Volume 67, Number 1, Winter 2026

The Global Minimum Tax ("Pillar Two") and the Future of Cross-Border M&A

João Vitor Gomes Martins*

The implementation of the OECD/G20's Global Anti-Base Erosion ("GloBE") Rules—commonly known as Pillar Two—marks a paradigm shift in international tax policy by establishing a coordinated global minimum corporate tax regime. While much of the early commentary has focused on its macroeconomic or policy implications, this Note examines how Pillar Two redefines the legal and commercial contours of cross-border mergers and acquisitions. Specifically, it explores how this regime disrupts conventional deal structures, alters the value of tax incentives, impacts purchase accounting, and introduces novel risks around scope testing and deferred tax treatment. In a landscape of asymmetric adoption and evolving regulatory guidance, this Note argues that Pillar Two will become a key determinant of tax due diligence, target valuation, and post-deal integration strategy. Transactional exposure to Top-up Taxes—including secondary liability under the Pillar Two charging provisions—requires the reconfiguration of risk allocation through tailored representations, warranties, and indemnities. Moreover, this Note identifies emerging gaps between financial and GloBE tax accounting that may distort jurisdictional effective tax rates and erode expected synergies. This Note's contribution lies in bridging doctrinal insights with transactional practice, drawing on OECD guidance, scholarly debate, and comparative implementation trends. By situating Pillar Two within the mechanics of real-world deals, it offers a forward-looking framework for multinational enterprises navigating the tension between global tax alignment and deal value preservation.

Table of Contents

* Associate at Milbank LLP. LL.M., Harvard Law School, 2025. The views and opinions expressed in this Note are solely those of the author and do not necessarily reflect the views, policies, opinions, or positions of the author's employer.

Introduction

Few developments in international tax policy have generated as much anticipation and uncertainty as the implementation of the Organisation for Economic Co-operation and Development ("OECD")/G20 Inclusive Framework's[1] Global Anti-Base Erosion ("GloBE") Model Rules.[2] Framed as a global solution to the "race to the bottom" in corporate taxation, the GloBE Rules—commonly known as Pillar Two—introduce a global minimum tax system to impose a fifteen percent minimum effective tax rate ("ETR") for large multinational enterprises ("MNEs") in each jurisdiction where they operate.[3] Implementing

1. The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting ("BEPS") is a coalition of over 140 jurisdictions committed to curbing tax avoidance and promoting transparency. It enables OECD and non-OECD members to participate equally in shaping international tax standards, particularly through the BEPS Project. A key initiative of the framework is the Two-Pillar Solution, which includes Pillar Two's global minimum tax to address profit shifting and tax competition. *See* Organisation for Economic Co-operation and Development [OECD], *Outcome Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (July 1, 2021), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf [https://perma.cc/YJL2-5Y9A]; OECD, *Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (July 11, 2023), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf [https://perma.cc/N4ET-JUMA].

2. Błażej Kuźniacki & Edwin Visser, *Tax and Non-Tax-Related Challenges of Pillar 2 for Non-Advanced Economies*, 114 Tax Notes Int'l 881, 887 (2024).

3. OECD, *Tax Challenges Arising from the Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two)* (Dec. 20, 2021), https://www.oecd.org/content/dam/oecd/

jurisdictions, which as of November 2025 include the European Union, the United Kingdom, Canada, and Japan, have committed to administering the rules in accordance with the Model Rules and their accompanying Commentary.[4] However, uneven implementation and jurisdiction-specific interpretations have already begun to surface, creating uncertainty and potential arbitrage over how the rules apply across borders.[5]

These consequences are not marginal. Pillar Two's computational mechanics—including the treatment of deferred taxes, purchase accounting, and tax credits—can affect whether a transaction triggers Top-up Tax, influences future tax attributes, or exposes the acquiring Group to secondary tax liability. As the rules are implemented unevenly across jurisdictions—and with the United States notably abstaining from adoption[6]—buyers and sellers alike must now navigate a fragmented regulatory environment in which Pillar Two risks are real but not uniformly distributed.

While much attention has been given to the policy's macroeconomic and geopolitical dimensions, its transactional implications—particularly for cross-border mergers and acquisitions ("M&A")—are only now being tested as practitioners confront its requirements. This Note argues that Pillar Two is not merely a tax compliance issue, but a structural force reshaping how MNEs approach deal strategy, valuation, and risk. Specifically, the global minimum tax regime alters the risk profile of target Entities, introduces new complexities in deal structuring, and disrupts established assumptions surrounding tax due diligence and contractual protections.

The remainder of this Note is structured as follows. Part I introduces the foundational mechanics of the GloBE Rules—highlighting the scope rules, computational steps, charging provisions, and recent tax developments that underpin the Pillar Two framework. Part II examines how these rules affect

---

en/publications/reports/2021/12/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two_eed81a23/782bac33-en.pdf [https://perma.cc/6K77-W7RU] [hereinafter OECD 2021 Model Rules].

4. OECD, *Tax Challenges Arising from the Digitalisation of the Economy—Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)*, at 9 (Apr. 25, 2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/04/tax-challenges-arising-from-the-digitalisation-of-the-economy-consolidated-commentary-to-the-global-anti-base-erosion-model-rules-2023_68ae5d21/b849f926-en.pdf [https://perma.cc/A7V2-KEQ3] [hereinafter OECD 2024 Commentary to Model Rules]. Capitalized terms in this Note refer to the definitions set forth in the GloBE Model Rules and Commentary, unless otherwise specified.

5. Hans Pijl, *Scope, Mergers and Demergers in the G20/OECD Global Minimum Tax (GloBE) Rules*, 77 Bull. Int'l Tax'n 460, 464 (2023).

6. *See* Richard Rubin, *Trump Pushes Back on Global Tax Deal*, Wall St. J. (Jan. 21, 2025), https://www.wsj.com/livecoverage/trump-inauguration-president-2025/card/trump-pushes-back-on-global-tax-deal-R4z6IDph6w2ZKEoxH3Rp [https://perma.cc/54QT-RM8H]; Press Release, U.S. Dep't of the Treasury, G7 Statement on Global Minimum Tax (June 28, 2025), https://home.treasury.gov/news/press-releases/sb0181[https://perma.cc/J7PY-WC5Z].

specific aspects of cross-border M&A transactions—including how the general scope rules are adapted in the context of mergers and demergers, the treatment of business combinations, the valuation of tax attributes, and the implications for ETR management. Finally, Part III explores the way forward for transaction planning and execution under Pillar Two—addressing the evolving role of tax due diligence, contractual provisions, and post-closing compliance in mitigating Top-up Tax exposures and managing inter-jurisdictional risk. By analyzing cross-border M&A through the lens of Pillar Two, this Note offers a forward-looking contribution that bridges tax rules and transactional design—an area where scholarship remains sparse, and practice is evolving in real time.

I. Key Mechanics

The legal and economic consequences of Pillar Two are deeply rooted in how the rules define the scope of GloBE, calculate jurisdictional ETRs, and allocate Top-up Taxes among Entities and jurisdictions. A solid understanding of the structure and operation of the global minimum tax regime is essential for evaluating its impact on cross-border M&A transactions. This Part outlines the core mechanics of the Pillar Two framework to support the analysis and contextualize its transactional relevance.

A. Scope Rule

The GloBE Rules apply to MNEs meeting a two-pronged test as per Article 1.1. First, the enterprise must meet the GloBE definition of a Group[7]—a collection of Entities[8] (or one Entity and a Permanent Establishment ["PE"][9]) related through ownership or control, such that their financial results are, or should have been, consolidated[10] on a line-by-line basis in the Consolidated Financial Statements of the Group's Ultimate Parent Entity ("UPE").[11] In addition, the Group must also include a cross-border element: At least one

7. OECD 2021 Model Rules, *supra* note 3, art. 1.2.2.

8. *Id.* art. 10.1 ("Entity means: (a) any legal person (other than a natural person); or (b) an arrangement that prepares separate financial accounts, such as a partnership or trust.").

9. For Pillar Two purposes, the definition of Permanent Establishment, although broader, is generally aligned with that provided by Article 5 of the 2017 OECD Model Tax Convention on Income and on Capital: "a fixed place of business through which the business of an enterprise is wholly or partly carried on." *See* OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, at 31 (Dec. 18, 2017), https://www.oecd.org/en/publications/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en.html [https://perma.cc/XF5E-XDMP].

10. The GloBE Rules provide for a deemed consolidated test based on control as defined by the acceptable financial accounting standard. *See* OECD 2024 Commentary to Model Rules, *supra* note 4, at 237.

11. *Id.* at 24.

Entity or PE must be located in a jurisdiction other than that of the UPE. Where this condition is met, the enterprise is classified as an "MNE Group."[12] Assessing this prong generally requires the Group to carry out extensive internal due diligence to identify all its Constituent Entities[13] and the jurisdictions in which they are located.

