EXPLANATORY STATEMENT

Issued by authority of the Treasurer

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

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

Section 29 of the *Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024* (the Assessment Act) provides that the Minister may make Rules required or permitted by the Assessment Act, or necessary or convenient for carrying out or giving effect to the Assessment Act.

The purpose of the *Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024* (the Rules) is to empower the Minister to detail the specifics in computing top-up tax. Whilst the Assessment Act establishes a framework to apply top-up tax, the Rules include the detailed calculations required to arrive at a liability to top-up tax. The Rules include details on:

- computing and allocating GloBE Income or Loss;
- computing and allocating Adjusted Covered Taxes;
- application to investment and Tax Transparent Entities;
- safe harbour provisions; and
- transitional provisions for MNE Groups in the initial phases of being in scope of the Assessment Act.

On 8 October 2021, Australia and 135 other members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework) agreed to the 'Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy' (the Two-Pillar Solution). The Two-Pillar Solution seeks to reform the international taxation rules and ensure that MNEs pay a fair share of tax wherever they operate and generate profits in today's digitalised and globalised world economy. The Two-Pillar Solution is a result of an OECD and G20 policy process with involvement of 140 countries and jurisdictions.

The Two-Pillar Solution is intended to be achieved through a series of tax reforms, including through the ratification of multilateral conventions / instruments. Different reforms are scheduled on different timeframes but are generally to be implemented as a coordinated approach across jurisdictions, with the earliest reforms taking effect from 1 January 2024.

The Two-Pillar Solution is comprised of Pillar 1 and Pillar 2. Pillar 1 aims to ensure a fairer distribution of profits and taxing rights among countries with respect to certain large MNEs. The GloBE Rules under Pillar 2 ensure that in scope MNE Groups will be subject to a global minimum tax rate of 15 per cent. This is achieved through a set of rules which identify low taxed pools of income within a MNE Group, and which allow parent jurisdictions, or in some cases, other jurisdictions, to claim taxing rights over that income.

The Australian Government announced its intention to implement key aspects of Pillar 2 in the 2023-24 Budget, as part of its continuing efforts to ensure MNE Groups pay their fair share of tax.

The Rules implement the domestic framework for a multinational top-up tax, by providing for the substantive computations of top-up tax under the GloBE Rules and operate to ensure that future administrative guidance released by the OECD can be incorporated in a timely and efficient manner. It is imperative that the Rules reflect OECD approved documents so that Australia's implementation of the GloBE Rules achieves qualified status, which can only be achieved if the Rules are implemented in a manner consistent with the GloBE Rules. All OECD documents are publicly available from the OECD website and could be, in 2024 accessed freely from https://oecd.org.

In Australia, the Rules were publicly consulted on for 8 weeks from 21 March 2024 to 16 May 2024. Once the Rules were further developed, by including later releases of OECD Agreed Administrative Guidance, the Rules were released for targeted consultation to individuals who were part of the Pillar 2 working group. The ATO has been heavily involved in the development of the Pillar 2 subordinate legislation.

The Assessment Act does not specify any conditions that need to be satisfied before the power to make the Rules may be exercised.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*. The Rules are subject to disallowance and sunsetting in accordance with sections 42 and 50, respectively, of the *Legislation Act 2003*.

The Rules commence the day after they are registered.

The Rules apply from 1 January 2024.

Retrospective commencement is appropriate because this will achieve a start date in line with that stipulated by the OECD's Two Pillar Solution and an expected collective group of jurisdictions implementing the GloBE Rules as part of the coordinated international approach. The Assessment Act provides that Rules may be made retrospectively despite subsection 12(2) of the *Legislation Act 2003*.

Details of the Rules are set out in <u>Attachment A.</u>

The Office of Impact (OIA) Analysis has been consulted. A list of reports certified as equivalent to a Policy Impact Analysis can be found at https://oia.pmc.gov.au/published-impact-analyses-and-reports/two-pillar-solution-addressing-tax-challenges-arising. The full list of reports and executive summaries of those reports are also available in the Explanatory Memorandum for the *Taxation (Multinational-Global and Domestic Minimum Tax) Act 2024* as these reports have been certified for the Assessment Act and the Rules.

ATTACHMENT A

Details of the *Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024*

Section 1 – Name

This section provides that the name of this instrument is the *Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024* (the Rules).

Section 2 – Commencement

The whole of the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Rules are made under the *Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024* (the Assessment Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

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Glossary

This Explanatory Statement uses the following abbreviations and acronyms.

Abbreviation	***Definition***
Acceptable FAS	Acceptable Financial Accounting Standard
Agreed Administrative Guidance	The following collection of documents: *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. *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. *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. *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.
Assessment Act	*Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024*
Authorised FAS	Authorised Financial Accounting Standard

CbC	Country-by-Country
CFS	Consolidated Financial Statements
2022 Commentary	*Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two),* OECD 2022
Consolidated Commentary	*Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)* published by the OECD on 25 April 2024
Consequential Act	*Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Act 2024*
DMT	Domestic Minimum Tax
ETR	Effective Tax Rate
FANIL	Financial Accounting Net Income or Loss
Imposition Act	*Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Act 2024*
GloBE Rules	OECD GloBE Model Rules (as modified by the Commentary, Agreed Administrative Guidance and Safe Harbours Rules)
IIR	Income Inclusion Rule
IPE	Intermediate Parent Entity
ITAA 1997	*Income Tax Assessment Act 1997*
JV	Joint Venture
LTCE	Low-Taxed Constituent Entity
MEC Group	Multiple Entry Consolidated Group

MNE	Multinational enterprise
MNE Group	MNE Group as defined in the GloBE Rules
MOCE	Minority-owned Constituent Entity
OECD	Organisation for Economic Cooperation and Development
OECD GloBE Model Rules	*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
POPE	Partially-owned Parent Entity
RBA	Reserve Bank of Australia
QDMTT	Qualified Domestic Minimum Top-up Tax
QIIR	Qualified Income Inclusion Rules
Safe Harbour Guidance	*Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)* published by the OECD on 20 December 2022
TCG	Tax Consolidated Group
The Rules	*Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024*
UPE	Ultimate Parent Entity
UTPR	Undertaxed Profits Rules

Chapter 1: Scope of entities

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Outline of chapter

1.1 The Assessment Act establishes a new taxation framework that assesses the Domestic Minimum Tax and the global minimum top-up tax liability on certain MNEs as a part of coordinated global approach. The Assessment Act, Imposition Act and Consequential Act (together, the Acts) ensure that MNEs within scope of the OECD's GloBE Rules pay a Minimum Rate of 15 per cent on the GloBE Income arising in each jurisdiction they operate, consistent with the GloBE Rules.

1.2 The Rules provide the specific legislative machinery and computations required to be undertaken to determine the amount of top-up tax liability.

1.3 The Rules implement the core provisions for computing Top-up Tax, by determining the amount of top-up tax that is applicable with respect to the ETR based on adjusted covered taxes divided by GloBE Income of an MNE Group in a jurisdiction. The Rules also provide ancillary provisions for special entities, transitional rules, and safe harbours.

1.4 The Rules contain detail on Chapters 2 to 5 of the GloBE Rules that establish the computations for calculating an ETR. The ancillary Chapters 6 and 7 of the GloBE Rules are included to support the ETR computations for special entities. The safe harbours and transitional provisions from Chapters 8 and 9 of the GloBE Rules are also contained in the Rules.

1.5 The following content on Chapter 1 sets out further entities that are excluded from the scope of the GloBE Rules and the currency translation rules that apply.

Detailed explanation of new law

Scope: Excluded entities

1.6 The GloBE Rules stipulate that an Excluded Entity is not subject to the GloBE Rules. However, the revenue of an Excluded Entity is included in ascertaining whether the EUR 750 million GloBE Threshold has been satisfied.

1.7 Section 20 of the Assessment Act defines an Excluded Entity, which includes an empowering provision for the Rules to prescribe further Entities that are Excluded.

Excluded Exempt Income Entity and Excluded Non-Profit Subsidiary

1.8 An Entity can be an Excluded Exempt Income Entity or Excluded Non-Profit Subsidiary depending on the value of the Entity owned by the Excluded Entity and the activities conducted by an Entity.

1.9 Where the Entity is a Main Entity, then the income of any Permanent Establishments under the Main Entity is included in the value and activities assessment.

1.10 The 'value of the entity' refers to the aggregate value of the Ownership Interests held by the Excluded Entity in the subsidiary Entity and is tested on the date of the most recent change in the Excluded Entity's relative Ownership Interests in the Entity. Where Ownership Interests are represented by shares, the value of the Entity refers to the value of the issued and outstanding shares held by the shareholders.

1.11 An ***Excluded Exempt Income Entity*** must have at least 85 per cent of its value owned by one or more Excluded Entities (other than any Pension Services Entity, Excluded Service Entity, Excluded Exempt Income Entity or Excluded Non-Profit Subsidiary) and substantially all of its income is Excluded Dividends or Excluded Equity Gain or Loss, which are items of income that are excluded from the computation of GloBE Income or Loss.
[Chapter 1, subsection 1-20(2) of the Rules]

1.12 The ownership percentage threshold for these Entities is lower than for Excluded Service Entities (see sections 20 and 25 of the Assessment Act) to allow for broader ownership structures associated with these types of Entities.

1.13 An ***Excluded Non-Profit Subsidiary*** must have 100 per cent of its value owned by one or more Non-profit Organisations and the sum of the revenue of Group Entities which are not a Non-profit Organisation, an Excluded Service Entity, or an Excluded Exempt Income Entity:

- is less than 25 per cent of the consolidated revenue of the MNE Group in a Fiscal Period; and

- does not exceed the EUR 750 million threshold.
  [Chapter 1, paragraph 1-20(3)(b) of the Rules]

1.14 An ***Excluded Non-Profit Subsidiary*** is a subsidiary Entity of a Non-profit Organisation. These subsidiary Entities typically undertake commercial activities to raise funds for the charitable activities of the parent Non-profit Organisation. The revenue of the Non-profit Organisation is included when determining the consolidated revenue of the MNE Group and, as a result, could lead to the consolidated revenue of the MNE Group reaching the EUR 750 million threshold, even though the revenue of the subsidiary entities undertaking the commercial activities could be significantly below that threshold. In other words, the subsidiaries undertaking the commercial activities may only come within scope of the GloBE Rules because they are owned by the Non-profit Organisation. This outcome would be inconsistent with the policy intention of the GloBE Rules. Treating an Excluded Non-Profit Subsidiary as an Excluded Entity rectifies this unintended consequence, as explained in paragraph 54.1 on page 30 of the Consolidated Commentary.

1.15 Prescribing Excluded Exempt Income Entities and Excluded Exempt Income Entities as Excluded Entities under paragraph 20(1)(h) of the Assessment Act is appropriate to ensure consistent outcomes with the OECD Model Rules that assists in achieving qualified status.

Currency translation

1.16 MNE Groups are required to undertake all relevant GloBE calculations and report the relevant amounts in the GloBE Information Return in the presentation currency of the MNE Group's CFS, as described in paragraph 17 on page 13 of the Consolidated Commentary.

1.17 Amounts relevant to the GloBE Income or Loss calculations that are not denominated in or have not been converted to the presentation currency of the MNE Group's CFS, must be translated to the presentation currency, in accordance with the applicable foreign currency translation rules in the Authorised FAS used to compute the FANIL of Constituent Entities in the jurisdiction.
[Chapter 1, section 1-25 of the Rules]

1.18 Where an amount which is relevant to determining if a materiality or other threshold is satisfied or exceeded is denominated in amount other than Euros, the amount is to be converted to Euros.
[Chapter 1, section 1-25 of the Rules]

1.19 The amount is to be converted using the average of the daily rates of exchange, for the month of December immediately preceding the Fiscal Year as quoted by the European Central Bank.

1.20 In the unlikely event that both the European Central Bank and the RBA do not quote a daily rate of exchange in respect of the two currencies, the Minister may make a legislative instrument specifying an appropriate source to quote

the rates of exchange.
[Chapter 1, section 1-25 of the Rules]

1.21 The power for the Minister to make a legislative instrument is appropriate as it achieves the necessary objective of ensuring that there will always be a method for determining the rate of exchange between two currencies. The legislative instrument would be subject to parliamentary oversight in the form of disallowance and sunsetting.

1.22 Thresholds for which an amount may be required to be translated include those found at:

- subsections 12(2) and (3) of the Assessment Act – referring to revenue included in the CFS equal to or greater than EUR 750 million;
- subsection 3-10(7)(c) of the Rules – referring to permanent differences in excess of EUR 1 million;
- subsection 4-120(4) of the Rules – referring to an aggregate decrease of less than EUR 1 million for a Constituent Entity in the prior fiscal year;
- subsections 5-100(1)(a) and (b) of the Rules – referring to Average GloBE Revenue of less than EUR 10 million and Average GloBE Income or Loss of less than EUR 1 million;
- section 34 of the Assessment Act – definition of 'Material Competitive Distortion' – which is an aggregate variation of greater than EUR 75 million in a Fiscal Year;
- section 3-65 of the Rules - 'Policy Disallowed Expenses' – referring to expenses accrued by the Constituent Entity for fines and penalties that equal or exceed EUR 50,000.

Chapter 2: Liability to Top-up Tax

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Outline of chapter

2.1 Chapter 2 of the Rules sets out the allocation of top-up tax on the Constituent Entities within an Applicable MNE Group. The allocation is consistent with the GloBE Rules.

2.2 The charging provisions in the GloBE Rules comprise of the IIR and the UTPR.

2.3 The IIR applies by allocating a Top-up Tax Amount to the Parent Entity generally closest to the top of the corporate structure (the 'top-down' approach). A Top-up Tax Amount is appliable to LTCEs that are subject to an ETR below the 15 per cent Minimum Rate.

2.4 The UTPR serves as a backstop to the IIR. It permits other jurisdictions to impose top-up tax (by denying deductions or an equivalent adjustment) on certain Constituent Entities to the extent that the undertaxed income of an LTCE in the MNE Group is not subject to tax under an IIR.

2.5 The two sets of rules provide a systematic solution to ensure all in scope MNE Groups are subject to a minimum of 15 per cent ETR on the excess profits in each jurisdiction in which they operate.

2.6 Jurisdictions have the option to legislate a DMT. The Rules include the details for computing Domestic Top-up Tax Amounts for Constituent Entities located in Australia that are subject to an ETR below the 15 per cent Minimum Rate.

Detailed explanation of new law

Agreed rule order for the IIR

2.7 The IIR follows a linear, top-down approach, in imposing top-up tax on a Parent Entity.

2.8 Generally, the jurisdiction where the LTCE is located has the primary right to collect any top-up tax under the QDMTT. However, if that right is not exercised, then under the IIR agreed rule order, the jurisdiction where the UPE of the MNE Group is located will have the right to collect the top-up tax under the IIR.

2.9 However, where the jurisdiction in which the UPE is located does not have a QIIR, the top-up tax in respect of a LTCE can be imposed on a Parent Entity that is lower down in the MNE Group structure. For instance, top-up tax liability that arises in respect of a Permanent Establishment will be imposed on the Main Entity. Another example of where the IIR may be imposed lower down the group structure is where there is a POPE.

2.10 Where neither the jurisdiction in which the UPE is located (or in some cases, a jurisdiction in which a Parent Entity lower down the group structure is located) does not have a QIIR, then other jurisdictions with a Qualified UTPR may be able to exercise the right to claim any top-up tax.

Application of the IIR

2.11 A Parent Entity has an IIR Top-up Tax Amount in respect of LTCE if the Parent Entity is located in Australia and it has an ownership interest in the LTCE for a Fiscal Year and the LTCE is not located in Australia. This extends to a Parent Entity that has an ownership interest in a JV or JV Subsidiary at any time in the Fiscal Year. The IIR Top-up Tax Amount is determined by reference to the Parent Entity's allocable share of top-up tax for the LTCE, JV, or JV Subsidiary for the Fiscal Year.
[Chapter 2, section 2-5 of the Rules]

2.12 The Top-up Tax of a JV Entity is used to compute the IIR Top-up Tax Amount of an UPE of the actual MNE Group that holds an Ownership Interest in the JV entity for the purpose of applying IIR by the Parent Entity.
[Chapter 2, subsections 2-5(3) and (4) of the Rules]

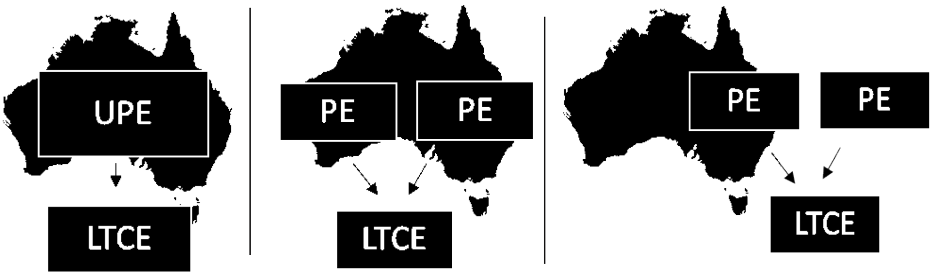
Top-up tax arising under the IIR

2.13 However, a Parent Entity may not have an IIR Top-up Tax Amount where the entity is an IPE or a POPE. An IPE will not have a IIR Top-up Tax Amount if the UPE of the group is required to apply a Qualified IIR. The same treatment

applies to an IPE where another IPE holds a Controlling Interest, directly or indirectly, in the POPE. Similarly, a POPE will not have an IIR Top-up Tax Amount if it is wholly owned by another POPE, which is required to apply a Qualified IIR.
[Chapter 2, subsection 2-5(5) of the Rules]

Diagram 2.1 Base scenarios for IIR

Example 1a **Example 1b** **Example 1c**



Example 1a: As the LTCE is in a different jurisdiction from the UPE, this is an MNE Group. The Parent Entity is in Australia and is the only Parent Entity. The entirety of top-up tax of the subsidiary is allocated to the Parent Entity. The subsidiary will not be subject to any other IIR.

Example 1b: Ownership of the entity in a low tax jurisdiction is split between two 'Parent' Entities (entities with an ownership interest) both in Australia. The LTCE will only be included on a line-by-line basis in the CFS of one Parent Entity (i.e. the parent that controls the LTCE), so will only be included under one MNE Group for the purposes of the GloBE Rules. However, only the Parent Entity (the UPE) will be required to pay its Allocable Share of top-up tax for the LTCE located in a low-tax jurisdiction. The other Parent Entity is not subject to the IIR in respect of the LTCE because it is not part of the same MNE Group for the purposes of the GloBE Rules.

Example 1c: Ownership is split between two Parent Entities: one in Australia; the other overseas. Similar to the previous scenario, the LTCE will only be in one set of CFS and therefore in one MNE Group with one UPE. If the UPE is the Australian parent, an Australian IIR will apply, and no foreign IIR will apply. This example assumes that the other Parent Entity is not a POPE that can apply IIR under the rule order.

Allocation of top-up tax under the IIR

2.14 Section 6 of the Assessment Act imposes IIR Top-up Tax Amount on an Entity if it has one or more Top-up Tax Amounts. The amount of the liability for top-up tax will be the sum of the Top-up Tax Amounts.

2.15 The Rules allocate the IIR Top-up Tax Amount to a Parent Entity in the MNE Group based on its ***Allocable Share*** of the top-up tax of each LTCE of the MNE Group for the Fiscal Year, which is an amount equal to:

$$\begin{gathered}\textit{Top-up tax Amount for each LTCE} \times \\ \textit{Parent Entity's Inclusion Ratio for the LTCE}\end{gathered}$$

[Chapter 2, section 2-10 of the Rules]

2.16 The ***Parent Entity's Inclusion Ratio*** for a LTCE is worked out based on its Ownership Interests in the LTCE. Specifically, the Inclusion Ratio is:

$$\frac{\textit{LTCE GloBE Income} - \textit{LTCE GloBE Income attributable to other owners}}{\textit{LTCE GloBE Income for the Fiscal Year}}$$

[Chapter 2, subsection 2-15(1) of the Rules]

2.17 The elements within this formula, which requires computing the GloBE Income that is attributable to other owners, begins with the GloBE Income or Loss calculated under Chapter 3 of the Rules.

2.18 That calculation starts with an Entity's FANIL and makes adjustments from there. The Constituent Entity's income is determined on a separate entity basis and transactions between Group Entities are generally respected; the GloBE Income computation generally does not take into account elimination adjustments that would be made in the financial statement consolidation process. The MNE Group can elect to apply its consolidated accounting elimination adjustments, but only in respect of transactions between Group Entities in the same jurisdiction. In this case, it would be unlikely that an LTCE's GloBE Income will exactly equal the accounting income that is ultimately reflected in the CFS.

2.19 The CFS generally reflects all the assets, liabilities, income, expenses and cash flows of controlled subsidiaries. However, where the subsidiaries are partially owned by third party owners outside of the MNE Group, adjustments will be required to account for the Ownership Interests of the third-party owners. This ensures that the CFS does not overstate the portion of the income of the MNE Group that belongs to or inures to the benefit of the owners of the UPE.

2.20 In determining the amount of an LTCE's GloBE Income that is attributable to other owners in the formula above, it is necessary to apply the same principles that the UPE applies in the CFS. Alternately, the principles it would need to apply in the CFS to determine the share of the FANIL that belongs to third party owners of a subsidiary that it does not wholly own. Consistent with the

GloBE Rules, a hypothetical amount of GloBE Income or Loss is attributed to third party owners with Ownership Interests in the LTCE. This calculation is based on applying the Authorised FAS used in the CFS of the UPE and with the following assumptions.

- First, the LTCE's net income is equal to its GloBE Income or Loss.
- Second, the Parent Entity had prepared the hypothetical CFS using the accounting standards it uses for its own CFS. This assumption sets a uniform accounting standard to appropriately allocate the LTCE's GloBE income and top-up tax among Parent Entities applying the IIR. Because all Parent Entities will be applying the same accounting standard to determine their Inclusion Ratio, there will be no under taxation or double taxation in computing Top-up Tax Amounts and there will be appropriate coordination between the application of the IIR by a Parent Entity and a POPE in respect of the same LTCE.
- Third, the Parent Entity owns a controlling interest in the LTCE such that all the income and expenses of the LTCE are consolidated on a line-by-line basis with those of the Parent Entity in the hypothetical statements. This assumption is required to ensure that the LTCE's income and expenses will be included in the hypothetical CFS (even where the Parent Entity does not actually hold a controlling interest in the LTCE).
- Fourth, the entire GloBE Income of the LTCE is attributable to transactions with third parties outside of the Group. This assumption ensures that intragroup income and expense transactions, which would otherwise be eliminated in the preparation of the CFS, are recognised in the hypothetical CFS.
- Finally, all Ownership Interests not held by the Parent Entity, directly or indirectly, are held by third-party owners. This assumption treats other CEs of the MNE Group that own an interest in the LTCE in the same manner as persons that are not Group Entities. This ensures that only the income attributable to direct and indirect Ownership Interests owned by the Parent Entity is included in the Parent Entity's Inclusion Ratio.
  [Chapter 2, subsection 2-15(2) of the Rules]

2.21 If the LTCE is a Flow-through Entity, the LTCE's GloBE Income for the purposes of the Inclusion Ratio is to be reduced by the amount allocated to non-Group owners who hold Ownership Interests in the Flow-through Entity directly or through a Tax Transparent Structure.
[Chapter 2, subsection 2-15(3) of the Rules]

IIR offset mechanism

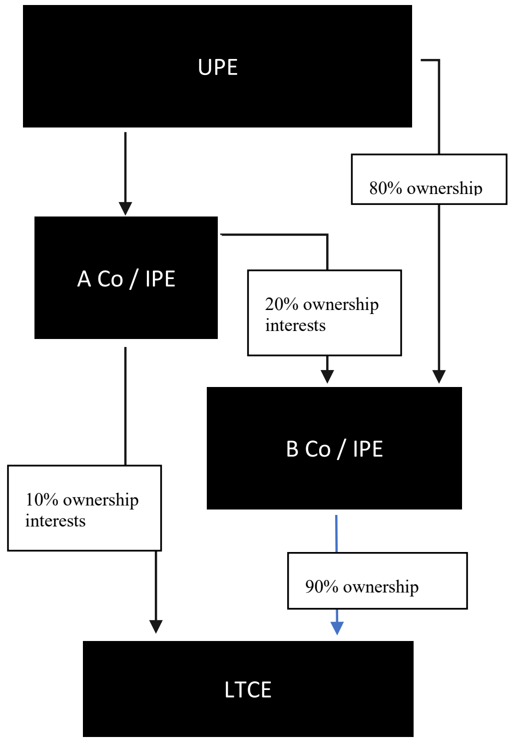
2.22 The purpose of the offset mechanism is to avoid any double taxation where top-up tax is allocated to more than one Parent Entity in the same ownership chain.

2.23 Consistent with the GloBE Rules, Australia imposes top-up tax under the IIR, and the tax is typically imposed on a UPE located in Australia.

2.24 Under the GloBE Rules, where a UPE is located in a jurisdiction without a Qualified IIR, an IPE located in a jurisdiction with a Qualified IIR will be liable for any top-up tax. Where there is more than one IPE, the highest-tier IPE, which is determined by whether it holds Controlling Interests over other Constituent Entities in the MNE Group, will have liability of the Top-up Tax Amount.

2.25 Where an IPE does not hold Controlling Interests over another IPE, then each IPE in the MNE Group will bear the top-up tax liability in respect of a LTCE that is proportional to its direct or indirect Ownership Interests in that LTCE. To avoid double taxation, an IPE's Allocable Share of the top-up tax is reduced by the amount of top-up tax payable by the other IPEs that are lower down in the ownership chain. This reduction is made when allocating the amount of top-up tax among Parent Entities and not after the full amount or a portion of the top-up tax is effectively paid.
[Chapter 2, section 2-20 of the Rules]

Diagram 2.2 IIR offset mechanism with Intermediate Parent Entities



If the UPE is in a jurisdiction with QIIR, then the UPE is liable for top-up tax.

If the UPE is not in a QIIR jurisdiction, and A Co and B Co are in a QIIR jurisdiction, then both are allocated top-up tax amounts, as neither holds controlling interests in the other.

Without the offset mechanism, if the top-up tax amount of the LTCE is $100, A Co will be liable for 28% of that amount, which is $10 from the 10% of its ownership interest in the LTCE, and $18 from the 18% (20% x 90%) indirect ownership interest in B Co.

However, applying the offset mechanism, B Co will have a top-up tax amount of $90 from its ownership interest of the LTCE, while A Co will have a top-up tax amount of $10.

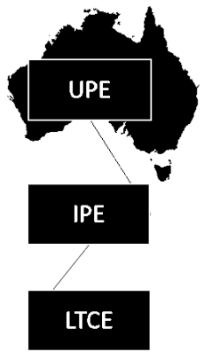
POPEs

2.26 The above top-down ordering rule is modified for POPEs. Top-up tax amounts in respect of a LTCE will be allocated to a POPE that directly or indirectly owns an Ownership Interest in the LTCE at any time during the Fiscal Year. This ensures that owners of the POPE who are outside the MNE Group also bear their share of the tax burden that is imposed on the POPE. This is called the Split-Ownership Ordering Rule. To achieve this result, the top-up tax amount of a LTCE for a Fiscal Year is allocated to the POPE, despite the UPE or an IPE potentially also calculating an allocable share of the top-up tax of the LTCE. The IIR offset mechanism operates to reduce the top-up tax liability of the UPE or IPE by an amount equal to the portion of the UPE's or IPE's Allocable Share of top-up tax that is brought into charge by the POPE. ***[Chapter 2, section 2-20 of the Rules]***

2.27 A Parent Entity will be a POPE where more than 20 per cent of the Ownership Interest's carrying rights to that Parent Entity's profits are held (directly or indirectly) by owners outside the MNE Group. ***[Chapter 10, section 10-5 of the Rules]***

2.28 These Ownership Interests may be held indirectly by the owners outside the MNE Group. Therefore, a POPE can wholly own another POPE provided more than 20 per cent of the relevant indirect Ownership Interests in the second POPE are held by owners outside the MNE Group. Where a POPE wholly owns another POPE, the Top-down Ordering Rule applies such that the top-up tax liability is imposed on the POPE higher in the ownership chain provided it is required to apply a QIIR in that Fiscal Year.
[Chapter 2, paragraph 2-5(5)(b) of the Rules]

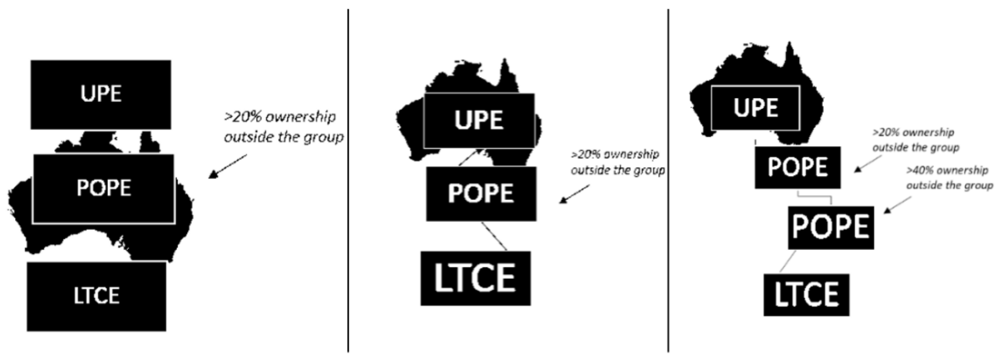
Diagram 2.3 IPE Interest outside of Australia



Example 2.1: The UPE is in Australia, with the other two entities overseas. Australia has a QIIR therefore, Top-up Tax is imposed on the UPE (Australia has primary taxing right). The LTCE will not be subject to another IIR.

Diagram 2.4 Ownership interests outside the group

Example 2.2a Example 2.2b Example 2.2c



Example 2.2a: The UPE is in a foreign jurisdiction, the POPE is in Australia, and the LTCE is in a low-taxed jurisdiction. The Australian POPE's Allocable Share of top-up tax of the LTCE is allocated to the POPE. The UPE and the POPE apply the IIR based

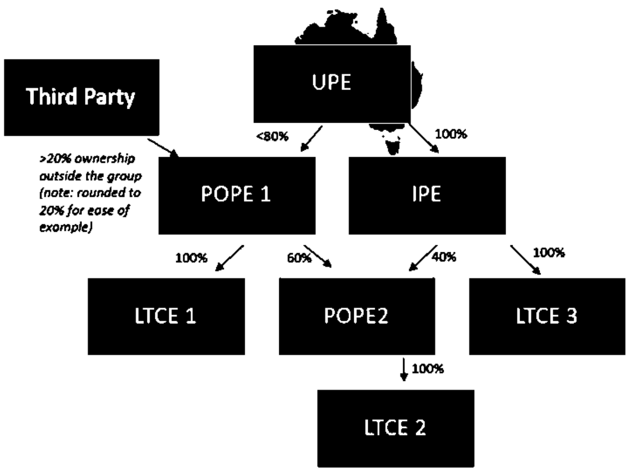
on their ownership interests in the LTCE and, under the IIR offset mechanism, the UPE's top-up tax liability is reduced by the portion that is brought into charge by the POPE.

Example 2.2b: The UPE is in Australia, the POPE is overseas and the LTCE is overseas. The Allocable Share of top-up tax of the LTCE is allocated to the Australian UPE and the POPE. Both Parent Entities apply the IIR but the UPE top-up tax liability is reduced by the POPE's top-up tax liability (in this example all the Top-up Tax of the LTCE). The rule applies even though Australia applies a Qualified IIR.

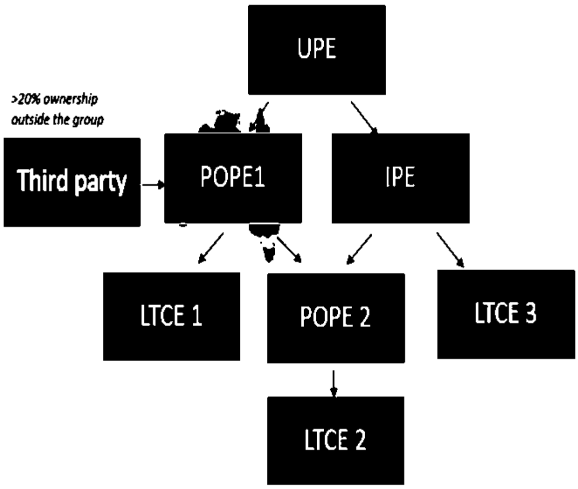
Example 2.2c: The UPE is in Australia and applies an IIR. Both POPEs also apply an IIR (as the lower POPE is not wholly owned by the upper POPE). The IIR offset mechanism will reduce the Top-up Tax liability of the UPE and the POPE higher in the ownership structure.

