



Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024

No. 132, 2024

**An Act to implement a multinational top-up tax,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 132, 2024

**An Act to implement a multinational top-up tax,
and for related purposes**

[Assented to 10 December 2024]

The Parliament of Australia enacts:

No. 132, 2024

*Taxation (Multinational—Global and Domestic Minimum Tax) Act
2024*

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Part 1—Preliminary

1 Short title

This Act is the *Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024*.

Note: Under section 356-20 in Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner of Taxation has the general administration of this Act.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	11 December 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Interpreting this Act

- (1) Interpret this Act in a manner consistent with the following:
- (a) the GloBE Rules;
 - (b) the Commentary;
 - (c) Agreed Administrative Guidance;

- (d) *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)* published by the OECD on 20 December 2022;
 - (e) a document, or part of a document, prescribed by the Rules for the purposes of this paragraph.
- (2) However, for the purposes of subsection (1), disregard a document, or part of a document, prescribed by the Rules for the purposes of this subsection, to the extent prescribed by the Rules.
 - (3) Subsection (1) does not affect the application of section 15AB of the *Acts Interpretation Act 1901* for the purposes of interpreting this Act.
 - (4) In this Act:

Agreed Administrative Guidance means:

- (a) *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)* published by the OECD on 2 February 2023; and
- (b) *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, July 2023, published by the OECD on 17 July 2023; and
- (c) *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, December 2023, published by the OECD on 18 December 2023; and
- (d) *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, June 2024, published by the OECD on 17 June 2024; and
- (e) any other Agreed Administrative Guidance (within the meaning of the GloBE Rules).

Commentary means *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global*

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Anti-Base Erosion Model Rules (Pillar Two) published by the OECD on 14 March 2022, as amended from time to time.

GloBE Rules means *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* published by the OECD on 20 December 2021.

- (5) A reference in this Act to **this Act** (other than in this subsection, section 28 and Part 4) includes a reference to the Rules.

4 Geographical application of this Act

- (1) This Act extends to every external Territory.
- (2) This Act extends to acts, omissions, matters and things outside Australia.

5 Application of this Act to Fiscal Years

- (1) This Act applies in relation to Fiscal Years starting on or after 1 January 2024.
- (2) Despite subsection (1), subsection 10(1) (Australian UTPR Tax) applies in relation to Fiscal Years starting on or after 1 January 2025.

Part 2—Liability

Division 1—Australian IIR tax (income inclusion rule tax)

6 Liability to tax—Australian IIR tax

- (1) Tax is payable by an Entity for a Fiscal Year if it has one or more IIR Top-up Tax Amounts for the Fiscal Year.
- (2) The amount of tax payable by the Entity for the Fiscal Year is the sum of those IIR Top-up Tax Amounts.

7 Meaning of *IIR Top-up Tax Amount*

- (1) *IIR Top-up Tax Amount* has the meaning given by the Rules.
- (2) Without limiting the scope of subsection (1), the Rules may provide that an Entity has an IIR Top-up Tax Amount in respect of:
 - (a) another Entity; or
 - (b) a Permanent Establishment.

Part 2 Liability

Division 2 Australian DMT tax (domestic minimum top-up tax)

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Division 2—Australian DMT tax (domestic minimum top-up tax)

8 Liability to tax—Australian DMT tax

- (1) Tax is payable by an Entity for a Fiscal Year if it has one or more Domestic Top-up Tax Amounts for the Fiscal Year.
- (2) The amount of tax payable by the Entity for the Fiscal Year is the sum of those Domestic Top-up Tax Amounts.

9 Meaning of *Domestic Top-up Tax Amount*

- (1) *Domestic Top-up Tax Amount* has the meaning given by the Rules.
- (2) Without limiting the scope of subsection (1), the Rules may provide that an Entity has a Domestic Top-up Tax Amount in respect of:
 - (a) another Entity; or
 - (b) a Permanent Establishment.

Division 3—Australian UTPR tax (undertaxed profits rule tax)

10 Liability to tax—Australian UTPR tax

- (1) Tax is payable by an Entity for a Fiscal Year if it has one or more UTPR Top-up Tax Amounts for the Fiscal Year.
- (2) The amount of tax payable by the Entity for the Fiscal Year is the sum of those UTPR Top-up Tax Amounts.

11 Meaning of *UTPR Top-up Tax Amount*

- (1) *UTPR Top-up Tax Amount* has the meaning given by the Rules.
- (2) Without limiting the scope of subsection (1), the Rules may provide that an Entity has a UTPR Top-up Tax Amount in respect of:
 - (a) another Entity; or
 - (b) a Permanent Establishment.

Part 3—Core Group and Entity concepts

Division 1—Groups, Entities and Permanent Establishments

12 Meaning of *Applicable MNE Group*

- (1) An MNE Group is an *Applicable MNE Group* for a Fiscal Year (the *test year*) if:
 - (a) for at least 2 of the 4 Fiscal Years immediately preceding the test year, the MNE Group's annual revenue is equal to or greater than its GloBE Threshold for the Fiscal Year; or
 - (b) if the Rules specify conditions for the purposes of this paragraph—those conditions are met.
- (2) For the purposes of paragraph (1)(a), the annual revenue of an MNE Group for a Fiscal Year preceding the test year is the amount shown in the Consolidated Financial Statements for that Fiscal Year of the Ultimate Parent Entity of the MNE Group as the annual revenue of the MNE Group.
- (3) The *GloBE Threshold* of an MNE Group for a Fiscal Year is:
 - (a) if paragraph (b) does not apply—750 million Euros; or
 - (b) if the Fiscal Year of the MNE Group is a period other than 12 months—the amount of Euros computed as follows:
 - (i) first, divide the period of the Fiscal Year (expressed in months) by 12;
 - (ii) next, multiply the result of subparagraph (i) by 750 million.
- (4) In computing an amount of Euros for the purposes of subsection (3), translate amounts expressed in currencies other than Euros to Euros in accordance with Rules made for the purposes of this subsection.