Secondly, the MNE Group must meet the revenue threshold in a two-out-of-four-years analysis.[14] Excluding the current year's results, the MNE Group will fall within the scope of Pillar Two if it reports global consolidated revenues of at least €750 million in two out of the four preceding fiscal years as per its Consolidated Financial Statements.[15]

As such, taxpaying Entities are considered out of scope for the Model Rules if they are not a Group, operate solely within a domestic jurisdiction,[16] or do not meet the €750 million consolidated revenue threshold.[17]

B. Computation

Once an MNE Group is within the scope of the rules, it must compute its ETR for each jurisdiction where it operates.[18] If the ETR in any jurisdiction falls below the global minimum, a Top-up Tax may be levied to bring the ETR up to fifteen percent.[19]

This multitiered assessment starts with determining the GloBE Income or Loss[20] of each member of the group (that is, a Constituent Entity) that is consolidated on a line-by-line basis.[21] GloBE Income is calculated from the financial accounts used in the preparation of the Consolidated Financial Statements of the MNE Group, subject to specific adjustments prescribed under the GloBE

12. OECD 2021 Model Rules, *supra* note 3, art. 1.2.1.

13. *Id.* art. 1.3.1 ("A Constituent Entity is: (a) any Entity that is included in a Group; and (b) any Permanent Establishment of a Main Entity that is within paragraph (a).").

14. *Id.* art. 1.1.1.

15. OECD 2024 Commentary to the Model Rules, *supra* note 4, at 19.

16. Note that implementing jurisdictions retain the possibility to introduce the GloBE Rules to purely domestic Groups while remaining compliant with the common approach, a choice adopted by members of the European Union, for instance. *See id.* at 256–57.

17. The GloBE Rules also exclude certain Entities from its scope of application, such as governmental entities, non-profits, pension funds, and investment funds which are outside the scope of this Note's analysis. *See* OECD 2021 Model Rules, *supra* note 3, art. 1.5.1.

18. *See infra* Appendix for the Jurisdictional Top-up Tax calculation formula.

19. This analysis, however, is generally preceded by an assessment of whether any of the jurisdictions qualify for the transitional safe harbor rule. As a matter of administrative simplification, if a jurisdiction meets the safe harbor criteria, it may be deemed to have an ETR of at least fifteen percent for the relevant fiscal year, which eliminates the need to perform the standard GloBE computation for that jurisdiction during the transition period. *See* OECD 2024 Commentary to the Model Rules, *supra* note 4, at 288, 330.

20. *Id.* at 54.

21. *Id.*

Rules that align accounting outcomes with the policy objectives of Pillar Two.[22] Next, the MNE Group must determine the amount of Covered Taxes,[23] which includes income taxes attributable to the GloBE Income of each Constituent Entity.[24] These amounts may require adjustments to reflect deferred tax items, tax credits, or other timing and base differences, as outlined in the GloBE Rules and accompanying Commentary.[25]

Once the GloBE Income and Covered Taxes are calculated, the MNE Group must aggregate these amounts for all Constituent Entities within the same jurisdiction. The jurisdictional ETR[26] is then computed by dividing the total Covered Taxes by the total GloBE Income in that jurisdiction. If the resulting ETR falls below the fifteen percent minimum rate, the MNE Group will owe a Top-up Tax to bring the jurisdictional taxation up to the agreed minimum level of fifteen percent.[27] However, the Top-up Tax is only applied to "Excess Profits"—that is, the GloBE Income remaining after subtracting a Substance-based Income Exclusion, which accounts for a fixed percentage of payroll costs and tangible assets located in the jurisdiction.[28] This mechanism creates a difference in the taxable base between the traditional corporate income tax regime and the Pillar Two add-on system, considering that the income excluded from Pillar Two will still be taxable under the traditional regime. This ensures that income linked to substantive economic activity is partially shielded from the Top-up Tax.[29]

C. Charging Provisions

Once determined, the Top-up Tax amount should be allocated and levied through a system of interlocking charging provisions, namely the Qualified

22. *Id.* at 10.

23. OECD 2021 Model Rules, *supra* note 3, art. 4.2 ("Covered Taxes means: (a) Taxes recorded in the financial accounts of a Constituent Entity with respect to its income or profits or its share of the income or profits of a Constituent Entity in which it owns an Ownership Interest; (b) Taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an Eligible Distribution Tax System; (c) Taxes imposed in lieu of a generally applicable corporate income tax; and (d) Taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity.").

24. *Id.* art. 4.1.

25. OECD 2024 Commentary to Model Rules, *supra* note 4, at 10.

26. *Id.* at 125 ("GloBE Jurisdictional ETR means the Effective Tax Rate for Entities located in a jurisdiction as computed under Article 5.1 without regard to any Covered Taxes under a CFC Tax Regime.").

27. Peter R. Merrill et al., *Where Credit Is Due: Treatment of Tax Credits Under Pillar 2*, Tax Notes (Mar. 20, 2023), https://www.taxnotes.com/special-reports/credits/where-credit-due-treatment-tax-credits-under-pillar-2/2023/03/17/7g743 [https://perma.cc/L5HG-QZED].

28. OECD 2024 Commentary to Model Rules, *supra* note 4, at 148.

29. *Id.* at 150–51.

Domestic Minimum Top-up Tax ("QDMTT"),[30] the Income Inclusion Rule ("IIR"), [31] and the Undertaxed Profits Rule ("UTPR"),[32] where applicable.[33]

The QDMTT gives the jurisdiction where a Low-Taxed Constituent Entity ("LTCE")[34] is located the first right to levy the additional tax needed to reach the fifteen percent minimum effective rate.[35] If that jurisdiction has not implemented a QDMTT, the responsibility to collect the Top-up Tax shifts to the IIR.[36] Under the IIR, the UPE must pay the Top-up Tax attributable to its LTCEs in the UPE jurisdiction. This rule follows a top-down approach—if the UPE's jurisdiction does not apply the IIR, the obligation passes down to the next Intermediate Parent Entity ("IPE") in the Group's ownership chain. In practice, the QDMTT directly reduces the amount of tax due by the UPE in relation to its subsidiaries, which would otherwise be required to collect it under the IIR.[37]

As a final safeguard, the UTPR[38] acts as a backstop to ensure that all low-taxed income is ultimately subject to Top-up Tax. Where neither the QDMTT nor the IIR is sufficient to tax the full top-up due by an LTCE, the UTPR allocates the remaining liability across various Entities in the MNE Group. These Entities must then bear an equivalent tax cost, typically through the denial of deductions, resulting in a cash tax expense corresponding to the UTPR-assigned top-up amount.[39]

D. Tax Policy Considerations

As observed, the applicable charging provision determines which jurisdiction—or combination of jurisdictions—is entitled to collect the Top-up Tax. This outcome represents a significant departure from traditional international tax norms, which generally allocate taxing rights to a single jurisdiction based on residence or source, typically under a bilateral tax treaty framework designed to avoid double taxation.

---

30. OECD 2021 Model Rules, *supra* note 3, art. 5.2.3(d).
31. *Id.* art. 2.1.
32. *Id.* art. 2.4.
33. João Vitor Gomes Martins & Thatiane Cristina Fontão Pires, *Assessing Damages in Investment Treaty Arbitration in the Context of Pillar Two: The Interplay Between the Charging Provisions and the Principle of Compensatio Lucri Cum Damno*, 53 Intertax 382, 387 (2025).
34. OECD 2021 Model Rules, *supra* note 3, art. 10.1 ("LTCE means a constituent Entity of the MNE Group that is located in a low-tax jurisdiction that has GloBE income and is subject to an ETR lower than the minimum rate.").
35. OECD 2024 Commentary to Model Rules, *supra* note 4, at 259.
36. OECD 2021 Model Rules, *supra* note 3, art. 2.1.
37. *See* Belisa Liotti, Ruth Wamuyu & Jeffrey Owens, *Challenges at the Intersection Between Investment Provisions in Regional Trade Agreements and Implementation of the GloBE Rules Under Pillar Two*, 30 Transnat'l Corp. 1, 56–57 (2023).
38. OECD 2021 Model Rules, *supra* note 3, art. 2.4.
39. Gomes Martins & Fontão Pires, *supra* note 33, at 388.

This large-scale policy shift has sparked criticism of incompatibility with the tax treaty system,[40] extraterritorial overreach, and discriminatory effects,[41] given that the Model Rules must be implemented through domestic tax law reforms in each of the members of the Inclusive Framework. Specifically, a major source of tension between the United States and the European Union regarding Pillar Two lies in the application of the UTPR, which creates potential exposure for U.S.-headquartered MNEs.[42] This is because, where a jurisdiction fails to impose sufficient tax, the GloBE framework allows others to intervene and collect the tax necessary to achieve the fifteen percent rate. The interlocking system of charging provisions, coupled with the international acceptance of Pillar Two, creates an environment in which no country can unilaterally shield its companies from taxation. This reinforces the pressure for continued Pillar Two implementation across jurisdictions.[43] For U.S.-headquartered MNEs, this means that low-taxed domestic profits of their U.S. portfolio companies could be subject to additional taxation by foreign jurisdictions applying the UTPR if the United States ultimately joins Pillar Two—a mechanism often described as the "devilish logic" of the global minimum tax.[44]

In recent months, however, the Trump Administration has pushed back against Pillar Two.[45] In particular, the looming prospect of retaliatory tax measures being introduced against countries imposing "unfair taxes" on U.S. MNEs brought the G7 nations to the negotiating table.[46] As a result of this political process, the G7 issued a statement on June 28, 2025, expressing a "shared understanding" that a "side-by-side" solution for Pillar Two "could preserve gains made by jurisdictions in the Inclusive Framework in tackling base erosion and profit shifting and provide greater stability and certainty in the international tax system moving forward."[47]

---

40. Lucie-Hélène Hallade, The Interaction Between the UTPR and Tax Treaties: Selected Issues 14 (Aug. 26, 2024) (unpublished manuscript), https://ssrn.com/abstract=5019512 [https://perma.cc/NAA3-CZVB].