Diagram 2.5 Complex MNE Group

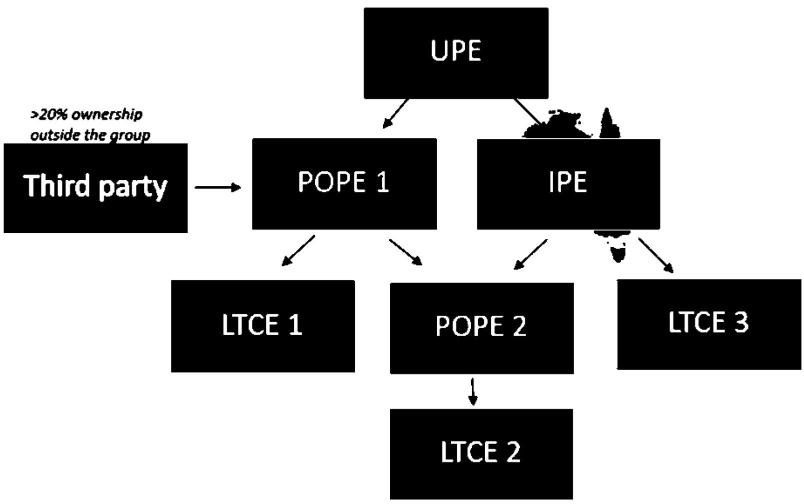
Example 2.3a



Example 2.3b



Example 2.3c



Example 2.3a: All top-up tax is collected by Australia from the UPE, except some portion of top-up tax of LTCE 1 and LTCE 2, which is payable by POPE 1 and POPE 2. No other IIRs can be applied by another jurisdiction.

Example 2.3b: The UPE applies a qualified QIIR and has an allocable share of the top-up tax for all low taxed constituent entities. The Australian POPE has an allocable share of the top-up tax of LTCE 1 and LTCE 2. However, the Australian POPE's allocable share of the top-up tax of LTCE 2 is reduced by POPE 2's allocable share of the top-up tax of LTCE 2 under the IIR offset mechanism (i.e. POPE 2 still applies an IIR).

Example 2.3c: Assume that the UPE is not applying an IIR and that all other jurisdictions impose a QIIR (as opposed to a domestic IIR). The Australian IPE has a 100 per cent Allocable Share of the Top-up Tax of LTCE 3. The Australian IPE will not have an Allocable Share of the Top-up Tax of LTCE 2 because of the IIR applied by POPE 2. POPE 1 has a 100% Allocable Share of the Top-up Tax of LTCE 1. POPE 2 will have a 100% Allocable Share of LTCE 2's top-up tax as it is not a wholly owned POPE.

Top-up Tax arising under the DMT

2.29 Domestic Top-up Tax applies in a similar manner to the IIR, but only to entities in the implementing jurisdiction. In terms of the rule order, a QDMTT preserves the first right of taxation to the source country and takes precedence over another jurisdiction's QIIR and UTPR.

2.30 Section 8 of the Assessment Act imposes DMT Top-up Tax on an Entity if it has one or more Domestic Top-up Tax Amounts. The amount of the liability for top-up tax will be the sum of the Domestic Top-up Tax Amounts. Section 9 of the Assessment Act prescribes the Rules to provide the meaning of Domestic Top-up Tax Amount.

2.31 Entities which may have a Domestic Top-up Tax Amount (and consequently have a DMT tax liability) are:

- Constituent Entities located in Australia; or
- Stateless Constituent Entities created in Australia; or
- A Main Entity not located in Australia with a Permanent Establishment located in Australia which is a LTCE; or
- JVs, or JV Subsidiaries located in Australia.
  [Chapter 2, subsections 2-25(1), (3), (4) and (7) of the Rules]

2.32 However, an entity which is a Securitisation Entity will only have a Domestic Top-up Tax Amount (and consequently have a DMT tax liability) if all the

entities located in Australia are Securitisation Entities
[Chapter 2, subsections 2-35(3), (4), (5) and (6) of the Rules]

2.33 In most cases a JV will be a JV only in respect of a single Applicable MNE Group. In such cases the Domestic Top-up Tax of the JV or of a JV Subsidiary will be computed as normal. However, a JV a may be a JV in respect of two Applicable MNE Groups. In such a case, the JV or a JV Subsidiary has an amount of Domestic Top-up Tax Amount, each Applicable MNE Group will be liable for half of the total Domestic Top-up Tax Amount. This is to avoid double taxation where both MNE Groups would otherwise be liable for 100 per cent of the JV or JV subsidiary's Domestic Top-up Tax Amount.
[Chapter 2, subsections 2-30(2) to (4) of the Rules]

2.34 For the purposes of computing the Domestic Top-up Tax amount payable, minor modifications are required to the Chapter 5 Top-up Tax calculations to ensure the correct outcomes. The ETR and Jurisdictional Top-up Tax formulas are still used under sections 5-5 and 5-30, respectively, however, in calculating the Jurisdictional Top-up Tax Amount, the Domestic Top-up Tax in that formula is taken to be zero. This is necessary as the calculation is being undertaken for the purpose of determining the Domestic Top-up Tax Amount and ensures that the correct amount of Domestic Top-up Tax Amount is calculated.
[Chapter 2, section 2-40 of the Rules]

2.35 This means the Jurisdictional Top-up Tax for the purposes of computing Domestic Top-up Tax Amount is as follows:

$$
\begin{aligned}
&\mathit{Jurisdictional\ Top\text{-}up\ Tax} \\
&\qquad = (\mathit{top\text{-}up\ tax\ percentage}\ \times \mathit{Excess\ profit}) \\
&\qquad + \mathit{Additional\ current\ Top}\ - \mathit{up\ Tax}
\end{aligned}
$$

2.36 To be treated as a QDMT, a DMT must be functionally equivalent to the GloBE Rules, consistent with paragraph 118 on page 256 of the Consolidated Commentary. The requirement to being functionally equivalent is that the determination of Adjusted Covered Taxes needs to be at least as restrictive as the GloBE Rules, consistent with paragraph 118.26 on page 256 of the Consolidated Commentary.

2.37 For the purpose of the IIR, some amounts of covered taxes accrued in the financial accounts of a Constituent Entity may be allocated to another constituent under Part 4-3 of the Rules. However, for the purposes of calculating a Domestic Top-up Tax Amount, Adjusted Covered Taxes are not allocated from:

- a Constituent Entity to Permanent Establishment;
- a Tax Transparent Entity to a Constituent Entity-owner of the Tax Transparent Entity;

- a Constituent Entity-owner of Constituent Entity that is CFC to the Constituent Entity;
- a Constituent Entity-owner of a Constituent Entity that is a Hybrid Entity to the Hybrid Entity.

Top-up Tax arising under the UTPR

2.38 The UTPR aims to impose a minimum tax on undertaxed profits to the extent that a Qualified IIR has not been imposed in respect of such profits. Where Qualified IIR of a parent jurisdiction has not been imposed in respect of such profits, that amount is allocated to other jurisdictions in proportion to the location of the group's tangible assets and employees.

2.39 The UTPR operates as a 'backstop' to reduce the incentives for MNEs to locate Parent Entities in jurisdictions which do not implement an IIR, thus avoiding the imposition of any IIR Top-up Tax.

2.40 Section 10 of the Assessment Act imposes UTPR Top-up Tax on an Entity if it has one or more UTPR Top-up Tax amounts. The amount of the liability for top up tax will be the sum of the UTPR Top-up Tax amounts.

2.41 An Entity will have a UTPR Top-up Tax Amount, if

- the Entity is a Constituent Entity located in Australia;
- the MNE Group has a Total UTPR Top up Tax Amount greater than zero; and
- all or part of that Total UTPR Top up Tax Amount is distributed to the Entity.
  [Chapter 2, subsection 2-45 of the Rules]

2.42 Pursuant to the steps below, an MNE Group's Total UTPR Top-up Tax Amount is calculated and allocated to certain Constituent Entities in the MNE Group.

Step 1 – Calculate a Constituent Entity's UTPR Top-up Tax and the Allocable Share of the Top-up tax of any JV

2.43 The starting point for the computation of the UTPR Top-up Tax Amount is the Top up tax of each LTCE and the UPE's Allocable Share of Top-up Tax of each JV. The Top-up Tax of a LTCE is calculated under Chapter 5 of the Rules while a UPE's Allocable Share of Top-up Tax of each JV is calculated under Part 6-4 with reference to the formulas under Chapter 2.
[Chapter 2, section 2-55 of the Rules]

Step 2 – Calculate the Total UTPR Top-up Tax Amount for an MNE Group

2.44 The next step involves calculating the Total UTPR Top-up Tax Amount for the entire MNE Group. The Total UTPR Top-up Tax Amount is used to allocate a top-up tax amount to each UTPR jurisdiction on the basis of the substance-based allocation key.

2.45 The Total UTPR Top-up Tax Amount under section 2-55 of the Rules for a Fiscal Year equals the sum of the Top-up Tax calculated for each LTCE of an MNE Group and the UPE's Allocable Share of Top-up Tax of a JV subject to a number of adjustments. Adjustments that may affect the calculation of the Total UTPR Top-up Tax Amount include whether the LTCE is a UPE and is required to apply a Qualified IIR, in which case the Top-up Tax of that LTCE is zero. Further, only the UPE's Allocable Share of Top-up Tax for a JV or JV subsidiary will be included and any Parent Entity of the MNE Group that holds an interest in a JV or JV subsidiary is reduced to zero.

2.46 For the UTPR to operate effectively as a 'backstop', it is important that it is capable of being applied in respect of Top-up Tax of JVs that are located in Australia, that have not been brought into charge under a Qualified IIR. Therefore, for the purposes of the UTPR Top-up Tax Amount for a JV under Part 6-4 of the Rules, a JV Group includes a JV and any JV Subsidiaries as well as standalone JVs that do not have JV Subsidiaries.

2.47 For the purposes of the Total UTPR Top-up Tax the top-up tax for each LTCE (including JVs, MOCEs, POPEs, and IPEs) of an Applicable MNE Group, including any located in Australia, is reduced by a Parent Entity's Allocable Share of that LTCE's Top-up Tax that is brought to charge under a Qualified IIR (including Australia's IIR). Not all Parent Entities that hold an indirect ownership interest need to apply a Qualified IIR for that Fiscal Year, rather, a Qualified IIR only needs to be applied in relation to all the UPE's interests in the LTCE.
[Chapter 2, section 2-55 of the Rules]

2.48 The Total UTPR Top-up Tax Amount, taking into account those adjustments, is then allocated amongst the UTPR Jurisdictions in accordance with the mechanism set out in Part 2-6 of the Rules.

Step 3 – Allocate UTPR Top-up Tax to Australia

2.49 Australia's share of the Total UTPR Top-up Tax Amount is calculated using the UTPR Percentage. The UTPR Percentage is calculated based on location of employees and assets of the MNE Group as a whole. This means the allocation of the UTPR Top-up Tax Amount is not focused on the structure of the MNE Group or chains of corporate ownership like the IIR. Instead, the UTPR Percentage focuses on employees and tangible assets in the jurisdiction and is calculated as follows:

$$\text{UTPR Percentage} = \left[50\% \frac{\textit{Number of employees in Australia}}{\textit{Number of employees in all UTPR jurisdictions}}\right] + \left[50\% \frac{\textit{Total value of tangible assets in Australia}}{\textit{Total value of tangible assets in all UTPR jurisdictions}}\right]$$

[Chapter 2, subsections 2-60 and 2-65 of the Rules]

2.50 'Number of employees' in a jurisdiction means the total number of employees on a full-time equivalent basis of all the Constituent Entities located in the relevant jurisdiction. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity are reported as employees.
[Chapter 2, section 2-95 of the Rules]

2.51 'Tangible Assets' means the Tangible Assets of all the Constituent Entities in the relevant tax jurisdiction. Tangible Assets do not include cash or cash equivalents, intangibles, or financial assets.

2.52 'Net Book Value of Tangible Assets' means the average of the beginning and end values of Tangible Assets after taking into account accumulated depreciation, depletion, and impairment, as recorded in the financial statements.
[Chapter 2, section 2-80 of the Rules]

2.53 For the purposes of avoiding double counting, treat the employees and tangible assets of a Permanent Establishment as separate from that of the Main Entity.
[Chapter 2, section 2-90 of the Rules]

2.54 The Number of Employees and the Net Book Value of Tangible Assets held by a Flow-through Entity that are not allocated to Permanent Establishments shall be allocated to the Constituent Entities (if any) that are located in the jurisdiction where the Flow-through Entity was created (regardless of whether they are the Constituent Entity-owners of the Entity). The Number of Employees and the Net Book Value of Tangible Assets held by a Flow-through Entity that are not allocated to Permanent Establishments and are excluded from the formula for allocating the total UTPR Top-up Tax amount.
[Chapter 2, subsection 2-95 of the Rules]

2.55 In completing step 3, all employees or tangible assets belonging to Investment Entities and Insurance Investment Entities must be excluded from calculations.
[Chapter 2, section 2-85 of the Rules]

Step 4 - Allocate UTPR Top-up Tax to individual Constituent Entities in Australia

2.56 The portion of the total UTPR Top-up Tax Amount allocated to Australia from step 3 is then allocated among Constituent Entities of the MNE Group that are located in Australia. The amount is distributed in proportion to each Constituent Entity's share of employees and fixed assets in Australia aligned with the following calculation:

$$\begin{aligned}&\mathit{Proportion\ of\ Total\ UTPR\ \ top\text{-}up\ tax\ amount\ liability\ for\ an\ Australian\ CE}\\&= \left[50\% \times \frac{\mathit{Number\ of\ employees\ of\ CE\ in\ Australia}}{\mathit{Number\ of\ employees\ of\ all\ CEs\ in\ Australia}}\right]\\&+ \left[50\% \times \frac{\mathit{Total\ value\ of\ tangible\ assets\ of\ CE\ in\ Australia}}{\mathit{Total\ value\ of\ tangible\ assets\ of\ all\ CEs\ in\ Australia}}\right]\end{aligned}$$

[Chapter 2, section 2-70 of the Rules]

2.57 In computing step 4, all employees or tangible assets belonging to Investment Entities, Insurance Investment Entities and Securitisation Entities is excluded from the calculation. However, if the only Constituent Entity in the MNE Group located in Australia is a ***Securitisation Entity*** then the UTPR Top-up Tax Amount will include the employees and tangible assets of that Entity to ensure appropriate allocation.
[Chapter 2, subsections 2-85(2) and (3) of the Rules]

2.58 A Constituent Entity in an Applicable MNE Group located in Australia that is allocated a UTPR Top-up Tax Amount (an amount allocated under Step 4) is liable to pay that amount. This extends to a foreign Main Entity in respect of its Permanent Establishment located in Australia, where the Permanent Establishment is allocated a UTPR Top-up Tax Amount.
[Chapter 2, section 2-90 of the Rules]

Application

2.59 The UTPR applies to Fiscal Years beginning on or after 1 January 2025. Safe Harbour and Transitional rules also apply to the UTPR and are explained in Chapter 8 and 9.

UTPR and DMT allocation mechanism for consolidated groups

2.60 Special rules apply for allocating Domestic Top-up Tax Amounts to LTCEs and UTPR Top-up Tax amounts to Parent Entities that are part of an Applicable MNE Group located in Australia and are subsidiaries of a TCG or MEC Group. In respect of these special rules the terms consolidated group, head company, MEC Group and subsidiary member have the same meaning as in the ITAA 1997.

2.61 If a LTCE has an amount of UTPR or Domestic Top-up Tax and is a subsidiary, TCG or MEC, the head company will be liable to pay the Top-up Tax Amount. The LTCE will not have any Top-up Tax liability, as the entire Top-up Tax Amount will be allocated to the head company. This is required to preserve the ordinary operation of a TCG or MEC Group being treated as a single entity for Australian taxation purposes, with the head company being

responsible for the payment of tax liabilities.
[Chapter 2, sections 2-30 and 2-50 of the Rules]

Securitisation entities

2.62 Securitisation entities are unlikely to be a Parent Entity and therefore will generally not be liable to any amounts of IIR or Domestic Top-up Tax. If there are other Constituent Entities in the jurisdiction with GloBE Income or Loss, the Top-up Tax liability of the securitisation entity will be allocated to the Constituent Entities with GloBE Income or Loss, consistent with the application of Chapter 5 of the Rules.

2.63 If the Constituent Entities in the jurisdiction do not have GloBE Income or Loss, the securitisation entity's top-up tax liability will be allocated equally to all Constituent Entity's in the jurisdiction. The only instance in which the securitisation entity will be liable to pay a Top-up Tax Amount is if the securitisation entity is the only Constituent Entity in the jurisdiction. This is because there is no other Constituent Entity that can be allocated the Top-up Tax Amount.
[Chapter 2, sections 2-35 and 2-85 of the Rules]

Aggregated reporting election

2.64 An MNE Group that has Constituent Entities that are in a TCG may elect to be treated as a single Constituent Entity for the purposes of reporting Domestic Top-up Tax Amounts in the GloBE Information Return. To make an annual election, a Filing Constituent Entity must meet all of the following conditions:

- the taxable profits and losses of the consolidated entities are aggregated for the purposes of computing a single tax liability (regardless of whether the consolidated entities might be jointly and severally liable for the tax charge on behalf of the group);
- all consolidated entities are wholly owned by the consolidating entity;
- Constituent Entities or members of a JV Group within the TCG are located in the same jurisdiction for GloBE purposes; and
- the Filing Constituent Entity makes an election to apply the consolidated treatment under section 3-185 of the Rules.

2.65 The election only applies to entities that share the same ETR calculation with the consolidating entity. For example, a Group that consists wholly of JVs to form a JV group, Investment Entities or Insurance Investment Entities, or only ordinary Constituent Entities. The reporting election does not apply to consolidated groups that consist of a combination of JV entities, Investment Entities and ordinary Constituent Entities.

Chapter 3: GloBE Income or Loss

Table of Contents:

Outline of Chapter

3.1 Chapter 3 of the Rules sets out the method for calculating the GloBE Income or Loss. The computation of GloBE Income or Loss begins with the FANIL of the Constituent Entity for the Fiscal Year, adjusted under the relevant provisions to arrive at the GloBE Income or Loss amount.

Detailed explanation of new law

Financial accounts

3.2 The GloBE Income or Loss of a Constituent Entity within a MNE Group is calculated starting with the FANIL for a Constituent Entity for the Fiscal Year, as adjusted for the items of income, gain, loss and expense that are set out in these Rules.
[Chapter 3, section 3-5 of the Rules]

3.3 FANIL for a Constituent Entity of an MNE Group for the Fiscal Year is defined as the net income or loss determined for the Constituent Entity, before

any consolidation adjustments eliminating intra-group transactions, in preparing the CFS of the UPE of the MNE Group for the Fiscal Year.
[Chapter 3, subsection 3-10(1) of the Rules]

3.4 Certain amounts which are not reflected in a Constituent Entity's net income or loss but are reflected in CFS can be taken into account in calculating GloBE Income or Loss of the Constituent Entity, where it can be shown the amounts reflect the affairs of the Constituent Entity, see paragraph 3 on pages 54 and 55 of the Consolidated Commentary.
[Chapter 3, subsections 3-10(1) and (2) of the Rules]

3.5 FANIL for the Constituent Entity for the Fiscal Year includes income, expenses, gains, and losses arising from transactions between the Constituent Entity and any other Constituent Entity of the MNE Group. However, if an election to apply a consolidated treatment under subsection 3-200(1) of the Rules applies, FANIL is adjusted to exclude such income, expenses, gain and losses from transactions between Constituent Entities that are, included in a TCG, and are located in the same jurisdiction.
[Chapter 3, subsection 3-10(3) and subsection 3-200(1) of the Rules]

3.6 The FANIL generally does not include any purchase accounting adjustments that are reflected in the CFS of the UPE or the Constituent Entity's Financial Accounts and are a result of a Constituent Entity acquiring an Entity. However, these adjustments are included in the FANIL if the Entity was acquired before 1 December 2021, and the MNE Group does not have sufficient records to determine the Constituent Entity's FANIL for the Fiscal Year in the absence of the adjustment. Purchase accounting adjustments may be reflected in separate accounts of the Constituent Entity used in preparing CFS of the UPE if permitted as per the financial accounting standard used by the UPE or these may be reflected in the CFS of the UPE. These purchase accounting adjustments are not included for acquisitions of Ownership Interest that occur after 1 December 2021.
[Chapter 3, subsections 3-10(4) and (5) of the Rules]

3.7 A special rule applies where it is not reasonably practicable to compute the Constituent Entity's FANIL using the accounting standard of the UPE's CFS. In this situation, FANIL for the Constituent Entity for the Fiscal Year may be computed using another Acceptable FAS or Authorised FAS (adjusted for Material Competitive Distortions) but only if:

- the financial accounts of the Constituent Entity are maintained based on the other Acceptable FAS or Authorised FAS; and
- the information in the financial accounts is reliable; and
- adjustments are made to eliminate any permanent difference of more than EUR 1 million that arises for the Fiscal Year due to the use of another accounting standard to items of income or expense or transactions instead of applying the UPE's financial accounting

standard.
[Chapter 3, subsections 3-10(6), and (7) of the Rules]

3.8 The condition to eliminate permanent differences only applies to permanent differences between the accounting standards. Timing differences, including differences in the financial accounting period used under the different accounting standards are not subject to this condition.

3.9 This rule is not expected to apply in many cases because an MNE Group will typically have mechanisms in place to convert a subsidiary's entity level accounts to the UPE's accounting standard in connection with the preparation of the CFS. However, this rule could apply, for example, when the MNE Group has undertaken a recent acquisition of a group of Entities that have historically used a different accounting standard to that of the acquiring MNE Group and it is not reasonably practicable for the recently acquired entities to use the UPE's accounting standard.

3.10 Where the special rule applies, the content of the GloBE Information Return for the MNE Group for the Fiscal Year relating to the FANIL for the Constituent Entity should be computed in accordance with the special rule.
[Chapter 3, subsections 3-10(6), and (7) of the Rules]

3.11 As the rules for computing GloBE Income or Loss begins with FANIL, income or expense items that are reported under certain financial accounting standards in the Other Comprehensive Income part of the CFS (rather than in the profit and loss statement) are generally excluded from the computation of GloBE Income or Loss, see paragraph 9 on page 57 of the Consolidated Commentary.
[Chapter 3, subsection 3-50(2) of the Rules]

Adjustments to determine GloBE Income or Loss

3.12 A series of adjustments are applied to the FANIL to account for certain differences between financial accounting and taxable income that are common and material in many Inclusive Framework jurisdictions.

3.13 Adjustments are also made for certain tax neutrality and distribution tax regimes (see Chapter 7), to corporate restructuring (including mergers, acquisitions, and demergers) and certain holding structures, such as multi-parented MNE Groups and JV investments (see Chapter 6). The rules in Chapters 6 and 7 must be considered in calculating GloBE Income or Loss and appropriate adjustments are be made to ensure that amounts calculated under Chapter 3, also reflect those calculated under Chapters 6 and 7.

3.14 The FANIL is adjusted through including, excluding or both including and excluding amounts for the purposes of computing the Constituent Entity's GloBE Income or Loss.

3.15 In summary, following adjustments are included with FANIL to determine GloBE Income or Loss of a Constituent Entity:

- Net Taxes Expense (being the net amount of various tax-related expenses and credits);
- Revaluation Method Gain or Loss (being gains or losses from included revaluation methods of adjusting the carrying value of property, plant and equipment to its fair value);
- Gain or loss from disposition of assets and liabilities that are excluded under section 6-55 of the Rules (being gains or losses from the transfer of assets and liabilities that are not taken into account under section 6-55 that meet the criteria of GloBE Reorganisation);
- Asymmetric Foreign Currency Gains or Losses (being differences in foreign currency gains or losses that arise due to asymmetries in tax and financial reporting);
- Policy Disallowed Expenses (being expenses that are not allowed such as bribes, fines or penalties);
- Prior Period Errors and Changes in Accounting Principles (being adjustments made due to errors from previous periods or changes in accounting standards);
- Accrued Pension Expense (being expenses related to pension accruals);
- Adjustments to reflect transactions between Constituent Entities consistent with the Arm's Length Principle to address misallocation of income among entities located in different jurisdictions. For example, cross-border intra-group transactions must be computed at an arm's length price in the computation of GloBE Income or Loss. The rationale of this adjustment is to protect the integrity of jurisdictional blending.

3.16 For the purposes of calculating GloBE Income or Loss, the following are excluded from FANIL:

- Excluded Dividends (being certain dividends received or accrued, other dividends in respect of portfolio ownership interests that are held for less than 12 months and ownership interests in an Investment Entity that is subject to a taxable distribution method election);
- Excluded Equity Gain or Loss (being and gains or losses from changes in fair value of ownership interests or any profit of loss in respect of an ownership interest that is included under the equity method of accounting);
- a gain or loss from the disposition of an ownership interest (other than a portfolio shareholding);
- insurance reserves;
- policy disallowed expenses; and

- international shipping income, subject to meeting certain criteria.

3.17 Depending on the circumstances, must either include or exclude the following are either included or excluded in calculating the GloBE Income or Loss:

- certain refundable tax credits and transferrable tax credits;
- asymmetric foreign currency gains or losses;
- adjustments for certain Intra-Group Financing Arrangements;
- adjustments for Additional or Restricted Tier One Capital; and
- specific taxes relating to insurance reserves.

3.18 An entity may make the following Annual or Five-Year elections to adjust their GloBE Income or Loss for the following:

- qualified debt release amount;
- stock-based compensation;
- realisation method, assets and liabilities that are subject to fair value or impairment accounting;
- Aggregate Asset Gain;
- applying consolidated accounting treatment to eliminate income, expense, gain and losses from transactions between Constituent Entities that are located and included in a TCG; or
- gains and losses on hedging instruments that are considered effective hedges.

Inclusions

Net taxes expense

3.19 Tax expenses would ordinarily be included in the calculation of the FANIL but must be added back in calculating the GloBE Income or Loss in order to produce appropriate ETR calculation. This is because income taxes and other Covered Taxes liabilities that accrue in a Fiscal Year generally reduce FANIL for financial reporting purposes, which is the starting point for calculation of the GloBE Income or Loss. These taxes must be added back to income to accurately calculate the tax on total income for the Fiscal Year.

3.20 Net taxes expense is the sum of the following amounts:

- any Covered Taxes accrued as an expense and any current and deferred covered taxes included in the income tax expense, including covered taxes on income that is excluded from the GloBE Income or Loss computation;

- any deferred tax asset attributed to a loss for the fiscal year (this is recorded as a negative amount that arises from a GloBE loss election);
- any QDMTT;
- any taxes arising under the GloBE Rules;
- any Disqualified Refundable Imputation Tax; and
- tax paid by an insurance company in respect of returns to policyholders.

3.21 Importantly, to mitigate potential anomalous outcomes, the income from the charge to insurance policy holders for tax paid in respect of their returns is removed, to the extent section 3-205 of the Rules applies.
[Chapter 3, section 3-15 of the Rules]

3.22 The adjustment for Net Tax Expenses will typically be a positive amount. However, where the Constituent Entity incurs a net loss that results in a deferred tax asset, then, adjustments will be a negative amount, see paragraph 23 on page 60 of the Consolidated Commentary.

3.23 Top-up Taxes arising under the GloBE Rules that have been accrued in the financial accounts must also be added back to the FANIL. The same adjustment is also required for QDMTT because it also reduces the MNE Group's Top-up Tax.

Distinction between refundable tax and imputation tax

3.24 Qualified Imputation Tax is distinguished from a Disqualified Refundable Imputation Tax. Both taxes are imputation taxes, as they allow either the company or the shareholder to claim a full or partial credit or refund of the corporate income tax previously paid by the company when that income is subsequently distributed to the shareholder in the form of a dividend. Disqualified Refundable Imputation Tax is also defined in paragraphs 9 to 11 on page 238 of the Consolidated Commentary.

3.25 However, under a Disqualified Refundable Imputation Tax regime, the corporate tax previously paid may be refunded without subjecting the shareholders to tax on the dividend. Disqualified Refundable Imputation Taxes are not Covered Taxes. Disqualified Refundable Imputation Taxes paid or accrued must be added back to FANIL. These taxes are essentially deposits that the MNE Group can have refunded at the time of distribution of dividends. When Disqualified Refundable Imputation Taxes that are refunded or credited to the MNE Group in a Fiscal Year, they must be removed from income or added back to the tax expense, see paragraph 25 on page 60, paragraph 33 on page 62 and paragraph 9 on page 238 of the Consolidated Commentary.

3.26 The definition of a Qualified Imputation Tax has specific requirements with respect to the taxation of the dividend recipients. The refund or credit must arise in connection with a dividend to a beneficial owner that is either subject to tax that is at least 15 per cent or is an individual beneficial owner who is a tax resident in the jurisdiction of the distributing corporation and is subject to tax on the dividend as ordinary income. The requirements in the definition of a Qualified Imputation Tax are descriptive of the corporate tax regimes of countries such as Australia and New Zealand.

3.27 A Qualified Refundable Tax Credit does not include any amount of tax that is creditable or refundable pursuant to either a Qualified Imputation Tax or a Disqualified Refundable Imputation Tax.

Revaluation method

3.28 Under financial accounting standards, Constituent Entities can elect the cost model or revaluation model, as its accounting policy for property, plant and equipment, see paragraphs 58 to 62 on page 72 of the Consolidated Commentary.

3.29 Revaluation increases are generally recognised in Other Comprehensive Income, rather than profit or loss. Revaluation decreases, on the other hand, are generally (but not always) recognised in profit and loss. Absent a corrective measure, the revaluation model would impact the computation of GloBE Income or Loss because revaluation gains are generally excluded from FANIL, but then depreciation expense is determined based on the revalued amount.

3.30 The effect of this adjustment is to require any revaluation to be included in the GloBE Income or Loss computation. Any revaluation losses or subsequent incremental increases in depreciation are to be included in the GloBE Income or Loss, only if they are attributable to revaluation increases included in the GloBE Income or Loss computation pursuant to section 3-45 of the Rules. ***[Chapter 3, sections 3-45 and 3-50 of the Rules]***

3.31 Any current or deferred Covered Taxes associated with an Included Revaluation Method Gain or Loss are taken into account in the computation of Adjusted Covered Taxes in Chapter 4, if they are subject to Covered Tax in the local tax jurisdiction.

Prior period errors and changes in accounting principles or policy

3.32 An adjustment is required where there are prior period errors or changes in accounting principles or policy that changes the opening equity at the beginning of the Fiscal Year that affects income or expenses that are included in the computation of GloBE Income or Loss, see paragraphs 79 to 84 on pages 75 and 76 of the Consolidated Commentary.

3.33 When an MNE Group corrects an error in the FANIL of a Constituent Entity for a Fiscal Year, the MNE Group must re-determine the opening equity of the Entity in the Fiscal Year in which the error was identified. For GloBE purposes, the adjustment to the opening equity must be taken into account in

determining the GloBE Income or Loss for the Fiscal Year.
[Chapter 3, section 3-70 of the Rules]

3.34 When an MNE Group changes an accounting principle or policy used in the determination of its FANIL, it may be required to re-determine its opening equity as if it had used the new accounting principle or policy in the Fiscal Year, this could be prior or future Fiscal Year/s (future year impacts could include, for example, deferred items). This adjustment may be necessary under the accounting standards to prevent the amount from being double counted or omitted from the MNE Group's income or equity in a Fiscal Year as a result in the change of principle or policy. The change in accounting principle or policy may require either an increase or decrease in the opening equity. The adjustment under section 3-70 of the Rules should correspond directly to the adjustment in the opening equity.
[Chapter 3, subsection 3-70 of the Rules]

3.35 Adjustments are only required to the extent the equity adjustment is attributable to items of income or expense that were or would have been included in the computation of the GloBE Income or Loss. To the extent that the adjustment relates to the Constituent Entity to Fiscal Years prior to the application of the Imposition Act, Assessment Act and the Rules, it is excluded from the computation of GloBE Income or Loss.
[Chapter 3, subsection 3-70 of the Rules]

3.36 An adjustment is not required where an error correction is a decrease that requires re-computation of the ETR and Top-up Tax for a previous Fiscal Year, as these adjustments are subject to post-filing adjustments and tax rate changes under Part 4-6 of the Rules.
[Chapter 3, paragraph 3-70(a) of the Rules]

Accrued Pension Expense

3.37 Adjustments for accrued pension amounts apply regardless of whether the pension fund is in surplus, deficit, or liability position.

