction

[1]While the model rules contain no such provisions, there are some generic considerations in the 2025 Consolidated Commentary. See OECD, "Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2025): Inclusive Framework on BEPS," chapter 10, paras. 118.11-118.12 (providing illustrative examples).

[2]Article 5.1.1.

[3]Article 7.4.2.

[4]Article 5.6. The U.K. implementation also provides for the QDMTT of securitization companies to be computed on a stand-alone basis (Finance (No.2) Act 2023, section 267A), in accordance with para. 118.40.10 of the consolidated commentary (2025).

[5]The U.K. rules follow this by defining standard members of an MNE group as CEs other than investment entities and minority-owned members. Stateless entities are treated as being the sole members of a group in a nominal territory. (*See* Finance (No.2) Act 2023, sections 132, 220-225, and 236.)

(the "completion accounts" or "closing accounts" pricing mechanism).

This article assumes that the latter is used — in other words, that the price is determined at completion of the transaction. In this case, the corporate tax creditor at the time of completion is typically included in net debt and therefore a deduction for this amount is factored into the price ultimately paid for the target entities by the purchaser. If the seller (and therefore the target entities as CEs) is within the scope of pillar 2 the corporate tax creditor may need to include an accrual for QDMTT for which the target entities are liable. This liability could arise owing to the allocation of liability under the domestic implementation of pillar 2 (as further described below) or under a contractual arrangement for the allocation of pillar 2 tax (for example, under some form of tax-sharing agreement). It is therefore important for both seller and purchaser to know the quantum of QDMTT that the target entities are liable for in the periods leading up to completion of the transaction.

Example 1

The enterprise value of Target is $1 million, based on its having zero net debt and a normal level of working capital. At completion, net debt excluding the pillar 2 accrual is $300,000. The accrual for the pillar 2 QDMTT liability of Target up to completion is $100,000, giving total net debt of $400,000. Actual working capital is equal to the normal level of working capital. The equity price for Target is therefore $600,000, calculated as $1 million (enterprise value) less $400,000 (net debt).

Seller receives $600,000. If Target pays its pillar 2 QDMTT liability of $100,000, Seller has no further pillar 2 QDMTT liability for Target, unless an adjustment to the liability arises and Seller has given an indemnity for this to Purchaser.

The above example ignores the practical challenge of computing the accrual for pillar 2 QDMTT in the completion accounts. A key factor will be whether completion coincides with the seller's fiscal year-end. If it does, the pillar 2 QDMTT accrual in the Target group could be carried out as part of a wider workstream to prepare the year-end tax accrual. There may be a challenge depending on the timing of the preparation of the completion accounts (which would normally be specified in the sale and purchase agreement and the timing of the statutory accounts (which may be determined by other factors, like company laws, regulations, or market expectations in the case of listed groups).

However, if the completion date is not at the seller's fiscal year-end, then there are two additional challenges:

- The fact of having to prepare a pillar 2 calculation outside the normal financial reporting cycle. This is a consequence of engaging in the transaction and is not unique to pillar 2, meaning there is a wider requirement to prepare completion accounts.
- The fact, which is specific to pillar 2, that the calculation of QDMTT for any jurisdiction in which there are both (a) CEs that are target entities and (b) CEs that are part of the seller's retained group depends on the financial results of, respectively, (1) the CEs that are target entities up to the date of completion and (2) the CEs in the seller's retained group up to the end of its fiscal year.[6] This means that the appropriate pillar 2 accrual up to the completion date cannot be known until the end of the fiscal year. This may be too long to wait for the completion accounts, which in a typical [sale and purchase agreement] are required to be prepared within a period of several months after completion. In practice this may mean that an estimate must be made followed by a true-up.

Before analyzing the allocation of QDMTT, it is worth noting that a similar allocation question arises for the UTPR, which this article does not cover. It also does not cover any issues relating to the IIR.

The Allocation of QDMTT — Overview

As the model rules do not specify how QDMTT is allocated, it is left to each jurisdiction

[6] Consolidated commentary (2025), at 205-206, paras. 47-49.