41. Reuven S. Avi-Yonah, *Is the UTPR Extraterritorial or Discriminatory?*, Tax Notes (Mar. 17, 2025), https://www.taxnotes.com/tax-notes-international/oecd-pillar-2-global-minimum-tax/utpr-extraterritorial-or-discriminatory/2025/03/17/7rbm1 [https://perma.cc/KQA7-A4RU].

42. Itai Grinberg, *Klaus Vogel Lecture 2024: The Future of Global Minimum Tax Enforcement*, 79 Bull. Int'l Tax'n 42, 42 (2025).

43. Ruth Mason, *A Wrench in the GLOBE's Diabolical Machinery*, Tax Notes (Sept. 19, 2022), https://www.taxnotes.com/special-reports/digital-economy/wrench-globes-diabolical-machinery/2022/09/16/7f3pt [https://perma.cc/5RS6-3Y52].

44. *Id.*

45. Rubin, *supra* note 6.

46. Alan Cole & Patrick Dunn, *The Future of BEAT*, Tax Found. (July 24, 2025), https://taxfoundation.org/blog/beat-tax-changes-obbba-section-899/ [https://perma.cc/L4RF-8P3H].

47. Dep't of Finance Canada, G7 Statement on Global Minimum Taxes (June 28, 2025), https://www.canada.ca/en/department-finance/news/2025/06/g7-statement-on-global-minimum-taxes.htm [https://perma.cc/L3MB-EG3C].

The understanding outlines, on a principled basis, that a side-by-side solution would fully exempt U.S.-parented MNEs from the GloBE project, while retaining the regime for all other non-U.S.-parented MNEs.[48] The solution would effectively align Pillar Two with the Global Intangible Low-Taxed Income ("GILTI") regime, now revised and rebranded as the Net Controlled Foreign Corporation Tested Income ("NCTI") under the One Big Beautiful Bill Act ("OBBBA"), and would eliminate U.S. exposure under both the IIR and the UTPR.[49] As part of the bargain, the United States removed Section 899[50]—a retaliatory provision included in the draft OBBBA that provided for the imposition of additional U.S. taxes on income and payments to individuals and entities connected to countries enforcing "unfair" taxes[51]—from the final text of the OBBBA signed into law on July 4, 2025.[52]

Despite the OECD Secretary-General's "warm welcome to the breakthrough statement,"[53] the political understanding has been widely perceived as a political victory for the Trump Administration.[54] While it indeed marks a significant political shift, its broad language and lack of detailed implementation guidelines and enforceability leave critical questions unresolved—particularly regarding the treatment of intermediary U.S. Entities, the interaction of NCTI with QDMTTs, and the practical application of exemptions under a coexistence model.[55]

---

48. U.S. Dep't of the Treasury, G7 Statement on Global Minimum Tax (June 28, 2025), https://home.treasury.gov/news/press-releases/sb0181 [https://perma.cc/34L5-MWDL].

49. Pieter Baert, European Parliamentary Research Service, PE 775.918, Side by Side? The Future of Pillar Two Minimum Corporate Tax Rules 1 (2025), https://www.europarl.europa.eu/RegData/etudes/ATAG/2025/775918/EPRS_ATA(2025)775918_EN.pdf [https://perma.cc/4A9R-PM64].

50. *See* H.R. 1, 119th Cong. § 112029 (as reported by House, May 20, 2025).

51. *See also* Tom Parkes, *Section 899—The Art of the Tax Deal*, Charles Stanley (July 18, 2025), https://www.charles-stanley.co.uk/insights/commentary/section-899-the-art-of-the-tax-deal [https://perma.cc/889R-Q2SV]; Alan Cole, Sean Bray & Daniel Bunn, *What Are the Goals of Retaliatory Tax Policies?*, Tax Found. (May 21, 2025), https://taxfoundation.org/blog/us-retaliatory-tax-policies-eu-international-taxes/ [https://perma.cc/9J4C-HHK8].

52. H.R. 1, 119th Cong. (2025); *see also* Laura Hodgson & Scott Friedman, *Update: US Retaliatory Taxes to Be Abandoned Following G7 Agreement on Pillar Two*, Hogan Lovells (July 1, 2025), https://www.hoganlovells.com/en/publications/update-us-retaliatory-taxes-to-be-abandoned-following-g7-agreement-on-pillar-two [https://perma.cc/8HYF-G4P8].

53. OECD, *Statement by the OECD Secretary-General on G7 Progress on International Tax Co-operation* (June 28, 2025), https://www.oecd.org/en/about/news/speech-statements/2025/06/statement-by-the-oecd-secretary-general-on-g7-progress-on-international-tax-co-operation.html [https://perma.cc/TJ9Y-B6FF].

54. Tom Baker, *Opinion: G7's Pillar Two Capitulation Proves US Power Always Wins*, Int'l Tax Rev. (July 7, 2025), https://www.internationaltaxreview.com/article/2f0pgs22rzxqspmg1iygw/direct-tax/opinion-g7s-pillar-two-capitulation-proves-us-power-always-wins [https://perma.cc/AXQ2-EUPA].

55. Baert, *supra* note 49, at 1–2.

Pillar Two remains a global reality for members of the OECD Inclusive Framework, with legislation at various stages of implementation. For instance, of the 142 countries that have approved the July 2023 Outcome Statement on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy,[56] sixty-seven countries—including the European Union, the United Kingdom, Canada, and Japan—have already implemented legislation in accordance with the GloBE Rules for the financial years 2024, 2025, and 2026.[57] Among those jurisdictions, eighty-eight percent have adopted the QDMTT, seventy percent the IIR, and forty-eight percent the UTPR.[58]

It remains unclear, however, whether—and in what form—the G7 statement will be incorporated into the laws of jurisdictions that have already implemented Pillar Two rules. In countries without mechanisms such as provisional decrees or presidential orders, amending tax law can be politically sensitive, procedurally complex, and time-consuming. As a result, MNEs could face a patchwork of compliance obligations, especially if domestic laws remain misaligned with evolving international understandings. From a transactional perspective, these uncertainties compound the tax and structuring risks that MNEs must evaluate in cross-border M&A transactions.

This dynamic environment requires a more expansive tax assessment when evaluating potential acquisition targets. In particular, a target Entity may not only be subject to GloBE-related tax liability—such as primary tax liability in relation to the Top-up Tax due over its low-taxed income or secondary liability for Top-up Taxes owed by other Group Entities[59]—but also to potential additional layers of retaliatory taxes to be imposed in response to U.S. pressure against Pillar Two.

---

56. The "Outcome Statement" is a formal, consensus-based declaration adopted by members of the OECD/G20 Inclusive Framework on BEPS, reflecting agreed progress, proposed deliverables, and political commitments toward implementing the Two-Pillar Solution to address the tax challenges of the digital economy. OECD, *Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (July 11, 2023), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf [https://perma.cc/DNM9-PZMM].

57. *Pillar Two Country Tracker: Summary v2*, PwC (last updated Sept. 14, 2025), https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html [https://perma.cc/S6GK-5NPZ].

58. *Id.*

59. *What Does Pillar Two Mean for Structured Finance?*, A&O Shearman (Dec. 4, 2023), https://www.aoshearman.com/en/insights/what-does-pillar-two-mean-for-structured-finance [https://perma.cc/6V5L-LTK4].

II. What Does Pillar Two Mean for Cross-Border M&A?

Traditional tax considerations in M&A transactions have followed a relatively consistent framework, requiring parties to address familiar issues such as choosing between asset and stock sales, evaluating tax attributes and associated limitations post-acquisition, mitigating tax leakage, and aligning asset structures with the buyer's operating model.[60] However, the design and mechanics of Pillar Two's global minimum tax regime introduce new complexities that may affect how these factors should be approached.[61] This Part explores how Pillar Two may influence traditional tax considerations in M&A transactions.