13 Meanings of *Entity* and *Ultimate Parent Entity*

- (1) **Entity** means:
 - (a) any legal person (other than a natural person); or
 - (b) an arrangement that is required to prepare separate financial accounts, such as a partnership or trust.
- (2) However, none of the following is an **Entity**:
 - (a) the Commonwealth;
 - (b) a State or Territory;
 - (c) the government of a foreign country or of part of a foreign country;
 - (d) an authority of a government covered by paragraph (a), (b) or (c) that carries out government functions.
- (3) **Ultimate Parent Entity** means:
 - (a) an Entity:
 - (i) that holds a Controlling Interest in another Entity; and
 - (ii) in which a Controlling Interest is not held by another Entity; or
 - (b) an Ultimate Parent Entity under paragraph 18(4)(c).

Note 1: See subsection 18(4) for a situation where the Main Entity in respect of one or more Permanent Establishments may be the Ultimate Parent Entity of a Group.

Note 2: For the purposes of subsection (3) of this section, a Governmental Entity that meets the criterion in subparagraph 21(1)(b)(ii) (a sovereign wealth fund) is treated as not being an Entity: see subsection 21(2).

14 Meanings of *MNE Group* and *Group*

- (1) An **MNE Group** is a Group that includes at least one Entity or Permanent Establishment that is not located in the jurisdiction of the Ultimate Parent Entity of the Group.
- (2) **Group** means:
 - (a) a Group under subsection 17(1); or
 - (b) a Group under paragraph 18(4)(a).

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Note: A Group under paragraph 18(4)(a) is an MNE Group.

15 Meaning of *Group Entity*

A ***Group Entity*** of a Group means:

- (a) in the case of a Group under subsection 17(1)—a Group Entity of the Group under subsection 17(3); or
- (b) in the case of a Group under paragraph 18(4)(a)—a Group Entity of the Group under that paragraph.

16 Meaning of *Constituent Entity*

(1) A ***Constituent Entity*** of a Group means:

- (a) in the case of a Group under subsection 17(1)—a Constituent Entity of the Group under subsection 17(4) or 18(3); or
 - (b) in the case of a Group under paragraph 18(4)(a)—a Constituent Entity of the Group under paragraph 18(4)(b); or
 - (c) an Entity, or a part of an Entity, prescribed by the Rules for the purposes of this paragraph.
- (2) Despite subsection (1), subsections 17(4) and 18(3), and paragraph 18(4)(b), an Entity, or a part of an Entity, prescribed by the Rules for the purposes of this subsection is *not* a ***Constituent Entity*** of the Group.

17 Groups—general structure

(1) A ***Group*** under this subsection is comprised of:

- (a) an Ultimate Parent Entity; and
- (b) one or more other Entities, each of which is related through ownership or control such that the assets, liabilities, income, expenses and cash flows of the Entity:
 - (i) are included in the Consolidated Financial Statements of the Ultimate Parent Entity; or
 - (ii) are excluded from the Consolidated Financial Statements of the Ultimate Parent Entity solely on size or materiality grounds, or on the grounds that the Entity is held for sale.

- (2) The Ultimate Parent Entity mentioned in paragraph (1)(a) is the **Ultimate Parent Entity** of the Group.
- (3) Each Entity mentioned in paragraphs (1)(a) and (b) is a **Group Entity** of the Group.
- (4) Each Group Entity of the Group that is not an Excluded Entity is a **Constituent Entity** of the Group.

18 Groups—structure with Permanent Establishment

- (1) This section applies if an Entity that is located in a jurisdiction is a Main Entity in respect of one or more Permanent Establishments that are located in other jurisdictions.
 - (2) For the purposes of this Act:
 - (a) each of those Permanent Establishments is taken to be separate from the Main Entity and from each other; and
 - (b) the Main Entity is taken to hold a Controlling Interest in each of those Permanent Establishments.
- Note: The Main Entity is taken to hold a Direct Ownership Interest in each of those Permanent Establishments: see subsection 38(4).
- (3) If the Entity is a Group Entity of a Group under subsection 17(1) and is not an Excluded Entity, the Main Entity and each of those Permanent Establishments is a **Constituent Entity** of the Group.
 - (4) If the Entity is not a Group Entity of a Group under subsection 17(1):
 - (a) the Entity is a **Group** under this paragraph and a **Group Entity** of the Group; and
 - (b) where the Entity is not an Excluded Entity—the Main Entity and each of those Permanent Establishments is a **Constituent Entity** of the Group; and
 - (c) the Main Entity is the **Ultimate Parent Entity** of the Group.

Note: For the purposes of this section, a Governmental Entity that meets the criterion in subparagraph 21(1)(b)(ii) (a sovereign wealth fund) is treated as not being an Entity: see subsection 21(2).