Table 1. Figures for Example 2

Entity	ACT (USD in millions)	GLOBE Income (USD in millions)	ETR	Top-Up Tax Percentage
CE1 (stand-alone)	0.3	2	15%	0%
CE2 (stand-alone)	0.1	2	5%	10%
CE1 and CE2 (combined)	0.4	4	10%	5%

implementing a QDMTT to determine how any QDMTT liability is allocated between CEs in that jurisdiction, although there is some discussion of allocation methods in the consolidated commentary.[7]

The model rules contain, in article 5.2.4, a rule for the allocation of a jurisdiction's top-up tax to a CE, but this is only for the IIR. Nonetheless, it is useful to examine this rule because it is used for the allocation of QDMTT in Canada and was (until the law changed) used for the same purpose in both the United Kingdom and France.

The allocation method in article 5.2.4 uses global anti-base-erosion (GLOBE) income as the allocation key. The total top-up tax for a jurisdiction is allocated to each CE based on the GLOBE income of the CE divided by the aggregate GLOBE income of all CEs in that jurisdiction. It is worth noting that GLOBE income can only be a positive number; if it were negative, it would be a GLOBE loss. Any CE with a GLOBE loss is excluded from the calculation and cannot be allocated top-up tax (outside of the specific situation covered in article 4.1.5 of the model rules, in which an MNE group has too high a tax credit in relation to an overall GLOBE loss, with the allocation covered by article 5.4.3, which is not covered in this article).

As the default allocation is based on GLOBE income, it is possible for a CE that on a stand-alone basis has an effective tax rate for GLOBE purposes of 15 percent or more to be allocated top-up tax for the IIR. This might be considered surprising, because a CE with a stand-alone ETR of 15 percent would not suffer a top-up tax. Nonetheless, that is the effect of the allocation under article 5.2.4.

There are alternative allocation mechanisms for QDMTT that are mentioned in the consolidated commentary[8]:

- Joint and several liability. This is the approach taken by Italy.
- Allocation only to CEs with an ETR below 15 percent. The approach taken by the United Kingdom and France is broadly along these lines, but the details are slightly different.
- Allocation based on the ratio of the excess profits of a CE to the total excess profits of all CEs in the jurisdiction.

The consolidated commentary also mentions the possibility of an allocation only to wholly owned CEs, using one of the allocation keys already mentioned. It may be observed that an allocation based on excess profits could result in a CE that has a stand-alone ETR of 15 percent or more nonetheless being allocated top-up tax (which, as noted above, can occur when using an allocation under article 5.2.4). This is shown in Example 2.

Example 2

Using the figures from Example 1, suppose that Target is CE1 in Seller's group and that Seller has one other constituent entity (CE2) in the same jurisdiction as CE1, but CE2 is not being sold. The adjusted covered tax (ACT), GLOBE income, and ETR of the CEs for a given fiscal year are shown in Table 1. Substance-based income exclusion (SBIE) is assumed to be zero.

Using these figures, the top-up tax percentage for the combined group (CE1

[7] *Id.* at pages 293-294, paras. 118.11 and 118.12.

[8] *Id.* at para. 118.12.

Table 2. Summary of Local Implementation of QDMTT

Country	Joint and Several Liability	Specific Allocation of Primary Liability	Allocation Key	Election to Allocate Entire Liability to Single Entity
Canada	Yes	Yes	Article 5.2.4	No
France	No	Yes	Was article 5.2.4; now ETR-based	Yes
Germany	Yes	Yes	Article 5.2.4	No
Italy	Yes	No	None	No
Spain	Yes	Yes	Article 5.2.4	No
U.K.	No	Yes	Was article 5.2.4; now ETR-based	Yes

and CE2) is 5 percent. The top-up tax on their combined GLOBE income of $4 million is $200,000 If the local implementation of QDMTT allocates top-up tax based on GLOBE income (as under article 5.2.4), then half of the top-up tax ($100,000) is allocated to CE1, and half ($100,000) to CE2. This may be surprising to CE1, because it has an ETR of 15 percent and therefore on a stand-alone basis would not have paid any top-up tax under a QDMTT.

In this case, the same outcome would arise if the allocation key were that of the excess profit rather than GLOBE income, because excess profit and GLOBE income are identical if SBIE is zero (as is assumed).