3.38 Adjustments only apply to amounts paid to a pension fund and does not include amounts that are accrued for direct pension payments to a former employee, see paragraph 85 on page 76 of the Consolidated Commentary. In Australia, a Pension Fund captures complying self-managed superannuation fund, registrable superannuation entity and retirement savings account.

3.39 Any difference in the accrued pension expense and the contribution is excluded from GloBE income, by using the following formula:

$$adjustment = \big((+)accrued\ income\ or\ (-)\ accrued\ expense + pension\ contribution\big) \times (-1)$$

[Chapter 3, section 3-75 of the Rules]

3.40 The formula ensures that these differences are cancelled out, by recording:

- accrued income as a positive amount;
- accrued expense as negative;
- contribution amounts as positive;
- resulting adjustment may be positive or negative, depending if expense exceeds contributions (positive) or if contributions exceed expense (negative);
- in the case of pension income, adjustment is calculated as the sum of pension income and pension contributions resulting in negative adjustment.

3.41 In cases where the Pension Fund is in surplus and the surplus (net income) is distributed to a Constituent Entity, that surplus will be included in the computation of the Constituent Entity's GloBE Income or Loss in the Fiscal Year of the distribution, see paragraph 86 on page 77 of the Consolidated Commentary.

Arm's Length requirement for cross border transactions

3.42 Transactions between Constituent Entities of the MNE Group located in different jurisdictions must be recorded consistently with the Arm's Length Principle in the computation of GloBE Income or Loss. This principle requires transactions to be recorded at the same price for all Constituent Entities that are parties to the transaction. The Arm's Length Principle applies in situations where all the relevant tax authorities agree that a transfer price must be adjusted to the same price, resulting in the counterparties making the relevant adjustment for the purposes of computing their GloBE Income or Loss. ***[Chapter 3, section 3-95 of the Rules]***

3.43 In some cases, the transfer price used in the financial accounts of the counterparties may differ from the transfer price used to compute each counterparty's taxable income. These differences may arise where:

- a unilateral Advanced Pricing Agreement has been agreed;
- a Constituent Entity files a tax return under a self-assessment system that includes book-to-tax adjustments, in order to comply with domestic transfer pricing rules; or
- a tax authority challenges and adjusts the transfer price used in the local tax return of one of the Constituent Entities.

3.44 The adjustment extends to cases where the transfer price used in the financial accounts of the counterparties may differ from the transfer price used to compute a counterparty's taxable income, but not the transfer price used to compute another counterparty's taxable income in another jurisdiction. To align with the Arm's Length Principle, the Constituent Entity's FANIL is adjusted accordingly to reflect the transfer price used for taxable income purposes to prevent double taxation or double non-taxation under the GloBE Rules.

3.45 A unilateral transfer pricing adjustment will generally result in a corresponding adjustment to the GloBE Income or Loss of all counterparties. However, an adjustment to align with the Arm’s Length Principle is not required if the transfer pricing adjustment increases or decreases the MNE Group’s taxable income in a jurisdiction that has a nominal tax rate below 15 per cent or that was a Low-Tax Jurisdiction with respect to the MNE Group in each of the two Fiscal Years preceding the unilateral transfer pricing adjustment (an under-taxed jurisdiction).

3.46 Similarly, a unilateral transfer pricing adjustment that increases taxable income in an under-taxed jurisdiction is not an adjustment that is to be reflected in the GloBE Income or Loss because such adjustment would result in double taxation, see paragraphs 80 to 82 on pages 96 to 105 of the Consolidated Commentary.

3.47 The underlying intention of this rule is to avoid double taxation or double non-taxation under the GloBE Rules where the taxable income of one or more Constituent Entities that are parties to a controlled transaction (counterparties) is determined using a transfer price different from the one used in the financial accounts. These differences may arise in the local tax return as filed or later when the tax return is audited by the local tax authority of one or more counterparties.

3.48 For example, a unilateral transfer pricing adjustment that reduces taxable income in a jurisdiction that has a nominal tax rate above the Minimum Rate but that had an ETR below the Minimum Rate in the previous two years should not be reflected in the GloBE income or loss, because if the counterparties are located in a high-tax jurisdiction, such adjustment would produce double non-taxation under the GloBE Rules.

3.49 Section 3-95 of the Rules does not require the MNE Group to conform the timing of an item of income or expense for GloBE purposes to the timing of that item for local tax purposes.

Arm’s Length requirement for Constituent Entities located in the same jurisdiction

3.50 Losses from transactions between Constituent Entities in the same jurisdiction must apply the Arm’s Length Principle if the loss is factored into the computations for GloBE Income or Loss.
[Chapter 3, section 3-100 of the Rules]

3.51 An adjustment is required so transactions are consistent with the Arm’s Length Principle where either:

- there are differences in the amounts in the financial accounts between entities located in different jurisdictions; or

- the amounts are inconsistent with the Arm's Length Principle.
[Chapter 3, section 3-105 of the Rules]

3.52 All relevant tax authorities must agree that a transfer price must be adjusted to the same price to reflect the Arm's Length Principle. Entities are then required to adjust their GloBE Income or Loss based on the agreement between the tax authorities.

3.53 The Arm's Length Principle is only applicable to transactions between Constituent Entities of an MNE Group that are located in the same jurisdiction if there is a loss that is taken into account for the GloBE Income or Loss computation. If the loss is excluded from GloBE Income or Loss calculations, the Arm's Length Principle does not apply, because there is no amount to adjust.

3.54 If a Filing Constituent Entity makes an election to apply the consolidated accounting treatment under section 3-200 of the Rules, the loss will be eliminated in the jurisdiction in which the loss arises, due to the Constituent Entities being members of the same TCG such that the loss, being an intragroup transaction, is excluded from the computation of the Constituent Entity's GloBE Income or Loss. This rule is intended to prevent MNE Group's from manufacturing losses in a jurisdiction through sales or other transfers between Constituent Entities of the same MNE Group at prices that are not consistent with the Arm's Length Principle, see paragraph 107 on page 82 of the Consolidated Commentary.

3.55 Transactions between Constituent Entities in the same jurisdiction who compute a separate ETR must also adhere to the Arm's Length Principle. This applies to MOCEs and Investment Entities because MOCEs are not included in the ETR and Top-up Tax computations for the jurisdiction, given MOCEs and Investment Entities compute their ETR separately. Thus, the income and expense of the parties to the transaction will not be eliminated in the jurisdictional blending computation and failure to reflect transactions based on the Arm's Length Principle would distort the ETR and top-up tax calculations for the jurisdiction and the MOCEs, see paragraph 108 on pages 82 and 83 of the Consolidated Commentary.
[Chapter 3, Section 3-100 of the Rules]

Specific taxes relating to insurance companies

3.56 Insurance companies are sometimes subject to current tax on returns that must be contractually paid to policyholders, see paragraphs 138 to 141 on pages 90 and 91 of the Consolidated Commentary.

3.57 The insurance company passes that tax along to the policyholders through a charge so that the company is in effect reimbursed for taxes paid on behalf of the policyholder. It is normally the case that the insurance company passes that tax along to the policyholders through a charge, specifically by way of a reduction in policy liabilities equivalent to the tax. The reduction is recognised

as income and so the company is in effect reimbursed for taxes paid on behalf of the policyholder.
[Chapter 3, section 3-205 of the Rules]

3.58 Financial accounting standards generally treat the returns that will be contractually paid over to the policyholder as income of the insurance company and the corresponding liability to pay the returns over to the policyholder as an expense resulting in a net zero effect on its income before tax. However, the tax paid on the policyholder returns may be treated as an income tax under some financial accounting standards.

3.59 To address this, any amount that is charged to policyholders for taxes paid by the Constituent Entity is excluded from the computation of GloBE Income or Loss under section 3-190 of the Rules and any taxes arising on the policyholder returns are excluded from the definition of Covered Taxes under paragraph 4-35(e) of the Rules. However, amounts charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders are only to be excluded from the GloBE Income and Loss computation if that tax is not included as an expense within the profit or loss before tax in the financial accounts.
[Chapter 3, section 3-205 of the Rules]

3.60 If the tax on the policyholder returns is treated as an above-the-line expense under the accounting standard used in the CFS, it will offset the charge of tax (or reduction in policyholder liabilities equivalent to policyholder tax) and thus no adjustment is necessary.

Specific adjustment for Additional and Restricted Tier One Capital

3.61 Additional Tier One Capital is generally treated as equity for financial accounting purposes. However, some jurisdictions may treat it as debt for tax purposes. Therefore, a permanent difference arises because payments of Additional Tier One Capital are deductible as interest expense by the issuer for tax purposes and included as interest income of the holder for tax purposes. An adjustment is required to rectify a permanent difference between financial accounting and taxable income see paragraphs 142 to 144 on pages 91 and 92 of the Consolidated Commentary.

3.62 Additional Tier One Capital is an instrument issued pursuant to prudential regulatory requirements in the banking sector that is convertible to equity or written down if a pre-specified trigger event occurs, and that has features which are designed to aid loss absorbency in the event of a financial crisis.

3.63 Dividends that are paid in respect of preference shares that are treated as Additional Tier One Capital are subject to section 3-195 of the Rules rather than treated as an Excluded Dividend under section 3-30 of the Rules. This is because Additional Tier One Capital includes preferred shares that are treated as debt for tax purposes. Therefore, dividends paid with respect to such shares would be treated as GloBE Income or Loss of the shareholder. The same

dividend should have symmetrical treatment among Constituent Entities. Intragroup Financing Arrangements under section 3-165 of the Rules does not apply to deny a deduction for distributions treated as an expense under section 3-195 of the Rules, see paragraph 114 on page 92 of the Consolidated Commentary.
[Chapter 3, section 3-210 of the Rules]

3.64 In the insurance sector, Restricted Tier One Capital is an instrument issued by a Constituent Entity pursuant to prudential regulatory requirements that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis. Therefore, section 3-210 of the Rules requires an equivalent adjustment to FANIL for Restricted Tier One Capital that are applicable to the insurance sector.
[Chapter 3, section 3-210 of the Rules]

Exclusions

Dividends

3.65 Dividends and distributions from controlled Entities and Entities reported under the equity method will generally be excluded from the calculation of the group's consolidated income. The underlying income or loss of Entities that are consolidated on a line-by-line basis and Entities that are accounted for under the equity method is included directly in the Group's income.

3.66 CFS exclude distributions from these Entities to avoid double-counting of the same income. The GloBE Rules, however, generally require the GloBE Income or Loss and Covered Taxes of Constituent Entities to be determined starting with the separate FANIL of the Constituent Entity. Accordingly, the starting point for a Constituent Entity's income for financial accounting purposes is to include intragroup dividends, including distributions received or accrued in respect of an Ownership Interest held in a Flow-through Entity, as well as dividends received in respect of Ownership Interests in JVs, associated Entities, and other Entities, including dividends on Portfolio Shareholdings.

3.67 Excluded Dividends are dividends or other distributions paid on shares or other equity interests where:

- the MNE Group holds 10 per cent or more of the Ownership Interests in the issuer; or
- the Constituent Entity has held full economic ownership of the Ownership Interest for a period of 12 months or more.
[Chapter 3, paragraph 3-20(1)(b) and section 3-25 of the Rules]

3.68 This is intended to provide for a broad exemption for dividends that aligns with the operation and scope of participation exemptions in many Inclusive Framework jurisdictions. It covers both substantial and long-term shareholdings while, at the same time, ensuring that the exclusion does not provide unintended benefits for dividend income received by a Constituent Entity as part of its trading activity.

Symmetric treatment of dividends and distributions

3.69 A financial instrument is a compound financial instrument when it has both equity and liability components under the Acceptable FAS, see paragraph 37 on page 63 of the Consolidated Commentary. To the extent the Constituent Entities have classified the instrument differently under the relevant accounting standards, the classification adopted by the issuer should also be applied by the holder. Aligning the classification of the instrument ensures that no amount in respect of a financial instrument shall be treated as an Excluded Dividend to the extent that another Constituent Entity in the same MNE Group that issued the instrument treats the payment as an expense in the computation of its GloBE Income or Loss. To the extent the issuer classifies the relevant instrument as a debt for accounting purposes, the MNE Group will still need to consider the application of intragroup payments under section 3-180 of the Rules.

Equity gain or loss

3.70 The following types of equity method gains, profit and losses that may be included in calculating FANIL are excluded from the GloBE Income computation:

- gains and losses from changes in fair value and impairment accounting of an Ownership Interest where the MNE Group holds more than 10 per cent of the ownership interests at the time of transfer;
- profit or loss in respect of an Ownership Interest included under the equity method of accounting; and
- gains and losses from disposition of an Ownership Interest where the MNE Group holds more than 10 per cent of the ownership interests at the time of transfer.
  [Chapter 3, sections 3-30 and 3-35 of the Rules]

Insurance reserves

3.71 If a movement in an insurance company's reserves economically matches an Excluded Dividend (net of the investment management fee) from a security held on behalf of a policyholder (for example, unit linked insurance), the movement in the insurance reserves is not allowed as an expense in the computation of GloBE Income or Loss.
[Chapter 3, section 3-40 of the Rules]

Policy disallowed expenses

3.72 Bribes, kickbacks, and other illegal payments that may be allowed as expenses under financial accounting rules are not deductible for tax purposes. Therefore, for the GloBE Income or Loss computation, these types of expenses are excluded.
[Chapter 3, subsection 3-65(1)(a) of the Rules]

3.73 Fines and penalties may also be expenses under financial accounting rules. These expenses are also excluded when calculating the GloBE Income. This exclusion only applies if the fine or penalty, or the total expenses accrued by the Constituent Entity for fines and penalties, exceeds EUR 50,000.
[Chapter 3, subsections 3-65(b) and (c) of the Rules]

3.74 Interest charges for late payment of tax or other liabilities to a governmental unit are not fines or penalties and no adjustment to add them into the GloBE income or loss computation is required.

Intragroup financing arrangements

3.75 In calculating the GloBE Income or Loss of a Constituent Entity that is a LTCE, exclude any expenses from an intragroup financing arrangement that can reasonably be expected over the term of the arrangement to increase the amount of expenses taken into account when calculating the GloBE income or loss of the low-tax entity, without a corresponding increase in the taxable income of the high-tax counterparty. For completeness, section 3-180 will not apply if the High-Tax Counterparty is eligible for a corresponding tax benefit in their jurisdiction.
[Chapter 3, section 3-180 of the Rules]

3.76 This rule acts to prevent MNE Groups from engaging in transactions that are intended to increase the ETR in a jurisdiction that is below the Min Rate by reducing the GloBE Income or Loss in such jurisdiction without increasing the taxable income of the High Tax Counterparty.

3.77 'Intragroup Financing Arrangement', 'Low-Tax Entity, 'High-Tax Counterparty', and 'Low-Tax Jurisdiction' are defined terms:

- an Intragroup Financing Arrangement is defined as an arrangement entered into between two or more members of the MNE Group where a High-Tax Counterparty directly or indirectly provides credit or otherwise makes an investment in a LTCE.
- a LTCE is defined as a Constituent Entity located in a Low-Tax Jurisdiction or a jurisdiction that would be a Low-Tax Jurisdiction if the ETR for the jurisdiction were determined without regard to any income or expense accrued by that Entity in respect of an intragroup Financing Arrangement.

- a High-Tax Counterparty is defined as a Constituent Entity that is located in a jurisdiction that is not a Low-Tax Jurisdiction or that is located in a jurisdiction that would not be a Low-Tax Jurisdiction if its ETR were determined without regard to any income or expense accrued by that Entity in respect of an Intragroup Financing Arrangement.
- low-tax jurisdictions are jurisdictions with an ETR that is lower than the 15 per cent minimum tax rate.
[Chapter 3, sections 3-185, 3-190 and 3-195 of the Rules]

International Shipping Income Exclusion

3.78 International Shipping Income and Qualified Ancillary International Shipping Income are excluded from computations of the GloBE Income or Loss for a Fiscal Year. This exclusion does not apply if during the Fiscal Year the strategic or commercial management of the ships is not effectively carried on from within the jurisdiction in which the Constituent Entity is located.
[Chapter 3, section 3-220 of the Rules]

3.79 The strategic or commercial management of the ships concerned is limited to those deployed in earning International Shipping Income and must be effectively carried out in the jurisdiction where the Constituent Entity is located in order to qualify for the exclusion. For this purpose, the ships deployed in earning International Shipping Income are those that are engaged in the transportation of passengers or cargo in international traffic, whether owned, leased or otherwise at the disposal of the Constituent Entity, see paragraph 181 on page 98 of the Consolidated Commentary.

3.80 It is intended that ships involved in activities giving rise to Qualified Ancillary International Shipping Income, as described in section 3-230 of the Rules, are not to be taken into account in the strategic or commercial management test.
[Chapter 3, section 3-220 of the Rules]

3.81 International traffic means any transport by ship, except when the ship is operated solely between places within the same jurisdiction, see paragraph 181 on page 98 of the Consolidated Commentary.
[Chapter 3, section 3-235 of the Rules]

3.82 A Constituent Entity's International Shipping Income for a Fiscal Year is determined by subtracting its International Shipping Income Costs from its International Shipping Income Revenue.
[Chapter 3, section 3-225 of the Rules]

3.83 International Shipping Income Revenue includes income from various activities:

- transporting passengers or cargo using a ship operated in international traffic, regardless of ownership;

- transporting passengers or cargo by a ship in international traffic under slot chartering arrangements;
- leasing a fully equipped and crewed ship for transporting passengers or cargo in international traffic;
- leasing a ship on a bareboat charter for transporting passengers or cargo in international traffic to another MNE Group entity;
- participating in a pool, joint business, or international operating agency for transporting passengers or cargo in international traffic; and
- selling a ship used for transporting passengers or cargo in international traffic that has been held for at least one year.
  [Chapter 3, subsection 3-225(2) of the Rules]

3.84 International Shipping Income Costs arise from both direct and indirect costs related to shipping activities. Which is computed by using a proportion of shipping revenue of the Constituent Entity for the fiscal year over total revenue of the Constituent Entity for the Fiscal Year, consistent with the following formula:

$$Direct\ costs + \left(Indirect\ costs \times \frac{Shipping\ revenue}{Total\ revenue}\right)$$

[Chapter 3, section 3-225 of the Rules]

3.85 The direct International Shipping Costs are the total costs incurred by the Constituent Entity for the Fiscal Year that are directly attributable to the Constituent Entity’s International Shipping Activities. Similarly, the Indirect costs includes expenditure indirectly attributable to International Shipping Activities.

3.86 Qualified Ancillary International Shipping Income of all Constituent Entities in a jurisdiction must be less than 51 per cent of those Constituent Entity’s International Shipping Income.
[Chapter 3, section 3-230 of the Rules]

3.87 International Shipping Income does not include any profits from transportation of passengers or cargo by ships via inland waterways within the same jurisdiction.
[Chapter 3, section 3-235 of the Rules]

Inclusions or exclusions, depending on circumstances

Asymmetric Foreign Currency Gains or Losses

3.88 Where the Constituent Entity's accounting functional currency is different from its tax functional currency, then the FANIL must be adjusted to account for Asymmetric Foreign Currency Gain or Loss.

3.89 The FANIL must be adjusted to account for Asymmetric Foreign Currency Gain or Loss. The Asymmetric Foreign Currency Gain or Loss will generally arise from foreign exchange gains or losses due to differences between the functional currency for accounting purposes and the one used for local tax purposes, see paragraphs 66 to 71.1 on pages 73 and 74 of the Consolidated Commentary.

3.90 No adjustments are necessary if the functional currency is the same as the tax currency in the CFS. However, an adjustment to include an amount in FANIL is needed where a Constituent Entity's tax functional currency is different from its accounting functional currency to the extent that the particular amount of taxable income or loss is:

- not included in FANIL, and may or may not be included in taxable income; or
- not included in FANIL but is included in the taxable income; and
- is attributable to fluctuations in the exchange rate between the accounting functional currency and either:
  - tax functional currency; or
  - another currency that is not the tax functional currency. ***[Chapter 3, subsection 3-55(1) of the Rules]***

3.91 If a Constituent Entity's accounting functional currency for the Fiscal Year is different from its tax functional currency for the Fiscal Year, to compute that Constituent Entity's GloBE Income or Loss for a Fiscal Year, exclude a particular amount of income or loss to the extent that it is:

- included in the Constituent Entity's FANIL; and
- not included in taxable income or loss; and
- attributable to fluctuations in the exchange rate between the accounting functional currency and either:
  - tax functional currency; or
  - another currency that is not the tax functional currency. ***[Chapter 3, subsection 3-55(2) of the Rules]***

3.92 Accounting functional currency is defined as the functional currency used by the Constituent Entity in its financial accounts. This is distinct from the presentation functional currency used in the CFS.

3.93 The tax functional currency is the functional currency used to determine the Constituent Entity's taxable income or loss for a Covered Tax in the jurisdiction in which it is located. The accounting functional currency is the functional currency used to determine the Constituent Entity's FANIL.
[Chapter 3, section 3-60 of the Rules]

Refundable and Transferable Tax Credits

3.94 Non-Qualified Refundable Tax Credits are not treated as income in the computation of GloBE Income or Loss of a Constituent Entity and so are excluded. Only Qualified Refundable Tax Credits and Marketable Transferable Tax Credits are treated as income, and therefore included, in the computation of GloBE Income or Loss of a Constituent Entity.
[Chapter 3, paragraphs 3-110(a) and (b) of the Rules]

3.95 The addition to Covered Taxes has the effect of reversing the accounting entry that treated it as a tax reduction instead of income. Where a tax credit regime provides for tax credits that are partially refundable or transferable (i.e. tradeable), such that only a fixed percentage or portion of the credit is refundable or transferable, the credit shall be bifurcated and the part that is refundable or transferable shall be tested to determine whether it is a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit.

3.96 Marketable Transfer Tax Credits are included in GloBE Income or Loss, whereas Non-Marketable Tax Credits are excluded from GloBE Income or Loss. Other Tax Credits are excluded when calculating GloBE Income or Loss.

Qualified Refundable Tax Credit

3.97 The qualified refundable tax credits referred to in section 3-120 of the Rules are not ordinary refunds of tax paid in a prior period due to an error in the computation of tax liability or pursuant to an imputation system.

3.98 Rather, they are incentives to engage in certain activities, such as research and development, whereby the government allows the company to offset its taxes dollar-for-dollar for engaging in specified activities or incurring specified expenditures or the government will refund the amount of the unused credit if the company doesn't have any tax liability. In this way, the government effectively pays for the activity or expenditure in a similar manner to a grant.

3.99 The intention is that the incentive or grant is delivered by a tax reduction to the extent possible because this is more efficient than having payments moving both from and to the government and taxpayer (see paragraph 110 on page 83 of the Consolidated Commentary). The tax credit regime that the Qualified Refundable Tax Credit operates in must be designed in a way so that a credit

becomes refundable within four years from when the conditions under the laws of the jurisdiction granting the credit are met.
[Chapter 3, subsections 3-125(1) and (2) of the Rules]

3.100 The face value of a Qualified Refundable Tax Credit will be treated as GloBE income of the recipient Constituent Entity in the year such entitlement accrues. However, if the Qualified Refundable Tax Credit is related to the acquisition or construction of assets and the Constituent Entity that engages in the activities that generate the credit (the Originator) has an accounting policy of reducing the carrying value of its assets in respect of such tax credits, or recognising the credit as deferred income such that the income from the tax credit is recognised over the productive life of the asset, the Originator may follow this same accounting policy for Qualified Refundable Tax Credits to determine its GloBE income or loss without changing the character of the credit.
[Chapter 3, section 3-115 of the Rules]

3.101 This reflects that these types of refundable tax credits share features of, and should be treated in the same way as, government grants that form part of income, given that they are in effect government support for a certain type of activity that can ultimately be received in cash or cash equivalent, see paragraph 111 on page 83 of the Consolidated Commentary.

3.102 In cases where an amount of a Qualified Refundable Tax Credit has been recorded as a reduction in current income tax expense (or other Covered Taxes) in the financial accounts of the Constituent Entity, that amount must be treated as an addition to covered taxes under paragraph 4-15(e) of the Rules to fully reverse the accounting entry that treated it as a tax reduction instead of income. This ensures that the Qualified Refundable Tax Credit is treated as an item of income rather than a reduction of accrued taxes. No adjustment is required if a tax credit that meets the definition of Qualified Refundable Tax Credit was already treated as income in the financial accounts.
[Chapter 4, subsection 4-15 of the Rules]

Refundable Tax Credit

3.103 A Refundable Tax Credit is defined in subsection 3-125(4) of the Rules. It can be treated as a Qualified Refundable Tax Credit and therefore the face value of the Refundable Tax Credit can also be treated as the GloBE Income of the Constituent Entity. The Refundable Tax Credit would need to be operate within a ***tax*** credit regime that is designed such that the refund mechanism has practical significance for those taxpayers that will be entitled to the credit. If the design of a tax credit regime is such that the credit will (or is intended to) never exceed any taxpayer's tax liability then the refund mechanism will be of no practical significance to taxpayers and the tax credit will not treat the credit as a Qualified Refundable Tax Credit.
[Chapter 3, subsection 3-125(2) of the Rules]

3.104 A Refundable Tax Credit will also not be treated as a Qualified Refundable Tax Credit to the extent that it includes an amount of Tax creditable under a Qualified Imputation Tax or a Disqualified Refundable Imputation Tax - both are imputation taxes, in the sense that they allow either the company or the shareholder to claim a full or partial credit or refund of the corporate income tax previously paid by the company when that income is subsequently distributed to the shareholder in the form of a dividend.
[Chapter 3, subsection 3-125(2) of the Rules]

Non-Qualified Refundable Tax Credit

3.105 The distinction between "Qualified" and "Non-Qualified" refundable tax credits, and their different treatment under specific rules in Chapters 3 and 4, ensure that refundable tax credits are properly accounted for in the computation of the GloBE income or loss and the determination of Adjusted Covered Taxes in a way that provides for transparent and predictable outcomes under the GloBE Rules.

3.106 A "Non-Qualified" credit is a credit that can be considered as meeting the definition of a Refundable Tax Credit but ultimately fails to meet the definition of a "Qualified" credit because it is not refundable within four years from when the conditions under the laws of the jurisdiction granting the credit are met, see paragraph 136 on page 274 of the Consolidated Commentary.
[Chapter 3, subsection 3-125(3) of the Rules]

Marketable Transferable Tax Credits

3.107 Marketable Transferable Tax Credit means a tax credit that can be used by the holder of the credit to reduce its liability for a Covered Tax in the jurisdiction that issued the tax credit and that meets the legal transferability standard and the marketability standard in the hands of holder.

Legal transferability standard

3.108 The legal transferability standard is met for the Originator of a tax credit if the tax credit regime is designed in a way that the Originator can transfer the credit to an unrelated party in the Fiscal Year in which it satisfies the eligibility criteria for the credit (Origination Year) or within 15 months of the end of the Origination Year.

3.109 The legal transferability standard is met for a purchaser of a tax credit if the tax credit regime is designed in a way that the purchaser can transfer the credit to an unrelated party in the Fiscal Year in which it purchased the tax credit. If under the legal framework that applies to the credit, a purchaser of the tax credit cannot legally transfer the tax credit to an unrelated party or is subject to more stringent legal restrictions on transfer of the credit than the Originator, the tax credit does not meet the legal transferability standard in the hands of the purchaser.

[Chapter 3, subsections 3-130(2)-(3) of the Rules]

Marketability standard

3.110 The marketability standard is met for the Originator of a tax credit if it is transferred to an unrelated party within 15 months of the end of the Origination Year (or, if not transferred or transferred between related parties, similar tax credits trade between unrelated parties within 15 months of the end of the Origination Year) at a price that equals or exceeds the Marketable Price Floor. The marketability standard is met for a purchaser if that purchaser acquired the credit from an unrelated party at a price that equals or exceeds the Marketable Price Floor.
[Chapter 3, subsections 3-130(4)-(5) of the Rules]

Marketable Floor Price

3.111 Marketable Price Floor means 80 per cent of the net present value (NPV) of the tax credit if the NPV is determined based on the yield to maturity on a debt instrument issued by the government that issued the tax credit with equal or similar maturity (and up to 5-year maturity) issued in the same Fiscal Year as the tax credit is transferred (or if not transferred, the Origination Year).

3.112 For this purpose, the tax credit is the face value of the credit or the remaining creditable amount in relation to the tax credit. The cash flow projection to be factored in the NPV calculation shall be based on the maximum amount that can be used each year under the legal design of the credit. An Originator and purchaser are considered related parties if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each of the Originator and purchaser.

3.113 In any case, an Originator and purchaser are considered related parties if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.
[Chapter 3, section 3-135 of the Rules]

3.114 Generally, the Originator of a Marketable Transferable Tax Credit shall treat the face value of the tax credit as GloBE Income in the Origination Year. However, if the Marketable Transferable Tax Credit is related to the acquisition or construction of assets and the Originator has an accounting policy of reducing the carrying value of its assets in respect of such tax credits, or recognising the credit as deferred income such that the income from the tax credit is recognized over the productive life of the asset, the Originator shall follow this same accounting policy for GloBE purposes.

3.115 If all or part of a Marketable Transferable Tax Credit expires without use, the Originator treats the face value attributable to the expired portion of the credit as a loss (or increase to the carrying value of the asset) in the computation of GloBE Income or Loss in the Fiscal Year of the expiration.

3.116 An Originator that transfers a Marketable Transferable Tax Credit within 15 months of the end of the Origination Year shall include the transfer price (in lieu of the face value of the credit) in its GloBE Income in the Origination Year. If the Originator transfers a Marketable Transferable Tax Credit after this period, any difference between the face value of the tax credit transferred that was included in GloBE Income or Loss for the Origination Year and the transfer price shall be treated as a loss in computing the Originator's GloBE Income or Loss in the Fiscal Year of the transfer. Where the Originator includes the tax credit as income rateably over the productive life of the asset, for both accounting and GloBE purposes, the difference between the transfer price and the face value of the tax credit shall be included in the GloBE Income or Loss rateably over the remaining productive life of the asset.

3.117 A purchaser of a Marketable Transferable Tax Credit that uses the tax credit to satisfy its liability for a Covered Tax includes the difference between the purchase price and the face value of the tax credit in its GloBE Income when and in proportion to the amount of the tax credit used by the purchaser to satisfy its liability for a Covered Tax. A purchaser of a Marketable Transferable Tax Credit that sells the credit must include the gain or loss on the sale in its GloBE income or loss in the Fiscal Year of the sale. The gain or loss on sale is equal to the sale price minus the total of the purchase price and the gain recognized from use of the credit. If all or part of a Marketable Transferable Tax Credit expires without use, the purchaser treats the loss attributable to the expired portion of the credit as a loss in the computation of GloBE income or loss in the Fiscal Year of the expiration. The loss attributable to the expiration is equal to the excess of the purchase price and the gain recognized on use of the credit over the amount of the credit used.

3.118 This treatment of a purchased Marketable Transferable Tax Credit applies to a purchased tax credit that also qualifies as a Qualified Refundable Tax Credit. A tax credit that does not meet the conditions for being a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit, but that was treated as income in the financial accounts, must be subtracted from the computation of GloBE Income or Loss. The conditions for a Marketable Transferable Tax Credit draw on the treatment in financial accounting standards (both for government grants and for income taxes), and are designed to identify tax credits that are, as a matter of substance and not merely form, transferable in a market.

3.119 To be treated as a Marketable Transferable Tax Credit under the GloBE Rules, there must be a market such that the legal right to transfer the credit has immediate practical and economic significance for those taxpayers that will be entitled to the credit. If there is no actual market for the transferable tax credits, then the transferability element will be of no practical significance to taxpayers

and the GloBE Rules will not treat the tax credit as a Marketable Transferable Tax Credit, see pages 84 to 86 of the Consolidated Commentary.
[Chapter 3, section 3-120 of the Rules]

Other Tax Credits

3.120 Other tax credits that do not fall into the categories of a qualified refundable tax credit, a marketable transferable tax credit or a non-marketable transferable tax credit credits cannot be included in the computation of the GloBE income or loss of a Constituent Entity.
[Chapter 3, sections 3-110 and 3-115 and subsection 3-140(2) of the Rules]

Elections

3.121 A relevant entity may make annual, five-yearly or indefinite elections as recorded in the GloBE Information Return.