19 Meanings of *Permanent Establishment* and *Main Entity*

- (1) ***Permanent Establishment*** means:
- (a) a place of business (including a deemed place of business) that is situated in a jurisdiction and treated as a permanent establishment in accordance with an applicable Tax Treaty in force, if the jurisdiction taxes the income attributable to it in accordance with a provision similar to Article 7 of the OECD Model Tax Convention; or
 - (b) if there is no applicable Tax Treaty in force—a place of business (including a deemed place of business) in respect of which a jurisdiction taxes the income attributable to that place of business under its law on a net basis similar to the manner in which it taxes its own tax residents; or
 - (c) if a jurisdiction has no corporate income tax system—a place of business (including a deemed place of business) that is situated in that jurisdiction and that would be treated as a permanent establishment in accordance with the OECD Model Tax Convention, if the jurisdiction would have had the right to tax the income attributable to it in accordance with Article 7 of that Convention; or
 - (d) if paragraphs (a) to (c) do not apply—a place of business (including a deemed place of business) through which operations are conducted outside the jurisdiction where the Entity that would be the Main Entity if the place of business were a Permanent Establishment is located, if that jurisdiction exempts the income attributable to the operations conducted through the place of business.
- (2) ***Main Entity***, in respect of a Permanent Establishment, is the Entity that includes the Financial Accounting Net Income or Loss of the Permanent Establishment in its financial statements.

Division 2—Excluded Entities

20 Meaning of *Excluded Entity*

- (1) An ***Excluded Entity*** is an Entity that is any of the following:
 - (a) a Governmental Entity;
 - (b) an International Organisation;
 - (c) a Non-profit Organisation;
 - (d) a Pension Fund;
 - (e) an Investment Fund that is an Ultimate Parent Entity;
 - (f) a Real Estate Investment Vehicle that is an Ultimate Parent Entity;
 - (g) an Excluded Service Entity;
 - (h) an Entity of a kind prescribed by the Rules for the purposes of this paragraph.
- (2) If:
 - (a) an Entity is an Excluded Entity under a paragraph of subsection (1); and
 - (b) the Entity is a Main Entity in respect of a Permanent Establishment;for the purposes of this Act, treat the Permanent Establishment as an Excluded Entity under that paragraph.
- (3) To avoid doubt, subsection (2) does not result in the Permanent Establishment being treated as an Entity for the purposes of this Act.
- (4) However, an Entity is not an ***Excluded Entity*** throughout a Fiscal Year if an election under subsection (5) applies to the Entity and the Fiscal Year.
- (5) A Filing Constituent Entity for an Applicable MNE Group may make an election under this section that applies to a specified Constituent Entity of the MNE Group.
- (6) An election under subsection (5) is a Five-Year Election.

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21 Meaning of *Governmental Entity*

- (1) A ***Governmental Entity*** is an Entity that meets all of the following criteria:
- (a) it is part of or wholly-owned by a government (including any political subdivision or local authority thereof) of a jurisdiction;
 - (b) it has the principal purpose of:
 - (i) fulfilling a government function; or
 - (ii) managing or investing that government's or jurisdiction's assets through the making and holding of investments, asset management, and related investment activities for those assets;
 - (c) it does not carry on a trade or business, other than:
 - (i) a business that only provides products or services for use by that government to fulfil a government function; or
 - (ii) an investment business described in subparagraph (b)(ii);
 - (d) it is accountable to that government on its overall performance, and provides annual information reporting to that government;
 - (e) its assets vest in that government upon dissolution;
 - (f) to the extent it distributes net earnings, the net earnings are distributed solely to that government with no portion of its net earnings inuring to the benefit of any private person.
- (2) For the purposes of subsection 13(3) and section 18, treat a Governmental Entity that meets the criterion in subparagraph (1)(b)(ii) of this section (a sovereign wealth fund) as not being an Entity.

22 Meanings of *International Organisation* and *Non-profit Organisation*

- (1) An ***International Organisation*** is any of the following:
-

- (a) an intergovernmental or supranational organisation that meets all of the following criteria:
 - (i) it is comprised primarily of governments;
 - (ii) it has in effect a headquarters agreement (or substantially similar agreement) with the jurisdiction in which the organisation is established (for example, an arrangement that entitles the organisation's offices or establishments in the jurisdiction to privileges and immunities);
 - (iii) law or its governing documents prevent its income inuring to the benefit of private persons;
 - (b) an Entity that meets both of the following criteria:
 - (i) it acts for, is part of, or is wholly-owned by an organisation described in paragraph (a);
 - (ii) law or its governing documents prevent its income inuring to the benefit of private persons.
- (2) A **Non-profit Organisation** is an Entity that meets all of the following criteria:
- (a) it is established and operated in the jurisdiction where it is created and managed:
 - (i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational or other similar purposes;
or
 - (ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
 - (b) substantially all of its income from its operations as mentioned in paragraph (a) is exempt from income tax in the jurisdiction where it is created and managed;
 - (c) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - (d) its income or assets may not be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than:

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- (i) pursuant to the conduct of its operations as mentioned in paragraph (a); or
- (ii) as payment of reasonable compensation for services rendered or for the use of property or capital; or
- (iii) as payment representing the fair market value of property which it has purchased;
- (e) upon its termination, liquidation or dissolution, all of its assets must be distributed or revert to a Non-profit Organisation or to the government (including any Governmental Entity) of the jurisdiction where it is created and managed, or any political subdivision thereof;
- (f) it does not carry on a trade or business that is not directly related to the purposes for which it was established.