A. Issues Arising in Connection with the Scope Rules

M&A transactions are typically structured as stock purchases, mergers, or asset deals.[62] In a stock purchase, the buyer acquires the target company's shares directly from its shareholders, thereby obtaining ownership of the entire legal Entity, including all its assets, liabilities, and contractual obligations. The corporate structure of the target remains intact.[63]

A merger, by contrast, involves the legal consolidation of two companies into one. In most cases, one Entity survives and assumes all the assets and liabilities of the other. Mergers can take several forms—such as statutory mergers, forward mergers, or reverse triangular mergers—depending on legal and tax objectives.[64] In an asset deal, instead of acquiring the entire entity, the buyer purchases selected assets and liabilities, while the seller retains excluded items and typically continues to exist unless formally dissolved.[65] More broadly, a business restructuring typically describes modifications to a company's operations,

60. Deloitte, M&A Tax Considerations Across a Range of Transactions: Buy-Side 1 (2025), https://www.deloitte.com/content/dam/assets-zone3/us/en/docs/services/tax/m-and-a-trends-buy-side-tax-considerations.pdf [https://perma.cc/MWB8-Z9CY].

61. Jean-Baptiste Tristram et al., *Brief Overview of What the Pillar Two Directive Means for Multinational Companies*, Tax Exec. (June 18, 2024), https://www.taxexecutive.org/brief-overview-of-what-the-pillar-two-directive-means-for-multinational-companies/ [https://perma.cc/P3TT-D93S].

62. John C. Coates IV, *M&A Contracts: Purposes, Types, Regulation, and Patterns of Practice* 11 (Harv. John M. Olin Discussion Article Series, Discussion Paper No. 825, 2015), http://www.law.harvard.edu/programs/olin_center/papers/pdf/Coates_825.pdf [https://perma.cc/KU4F-TW7N].

63. Guhan Subramanian, Understanding Transactional Agreements: An Overview of the Key Legal Documents Involved in M&A Transactions (Apr. 8, 2025) (unpublished Harvard Bus. Sch. course material, Deals) (on file with author).

64. Patrick A. Gaughan, Mergers, Acquisitions, and Corporate Restructurings 19–20 (7th ed. 2017).

65. *Id.* at 18.

often involving shifts in ownership, asset allocation, or capital structure aimed at enhancing efficiency, creating synergies, and increasing profitability.[66]

The Pillar Two framework, however, introduces its own definitions to characterize corporate reorganizations such as mergers, demergers, and other ownership restructurings. In addition to the general consolidated revenue threshold under Article 1.1, the GloBE Rules include specific provisions that adjust scope testing in the context of transformative M&A deals.[67] Whether a transaction qualifies as a merger or demerger under these rules can directly impact whether a Group falls within the scope of Pillar Two. This Section examines how the following definitions affect the application of the scope rules.

1. Mergers

The definition of a *merger* under Pillar Two is broader than the types of ordinary mergers as explained above. It encompasses any transaction or arrangement that results in two or more previously separate Groups—or standalone Entities—coming under common control, forming a single consolidated Group. Specifically, a merger under Article 6.1.2 includes (a) situations where all or substantially all the Entities from two or more Groups are unified under common control; and (b) cases where a previously unaffiliated Entity is brought under common control with another Entity or Group. Therefore, the legal form of the transaction is irrelevant—what matters is the establishment of common control and the satisfaction of the Group definition.[68]

If a transaction meets the merger definition, Article 6.1.1 supplements the general two-pronged scope test of Article 1.1.[69] Paragraph (a) of Article 6.1.1 addresses mergers between two or more Groups. Because the newly formed MNE Group would not have Consolidated Financial Statements for the fiscal years prior to the merger, the rule establishes a fiction of consolidation:

66. Marcos André Vinhas Catão & Verônica Souza, *International Tax Law and Corporate Law*, *in* The Oxford Handbook of International Tax Law 197, 205 (Florian Haase & Georg Kofler eds., 2023).

67. *See* OECD 2024 Commentary to Model Rules, *supra* note 4, at 172.

68. *See id.* at 178–79.

69. OECD 2021 Model Rules, *supra* note 3, art. 6.1.1 ("For the purposes of Article 1.1: (a) If two or more Groups merge to form a single Group in any of the four Fiscal Years prior to the tested Fiscal Year, then the consolidated revenue threshold of the MNE Group for any Fiscal Year prior to the merger is deemed to be met for that year if the sum of the revenue included in each of their Consolidated Financial Statements for that year is equal to or greater than EUR 750 million. (b) Where an Entity that is not a member of any Group (target) merges with an Entity or Group (acquirer) in the tested Fiscal Year and the target or acquirer does not have Consolidated Financial Statements in any of the four Fiscal Years prior to the tested Fiscal Year because it was not a member of any Group in that year, the consolidated revenue threshold of the MNE Group is deemed to be met for that year if the sum of the revenue included in each of their Financial Statements or Consolidated Financial Statements for that year is equal to or greater than EUR 750 million.").

The revenue threshold is satisfied for a given year when the sum of the consolidated revenues for each of the preceding Groups, as reported in their prior financial statements, is at least €750 million.[70]

For example, assume that X Group and Y Group were unrelated MNE Groups prior to Year 5. Over the four fiscal years preceding their merger, X Group and Y Group reported steady €600 million and €400 million consolidated revenues every year, respectively. In Year 5, the two Groups undergo a merger and come under common control, forming the XY MNE Group. Although neither X Group nor Y Group individually exceeded the €750 million threshold, the combined revenues surpassed it in all four preceding fiscal years. Under Article 6.1.1(a), the XY MNE Group is deemed to satisfy the revenue threshold and therefore falls within the scope of the GloBE Rules in Year 5.[71]

Paragraph (b) relates to the cases of a merger between two or more standalone Entities or an Entity and a Group. Similarly to paragraph (a), if a new Group is formed through a merger involving a standalone Entity, the lack of prior Consolidated Financial Statements does not exempt the Group from Pillar Two. Provided the combined revenue reported in each of the merging Entities' respective individual financials meets the €750 million threshold in one of the relevant prior years, that year counts toward meeting the GloBE revenue threshold.[72]

Returning to the example above, assume instead that X was a standalone Entity with annual revenues of €100 million in Year 1, increasing by €100 million each year to reach €400 million by Year 4. Meanwhile, Y Group consistently reported consolidated revenues of €500 million across the same four-year period, merging with Entity X in Year 5. In this scenario, the combined revenue of Entity X and Y Group exceeded €750 million in two of the four fiscal years prior to the merger. Accordingly, the newly formed XY MNE Group would fall within the scope of the GloBE Rules beginning in Year 5, despite one of the merging parties having operated as a standalone Entity before the transaction.[73]

In sum, the Pillar Two framework broadens the traditional understanding of mergers by focusing on the creation of common control rather than formal legal structures.[74] This expansive approach highlights the importance of careful revenue analysis and accounting policies on deal structuring, as mergers

70. Pijl, *supra* note 5, at 464–65.
71. OECD 2024 Commentary to Model Rules, *supra* note 4, at 176.
72. *Id.* at 176–77.
73. *Id.* at 177.
74. *Id.* at 172.

that would not have triggered Pillar Two obligations on a standalone basis may nonetheless bring newly consolidated Groups into scope.

2. Demergers

Article 6.1.3 of the GloBE Rules defines a *demerger* for Pillar Two purposes as any arrangement where the Entities of a single MNE Group already in scope of the rules are separated into two or more Groups, such that they are no longer consolidated on a line-by-line basis by the same UPE, but rather by two or more UPEs of different MNE Groups.[75] In essence, a transaction constitutes a demerger only when the separation leads to the creation of new Groups as defined by Article 1.2.1.[76]

By doing so, the rule distinguishes a true demerger from more limited divestitures. For example, the divestiture of a single Constituent Entity should not qualify as a demerger if the disposed Entity would become a standalone Entity, not a new Group. However, if the disposed Entity has a Permanent Establishment ("PE") in another jurisdiction, then together with its PE it may be treated as a Group under Article 1.2.3, thereby qualifying the transaction as a demerger.[77] Conversely, the transfer of one or more Constituent Entities to an existing MNE Group does not constitute a demerger, as the Entities are merely joining an established Group. Nonetheless, such a transaction may still be characterized as a merger under Article 6.1.2.[78]

Where a demerger is observed, paragraph (c) of Article 6.1.1[79] establishes a complementary test to the one found in Article 1.1. Unlike mergers, the demerger rule applies a forward-looking revenue test to the newly separated Groups.[80] Under subparagraph (c)(i), the demerged Group must meet a €750 million revenue threshold in the first fiscal year ending after the demerger (that is, the year to be immediately brought into scope). If that fiscal year covers less than twelve months, the threshold is prorated under Article 1.1.2.[81]

75. *Id.* at 179.

76. *Id.* at 179.

77. OECD 2021 Model Rules, *supra* note 3, art. 1.2.3.

78. OECD 2024 Commentary to Model Rules, *supra* note 4, at 179.

79. OECD 2021 Model Rules, *supra* note 3, art. 6.1.1(c) ("Where a single MNE Group within the scope of the GloBE Rules demerges into two or more Groups (each a demerged Group), the consolidated revenue threshold is deemed to be met by a demerged Group: i. with respect to the first tested Fiscal Year ending after the demerger, if the demerged Group has annual revenues of €750 million or more in that year; ii. with respect to the second to fourth tested Fiscal Years ending after the demerger, if the demerged Group has annual revenues of €750 million or more in at least two of the Fiscal Years following the year of the demerger.").

