OECD Administrative Guidance Addresses Key Pillar 2 Technical Issues

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New "Administrative Guidance" from the Organisation for Economic Cooperation and Development (OECD) released on February 2, 2023[1] fills in key gaps in the Global Anti-Base Erosion (GloBE, or Pillar 2) Model Rules published in December 2021[2] and associated commentary released in March 2022 ("Commentary").[3] Contrary to prior assertions by OECD and governmental officials that the Model Rules and Commentary represented "final" guidance, the new Administrative Guidance describes intended changes to the Commentary and effectively overrides aspects of the Model Rules and Commentary.

This article describes key aspects of the Administrative Guidance that will broadly impact multinational groups, with a particular focus on the interaction of the GloBE rules with U.S. tax law, including the Global Intangible Low-Taxed Income ("GILTI") and Corporate Alternative Minimum Tax ("CAMT") regimes. In particular, this article describes (1) priority rules as between controlled foreign corporation ("CFC") regimes like GILTI and the various Pillar 2 taxing rules; (2) a special methodology for attributing GILTI taxes to different jurisdictions; (3) special rules applicable to transactions in the "gap period" between December 2021 and the applicability of countries' Pillar 2 regimes; (4) treatment of certain domestic tax credit regimes; (5) status and treatment of the CAMT under the Pillar 2 rules; and (6) various new rules intended to prevent double taxation.

Priority Between CFC Regimes (GILTI), IIRs, UTPRs, and QDMTTs

The Administrative Guidance finally settles longstanding questions about what tax regime takes precedence when Pillar 2 income inclusion rules ("IIRs"), undertaxed payment rules ("UTPRs"), and qualified domestic minimum top-up taxes ("QDMTTs"), as well as countries' own CFC regimes, potentially apply to the same income. At a high level, the Administrative Guidance confirms that QDMTTs apply first, followed by CFC regimes, IIRs, and UTPRs. The

Administrative Guidance also confirms that GILTI is treated as a CFC regime and provides a special allocation methodology for taking into account taxes paid by a U.S. shareholder under the GILTI regime in determining the top-up tax due under an IIR or UTPR.

Under a country's IIR and UTPR, a multinational group with a presence in that country may be liable to pay a portion of the "Top-Up Tax" calculated with respect to income earned by other group members in low-tax jurisdictions. The Model Rules made clear that tax imposed by the jurisdiction of the group's parent company under a CFC regime potentially could reduce the amount of Top-Up Tax due under an IIR or UTPR but do not provide a complete methodology for doing so.[4] The Model Rules do not specifically address the status of GILTI as an IIR or CFC regime, thereby leaving open the question of whether GILTI would take precedence over IIRs and UTPRs, or *vice versa*.

QDMTTs are taxes that countries apply to domestic income that prevents a taxpayer earning income in that country from owing Top-Up Tax under another country's IIR or UTPR. The Model Rules do not specify whether the amount due under a QDMTT can or must be reduced by taxes paid with respect to income from that jurisdiction under a CFC regime and, consequently, whether a QDMTT or a CFC regime takes precedence.

The Administrative Guidance resolves all of these open questions regarding the priority of different tax regimes. In particular, the Administrative Guidance specifically states that GILTI qualifies as a CFC regime, such that GILTI taxes paid by a U.S. shareholder can reduce Top-Up Tax potentially due under an IIR or a UTPR, and provides a special methodology for allocating GILTI tax to reduce potential Top-Up Tax in specific jurisdictions.[5] Additionally, the Administrative Guidance states that potential tax liability under a QDMTT should not be reduced by CFC regime taxes.[6] Accordingly, QDMTTs take first priority, followed by GILTI and other CFC regimes, followed by IIRs and then UTPRs.

The Administrative Guidance also announces a multilateral review process to determine the status of particular foreign taxes as QDMTTs.[7] Under the Model Rules, a tax regime will not be considered a QDMTT if the jurisdiction provides certain benefits (*e.g.*, grants) related to the QDMTT or the GloBE rules, in order to prevent a country from directly or indirectly refunding QDMTT liability to a taxpayer.[8] The full significance of a country providing such a benefit is unclear. In particular, it is not clear whether a domestic tax would fail to be considered a QDMTT but would still be considered a Covered Tax, or whether liability under such a tax would be considered refunded (as in the case of U.S. rules under Code Sec. 901(i), where a country provides certain tax-linked subsidies). In any case, the Administrative Guidance indicates that the OECD will consider providing further guidance in relation to the identification of benefits related to a QDMTT.