23 Meanings of *Pension Fund* and *Pension Services Entity*

- (1) A ***Pension Fund*** is any of the following:
 - (a) an Entity that is established and operated in a jurisdiction exclusively or almost exclusively for the purpose of administering or providing retirement benefits and ancillary or incidental benefits to individuals, if:
 - (i) the Entity's establishment and operations for that purpose are regulated by that jurisdiction or one of its political subdivisions or local authorities; or
 - (ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trust to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the Entity, or of other Entities together with which the Entity comprise a Group;
 - (b) a Pension Services Entity.
- (2) A ***Pension Services Entity*** is an Entity that is established and operated exclusively or almost exclusively:
 - (a) to invest funds for the benefit of Entities referred to in paragraph (1)(a); or

- (b) if the Entity and an Entity referred to in paragraph (1)(a) (the ***Pension Fund Entity***), together with one or more other Entities, comprise a Group—to carry out activities that are ancillary to such of the Pension Fund Entity’s activities that are for the purpose mentioned in that paragraph.

24 Meanings of *Real Estate Investment Vehicle* and *Investment Fund*

- (1) A ***Real Estate Investment Vehicle*** is an Entity that meets all of the following criteria:
 - (a) taxation of the Entity achieves a single level of taxation either in its hands or the hands of the holders of the Ownership Interests in the Entity (with at most one year of deferral);
 - (b) it holds predominantly immovable property;
 - (c) it is widely held.
- (2) An ***Investment Fund*** is an Entity that meets all of the following criteria:
 - (a) it is designed to pool assets (which may be financial and non-financial) from a number of investors, at least some of whom are not connected;
 - (b) it invests in accordance with a defined investment policy;
 - (c) it allows investors to reduce transaction, research and analytical costs, or to spread risk collectively;
 - (d) it is primarily designed to generate investment income or gains, or protect against a specific or general event or outcome;
 - (e) its investors have a right to return from its assets or income earned on those assets, based on the contributions made by those investors;
 - (f) it or its management is subject to a regulatory regime in the jurisdiction in which it is established or managed, including appropriate anti-money laundering and investor protection regulations;
 - (g) it is managed by investment fund management professionals on behalf of its investors.

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- (3) For the purposes of paragraph (2)(a), an investor is connected to another investor if:
- (a) under paragraph 8 of Article 5 of the OECD Model Tax Convention, the investor is closely related to the other investor for the purposes of that Article; or
 - (b) the investor is a spouse or de facto partner (within the meaning of the *Acts Interpretation Act 1901*), parent or remoter lineal ancestor, child or remoter issue, or sibling of the other investor.
- (4) For the purposes of paragraph (3)(b):
- (a) without limiting who is a child of another person, a person is the child of another person if the person is a child of the other person within the meaning of the *Family Law Act 1975*; and
 - (b) without limiting who is a parent of another person, a person is the parent of another person if the other person is the person's child because of paragraph (a); and
 - (c) if one person is the child of another person because of paragraph (a), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

25 Meaning of *Excluded Service Entity*

An Entity is an *Excluded Service Entity* if:

- (a) at least 95% of the value of the Entity is owned (directly or through a chain of Excluded Entities) by one or more of the following (other than a Pension Services Entity):
 - (i) an Excluded Entity under paragraph 20(1)(a), (b), (c), (d), (e) or (f);
 - (ii) if the Entity is an Ultimate Parent Entity—an Investment Fund or a Real Estate Investment Vehicle; and
- (b) any of the following conditions are satisfied:
 - (i) the Entity operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the Entities mentioned in paragraph (a);

- (ii) the Entity only carries out activities that are ancillary to those carried out by the Entities mentioned in paragraph (a).

Division 3—Joint Ventures and Multi-Parented MNE Groups

26 Joint Ventures

- (1) An Entity is a *Joint Venture* of an MNE Group if:
 - (a) the Entity's financial results are reported under the equity method in the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year; and
 - (b) the Ultimate Parent Entity's Ownership Interest Percentage in the Entity is at least 50%.
- (2) However, the Entity is not a *Joint Venture* of an MNE Group if any of the following applies:
 - (a) the Entity is the Ultimate Parent Entity of an Applicable MNE Group;
 - (b) the Entity is an Excluded Entity under paragraph 20(1)(a), (b), (c), (d), (e) or (f);
 - (c) in a case where the Group Entities of the MNE Group that hold Direct Ownership Interests in the Entity (the *Excluded Entity owners*) are Excluded Entities mentioned in paragraph (b) of this subsection—any of the following applies:
 - (i) the Entity operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the holders of Direct Ownership Interests in the Entity;
 - (ii) the Entity only carries out activities that are ancillary to those carried out by the Excluded Entity owners;
 - (iii) the Entity is of a kind prescribed by the Rules for the purposes of this subparagraph;
 - (d) the MNE Group is comprised exclusively of Excluded Entities;
 - (e) the Entity is a JV Subsidiary of a Joint Venture.

27 Meanings of *JV Group* and *JV Subsidiary*

- (1) ***JV Group*** means a Joint Venture of an MNE Group and its JV Subsidiaries.
- (2) ***JV Subsidiary***, of a Joint Venture of an MNE Group, means an Entity whose assets, liabilities, income, expenses and cash flows are consolidated by the Joint Venture under an Acceptable Financial Accounting Standard (or would have been consolidated had it been required to consolidate such items in accordance with an Acceptable Financial Accounting Standard).
- (3) If the Main Entity in respect of a Permanent Establishment is a Joint Venture of an MNE Group or a JV Subsidiary of a Joint Venture of an MNE Group, the Permanent Establishment is a ***JV Subsidiary*** of the Joint Venture.