Five-Year election: Excluded Dividends

3.122 A Filing Constituent Entity may make a Five-Year election for the MNE Group for any Constituent Entity to include all dividends from all portfolio shareholdings on the basis that it is burdensome to differentiate long-term and Short-term Portfolio Shareholdings.
[Chapter 3, sections 3-20(2) the Rules]

3.123 A Short-term Portfolio Shareholding exists in respect of distributions that have been transferred to a Constituent Entity who then holds the distributions for a period of less than a year.
[Chapter 3, sections 3-25(3) the Rules]

Five-Year election: Excluded Equity Gains or Loss and Investment Hedges in Foreign Operations

3.124 A redeemable preference share or convertible note is often treated as a liability for the issuer under Acceptable FAS, while the same accounting standard allows for a different classification to treat the instrument as equity from the holder’s perspective. A similar outcome could potentially apply in circumstances where a Constituent Entity issues a compound financial instrument. Compound financial instruments are non-derivative financial instruments that, from the issuer’s perspective, contain both a liability and an equity component, such as a convertible bond, see paragraphs 57.1 to 57.3 on pages 67 and 68 of the Consolidated Commentary

3.125 Common examples of instruments that may be eligible for the Five-Year election include redeemable preference shares, compound financial instruments, and hedging instruments. Under the International Financial Reporting Standards and the US’ Generally Accepted Accounting Principles, the issuing entity must separately identify the liability and equity components of the compound financial instrument and treat each accordingly in the financial statements.

3.126 On the basis that the treatment of a net investment hedge should follow the treatment of the investment it is hedging, a Filing Constituent Entity may make a Five-Year election to treat foreign exchange gains or losses reflected in a Constituent Entity's FANIL as an Excluded Equity Gain or Loss, to the extent that:

- the foreign exchange gain or losses are attributable to hedging instruments that hedge the currency risk in Ownership Interests other than Portfolio Shareholdings; and
- the gain or loss is recognised in Other Comprehensive Income at the level of the CFS; and
- the hedging instrument is considered effective under the Authorised FAS used in preparing the CFS.
[Chapter 3, subsections 3-35(1), (2), (3) and (4)]

3.127 Where the hedging instrument is held by a Constituent Entity that does not itself hold the ownership interests being hedged and that Constituent Entity transfers the foreign exchange risk to another Constituent Entity that does hold those ownership interests (such as through intercompany loans), then:

- the foreign exchange gain or loss on the net investment hedge is treated as Excluded Equity Gain or Loss of the Constituent Entity that holds the Ownership Interest; and
- the exclusion does not apply to the Constituent Entity that issued the hedging instrument and no adjustment is made to the GloBE Income or Loss.
[Chapter 3, subsection 3-35(2) of the Rules]

3.128 As a consequence, any taxes arising on the foreign exchange gains is treated as a reduction to Covered Taxes under paragraph 4-20(a) of the Rules.

Annual election: exclude qualified debt release amount

3.129 A Filing Constituent Entity may make an Annual Election to exclude an amount in respect of a debt release from the Constituent Entity's FANIL for a Fiscal Year if the debt release:

- is subject to court or other judicial body statutorily provided insolvency or bankruptcy proceedings or where an independent insolvency administrator is appointed; and
- arises by arrangement where one or more creditors is not connected with the debtor and it is reasonable to conclude the debtor would be insolvent in 12 months of the date of release.

[Chapter 3, section 3-80 and paragraphs 3-85(1)(a) and (b) of the Rules]

3.130 However, if neither of the conditions above are met, an Annual Election to exclude an amount of debt release if

- the debt release arises by arrangement where one or more creditors is not connected with the debtor;
- amount is in respect of a debt owed to a third-party creditor; and
- the debtor liabilities are more than the fair market value of its assets determined immediately before the release; and
- the amount does not exceed the lesser of the following amounts:
  - the debtor's liabilities minus the fair market value of its assets, determined immediately before the debt release – if the debtor's assets are greater than or equal to its liabilities as a result of the debt release; or
  - the reduction in the debtor's deferred tax assets resulting from the debt release – if as a result of the debt release, any amount included in computing net income or loss is offset by a corresponding reduction in deferred tax assets.
    [Chapter 3, paragraph 3-85(c) and subsection 3-85(2) of the Rules]

Five-year election: substitution amount of stock-based compensation

3.131 A Filing Constituent Entity may make a Five-Year election to use the amount of allowable deduction determined for the purpose of computing its taxable income instead of the amount of stock-based compensation expensed in its financial accounts. The election must be applied consistently to the stock-based compensation of all entities located in the same jurisdiction for the duration of the Five-Year election.

3.132 A stock-based compensation election under section 3-95 of the Rules does not impact the Substance-based Income Exclusion that is calculated under Part 5-3 of the Rules.

3.133 Under financial accounting standards the value of stock-based compensation is determined on the present value of stock option at the grant date of the option which is then amortised over the exercise period. However, some jurisdictions allow tax deductions based on the value of the stock at exercise date.

3.134 This disparity between the amount of expense allowed in the computation of financial accounting income and the local tax base would often depress the GloBE ETR, in some cases below the Minimum Rate. This election allows for a deduction based on the value of the stock at the exercise date. In the event where an election is not made, the Constituent Entity would simply compute its

GloBE Income or Loss taking into account the amount of stock-based compensation allowed in the computation of FANIL.
[Chapter 3, section 3-90 of the Rules]

3.135 If the stock-based compensation election is made in respect of an option that expires without exercise, the entity must include the total amount previously deducted in the computation of its GloBE Income or Loss for the Fiscal Year in which the option expires. This rule prevents the Constituent Entity from retaining the benefit of a deduction for an item that will never be paid.
[Chapter 3, paragraph 3-90(4)(c) of the Rules]

3.136 If the election is made in a Fiscal Year after some of the stock-based compensation of a transaction has been recorded in the financial accounts, but before the exercise date, the Constituent Entity must recapture the stock-based compensation expense allowed in the computation of its GloBE Income or Loss in the previous Fiscal Years. The amount of recaptured stock-based compensation is equal to the excess of the cumulative amount allowed as an expense in the computation of the Constituent Entity's GloBE Income or Loss in previous Fiscal Years over the cumulative amount that would have been allowed as an expense if the election had been in place in those Fiscal Years. This rule only applies for stock-based compensation expenses for which options have not yet been exercised before the end of the Fiscal Year.
[Chapter 3, subsections 3-90(4) and (5) of the Rules]

Revocation of stock-based compensation election

3.137 If the election is revoked during a Fiscal Year, the Constituent Entity must include in the computation of its GloBE Income or Loss for the revocation year the amount deducted pursuant to the election that exceeds financial accounting expense accrued in respect of the stock-based compensation for previous Fiscal Years before the first year to which the revocation applies regarding options that have not been exercised. This rule only applies for stock-based compensation expenses that have not been exercised before the revocation year. See paragraph 93 on page 80 of the Consolidated Commentary.
[Chapter 3, subsection 3-90(5) of the Rules]

Five-year election: Realisation method

3.138 A Filing Constituent Entity may make a Five-Year election to use the realisation method for assets and liabilities that are subject to fair value or impairment accounting for all entities within a jurisdiction.
[Chapter 3, section 3-150 of the Rules]

3.139 The election applies to all assets and liabilities of entities, unless the Filing Constituent Entity chooses to limit the election to tangible assets of such Constituent Entities or to Constituent Entities that are Investment Entities.
[Chapter 3, subsection 3-150(1) of the Rules]

3.140 The realisation method has the effect of recognising gains or losses for GloBE purposes when the asset is disposed or liability is satisfied rather than when change in fair value of the asset or liability is recorded in the financial accounts.

3.141 When the realisation election applies all gains or losses that result from fair value or impairment accounting with respect to an asset or liability are excluded from the computation of GloBE Income or Loss.
[Chapter 3, subsection 3-150(3)(a) of the Rules]

3.142 For the purposes of the realisation method, the carrying value of an asset or liability is the carrying value at the later of:

- the first day of election year; or
- the date the asset was acquired or liability was incurred.
[Chapter 3, subsection 3-150(3)(b) of the Rules]

Revocation of realisation method election

3.143 In the year an election is revoked, the GloBE Income or Loss is adjusted by the difference between the fair value of the asset or liability at the beginning of the year and the carrying value of the asset or liability determined pursuant to the election. This adjustment recaptures the net fair value gain or loss that arose during the election.
[Chapter 3, subsections 3-150(4) and (5) of the Rules]

Annual election: Allocation of Aggregate Asset Gain

3.144 A Filing Constituent Entity may make an Annual Election for a jurisdiction in a Fiscal Year, where an ***Aggregate Asset Gain*** arises. The effect of the Annual Election is that the GloBE Income or Loss can be adjusted for each fiscal year in the ***Look-back Period*** by allocating the Aggregate Asset Gain to years in the Look-back Period. The Look-back Period is defined as the election year plus the previous four fiscal years.

3.145 An Aggregate Asset Gain arises in a Fiscal Year in a Jurisdiction if the disposal of Local Tangible Assets in that year by Constituent Entities of the MNE Group results in a net gain. The Aggregate Asset Gain excludes any gain or loss on a transfer of Local Tangible Assets between Group Members. Local Tangible Assets only include immovable property located in the jurisdiction.
[Chapter 3, subsections 3-170(1)-(3) and 3-175(1) of the Rules]

3.146 A Constituent Entity may have a net asset loss from disposing of Local Tangible Assets in a year. The net loss of the Constituent Entity is reduced by amounts set-off under previous elections. When an Aggregate Asset Gain is set off against a Net Asset Loss, that Net Asset Loss is reduced by a corresponding amount, ensuring that there is no double benefit in the future.

3.147 The Aggregate Asset Gain is matched against the net asset losses in the Look-back Period, starting with the earliest loss year in the period. If the asset gain is not absorbed in the earliest loss year, the balance is carried forward to the next loss year until the gain is fully absorbed or there are no remaining loss years in the Look-back Period.
[Chapter 3, section 3-165 of the Rules]

3.148 If the Net Asset Loss is in excess of the Aggregate Asset Gain, the Aggregate Asset Gain is set-off based on the ratio of the Constituent Entity's Net Asset Loss to total of Net Losses of all Constituent Entities in the jurisdiction for the Fiscal Year. Where the amount of Aggregate Asset Gain is in excess of the Net Asset Losses in the Loss Years of the Look-back Period, it is spread evenly over the Look-back Period and allocated among the Constituent Entities based on individual net asset gains in the election year in accordance with the following formula:

$$Allocated\ asset\ gain = \frac{Constituent\ Entity's\ Net\ Asset\ Gain}{Net\ asset\ gain\ of\ all\ Constituent\ Entities}$$

3.149 This may be combined with an election to consolidate transactions under section 3-185 of the Rules for tangible assets, excluding fair value gains/losses and impairments during that period.
[Chapter 3, subsection 3-165 of the Rules]

Recalculating top-up tax

3.150 The election is an ETR adjustment provision, meaning that the ETR and top-up tax for prior Fiscal Years in the Look-back Period must be recalculated.
[Chapter 3, subsections 3-160(4) and (5) of the Rules]

3.151 Any GloBE Loss generated in previous fiscal years must be recalculated after applying subsections 3-160(4) and (5) of the Rules. If a GloBE Loss is reduced due to this, the top-up tax for that Fiscal Year must also be recalculated in accordance with section 5-60 of the Rules.
[Chapter 3, section 3-160 of the Rules]

Five-year election: Consolidated accounting treatment

3.152 A Filing Constituent Entity may make a Five-Year election to apply its consolidated accounting treatment to eliminate income, expense, gains, and losses from transactions between Constituent Entities provided they are in a tax consolidation group, and all located in the same jurisdiction. This may be used in place of using the arm's length method and aims to eliminate intragroup transactions. This election applies to Australian TCGs but also MEC Groups. Australia's income TCG and MEC Group regimes in Part 3-90 of the ITAA 1997 qualify to apply the consolidated accounting treatment under section 3-200 of the Rules.
[Chapter 3, section 3-200 of the Rules]

3.153 This election prevents unintended consequences where income, expenses, gains and losses from domestic intra-group transactions are treated as tax neutral transactions under local law. This election is relevant in circumstances if excluded intra-group transactions between entities located in same jurisdiction for GloBE computations where such transactions would shift income, gain, expense or loss to another member of the group to be recognised in subsequent fiscal year in connection with third party transfer.

3.154 Section 3-105 of the Rules requires that transactions between Constituent Entities located in same jurisdiction that result in loss are to be adjusted to comply with the Arm's Length Principle. The consolidated accounting treatment election applies to eliminate non-arm's length transactions between Constituent Entities, and therefore the consolidated accounting election may be used in place of using the arm's length method for transactions that result in loss that occur between Constituent Entities located in same jurisdictions.

Allocating income between entities

3.155 There are a series of special rules for the allocation of income for Permanent Establishments and Flow-through Entities.

Permanent Establishments

3.156 Due to a Permanent Establishment being a tax concept, separate accounts of Permanent Establishments may be maintained either for management purposes or to comply with local tax rules. In making allocations of income between the Permanent Establishment and the Main Entity, accounting treatment is followed as far as possible. This is subject to income and expense allocation rules under any relevant Tax Treaty or domestic tax law, see paragraphs 186 to 187 on page 99 of the Consolidated Commentary.

3.157 For a Permanent Establishment that meets definition of paragraph 19(1)(a), (b) or (c) of the Assessment Act, FANIL of the Permanent Establishment is net income or loss reflected in the financial accounts. However, where there are no separate financial accounts for a Permanent Establishment, the FANIL is the amount that would have been reflected in the separate financial accounts if prepared on a standalone basis.
[Chapter 3, subsection 3-240(1) of the Rules]

3.158 If a Permanent Establishment exists and is taxed based on a tax treaty, as defined under paragraph 19(1)(d) of the Assessment Act, domestic law, or as if a tax treaty were in place, income is allocated to a Permanent Establishment for those amounts of income or expenses that are attributed to the Permanent Establishment according to domestic law or tax treaty, or Article 7 of the OECD Model Tax Convention.
[Chapter 3, subsection 3-235 of the Rules]

3.159 In determining the FANIL of a Permanent Establishment that meets the definition of paragraph 19(1)(d) of the Assessment Act, only income that is exempt from tax in the Main Entity and is attributable to the operations outside of the Main Entity is taken into consideration. Similarly, only those expenses that are not deducted for tax purposes in the Main Entity jurisdiction and attributable to operations outside of the Main Entity jurisdiction are taken into account.
[Chapter 3, subsection 3-240(2) of the Rules]

3.160 Any adjustments made to the accounting income of a Permanent Establishment that are reflected in the Main Entity's accounts must be excluded to prevent double counting or omission of FANIL in the computation of the GloBE Income or Loss of the Main Entity and the Permanent Establishment. The law of the jurisdiction of the Main Entity is relevant to calculate this offset.
[Chapter 3, subsection 3-250(1) of the Rules]

3.161 An exception to the rule is that losses of a Permanent Establishment may be allocated to the Main Entity for the purposes of computing GloBE Income or Loss to the extent that the loss of the Permanent Establishment is treated as an expense in computation of taxable income of the Main Entity. However, the loss must not be set off against an item of income that is subject to tax in both jurisdictions. A corresponding adjustment is required to treat subsequent income of the Permanent Establishment as income of the Main Entity up to the amount of the loss that was previously recorded as an expense of the Main Entity.
[Chapter 3, subsection 3-250(2) of the Rules]

3.162 However, this exception may not apply to MNE Groups in an Australian context as the Permanent Establishment's expense is not deductible against the Main Entity's taxable income located in Australia. Therefore, the GloBE Loss of a Permanent Establishment will not be treated as an expense of a Main Entity located in Australia for purpose of computing its taxable income.
[Chapter 3, subsection 3-250(3) of the Rules]

Flow-through Entities

3.163 A Flow-through Entity is an entity that is fiscally transparent regarding its income, expenditure, profit or loss in the jurisdiction where it is created, unless it is tax resident and subject to a Covered Tax on its income or profit in another jurisdiction. It is treated as a Tax Transparent Entity if its direct owners treat it as fiscally transparent, and treated as a Reverse Hybrid Entity if the owners treat it as opaque. These entities have separate rules as the regime imposes tax on the UPEs owners, which may include partners, beneficiaries or shareholders.
[Chapter 10, sections 10-10, 10-15 and 10-20 of the Rules]

3.164 There are separate rules for Constituent Entities that are flow-through entities and UPEs that are flow-through entities. These rules are necessary because in many cases these Entities would have separate financial accounts showing their

FANIL regardless of the fact that they have no taxable net income or loss as that income or loss had been allocated to its owners under tax rules, see paragraph 204 on page 101 of the Consolidated Commentary.

3.165 There are two steps to ensure that all income is appropriately allocated to produce a reliable ETR. The first step is to adjust the FANIL of the Flow-through Entity by reducing the amount attributable to owners outside of the MNE Group. This ensures that the jurisdictional ETR of the Group Members of the MNE Group is properly computed given that taxes paid by non-members of the MNE Group are not taken into account for the purposes of ETR computation, see paragraph 206 on page 102 of the Consolidated Commentary.
[Chapter 3, subsection 3-255(1) of the Rules]

3.166 The second step only applies if there is remaining income after step one. In this case, the remaining income is allocated based on the ownership interest in the Flow-through Entity and the characteristics of the ownership entity. Where the business of a Flow-through Entity is carried out through the following types of entities it is allocated as follows and prioritised in the order that they appear.

- through a Permanent Establishment – allocate to the Permanent Establishment, in accordance with Part 3-4 of the Rules. This ensures that there is no double counting of the FANIL of the Permanent Establishment for the ETR computations.
- Tax Transparent Entities (that are not the UPE) – allocate to Constituent Entity owners based on ownership interests. This rule continues to apply until the owner is either not tax transparent or is the UPE.
- reverse hybrid – allocate to the entity. The income is not allocated to owners because it is not fiscally transparent, see paragraph 207 on page 102 of the Consolidate Commentary.
[Chapter 3, subsection 3-255(1) of the Rules]

3.167 It is possible for the same Flow-through Entity to be treated as a Tax Transparent Entity by some of owners and a Reverse Hybrid Entity by other owners. In these cases, the steps to allocate FANIL of the Flow-through Entity is applied by each Constituent Entity-owner separately. In other words, subsection 3-255(1) of the Rules applies the Tax Transparent Entity treatment with respect to Constituent Entity-owners that treat the entity as tax transparent and applies the Reverse Hybrid Entity treatment with respect to the other Constituent Entity-owners, see paragraph 225 on page 83 of the Consolidated Commentary.
[Chapter 3, subsections 3-255(4)) of the Rules]

3.168 When the UPE is reached, the income is allocated to the UPE in accordance with Part 7-1 of the Rules, which deals with the treatment of a UPE being a Flow-through Entity and UPEs that directly own a Flow-through Entity, see

paragraph 207 on page 102 of the Consolidated Commentary.
[Chapter 3, subsection 3-255(2) and Chapter 7, Part 7-1 of the Rules]

Chapter 4: Adjusted Covered Taxes

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Outline of chapter

4.1 Chapter 4 of the Rules sets out the computation for arriving at adjusted covered taxes, which is the amount that is included in the numerator of the ETR calculation. Chapter 4 refers to various taxes, where a general definition of 'tax' is defined in the GloBE Rules as a compulsory unrequited payment to General Government. This definition is based on the OECD's long-standing definition and is consistent with the definition used by various international organisations.
[Chapter 10, section 10-5 of the Rules]

Detailed explanation of new law

Meaning of Covered Taxes

4.2 The term Covered Taxes is broadly defined to include taxes imposed on a Constituent Entity's income or profits, as well as taxes that are functionally equivalent to such income taxes and taxes on retained earnings and corporate equity. The broad definition of Covered Taxes aims to allow for a simplified estimate of net profit, taxes or surcharges imposed on the net income of specific activities and tax on the net income of a Constituent Entity under Pillar One, see paragraph 27 on page 118 of the Consolidated Commentary. The definition of Covered Taxes is developed solely for the purposes of the GloBE

Rules and does not have any connection to other similar definitions, for example in model tax conventions.

4.3 The definition of Covered Taxes includes the following taxes:

- recorded in a Constituent Entity's financial accounts that relate to:
  - its income or profits, or
  - its share of the income or profits of another Constituent Entity of a Group in which it has an Ownership Interest;
- on distributed profits, deemed profit distributions and non-business expenses under an Eligible Distribution Tax System;
- imposed as an alternative to a generally applicable corporate income tax; and
- levied by reference to retained earnings and corporate equity, including taxes on multiple components based on both income and equity. ***[Chapter 4, subsection 4-40(1) of the Rules]***

4.4 Broadly, any taxes that are of the following nature are excluded from the meaning of Covered Taxes:

- Top-up Tax accrued by a Parent Entity under a Qualified IIR;
- Top-up Tax accrued by a Constituent Entity under a QDMTT;
- any Tax under or as a result of the application of a Qualified UTPR;
- a Disqualified Refundable Imputation Tax;
- Taxes paid or accrued by an insurance company in respect of returns to policyholders. ***[Chapter 4, subsection 4-40(2) of the Rules]***

4.5 A number of commonly encountered taxes are also not included in the definition of Covered taxes, including consumption taxes, excise and taxes on inputs, digital services taxes, payroll taxes and other employment-based taxes, transaction-based taxes, and property taxes. Although these taxes are excluded from Covered Taxes, they may still be treated as reductions in the GloBE Income or Loss computations.

Taxes captured in the definition Covered Taxes

Income Taxes

4.6 Taxes recorded in the financial accounts of a Constituent Entity with respect to its income or profits are Covered Taxes. Income taxes generally refer to taxes levied on a flow of money (or its equivalent) accrued by a taxpayer during a period of time. Such taxes consider the related expenses of generating the taxpayer's money flow to determine the net wealth increase for the taxpayer

during that period.
[Chapter 4, paragraph 4-40(1)(a) and subsection 4-40(2) of the Rules]

4.7 A definition of Covered Taxes that applies to income calculated on a net (rather than gross) basis is in line with the definition of income tax used for financial accounting purposes and therefore it is expected that a tax recognised as an income tax for financial accounting purposes should generally qualify as a Covered Tax. The definition of Covered Taxes does not include a tax on a gross amount unless that tax acts as a substitute to an income tax.

4.8 The definition of Covered Taxes also extends to taxes on income at the point of earning and on subsequent profit distributions.
[Chapter 4, paragraphs 4-40(1)(a) and (c) of the Rules]

Ownership Interest and profit distributions

4.9 Covered taxes include taxes on the income of the Constituent Entity as well as on its share of income of another Constituent Entity in which it owns an Ownership Interest (including direct and indirect interest), including taxes imposed:

- on the Constituent Entity's share of undistributed profits from a Tax Transparent Entity such as a partnership;
- under a CFC Tax Regime; or
- on distributions from another Constituent Entity (see paragraph 26 on page 117 of the Consolidated Commentary).

4.10 The amount of such taxes allocated in respect of an Ownership Interest in another Constituent Entity are set out in Part 4-3 of the Rules, explained from paragraph 4.81.

Taxes imposed under an Eligible Distribution Tax System

4.11 An Eligible Distribution Tax System is a corporate income tax system that was in force on or before 1 July 2021 and that:

- imposes tax at a rate equal to or exceeding 15 per cent; and
- imposes an income tax on the corporation with the tax generally payable only when:
  - it distributes profits to shareholders;
  - is deemed to distribute profits; or
  - incurs specific non-business expenses.
    [Chapter 4, paragraph 4-40(1)(b) of the Rules]

Taxes imposed in lieu of a generally applicable corporate income tax

4.12 Covered Taxes captures taxes imposed in lieu of a generally applicable corporate income tax. A generally applicable corporate income tax could be tax that is applicable to:

- all resident corporations; or
- to resident corporations that are members of a large MNE Group.

4.13 A generally applicable corporate income tax could also be an income tax that, while imposed on a corporation, applies to other taxable entities (such as individuals). If a tax does not fit the description of a generally applicable income tax but operates as a substitute for such taxes, then it meets the 'in lieu of' test.

4.14 This test captures various forms of taxation that serve as a functional equivalent of a generally applicable income tax across different jurisdictions. The test is used in some jurisdictions in the context of their foreign tax credit rules. Taxes resulting from the Subject to Tax Rule are also captured by the test.

4.15 The test generally includes the following types of taxes if such taxes are imposed as a substitute to a generally applicable income tax:

- withholding taxes on interest, rents and royalties;
- other taxes on categories of gross payments (e.g. insurance premiums).

4.16 The concept of 'in lieu of' also includes taxes imposed on an alternative basis, other than net income, such as taxes based on units produced or commercial surface area, which are substitutes for a generally applicable income tax. However, a tax on an alternative basis that is in addition to, and not a substitute for, a generally applicable income tax would not be considered a Covered Tax under the 'in lieu of' test.
[Chapter 4, paragraph 4-40(1)(c) of the Rules]

Taxes levied by reference to retained earnings and corporate equity

4.17 The equity or capital of a corporation comprises retained earnings (the undistributed portion of after-tax income) and shareholder contributions. Taxes on corporate equity or net equity may supplement a corporate income tax acting as an integral part of the overall system of corporate taxation and are therefore included as Covered Taxes. Other types of taxes that are included are taxes that:

- have multiple components to the base and all the components of the tax base fall within the definition of income or profit covered by the Rules; or
- are levied in respect of a corporation's activities in a jurisdiction and consist of an income and a non-income element if they are

predominately a tax on an entity's income and it would be administratively burdensome to split the tax into separate income and non-income components.
[Chapter 4, paragraph 4-40(1)(d) of the Rules]

Taxes excluded from the definition of Covered Taxes

Top-up taxes

4.18 Top-up taxes are not included in the definition of Covered Taxes because their inclusion would lead to a circular computation in the Fiscal Year they arise. Their inclusion in subsequent years would also compromise the agreed 15 per cent minimum rate, effectively reducing the top-up tax required for the next year.

4.19 Therefore, the following top-up taxes are excluded from the definition of Covered Taxes:

- accrued by a Parent Entity under a QIIR;
- any Tax under, or as a result of, the application of a Qualified UTPR; and
- a top-up tax accrued by a Constituent Entity under a QDMTT.
[Chapter 4, subsection 4-40(2)(a), (b) and (c) of the Rules]

4.20 QDMTT taxes remain creditable against top-up tax. However, ordinary domestic minimum taxes that are not qualified by the OECD may only be considered Covered Taxes if they otherwise meet the definition of Covered Taxes.
[Chapter 4, subsection 4-40(2)(b) of the Rules]

Disqualified Refundable Imputation taxes

4.21 Disqualified Refundable Imputation Taxes are excluded from the definition of Covered Taxes. Disqualified Refundable Imputation Taxes are taxes, other than Qualified Imputation Taxes, that are initially imposed on the income of a Constituent Entity but when that income is distributed by way of dividend to the owners of the Constituent Entity, the tax is refunded to the Constituent Entity or the owner or creditable against a tax liability of the owner other than a tax liability arising from the dividend.

4.22 Disqualified Refundable Imputation are distinguished from Qualified Imputation Taxes (which are a Covered Tax) because Disqualified Refundable Imputation Taxes are generally refunded without the dividend recipient being subject to tax on the distributed income.

4.23 The definition of Disqualified Refundable Imputation Taxes only extends to the taxes that are paid or accrued by the Constituent Entity in respect of its income that are refundable or creditable upon distribution of a dividend. As Disqualified Refundable Imputation Taxes are not counted as Covered Taxes,

any refund of such taxes similarly does not reduce Adjusted Covered Taxes.
[Chapter 4, subsection 4-40(2)(d) of the Rules]

Taxes paid or accrued by an insurance company

4.24 If a tax is paid or accrued by insurance companies and relates to returns to policyholders, then it is excluded from the definition of Covered Taxes. The exclusion only applies to the extent of a corresponding adjustment when computing the GloBE Income or Loss for a Fiscal Year of a Constituent Entity of an MNE Group that is an insurance company.
[Chapter 4, subsection 4-40(2)(e) of the Rules]

4.25 Similar to the justification in paragraph 3.59, this exclusion is necessary due to insurance companies sometimes passing tax charges to policyholders, effectively reimbursing the company for taxes paid on the policyholder's behalf. Certain financial accounting standards treat returns to policyholders as the insurance company's income with this income effectively eliminated with a corresponding liability to the policyholder. The liability is typically reduced by the tax incurred on the relevant income, thus reimbursing the insurance company for the taxes incurred.

No Double Counting of covered taxes

4.26 Where an amount of Covered Taxes may overlap across multiple adjustment categories, that amount of Covered Taxes must only be taken into account once for the purposes of Chapter 4 of the Rules. An amount of Covered Taxes cannot be duplicated for the same Constituent Entity, across Fiscal Years or for multiple Constituent Entities.
[Chapter 4, section 4-25 of the Rules]

Adjusted Covered Taxes

Accrued Current Covered Tax Expense amount

4.27 The starting point to determine the Adjusted Covered Taxes is the amount of ***Accrued Current Covered Tax Expense*** for a Fiscal Year of a Constituent Entity of an MNE Group. The Accrued Current Covered Tax Expense is the amount of the Constituent Entity's current tax expense accrued, in respect of Covered Taxes, in the Constituent Entity's FANIL for the Fiscal Year.
[Chapter 4, section 4-10 of the Rules]

Adjusted Covered Taxes amount

4.28 Various adjustments are made to Accrued Current Covered Tax Expense to arrive at the amount of Adjusted Covered Taxes for the Fiscal Year, including:

- adding the amounts related to the Additions to Covered Taxes for the Fiscal Year;
- subtracting the amounts related to the Reductions to Covered Taxes for the Fiscal Year;
- adding the Total Deferred Tax Adjustment Amount for the Constituent Entity for the Fiscal Year under Part 4-4 of the Rules; and
- adjusting for any increases or decreases in Covered Taxes that:
  - are recorded in equity or Other Comprehensive Income of the Constituent Entity for the Fiscal Year; and
  - relate to amounts that are part of the GloBE Income or Loss computation for the Fiscal Year and will be taxed under the law of the jurisdiction in which it is located.
    [Chapter 4, section 4-5 of the Rules]

4.29 As an example, if a Constituent Entity accrues $100 of current tax expense in respect of Covered Taxes, then a debit journal entry to that expense account in the financial accounts is made resulting in a positive Accrued Current Covered Tax Expense amount. A negative amount of Accrued Current Covered Tax Expense will arise where there is a net credit to the current tax expense, which indicates a current tax benefit. This similarly applies to the computation of the Total Deferred Tax Adjustment Amount, where a debit to the deferred tax expense account is a positive amount in calculating the Total Deferred Tax Adjustment Amount

Additions to Covered Taxes

4.30 The Additions to Covered Taxes of a Constituent Entity for the Fiscal Year is the sum of the following amounts:

- Covered Taxes of the Constituent Entity for the Fiscal Year accrued as an expense in the profit before taxation in the Constituent Entity's financial accounts for the Fiscal Year;
- GloBE Loss Deferred Tax Asset that is used in a Fiscal Year;
- Covered Taxes that are paid in the Fiscal Year that:
  - relates to an uncertain tax position; and
  - treated as a Reduction to Covered Taxes for a previous Fiscal Year; and
- refunds or credits in respect of a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit recorded as a reduction, in respect of Covered Taxes, to its Accrued Current Covered Tax Expense for the Fiscal Year.
  [Chapter 4, section 4-15 of the Rules]

Adding the amount of Covered Taxes accrued as an expense

4.31 Given the broader meaning of Covered Taxes, any accrued liability for Covered Taxes that was reported as an ordinary expense in the financial statements (rather than income tax expense) is added to Adjusted Covered Taxes. This ensures that all qualifying Covered Taxes are included, regardless of whether they appear as ordinary expenses when computing the profit and loss before tax, opposed to income tax expense in a Constituent Entity's financial statements.
[Chapter 4, subsection 4-15(a) of the Rules]

4.32 To ensure a consistent treatment of a Covered Tax accrued as an expense (for example, a tax on corporate equity) that is added to Adjusted Covered Taxes, a corresponding adjustment must be made to FANIL when computing GloBE Income or Loss by 'adding' the expense.

Adding the amount of GloBE Loss Deferred Tax Asset used

4.33 Where a GloBE loss election has been made under Part 4-5 of the Rules and the GloBE Loss Deferred Tax Asset attribute is used when GloBE Income is earned in a Fiscal Year subsequent to having incurred a GloBE Loss in a prior Fiscal Year, the amount of GloBE Loss Deferred Tax asset used is added to the Accrued Current Covered Tax Expense. This addition ensures that the GloBE Loss Deferred Tax Asset is accurately reflected in the computation of the ETR for the jurisdiction in the Fiscal Year in which it is used.

4.34 The amount of the GloBE Loss Deferred Tax Asset depends on whether the election has been made for the jurisdiction or for the Flow-through UPE.