Comparison of Allocation Methods

Below we provide an overview of the allocation methods for Canada, France, Germany, Italy, Spain, and the United Kingdom, summarized in Table 2. Overall, there is considerable variation in the approaches taken, and this emphasizes the need to understand local implementation when dealing with multiple jurisdictions in a mergers and acquisitions context.

It is important to recall that this article does not comment on specific types of entity (like investment entities), for which separate rules apply.

Canadian Implementation

Canada has implemented the method in article 5.2.4 of the model rules for allocating QDMTT to individual Canadian CEs in an MNE group.[9]

The Canadian implementation of the pillar 2 rules is contained in the Global Minimum Tax Act (GMTA), which is a stand-alone law. The GMTA includes a Canadian domestic minimum top-up tax that imposes a top-up tax on the low-taxed income of Canadian CEs.[10] It is intended to be a QDMTT as defined in the model rules and to qualify for the QDMTT safe harbor,[11] which has been confirmed by the OECD.[12]

The Canadian QDMTT is in effect for fiscal years of MNE groups that begin on or after December 31, 2023.[13]

The QDMTT of any individual Canadian CE is the top-up tax determined for IIR purposes, subject to certain adjustments.[14] Specifically, if the net GLOBE income of the Canadian CEs for the fiscal year is greater than zero, the top-up tax for any individual Canadian CE is the Canadian top-

[9] Global Minimum Tax Act, subsection 52(1), which refers to the top-up amount determined for the IIR under subsection 30(1).

[10] *Id.* at part 3.

[11] *Id.* at para. 50(a).

[12] Under the central record listed on OECD, "Central Record of Legislation With Transitional Qualified Status," at Qualified Domestic Minimum Top-Up Tax Rules and QDMTT Safe Harbours (updated Mar. 31, 2025).

[13] GMTA, subsection 81(2).

[14] *Id.* at subsection 52(1).

up tax (for all the Canadian CEs) multiplied by the GLOBE income of the CE and divided by the total GLOBE income of all the CEs.[15]

The Canadian rules specify which entity must pay the Canadian QDMTT[16]: Generally, it is the Canadian CE to which the QDMTT liability has been allocated, unless the CE is not normally subject to tax (for example, if it is a partnership).[17]

We highlight two specific differences between the Canadian and U.K. implementations, which have important implications in the M&A context:

- First, there is no provision that allows the Canadian QDMTT liability to be allocated by election to a single CE in Canada, so Canada does not allow that flexibility.
- Second, and more importantly, a Canadian CE is jointly and severally (or "solidarily") liable for the QDMTT liabilities of another Canadian CE of that MNE group.[18]

Therefore, despite the formal allocation of QMDTT to individual Canadian CEs, the joint liability for the QDMTT of any other Canadian CE means that a purchaser can only obtain certainty regarding the Canadian QDMTT liabilities if it has information regarding all the Canadian CEs in the seller's group. This could be the case if, for example, the target perimeter comprises the seller's entire Canadian subgroup. In other cases, an indemnity would be needed to protect against precompletion QDMTT liabilities for which the Canadian CEs that are acquired could be liable.

French Implementation

The approach to the allocation of QDMTT in France, like the United Kingdom's, has changed. It originally followed article 5.2.4, but it is now based on the stand-alone ETR of French CEs, in a similar (but not identical) manner to the revised U.K. method.

As a member of the EU, France, via its Finance Act 2024, implemented the EU directive on pillar 2,[19] and it exercised its option (as permitted by the EU directive) to introduce a QDMTT.

When the pillar 2 rules were first enacted in France,[20] the allocation method for QDMTT — as noted above — was the same as the one used by the OECD for the IIR.

However, the allocation method was modified by Finance Act 2025, enacted in February. The new method[21] is as follows:

- only French CEs with a stand-alone ETR of less than 15 percent are liable for QDMTT;
- the QDMTT is calculated for the French CEs of the MNE group;
- if there is QDMTT payable, then each individual CE must compute its own QDMTT on a notional stand-alone basis (including the effect of the SBIE); and
- the QDMTT payable across all CEs is apportioned based on the ratio of stand-alone QDMTT to the sum of the stand-alone QDMTTs.

Interestingly, the revised U.K. and French allocation methods are almost the same, a key difference being that the U.K. allocation key ignores SBIE, while the French one does not.