80. Pijl, *supra* note 5, at 461.

81. OECD 2021 Model Rules, *supra* note 3, art. 1.1.2 ("If one or more of the Fiscal Years of the MNE Group taken into account for purposes of Article 1.1.1 is of a period other than 12 months, for each of those Fiscal Years the €750 million threshold is adjusted proportionally to correspond with the length of the relevant Fiscal Year.").

This allows immediate application of the GloBE Rules to any newly formed Group that continues to operate at a scale consistent with the original threshold.[82]

For example, assume that X MNE Group had €1 billion in consolidated revenues in each of the four fiscal years preceding Year 5, which aligns with the calendar year. In the middle of Year 5, X MNE Group undergoes a demerger, resulting in the creation of Y MNE Group, which records €380 million in revenues during the remainder of that fiscal year, while X MNE Group retains €620 million. If Y MNE Group retains the same financial year, the first fiscal year ending after the demerger will be Year 5 and, because it is shorter than twelve months, the €750 million threshold is proportionally reduced to €375 million under Article 1.1.2. As Y MNE Group exceeds the pro-rated threshold, it is deemed in scope for Year 5 under Article 6.1.1(c)(i).[83] X MNE Group, as the surviving demerged Group, continues to satisfy the two-out-of-four test of Article 1.1 independently and remains subject to Pillar Two.[84]

In addition, subparagraph (ii) of Article 6.1.1(c) governs scope determinations for the second through fourth fiscal years following the demerger.[85] To remain in scope during those years, a demerged Group must meet the €750 million threshold in at least two of the fiscal years after the year of the demerger. However, Hans Pijl highlights the possibility of conflicting interpretations regarding the interplay between subparagraphs (i) and (ii). In particular, the author debates whether the tests should be applied cumulatively, separately, or if their individual effects could be extrapolated to the following or preceding years.[86]

These diverging readings give rise to legal uncertainty and result in inconsistent implementation across jurisdictions. For instance, the German implementation of Pillar Two provides that meeting the threshold in the first fiscal year after the demerger under subparagraph (i) will automatically bring the demerged Group into scope for the four subsequent years.[87] On the other hand, the United Kingdom's approach requires both tests to be met, which increases the likelihood that demerged groups will be out of scope.[88]

---

82. OECD 2024 Commentary to Model Rules, *supra* note 4, at 177.

83. *Id.* at 178.

84. Note that Article 6.1 operates in addition to, rather than as a substitute for, the general rule in Article 1.1. *See* Pijl, *supra* note 5, at 467.

85. *See* Hodgson & Friedman, *supra* note 52.

86. Pijl, *supra* note 5, at 469–70.

87. Gesetz zur Umsetzung der Richtlinie (EU) 2022/2523 des Rates zur Gewährleistung einer globalen Mindestbesteuerung und weiterer Begleitmaßnahmen [Law for the Implementation of Council Directive (EU) 2022/2523 to Ensure a Global Minimum Tax and Other Accompanying Measures], Dec. 27, 2023, Bundesgesetzblatt [BGBL] I at 397 (Ger.).

88. HM Revenue & Customs, HMRC Internal Man., Multinational Top-up Tax and Domestic Top-up Tax § MTT11020—Scope: Revenue Threshold Test: Effect of Mergers and De-mergers (Aug. 5, 2025) (U.K.), https://www.gov.uk/hmrc-internal-manuals/multinational-top-up-tax-and-domestic-top-up-tax/mtt11020 [https://perma.cc/883A-376B].

In that regard, the OECD Commentary seems to support an integrated approach as implemented by the United Kingdom. It provides an example where a demerged Group will satisfy the requirement in its second fiscal year post-demerger if its consolidated revenues equal or exceed the €750 million threshold in both the first and second fiscal years following the demerger.[89] From this, it can be inferred that the evaluation of Year 1 is counted towards the assessment of the threshold test under subparagraph (ii); that is, if Year 1 is not met, then the MNE Group would not be in scope in Year 2 as well. As with the initial post-demerger test under subparagraph (i), the focus seems to remain on the fiscal year being evaluated, but the assessment considers cumulative performance across multiple years. Consequently, if a demerged Group meets the revenue threshold in Years 1 and 2, it will be in scope in Year 1 under subparagraph (i), in Year 2 under subparagraph (ii), but also in Years 3 and 4—regardless of their actual performance—as the "two of the fiscal years following the year of the demerger" condition continues to be met.[90]

While the OECD Commentary supports the reading that allows prior-year performance to influence subsequent scope determinations, diverging national implementations highlight the risk of fragmentation in the global application of Pillar Two. MNE Groups considering demerger transactions will need to reconcile potential misalignments to assess whether they are subject to Pillar Two in some of the jurisdictions where they operate.

Conversely, the rules also leave room for strategic planning for Groups not yet in scope. By organizing demergers before a Group exceeds the revenue threshold, it may be possible to split a multi-portfolio organization into distinct, unconsolidated verticals, each falling below the €750 million threshold. Although such restructurings would require careful assessment under the substance-over-form principles embedded in the GloBE Rules and Commentary, they illustrate that the timing and sequencing of transactions can have a material impact on Pillar Two exposure.

B. Issues Arising in Connection with the Transactional Adjustments

As discussed, after assessing whether a Group is in scope of Pillar Two—or has been brought in scope as a result of an M&A deal—the Group will need to identify the ETR of each Constituent Entity and determine any resulting Top-up Tax liability to be collected under one or more charging provisions. In this process, the GloBE Rules provide for several transactional adjustments, that is, adjustments related to transactions carried on throughout a given fiscal year, which could affect the tax outcome of M&A transactions.

89. OECD 2024 Commentary to Model Rules, *supra* note 4, at 178.
90. *Id.*

Pillar Two applies different rules depending on the type of transaction. Share deals are subject to provisions addressing scenarios where an Entity either enters or exits an MNE Group during a given fiscal year. These rules are required to ensure the proper application of the GloBE framework to an Entity during this transitional phase. They affect several components of the GloBE calculation, including the determination of GloBE Income or Loss, the computation of Adjusted Covered Taxes, and the calculation of the Substance-based Income Exclusion.[91]

In contrast, asset deals are governed by separate rules defining the treatment of transactions involving direct transfer of assets or liabilities of a Constituent Entity, whether occurring independently or as part of a business reorganization. Those provisions lay out the criteria for recognizing gains or losses on such transfers and prescribe how the acquiring Entity should determine the carrying value of the assets or liabilities for the purpose of calculating its GloBE Income or Loss in future fiscal years.[92]

The following subsections examine selected aspects of the Pillar Two framework as they relate to M&A transactions, highlighting key issues and practical considerations that may arise in transactional planning and compliance.

1. Tax Liability

For purposes of Pillar Two, tax liability for an acquired target Entity begins when the Entity's results are first included on a line-by-line basis in the Consolidated Financial Statements of the acquiring MNE Group, regardless of its financial performance.[93] This generally coincides with the point at which the acquirer obtains control under international accounting standards.[94] Similarly, the termination of a target Entity's exposure to Top-up Tax follows the end of such consolidation, typically when the Group relinquishes control.[95] Accordingly, income and expenses, including Covered Taxes, should be apportioned to the MNE Group following the consolidation date.[96]

This principle may conflict with deal structures that use a *locked-box* mechanism—common in European M&A practice—where the economic risks

91. OECD 2021 Model Rules, *supra* note 3, art. 6.2; OECD 2024 Commentary to Model Rules, *supra* note 4, at 172.

92. OECD 2021 Model Rules, *supra* note 3, art. 6.3; OECD 2024 Commentary to Model Rules, *supra* note 4, at 172.

93. OECD 2021 Model Rules, *supra* note 3, art. 6.2.1.(a).

94. Thomas Hug & Vikram Chand, *Pillar Two Aspects of M&A Transactions: Focus on Share Deals and Asset Deals*, 1 IFF Forum für Steuerrecht 26, 30 (2025).

95. OECD 2024 Commentary to Model Rules, *supra* note 4, at 180.

96. *Id.* at 179.

and benefits are transferred to the buyer from an agreed "locked-box" date, even if legal ownership is transferred later.[97]

Under a locked-box arrangement, the buyer becomes the *economic* owner of the target business from the locked-box date—often months before legal closing—such that all profits (and losses) accrue to the buyer from that date. Traditionally, this mechanism was viewed as a means of simplifying price adjustment and providing transaction certainty, as it fixes the purchase price based on a pre-signing balance sheet rather than post-closing accounts. However, with the advent of Pillar Two, this simplicity is challenged. Under Pillar Two, tax liability does not shift until control is actually obtained, which usually happens at closing.[98] Where the seller group is in scope of the GloBE Rules, but the target is not, the pre-closing profits of the target (earned during the locked-box period) may nonetheless attract a Top-up Tax at the seller level. This raises a conceptual and practical question: Who should bear that Pillar Two cost—the seller, who legally pays it, or the buyer, who is the economic owner of the target for that period? From a contractual perspective, the locked-box design needs to be reassessed to prevent parties that would not otherwise suffer Pillar Two consequences from inadvertently doing so.