4.35 A GloBE Loss Deferred Tax Asset that applies to the jurisdiction is a jurisdictional amount, therefore, only the Constituent Entity's share of that amount, computed based on their share of the MNE Group's Net GloBE Income for the Fiscal Year, that is used in a Fiscal Year is added to the Accrued Current Covered Tax Expense. A GloBE Loss Deferred Tax Asset that applies only to the Flow-through UPE allows the UPE to add the entire amount used for the Fiscal Year as that is a separate election.
[Chapter 4, paragraphs 4-15(b) and (c) of the Rules]

Adding the amount of Covered Taxes paid relating to uncertain tax positions

4.36 Uncertain tax positions, as defined by accounting standards, arise when a Constituent Entity takes a tax filing position that is not more likely than not to be sustained upon examination. Although the criteria for determining such positions may vary under different accounting standards, they generally require that a reserve be established for these positions.

4.37 If the filing position is eventually sustained, the reserve is released, reversing the expense and reflecting a corresponding amount of income in the financial accounts.

4.38 Once the uncertain tax positions are paid, those amounts are included in Covered Taxes. This addition accurately reflects the actual tax positions of the entity once the uncertainty is resolved and the tax is paid. As a result, the ETR computation is based on actual tax payments, rather than uncertain positions. ***[Chapter 4, paragraph 4-15(d) of the Rules]***

4.39 Any penalties or interest expense accrued or paid with respect to such uncertain tax position is excluded from the Addition to Covered Taxes.

Adding the amount of refund or credit in respect of a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit recorded as a reduction to current tax expense

4.40 Qualified Refundable Tax Credits and Marketable Transferable Tax Credits are treated as income items in the computation of GloBE Income or Loss. However, those credits may be recorded as reductions to the current tax expense, which must be reversed for the purposes of determining Adjusted Covered Taxes. Therefore, the refund or credit amount is added to Accrued Current Covered Tax Expense. ***[Chapter 4, subsection 4-15(e) of the Rules]***

4.41 This adjustment prevents the ETR being understated by such a reduction to the current tax expense.

Reductions to Covered Taxes

4.42 Certain amounts are required to be removed from Accrued Current Covered Tax Expense to ensure that the amount of Adjusted Covered Taxes for the ETR calculation for the relevant Constituent Entity only reflects taxes that arise in respect of GloBE Income or Loss and that are expected to be paid within three years.

4.43 The Reductions to Covered Taxes of a Constituent Entity for the Fiscal Year is the total of the following amounts:

- the sum of the entity’s Accrued Current Covered Tax Expense and Additions to Covered Taxes for the Fiscal Year that relates to income excluded from the computation of the Constituent Entity’s GloBE Income or Loss under Chapter 3 of the Rules;
- any amount of credit or refund related to a tax credit that is *not* a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit but is credited or refunded to a Constituent Entity in respect of Covered Taxes in the Fiscal Year and is not recorded as a reduction to

the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year;

- any amount of Covered Taxes refunded or credited to the Constituent Entity (other than a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit) that is not treated as an adjustment to the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year;
- any amount received by a Constituent Entity in exchange for a transfer, if a Constituent Entity transferred a Non-Marketable Transferrable Tax Credit during the Fiscal Year and was the person whom the tax credit was originally granted, or the resulting transfer amount in subsection 3-132(3) of the Rules is a positive number;
- any amount of the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year that relates to an uncertain tax position;
- any amount of the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year that is not expected to be paid within three years after the last day of the Fiscal Year.
[Chapter 4, subsection 4-20(1) of the Rules]

4.44 Reducing the amount of Accrued Current Tax Expense related to income excluded from GloBE Income or Loss When an income item is not part of the GloBE Income or Loss computation under Chapter 3 of the Rules, the associated taxes are not included in the Adjusted Covered Taxes for the ETR computation for that jurisdiction.
[Chapter 4, subsection 4-20(1)(a) of the Rules]

4.45 The reduction to the Accrued Current Tax Expense is directly related to the amount of income that is excluded from GloBE Income or Loss. This means that if only a portion of an income item is excluded from GloBE Income or Loss, only the extent of that excluded portion is applied to exclude an amount from the Adjusted Covered Taxes. For example, in the case of a CFC charge on a minority interest, that portion of the shareholder's income tax attributable to the CFC inclusion must be excluded from the Constituent Entity's Adjusted Covered Taxes when calculating the ETR.

Other considerations - CFC Tax Regimes

4.46 While this section removes certain taxes from a Constituent Entity's Adjusted Covered Taxes, those taxes may be allocated to another Constituent Entity and be part of that Constituent Entity's Adjusted Covered Taxes computation.

4.47 For example, Covered Taxes related to dividends from another Constituent Entity are removed from the receiving entity's Adjusted Covered Taxes under section 4-20 of the Rules but are allocated to the distributing entity according to section 4-60 of the Rules. Similarly, Covered Taxes included in the financial accounts of a Constituent Entity-owner under a CFC Tax Regime are allocated to the Constituent Entity CFC under section 4-45 of the Rules and an adjustment to Accrued Current Covered Tax Expense may be required. To the extent Covered Taxes are not allocated under section 4-65 of the Rules, any remaining amount is included in the Constituent Entity-owner's Adjusted Covered Taxes.

Reducing the amount of credit or refund related to certain tax credits

4.48 A tax credit that is not a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit may be treated as income of a Constituent Entity for financial accounting purposes. However, as explained in paragraph 3.94, these tax credits are excluded from the computation of GloBE Income or Loss under section 3-115 of the Rules and are treated as a reduction in the tax expense of the Constituent Entity.

4.49 To the extent that such an amount is not already recorded as a reduction to the Current Tax Expense, the amount of credit or refund related to a tax credit reduces the Accrued Current Covered Tax Expense.
[Chapter 4, paragraph 4-20(b) of the Rules]

Reducing the amount of Covered Taxes refunded or credited to the Constituent Entity

4.50 If there is an amount of Covered Taxes credited or refunded to a Constituent Entity that has not already been treated as an adjustment to Accrued Current Tax Expense for the Fiscal Year, then that amount is removed, provided that the credit or refund is not a Qualified Refundable Tax Credits or Marketable Transferable Tax Credit.
[Chapter 4, paragraphs 4-5(c) and 4-20(c) of the Rules]

4.51 This reduction ensures that, to the extent a Constituent Entity receives a refund of previously claimed Covered Taxes, including a refund that is credited against another Covered Tax liability, the amount of the refund or credit is treated as a reduction in the computation of Adjusted Covered Taxes for the Fiscal Year in which the refund or credit is accrued in the financial accounts.

4.52 The reduction applies to cases even where the Constituent Entity's accounting principles or policy did not treat that amount as an adjustment to the current tax expense for a Covered Tax. The reduction also applies to refunds and credits in respect of Covered Taxes when the refund or credit is made to a different Constituent Entity than the entity that originally incurred the tax expense.

4.53 In the case of a transfer, the amount of the adjustment is determined in line with the following formula:

$$\begin{aligned}&Transfer\ amount\ to\ adjust\ Covered\ Taxes\\ &\qquad = (amount\ of\ tax\ credit\ used\ by\ CE\\ &\qquad + amount\ received\ by\ CE\ in\ exchange\ of\ transfer)\\ &\qquad - (CE's\ purchase\ price\ of\ tax\ credit\\ &\qquad + each\ credit\ or\ refund\ to\ the\ CE)\end{aligned}$$

4.54 For the purposes of determining the GloBE category of a tax credit, the refundability criteria should be tested primarily, and the transferability should be tested subordinately, consistent with paragraph 14.4 on page 112 of the Consolidated Commentary. Accordingly, if a tax credit meets the refundability criteria and qualifies as a Qualified Refundable Tax Credit, it will be defined as a Qualified Refundable Tax Credit regardless of whether it could be also transferable at a marketable price. If the tax credit rather does not meet the refundability criteria (due to either being non-refundable or a non-Qualified Refundable Tax Credit), then the transferability criteria shall be tested to determine whether the tax credit could be considered a Marketable Transferable Tax Credit.

4.55 The reduction could also apply to refunds and credits in respect of Covered Taxes paid or accrued in a current or previous Fiscal Year subject to the overriding operation of section 4-140 of the Rules. The limitation under section 4-140 of the Rules requires downward adjustments to the liability for Covered Taxes from a previous Fiscal Year (where the tax refund is EUR 1 million or more) to be included in a recalculation for that prior Fiscal Year.

4.56 For example, the reduction would apply if a jurisdiction provided a refund or credit for previously incurred taxes on corporate equity where the tax and the corresponding refund or credit was taken into account as an ordinary expense or income for financial reporting purposes in the year of the refund or credit.

Current tax expense related to uncertain tax positions

4.57 Any amounts of Accrued Current Tax Expenses relating to uncertain tax positions require a reduction to Adjusted Covered Taxes due to the high degree of uncertainty on whether such amounts will be paid in a future period.
[Chapter 4, subsection 4-20(d) of the Rules]

Reducing the amount of Accrued Current Covered Tax Expense not expected to be paid within three years of the Fiscal Year

4.58 Any amount of Accrued Current Covered Tax Expense that is not expected to be paid within three years of the last day of the Fiscal Year is to be treated as a reduction to Covered Taxes.
[Chapter 4, paragraph 4-20(1)(e) of the Rules]

4.59 This reduction is consistent with section 4-140 of the Rules which requires the recapture of material amounts previously claimed as Covered Taxes and not paid within three years of the last day of the Fiscal Year.

4.60 If an amount of Accrued Current Tax Expense is not expected to be paid within the three-year timeframe, that amount may not be included in the computation of Adjusted Covered Taxes. Because timely payment of a liability for Covered Taxes is within the control of the MNE Group, there is no mechanism to include amounts paid after expiration of the three-year period in Adjusted Covered Taxes.

4.61 The fixed time-frame prevents evading top-up tax liability by not paying tax in year where a Constituent Entity pays tax at the Minimum Rate of taxation but subsequently paying the tax liability in a year the overall rate is less than the 15 per cent Minimum Rate.

Interaction with other adjustments to Accrued Current Covered Tax Expense

4.62 As described in paragraph 4.38, amounts paid with respect to uncertain tax positions may be included as an adjustment to Covered Taxes despite not being paid within 3 years under paragraph 4-20(1)(e) of the Rules.

4.63 Post-filing adjustments under Part 4 6 of the Rules do not fall within the scope of the reduction of expected payment due to those amounts not being included in the Accrued Current Covered Tax Expense.

Adjusting for any increases or decreases in Covered Taxes

4.64 The Constituent Entity's Accrued Current Covered Tax Expense is adjusted by adding any increase and subtracting any decrease in Covered Taxes that is not included in current or deferred tax expense but is recorded in equity or other comprehensive income when the amounts of income or loss to which such taxes relate is included in the computation of GloBE Income or Loss. ***[Chapter 4, subsection 4-5(c) of the Rules]***

4.65 This adjustment ensures that when Covered Taxes are incurred with respect to items included in the computation of GloBE Income or Loss, such Covered Taxes are included despite being reported in the profit and loss statement and not being recorded as a current or deferred tax expense. However, this adjustment will only apply where the amount of income or loss to which the Covered Taxes relate is subject to tax under local tax rules.

4.66 For example, this adjustment may apply where a Constituent Entity is subject to tax on gains and losses that were taken into account under other comprehensive income pursuant to the revaluation method for property, plant and equipment, provided that the gain or loss is included in the computation of GloBE Income or Loss.

Special rule: MNE Group has no Net GloBE Income and tax falls short of expected tax

4.67 A special rule may apply in limited circumstances when there is no Net GloBE Income in a jurisdiction for the Fiscal Year and the Constituent Entity has a deferred tax asset that has arisen due to a permanent difference in the same Fiscal Year.

4.68 The special rule applies a 15 per cent tax to the excess benefit resulting from a permanent difference in the year it is created. This rule effectively allows a Constituent Entity to follow the local tax rules and apply the excess deferred tax asset arising for local tax purposes to shelter income in a future year, without giving rise to adverse outcomes under these rules.

4.69 The most common scenario where this rule would apply is when the local tax rules in the Constituent Entity's jurisdiction grant a deduction from income that exceeds the expense amount that would be allowed for financial accounting purposes and that difference between local tax rules and GloBE rules do not reverse over time. Ultimately, the difference is taxed at the minimum rate.

Conditions for when a deemed Additional Current top-up tax arises

4.70 Constituent Entities in a jurisdiction will be treated as having an Additional Current Top-up Tax amount in a Fiscal Year, if there is no Net GloBE Income for a jurisdiction and:

- the Adjusted Covered Taxes for the jurisdiction are less than zero; and
- the Adjusted Covered Taxes for the jurisdiction are less than the Expected Adjusted Covered Taxes.

4.71 The Adjusted Covered Taxes for the jurisdiction is the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction.

4.72 The Expected Adjusted Covered Taxes Amount is determined by:

$$Net\ GloBE\ Loss \times 15\%$$

[Chapter 4, subsection 4-30(1) and (3) of the Rules]

Calculating amount of Additional Current top-up tax

4.73 The amount of Additional Current top-up tax of the MNE Group for the Fiscal Year for the jurisdiction is equal to the difference between:

- the sum of the Adjusted Covered Taxes for the jurisdiction; and
- the Expected Adjusted Covered Taxes Amount.
[Chapter 4, subsection 4-30(3) of the Rules]

4.74 The allocation of the deemed Additional Current Top-up Tax follows the same mechanism as under section 5-100 of the Rules.

Carry-forward of Excess Negative Expense

4.75 The MNE Group may elect to apply the Excess Negative Tax Expense administrative procedure to avoid the deemed Additional Current Top-up Tax in the Fiscal Year of the GloBE Loss.

4.76 However, the MNE Group is mandated to apply the Excess Negative Tax Expense administrative procedure where a Top-up Tax Percentage is calculated that exceeds 15 per cent.

4.77 An MNE Group that elects or is required to apply the Excess Negative Tax Expense administrative procedure excludes the Excess Negative Tax Expense from its aggregate Adjusted Covered Taxes computed for the Fiscal Year and instead establishes an Excess Negative Tax Expense Carry-forward.

4.78 The amount of Excess Negative Tax Expense depends on whether GloBE income or loss is positive or negative:

- GloBE loss - then equal to the Additional Current Top-up Tax (sum of the Adjusted Covered Taxes for the jurisdiction minus the Expected Adjusted Covered Taxes Amount);
- GloBE Income - then, equal to the negative Adjusted Covered Taxes for that Fiscal Year.

4.79 In each subsequent Fiscal Year in which the MNE Group has positive GloBE Income and Adjusted Covered Taxes for the jurisdiction, the MNE Group reduces the aggregate Adjusted Covered Taxes (not below zero) by the remaining balance of the Excess Negative Tax Expense Carry-forward. The Excess Negative Tax Carry-forward balance will reduce by the amount used. ***[Chapter 4, section 4-35 of the Rules]***

4.80 The creation and reversal of a deemed deferred tax asset resulting from the loss carry-back interacts with Part 4-6 of the Rules on Post-filing adjustments.

Allocation of Covered Taxes

4.81 The allocation of taxes in Chapter 4 of the Rules follow the same pattern as the income allocation provisions. Covered Taxes are generally allocated to the Constituent Entity, including a Stateless Constituent Entity, which includes the corresponding income in the computation of its GloBE Income or Loss that are then considered in the ETR computation for the jurisdiction in which the Entity is located. The allocation of Covered Taxes is not limited to the current Taxes paid or accrued, but extends to deferred taxes under Part 4-4 of the Rules.

4.82 Generally, the Constituent Entity will pay Covered Taxes with respect to its own income to the relevant tax authority in the jurisdiction in which it is located, with no allocation being required. However, in more complex scenarios, Covered Taxes may be imposed on the Constituent Entity in respect of income included in another Constituent Entity's GloBE Income or Loss computation or by a jurisdiction other than the one in which the Constituent Entity is located, for example for CFC taxes and withholding taxes.

4.83 In those complicated cases, it is necessary to allocate the Covered Taxes to the relevant Constituent Entity that earned the income, subject to certain limitations. Similarly, rules are necessary to properly allocate Covered Taxes on distributions and Covered taxes of Main Entities with Permanent Establishments and Constituent Entity-owners in the case of Tax Transparent Entities, as described in paragraphs 41 and 42 on page 121 of the Consolidated Commentary.

Allocation rules for cross-border taxes

4.84 Part 4-3 of the Rules sets out the general approach to be followed in allocating Covered Taxes for each category of cross-border taxes. These general approaches are expected to be sufficient to allocate Covered Taxes imposed under many countries' tax regimes. To ensure that Covered Taxes align with the GloBE Income the taxes relate to, special allocation rules for specific cross-border taxes are introduced for:

- Permanent Establishments;
- Tax Transparent Entities;
- CFC taxes;
- Hybrid Entities; and
- taxes on other distributions.

Allocation of Covered Taxes to a Permanent Establishment

4.85 Any amount of Covered Taxes with respect to the GloBE Income or Loss of a Permanent Establishment is allocated to the Permanent Establishment. Covered Taxes in respect of a Permanent Establishment that are included in the financial accounts of a Main Entity or another Constituent Entity are excluded from the Adjusted Covered Taxes of that Constituent Entity or Main Entity and are instead included in the Adjusted Covered Taxes of the Permanent Establishment.
[Chapter 4, subsection 4-45 of the Rules]

Determining the amount of Covered Taxes allocated to the Permanent Establishment

4.86 The amount of tax that relates to a Permanent Establishment's income that is excluded from the Main Entity's Covered Taxes can be computed using a three-step process:

1) Identify the Permanent Establishment income amount included in the Main Entity's local taxable income.

2) Determine the Main Entity's tax liability resulting from the inclusion of the Permanent Establishment income.

3) Identify any tax credit allowed relating to taxes paid by the Permanent Establishment.

4.87 The Main Entity's tax return or the work-papers used to prepare that tax return may be relied on to identify the Permanent Establishment's income included in the Main Entity's local taxable income and the total credit allowed in respect of these income inclusions.

4.88 Despite there being a possible difference between the Main Entity's return and the GloBE Income computed under Part 3-4 of the Rules, it is the amount of income attributed to the Permanent Establishment in the local taxable income that is relevant for measuring Covered Taxes.

4.89 Determining the Main Entity's tax liability resulting from the inclusion of the Permanent Establishment income depends on whether the income is subject to tax separately or mixed with the Main Entity's income. If the Permanent Establishment's income inclusion is subject to tax separately from the other income of the Main Entity, the tax rate applicable to the included income is multiplied by the amount of the income inclusion.

4.90 If the Permanent Establishment's income inclusion is mixed with the Main Entity's other income, the Main Entity's pre-foreign tax credit tax liability on all the income needs to be determined and allocated on a pro rata basis between the Permanent Establishment income inclusion and the rest of the Main Entity's taxable income. It is permissible for domestic losses and losses of other Permanent Establishment's that are allowed in the Main Entity's taxable income computation under a credit method to be used first against domestic income and then applied to Permanent Establishment income inclusions.

4.91 Identifying creditable taxes of the Permanent Establishment that are included in the broader base of foreign income that includes other foreign income of the Main Entity requires referring to the rules of the jurisdiction and reasonable assumptions to work out the amount of the foreign tax credit attributable to the Permanent Establishment's income.

Multiple Permanent Establishments

4.92 If the Main Entity was subject to tax on the income of more than one Permanent Establishment, the amount of tax that is determined to be excluded from the Main Entity's Covered Taxes must be allocated to the jurisdiction of the relevant Permanent Establishments, by the difference between:

- the pre credit tax liability for each Permanent Establishment income inclusion; and
- any credit allowed for foreign taxes on each inclusion from the pre credit tax liability, consistent with paragraph 51 on 123 of the Consolidated Commentary.

4.93 This amount of 'residual tax' in excess of the allowed credit for foreign taxes is based on the rules of the Main Entity jurisdiction, including tax credit limitations and where necessary make reasonable assumptions. For example, in the case that cross-crediting of taxes is not allowed, the tax paid by the Permanent Establishment will only be creditable to the extent the tax liability arises from the income inclusion of that Permanent Establishment.

4.94 Determining the amount of tax paid on a Permanent Establishment income inclusion is more complicated when cross crediting is allowed because Taxes paid by one Permanent Establishment are allowed to reduce the tax liability arising in respect of other Permanent Establishment income inclusions. Cross-crediting means that the tax paid with respect to an income inclusion from a low-taxed Permanent Establishment may not equal the pre-credit tax liability on the inclusion less the tax credit allowed for taxes paid by that Permanent Establishment.

Allocation from a Tax Transparent Entity or Flow-through Entity

4.95 An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Tax Transparent Entity to the Constituent Entity-owner of the Tax Transparent Entity.
[Chapter 4, section 4-50 of the Rules]

4.96 Similar to the allocation of income described at paragraph 3.165, Covered Taxes that are not allocated to a Permanent Establishment will be allocated to the Constituent Entity-owners of the Tax Transparent Entity. Typically, this will mean that Covered Taxes imposed on a Tax Transparent Entity's income (and not attributable to any Permanent Establishment) will be assigned to each Constituent Entity-owner in proportion to its share of the Tax Transparent Entity's income.

4.97 Generally, Tax Transparent Entities are not subject to corporate income tax in the jurisdiction where they are created. However, some Covered Taxes could be imposed at a sub-national level on Tax Transparent Entities without causing them to be considered a tax resident of that jurisdiction. In other cases, the operations carried out through the Tax Transparent Entity could give rise to source taxation that could be borne by the Tax Transparent Entity. In most cases, where the Tax Transparent Entity is liable to tax on net income in a jurisdiction it will be because the activities and operations of that Entity give rise to a Permanent Establishment in that jurisdiction.

4.98 Where the Tax Transparent Entity is liable to tax because of a Permanent Establishment, the appropriate portion of the income of the Tax Transparent Entity that is attributable to the Permanent Establishment is first allocated to the Permanent Establishment, Similar to the allocation of income described at paragraph 3.165.
[Chapter 4, section 4-45 of the Rules]

4.99 However, if the Constituent Entity-owner of a Flow-through Entity is required to pay the tax with respect to the income attributable to the Permanent Establishment that tax is allocated from the Constituent Entity-owner to that Permanent Establishment. For example, the tax must be allocated to the Permanent Establishment where the Constituent Entity-owner of a Flow-through Entity is a partner of a Tax Transparent Entity that is a partnership which is also a Constituent Entity due to the activities undertaken through a Tax Transparent Entity with respect to the income attributable to the Permanent Establishment.

Allocation of taxes under a CFC Tax Regime

4.100 An amount in respect of Covered Taxes for a Fiscal Year can be allocated from a Constituent Entity-owner to the Constituent Entity if the Constituent Entity-owner is subject to a CFC Tax Regime.
[Chapter 4, subsection 4-55(1) of the Rules]

4.101 The same general process described for allocating Covered Taxes imposed on the Main Entity in respect of a Permanent Establishment under section 4-40 can also be applied by a Constituent Entity-owner in respect of a taxes arising under a CFC Tax Regime. The amount of any CFC Taxes included in the financial accounts of a direct or indirect Constituent Entity-owner on its share of the CFC's income is allocated to such CFC.

Blended CFC Tax Regimes

4.102 Separate rules apply if the CFC Tax Regime is a Blended CFC Tax Regime. Allocable Blended CFC Tax is allocated from a Constituent Entity-owner to a Constituent Entity for Fiscal Years that begin on or before 31 December 2025 but not including a Fiscal Year that ends after 30 June 2027.
[Chapter 4, subsections 4-50(1) and (2) of the Rules]

4.103 A Blended CFC Tax Regime is a regime where the shareholder's tax liability is determined by aggregating income, losses and creditable taxes of other Entities, located in one or more other jurisdiction, with an applicable rate of less than the Minimum Rate. The income of entities in the shareholder's jurisdiction is not taken into account.
[Chapter 4, section 4-60 of the Rules]

4.104 For example, in the case of the USA's tax Global Intangible Low-Taxed Income (GILTI), the Allocable Blended CFC Tax can be determined from the USA shareholder's federal income tax return and is equal to the US shareholder's share of the tested income (without reduction for foreign income taxes) of the Constituent Entity (which may be a CFC or a tested unit of the CFC). For example, in the absence of a domestic loss the Allocable Blended CFC Tax is equal to the amount of GILTI (reduced by the GILTI deduction) multiplied by 21 per cent, less the foreign tax credit allowed in the GILTI basket.

4.105 The amount allocated from a Constituent Entity-owner to the Constituent Entity is computed using the following formula:

$$\frac{Blended\ CFC\ Allocation\ Key}{Sum\ of\ all\ Blended\ CFC\ Allocation\ Keys} \times Allocable\ Blended\ CFC\ Tax$$

[Chapter 4, subsection 4-55(3) of the Rules]

4.106 Allocable Blended CFC Tax is the amount of tax charge incurred by the Constituent Entity-owner under the Blended CFC Tax Regime.

4.107 The Blended CFC Allocation Key is computed by multiplying the Attributable Income of the Entity by the difference between the Applicable Rate and the GloBE jurisdictional ETR. The Attributable Income of the Entity is the Constituent Entity-owner's proportionate share of the income, of the CFC (or relevant part of the income of a CFC that is comprised of more than one Constituent Entity) in the jurisdiction in which the Entity is located as determined under the Blended CFC Tax Regime. The Applicable Rate is the lowest rate of taxation that would prevent liability to tax under the Blended CFC Tax Regime. In other words, the minimum rate at which foreign taxes on CFC income generally fully offsets the CFC tax. The Jurisdictional ETR computed under Part 5-1 of the Rules does not include any Covered Taxes under a CFC Tax Regime
[Chapter 4, subsection 4-55(4) of the Rules]

4.108 If the GloBE Jurisdictional ETR equals or exceeds the Applicable Rate or the Minimum Rate, the Blended CFC Allocation Key for the Constituent Entity the resulting amount will be negative and therefore is treated as zero. If a jurisdiction has imposed a DMT that is qualified, the income tax expense attributable to the QDMTT is included in the computation of the Jurisdictional ETR for that jurisdiction. A QDMTT is taken into account in determining the Jurisdictional ETR only if the Blended CFC Tax Regime allows a foreign tax credit for the QDMTT on the same terms as any other creditable Covered Tax.

4.109 The Sum of all Blended CFC Allocation Keys is calculated by firstly identifying each Entity that is not a Constituent Entity of the MNE Group that the Constituent Entity-owner holds an ownership interest in and that the Entity is located in the same jurisdiction as the Constituent Entity that is being allocated the amount of Covered Taxes. The Blended CFC Allocation Key for

these Entities is then computed as if the Entity were a Constituent Entity of the MNE Group. The sum of all Blended CFC Allocation Keys is then calculated by adding all the Blended CFC Allocation Key for the Constituent Entities and Entities together.
[Chapter 4, subsection 4-55(5) of the Rules]

Allocation for Hybrid Entities

4.110 An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity-owner to a Hybrid Entity if the Constituent Entity-owner holds a direct Ownership Interest in the Hybrid Entity and the amount accrued in the Constituent Entity-owner's financial accounts is in respect of the Hybrid Entity's income.
[Chapter 4, section 4-65 of the Rules]

4.111 If a Constituent Entity-owner of a Hybrid Entity is located in a tax jurisdiction that imposes Tax on the owner's share of the Hybrid Entity's income under a fiscal transparency regime, the Covered Taxes included in the financial accounts of the Constituent Entity-owner is assigned to the Hybrid Entity.

4.112 The same general process for allocating Covered Taxes imposed on the Main Entity in respect of a Permanent Establishment under section 4-40 can also be used to determine the amount of taxes allocated by a Constituent Entity owner to a Hybrid Entity. However, any taxes allocated to a Hybrid Entity by a Constituent Entity-owner in respect of passive income, such as dividends and distributions are subject to certain limitations.

4.113 If the Constituent Entity-owner is subject to a withholding tax or net basis taxes on distributions from the Hybrid Entity, those taxes are also allocated to the Hybrid Entity.

Allocation of taxes on dividends and other distributions

4.114 An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity owner to the Constituent Entity if the amount is accrued in the Constituent Entity-owner's financial accounts and is included in respect of distributions from the Constituent Entity to the Constituent Entity owner during the Fiscal Year.
[Chapter 4, section 4-70 of the Rules]

4.115 This allocation includes withholding tax and net basis taxes incurred by direct Constituent Entity-owners on distributions by Constituent Entities in respect of their stock which are allocated to the distributing Constituent Entity. Withholding taxes are imposed under the laws of the distributing Constituent Entity and are collected at the source, but the income tax is the legal liability of the Constituent Entity-owner.

4.116 The allocation rule applies to taxes with respect to any type of distribution with respect to the stock of the distributing Constituent Entity. Therefore, the rule also applies to taxes in respect of a distribution that does not meet the definition of a dividend for tax purposes in the recipient jurisdiction or that would not be considered a distribution of retained earnings under the UPE's financial accounting standard.

4.117 In many cases, the distributing Constituent Entity is the Constituent Entity that originally earned the income. In other cases, the distributing Constituent Entity will be a direct or indirect shareholder of the Constituent Entity that originally earned the income. However, given the complexity in tracing distributions through the ownership chain, generally, the rule assigns taxes to the jurisdiction of the immediate Constituent Entity that distributed the dividend that triggered the tax liability, see paragraphs 60 to 61 on pages 126 and 127 of the Consolidated Commentary.

Deemed distributions

4.118 Section 4-60 of the Rules applies to Covered Taxes incurred by a Constituent Entity-owner in respect of deemed distributions where the underlying interest is treated as an equity interest for tax purposes in the jurisdiction imposing the tax and for financial accounting purposes.

4.119 Covered Taxes incurred in respect of deemed distributions include taxes (other than CFC taxes) that a jurisdiction imposes on a shareholder in connection with undistributed earnings or capital of an Entity in which it holds an Ownership Interest, such as consent dividends.
[Chapter 4, paragraph 4-70(a) of the Rules]

Distributions made in respect of Ownership Interest

4.120 This section also applies to taxes in respect of a distribution that does not meet the definition of a dividend for tax purposes in the recipient jurisdiction, but is made in respect of an Ownership Interest in a Constituent Entity under the financial accounting standard used in the preparation of the CFS.
[Chapter 4, paragraph 4-70(b) of the Rules]

Limitation on the "Push-Down" of taxes for Passive Income

4.121 Taxes from a Constituent Entity-owner that are attributable to Passive Income of the subsidiary Constituent Entity are subject to a limitation on the "push-down" of such taxes.

4.122 This rule is designed to maintain the integrity of the jurisdictional blending rules in relation to mobile income. Without this limitation the allocation rules that allocate taxes paid by a Constituent Entity-owner under a CFC Tax Regime or in respect of a Hybrid Entity, could effectively blend the Taxes paid on that mobile income in the Constituent Entity-owner's high tax jurisdiction with other income arising in the CFC's Low-Tax Jurisdiction.

4.123 Therefore, without this limitation, an MNE Group could shift mobile income from high-tax jurisdictions to Low-Tax Jurisdictions to reduce overall tax liability (including top-up tax liability) in the MNE Group.

4.124 If an amount in respect of Covered Taxes for a Fiscal Year is allocated to a Constituent Entity of an MNE Group because of the CFC Tax Regime under section 4-50 of the Rules or due to a Hybrid Entity under section 4-55 of the Rules in respect of Passive Income, section 4-75 determines the amount that is included in the Constituent Entity's Adjusted Covered Taxes for the Fiscal Year.

4.125 The amount of Covered Taxes allocated under sections 4-55 of the Rules (CFC Regime) or 4-65 of the Rules (Hybrid Entity) from a Constituent Entity-owner to a subsidiary in respect of Passive Income is limited to the lesser of:

- the actual amount of Covered Taxes allocated in respect of such Passive Income; or
- the top-up tax Percentage for the Fiscal Year of the MNE Group for the jurisdiction in which the Constituent Entity is located multiplied by the Constituent Entity's Passive Income for the Fiscal Year to the extent that is includible under any CFC Tax Regime or fiscal transparency rule.
  [Chapter 4, subsection 4-65(1) of the Rules]

4.126 The top-up tax percentage used for this computation disregards the taxes to be pushed down to the subsidiary under the CFC Tax Regime or fiscal transparency rule. Any Covered Taxes of the Constituent Entity-owner incurred with respect to the Passive Income that remains after the application of this rule is not allocated under sections 4-55 or 4-65 of the Rules and remains with the Constituent Entity-owner.
[Chapter 4, subsection 4-65(2) of the Rules]

Adjusted Covered Taxes for Permanent Establishments and Main Entities

4.127 Any Covered Taxes that arise in the Permanent Establishment's jurisdiction and are related to the income of the Permanent Establishment that is allocated to the Main Entity under section 3-250 of the Rules are also allocated to the Main Entity. However, the allocated amount is capped at the amount that is the result of multiplying the income with the highest corporate tax rate on ordinary income in the Main Entity's jurisdiction.
[Chapter 4, section 4-70 of the Rules]

4.128 The highest corporate tax rate on ordinary income means the full marginal rate which a jurisdiction generally applies to categories of income which do not benefit from any exemption, exclusion, credit or other tax relief applicable to particular types of payments. This excludes rates which are only applied to particular business sectors, and a DMT that is higher than the regular Corporate Income Tax rate where that rate is lower than 15 per cent.