Example 3

In this example we assume that there are three CEs in a French group (CE1, CE2, and CE3), each with GLOBE income of $100 million, but with different stand-alone ETRs, as shown in Table 3.

The QDMTT column shows the notional stand-alone QDMTT for CE1 ($2.1 million), CE2 ($3 million) and CE3 (zero). This provides the "allocation key" for the actual QDMTT, computed on a combined basis, which is $900,000. Note that this is lower than the sum of the stand-alone

[15] *Id.* at para. 30(1)(a).

[16] *Id.* at subsection 51(1).

[17] If the CE is not subject to tax in Canada, then the top-up tax is payable by the person that would, subject to certain assumptions, include in its income as calculated for the purposes of Part I of the Income Tax Act (Canada) income of the CE for the fiscal year. This rule addresses partnerships that are generally not taxpaying entities in Canada.

[18] GMTA, subsection 66(3).

[19] Council Directive (EU) 2022/2523 of December 14, 2022, on ensuring a global minimum level of taxation for MNE groups and large-scale domestic groups in the EU. Article 1(2) gives member states the option of implementing a QDMTT.

[20] Finance Act 2024, enacted in December 2023, introduced a new chapter into the French tax code (Chapter II bis: Imposition minimale mondiale des groupes d'entreprises multinationales et des groupes nationaux).

[21] Code général des impôts (the French tax code), art. 223WF, Para. IV.

Table 3. Figures for Example 3

Entity	ACT (in millions USD)	GLOBE Income (in millions USD)	ETR	SBIE (in millions USD)	Excess Profits (in millions USD)	QDMTT (in millions USD)
CE1 (stand-alone)	12	100	12%	30	70	2.1
CE2 (stand-alone)	12	100	12%	0	100	3
CE3 (stand-alone)	20	100	20%	2	98	0
CE1, CE2, and CE3 (combined)	44	300	14.7%	32	268	0.9

QDMTT amounts because CE3 has a stand-alone ETR of more than 15 percent, so CE3's ETR results in a higher combined ETR than CE1's or CE2's stand-alone ETR.

The QDMTT on a combined basis is $900,000, which is allocated in the ratio 2.1:3 to CE1 and CE2, with zero allocated to CE3. On this basis, CE1 is allocated $0.4 million and CE2 is allocated $500,000.

A later example in this article (Example 5) shows a case in which notional stand-alone QDMTT can be zero but group QDMTT can be positive. In this case, the French allocation method breaks down because the numerator and denominator of the allocation fraction are both zero. In such a case it may be that the allocation is to CEs with a stand-alone ETR of less than 15 percent, although it is unclear.[22]

Like the United Kingdom, it is possible to designate one French CE to pay the entire amount of QDMTT for the French CEs in the group.[23] In such a case, each French CE remains liable for its portion of the QDMTT, but the designated entity becomes jointly liable for the payment of the QDMTT, including any penalties and ancillary costs of each French CE, as the case may be.

The French tax administration has provided guidance regarding the tax effect of recharging QDMTT amongst French CEs. The expectation is that these amounts would be nondeductible (for the payer) and nontaxable (for the recipient), although this is to be confirmed.

[22]The first line of para. 4 of art. 223WF.

[23]French tax code, art. 1679.

German Implementation

Following the EU directive on pillar 2 and intense discussion on a draft law published on March 17, 2023,[24] Germany implemented the directive in the Minimum Tax Act (Mindeststeuergesetz, or MinStG) effective for fiscal years starting after December 30, 2023.[25]

As in the other countries reviewed in this article, for groups with a December 31 year-end, the first year under pillar 2 is the year ending December 31, 2024, whereas for non-December year-ends the first period is delayed, depending on the year-end of the ultimate parent entity.[26] The UTPR applies in Germany for fiscal years starting after December 30, 2024, in line with the EU directive.[27]

The MinStG only considered the OECD's first[28] and second[29] administrative guidance on pillar 2. Subsequent administrative guidance[30] arguably goes beyond the simple interpretation of the model rules and could be seen as effectively setting new rules. There is therefore a requirement to reflect the later guidance in German law. To foster discussion on the law, discussion drafts of the amending law have been

[24]Federal Ministry of Finance (BMF), discussion draft of the Minimum Tax Act.