For buyers, any Pillar Two taxes attributable to the locked-box period could represent an additional economic cost not reflected in the agreed purchase price, especially if the buyer itself falls within the scope of Pillar Two and would have borne similar taxes had the transaction already closed. Conversely, sellers may argue that since the target is only brought within Pillar Two's ambit due to consolidation into their own group, they should not be left economically worse off by a tax that arises purely from group affiliation. The question becomes more acute in joint venture or minority investment structures, where one investor's Pillar Two status may "taint" the entire joint venture, exposing the minority to Top-up Taxes. In such cases, contractual solutions—such as compensatory capital contributions or purchase price adjustments—may be necessary to allocate these costs fairly. As private equity-style locked-box transactions become more prevalent across markets, these nuances underscore the need to rethink what constitutes a "normal" allocation of tax risk in M&A. The balance between transactional simplicity and fiscal fairness under Pillar Two will likely become a defining feature of deal documentation in the years ahead.

The European preference for the locked-box arrangement stands in contrast to U.S. deal practice, where post-closing purchase price adjustments are prevalent, and the economic handover more closely aligns with the transfer of control.[99] As a result, Pillar Two may offer an additional argument for

97. Hug & Chand, *supra* note 94, at 30.
98. *Id.*
99. Subramanian, *supra* note 63.

U.S. buyers—already accustomed to price adjustment mechanisms—to resist adopting locked-box clauses. Going forward, aligning transaction structures with Pillar Two's control-based framework will be critical to managing Top-up Tax exposures effectively.

2. Capital Gains or Losses

Capital gains or losses arising from the sale of shares or assets play a critical role in the structuring and tax consequences of M&A transactions. This Section explores how such gains or losses are treated under the GloBE Rules, distinguishing between share and asset deals, and highlighting the circumstances under which certain transactions may trigger or avoid Top-up Taxes. The analysis further considers how mismatches between local tax regimes and the Pillar Two framework can affect ETR calculation and lead to permanent differences in GloBE Income.

In most domestic tax systems, the disposal of an equity interest may give rise to a capital gain or loss arising from the difference between the book value and the sale price.[100] However, many jurisdictions either partially or fully exempt such gains from taxation—especially in the context of business reorganizations or qualified investments—and often disallow deductions for corresponding losses. As a result, the tax treatment of equity disposals can vary widely depending on factors such as the issuer's tax residence, the nature of the underlying assets, or the timing of the transaction.[101]

For Pillar Two purposes, when an Entity within an in-scope MNE Group disposes of an equity interest in another Entity, the resulting gain or loss is, in principle, included in the seller's GloBE Income or Loss.[102] However, Article 3.2.1(c) introduces an exemption to the gain or loss when the disposed equity interest carries rights to at least ten percent of the profits, capital, reserves, or voting rights of the disposed Entity at the date of the disposition (that is, a non-portfolio shareholding).[103] From the perspective of the purchasing Entity, the exemption will not impact the transaction price, which will remain equal to the acquisition cost.[104]

As the Pillar Two exemption hinges exclusively on the percentage of ownership,[105] misalignments with the regular corporate income tax systems

100. Vinhas Catão & Souza, *supra* note 66, at 205.
101. OECD 2024 Commentary to Model Rules, *supra* note 4, at 66–67.
102. Hug & Chand, *supra* note 94, at 29.
103. Tristram et al., *supra* note 61.
104. Hug & Chand, *supra* note 94, at 30.
105. OECD 2021 Model Rules, *supra* note 3, art. 3.2.1 ("A Constituent Entity's Financial Accounting Net Income or Loss is adjusted for the following items to arrive at that Entity's GloBE Income or Loss: . . . (c) Excluded Equity Gain or Loss . . . ."); *id.* art. 10.1 ("Excluded Equity Gain or Loss means the gain, profit or loss included in the Financial Accounting Net

may arise, particularly where the underlying tax system considers other factors in determining an exemption. For instance, in the Netherlands, participation exemption generally requires a corporate shareholder to own at least five percent of a subsidiary's shares. In addition, the shares must either be held for active business purposes (not just as a passive investment) or, if considered passive, the subsidiary must meet certain tests to ensure it is not low-taxed—such as having at least fifty percent of its assets invested outside of passive portfolio assets or being taxed at an effective rate of at least ten percent under Dutch tax rules.[106]

Those disparities may lead to permanent differences between financial accounting income and taxable income. For example, if a gain is recognized in the financial statements but not subject to corporate tax, this might reduce the ETR for GloBE purposes—potentially triggering a Top-up Tax if the conditions of Article 3.2.1(c) are not met. A disallowed loss, on the other hand, may artificially increase the GloBE ETR and reduce Top-up Tax exposure.[107] Therefore, MNEs disposing of equity interests must assess potential mismatches that could materially impact their Pillar Two outcomes.

When assets or liabilities are transferred, according to Article 6.3.1, a disposing Constituent Entity is required to include the resulting gain or loss in the computation of its GloBE Income or Loss based on the acquisition price.[108] Similarly, an acquiring Entity must use the adjusted carrying value of the acquired asset as per the consolidated financial standards of its UPE.[109]

The gain or loss may, however, be excluded from the GloBE computation if the transaction is part of a GloBE Reorganization.[110] The definition encompasses a transfer or transformation of assets and liabilities occurring in the context of a merger, demerger, liquidation, or similar transaction that meets specific conditions.[111]

First, the transaction must involve consideration that consists wholly or substantially of equity interests issued by the acquiring Entity or a related party.[112]

Income or Loss of the Constituent Entity arising from: (a) gains and losses from changes in fair value of an Ownership Interest, except for a Portfolio Shareholding; . . . (c) gains and losses from disposition of an Ownership Interest, except for a disposition of a Portfolio Shareholder . . . . Portfolio Shareholding means Ownership Interests in an Entity that are held by the MNE Group and that carry rights to less than 10% of the profits, capital, reserves, or voting rights of that Entity at the date of the distribution or disposition.").

106. *Global Tax Guide to Doing Business in the Netherlands*, DENTONS, https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in/the-netherlands [https://perma.cc/ZX2A-CJ92].

107. OECD 2024 Commentary to Model Rules, *supra* note 4, at 66–67.

108. OECD 2021 Model Rules, *supra* note 3, art. 6.3.1.

109. OECD 2024 Commentary to Model Rules, *supra* note 4, at 185.

110. OECD 2021 Model Rules, *supra* note 3, art. 6.3.2.

111. *Id.* art. 10.1.

112. OECD 2024 Commentary to Model Rules, *supra* note 4, at 241.

Second, the transaction must be partially or fully non-taxable for the disposing Entity at the time of the transaction, meaning any gain or loss on the transfer is either exempt or tax deferred.[113] Third, the acquiring Entity must inherit the tax basis of the transferred assets from the disposing Entity, as required by the tax laws of its jurisdiction.[114] These cumulative conditions are designed to ensure that reorganizations qualifying under this definition reflect continuity of ownership and tax attributes, and are not used to reset asset values for purposes of GloBE Income or Loss computation.[115]

However, to the extent the consideration for the deal involves a cash component in addition to shares, and the gain or loss related to such amount is subject to tax in the jurisdiction of the disposing Entity, the GloBE Rules require the recognition of a Non-Qualifying Gain or Loss, which will be included in the disposing Entity's GloBE Income.[116] Similarly, the acquiring Entity will increase or decrease the carrying amounts of the acquired assets and liabilities in the same proportion.[117]

Notably, it is not clear what limit the cash component can take. Although the definition of GloBE Reorganization refers to "in whole or in significant part," no clear-cut line has been established. It is reasonable to assume that such a threshold will depend on the domestic legislation of the relevant jurisdiction and whether a limited cash component is acceptable in the context of a tax-free reorganization. Likely, a Non-Qualifying Gain would only be recognized to the extent it exceeds the domestically accepted amount. Otherwise, the cash consideration component would be subject to Top-up Tax, while the principal equity component would not—an outcome that would create an arbitrary disparity between economically integrated elements of the same transaction. This appears rather inconsistent with the policy intent of the GloBE Reorganization provision.