Allocation of GILTI Taxes to Constituent Entities for GloBE Purposes

The Administrative Guidance identifies GILTI as a "Blended CFC Tax Regime," which is a regime in which tax liability is based on the aggregate of CFC income, losses, and creditable taxes, rather than being imposed with respect to a specific CFC.[9] Because taxes under such a CFC regime are not associated with a specific CFC, rules are needed on how to allocate such taxes to specific Constituent Entities for purposes of the GloBE rules. Accordingly, the Administrative Guidance provides a special allocation methodology effective for tax years that begin on or before December 31, 2025.[10] As a general matter, this special allocation methodology helpfully allocates U.S. tax paid under GILTI after taking into account U.S. foreign tax credits ("FTCs") to low-tax jurisdictions in proportion to the Top-Up Tax potentially due with respect to such jurisdictions.

The special allocation methodology for CFC regimes allocates to a constituent entity a proportion of "Allocable Blended CFC Tax" paid in a parent company jurisdiction, thereby reducing Top-Up Tax that otherwise would be due with respect to the entity's income. For GILTI, the Allocable Blended CFC Tax generally is the amount of residual GILTI tax that a U.S. shareholder pays, after taking into account GILTI FTCs (including any tax on GILTI that arises as a result of expense allocation to the GILTI basket). Specifically, in the case of a taxpayer without domestic losses, the Allocable Blended CFC Tax arising from the GILTI regime would be 10.5% of GILTI less FTCs allowed in the Code Sec. 904 category for taxes on inclusions under the GILTI regime (Code Sec. 951A).

The Allocable Blended CFC Tax allocated to an entity is the entity's "Blended CFC Allocation Key" over the sum of all Blended CFC Allocation Keys.[11] The "Blended CFC Allocation Key" is the product of the "Attributable Income of Entity" and the excess of the "Applicable Rate" over the GloBE Jurisdictional ETR.[12] The Attributable Income of Entity generally is the owner's proportionate share of the income in the jurisdiction in which the Entity is located under the Blended CFC Tax Regime.[13] For GILTI, this amount is the U.S. shareholder's share of the tested income of the Constituent Entity.

The Applicable Rate is the threshold for low taxation under the Blended CFC Regime (in other words, the minimum rate at which foreign taxes on the CFC income generally fully offsets the CFC tax).[14] For GILTI, the Applicable Rate is 13.125%. The GloBE Jurisdictional effective tax rate ("ETR") is a jurisdiction's ETR under the GloBE rules.[15] If the GloBE Jurisdictional ETR is greater than or equal to 13.125%, then the Blended CFC Allocation Key is zero. In other words, under the allocation key, no residual GILTI taxes are allocated to high-tax jurisdictions; all of them are allocated to low-tax jurisdictions.

This allocation formula is generally helpful for U.S. taxpayers that have a tax charge under GILTI exceeding the FTCs they are allowed to claim in the GILTI basket, including a GILTI tax charge that results because the allocation of domestic expenses to the GILTI basket limits the amount of FTCs that may be utilized. The allocation formula is not relevant to U.S. taxpayers that are not paying residual tax on GILTI after FTCs. Additionally, to the extent that foreign jurisdictions impose QDMTTs, which take precedence over CFC taxes like GILTI, there is likely to be less residual GILTI tax paid by U.S. taxpayers and thus less GILTI tax to allocate at current GILTI rates (assuming such QDMTTs are creditable for U.S. purposes).

We note, however, that state and local taxes may be imposed on GILTI and would be considered Covered Taxes under the Model Rules.[16] Although such state and local taxes presumably should be considered to be imposed under a CFC regime, and thus potentially reduce Top-Up Tax, the Administrative Guidance regarding Blended CFC Regimes refers specifically to federal taxes imposed on GILTI income, raising a question of whether the special temporary allocation key for GILTI should apply to state and local taxes imposed on GILTI, as well.