4.129 The allocation of Covered Taxes of the Permanent Establishment to the Main Entity generally only arises where a loss of a Permanent Establishment is treated as an expense of the Main Entity under subsection 3-250(2) of the Rules. In most cases, there will not be taxes in the location of the Permanent Establishment, either because the jurisdiction allows the Permanent Establishment to carry-forward its loss or the Permanent Establishment is not subject to tax.

4.130 The Adjusted Covered Taxes of the Permanent Establishment jurisdiction or Main Entity jurisdiction will not increase or decrease where a GloBE Loss of a Permanent Establishment is treated as an expense of a Main Entity under subsection 3-250(2) of the Rules and:

- any deferred tax asset is established with respect to a tax loss of the Permanent Establishment jurisdiction; or
- the deferred tax asset established reverses in the Permanent Establishment jurisdiction (see paragraphs 64 to 66 on pages 127-128 of the Consolidated Commentary).

Mechanism to address temporary differences

4.131 Part 44 of the Rules builds on the principles of deferred tax accounting and provides the mechanism to address temporary differences that arise when income or loss is recognised in a different year for financial accounting and tax. This is achieved by determining the Total Deferred Tax Adjustment Amount which is added to Adjusted Covered Taxes under Part 4-1 of the Rules. The Total Deferred Tax Adjustment Amount adjusts the Covered Taxes of a Constituent Entity to take certain deferred tax assets and liabilities into account to address the impact of temporary differences.

4.132 While Part 4-4 of the Rules builds on existing deferred tax accounts maintained by individual Constituent Entities and MNE Groups, certain adjustments are required to arrive at an accurate ETR computation, including:

- using the lower of the Minimum Rate or the applicable tax rate to calculate deferred tax assets and liabilities to prevent deferred tax amounts from sheltering unrelated GloBE Income; or
- the recapture of certain amounts claimed as deferred tax liabilities that are not paid within five years.

4.133 However, exceptions are provided for the most common and material book to tax differences when they relate to substance in a jurisdiction or are not prone to taxpayer manipulation since these amounts do not require monitoring for recapture.

Total Deferred Tax Adjustment Amount

4.134 The starting point for the Total Deferred Tax Adjustment Amount is the deferred tax expense, but the amount depends on whether the Constituent Entity is subject to an applicable tax rate above or below the Minimum Rate of 15 per cent:

- below 15 per cent – then the relevant deferred tax expense is equal to the amount of deferred tax expense accrued in the financial accounts for the Fiscal Year; or
- greater than or equal to 15 per cent – the deferred tax expense is recast at 15 per cent.
[Chapter 4, subsection 4-85(1) of the Rules]

4.135 The recasting of the ***relevant deferred tax expense*** can be done either for each item or in aggregate for items recorded at the same rate, ensuring consistent results. Generally, deferred tax expenses may be recorded in the individual accounts of a Constituent Entity or in the MNE Group's consolidated accounts. Regardless of where it is recorded, and provided that it is only recorded once, that amount is included in the computation of Adjusted Covered Taxes.

Exclusions from the Total Deferred Tax Adjustment Amount

Items excluded from GloBE income or Loss

4.136 Any amount of relevant deferred tax expense related to items that are excluded from the computation of GloBE Income or Loss is excluded from the Total Deferred Tax Adjustment Amount.
[Chapter 4, paragraph 4-85(2)(a) of the Rules]

4.137 Excluding amounts related to items not included in the GloBE Income or Loss calculation prevents the artificial inflation of Adjusted Covered Taxes and overstatement of jurisdictional ETR.

4.138 For example, if a Constituent Entity records a deferred tax asset related to income excluded from the GloBE Income or Loss computation, the deferred tax asset is not taken into account as a reduction to Adjusted Covered Taxes. Further, the subsequent reversal of the deferred tax asset will not be used to increase the Adjusted Covered Taxes. The current tax expense in the year of payment of the tax is also excluded from Adjusted Covered Taxes in accordance with paragraph 4-20(1)(a) of the Rules.

Amounts relating to Disallowed and Unclaimed Accruals

4.139 Movements in deferred tax expenses accrued in the financial accounts relating to uncertain tax positions or distributions from any Constituent Entity of the Group are referred to as a ***Disallowed Accrual***. An ***Unclaimed Accrual*** is an increase in the deferred tax liability recorded in the financial accounts of a

Constituent Entity if the liability is not expected to be paid within five subsequent Fiscal Years and an election not to include the amount in Total Deferred Tax Adjustment Amount is made by the Filing Constituent Entity applies to the Constituent Entity.
[Chapter 4, section 4-115 of the Rules]

4.140 Until such amounts are paid, they are speculative in nature. For Disallowed Accruals, there is speculation about whether these amounts will ever be paid. For Unclaimed Accruals, the uncertainty lies in the timing of the payment.

4.141 The uncertainty surrounding these accruals means that any amounts of relevant deferred tax expense that relate to Disallowed Accruals and Unclaimed Accruals, are excluded from the Total Deferred Tax Adjustment Amount.
[Chapter 4, subsection 4-85(2)(b) of the Rules]

Valuation allowance or accounting recognition adjustment

4.142 When it is not likely that taxable profit will arise in the future against which all or part of a domestic tax loss can be applied, a valuation allowance or accounting recognition adjustment is generally required for financial accounting purposes. When accounting rules require a valuation allowance, the deferred tax asset associated with the domestic tax loss is recorded in the financial statements as a deferred tax asset, however, an offsetting liability is recorded as a valuation allowance to the extent of the deferred tax asset that is not forecast to be usable.

4.143 If financial forecasts change in a future period and it becomes probable that taxable profit will arise in current period or a future period, the accounting recognition adjustment or valuation allowance is reversed in the period in which the forecast changes.

4.144 Since the generation of deferred tax assets reduces Adjusted Covered Taxes, it is necessary to ensure that a deferred tax asset relating to a domestic tax loss is recorded in the same year as such loss for GloBE purposes. Accordingly, the deferred tax asset is recorded for GloBE purposes in the same year as the economic loss which gave rise to such asset, consistent with paragraph 77 on page 130 of the Consolidated Commentary.

4.145 Because valuation allowances and accounting recognition adjustments are disregarded under the GloBE Rules, a deferred tax asset will be recorded in respect of a domestic tax loss (regardless of whether there is a forecast of probable future use of such attribute).

4.146 As a result, a taxpayer may have recorded a GloBE deferred tax asset in respect of a carry-forward domestic tax loss that expires. A carry-forward loss cannot be used under domestic law when it is not available to offset domestic taxable income. The financial accounting rules treat deferred tax assets arising from domestic carry-forward losses as reversed when they are used to offset domestic taxable income.

4.147 Therefore, such losses will not be available for use for GloBE purposes to the extent they cannot be used under domestic law. It follows that when a loss is not available for domestic law purposes, it cannot reverse under financial accounting rules, and therefore it will not be available for GloBE purposes to increase Adjusted Covered Taxes.

4.148 To prevent this, the Total Deferred Tax Adjustment Amount excludes valuation adjustments or accounting recognition adjustments with respect to deferred tax assets.
[Chapter 4, paragraph 4-85(2)(c) of the Rules]

Example 4.1 Disregarding impact of valuation adjustments or accounting recognition adjustments

In Year 1 a Constituent Entity incurs a GloBE Loss of (100) and a deferred tax asset of (15) (100 x 15%) is generated, however, financial forecasts indicate that the tax loss will not be used in the future. The benefit of this tax loss is not recorded due to valuation adjustments or accounting recognition adjustments.

In Year 2, the Constituent Entity continues to have a GloBE Loss, but forecast changes and the valuation adjustment or accounting recognition adjustment is reversed. This is also disregarded for GloBE purposes.

In Year 3, the Constituent Entity records a GloBE Income of 100 and the deferred tax asset generated in Year 1 is used and reversed.

The application of paragraph 4-85(2)(c) prevents top-up tax arising due to the application of section 4-30 from a deferred tax adjustment from generating in Year 2 and reducing Adjusted Covered Taxes when there is no Net GloBE Income.

Exclude amounts that result from a re-measurement of tax rates

4.149 If additional relevant deferred tax expense amounts are accrued in the financial statements because of a change in the applicable domestic tax rate, such amounts should not be added to Covered Taxes. This is because these amounts do not relate to GloBE Income in the current Fiscal Year.

4.150 Amounts accrued due to such re-measurements are simply changes to amounts already accrued and therefore, such amounts are excluded from the Total Deferred Tax Adjustment Amount.
[Chapter 4, paragraph 4-85(2)(d) of the Rules]

Excluding tax credits from the Total Deferred Tax Adjustment Amount

4.151 Tax credits are excluded from the Total Deferred Tax Adjustment Amount because the inclusion of such amounts could lead to distortions in GloBE results. This exclusion captures the deferred tax benefit with respect to the

generation and use of tax credits, in addition to related deferred tax expense arising from the generation and use of such tax credits. It does not address Qualified Refundable Tax Credits, as they are addressed separately under paragraph 4-15(e) of the Rules
[Chapter 4, paragraph 4-85(2)(e) of the Rules]

4.152 A tax credit is an amount that taxpayers can subtract directly from taxes owed to a government. Tax credits directly reduce the amount of tax owed and are different from deductions (which reduce the amount of taxable income). Tax credits captured by this exclusion include tax credits granted in a jurisdiction due to a tax liability imposed in another jurisdiction or imposed on profits distributed by another entity such as foreign tax credits.

4.153 An example of a tax credit is an investment tax credit whereby the government provides the taxpayer that incurs certain qualifying expenditure with a reduction in a future tax payable that is calculated as a percentage of the expenditure incurred.

4.154 For example, when an excess foreign tax credit carry-forward is generated, the deferred tax asset associated with such carry-forward will not reduce Adjusted Covered Taxes since it is excluded from the Total Deferred Tax Adjustment Amount. Conversely, when such foreign tax credit carry-forward is used in a subsequent Fiscal Year, the use of such deferred tax asset will not result in an increase to Adjusted Covered Taxes for the same reason. This results in the same outcome as if no deferred tax asset for the carry-forward of a foreign tax credit was recorded at all.

Example 4.2 Excluding deferred tax expense items excluded from GloBE income or Loss

A Constituent Entity (M Co) in Country C has a 15% corporate tax rate, which taxes Excluded Equity Gains and Losses. In a specific Fiscal Year, M Co has a GloBE Loss of (300) and an Excluded Equity Loss of (100).

This Excluded Equity Loss is not included in the calculation of the GloBE Income or Loss for Country C.

Assuming that the GloBE Loss for Country C remains at (300), and the domestic tax loss for Country C is (400).

A deferred tax asset of 60 is established in respect of the (400) domestic tax loss (400 x 15%). However, for GloBE purposes, only 45 ((400-100)) x 15%) of this deferred tax asset can be considered because 15 (100 x 15%) of the deferred tax asset is associated with the Excluded Equity Loss of 100.

Exception for Substitute Loss Carry-forward Deferred Tax Assets

4.155 However, the amount of the relevant deferred tax expense that is in respect of the generation and use of tax credits under paragraph 4-85(2)(e) of the Rules does not apply in the case of a Substitute Loss Carry-forward Deferred Tax Asset. A Substitute Loss Carry-forward deferred tax asset arises where all of the following apply:

- the jurisdiction requires that foreign source income offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income;
- the Constituent Entity has a domestic tax loss that is fully or partially offset by foreign source income; and
- the domestic tax regime allows foreign tax credits to be used to offset a tax liability in a subsequent Fiscal Year in relation to income that is included in the computation of the Constituent Entity's GloBE Income or Loss for that subsequent Fiscal Year.
[Chapter 4, section 4-90 and subsection 4-95(1) of the Rules]

4.156 A Constituent Entity of an MNE Group also has a Substitute Loss Carry-forward deferred tax asset arsing in a Fiscal Year where:

- the conditions in paragraphs 4-78(1)(a) and (b) are satisfied, but the condition in paragraph (1)(c) is not satisfied; and
- the tax law of the jurisdiction permits the recharacterisation of domestic source income of a Fiscal Year as foreign source income of a later Fiscal Year; and
- the effect of that recharacterisation is to allow foreign tax credits to be used to offset a tax liability in a subsequent Fiscal Year in relation to income that is included in the computation of the Constituent Entity's GloBE Income or Loss for that subsequent Fiscal Year
[Chapter 4, subsection 4-95(2) of the Rules]

4.157 The amount of a Substitute Loss Carry-forward DTA is equal to lesser of:

- the amount of the foreign tax credit that the domestic tax regime allows to be carried forward from the year in which the Constituent Entity had a tax loss to a subsequent year; and
- the amount of the Constituent Entity's tax loss for the tax year (before considering any foreign source income) multiplied by the applicable domestic tax rate.
[Chapter 4, subsection 4-95(3) of the Rules]

4.158 The Substitute Loss Carry-forward deferred tax asset is excluded from the Total Deferred Tax Adjustment Amount under 4-75(2)(e) due to being a deferred tax benefit with respect to the generation of tax credits and must be recast at the Minimum Rate in accordance with the formula:

$$\frac{Deferred\ assets\ reflected\ in\ the\ financial\ accounts}{Applicable\ domestic\ tax\ rate} \times 15\%$$

Adjustments to the Total Deferred Tax Adjustment Amount

4.159 The Total Deferred Tax Adjustment Amount is adjusted by increasing its amount by the amount of any Unclaimed Accrual paid during the Fiscal Year. ***[Chapter 4, paragraph 4-85(3)(a) of the Rules]***

Unclaimed Accruals

4.160 To ensure that the paid taxes are taken into account for GloBE purposes, the Total Deferred Tax Adjustment Amount is increased by the amount of any Unclaimed Accrual paid during the Fiscal Year to ensure there is no net movement in the Total Deferred Tax Adjustment Amount. An Unclaimed Accrual may also increase the Total Deferred Tax Adjustment Amount if there is an increase in a deferred tax liability recorded in the financial accounts of the Constituent Entity for the Fiscal Year (the current year) and:

- it is not expected to be paid by the end of the fifth following Fiscal Year, (which is consistent with the period set out in subsection 4-95(2); and
- a Filing Constituent Entity has made an Annual Election that applies to the Constituent Entity for the current year. ***[Chapter 4, subsections 4-115(2) and (3) of the Rules]***

4.161 The Annual Election is a compliance simplification option with respect to the recapture rule and allows a Constituent Entity to exclude from the Total Deferred Tax Adjustment Amount any deferred tax liability that is not expected to be paid within the period. The simplification allows for the exclusion of deferred tax liabilities that are almost certain to require recapture, which reduces compliance monitoring such liabilities and recalculating top-up tax several years later.

4.162 Amounts of Unclaimed Accrual are not considered when generated due to their speculative nature of when and whether such taxes would be paid. It is only once such taxes are paid that it is appropriate to take them into account under the Rules.

4.163 The inclusion of an Unclaimed Accrual could be offset by the amount of decrease in the deferred tax liability that is included in the Total Deferred Tax Adjustment Amount, and ultimately Adjusted Covered Taxes. Whilst the exclusions from the Total Deferred Tax Adjustment Amount applies equally to exclude both increases and decreases in the relevant deferred tax expense, an Unclaimed Accrual is defined solely by reference to an increase in a deferred tax liability. Therefore, any subsequent decrease will not be captured by the exclusion in paragraph 4-85(2)(b) of the Rules.

Recaptured Deferred Tax Liabilities once paid

4.164 The Total Deferred Tax Adjustment Amount is increased by the amount of any Recaptured Deferred Tax Liability computed in a preceding Fiscal Year that has been paid during the Fiscal Year.
[Chapter 4, paragraph 4-85(3)(b) of the Rules]

4.165 The Total Deferred Tax Adjustment Amount is increased by the amount of any Recaptured Deferred Tax Liability computed in a preceding Fiscal Year that has been paid during the Fiscal Year. Certain amounts relating to deferred tax liabilities claimed as Adjusted Covered Taxes must be recaptured if the tax not paid within five subsequent Fiscal Years.

Reductions to create a deemed deferred tax asset when the recognition criteria are not met

4.166 The Total Deferred Tax Adjustment Amount is reduced by the amount that would be a reduction to the Total Deferred Tax Adjustment Amount due to the recognition of a loss deferred tax asset for a current year tax loss, where a loss deferred tax asset has not been recognised because the recognition criteria are not met.
[Chapter 4, paragraph 4-85(3)(c) of the Rules]

4.167 When a deferred tax asset should have been generated but was not because the recognition criteria had not been met, this reduction provides for the creation of a deemed deferred tax asset. This reduction is a result of the rule that disregards valuation adjustments or accounting recognition adjustments.
[Chapter 4, paragraphs 4-85(2)(c) and 3(c) of the Rules]

4.168 In some cases, the deferred tax asset in respect of such adjustments may not be recorded in the first place due to the recognition criteria not being met. By reducing the Total Deferred Tax Adjustment Amount by the amount that would be a reduction to the Total Deferred Tax Adjustment Amount due to recognition of a loss deferred tax asset for a current year tax loss, this rule provides for the creation of the deferred tax asset for GloBE purposes in the year of the loss.

4.169 When the recognition criteria is met in subsequent years, the exclusion rule in paragraph 4-85(2)(c) of the Rules disregards the creation of such deferred tax asset in subsequent years. This aligns the deemed deferred tax asset generated with the loss to ensure that top-up tax is not triggered under the special rule under section 4-30 of the Rules, simply because the recognition criteria have not been met.

4.170 This rule also extends beyond loss deferred tax assets to other types of deferred tax assets, including a deferred tax asset generated due to the carry forward of future deductible items, such as the disallowed amount under fixed ratio test in Australia's Thin Capitalisation regime under section 820-56 of the ITAA 1997.

Meaning of recognition criteria

4.171 Recognition criteria is not defined in the Rules as it is intended to take the financial accounting meaning, consistent with paragraph 2 on page 235 of the Consolidated Commentary. In accounting and in the context of a deferred tax asset, the 'recognition criteria' relates to an accounting judgement whether there is an expectation that a sufficient future taxable income would be available to deductible temporary difference or carry forward of unused tax losses or tax credits. The recognition criteria determines whether an element should be recognised if:

- it is probable that any future economic benefit associated with the item will flow to or from the entity; and
- the item has a cost or value that can be measured with reliability.

Example 4.3 Reduction to Total Deferred Tax Adjustment Amount relating to deferred tax assets not meeting recognition criteria

In Year 1, a Constituent Entity generates a GloBE Loss and local tax loss of (100). No deferred tax asset is generated for financial accounting purposes because the recognition criteria have not been. met because there is no forecast of future profits. Consequently, a deferred tax asset of 15 (100 x 15%) is generated in Year 1.

In Year 2, the Constituent Entity does not have a taxable income or loss or GloBE Income or Loss, however, the future forecasts change and the DTA of 15 is recorded for financial accounting purposes because the recognition criteria are met, but this is excluded because of paragraph 4-75(2)(c).

In Year 3, the Constituent Entity earns GloBE Income of 100 and applies its domestic tax loss carry-forward. The DTA of 15 is applied in Year 3.

Recasting Deferred Tax Assets at the Minimum Rate

4.172 If a deferred tax asset is generated due to a GloBE loss and has been recorded at a rate lower than 15 per cent then, then the deferred tax asset must be recast at the minimum rate of 15 per cent. The final figure after recasting is subtracted from the Total Deferred Tax Adjustment Amount.
[Chapter 4, subsections 4-85(4) and (5) of the Rules]

4.173 The recasting of the deferred tax asset must be done in the Fiscal Year in which the tax loss becomes a GloBE Loss to prevent distortive outcomes. As a result of the recasting may increase the deferred tax asset and consequently, the

Total Deferred Tax Adjustment Amount is also decreased by the amount of incremental deferred tax asset generated.

4.174 This rule preserves the basic tenet that an amount of a GloBE Loss should offset GloBE Income of the same amount. For example, recasting in a year after the GloBE Loss is incurred could result in such recast resulting in additional current top-up tax under section 4-30 of the Rules. It is at the discretion of the Constituent Entity to recast the deferred tax asset at the Minimum Rate of 15 per cent, if the deferred tax asset was recorded at a rate higher than 15 per cent.

Recaptured Deferred Tax Liability and Recapture Exception Accrual

4.175 The recapture rule ensures that deferred tax liabilities recorded with respect to categories that do not relate to specific policy allowed categories are settled within a certain period.

Recaptured Deferred Tax Liability

4.176 Deferred tax liabilities that do not reverse within five years must be recaptured in the Fiscal Year in which the increase in the Recaptured Deferred Tax Liability was initially included in the Total Deferred Tax Adjustment Amount. This is only relevant for items of deferred tax liabilities that do not meet the specific policy-allowed categories defined under the Recapture Exception Accruals.

4.177 The Recaptured Deferred Tax Liability for a Constituent Entity for a Fiscal Year is the amount of a deferred tax liability that was included in the Total Deferred Tax Adjustment Amount for the Constituent Entity for the fifth preceding Fiscal Year and:

- has not reversed by the end of the last day of the Fiscal Year, and
- does not relate to a Recapture Exception Accrual.
  [Chapter 4, section 4-105 of the Rules]

4.178 For a Fiscal Year where there is a Recaptured Deferred Tax Liability for a Constituent Entity, the amount of this Recaptured Deferred Tax Liability is treated as a reduction to Covered Taxes in the fifth preceding Fiscal Year. The ETR and top-up tax of the fifth preceding year must be recalculated in accordance with Additional Current Top-up Tax under section 5-90 of the Rules.
[Chapter 4, section 4-100 of the Rules]

Recapture Exception Accrual

4.179 The Recapture Exception Accrual provides categories of deferred tax liabilities that do not need to be monitored for recapture under provisions relating to the Recaptured Deferred Tax Liability.

4.180 The list of Recapture Exception Accruals sets out the temporary differences that are both common in Inclusive Framework jurisdictions and are generally material to MNE Groups. Such temporary differences are typically tied to substantive activities in a jurisdiction or are differences that are not subject to taxpayer manipulation. Therefore, to reduce compliance burdens, these low-risk items that will reverse over time are not required to be monitored for recapture.
[Chapter 4, paragraph 4-105(c) and section 4-110 of the Rules]

Cost recovery allowances on tangible assets

4.181 Accelerated depreciation and immediate expensing regimes are common in Inclusive Framework jurisdictions and timing differences will generally reverse over the life of an asset. Therefore, the cost recovery allowances with respect to tangible assets is included as a category under Recapture Exception Accrual. Without the exclusion, the recapture mechanism could distort jurisdictional ETRs for assets that have a lifespan longer than the time set forth under the recapture rule.

4.182 Whether an asset constitutes tangible property is evaluated under the accounting standard used to determine the FANIL of the Constituent Entity, which may include:

- deferred tax liabilities arising in connection with differences in capitalized costs associated with the particular asset;
- natural resources, such as mineral deposits, timber, oil and gas reserves, and exploration and evaluation assets; or
- tangible assets that have been leased.

4.183 The Recapture Exception Accrual rule also extends to associated deferred tax liabilities where the relevant financial accounting rules require different treatments, such as capitalization of a broader range of costs than the relevant tax accounting rules or timing differences between tax and accounting.

4.184 For example, mine, oil or gas exploration and development costs that are deducted as incurred or amortised over a brief period for tax purposes and capitalised into the natural resource asset for accounting purposes meet the definition of Recapture Exception Accrual. Similar extension of the Recapture Exception Accrual also applies where natural resources are eligible for an accelerated cost recovery method or other similar treatment in respect of associated costs.

4.185 For financial accounting purposes, tangible assets that have been leased is treated as a right of use that is depreciated and is a lease liability, as it is an obligation to make future lease payments. Upon initial recognition, the right to use the asset and the lease liability are equal and there is no net deferred tax asset or liability. Timing differences arise when local tax treatment of leased assets differs from accounting such that lease payments are treated as deductible operational expenses. When such timing differences arise, the Recapture Exception Accrual provides that they are not subject to the recapture rule.
[Chapter 4, paragraph 4-110(a) of the Rules]

Cost of licences or similar arrangements from the government

4.186 The Recapture Exception Accrual captures the cost of a licence or similar arrangement from the government, such as a lease or concession, for the use of immovable property or the exploitation of natural resources, where this entails significant investment in tangible assets. When the right also imposes an obligation to incur significant investment in tangible assets, the cost will be within this category.
[Chapter 4, paragraph 4-110(b) of the Rules]

4.187 A right to use immovable property includes licenses for the right to use radio spectrum for telecommunications services. For example, local tax laws may require the amortisation of a radio spectrum license over a 15-year period, whereas for financial accounting purposes the useful life of such asset has been determined to be 20 years. This category could also apply to cover the cost of a mining tenement obtained from a government.

Research and development expenses

4.188 Many Inclusive Framework jurisdictions allow a deduction for research and development costs. On this basis and given the materiality of research and development expenses to MNE Groups, research and development expenses are included as a category under Recapture Exception Accrual.
[Chapter 4, paragraph 4-110(c) of the Rules]

4.189 Research and development costs may be capitalised for financial accounting purposes, which may lead to unintended outcomes, including increased pressure on the application of accounting standards and differences in treatment depending upon the accounting standard utilised.

De-commissioning and Remediation Expenses

4.190 De-commissioning and remediation expenses are captured as a category in the Recapture Exception Accruals on the basis that Inclusive Framework jurisdictions generally allow the deduction of these de-commissioning and remediation costs that are expected to be incurred in the future and these expenses are material.
[Chapter 4, paragraph 4-110(d) of the Rules]

4.191 These costs include the costs to de-commission certain types of assets upon reaching the end of their useful life and remediating the site environment. In some jurisdictions, however, these costs may not be deductible for tax purposes until the operation is decommissioned or the costs are paid. Some jurisdictions may allow a deduction based on contributions to a trust or similar fund that is created for purposes of funding the future reclamation or closure costs which may differ from the amount accrued as an expense in the financial accounts. Examples of assets may include oil rigs, a well, a mine, or a power plant.

4.192 For example, in the natural resource extractive business, future reclamation and other closure costs stemming from ongoing production of a natural resource are generally expensed as the extraction progresses, despite the costs not being paid until after the mine or well is no longer productive.

Fair value accounting on unrealised net gains

4.193 Fair value accounting on unrealised gains is included as a Recapture Exception Accrual. The Recapture Exception Accrual for these gains only applies to the extent the fair value accounting is also applied for GloBE purposes. Therefore, this rule would not apply to the extent the MNE Group has elected to account for assets and liabilities using fair value or impairment accounting under subsection 3-150(1) of the Rules in relation to such gains.
[Chapter 4, paragraph 4-110(e) of the Rules]

4.194 Gains on such investments may not brought into account for tax purposes until such amounts have been realised through a sale or other disposition of the asset. The taxation of realised gains and losses is relatively common amongst Inclusive Framework jurisdictions and can give rise to temporary differences, which can often be material to MNE Groups, both in terms of amount and length of deferral. Some examples of fair value gains and losses for accounting purposes include increases in value of the investments assets of insurance companies or increases in the value of rights to timber held by a forestry company.

Foreign currency exchange net gains

4.195 Net gains on foreign currency exchange are captured as a Recapture Exception Accrual. These foreign exchange gains and losses are generally recognised in the financial accounting income of a Constituent Entity. The monetary items such as payables, receivables, and loans that are denominated in a foreign currency, that is a currency different to the functional currency for of the Constituent Entity, are translated at the spot exchange rate at the reporting date for accounting purposes. However, domestic tax laws may not recognise these unrealised foreign exchange gains and losses until a realisation event occurs, such as a repayment of a loan.
[Chapter 4, paragraph 4-110(f) of the Rules]

Insurance reserves and insurance policy deferred acquisition costs

4.196 Given the commonality of treatment in Inclusive Framework jurisdictions and the materiality of insurance reserve amounts, insurance reserves are treated as Recapture Exception Accruals. These amounts are not prone to manipulation given that the timing rules are governed by regulatory requirements and accounting rules.
[Chapter 4, paragraph 4-110(g) of the Rules]

4.197 Insurance companies generally collect premiums, invest such premiums, and pay claims with the earnings. When a premium is collected, it is known that some portion of the premium and earnings on such premium will be needed to pay claims, generally in a subsequent period.

4.198 On the basis that jurisdictions generally allow a deduction with reference to the amount reserved for future claims, the full premium received is not subject to corporate income tax. The long-term nature of insurance contracts can also lead to significant timing differences, as a result of differences in tax rules and how insurance contracts are valued under different accounting standards. Whilst these amounts will eventually reverse over time, without the Recapture Exception Accrual capturing this category, significant distortions would arise with respect to the ETR for insurance companies due to the material timing differences between accounting and tax treatment.

4.199 The reference to deferred acquisition costs may include the recognition of items relating to in-force contracts (for example, as part of an insurance business acquisition), where the insurer is required to recognise the difference in the fair value of the acquired insurance contracts and insurance obligations assumed on acquisition.

4.200 This item is commonly known as either value of business acquired, present value of in-force business, acquired value of in-force business, or value of business in-force, and may be recognised or disclosed together with another item, such as deferred acquisition costs, or as a separate item in financial statements for reporting purposes.

4.201 In either case, to the extent recognised or disclosed, it is intended that the Recapture Exception Accrual category includes such assets and liabilities. As is the case with deferred acquisition costs, this item is also amortised over a definite period, and can lead to material timing differences depending on local tax rules.

Reinvestment in Tangible Property

4.202 Recapture Exception Accruals extends to deferred tax liabilities associated with gains from the sale of tangible property located in the same jurisdiction as the Constituent Entity that are reinvested in tangible property in the same jurisdiction.

4.203 Some Inclusive Framework jurisdictions permit a taxpayer to benefit from roll-over or deferral relief with respect to gain on the disposition of capital assets if reinvested into a replacement asset within a prescribed time period. The gain is not recognised but is treated as a reduction to the acquisition cost of the new asset, thereby preserving the gain for future taxation. Roll-over or deferral of gain treatment is equivalent to recognising the gain and then allowing an immediate expense of the same amount of the cost of the new asset. Therefore, to the extent that the asset is depreciable for accounting purposes, the roll-over or deferral is akin to accelerated depreciation and immediate expensing.

4.204 In the case of land, the temporary difference will not reverse until the land is sold and the gain is not rolled over to a new investment. Such difference is material and common in Inclusive Framework jurisdictions, having characteristics like accelerated depreciation. This is because the underlying expenditure is directly connected with investment in tangible assets and the difference will reverse over a definite period. Strict adherence to financial accounting treatment with respect to such property could lead to unintended outcomes in GloBE calculations.
[Chapter 4, paragraph 4-110(h) of the Rules]

Additional amounts as a result of accounting principle changes

4.205 Any deferred tax expense arising from a change in accounting principle with respect to any of the categories of the Recapture Exception Accrual definition will also be a Recapture Exception Accrual.
[Chapter 4, paragraph 4-110(i) of the Rules]

4.206 For example, if a change in accounting principles or policies occurs in a Fiscal Year that results in additional deferred tax expense being accrued with respect to a previously recorded cost recovery allowance on tangible property, such accrual benefits from the Recapture Exception Accrual rule.

GloBE Loss Election

4.207 Part 4-5 of the Rules provides an elective rule to effectively carry GloBE losses forward with a deemed deferred tax asset for Constituent Entities located in the same jurisdiction. A separate GloBE Loss Election may be made for a Flow-through UPE.

4.208 When elected, Part 4-5 applies in lieu of the modified deferred tax accounting rules in Part 4-4.
[Chapter 4, paragraphs 4-125(1)(a) and 4-135(1)(a) of the Rules]

4.209 Part 4-5 of the Rules is generally expected to be of greatest utility as a simplification in jurisdictions that do not impose a corporate income tax or impose one at a very low rate given that when the election is made (since Part 4-4 of the Rules no longer applies and temporary differences may result in top-up tax). It is also not expected that the generation of a GloBE Loss Deferred Tax Asset under Part 4-5 of the Rules will result in top-up tax under the special rule under section 4-30 of the Rules.