28 Multi-Parented MNE Groups

- (1) The Rules may set out the manner in which this Act applies in relation to a Multi-Parented MNE Group.
- (2) To the extent that there is any inconsistency between this Act and Rules made for the purposes of subsection (1), this Act applies subject to those Rules.
- (3) The Rules may make provision as mentioned in subsection (1) only to the extent that doing so is consistent with the documents mentioned in subsection 3(1).

Part 4—Rules

29 The Rules—general

- (1) The Minister may, by legislative instrument, make Rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the Rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the Rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act.

30 The Rules—conferral of powers and functions

- (1) The Rules may confer on a person or body any of the following powers or functions:
 - (a) a power to determine, or a function of determining, any matter that may be dealt with by the Rules;
 - (b) a power or function relating to the operation, application or administration of the Rules.
- (2) If the Rules confer on a person or body a power or function, the Rules may:
 - (a) provide that the power is to be exercised, or the function performed, by legislative instrument or notifiable instrument; and
 - (b) provide for the person or body to delegate the power or function.

- (3) Despite subsection (2), the Rules must not:
- (a) confer a power to make a legislative instrument on a person other than the Minister; or
 - (b) confer a power to make a notifiable instrument on a person other than:
 - (i) the Minister; or
 - (ii) the Secretary of the Department; or
 - (iii) the Commissioner of Taxation; or
 - (c) confer a power to delegate a power to make a legislative instrument; or
 - (d) confer a power to delegate a power to make a notifiable instrument to a person other than:
 - (i) the Secretary of the Department; or
 - (ii) the Commissioner of Taxation; or
 - (iii) an SES employee or acting SES employee in the Department; or
 - (iv) an SES employee or acting SES employee of the Australian Taxation Office.
- (4) The Rules may:
- (a) make provision in relation to a matter in a way that depends on the exercise of a discretion by a person; and
 - (b) specify matters that the person must or may take into account, or not take into account, in exercising that discretion; and
 - (c) specify the manner in which the person is to exercise the discretion; and
 - (d) confer a power on the person to delegate the power to exercise the discretion; and
 - (e) require the person to whom the power is delegated to comply with any written directions of the person who delegated the power; and
 - (f) provide that a person who is dissatisfied with a decision to exercise (or not exercise) the discretion may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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- (5) Despite paragraph (4)(d), the Rules must not provide for a person to delegate a power to exercise the discretion mentioned in that paragraph on a person other than:
- (a) the Secretary of the Department; or
 - (b) an SES employee or acting SES employee in the Department.
- (6) Paragraph (4)(d) and subsection (5) apply subject to section 8 of the *Taxation Administration Act 1953*.

Note: Section 8 of the *Taxation Administration Act 1953* contains the Commissioner of Taxation's delegation power.

31 The Rules—incorporation by reference

- (1) The Rules may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in any other instrument or writing:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.

Note: Section 33 contains some examples of how the Rules may make such provision.

- (2) Subsection (1) has effect despite subsection 14(2) of the *Legislation Act 2003*.
- (3) The Rules may make provision as mentioned in subsection (1) only to the extent that doing so is consistent with the documents mentioned in subsection 3(1).

32 The Rules—retrospective application

Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to:

- (a) the Rules; and
- (b) legislative instruments made under a power conferred by the Rules.

33 The Rules—miscellaneous

- (1) Without limiting the scope of the other sections of this Part, the Rules may:
- (a) make provision in respect of a matter regardless of whether it relates to Australia; and
 - (b) make provision in respect of a matter by reference to the effects of a foreign legal system; and
 - (c) make provision in respect of a matter by reference to the contents of an instrument or publication of an International Organisation; and
 - (d) make provision in respect of a matter by reference to the operation of any of the following:
 - (i) accounting standards (whether Australian or otherwise);
 - (ii) financial reporting standards (whether Australian or otherwise);
 - (iii) generally accepted accounting principles (whether Australian or otherwise); and
 - (e) make provision in respect of the translation of amounts:
 - (i) to or from Australian currency; and
 - (ii) to or from one foreign currency to another foreign currency; and
 - (f) make provision for the making of a Five-Year Election, Annual Election or other election by an Entity or Constituent Entity; and
 - (g) make provision in respect of a matter by reference to the contents of such an election; and
 - (h) make provision for the use of approved forms; and
 - (i) make provision in respect of an amount even if the amount is zero or a negative amount; and
 - (j) make provision by reference to deemed matters, including (but not limited to) the following:
 - (i) groups that are deemed to be, or not to be, Groups or MNE Groups;
 - (ii) entities that are deemed to be, or not to be, Entities, Group Entities or Constituent Entities;

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- for any purpose related to the Rules; and
- (k) make provision with respect to transitional, application and savings matters arising from the making of the Rules or amendments to the Rules.
- (2) To avoid doubt, the paragraphs of subsection (1) do not limit each other.

Part 5—Interpretation

Division 1—Definitions

34 Definitions

In this Act:

Acceptable Financial Accounting Standard means any of the following:

- (a) an accounting standard (within the meaning of the *Corporations Act 2001*);
- (b) the IFRS;
- (c) the generally accepted accounting principles of any of the following:
 - (i) Brazil;
 - (ii) Canada;
 - (iii) Member States of the European Union;
 - (iv) Member States of the European Economic Area;
 - (v) Hong Kong (China);
 - (vi) Japan;
 - (vii) Mexico;
 - (viii) New Zealand;
 - (ix) the People’s Republic of China;
 - (x) the Republic of India;
 - (xi) the Republic of Korea;
 - (xii) Singapore;
 - (xiii) Switzerland;
 - (xiv) the United Kingdom;
 - (xv) the United States of America.