Finally, it is still unclear whether the differences between the treatment of gains and losses arising from share or assets deals may lead to market-wide preferencing of one structuring alternative over another.[118] From the acquirer's perspective, relevant Pillar Two information must be disclosed to the seller as part of the due diligence process. In particular, vendor due diligence should include a dedicated section outlining the target's historical Pillar Two profile, including

113. *Id.*
114. *Id.*
115. *Id.* at 173.
116. OECD 2021 Model Rules, *supra* note 3, art. 6.3.3.
117. OECD 2024 Commentary to Model Rules, *supra* note 4, at 186.
118. Cara Harrison, *As Pillar Two Evolves, So Does Its Effect on M&A Transactions*, Tax Exec. (Aug. 27, 2024), https://www.taxexecutive.org/as-pillar-two-evolves-so-does-its-effect-on-ma-transactions/ [https://perma.cc/2MRE-KMJG].

any exposure to Top-up Tax, deferred tax positions, or reorganizations.[119] The transaction agreement should also require the disposing Entity to provide the acquiring Entity with the historical carrying values of the transferred assets and liabilities, as the acquiring Entity is expected to maintain such data.[120]

3. Purchase Accounting and the Treatment of Share Deals as Asset Deals

When an acquisition qualifies as a business combination under International Financial Reporting Standards ("IFRS") or U.S. Generally Accepted Accounting Principles ("GAAP"), the acquiring Entity must remeasure the target's assets and liabilities at fair market value for purposes of the consolidated financial statement.[121] This remeasurement typically results in the recognition of previously unrecorded intangible assets and goodwill, with the latter reflecting the difference between the purchase price and the adjusted net asset value of the target.[122] In some cases, these fair value adjustments may be pushed down to the target's standalone financial statements.[123]

It is common for buyers to pay a premium in M&A transactions to secure a step-up—that is, to increase the recorded value of the acquired assets to reflect their fair market value at the time of purchase.[124] This stepped-up basis allows the buyer to claim larger depreciation and amortization deductions over time, which can reduce taxable income.[125] Additionally, it may decrease the taxable gain or increase the deductible loss if the assets are sold in the future, resulting in meaningful tax savings.[126] However, for Pillar Two purposes, these adjustments should be disregarded in determining the target's GloBE Income. The Model Rules expressly prohibit pushing down the step-up in asset values to the target Entity, even where pushdown accounting is used for Group reporting purposes. Consequently, amortization of newly recognized intangibles or

119. Christian Athanasoulas et al., *The Intersection of Pillar Two and M&A Tax*, KPMG (2024), https://kpmg.com/xx/en/our-insights/transformation/the-intersection-of-pillar-two-and-m-and-a-tax.html [https://perma.cc/CFQ4-QHPG].

120. Hug & Chand, *supra* note 94, at 38.

121. *IFRS 3 Business Combinations*, Int'l Acct. Standards Bd. (2025), https://www.ifrs.org/issued-standards/list-of-standards/ifrs-3-business-combinations/ [https://perma.cc/FH57-AURW].

122. Hug & Chand, *supra* note 94, at 31.

123. Fin. Acct. Standards Bd., Accounting Standards Codification, §§ 805-50-25-4–6 (2024).

124. EY Americas, *Key Ways BEPS 2.0 Pillar Two May Impact U.S. Multinational Entities' M&A Transactions*, Ernst & Young (Dec. 13, 2023), https://www.ey.com/en_us/insights/tax/us-multinationals-considering-mergers-and-acquisitions [https://perma.cc/ZGZ5-J7DP].

125. *Asset Acquisitions: Tax Overview*, Thomson Reuters Practical Law, https://uk.practicallaw.thomsonreuters.com/6-383-6235 [https://perma.cc/RM3C-P34R].

126. *Id.*

goodwill under purchase accounting and the corresponding deferred tax assets ("DTAs") and liabilities ("DTLs") has no impact on GloBE calculations.[127]

This divergence between local tax rules and the Pillar Two framework can materially distort the jurisdictional ETR, as illustrated by the Brazilian regime. There, the acquirer in a business combination may amortize and deduct goodwill and fair value step-ups for income tax purposes, provided the acquired Entity is merged into the buyer (or vice versa) and certain statutory conditions are met.[128] Nevertheless, these tax deductions are not recognized under Pillar Two, creating a permanent difference between local taxable income and GloBE Income and potentially lowering the jurisdictional ETR to below fifteen percent.[129]

An important exception to the general prohibition on recognizing purchase accounting adjustments is set out in Article 6.2.2 of the GloBE Model Rules. Where a share acquisition is treated by the local jurisdiction as a deemed transfer of the target's underlying assets—rather than merely as a transfer of equity—and a Covered Tax is imposed based on the gain from the underlying assets, the transaction is treated as an asset acquisition for Pillar Two purposes.[130] Thus, the purchaser is permitted to step up the asset values for GloBE purposes, mirroring the treatment typically afforded in an asset deal.[131]

In this context, a transaction may also benefit from the GloBE Reorganization provision to exempt gains or losses associated with the disposal of assets and liabilities, provided the specific criteria are met.[132] Understanding these nuances will be critical for deal structuring, as failure to properly anticipate these effects could inadvertently depress jurisdictional ETRs and trigger Top-up Taxes.

4. Tax Incentives

Historically, income-based incentives such as tax holidays, investment allowances, and preferential regimes have been essential tools for attracting foreign direct investment, often forming part of a target company's value proposition, particularly in developing economies.[133] Generally, these incentives aim to

127. OECD 2024 Commentary to Model Rules, *supra* note 4, at 174.

128. Luciana Rosanova Galhardo & Paula Zugaib Destruti, *The Impact of the Brazilian QDMTT on M&A Transactions: The Goodwill Case*, LEXOLOGY (Dec. 16, 2024), https://www.lexology.com/library/detail.aspx?g=d6edb3a3-d68e-4f6f-9de2-b0569e7eb7ee [https://perma.cc/YZC8-EX4A].

129. Athanasoulas et al., *supra* note 119.

130. Tristram et al., *supra* note 61.

131. Hug & Chand, *supra* note 94, at 38–39.

132. Tristram et al., *supra* note 61.

133. Vikram Chand & Kinga Romanovska, *The Impact of Pillar Two on Corporate Tax Incentives and Incentives Post Pillar Two—The Potential Rise of Tax Credits and Subsidies*, 6 INT'L TAX STUDS. 9, 48 (2024).

offset structural disadvantages relative to more advanced states.[134] For instance, certain types of companies established in the Amazonian and Northeastern regions of Brazil may benefit from a seventy-five percent corporate income tax reduction on operating profits.[135] Similarly, in the United Arab Emirates, companies established in the free zones and engaged in certain qualifying activities may enjoy a zero percent tax rate on their qualifying income.[136]

However, the global minimum tax regime introduces new constraints on the sustainability and effectiveness of such incentives. Because income-based benefits reduce an entity's ETR under the regular corporate tax regime, a higher Top-up Tax will be imposed under Pillar Two to raise the ETR to the required fifteen percent threshold.[137] In practical terms, the incentive will likely be recaptured through the Pillar Two charging provisions.

Not all tax benefits are treated equally under Pillar Two. The rules incentivize an additional level of tax competition by granting preferential treatment to refundable tax credits[138]—that is, credits that not only reduce a taxpayer's liability to zero but also entitle the recipient to receive any excess as a cash refund.[139] Refundable credits paid in cash, or available as cash equivalents within four years, are considered "qualified" and are included in GloBE Income.[140] All other refundable credits are "non-qualified" and treated as reductions of Covered Taxes.[141] Consequently, while non-qualified credits may lower the ETR and exposure to a Top-up Tax, qualified credits—by increasing GloBE Income rather than reducing Covered Taxes—tend to have a more neutral or limited effect.[142]

This concern is compounded by the multi-jurisdictional nature of the GloBE regime. The impact of a tax incentive in one jurisdiction cannot be assessed in isolation but must be evaluated in light of how other Pillar Two jurisdictions

134. Kuźniacki & Visser, *supra* note 2, at 887.

135. Veronica Melo de Souza, *Impactos do Pilar 2 nos incentivos fiscais de Sudam e Sudene* [*Impacts of Pillar 2 on Sudam and Sudene Tax Incentives*], JOTA (Jan. 13, 2025), https://www.jota.info/opiniao-e-analise/colunas/coluna-da-abdf/impactos-do-pilar-2-nos-incentivos-fiscais-de-sudam-e-sudene [https://perma.cc/DEE5-EXGF].

136. Fed. Tax Auth., Basic Tax Information Bulletin: Free Zone Persons (Apr. 2024) (U.A.E.), https://tax.gov.ae/Datafolder/Files/Pdf/2024/CT%20Bulletin/Basic%20Tax%20Information%20bulletin-%20Free%20Zone%20Person-English.pdf [https://perma.cc/PHZ4-K2SA].

137. Chand & Romanovska, *supra* note 133, at 6.

138. Kuźniacki & Visser, *supra* note 2, at 887.

139. Merrill et al., *supra* note 27; OECD 2024 Commentary to Model Rules, *supra* note 4, at 148.

140. OECD 2024 Commentary to Model Rules, *supra* note 4, at 273.

141. OECD 2021 Model Rules, *supra* note 3, art. 4.1.2.

142. Chand & Romanovska, *supra* note 133, at 15.

interpret and apply that incentive.[143] From a transactional perspective, due diligence must extend beyond determining whether the target currently benefits from a tax incentive. Buyers must also assess whether those benefits will continue to have fiscal value post-acquisition, especially given the potential for Top-up Taxes to erode or neutralize their effect.