Conditions for making a GloBE Loss Election

4.210 A Filing Constituent Entity may make a GloBE Loss Election for any jurisdiction that has a GloBE Loss for a Fiscal Year for an MNE Group, if:

- the jurisdiction in which it is located does not have an Eligible Distribution Tax System; and
- the election is made in the first GloBE Information Return of the MNE Group for the first Fiscal Year in respect of which subsection 8-5(1) (Transitional CbCR Safe Harbour) does not apply in relation to the MNE Group, the jurisdiction, and the Fiscal Year. ***[Chapter 4, subsections 4-120(1) and (2) and 4-130(1) of Rules]***

4.211 The requirement to only make the GloBE Loss Election once in the first GloBE information return that the Transitional CbC Reporting Safe Harbour does not apply is ensures that MNE Groups cannot opt in and out of the election as this could lead to potential distortions.

4.212 The limitation to exclude jurisdictions with an Eligible Distribution Tax System is to prevent an overstated ETR for such jurisdictions, given that distribution tax is only applicable when positive earnings are distributed.

4.213 A Filing Constituent Entity may make a separate election for the UPE that is a Flow-through Entity, provided that the same conditions above are met. The GloBE Loss election that exclusively applies to the Flow-through UPE can apply simultaneously to the GloBE Loss election for the MNE Group. This has the effect that even if a GloBE Loss Election has been made for the jurisdiction in which the UPE Flow-through Entity is located, other Constituent Entities are not aggregated with the Flow-through Entity that is a UPE.
[Chapter 4, subsection 4-130(1) of Rules]

Application and revocation of election

4.214 Unless the GloBE Loss Election for the MNE Group or UPE is revoked, it applies to:

- the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records the election is filed by the Filing Constituent Entity; and
- each subsequent Fiscal Year. ***[Chapter 4, subsections 4-120(3) and 4-130(2) of the Rules]***

4.215 A Filing Constituent Entity for the MNE Group may revoke a GloBE Loss Election for an MNE Group or for the UPE Flow-through Entity. When revoked, the election does not apply to the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records the revocation is filed by the Filing Constituent Entity and each subsequent Fiscal Year.
[Chapter 4, subsections 4-120(4), (5), 4-130(3) and (4) of the Rules]

4.216 If the GloBE Loss Election for an MNE Group is subsequently revoked, any remaining GloBE Loss Deferred Tax Asset of the MNE Group will be reduced to zero on the first day of the first Fiscal Year to which the GloBE Loss Election is no longer applicable.
[Chapter 4, subsection 4-125(3) and 4-135(5) of the Rules]

4.217 The revocation of a GloBE Loss Election has the effect of applying the general deferred tax accounting principles under Part 4-4 of the Rules, which means that the historic deferred tax assets and liabilities must be taken into account under Part 4-4 and Part 9-1 of the Rules on the assumption that the GloBE loss election had not applied for the prior Fiscal Years and the deferred tax amounts had been calculated. Allowing the GloBE Loss Deferred Tax Asset to be carried forward into these subsequent Fiscal Years would potentially permit double benefit for losses and other distorted outcomes.

4.218 Where a GloBE Loss Election is made for both the MNE Group and the UPE Flow-through Entity that are located in the same jurisdiction, the amount of GloBE Income or Loss of the UPE is only taken into account for the UPE and is disregarded in the jurisdictional MNE Group's GloBE Loss Election.
[Chapter 4, subsections 4-135(3) and (4) of the Rules]

4.219 If the GloBE Loss Election for the UPE is revoked, the UPE effectively becomes an ordinary Constituent Entity of the MNE Group. Therefore, the UPE may access and use the MNE Group's remaining GloBE Loss Deferred Tax Asset in subsequent years that the MNE Group GloBE Loss election applies.

Calculating the GloBE Loss Deferred Tax Asset of an MNE Group

4.220 The GloBE Loss Election allows for the establishment of a GloBE Loss Deferred Tax Asset when there is a Net GloBE Loss for the jurisdiction for the Fiscal Year.

4.221 If this is the first GloBE Loss Deferred Tax Asset, the amount of the GloBE Loss Deferred Tax Asset for a MNE Group for jurisdiction is calculated by multiplying the Net GloBE Loss by the Minimum Rate of 15 per cent.
[Chapter 4, paragraphs 4-125(1)(b) and 4-135(1)(b) of the Rules]

Net GloBE Loss: Carrying forward the GloBE Loss Deferred Tax Asset

4.222 In a subsequent Fiscal Year where there is a Net GloBE Loss of an MNE Group, the balance of the GloBE Loss Deferred Tax Asset is carried forward and increased. The increase to the GloBE Loss Deferred Tax Asset of an MNE Group for subsequent fiscal years follows the same formula used to establish the asset, where the Deferred Tax Asset is increased by multiplying the Net GloBE Loss recorded in the subsequent year by the Minimum Rate of 15 per cent.
[Chapter 4, paragraphs 4-125(1)(c) and 4-135(1)(c) of the Rules]

4.223 Part 4-5 of the Rules is consistent with the GloBE rules and allows for an indefinite carry-forward of the GloBE Loss Deferred Tax Asset. However, certain domestic laws of other jurisdictions may impose restrictions after a specific duration or conditions, such as record-keeping and evidence requirements, to claim the benefits of a carried-forward loss.

Deferred Tax Asset of a UPE

4.224 The establishment and increase of a GloBE Loss Deferred Tax Asset for a UPE follows the same approach for an MNE Group for a jurisdiction, but the GloBE Loss instead exclusively looks at the UPE's GloBE Loss. This has the effect that provided that the UPE has a GloBE Loss, a GloBE Loss Election can be made even if the MNE Group has Net GloBE Income in a Financial Year.

4.225 The GloBE Loss of the UPE must take into account the reduction under section 7-10 of the Rules to ensure losses that flow through to shareholders are not double counted, as mentioned in paragraph 7.36. The GloBE Loss remains with the Flow-through Entity that is a UPE and can only be used to offset future GloBE Income of that UPE.
[Chapter 4, subsection 4-135(1) of Rules]

4.226 This is done by calculating the GloBE Loss Deferred Tax Asset of an MNE Group for that subsequent year and increasing the balance of the existing GloBE Loss Deferred Tax Asset by that amount.
[Chapter 4, subsection 4-125(1)(c) of the Rules]

Net GloBE Income: Using the GloBE Loss Deferred Tax Asset

4.227 In a subsequent Fiscal Year where there is a Net GloBE Income of the MNE Group, the amount of GloBE Loss Deferred Tax Asset for the Fiscal Year must be used. The balance of the GloBE Loss Deferred Tax Asset that is carried forward to subsequent Fiscal Years is reduced by the amount that is used for the Fiscal Year in which it is used.

4.228 The amount of the GloBE Loss Deferred Tax Asset that is used is the lower of the following amounts:

- the Net GloBE Income multiplied by the 15 per cent Minimum Rate; or
- the amount of the GloBE Loss Deferred Tax Asset that has not been previously used (i.e. the balance of any existing GloBE Loss Deferred Tax Asset amount).
[Chapter 4, subsections 4-125(2) and 4-135(2) of the Rules]

4.229 When a GloBE Loss Deferred Tax Asset is used in a subsequent Fiscal Year, the amount of the GloBE Loss Deferred Tax Asset that is used is added to the Accrued Current Covered Tax Expense to ensure that the GloBE Loss Deferred Tax Asset is appropriately accounted for in computing the ETR.

Interaction with transfers under Part 6-2 of the Rules

4.230 The GloBE Loss Deferred Tax Asset does not transfer with a Constituent Entity that leaves an MNE Group as the GloBE Loss Deferred Tax Asset is a jurisdictional attribute of the MNE Group. In the circumstance that all Constituent Entities in a jurisdiction are transferred, the GloBE Loss Deferred Tax Asset remains with the transferor MNE Group despite the fact that there are no longer any Constituent Entities in that jurisdiction.

Post-filing adjustments and tax rate changes

4.231 Part 4-6 of the Rule caters for adjustments to Covered Taxes that occur after a Constituent Entity's liability has been determined. Broadly, an adjustment is required where there is a change in the amount of taxes determined. These adjustments can arise from various circumstances, including changes in recognised income due to tax authority examinations, management reviews, or more accurate estimates of tax liabilities.

4.232 Part 4-6 also applies when a QDMTT loss is carried-back to a prior Fiscal Year. When a tax loss is carried-back, a refund of tax for a prior Fiscal Year is issued in the current Fiscal Year. This refund translates into a decrease to Covered Taxes for a prior Fiscal Year and is as an adjustment to a Constituent Entity's liability for Covered Taxes for a previous Fiscal Year. The refund of Covered Taxes relating to the prior year must be matched with a corresponding adjustment to reflect a carry back of the domestic tax loss that results in outcomes that are consistent with the treatment of carry-forward losses (see paragraphs 119-127 on pages 140-142 of the Consolidated Commentary).

Treatment of Increases and Immaterial Decreases

4.233 A Filing Constituent Entity may elect to treat increases in Covered Tax liabilities, or immaterial decreases, as adjustments to the liability for Covered Taxes in the current Fiscal Year. This simplified approach avoids the need to recalculate prior year positions while ensuring appropriate recognition of tax adjustments.
[Chapter 4, section 4-140(5) of the Rules]

4.234 While treating such post-filing adjustments to a tax liability in the current year is not as accurate as recalculating the GloBE tax liability or potential GloBE tax liability with respect to the relevant Fiscal Years, it significantly simplifies compliance with computing top-up Tax under the GloBE Rules while preventing manipulation of top-up tax liabilities.

Immaterial decrease

4.235 An immaterial decrease in Covered Taxes is an aggregate decrease in that liability of less than EUR 1 million in the sum of adjustments to the liability

for Covered Taxes for the prior year of each Constituent Entity of the MNE Group located in the same jurisdiction. Determining the total adjustment for each Fiscal Year is done by reference to the aggregate increase or decrease in Covered Taxes.
[Chapter 4, subsection 4-140(4) of the Rules]

Material decreases

4.236 Where there is a material decrease in Covered Taxes of 1 million EUR or more, the ETR and top-up tax for the prior Fiscal Year must be recalculated for the prior Fiscal Year to which the tax adjustment relates to, which has the effect of:

- reducing the Constituent Entity's Adjusted Covered Taxes for the prior year by the amount of the decrease; and
- adjusting the GloBE Income or Loss for all relevant Fiscal Years as necessary.
[Chapter 4, subsection 4-140(3) of the Rules]

4.237 This requirement for recalculation of material decreases ensures that any overstatement of Covered Taxes that may have avoided top-up tax in a prior year is appropriately addressed. Simply reducing Accrued Current Covered Tax Expense in the current year may not effectively recapture the avoided top-up tax (paragraph 121 on page 141 of the Consolidated Commentary).

4.238 A post filing adjustment is required where a domestic tax loss is carried-back to a prior Fiscal Year because of the approach to establish a deemed deferred tax asset in the year the domestic tax loss is incurred. This mechanism preserves the deferred tax accounting approach by creating and reversing deemed deferred tax assets. When a tax loss is carried-back it results in a decrease to the Accrued Current Covered Tax Expense for a prior Fiscal Year and any resulting refund of tax for a prior Fiscal Year is issued in the current Fiscal Year.

4.239 To the extent a loss-carry back is taken into account, the special rule under section 4-30 continues to apply in the current Fiscal Year.

Changes in applicable domestic tax rate

4.240 An adjustment to the liability of Covered Taxes is required where there is an amount of deferred or current tax expense that has previously been recorded at an applicable domestic tax rate, but that domestic tax rate has subsequently changed relative to the Minimum Rate of 15 per cent.

Applicable domestic tax rate decreases to less than the Minimum Rate

4.241 Where the domestic tax rate is reduced to less than 15 per cent and there is an amount of deferred tax expense recorded in the financial accounts, the Constituent Entity must adjust Adjusted Covered Taxes for the

prior year by the deferred tax amount.
[Chapter 4, subsection 4-145(1) of the Rules]

4.242 This ensures that when a domestic tax rate is subsequently reduced, the deferred tax expense previously claimed as a Covered Tax is adjusted to the correct value, which is the amount of such tax that will be paid upon reversal of the deferred tax liability.

Example 4.4 Decrease in applicable domestic tax rate

In Fiscal Year 1, the domestic tax rate is 15% and a Constituent Entity claims 15 of Covered Taxes resulting from a deferred tax liability on 100 (100 x 15%) of GloBE Income.

In Fiscal Year 2, the domestic tax rate is reduced to 10%.

Assuming an ETR of 10%, when the deferred tax liability is paid, only 10 of tax will be paid. Therefore, the Top-up Tax resulting from Fiscal Year 1 must be recalculated.

A total of 5 of Top-up Tax would be owing in Fiscal Year 2 due to the recalculation.

Applicable domestic tax rate increases to more than the minimum rate

4.243 The amount of deferred tax expense that has been paid and recorded in the financial accounts resulting from an increase in the domestic tax rate that was previously less than 15 per cent and has increased to greater than 15 per cent will be an adjustment to a Constituent Entity's liability for Covered Taxes for a previous Fiscal Year. The adjustment is limited to an amount equal an increase of deferred tax expense up to such deferred tax expense recast at the 15 per cent.
[Chapter 4, subsection 4-145(2) of the Rules]

Current tax not paid within three years

4.244 Adjustments to prior calculations of the ETR and top-up tax are required where current tax expense was recorded in the financial accounts of a prior Fiscal Year that was included in the Constituent Entity's Adjusted Covered Taxes, but more than 1 million Euros remains unpaid by the end of the third Fiscal Year after that prior Fiscal Year. In these circumstances the ETR and Jurisdictional Top-up Tax for that prior Fiscal Year must be recalculated to exclude the amount of unpaid current tax expense from the Constituent Entity's Adjusted Covered Taxes.
[Chapter 4, subsection 4-145(3) of the Rules

Chapter 5: Computing Top-up Tax

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Outline of chapter

5.1 Chapter 5 of the Rules sets out the computation rules for determining the ETR of a jurisdiction and the top-up tax amount for a low-tax jurisdiction.

5.2 The GloBE Income or Loss calculated for each Constituent Entity located in the same jurisdiction are combined to arrive at the Net GloBE Income or Net GloBE Loss amount.

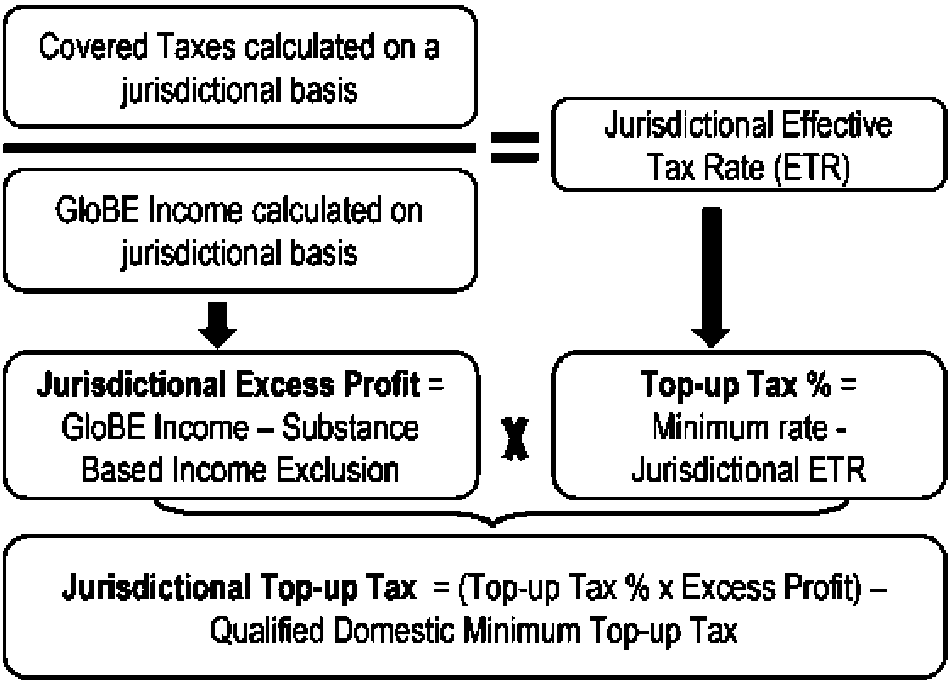
5.3 Similarly, the Adjusted Covered Taxes for each Constituent Entity located in the same jurisdiction are added together to arrive at the total Adjusted Covered Taxes amount. The adjusted covered taxes are then divided by the Net GloBE Income to arrive at the GloBE Jurisdictional ETR.

5.4 The Top-up Tax Percentage is the number of percentage points by which the GloBE Minimum Rate of 15 per cent exceeds the MNE Group's ETR in the jurisdiction. The top-up tax percentage is applied to an MNE Group's jurisdictional excess profit. A MNE Group's excess profit is any positive amount which remains after the Substance-based Income Exclusion is applied to the MNE Group's Net GloBE Income in the jurisdiction.

5.5 The final amount of top-up tax due is then calculated by subtracting any QDMTT amount and adding any additional top-up tax. Any positive amount is then allocated to the Constituent Entity in the undertaxed jurisdiction proportionally according to their GloBE Income. There is no allocation to entities with a GloBE loss.

5.6 The resulting top-up tax amount is then charged to a Parent Entity under the QIIR or, if there is no QIIR, to Constituent Entities located in a UTPR Jurisdiction.

Diagram 5.1 Calculating the jurisdictional ETR and Top-up Tax



OECD (2023), Figure 1.7 of the Minimum Tax Implementation Handbook (Pillar Two), OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, https://www.oecd.org/tax/beps/minimum-tax-implementation-handbook-pillar-two.pdf

Detailed explanation of new law

Determination of effective tax rate

5.7 The ETR of an MNE Group for a jurisdiction and Fiscal Year is the total adjusted covered taxes of all entities in that jurisdiction divided by the total GloBE Income of all entities in that jurisdiction. This formula is expressed below:

$$Jurisdictional\ ETR = \frac{jurisdictional\ adjusted\ covered\ taxes}{jurisdictional\ net\ GloBE\ income}$$

[Chapter 5, section 5-5 of the Rules]

5.8 An MNE Group in a jurisdiction calculates an ETR each Fiscal Year it is in scope of the Rules, unless a jurisdiction has a Net GloBE Loss for a Fiscal Year, then no ETR calculation is required.

Entities that compute their ETR separately

5.9 The ETR is calculated for all Constituent Entities in the jurisdiction. However, the following entities must calculate their ETR separately to the group:

- Investment Entities or Insurance Investment Entities;
- MOCEs;
- stateless entities; and
- JVs.

5.10 As such, depending on the composition of the MNE Group, it could be computing the ETR using different rules for different Constituent Entities. The methodology for calculating the ETR follows the same procedure regardless of whether computation is on group basis or a standalone basis.
[Chapter 5, section 5-5 of the Rules]

Investment Entities and Insurance Investment Entities

5.11 Investment Entities and Insurance Investment Entities compute their ETR separately from the MNE Group, as explained in further detail from paragraph 7.65. If there are multiple Investment Entities or Insurance Investment Entities within the MNE Group in the same jurisdiction, those Entities can combine their adjusted covered taxes and GloBE Income to produce their ETR.

Minority-Owned Constituent Entities

5.12 The ETR calculations of a minority owned subgroup within a jurisdiction will be calculated separately to the actual MNE Group, as explained in further detail from paragraph 5.73.

Stateless entities

5.13 Stateless Constituent Entities are treated as being the only Constituent Entity in a jurisdiction and are to compute their ETR separately from the actual MNE Group.
[Chapter 5, section 5-45 of the Rules]

Joint ventures

5.14 JVs including any JV Subsidiaries with at least 50 per cent Ownership interests held by the MNE Group are to compute their ETR as if they were a separate MNE Group with the JV being the equivalent of a UPE of that Group. The JVs' income and taxes are not blended with other Constituent Entities in the MNE Group, as explained in further detail at paragraph 6.64.
[Chapter 5, notes to section 5-5 of the Rules]

Net GloBE Income and Net GloBE Loss

5.15 The ***Net GloBE Income*** or ***Net GloBE Loss*** of an MNE Group for a jurisdiction for a Fiscal Year is equal to the ***GloBE Income of all Constituent Entities*** in the jurisdiction for the Fiscal Year, minus the ***GloBE Losses of all Constituent Entities*** in the jurisdiction for the Fiscal Year. If the amount computed is a positive amount, is Net GloBE Income. If the amount computed is zero or a negative amount, is Net GloBE Loss.
[Chapter 5, section 5-15 of the Rules]

Administrative procedure

5.16 An MNE Group is required to apply the Excess Negative Tax Expense administrative procedure where the resulting Top-up Tax is greater than 15 per cent. The administrative procedure has the effect of the MNE Group not being subject to any top-up tax arising under the Rules. To apply the administrative procedure, the MNE Group must exclude the Excess Negative Tax Expense from the sum of Adjusted Covered Taxes and establish an Excess Negative Tax Expense Carry-forward. This ensures that the Excess Negative Tax Expense attributable to an amount of a loss that is carried back and applied against income for prior taxable years for domestic tax purposes must be considered under section 4-30 of the Rules and cannot be included in the Excess Negative Tax Expense Carry-forward.

5.17 The Excess Negative Tax Expense equals:

- the total adjusted covered taxes, if there is no GloBE Income; or
- the amount of negative adjusted covered taxes, where the MNE Group has a GloBE Income.

5.18 In each subsequent Fiscal Year in which the MNE Group has positive GloBE Income and Adjusted Covered Taxes for the jurisdiction, the MNE Group reduces the aggregate Adjusted Covered Taxes by the remaining balance of the Excess Negative Tax Expense Carry-forward, with the balance of the Excess Negative Tax Expense Carry-forward being reduced by the same amount.
[Chapter 5, section 5-10 of the Rules]

Top-up Tax

5.19 The amount of top-up tax for a jurisdiction is calculated by determining the excess profit that is subject to the top-up tax percentage.

Top-up Tax percentage

5.20 Once the ETR calculation has been computed, this is compared to the Minimum Rate of 15 per cent. The top-up tax percentage is 15 per cent minus the MNE Group's ETR in that jurisdiction.
[Chapter 5, section 5-20 of the Rules]

$$Top\text{-}up\ tax\ percentage = 15\% - ETR$$

5.21 If the ETR in a jurisdiction is greater than 15 per cent, no top-up tax applies as entities and groups are paying the Minimum Rate. However, if the ETR in a jurisdiction is less than 15 percent, an MNE Group will be made liable for a top-up tax amount.

Excess profit

5.22 ***Excess profit*** is the amount of profit of a MNE Group within a jurisdiction on which the top-up tax is levied. Provided that the entity has applied the substance-based income exclusion, the excess profit only refers to positive amounts and is calculated using the following formula:

$$Excess\ profit = Net\ GloBE\ Income - Substance\ based\ income\ exclusion$$

[Chapter 5, section 5-25 of the Rules]

5.23 If the Substance-based Income Exclusion is greater than or equal to the Net GloBE Income, there is no excess profit and top-up tax does not apply, however, Additional Current Top-up Tax may still apply.

Jurisdictional Top-up Tax

5.24 The results from the top-up tax percentage and excess profit formulas are used to arrive at the Jurisdictional Top-up Tax. The Jurisdictional Top-up Tax is calculated by multiplying the top-up tax percentage by the Excess profits for the MNE Group in each low-tax jurisdiction and reduce the result by the amount of any QDMTT and adding any Additional Top-up Tax:

$$Jurisdictional\ Top\text{-}up\ tax = (Top\text{-}up\ tax\ percentage \times Excess\ profit) - QDMTT + Additional\ Current\ Top\text{-}up\ Tax$$

5.25 Additional Current Top-up Tax is an amount of top-up tax added to the current year that is attributable to certain re-calculations of the top-up tax in previous years.
[Chapter 5, section 5-30 of the Rules]

Top-up-tax of a Constituent Entity

5.26 The Jurisdictional Top-up tax is allocated only to Constituent Entities that have GloBE Income for the relevant year. There is no allocation to entities with a GloBE loss.

$$Constituent\ Entity's\ Top\text{-}up\ tax =$$
$$Jurisdictional\ Top\text{-}up\ tax \times \frac{GloBE\ income\ of\ the\ CE}{Aggregate\ GloBE\ income\ of\ all\ CEs}$$

5.27 An entity within the MNE Group is allocated top-up tax depending on its share of the MNE Group's income.

5.28 The allocation of top-up tax among LTCEs facilitates the application of the IIR by Parent Entities that are not UPEs and the application of the UTPR where part of an entity's top-up tax is subject to an IIR, and the remainder is subject to the UTPR.
[Chapter 5, section 5-40 of the Rules]

Substance-based Income Exclusion

5.29 The purpose of excluding Substance-based Income is to exclude a fixed return for substantive activities within a jurisdiction from the application of the GloBE Rules. Generally, it represents the elements of the business that relate to the Group's activities in that jurisdiction, that should not be subject to international taxation. For example, if a company has sufficient presence and economic substance in a jurisdiction where the income is earned, the income should largely be excluded from being considered as GloBE Income.

5.30 The amount of substance-based income that may be excluded is:

$$Substance\text{-}based\ Income\ Exclusion =$$
$$Payroll\ carve\text{-}out + Tangible\ asset\ carve\text{-}out$$

5.31 The payroll carve-out and tangible asset carve-out are for each Constituent Entity located in the jurisdiction that is not an Investment Entity or Insurance Investment Entity.
[Chapter 5, subsection 5-50(1) of the Rules]

5.32 To determine whether income has sufficient substance the following factors may be taken into consideration with respect to a jurisdiction:

- number of employees and level of payroll;
- level of investment;
- level of physical presence, such as office space and equipment;
- level of decision-making and control exercised; and
- level of research and development activities.

5.33 Where the Substance-based Income Exclusion exceeds the GloBE Income, the resulting amount cannot be reduced to result in a GloBE Loss. Any excess Substance-based Income Exclusions cannot be carried forward or backward to reduce GloBE Income for another year. See paragraph 27 on page 151 of the Consolidated Commentary.

Payroll Carve-out Amount

5.34 The Payroll Carve-out Amount is five per cent of the Eligible Payroll Costs of each entity in the MNE Group. The Payroll Carve-out Amount does not include costs that are included in the carrying value of Eligible Tangible Assets or attributable to a Constituent Entity's International Shipping Income and Qualified Ancillary Shipping Income if it were excluded from the GloBE Income or Loss computations for that Fiscal Year. The design recognises a Constituent Entity's payroll expense as an appropriate proxy for substantive activities carried out by employees of the MNE Group in the relevant jurisdiction.
[Chapter 5, subsections 5-55(1) and (2) of the Rules]

Tangible Asset Carve-out Amount

5.35 The Tangible Asset Carve-out Amount is five per cent of the value of Eligible Tangible Assets in a jurisdiction. The term Eligible Tangible Assets is defined as the property, plant, equipment, natural resources, lessee's right to use those tangible assets of the MNE Group that are located in that jurisdiction, and governmental support for the use of immovable property that entails significant investment in tangible assets. This does not include the carrying value of land or buildings held for sale, lease or investment and does not include assets used in generating International Shipping Income and Qualified Ancillary International Shipping Income. This is because this income is not typically included in the GloBE Income or Loss.
[Chapter 5, subsections 5-65(1) and (3) and section 5-75 of the Rules]

5.36 The carrying value of tangible assets is based on the average carrying value at the beginning and ending of the reporting year as recorded in the CFS of the UPE. The average carrying value is net of accumulated depreciation, amortisation, or depletion and including any amount attributable to

capitalisation of payroll expense.
[Chapter 5, subsection 5-65(2) of the Rules]

5.37 With respect to the proportion of Payroll Carve-out Amount and Tangible Asset Carve-out Amount, the total eligible payroll costs and tangible assets are reduced to equal the amount of time spent in the jurisdiction. For example, where an employee only spends 30 per cent of their time working in Australia, the payroll costs should be reduced to 30 per cent.
[Chapter 5, subsection 5-55(2) and paragraph 5-65(3)(f) of the Rules]

Transitional rule

5.38 The payroll and tangible asset carve-out percentages are subject to a ten-year transitional rule outlined in Part 9-2 of the Rules that starts with a higher percentage that is gradually reduced to 5 per cent by 2033.

Operating leases

5.39 Regarding operating leases, the lessor will be allowed to take a portion of the carrying value of an asset subject to an operating lease into account in determining its Eligible Tangible Asset if the asset is located in the same jurisdiction as the lessor. The amount allowed is equal to the excess, if any, of the lessor's average carrying value of the asset determined at the beginning and end of the Fiscal Year over the average amount of the lessee's right of use asset determined at the beginning and end of the Fiscal Year. By allowing only the excess of the carrying value over the right-of-use asset, the lessor is prevented from also claiming Substance-based Exclusion Amount in respect of the same asset value that is included in the lessee's Substance-based Exclusion Amount computation.
[Chapter 5, section 5-70 of the Rules]

Permanent Establishments and Flow-through Entities

5.40 Separate rules are required for the tangible assets and payroll for Permanent Establishments and Flow-through Entities.

5.41 Eligible payroll costs and eligible tangible assets of a Permanent Establishment are those that are included in the separate financial accounts and adjusted accordingly to arrive at GloBE Income or Loss. This is conditional on the employees and assets being located in the same jurisdiction as the Permanent Establishment. If employees and assets are located in a different location to the Permanent Establishment, those assets and employees are excluded from the Substance-based Income Exclusion Amount.
[Chapter 5, section 5-80 of the Rules]

5.42 To prevent the possibility of costs being double counted, the eligible payroll costs and tangible assets of the Permanent Establishment are not allocated to the Main Entity. If a Permanent Establishment's income is allocated to the Main Entity under section 3-250 of the Rules, the definition of eligible payroll

costs and tangible assets ensures that it remains in the jurisdiction it is located and is not attributed to the Permanent Establishment.
[Chapter 5, subsection 5-80(2) of the Rules]

5.43 A Permanent Establishment that has wholly or partly excluded income under sections 3-240 and 7-15 of the Rules is excluded from the Substance-based Income Exclusion Amount computations of the MNE Group in the same proportion.
[Chapter 5, subsection 5-80(2) of the Rules]

5.44 Adjustments are made for a Flow-through Entity regarding tangible asset and payroll so that any amount not considered in determining underlying profit is also excluded.

5.45 Employees and assets attributed to a Permanent Establishment are excluded from the allocation rules for Flow-through Entities. There are three separate rules on allocating employees and assets of a flow through entity, which are allocated as follows:

- to the Constituent Entity owner in the same proportion as the accounting income of the Flow-through Entity that is allocated to the Constituent Entity owner under subsection 5-85(3) of the Rules;
- to the UPE where the Flow-through Entity is a UPE and reduced in the same proportion as the income allocated under subsection 7-5(2) of the Rules;
- all other eligible payroll costs and eligible tangible assets of a Flow-through Entity are excluded from the Substance-based Income Exclusion.
[Chapter 5, section 5-85 of the Rules]

5.46 Consistent with the rules above to exclude amounts of Eligible Tangible Assets and Eligible Payroll Costs that is associated with excluded Income, a similar rule applies where a UPE is subject to a Deductible Dividend Regime. Given that sections 7-20 and 7-25 of the Rules excludes certain amounts subject to Deductible Dividend Regime from GloBE Income, a proportionate reduction to the Eligible Payroll Costs is required so that amounts attributable to that excluded income are not included in the Substance-based Income Exclusion Amount.
[Chapter 5, section 5-90 of the Rules]

Election out of the Substance-based Income Exclusion

5.47 The Substance-based Income Exclusion applies automatically. However, the filing Constituent Entity may make an Annual Election to not apply the Substance-based Income Exclusion for all Entities in the jurisdiction.

5.48 The election out of the Substance-based Income Exclusion results in the Substance-based Income Exclusion Amount being zero for the Fiscal Year in

which the election is made. This has the effect of the Excess Profit being equal to the Net GloBE Income for the jurisdiction.
[Chapter 5, subsection 5-50(2) of the Rules]

5.49 The Annual Election does not need to be an express statement but is made by the filing Constituent Entity either completing, or instead claiming the computations for the exclusion in the GloBE Information Return.
[Chapter 5, subsections 5-50(3) to (5) of the Rules]

5.50 Once an entity has filed the GloBE Information Return, an election cannot be varied or revoked. The entity is permitted to elect to apply the Substance-based Income Exclusion Amount in following years as the election resets every year.
[Chapter 5, subsection 5-50(6) of the Rules]

Additional Current Top-up Tax

5.51 The ETR must be recalculated where certain circumstances require changes to prior year calculations. The resulting change in liability is treated as an Additional Current Top-up-Tax in the current fiscal year. If Additional Top-up Tax is calculated for an entity, that entity is deemed a LTCE for that year.
[Chapter 5, section 5-95 of the Rules]

Additional Current Top-up Tax – ETR Adjustment Provisions

5.52 An Additional Current Top-up Tax liability may arise where an ETR Adjustment Provision applies, including under the following provisions:

- section 3-145 (relating to asset gain);
- subsection 4-80 (recaptured deferred tax liability);
- subsection 4-120 (post-filing adjustments);
- subsection 4-125 (current tax expense not paid within 3 years); or
- subsection 7-75 (deemed distribution tax).
[Chapter 5, subsections 5-95(1), (2) and (6) of the Rules]

5.53 This is not intended to address ordinary mistakes in the computations under the GloBE Rules or adjustments to GloBE Income arising from an examination of a Constituent Entity's application of the IIR or the UTPR. Instead, it applies when there is an adjustment to a local tax item that has a follow-on effect on computations under the GloBE Rules.