Treatment of "Gap Period" Transactions

In general, under Article 9.1.1 of the Model Rules, the carrying value of assets and any deferred tax assets ("DTAs") from pre-GloBE years may be taken into account in computing Top-Up Tax when GloBE rules become effective, at a tax rate equal to the lesser of 15% or the applicable GloBE rate. For instance, a regular tax net operating loss (NOL) of $1 that gives rise to a DTA may, when used, be treated as a payment of 15 cents of tax for GloBE purposes under Article 4, thereby preventing the imposition of Top-Up Tax that would result from the NOL's reduction of regular taxable income but not for financial accounting income (*i.e.*, the starting point for the GloBE base).

The relatively favorable transition rule of Article 9.1.1 is limited, however, by a special rule for intragroup asset transfers occurring after November 30, 2021 and before the GloBE rules become effective with respect to a group in a particular jurisdiction. In particular, under Article 9.1.3 of the Model Rules, certain intragroup asset transfers during this gap period do not give rise to an increase in carrying value (*i.e.*, a basis step-up) for GloBE purposes or other GloBE attributes. This harsh rule meant that a taxpayer could recognize and pay tax on the gain on an intragroup asset transfer under regular tax rules but effectively be subject to tax on the same gain under the GloBE rules when they take effect.

The Administrative Guidance includes changes to the Commentary that provide important relief for asset transfers during the gap period where the gain is recognized. In particular, proposed changes to the Commentary would provide that the acquiring entity may take into account a DTA for GloBE purposes "to the extent that the disposing entity paid tax in respect of the transaction and to the extent of any DTA that would have been taken into account under Article 9.1.1 but was reversed or not created by the disposing entity because the gain from the disposition was included in the taxable income of the entity."[17] For this purpose, taxes paid by another constituent entity—including taxes paid under GILTI or another CFC regime—may be taken into account. The amount of the DTA created may not exceed 15% multiplied by the difference between the local tax basis in the asset and the GloBE carrying value of the asset under Article 9.1.3.

Thus, for instance, suppose a zero-basis intangible asset is transferred from CFC A to CFC B for $100 during the gap period, with CFC A recognizing and paying $20 tax on $100 of gain with respect to the intangible. Assume CFC B's jurisdiction has a 12% applicable tax rate and that CFC B has a $0 carrying value in the asset under the relevant accounting standard (and also disregarding any shareholder-level taxes imposed on the transaction), but a $100 amortizable basis for local tax purposes. Under these circumstances, CFC B establishes a DTA for financial accounting purposes and will be allowed a $12 GloBE DTA under the revised Commentary. If CFC B is permitted $10 of amortization for local tax purposes each year for 10 years, its GloBE DTA will be reduced by $1.20 each year, and CFC B will be treated under Article 4 of the Model Rules as paying $1.20 of Covered Taxes, thereby reducing potential Top-Up Tax that would result from the amortization of the asset basis step-up that did not correspond to an increase in financial accounting carrying value of the asset.

Domestic Tax Credits

The Model Rules contain certain provisions to address the situation where a taxpayer's taxes are reduced by refundable tax credits. In general, the Model Rules simply treat refundable tax credits (and nonrefundable tax credits) as reductions in Covered Taxes. This treatment may reduce a Constituent Entity's ETR below the Minimum Rate, with the result that the intended benefits of the tax credits are reduced due to the Top-Up Tax resulting therefrom.

The Model Rules provide partial relief on this issue. Under Articles 3.2.4 and 4.1.2(d) of the Model Rules, a Constituent Entity's "Qualified Refundable Tax Credits" do not reduce its Covered Taxes for GloBE purposes but are instead included in GloBE Income. This treatment reflects the Inclusive Framework's determination that certain refundable tax credits are in substance government grants for specific activities, not tax refunds.[18]

The Model Rules generally define a Qualified Refundable Tax Credit as a refundable tax credit that is "designed in a way such that it must be paid as cash or available as cash equivalents within four years from when a Constituent Entity satisfies the conditions for receiving the credit."[19] The Commentary to the Model Rules indicates that a refundable tax credit is unlikely to be considered a Qualified Refundable Tax Credit unless the credit is likely to exceed eligible taxpayers' tax liability in the normal circumstances in which it applies (*i.e.*, the refund mechanism is likely to be triggered).[20]