Additional issues may arise in relation to non-tax benefits. The GloBE Rules empower jurisdictions to disregard a Top-up Tax applied by another jurisdiction if it provides "collateral benefits" that offset the general impact of Pillar Two.[144] In other words, selective incentives—even if structured as non-tax compensatory arrangements—may still be recaptured, adding further complexity to deal valuation.[145] Buyers will need to critically consider whether such incentives are compatible with the evolving OECD guidance to avoid additional Top-up Taxes post-closing of an M&A deal.

III. The Way Forward

As MNE Groups adapt to the new global minimum tax regime, contractual protections and robust due diligence practices will become increasingly central to cross-border M&A deal structuring. The complexity of Pillar Two compliance—combined with jurisdictional differences in implementation—requires careful calibration of risk allocation between buyers and sellers, particularly with respect to Top-up Taxes, DTAs and DTLs, and secondary tax liability exposure.[146]

On the due diligence front, timing mismatches and ETR blending issues complicate the modeling of tax consequences. Pre-deal diligence should identify jurisdictions with potentially low ETRs or vulnerable incentive regimes.[147] Additionally, taxpayers must examine the recognition and valuation of DTAs and DTLs under Pillar Two rules, as well as mismatches between financial and tax books that could distort GloBE outcomes.[148] Tax teams should be engaged

143. Martin Baumgartner, *BEPS Pillar II—What Are the Impacts on M&A Transactions?,* Ernst & Young (July 27, 2023), https://www.ey.com/en_ch/insights/tax/beps-pillar-ii-what-are-the-impacts-on-m-a-transactions [https://perma.cc/2EGK-EB4P].

144. The term "collateral benefits" is not defined in detail in the GloBE Model Rules, but it refers generally to non-tax advantages granted by a jurisdiction that could be viewed as offsetting or neutralizing the economic impact of a Top-up Tax. *See* Kuźniacki & Visser, *supra* note 2, at 889.

145. Gomes Martins & Fontão Pires, *supra* note 33, at 394.

146. Baumgartner, *supra* note 143.

147. Deloitte, Global Minimum Tax Insights: Episode 02—Navigating Cross-Border M&A Transactions in GMT World 3 (Oct. 2024), https://www.deloitte.com/content/dam/assets-zone1/southeast-asia/en/docs/services/tax/2024/vn-tax-gmt-insights-series-episode-02-en.pdf [https://perma.cc/9DQZ-E3F7].

148. Erin DeHaven et al., How Pillar Two Raises the Bar for M&A Integration and Tax Compliance 2–3 (Apr. 2025), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/ma-pillar-two.pdf [https://perma.cc/KSW6-9HWR].

early in the transaction timeline to map Pillar Two-relevant data sources, assess compliance readiness, and determine whether IT systems are equipped to support post-deal reporting.[149] Coordination across finance and tax functions will be key in this effort. Following the closing, the acquiring Group must integrate the target into a Group-wide Pillar Two compliance framework, ensuring transparency, system interoperability, and dispute preparedness.[150]

Transaction agreements will need to become more detailed to respond to the changing tax complexity of Pillar Two. Buyers will likely seek representations and warranties ("R&Ws") that confirm the target's Pillar Two status, the accuracy of its financial data, and its compliance with GloBE-related elections and reporting obligations.[151] Indemnities, in turn, should be crafted to protect buyers against potential Top-up Tax liabilities attributable to pre-closing periods or to joint and several liability arising under IIR and UTPR rules.[152] In certain cases, Top-up Taxes triggered by related parties in the seller's Group may still attach to the target post-acquisition, necessitating indemnification even where the target was not directly liable.[153]

Deferred taxes also demand careful attention. The GloBE Rules provide for a five-year recapture mechanism for DTLs that do not materialize into actual liabilities.[154] A post-closing realization of such liabilities may affect the acquiring Group's ETR in earlier years, triggering Top-up Taxes retroactively. Contractual clauses that allocate this risk between the parties, including change-of-law or voluntary act exclusions, might become critical.[155]

In practice, however, no universally accepted template exists to address Pillar Two-related risks. Parties must craft bespoke clauses tailored to the specific features of their transactions, including the jurisdictions involved and the Pillar Two implementation status in those locations.[156] Moreover, it remains uncertain whether R&W insurance policies will provide sufficient protection, as many standard policies exclude secondary tax liability or risks tied to Group-wide tax exposures.[157]

---

149. *Id.*

150. Deloitte, M&A Tax Talk: Pillar Two—Navigating Cross-Border M&A in the Pillar Two World 2 (Nov. 23, 2023), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-ma-tax-talk-november-2023.pdf [https://perma.cc/TZY9-7Z9N].

151. *Id.*

152. *Id.* at 3.

153. *Id.*

154. Brin Rajathurai & May Smith, *The Impact of the OECD's Pillar Two on International M&A*, Tax J. (June 30, 2022), https://www.taxjournal.com/articles/the-impact-of-the-oecd-s-pillar-two-on-international-m-a [https://perma.cc/2XRB-BH4B].

155. *Id.*

156. Deloitte, *supra* note 147, at 2–4.

157. Baumgartner, *supra* note 143.

Beyond risk mitigation, the evolving Pillar Two landscape also presents new avenues for strategic tax planning. Early-stage integration of Pillar Two considerations into deal structuring and post-acquisition planning can not only mitigate compliance risks but also unlock long-term value by preserving ETR efficiency and minimizing Top-up Tax exposures. MNE Groups should focus on optimizing jurisdictional ETR profiles, structuring financing arrangements to align with GloBE requirements, negotiating incentives that are Pillar Two-compliant, and designing transactions to leverage available exclusions under the Model Rules.

Achieving tax efficiency under Pillar Two requires a shift away from transaction-specific strategies toward a more holistic, Group-wide approach. In this new environment, isolated optimizations at the deal level may prove insufficient—or even counterproductive—if they adversely affect the ETR profile of the wider Group. For MNEs not yet in scope of Pillar Two, strategic planning should also consider how current operations, acquisitions, and restructurings could accelerate or delay crossing the €750 million consolidated revenue threshold. Structuring transactions to carefully manage the allocation of income and tax attributes may help balance ETR profiles across the Group, potentially deferring the point at which Pillar Two obligations arise. A fragmented approach risks triggering Top-up Taxes and increasing compliance burdens prematurely. These steps are essential not only to mitigate risk but also to preserve deal value in an environment where compliance costs, reputational exposure, and retroactive tax assessments are poised to become key deal-breakers.

Conclusion

The implementation of the GloBE Rules under Pillar Two is reshaping the global tax landscape in ways that extend far beyond policy or compliance. For MNEs engaged in cross-border M&A transactions, the effects are particularly acute. As this Note has shown, the new regime alters longstanding assumptions in deal structuring—from how capital gains are taxed and step-ups in asset basis are treated, to how deferred tax positions and tax incentives are valued. It also introduces novel sources of risk, including secondary tax liability, which must now be explicitly negotiated and allocated in transaction documents.

In this shifting environment, due diligence and contractual protections must evolve in parallel. Buyers and sellers can no longer rely solely on traditional tax warranties or indemnities; they must integrate Pillar Two-specific considerations into the architecture of the deal. Representations around GloBE compliance, indemnities tailored to pre-closing and secondary liabilities, and mechanisms for post-closing cooperation will all become indispensable tools in navigating the fragmented and uncertain international tax regime.

Yet, the legal and transactional challenges posed by Pillar Two are still unfolding. Implementation remains uneven, and the OECD's guidance continues to evolve. Against this backdrop, dealmakers must operate not only with technical precision but also with strategic foresight. The transactional lens adopted in this Note underscores the need to bridge legal doctrine with market practice and to treat Pillar Two not as an isolated tax reform, but as a structural force with implications for deal value, strategy, and risk.

As new guidance is issued and implementation matures, further research will be essential to refine the understanding of how cross-border deals can be designed to remain both compliant and commercially viable under Pillar Two. For now, one thing is clear: Transactional tax planning has entered a new era.

Appendix: Top-up Tax Formulas

Jurisdictional Top-up Tax Calculation: Article 5.2.3

Jurisdictional Top-up Tax = (*Top-up Tax Percentage x Excess Profits*) – *QDMTT*

Where:

- Top-up Tax Percentage = Minimum rate – Jurisdictional ETR
- Jurisdictional Excess Profit = Net GloBE Income – Substance Based Income Exclusion
- Net GloBE Income = GloBE Income of all Constituent Entities – GloBE Losses of all Constituent Entities
- Substance Based Income Exclusion = an excluded routine return on tangible assets and payroll costs as per Articles 5.3. and 9.2
- QDMTT = amount payable under a QDMTT of the jurisdiction

Allocation of Top-up Tax to Constituent Entities: Article 5.2.4

$$\textit{Top-up Tax of a CE} = \textit{Jurisdictional Top-up Tax} \times \frac{\textit{GloBE Income of the CE}}{\textit{Aggregate GloBE Income of all CEs}}$$

Where:

- Jurisdictional Top-up Tax = Top-up Tax Percentage x Excess Profits – QDMTT
- GloBE Income of the CE = all net income of the CE subject to Pillar Two
- Aggregate GloBE Income of all CEs = sum of all net GloBE Income within a jurisdiction