Agreed Administrative Guidance: see subsection 3(4).

Annual Election: see section 37.

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Applicable MNE Group: see subsection 12(1).

Authorised Accounting Body means the body with legal authority in a jurisdiction to prescribe, establish or accept accounting standards for financial reporting purposes.

Authorised Financial Accounting Standard, in respect of an Entity, means a set of generally acceptable accounting principles permitted by the Authorised Accounting Body in the jurisdiction where the Entity is located.

Commentary: see subsection 3(4).

Consolidated Financial Statements of an Entity means:

- (a) if the Entity is *not* the Ultimate Parent Entity of a Group under paragraph 18(4)(c)—the financial statements prepared by the Entity in accordance with an Acceptable Financial Accounting Standard, in which the assets, liabilities, income, expenses and cash flows of that Entity and the Entities in which it has a Controlling Interest are presented as those of a single economic unit; or
- (b) if the Entity is the Ultimate Parent Entity of a Group under paragraph 18(4)(c)—the financial statements of the Entity that are prepared in accordance with an Acceptable Financial Accounting Standard; or
- (c) if the Entity has prepared financial statements that are not covered by paragraph (a) or (b), but would be so covered if they were prepared in accordance with an Acceptable Financial Accounting Standard—those financial statements, adjusted to prevent any Material Competitive Distortions; or
- (d) if the Entity has not prepared financial statements that are covered by paragraph (a), (b) or (c)—the financial statements of the Entity that would have been prepared if the Entity were required to prepare such financial statements in accordance with an Authorised Financial Accounting Standard that is:
 - (i) an Acceptable Financial Accounting Standard; or
 - (ii) another financial accounting standard that is adjusted to prevent any Material Competitive Distortions.

Constituent Entity: see section 16.

Controlling Interest means an Ownership Interest in an Entity such that the holder of the Ownership Interest:

- (a) is required to consolidate the assets, liabilities, income, expenses and cash flows of the Entity on a line-by-line basis in accordance with an Acceptable Financial Accounting Standard; or
- (b) would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the Entity on a line-by-line basis if the holder of the Ownership Interest had prepared Consolidated Financial Statements.

Note: A Main Entity is taken to hold a Controlling Interest in its Permanent Establishments: see paragraph 18(2)(b).

Covered Taxes has the meaning given by the Rules.

Direct Ownership Interest: see section 38.

Direct Ownership Interest Percentage: see section 39.

Domestic Top-up Tax Amount: see section 9.

Entity: see section 13.

Excluded Entity: see section 20.

Excluded Service Entity: see section 25.

Filing Constituent Entity, for an MNE Group, means a Constituent Entity of the MNE Group that files a GloBE Information Return for the MNE Group.

Financial Accounting Net Income or Loss has the meaning given by the Rules.

Fiscal Year means:

- (a) if paragraph (b) does not apply—an accounting period with respect to which the Ultimate Parent Entity of an MNE Group prepares its Consolidated Financial Statements; or

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(b) if paragraph (d) of the definition of **Consolidated Financial Statements** applies in relation to the Ultimate Parent Entity—a calendar year.

Five-Year Election: see section 36.

Flow-through Entity has the meaning given by the Rules.

GloBE Information Return has the meaning given by the *Income Tax Assessment Act 1997*.

GloBE Rules: see subsection 3(4).

GloBE Threshold, for a Fiscal Year: see subsection 12(3).

Governmental Entity: see section 21.

Group: see subsection 14(2).

Group Entity: see section 15.

IFRS means the International Financial Reporting Standards.

IIR Top-up Tax Amount: see section 7.

Indirect Ownership Interest: see section 38.

Indirect Ownership Interest Percentage: see section 39.

International Organisation: see subsection 22(1).

Investment Fund: see section 24.

Joint Venture: see section 26.

JV Group: see subsection 27(1).

JV Subsidiary: see subsections 27(2) and (3).

Main Entity, in respect of a Permanent Establishment: see subsection 19(2).

Material Competitive Distortion, in respect of Consolidated Financial Statements:

- (a) unless paragraph (b) applies—means an application of a specific principle or procedure, under the set of generally accepted accounting principles used in preparing the Consolidated Financial Statements, that results in an aggregate variation greater than 75 million Euros in a Fiscal Year as compared to the amounts that would have been determined by applying the corresponding IFRS principle or procedure; or
- (b) if Rules made for the purposes of this paragraph define **Material Competitive Distortion**—has the meaning given by the Rules.

Note: Section 35 allows the Rules to provide for currency translation in respect of amounts of aggregate variation.

MNE Group: see subsection 14(1).

Multi-Parented MNE Group has the meaning given by the Rules.

Non-profit Organisation: see subsection 22(2).

OECD means the Organisation for Economic Cooperation and Development.

OECD Model Tax Convention means the Model Tax Convention on Income and on Capital published (from time to time) by the Council of the OECD.

Ownership Interest: see section 38.

Ownership Interest Percentage: see section 39.

Pension Fund: see subsection 23(1).

Pension Services Entity: see subsection 23(2).

Permanent Establishment: see subsection 19(1).