U.S. corporate income tax credits—such as the credit for research and experimentation ("R&E credit") or the low-income housing tax credit ("LIHTC")—generally do not have refundability features and so would not be considered Qualified Refundable Tax Credits. As part of the Inflation Reduction Act of 2022 ("IRA"), however, Congress provided for certain "green energy" credits to have features that would allow taxpayers to monetize the credit. In particular, under certain circumstances, a taxpayer may elect under Code Sec. 6417 for specific U.S. credits (*e.g.*, the Code Sec. 45Q credit for carbon sequestration) to be treated as a payment of tax (and thus potentially refundable in cash to the taxpayer), such that they presumably would be treated as Qualified Refundable Tax Credits. Additionally, under certain circumstances, a taxpayer may elect under Code Sec. 6418 to transfer certain green energy credits to other taxpayers for cash, with the result that the purchasing taxpayer is treated as if it had generated the credit. The Administrative Guidance unfortunately does not provide any guidance regarding such transferable credits, leaving open the question of their treatment under the GloBE rules.

Although the Administrative Guidance does not provide a general solution for U.S. credits under the GloBE rules, the guidance does provide relief in certain situations where taxpayers invest in certain partnership structures that generate Non-Qualified Refundable Tax Credits. Specifically, the Administrative Guidance provides that "Qualified Flow-Through Tax Benefits" will not be taken into account in determining a Constituent Entity's Covered Taxes.[21] Qualified Flow-Through Tax Benefits generally include tax credits (other than Qualified Refundable Tax Credits) that are derived from an interest in a partnership and that constitute a return of all or part of the investor's investment.[22] For example, LIHTCs that flow to an investor in a partnership that generates LIHTCs may qualify as a Qualified Flow-Through Tax Benefit. Importantly, a tax credit qualifies as a Qualified Flow-Through Tax Benefit only if the taxpayer's expected return on the associated investment would be negative but for the credit.[23]

In addition to the relief for certain tax credit investment structures, the Administrative Guidance also provides relief targeted at tax credit carryforwards that are utilized in years when the GloBE rules apply. In particular, the Administrative Guidance provides that DTAs related to tax credit carryforwards may be taken into account for GloBE purposes under Article 9.1.1 of the Model Rules.[24] Specifically, the Administrative Guidance provides that the GloBE DTA attributable to a tax credit carryforward is generally equal to the amount of the carryforward multiplied by a fraction, the numerator of which is the Minimum Rate (*i.e.*, 15%) and the denominator of which is the domestic tax rate applicable to the Constituent Entity in the year preceding the Transition Year.[25] As a result, when the tax credit carryforward is utilized and the associated DTA is reversed, the taxpayer will be deemed to have paid Covered Taxes for GloBE purposes, such that the use of the credit carryforward will not result in Top-Up Tax liability.

Pillar 2 Interaction with CAMT

In contrast to how the Pillar 2 Administrative Guidance explicitly refers to GILTI, there is no explicit reference in the guidance to the recently enacted CAMT that was included in the IRA. Nevertheless, the Administrative Guidance does include some helpful clues as to how Pillar 2 may eventually interact with the CAMT.

As background, the CAMT became effective in 2023 and imposes a 15% minimum tax on the adjusted financial statement income ("AFSI") of U.S.-based and certain foreign-based multinationals with profits exceeding $1 billion.[26] As relevant to the recent Pillar 2 guidance, both domestic and foreign profits generally are taken into account in determining the AFSI that is subject to U.S. tax under the CAMT.[27] Foreign profits subject to the CAMT may include profits earned through a foreign branch or a domestic corporation's *pro rata* share of the net income reported on a CFC's applicable financial statement.[28] In addition, FTCs (including FTCs from foreign taxes paid by CFCs) are allowed to reduce a CAMT liability.[29]

Although the CAMT appears to satisfy the definition of a CFC regime for GloBE purposes, due to the inclusion of CFC income in the CAMT, the CAMT does not appear to fall within the definition of a Blended CFC Tax Regime in the Administrative Guidance. In particular, the Administrative Guidance provides that "a Blended CFC Tax Regime does not include taxing regimes that take into account a group's domestic income (although Blended CFC Tax Regimes may include regimes that allow losses incurred by the domestic shareholder of the CFC to reduce the CFC income inclusion)."[30] Accordingly, although taxes imposed on a U.S. shareholder under CAMT with respect to CFC income may be considered Covered Taxes that can reduce Top-Up Taxes otherwise due with respect to CFCs in low-tax jurisdictions, the simplified methodology that may be used for allocating GILTI taxes to specific jurisdictions is not available for CAMT taxes. Rather, the less specific and more complicated rules in the Commentary on Article 4.3.2 would apply.