[25]MinStG section 101, para. 1.

[26]*Id.*

[27]*Id.* at para. 2.

[28]OECD, "Administrative Guidance on the GLOBE Model Rules (Pillar Two)" (Feb. 2023).

[29]OECD, "Administrative Guidance on the GLOBE Model Rules (Pillar Two)" (July 2023).

[30]OECD, "Administrative Guidance on the GLOBE Model Rules (Pillar Two)" (Dec. 2023); OECD, "Administrative Guidance on the GLOBE Model Rules (Pillar Two)" (June 2024); OECD, "Administrative Guidance on Article 8.1.4 and 8.1.5 of the GLOBE Model Rules" (Jan. 2025).

published by the German Ministry of Finance.[31] Further steps in the legislative process have not yet been made.

The QDMTT has been enacted in the MinStG (MinStG section 90) and determines the taxation of German CEs subject to taxation under the QDMTT, IIR, and UTPR,[32] including the allocation mechanism of the IIR (MinStG section 54, para. 4 or section 57). The mechanism for the allocation and tax payments is as follows:

- Tax payable under the IIR is allocated to each taxable CE in accordance with the rule in article 5.2.4 of the IIR model rules.[33] In particular, MinStG section 54, para. 4 allocates top-up tax to a CE in proportion to its GLOBE income relative to the GLOBE income of all CEs in the jurisdiction. The mechanism ensures an allocation of the IIR and QDMTT, respectively, only to those entities that have positive GLOBE income.[34] This is in line with the allocation mechanism defined in rule 5.2.4.[35]
- The MinStG creates a mandatory system of a "minimum tax group head" (MinStG section 3). All the top-up tax of the German CEs (regardless of whether it relates to the IIR, QDMTT, or the UTPR) is payable by the minimum tax group head (MinStG section 3, para. 1, sentence 2). As such, the minimum tax group head owes the tax to the tax authorities[36] and must file the necessary IIR and/or QDMTT return.[37]
- All German CEs are jointly and severally liable for the full top-up tax liability of the minimum tax group head (MinStG section 3, para. 5). The effect of this liability must be considered in detail in case of an acquisition or disposal of a German CE.
- When top-up tax of other German CEs has been paid by the minimum tax group head, it has a legal right of reimbursement from the CEs (MinStG section 3, para. 6).[38] This right only relates to top-up tax paid for German CEs that is allocated to them under the principles set out above. Any right to reimbursement of IIR amounts resulting from low-taxed CEs in other jurisdictions of the group (outside Germany) is not covered, and the tax treatment of this remains an open issue.

Italian Implementation

Italy (unlike the United Kingdom and Canada) is a member of the EU, and it has implemented the EU directive on pillar 2, with effect from January 1, 2024,[39] and — like France, Germany, and Spain — it chose to implement a QDMTT. The legislation implementing the QDMTT[40] is silent regarding the allocation of the QDMTT, other than providing for the joint and several liability of Italian CEs.[41]

An MNE group is therefore free to allocate the Italian QDMTT amongst CEs, typically using a contractual arrangement referred to as a "QDMTT amount allocation agreement." This contrasts with the United Kingdom and France, where the primary allocation is specified by the legislation.

In general, it is expected that in any given MNE group there will be one CE that will pay the QDMTT on behalf of all the other CEs and then seek reimbursement of the relevant portion from the others. The Italian legislation[42] states that recharging the QDMTT amongst CEs is not a taxable event.

[31] BMF, "First Discussion Draft of the Minimum Tax Adjustment Act (MinStAnpG)" (Aug. 2024); BMF, "Second Discussion Draft of the Minimum Tax Adjustment Act (MinStAnpG)" (Dec. 2024).

[32] MinStG section 90, para. 1.

[33] Explanatory memorandum to MinStG section 90.

[34] Explanatory memorandum to MinStG section 54, para. 4.

[35] OECD model rules, articles 5.1.2 and 10.1.1.

[36] MinStG section 3, para. 1.

[37] MinStG section 95, para. 1.

[38] In Austria, a similar concept of a minimum tax group head was implemented, but the law does not provide a clawback mechanism for allocated tax amounts.

[39] Legislative Decree 209/2023 (Dec. 27, 2023).