Qualified IIR has the meaning given by the Rules.

Real Estate Investment Vehicle: see subsection 24(1).

Rules means Rules made under subsection 29(1).

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Securitisation Entity has the meaning given by the Rules.

Stateless Constituent Entity: see subsections 41(3), 42(3) and 43(2).

Tax Treaty means an agreement for the avoidance of double taxation with respect to taxes on income and on capital.

this Act: see subsection 3(5).

Ultimate Parent Entity: see subsection 13(3) and paragraph 18(4)(c).

UTPR Top-up Tax Amount: see section 11.

**35 Currency translation of aggregate variation—definition of
*Material Competitive Distortion***

In computing an amount of Euros for the purposes of computing an aggregate variation mentioned in paragraph (a) of the definition of *Material Competitive Distortion* in section 34, translate amounts expressed in currencies other than Euros to Euros in accordance with Rules made for the purposes of this section.

Division 2—Elections

36 Five-Year Elections

- (1) This section applies if a provision of this Act permits a Filing Constituent Entity for an Applicable MNE Group to make a *Five-Year Election*.
- (2) Unless the election is revoked, it applies to:
 - (a) the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records or evidences the election is filed by the Filing Constituent Entity; and
 - (b) each subsequent Fiscal Year.
- (3) Unless the provision mentioned in subsection (1) otherwise provides, a Filing Constituent Entity for the MNE Group may revoke the election.
- (4) If the Filing Constituent Entity revokes the election, the election does not apply to:
 - (a) the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records or evidences the revocation is filed by the Filing Constituent Entity; and
 - (b) each subsequent Fiscal Year.
- (5) However, the Filing Constituent Entity cannot revoke the election if doing so would result in the election not applying to:
 - (a) the Fiscal Year mentioned in paragraph (2)(a); or
 - (b) any of the subsequent 4 Fiscal Years.
- (6) If the Filing Constituent Entity revokes the election, a Filing Constituent Entity for the MNE Group cannot make another election under the provision mentioned in subsection (1) that applies to:
 - (a) the Fiscal Year mentioned in paragraph (4)(a); or
 - (b) any of the subsequent 4 Fiscal Years.

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37 Annual Elections

- (1) This section applies if a provision of this Act permits a Filing Constituent Entity for an Applicable MNE Group to make an *Annual Election*.
- (2) Unless the election is revoked, it applies to the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records or evidences the election is filed by the Filing Constituent Entity.

Division 3—Ownership Interests and Ownership Interest Percentages

38 Meanings of *Ownership Interest*, *Direct Ownership Interest* and *Indirect Ownership Interest*

- (1) An ***Ownership Interest*** in an Entity or in a Permanent Establishment is:
 - (a) a Direct Ownership Interest in the Entity or Permanent Establishment; or
 - (b) an Indirect Ownership Interest in the Entity or Permanent Establishment.
- (2) A ***Direct Ownership Interest*** in an Entity is an interest (whether by way of shares, other security or otherwise) that:
 - (a) carries rights to a share of the profits, capital or reserves of the Entity (whether on the making of a distribution of profits, winding up or otherwise); and
 - (b) would be classified as equity under the financial accounting standard used in the preparation of the relevant Consolidated Financial Statements (disregarding any requirement in those Consolidated Financial Statements to consolidate the assets, liabilities, income, expenses and cash flows of the Entity).
- (3) However, an interest is not a ***Direct Ownership Interest*** in an Entity if it is of a kind prescribed by the Rules.
- (4) The Main Entity in respect of a Permanent Establishment is taken to hold a ***Direct Ownership Interest*** in the Permanent Establishment.

Note: The Main Entity's Direct Ownership Interest Percentage in the Permanent Establishment is 100%: see subsection 39(7).
- (5) An Entity (the ***first entity***) holds an ***Indirect Ownership Interest*** in another Entity or a Permanent Establishment (the ***other entity/PE***) if the first entity holds a Direct Ownership Interest in:

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- (a) another Entity that holds a Direct Ownership Interest in the other entity/PE; or
- (b) another Entity that holds an Indirect Ownership Interest in the other entity/PE under one or more other applications of this subsection.

39 Meanings of *Ownership Interest Percentage*, *Direct Ownership Interest Percentage* and *Indirect Ownership Interest Percentage*

- (1) The ***Ownership Interest Percentage*** of an Entity (the ***holding entity***) in another Entity (the ***test entity***) is equal to the sum of:
 - (a) the holding entity's Direct Ownership Interest Percentage in the test Entity; and
 - (b) the holding entity's Indirect Ownership Interest Percentages in the test Entity.
- (2) Compute the ***Direct Ownership Interest Percentage*** of an Entity (the ***holding entity***) in another Entity (the ***test entity***) as follows:
 - (a) compute the following:
 - (i) the profits of the test entity (the ***relevant test entity profits***) to which holders of Direct Ownership Interests in the test entity are entitled;
 - (ii) the capital of the test entity (the ***relevant test entity capital***) to which holders of Direct Ownership Interests in the test entity are entitled;
 - (iii) the reserves of the test entity (the ***relevant test entity reserves***) to which holders of Direct Ownership Interests in the test entity are entitled;
 - (b) compute the sum of the following:
 - (i) the percentage of the relevant test entity profits to which the holding entity is entitled because of the Direct Ownership Interests that it holds in the test entity;
 - (ii) the percentage of the relevant test entity capital to which the holding entity is entitled because of the Direct Ownership Interests that it holds in the test entity;