Consequently, although the CAMT may have the effect of reducing potential Top-Up Tax due with respect to a group's U.S. income or foreign income under another country's GloBE rules, the CAMT will not necessarily completely call off such rules and will not spare U.S.-based companies from the administrative burdens of complying with such rules.

Furthermore, the Administrative Guidance provides indications (in addition to others that may exist) that the CAMT may not qualify as a QDMTT. In particular, the Administrative Guidance indicates that blending of domestic and foreign income may disqualify a tax regime as a QDMTT.[31] In that case, the CAMT might be disqualified as a QDMTT because, as noted, the CAMT takes into account both domestic and foreign-source income (although the CAMT limits the use of overall CFC losses). The OECD is considering issuing additional guidance concerning the treatment of income and tax blending with respect to QDMTTs.[32]

Consequently, although the CAMT may have the effect of reducing potential Top-Up Tax due with respect to a group's U.S. income or foreign income under another country's GloBE rules, the CAMT will not necessarily completely call off such rules and will not spare U.S.-based companies from the administrative burdens of complying with such rules.

Relief from Potential Double Tax and Other Issues

In addition to guidance on the major topics discussed above, the Administrative Guidance includes rules to address a variety of fact patterns that could lead to double taxation, including the following new rules.

- **DTAs on Consolidated Financial Statements.** As discussed above, financial statement DTAs that are taken into account for GloBE purposes can reduce potential Top-Up Tax when the DTA reverses. The Administrative Guidance clarifies that DTAs that may be taken into account for GloBE purposes include both DTAs recorded on a particular Constituent Entity's accounts as well as DTAs reflected in the multinational enterprise (MNE) Group's consolidated financial statements.[33] This clarification addresses the uncertainty that had existed under Article 4.4.3, which provides that, in determining a Constituent Entity's Covered Taxes, the DTAs to be taken into account are those accrued on "its" financial accounts. The Administrative Guidance indicates that this reference was not intended to limit the use of deferred tax expenses to only those recorded on the Constituent Entity's individual financial accounts. Rather, consistent with Article 3.1.1, a Constituent Entity may take into account the deferred tax expense attributable to the Constituent Entity that is recorded on the consolidated financial accounts of the MNE Group.
- **Intragroup Transfers Accounted for at Carrying Value.** As a general matter, the consequences of asset transfers within an MNE Group—including gain or loss recognized and the transferee's carrying value—are determined under the ultimate parent entity's financial accounting standard under Article 6.3. Under some financial accounting standards, however, certain intragroup transfers may be accounted for at cost rather than at fair market value, which led to questions about how such transactions should be treated for GloBE purposes. To address this uncertainty, the Administrative Guidance provides that, consistent with Article 3.2.3, GloBE Income or Loss on an intragroup transfer of property is determined at fair market value under the arm's-length principle even if the transaction is accounted for at carrying value.[34] Notably, although the Administrative Guidance does not explicitly provide that the acquiring entity will take a fair market value basis in the acquired property, it does indicate that further guidance will be forthcoming to avoid double taxation for the acquiring entity.[35]
- **Foreign Currency Risk on Net Investment Hedges.** Although Article 3.2.1(c) generally provides that gain or loss from dispositions of equity interests are excluded from the calculation of GloBE Income or Loss, the Model Rules did not provide a similar exclusion for foreign currency gain or loss from net investment hedges with respect to such equity interests, creating a potential mismatch in the GloBE ETR calculation (where tax with respect to such gain or loss would be taken into account). To avoid this mismatch, the Administrative Guidance generally provides that an MNE Group may elect to exclude from GloBE income gains and losses with respect to instruments that hedge foreign currency risk on excluded equity instruments.[36]
- **Top-Up Tax in GloBE Loss Years.** Under the general mechanics of Article 4.1.5, if a Constituent Entity's "negative" tax expense (*e.g.*, due to a credit) results in a GloBE Loss for a given year, Top-Up Tax is imposed for that year notwithstanding the existence of a GloBE Loss, although a DTA resulting from the expense may be used to reduce Top-Up Tax in a subsequent year. Recognizing that these mechanics may not result in a later-year reduction that is commensurate with the Top-Up Tax generated in the initial year, the Guidance provides an elective procedure pursuant to which a GloBE Loss due to a negative tax expense does not generate Top-Up Tax in the initial year, but instead is carried forward to reduce Covered Taxes in a later year.[37]
- **Top-Up Tax Resulting from Overall Domestic Loss Recapture.** Under Article 4.4.1(e), DTAs attributable to tax credit carryforwards are not taken into account in computing Covered Taxes. This treatment of tax credit carryforwards can interact with rules like the U.S. overall domestic loss ("ODL") rules[38] to generate unexpected Top-Up Tax. For instance, where an FTC cannot be used in a particular year due to an ODL but is carried forward and used in a year when the ODL is recaptured to generate foreign source income, the tax credit carryforward would reduce domestic tax liability and thereby result in Top-Up Tax with respect to U.S. income. To accommodate rules like the U.S. ODL rules, the Administrative Guidance provides a special rule whereby FTC carryforwards generated due to the operation of such domestic loss rules may be taken into account in computing Covered Taxes.[39]