[40] Art. 18(7) and (8) of Legislative Decree 209/2023, and art. 10 of the Ministerial Decree of July 1, 2024.

[41] Art. 18(7): "CEs, other than investment entities, and joint ventures located in the territory of the Italian State shall be jointly and severally liable for the payment of the national minimum tax referred to in paragraph 1 [i.e., the QDMTT]. The multinational or domestic group shall identify the enterprise located in Italy as responsible for the national minimum tax referred to in paragraph 1 and determine the allocation of the relevant burden among enterprises located in the territory of the Italian State." [Unofficial translation.]

[42] Art. 18(8): "Amounts received and paid in respect of the chargeback of the national minimum tax referred to in paragraph 1 made between CEs and joint ventures shall not be relevant for tax purposes." [Unofficial translation.]

Spanish Implementation

On December 21, 2024, the Spanish Official State Gazette published Law 7/2024 of December 20, 2024 (the Global Minimum Tax Law,[43] referred to as the LIC), which implements the global minimum tax defined in the EU pillar 2 directive and the OECD model rules for large multinational and domestic groups in Spain.

The LIC is structured as a separate tax law, not embedded in the existing Spanish corporate income tax law. While the law applies in Spain, there may still be certain particularities to be defined from 2025 onward in the "foral territories"[44] of the Basque Country and Navarra, which will need to produce their own minimum tax law under their fiscal autonomy.

The LIC implements a domestic minimum top-up tax in Spain (LIC article 25), which is qualified for pillar 2 purposes. The DMTT is calculated in line with the model rules and the EU pillar 2 directive and, for the allocation of DMTT, Spain has decided to follow the article 5.2.4 method described above.

All Spanish CEs are jointly liable for the QDMTT, but — like Germany, for example — a specific payment mechanism is prescribed (article 6.5 LIC). For these purposes, a "substitute" entity in Spain is specified by the LIC. It is this substitute entity that is responsible for filing the tax return and paying the top-up tax.

The substitute entity is determined by the LIC according to the following rules:

- If the UPE of the MNE group is a Spanish CE, and is not an excluded entity, then the UPE is the substitute entity.
- If the UPE is not in Spain or is an excluded entity, then the substitute entity is the CE that is a holding company with the highest net book value of tangible assets, if it is not an excluded entity.
- If the UPE is an excluded entity or is not in Spain, and if there are no holding entities in Spain, the substitute of the taxpayer is the Spanish CE with the highest net book value of tangible assets compared with the other Spanish CEs.

Note that even though the substitute entity pays the top-up tax to the Spanish tax authority, this does not mean that it must bear the economic cost. The LIC gives the substitute entity the option (LIC article 50.2) of requiring reimbursement for tax it pays from other CEs in the group.

Because this reimbursement is optional, groups may wish to consider preparing intragroup agreements to determine guidelines for recharges or reimbursements between CEs and the substitute entity. This would be a relevant consideration for financial accounting purposes, to determine which CE records the top-up tax liability in its financial statements — in other words, the substitute entity that pays the tax, or other CEs if they reimburse the substitute entity.

U.K. Implementation

The United Kingdom's QDMTT implementation does not provide for joint and several liability for QDMTT, but instead gives a specific allocation method that can be overridden in certain cases outlined below.

The allocation method set out in article 5.2.4 of the model rules was used in the U.K. implementation of pillar 2 when the rules were first enacted in Finance (No.2) Act 2023,[45] but this was replaced with a different allocation method in Finance Act 2025, based on the stand-alone ETR of each CE in the United Kingdom.[46] The new method is as follows:

- For each CE in the United Kingdom with positive GLOBE income, its stand-alone ETR is calculated.
- If the ETR is less than 15 percent, then the top-up tax percentage for the CE is calculated as 15 percent minus the CE's ETR. This is the same calculation as in article 5.2.1

[43] Ley 7/2024, de 20 de diciembre, por la que se establecen un Impuesto Complementario para garantizar un nivel mínimo global de imposición para los grupos multinacionales y los grupos nacionales de gran magnitud (the Spanish law implementing the global minimum tax, or "LIC").

[44] Foral territories are communities in Spain with fiscal autonomy.

[45] Finance (No.2) Act 2023, section 272.