- (iii) the percentage of the relevant test entity reserves to which the holding entity is entitled because of the Direct Ownership Interests that it holds in the test entity;
 - (c) if the test Entity issued Direct Ownership Interests that give rise to only 1 of the kinds of entitlement mentioned in subparagraphs (a)(i), (ii) and (iii)—the **Direct Ownership Interest Percentage** is the result of paragraph (b);
 - (d) if the test Entity issued Direct Ownership Interests that give rise to only 2 of those kinds of entitlement—the **Direct Ownership Interest Percentage** is the result of paragraph (b) divided by 2;
 - (e) if the test Entity issued Direct Ownership Interests that give rise to all 3 of those kinds of entitlement—the **Direct Ownership Interest Percentage** is the result of paragraph (b) divided by 3.
- (3) Compute the **Indirect Ownership Interest Percentage** of an Entity (the **holding entity**) in another Entity (the **test entity**) by multiplying:
 - (a) the holding entity's Direct Ownership Interest Percentage in another Entity (the **intermediate entity**) at that time;by:
 - (b) the sum of:
 - (i) the intermediate entity's Direct Ownership Interest Percentage in the test entity; and
 - (ii) the intermediate entity's Indirect Ownership Interest Percentage in the test entity (as worked out under one or more other applications of this section).
- (4) Despite subsection (3), if there is more than one intermediate entity to which paragraph (3)(a) applies, the holding entity's **Indirect Ownership Interest Percentage** in the test entity is the sum of the percentages worked out under subsection (3) in relation to each of those intermediate entities.
- (5) Treat a reference in this section to an Entity as being a reference to an Entity or a Permanent Establishment (unless the Entity is a holding entity mentioned in this section).

Part 5 Interpretation

Division 3 Ownership Interests and Ownership Interest Percentages

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- (6) Subsection (7) applies if, as a result of subsection (5):
- (a) the holding entity mentioned in subsection (2) is the Main Entity in respect of a Permanent Establishment; and
 - (b) the test entity mentioned in subsection (2) is the Permanent Establishment.

Note: The Main Entity is taken to hold a Direct Ownership Interest in the Permanent Establishment: see subsection 38(4).

- (7) Despite subsection (2), treat the holding entity's ***Direct Ownership Interest Percentage*** in the test entity as being 100%.

Division 4—Location of Entities and Permanent Establishments

40 Location of an Entity that is not a Flow-through Entity

- (1) This section applies to an Entity if it is not a Flow-through Entity.
- (2) For the purposes of this Act, the Entity is located in the following jurisdiction:
 - (a) if the Entity is an Australian entity (within the meaning of the *Income Tax Assessment Act 1997*)—Australia;
 - (b) if, for the purposes of a law of a jurisdiction relating to national or federal Covered Taxes, the Entity is resident in the jurisdiction based on its place of management, place of creation or a similar criterion—that jurisdiction;
 - (c) if paragraphs (a) and (b) do not apply—the jurisdiction in which the Entity was created.

Note: If, under this section, the Entity is located in more than one jurisdiction for a Fiscal Year, see section 43.

41 Location of an Entity that is a Flow-through Entity

- (1) This section applies to an Entity if it is a Flow-through Entity.
- (2) For the purposes of this Act, the Entity is located in the jurisdiction in which the Entity was created if:
 - (a) the Entity is an Ultimate Parent Entity; or
 - (b) the Entity is required to apply a Qualified IIR.
- (3) For the purposes of this Act, if:
 - (a) subsection (2) does not apply to the Entity; and
 - (b) the Entity is a Constituent Entity of an MNE Group; the Entity is a ***Stateless Constituent Entity*** of the MNE Group.

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42 Location of a Permanent Establishment

- (1) This section applies to a Constituent Entity of an MNE Group if it is a Permanent Establishment.
- (2) For the purposes of this Act, if paragraph 19(1)(a), (b) or (c) applies in relation to the Permanent Establishment, the Permanent Establishment is located in the jurisdiction mentioned in that paragraph.
- (3) For the purposes of this Act, if paragraph 19(1)(d) applies in relation to the Permanent Establishment, the Permanent Establishment is a *Stateless Constituent Entity* of the MNE Group.

43 Dual-located entities

- (1) Subsection (2) applies if a Constituent Entity of an MNE Group would be located in more than one jurisdiction under section 40 for a Fiscal Year, disregarding this section.
- (2) For the purposes of this Act, and despite section 40:
 - (a) if paragraph (b) of this subsection does not apply—the Constituent Entity is taken to be located, for the Fiscal Year, in the jurisdiction worked out in accordance with the Rules; or
 - (b) if the Constituent Entity is not taken under the Rules to be located in a jurisdiction for the Fiscal Year:
 - (i) the Constituent Entity is taken not to be located in any jurisdiction for the Fiscal Year; and
 - (ii) the Constituent Entity is a *Stateless Constituent Entity* of the MNE Group.
- (3) For the purposes of subsection (2), the Rules may specify a method for determining the jurisdiction in which a Constituent Entity mentioned in subsection (1) is taken to be located for a Fiscal Year.

44 Change of location during a Fiscal Year

If the location of an Entity changes during a Fiscal Year, treat the Entity as being located, for the Fiscal Year, in the jurisdiction in which it was located at the beginning of the Fiscal Year.

*[Minister's second reading speech made in—
House of Representatives on 4 July 2024
Senate on 22 August 2024]*

(87/24)