ENDNOTES

[1] Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, *Tax Challenges Arising from Digitalisation of the Economy—Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)* (Feb. 2, 2023), available at *www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm*.

[2] Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, *Tax Challenges Arising from Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two)* (Dec. 20, 2021), available at *www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm*.

[3] Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, *Tax Challenges Arising from Digitalisation of the Economy—Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition* (Mar. 14, 2022), available at *www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm*.

[4] Commentary, 4.58.

[5] Administrative Guidance, 2.10.

[6] Administrative Guidance, 5.1.2 (proposed paragraph 118.30 to Commentary to Article 10.1).

[7] Administrative Guidance, 5.1.1.

[8] Administrative Guidance, 5.1.2 (proposed paragraph 118.13 to Commentary to Article 10.1).

[9] Administrative Guidance, 2.10.1 (proposed paragraph 58.2 to Commentary to Article 4.3.2).

[10] Administrative Guidance 2.10.3.

[11] Administrative Guidance 2.10.3 (proposed paragraph 58.3 to Commentary to Article 4.3.2).

[12] *Id*.

[13] Administrative Guidance 2.10.3 (proposed paragraph 58.4 to Commentary to Article 4.3.2).

[14] Administrative Guidance 2.10.3 (proposed paragraph 58.5 to Commentary to Article 4.3.2).

[15] Administrative Guidance 2.10.3 (proposed paragraph 58.6 to Commentary to Article 4.3.2).

[16] Commentary on Article 4.2, paragraph 24.

[17] Administrative Guidance, 4.3.3 (proposed paragraph 10.9 to Commentary to Article 9.1.3). By taking into account a DTA that "was reversed or not created" because of the inclusion of gain on the intercompany asset transfer, this rule provides a taxpayer-favorable result where there is an intragroup asset transfer that, for instance, utilizes an NOL for which a DTA had been established.

[18] *See* Commentary at 64.

[19] *See* Model Rules at 65.

[20] *See* Commentary at 215.

[21] *See* Administrative Guidance at 63.

[22] *See* Administrative Guidance at 65.

[23] Administrative Guidance at 63.

[24] Administrative Guidance at 82.

[25] *Id*.

[26] Code Secs. 55, 56A, and 59.

[27] Code Sec. 56A(c).

[28] *Id*.

[29] Code Secs. 55(b)(2) and 59(l).

[30] Administrative Guidance at 68.

[31] *See* Administrative Guidance at 98.

[32] *Id*.

[33] Administrative Guidance at 20.

[34] Administrative Guidance at 30.

[35] *Id*.

[36] Administrative Guidance at 31–33.

[37] Administrative Guidance at 49–53.

[38] Code Sec. 904(g).

[39] Administrative Guidance at 55–58.