[46] Finance Act 2025, schedule 4, para. 43 inserts a new subsection 3A into Finance (No.2) Act 2023 section 272 with the new allocation method. The new method applies for accounting periods beginning on or after December 31, 2024 (schedule 4, para. 72(4)). If a certain election (the "retrospection election") is made, it can apply from December 31, 2023 (schedule 4, para. 72(5)). Therefore, if the election is not made, taxpayers will have a different allocation method in the first year compared with later years.

Table 4. Figures for Example 4

Entity	GLOBE Income (USD in millions)	ETR	Top-Up Tax Percentage	Allocation Key Amount (USD in millions)
CE1 (stand-alone)	2	15%	0%	0
CE2 (stand-alone)	2	5%	10%	0.2

Table 5. Figures for Example 5 (in millions USD)

Entity	GLOBE Income	SBIE	Excess Profits	QDMTT
CE1 (stand-alone)	2	0	2	0
CE2 (stand-alone)	2	2	0	0

of the model rules, except that the percentage in this case is calculated separately for each CE with positive GLOBE income (rather than on an aggregated basis, under article 5.2.1).

- Next, multiply the top-up tax percentage of an individual CE by the GLOBE income of that CE to give the "allocation key amount" for each CE.
- The actual top-up tax for the U.K. CEs is then allocated to each CE based on their own allocation key amount, divided by the sum of all allocation key amounts.

Note that this allocation method ignores the effect of SBIE. As shown below, the U.K. method is similar to that of France, except that the French method includes the effect of SBIE.

Example 4

Using the figures from Example 2, the top-up tax for CE1 and CE2 is still $200,000, but the allocation is different. (See Table 4.)

Because the allocation key amount is zero for CE1, the entire amount is allocated to CE2, which is a completely different result to the previous allocation, shown in Example 2.

Example 5

This example shows the effect of nonzero SBIE on the allocation.

Suppose that the figures are as in examples 2 and 3, but now CE2 has SBIE of $2 million; CE1 is assumed to have zero SBIE; and the figures for GLOBE income, ETR, and top-up tax percentage are unchanged. As noted above, SBIE is not considered when calculating the allocation key, so the allocation key amounts are unchanged. What does change are the excess profits, and therefore the top-up tax. For illustrative purposes, the notional stand-alone QDMTT is also shown.

Because the allocation key is not based on notional stand-alone QDMTT, the allocation is still for the entire amount of the group's QDMTT of $200,000 to be allocated to CE2, even though on a stand-alone basis CE2 would have had zero QDMTT.

This might be a surprising result (and one that is explored in further detail in a recent *Tax Notes* article[47]). Note also that the French allocation method seems to break down in this case (as mentioned earlier).

Both the original and revised U.K. methods impose a primary liability for the U.K. QDMTT on

[47] Robin Tulp, "Top-Up Tax Allocation in M&A Transactions and Among Subgroups: A Wicked Problem?" *Tax Notes Int'l*, May 26, 2025, p. 1087.

individual CEs in an MNE group. In principle, a seller could calculate the total QDMTT for its U.K. CEs in precompletion periods, allocate the tax to the CEs, and thereby determine the amount that should be accrued in the completion accounts. This accrual would then form part of the calculation of net debt and the price paid by the purchaser would be adjusted accordingly.

As mentioned earlier in this article, there can be practical difficulties in determining the calculations, so it is likely that the purchaser would also seek an indemnity from the seller for any additional liability exceeding the amounts accrued in the completion accounts.

As also mentioned earlier in this article, the allocation method can be overridden in certain cases. One is by election: The "filing member" of the U.K. CEs of an MNE group can make an election,[48] for each fiscal year, for the entire primary liability for U.K. QDMTT to be allocated to a single CE (subject to the elected CE's consent). This election could be made to allocate the QDMTT to a U.K. CE that remains in the seller's MNE group. In this case, no accrual is required in the completion accounts for any period in which the election has been made.

The election must be made "in an information return submitted to HMRC or a qualifying authority" regarding "the period to which the election relates."[49] In practice, this would be the GLOBE information return that is submitted for the fiscal year in question.

Example 6

Using the same figures as Example 1, if Seller makes the election for the entire U.K. top-up tax to be allocated to the U.K. CE that Seller retains (CE2), then the top-up tax accrual for CE1 is zero.

The net debt amount is then $300,000, as the pillar 2 accrual is zero. The equity price for Target is now $700,000, calculated as $1 million minus $300,000.

Seller now receives $700,000. However, as Seller has made the election for the entire U.K. top-up tax to be allocated to CE2, which is retained by Seller, the top-up tax for which CE2 is liable has increased by $100,000. After paying that liability, Seller is left with $600,000, which is the same amount received in Example 1.

In other words, the net economic effect for Seller is the same in both Example 1 and Example 6, but Purchaser and Seller have avoided the need to calculate any top-up tax accrual in the completion accounts, which may be a helpful practical benefit.

HM Revenue & Customs also has an administrative power to issue a "group payment notice"[50] to any member of an MNE group, which requires the recipient to pay any unpaid U.K. top-up tax. The notice can be issued to any member worldwide.[51] In the M&A context, an indemnity may be the only practical way to protect a purchaser against this risk.

Another aspect that may arise in MNE groups is the recharging of pillar 2 liabilities amongst CEs. The United Kingdom has specific provisions dealing with this:

- When, notwithstanding the primary allocation provided for in U.K. legislation, one group company (X) pays the top-up tax for which another company (Y) is liable, there are special provisions[52] dealing with the payment of top-up tax and any reimbursement (from Y to X), shown below.
- For the payer of the amount (X), when computing X's profits for tax purposes:
  a. the payment of Y's top-up tax is not an allowable deduction for X; and
  b. any reimbursement of the payment is not regarded as a receipt.
- Also, the top-up tax payment is not to be considered when computing the taxable profits of Y and is not regarded as a distribution for corporation tax purposes.

[48] Finance (No.2) Act 2023, section 271.

[49] *Id.* at schedule 15, paras. 1(2)(c) and 2(2)(c).

[50] Finance (No2) Act 2023, schedule 14, para. 34.

[51] The worldwide point is specifically mentioned in the legislation: "A group payment notice may be issued to any person who is a member of the group or which was a member of the group at any time in the accounting period to which the amount payable relates (wherever in the world they are located)." (*See id.* at schedule 14, para. 34(2).)

[52] *Id.* at schedule 14, para. 37.

- The payment of top-up tax by X is considered in calculating the amount of top-up tax due by Y. In other words, the payment by X can wholly or partially reduce the amount due by Y.

The following example shows how these provisions can work.

Example 7

CE1 and CE2 are U.K. CEs of an MNE group. Top-up tax of $1 million is allocated to each of them. CE2 pays the total amount ($2 million) to HMRC. CE1 makes a payment of $1 million to CE2 to reimburse CE2 for the payment. The net economic cost to each of CE1 and CE2 is thus $1 million. The payment of $1 million by CE2 is ignored for corporation tax purposes, as is the reimbursement from CE1 to CE2.

Alternatively, the U.K. CEs could make an election under Finance (No.2) Act 2023 section 271, under which the entire liability could be allocated to either CE1 or CE2.

Conclusion

This article highlights the importance, in the M&A context, of understanding the allocation of QDMTT to individual CEs in an MNE group. The examination of the methods used in the six countries surveyed brings to light themes that can be summarized as follows:

- As the allocation of QDMTT is left to individual jurisdictions, we see broadly three different approaches being adopted, although others could be possible:
  a. no specific allocation;
  b. allocation according to GLOBE income (under article 5.2.4 of the model rules); or
  c. allocation based on ETR (noting that France and the United Kingdom have implemented this in slightly different ways).
- A distinction can be drawn between the allocation of the QDMTT and the mechanism for payment to the tax authority. In some cases, each entity has its own liability to settle; in other cases, the local implementation specifies that one entity must pay the top-up tax on behalf of the other CEs and can then recover the tax from those CEs.
- The use of internal agreements to cover the recharging of top-up tax may be necessary to deal with recharges or reimbursements arising as a result of the payment mechanism mentioned above. In most of the countries surveyed there are provisions to deal with the (non)taxation of QDMTT reimbursement, although these do not necessarily cover all scenarios.
- Further flexibility, like the ability to reallocate the liability to QDMTT, by election, to an individual CE, exists in only two of the countries surveyed. This election may be useful in an M&A context. ■