Calculation of Additional Current Top-up Tax

5.54 If an ETR Adjustment Provision applies in relation to a prior Fiscal Year, the ETR and Jurisdictional Top-up Tax for relevant prior years are recalculated. However, the difference between the originally calculated top-up tax and the

recalculated top-up tax is not included in the MNE Group's Jurisdictional Top-up Tax for that prior Fiscal Year. Instead, the amount is treated as Additional Current Top-up tax for the current fiscal Year.
[Chapter 5, subsections 5-95(2) and (3) of the Rules]

No Net GloBE Income

5.55 If Additional Current Top-up Tax applies for the current Fiscal Year and the net GloBE Income of the MNE Group for the jurisdiction for the fiscal year is zero, the GloBE Income of each entity in the MNE Group in the jurisdiction is treated as:

$$\frac{Constituent\ Entity's\ top\text{-}up\ tax}{15\%}$$

[Chapter 5, subsection 5-95(4) of the Rules]

5.56 This rule ensures that when a recalculation results in Additional Current Top-up Tax that is payable in a Fiscal Year with no GloBE Income for a jurisdiction that there is still a mechanism in place by which the top-up tax that is ***owed*** can be allocated to Parent Entities that may be subject to an IIR. Where this rule applies, the Constituent Entity which applied the ETR adjustments resulting in Additional Current Top-up Tax is treated as a LTCE for the Fiscal Year.
[Chapter 5, subsection 5-95(5) of the Rules]

Adjusted Covered Taxes less than expected amount

5.57 A different rule applies if there is Additional Current Top-up Tax due to an MNE Group having no Net GloBE Income for a jurisdiction and a deferred tax asset in the same year. The amount of Additional Current Top-up Tax allocated to a Constituent Entity is:

$$\frac{Constituent\ Entity's\ Additional\ Current\ Top\text{-}up\ Tax\ for\ the\ current\ Fiscal\ Year}{15\%}$$

[Chapter 5, subsections 5-100(1) and (2) of the Rules]

5.58 However, the amount of Additional Current Top-up Tax in this circumstance is allocated only to Constituent Entities that have an Adjusted Covered Taxes amount that is:

- less than zero; and
- less than 15 per cent of the GloBE Income or Loss of the Constituent Entity.

5.59 A Constituent Entity that is allocated Additional Current Top-up Tax for a Fiscal Year is treated as an LTCE for that Fiscal Year. These Constituent

Entities are allocated an amount of Additional Current Top-up Tax in proportion to their Top-up Tax Amount, as calculated by:

$$(GloBE\ Income\ or\ Loss \times\ 15\%) - Adjusted\ Covered\ Taxes$$

[Chapter 5, subsections 5-100(3) and (4) of the Rules]

De minimis exclusion

5.60 Constituent Entities located in a jurisdiction are exempt from calculating top-up tax when their aggregated revenue and aggregated income are below certain thresholds.

5.61 If a Constituent Entity in a jurisdiction meets the criteria for the de minimis exclusion in a Fiscal Year, its top-up tax is taken to be zero for that Fiscal Year.
[Chapter 5, subsection 5-105(1) of the Rules]

5.62 The criteria include revenue and income thresholds for the jurisdiction. For a Constituent Entity in a jurisdiction to qualify for the exclusion in a Fiscal Year:

- the average GloBE Revenue of the MNE Group in the jurisdiction in the Fiscal Year must be less than EUR 10 million; and
- the average GloBE Income or Loss of the MNE Group in the jurisdiction in the Fiscal Year must be a loss or less than EUR 1 million
[Chapter 5, subsection 5-105(1) of the Rules]

5.63 To make use of the exclusion, the filing Constituent Entity must make an Annual Election to apply the exclusion to the Constituent Entities located in a jurisdiction and the Fiscal Year.
[Chapter 5, subsections 5-105(1) to (3) of the Rules]

5.64 ***Average Globe Revenue*** of an MNE Group for a jurisdiction for a Fiscal Year is the average of the ***GloBE Revenue*** of the MNE Group for the jurisdiction for the most recent three years, including the current year. ***GloBE Revenue*** of an MNE Group for a jurisdiction for a Fiscal Year is the sum of the revenue for the current year of all Constituent Entities of the MNE Group in the jurisdiction per Chapter 3.
[Chapter 5, subsections 5-110(1) and (3) of the Rules]

5.65 ***Average GloBE Income or Loss*** of an MNE Group for a jurisdiction for a Fiscal Year is the average of the GloBE Income or Loss of the MNE Group for the most recent three years, including the current year. ***GloBE Income or Loss*** of an MNE Group for a jurisdiction for a Fiscal Year is the GloBE Income of all Constituent Entities subtracting GloBE Losses of all Constituent Entities.
[Chapter 5, subsections 5-110(1) and (3) and 5-15(2) of the Rules]

5.66 The computation method assumes that each Fiscal Year is 12 months. If a Fiscal Year for an Entity is not 12 months, then the average should be adjusted proportionally.

5.67 Both the Average GloBE Revenue and Average GloBE Income or Loss are determined by applying the same rules used to compute the GloBE Income or Loss of a jurisdiction. The Average GloBE revenue calculation must exclude any preceding years where there were no Constituent Entities of the MNE Group in that jurisdiction with GloBE Revenue or GloBE losses. In the first year of the GloBE Rules, the average GloBE Revenue and GloBE Income or Loss will be based off the first-year amounts only, as no previous calculation of GloBE amounts exists.
[Chapter 5, subsection 5-110(2) of the Rules]

Stateless Constituent Entities and Investment Entities

5.68 Even if the filing Constituent Entity has made an election and the Constituent Entities in the jurisdiction meet the revenue and income requirements, a Constituent Entity cannot use the de minimis exclusion if it is a Stateless Constituent Entity or an Investment Entity. This is because these entities must compute their ETR separately.
[Chapter 5, paragraph 5-105(1)(d) of the Rules]

5.69 The revenue and GloBE Income or Loss of Stateless Constituent Entities and Investment Entities is not included when calculating regardless of whether the Constituent Entities in a jurisdiction meet the revenue and income thresholds.
[Chapter 5, paragraph 5-110(3)(d) of the Rules]

Minority-Owned Constituent Entities

5.70 Rules apply for calculating the Jurisdictional ETR and top-up tax of MOCEs. MOCEs are defined as Constituent Entities where the UPE has less than 30 per cent indirect or direct ownership. MOCEs may become Parent Entities where that Entity owns controlling interest in another Constituent Entity. Multiple owned entities by ***Minority-Owned Parent Entities*** become part of a ***Minority-Owned Subgroups***, which comprise of two or more MOCEs in an MNE Group.
[Chapter 5, subsections 5-120(1) and (2), section 5-130 and 5-135 of the Rules]

5.71 The computations for MOCEs and Minority-Owned Subgroups are done separately to the MNE Group in recognition of the fact that MOCEs have different owners outside of the MNE Group. If MOCEs are included in the computations of the MNE Group, it could result in third-party owners outside of the MNE Group bearing top-up tax liability, which is not correct outcome. As such, ETR and Net GloBE Income or Loss computations of MOCE and Minority-Owned Subgroups do not consider the other Constituent Entities of

the MNE Group.
[Chapter 5, subsection 5-120(3) of the Rules]

5.72 The computation methods for Jurisdictional ETR and top-up tax for the MOCEs and Minority-Owned Subgroups are otherwise the same as the computation methods applied to the MNE Group.

5.73 If a MOCE is not in a Minority-Owned Subgroup and is not an Investment Entity, it is treated as the only Constituent Entity of the MNE Group in its jurisdiction when calculating its Jurisdictional ETR and top-up tax. If a MOCE is an Investment Entity, the Investment rules described in Chapter 7 takes priority. The separate ETR calculation for MOCEs may also apply to Permanent Establishments and Main Entities that meet the definition of a MOCE.
[Chapter 5, subsections 5-120(1), (2) and (4) of the Rules]

5.74 The deeming of a separate group is important for the jurisdictional calculations including any Additional Current Top-up Tax arising under section 4-30 of the Rules and for determining a LTCE.
[Chapter 5, subsection 5-120(3) of the Rules]

5.75 The deeming has no effect in determining FANIL or adjustments to FANIL under Chapter 3 of the Rules. An election to apply a consolidated accounting treatment under section 3-200 of the Rules can also apply to transactions between members of a subgroup. For example, transactions exclusively between MOCEs, or between Investment Entities, Insurance Investment Entities or between JV Group entities.

5.76 Covered Taxes can be allocated to and from MOCEs from and to regular Constituent Entities under Part 4-3 of the Rules. The rules under chapter 6 continue to apply to acquisitions and transactions involving MOCEs and regular Constituent Entities. Elections are made by the Filing Constituent Entity of the Applicable MNE Group (not by a Constituent Entity of the subgroup). The GloBE Loss Deferred Tax Asset election under Part 4-5 of the Rules applies separately to JVs, MOCEs, Investment Entities and Insurance Investment Entities from regular Constituent Entities due to having separate Net GloBE Income and ETR calculations at a jurisdictional level.

5.77 The Chapter 6 rules continue to apply to acquisitions and transactions involving MOCEs and regular Constituent Entities. Any elections that are made by the Filing Constituent Entity for the MNE Group, that is not the MOCE, also apply to the MOCE and any subgroup entities. This has the effect of the election covering the entirety of a jurisdiction, including all standard Constituent Entities and subgroups that are in the jurisdiction.

Chapter 6: Corporate structures

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Outline of chapter

6.1 Chapter 6 of the Rules sets out special rules for acquisitions and disposal of ownership interests or assets as well as the application of the Rules to certain holding structures, including JVs, stapled structures and dual-listed arrangements.

Detailed explanation of new law

Mergers and demergers

6.2 Generally, the GloBE regime is based on a steady state that assumes the MNE Group is comprised of the same Constituent Entities through the entire Fiscal Year. The Rules are modified or clarified to ensure the appropriate outcomes for both the acquiring MNE Group and the disposing MNE Group (defined in the paragraphs below).

6.3 For MNE Groups that merge or demerge during a Fiscal Year, the GloBE Threshold is modified to determine whether the GloBE Threshold for those MNE Groups has been met, see paragraphs 19 to 40 on pages 175 to 179 of the Consolidated Commentary.

Mergers

6.4 Where two or more Groups merge into a single Group, paragraph 12(1)(b) of the Assessment Act empowers the Rules to specify merger conditions for the purposes of meeting the definition of an Applicable MNE Group. More specifically, a merger, in relation to an Applicable MNE Group, is any arrangement under which:

- all or substantially all of the Group Entities of two or more Groups;
- all (or substantially all) of the Group Entities of a Group, or two or more separate Groups, together with one or more Entities; or
- an Entity that is not a member of any Group, together with one or more other Entities or Groups,

are brought under common control such that they are Group Entities of one Group.
[Chapter 6, subsections 6-5(1) and (4) of the Rules]

6.5 A Group is an Applicable MNE Group in a Fiscal Year (the test year) if it was formed when:

- two or more Groups merged to form this Group and the sum of the revenue included in the CFS of each of the pre-merger Groups is at least EUR 750 million in any year prior to the merger; or
- one or more Entities that are not part of a Group merged with one or more Entities or Groups, and the sum of the revenue included in the financial statements or CFS (as the case may be) in each of the pre-merger Entities or Groups is at least EUR 750 million in two of the four Fiscal Years immediately preceding the test year.
[Chapter 6, subsection 6-5(2) of the Rules]

6.6 The merger definition requires that "all or substantially all" of the Entities that are the members of the separate Groups become members of the merged Group. It would not apply, for example, where a Group sells all the Entities that make a business division unless that division represented virtually all the business of the selling Group.

6.7 In determining whether a merged Group is an Applicable MNE Group in the test year, the following amounts for an accounting period ending within a Fiscal Year in the test period are included in the merged Group's annual revenue for the Fiscal Year, regardless of whether the merged Group existed in the Fiscal Year:

- for mergers of two or more Groups:
  - each amount of annual revenue in the CFS of the UPE of a pre-merger Group;
- for an Entity that is not part of a Group, that acquires or merges with one or more Entities or Groups:
  - the annual revenue amount in the financial accounts of the acquirer;
  - the annual revenue amount in the CFS of the UPE of the target (if the target is part of a Group for the Fiscal year);
  - the annual revenue amount in the financial accounts of the target (if the target is not part of a Group for the Fiscal Year). [Chapter 6, subsection 6-5(3) of the Rules]

6.8 The Groups may use separate financial statements to determine their combined revenue figure if a CFS were not prepared.

Demergers

6.9 Where an MNE Group demerges, paragraph 12(1)(b) of the Assessment Act empowers the Rules to specify demerger conditions for the purposes of meeting the definition of an Applicable MNE Group. A demerger is where a single Applicable MNE Group separates into two or more Groups that are no longer consolidated by the same UPE. The revenue threshold test for demergers is intended to ascertain whether a Group resulting from the demerger of the Applicable MNE Group, is an Applicable MNE Group and remains subject to the GloBE Rules. Unlike in mergers, the revenue threshold for demergers is applied prospectively by testing the future four years ending after the demerger.
[Chapter 6, subsections 6-10(1) and (3) and of the Rules]

6.10 A demerged Group is an Applicable MNE Group if for the first year after the demerger, the demerged Group has annual revenues of at least EUR 750 million, and for the second to fourth years after the demerger, the demerged Group has at least EUR 750 million in any two years.
[Chapter 6, subsection 6-10(2) of the Rules]

Transfers of Ownership Interests

6.11 Special rules apply to MNE Groups that acquire or dispose of a Constituent Entity during the Fiscal Year. This has implications for calculating for GloBE Income or Loss, Adjusted Covered Taxes, Substance based Income Exclusion, and the application of the IIR, see paragraph 44 and following on page 179 of the Consolidated Commentary.

6.12 Sections 6-15 to 6-50 (excluding section 6-30) of the Rules apply to a direct or indirect disposition or acquisition of a Controlling Interest that occurs during a Transition Year and subsequent Fiscal Years. The definition of the Transition Year also considers any modifications to that term when an MNE Group is subject to the Transitional CbC Reporting Safe Harbour in a specific jurisdiction.

6.13 An Entity that becomes or ceases to be a Constituent Entity of an MNE Group is referred to as the ***target***. The Fiscal Year in which the Ownership Interests in the target are transferred to facilitate the acquisition or disposal is referred to as the ***transfer year***.
[Chapter 6, subsection 6-15(1) and 6-25 of the Rules]

6.14 The special rules apply where the target ceases to be a Constituent Entity of an MNE Group (the ***disposing MNE Group***), regardless of whether the target then becomes the Constituent Entity of another MNE Group. The rules also apply where the target becomes a Constituent Entity of an MNE Group (the ***acquiring MNE Group***), including if the acquiring MNE Group is a new Group and the target becomes the UPE of the acquiring MNE Group.
[Chapter 6, section 6-15(2) of the Rules]

6.15 The target is considered a Constituent Entity of the disposing MNE Group or the acquiring MNE Group if at any point in the transfer year a portion of the target’s financial amounts are included on a line-by-line basis in the CFS of the UPE of the acquiring MNE Group. In the transfer year, this may result in the target’s financials being included in both the disposing and acquiring MNE Group’s CFS and may be treated as a Constituent Entity of both MNE Groups.
[Chapter 6, section 6-20 of the Rules]

FANIL and GloBE Income or Loss calculations

6.16 Despite the target’s financial information potentially being included in the CFS of more than one MNE Group during a Fiscal Year, the relevant income and taxes to compute the ETR and to apply any Top-up Taxes are only taken into account by the disposing MNE Group or acquiring MNE Group in their respective CFS in the transfer year.
[Chapter 6, section 6-25 of the Rules]

6.17 An MNE Group that acquires a Controlling Interest in a Constituent Entity is to exclude the effect of any purchase accounting consolidation adjustments attributable to the acquisition and treat the target, for GloBE purposes, as having the same carrying value in its assets that it has prior to the transfer, that is, the historical carrying value of assets and liabilities, see paragraph 50 and 51 on page 181 of the Consolidated Commentary.
[Chapter 6, section 6-30 of the Rules]

6.18 This is consistent with subsection 3-10(4) of the Rules, which requires that the FANIL of the Constituent Entity does not include any amounts relating to purchase accounting adjustments, irrespective of whether Constituent Entity

was acquired before or after the Transition Year of the acquiring Constituent Entity. Subsection 3-10(5) of the Rules provides an exception such that purchase accounting adjustments may be taken into account where acquisition occurs prior to December 2021 and a MNE Group does not have sufficient records to compute FANIL without adjustment.
[Chapter 6, section 6-30 of the Rules]

6.19 There are cases where the Constituent Entity is required to determine its GloBE Income or Loss by reference to a carrying value of assets or liabilities that may be different from the carrying value reflected in the financial accounts used for calculating FANIL.
[Chapter 6, section 6-30 of the Rules]

6.20 MNE Groups are required to determine the deferred tax assets and deferred tax liabilities for GloBE purposes based on the GloBE carrying value and the tax carrying value, in accordance with the Acceptable FAS (or Authorised FAS, if applicable), unless otherwise specified. The deferred tax expense or benefit in respect of such deferred tax asset or liability and its subsequent adjustments must be used to compute the Total Deferred Tax Adjustment Amount for purposes of determining the Adjusted Covered Taxes of the Constituent Entity.

6.21 Determination of deferred tax assets based on GloBE carrying values does not displace the application of the financial accounting standard used under section 3-10 of the Rules. However, the carrying value of the target’s Eligible Tangible Assets for the transfer year must be adjusted proportionally to correspond to the period in the transfer year that the target was a member of the disposing MNE Group or acquiring MNE Group, as relevant when computing the target’s Tangible Asset Carve-out Amount for the transfer year.
[Chapter 6, subsection 6-35(2) of the Rules]

6.22 Similarly, the amount of Eligible Payroll Costs of the target for the transfer year is the amount reflected in the CFS of the disposing MNE Group or the acquiring MNE Group.
[Chapter 6, subsection 6-35(1) of the Rules]

6.23 In applying the Rules to the acquiring MNE Group, a deferred tax asset or deferred tax liability is taken into account in the same manner as if the acquiring MNE Group controlled the target at the time the deferred tax asset or liability arose. A deferred tax asset or deferred tax liability is only taken into account by the acquiring MNE Group, if under the financial accounting standard, the deferred tax asset or deferred tax liability is considered to be transferred, which depends largely on the allocation of items for tax purposes under jurisdictional laws. The exception to this is GloBE Loss Deferred Tax Asset which is a jurisdictional attribute and is unable to be transferred to another MNE Group.
[Chapter 6, subsections 6-40(1), (2) and (3) of the Rules]

6.24 An MNE Group must make appropriate adjustments for a target that joins or leaves an MNE Group and has deferred tax liabilities that were included in the Total Deferred Tax Adjustment Amount under Part 4-4 of these Rules. At the

time a target ceases to be a Constituent Entity of an MNE Group, the disposing MNE Group must treat the deferred tax liability recorded under Part 4-4 as reversed in the transfer year. This is intended to relieve the disposing MNE Group from needing to reflect this deemed reversal in computations of total deferred tax adjustment.
[Chapter 6, subsections 6-40(3) and (4) of the Rules]

6.25 Conversely, a MNE Group that acquires a target with a deferred tax liability must treat that liability as arising in the transfer year, regardless of the year it arose. This restarts the five-year period, meaning that any subsequent increases to reductions to Covered Taxes have effect for the Fiscal Year in which the amount was recaptured, that is, the fifth subsequent Fiscal Year following the transfer year. The ordinary rule in section 4-80 of the Rules would have required that a Recaptured Deferred Tax Liability increase reductions to Covered Taxes for the fifth preceding Fiscal Year. This application only applies to deferred tax liabilities that fall within the meaning of recapture exception accruals under Part 4-4 of the Rules.
[Chapter 6, subsections 6-40(4) and (6) of the Rules]

6.26 If in a transfer year, a target is an UPE and a group Entity of one or more MNE Groups, then the target shall apply the IIR separately to its Allocable Shares of the Top-up Tax of LTCEs determined for each MNE Group. Thus, a determination whether a Constituent Entity in which the target has ownership interest is a LTCE must be made separately with respect to both the MNE Groups that the target joined or left. Similarly, a determination of whether a target is an UPE that is required to apply IIR must be determined based on the facts of each MNE Group and IIR rule order.
[Chapter 6, subsection 6-45 of the Rules]

Transfer of Ownership Interests treated as transfer of assets and liabilities

6.27 Division 2 of Part 6-2 of the Rules applies to capture transfers of a Controlling Interest in the target by treating the transfer as a transfer of the assets and liabilities of the target for local tax purposes as an acquisition or disposal of Ownership Interest for GloBE computations, provided that the relevant conditions are satisfied.
[Chapter 6, section 6-50 of the Rules]

6.28 The two conditions that must be met are that the jurisdiction in which the target is located:

- treats the acquisition or disposal in the same or similar manner as the acquisition or disposition of the underlying assets and liabilities of the target; and

- imposes a Covered Tax on the person disposing the Controlling Interest.
  [Chapter 6, subsection 6-50(1) of the Rules]

6.29 The first condition is met where, on acquisition of a Controlling Interest in the target, the jurisdiction of the target recognises the assets and liabilities of the target as forming part of another Constituent Entity in that jurisdiction for tax purposes because the target forms part of a TCG.
[Chapter 6, subsection 6-50(1) of the Rules]

6.30 If the target is a Tax Transparent Entity, then satisfying the first condition is based on the treatment of jurisdiction in which the assets are located.

6.31 To meet the second condition, the Covered Tax must be based on a gain that is determined by reference to the inside basis of the target's assets and liabilities. The Covered Tax is based on the difference between the tax basis of assets and liabilities and the consideration received for the Controlling Interest or the fair value of the underlying assets and liabilities of the target.
[Chapter 6, subsection 6-50(1) of the Rules]

6.32 Division 1 of this Part does not apply to the acquisition or disposal of the Controlling Interest.
[Chapter 6, subsection 6-50(2) of the Rules]

6.33 The consequences of Division 2 of Part 6-2 of the Rules applying are that the seller is treated as selling its Ownership Interest and the gain or loss on that sale is treated as an Excluded Gain or Loss under section 3-45 of the Rules in the jurisdiction in which the target is located. The gains on the disposition of assets and liabilities and Covered Taxes are included in the disposing MNE Group's ETR computation for the jurisdiction that imposed the treatment for local tax purposes, rather than the jurisdiction of the seller of the Ownership Interest.
[Chapter 6, subsection 6-50(3) of the Rules]

6.34 The acquiring Constituent Entity determines its GloBE Income or Loss using the fair value of the assets and liabilities of the target instead of the historic carrying value of assets and liabilities of the target. The fair value must be used in the computation of the acquiring entity's computation of GloBE Income or Loss in the transfer year and in the subsequent Fiscal Year, regardless of whether the fair value is in the target's financial accounts or in the CFS.
[Chapter 6, subsection 6-55(2) of the Rules]

Application to TCGs

6.35 Section 6-50 of the Rules applies where there is a transfer of Ownership Interests which results in an 'exit' from an existing TCG and an 'entry' into another TCG. However, where there is an 'exit' but there is no 'entry' into another TCG, the rules under section 6-50 of the Rules are not applicable.

Example 6.1 Treatment of Ownership Interest transfers between TCGs

Hold Co 1 and Hold Co 2 are unrelated parties and the respective head companies of two separate, existing Australian TCGs, respectively Aus TCG 1 and Aus TCG 2. Hold Co 1 holds a Controlling Interest in A Co.

A Co exits in Australian TCG 1. As a result, Hold Co 1 determines its gain or loss on the sale of the shares in A Co pursuant to the Capital Gains Tax rules and the Exit ACA rules in Division 711 of the ITAA 1997.

Hold Co 2 acquires 100% of the shares in A Co in the Transition Year (i.e., when Chapter 6 of the Rules are in effect) from Hold Co 1, an unrelated third party. As a result of the 'one-in, all-in' rule, A Co automatically joined the Aus TCG 2.

Hold Co 2's acquisition of A Co is treated as a business combination for accounting purposes. The historical book carrying value of the assets prior to the acquisition is nil.

The book carrying value of the assets of A Co at the beginning of the Transition Year was 3,000. The reset tax basis of the assets of A Co at the beginning of Transition Year was 3,000.

There was no DTA recognised in relation to the step up in tax basis of the assets, as the book carrying value and reset tax basis was equal.

The remaining book and tax depreciation period at the beginning of the Transition Year is 10 years.

Section 6-50 therefore applies to this transaction in the following way. Hold Co 1 is treated as selling its Ownership Interests in A Co and the gain or loss on that sale is excluded in calculating its GloBE Income or Loss for Australia.

A Co is treated as selling its assets and liabilities to Hold Co 2 in exchange for the consideration received by Hold Co 1. A Co's gain or loss and Covered Taxes on the sale of its assets and liabilities are taken into account in computing its GloBE Income or Loss and Adjusted Covered Taxes and Hold Co 1's ETR for Australia. A Co should be treated as acquiring the assets and liabilities based on fair value (i.e., the 'stepped up' basis).

Transfer of assets and liabilities

6.36 Part 6-3 of these Rules provides rules for the recognition or non-recognition of gain or loss on the disposition of assets and liabilities by a disposing MNE

Group and for determining the carrying values of assets and liabilities acquired by the acquiring MNE Group, see paragraph 69 on page 185 of the Consolidated Commentary.

6.37 For acquisitions and disposals of assets and liabilities between Constituent Entities, the GloBE Income or Loss of a disposing Constituent Entity is adjusted in accordance with the Arm's Length Principle described under sections 3-100 and 3-105 of the Rules regardless of whether transactions are recorded at cost rather than on fair value basis, see paragraph 73.1 on page 185 of the Consolidated Commentary.

6.38 Gains or losses arising from the transfer of assets and liabilities are generally included in GloBE Income or Loss (except for gains or losses arising on GloBE Reorganisations) to align the GloBE values with accounting values where accounting values generally reflect fair market value of assets and liabilities at the time of disposition.

6.39 Section 6-55 of the Rules generally requires inclusion of gain or loss arising from a transfer of assets (other than Ownership Interests that are not portfolio shareholdings) and liabilities in the computation of GloBE Income or Loss. Gains or losses from a transfer of Ownership Interests in another Constituent Entity are not included in GloBE Income or Loss under section 6-55 of the Rules, instead the gains or losses on transfer of Ownership Interests are considered Excluded Gains or Losses under section 3-30 of the Rules.
[Chapter 6, section 6-55 of the Rules]

6.40 The treatment of the disposition of assets and liabilities in calculating the GloBE Income or Loss of the disposing and acquiring Constituent Entities depends on whether or not the disposition is part of a GloBE Reorganisation.
[Chapter 6, sections 6-55, 6-60 and 6-65 of the Rules]

6.41 The disposing Constituent Entity needs to include a gain or loss in respect of disposal of assets and liabilities, in computing the GloBE Income or Loss of the disposing Constituent Entity for the Fiscal Year in which the disposal occurs.
[Chapter 6, subsection 6-55(1) of the Rules]

Table 6.1 Treatment of dispositions when calculating GloBE Income or Loss

Scenario	*Disposing Constituent Entity*	*Acquiring Constituent Entity*
GloBE Reorganisation	Exclude the gain or loss on disposition.	Use the disposing Constituent Entity's carrying value of the asset/liability upon disposition.
GloBE Reorganisation where the disposing Constituent Entity has a Non-qualifying Gain or Loss	Include the gain or loss on disposition to the extent of the Non-qualifying Gain or Loss.	Use the disposing Constituent Entity's carrying value of the asset/liability upon disposition, adjusted to be consistent with the local tax rules to account for the Non-qualifying Gain or Loss.
Disposition other than a GloBE Reorganisation	Include the gain or loss on disposition.	Use the acquiring Constituent Entity's carrying value of the asset/liability, as determined under the accounting standard used in preparing the CFS of the UPE.

Definition of GloBE Reorganisation

6.42 These rules are intended to harmonise the GloBE Rules with common tax reorganisation rules. A GloBE Reorganisation is defined in Article 10.1 of the Consolidated Commentary and is an acquisition or disposition where the sellers of the target are compensated with equity interests in the acquirer and the gains or losses on the acquired assets and liabilities are deferred under the local tax rules.
[Chapter 6, sections 6-60 and 6-65 of the Rules]

6.43 To meet the definition of GloBE Reorganisation, various conditions must be met, including consideration of equity interests, taxability of the gain or loss on the asset and the local tax laws of the jurisdiction. A GloBE Reorganisation extends to transformations where a transferor or acquiror is involved, such as when a business changes from a partnership to a corporation. Further, a transformation includes a contribution of assets to the capital of an existing Entity, provided that the Entity does not issue new or additional Ownership Interests in exchange for the contributed assets.
[Chapter 6, subsections 6-65(2) and (3) of the Rules]

6.44 To qualify as a GloBE Reorganisation, the transformation or transfer involves the disposal or acquisition of assets or liabilities. If no consideration is provided the issuance of an equity interest as consideration for the transformation or transfer would have no economic significance, if consideration provided it is in whole or significant part of equity interests issued by the acquiring Constituent Entity or by a person connected with the

acquiring Constituent Entity, or in case of liquidation, the consideration is with respect to the cancellation of equity interest of the target.
[Chapter 6, paragraphs 6-65(1)(a), (b) and (c) of the Rules]

6.45 Additionally, the disposing Constituent Entity's gain or loss on the assets and liabilities must be at least partially non-taxable at the time of the transformation or transaction.
[Chapter 6, paragraph 6-65(1)(d) of the Rules]

6.46 The criteria for the tax laws of the jurisdiction is considered to be satisfied where the tax laws of acquiring entity's jurisdiction require the acquiring entity to compute its taxable income after the acquisition using the disposing entity tax basis adjusted for any taxable gain or loss on the disposition or acquisition and that the taxable gain or loss on the transaction is generally lower than financial accounting gain or loss arising on the transaction.
[Chapter 6, paragraph 6-65(1)(e) of the Rules]

6.47 Finally, the tax laws of the jurisdiction in which the acquiring Constituent Entity is located must require the acquiring Constituent Entity to compute taxable income after the acquisition using the disposing Constituent Entity's tax basis in the assets or liabilities, adjusted for any Non-Qualifying Gain or Loss on the disposition or acquisition. The Non-qualifying Gain or Loss is the lesser of gain or loss of the transferor arising in connection with a GloBE Reorganisation that is subject to tax in jurisdiction, or the financial accounting gains or loss of the transferor.
[Chapter 6, subsection 6-65(4) of the Rules]

Gain or loss from GloBE Reorganisation of disposed assets and liabilities

6.48 In the case of a GloBE Reorganisation, where there is a transfer of assets and liabilities, the entity disposing of the assets and liabilities will exclude any gain or loss from its GloBE Income. The acquiring entity will compute its GloBE income or loss based on the disposing entity's carrying values of the acquired assets and liabilities immediately before disposal.
[Chapter 6, section 6-60 of the Rules]

6.49 The gain or loss of a transfer of assets and liabilities resulting from a GloBE Reorganisation is included in the computation of GloBE Income or Loss only to the extent it relates to a Non-qualifying Gain or Loss, defined in subsection 6-65(4) of the Rules generally as the lesser of the taxable or financial accounting gain or loss on the transfer. In most cases, there will not be any Non-qualifying Loss because jurisdictions typically do not allow losses to be taken into account in connection with a tax-free reorganisation. An adjustment to the FANIL for a Non-qualifying Gain is a positive adjustment, whereas an adjustment to FANIL for Non-qualifying Loss is a negative adjustment.
[Chapter 6, subsection 6-65(4) of the Rules]

Fair value adjustments

6.50 A Filing Constituent Entity for an MNE Group may make an annual or Five-Year election to apply a fair value adjustment, if certain conditions are met. The adjustment required for tax purposes is usually, but not always, based on fair value and may lead to determination of fair value for local tax purposes that is different from fair value for financial reporting purposes. An adjusting Constituent Entity is required or permitted to adjust the basis of its assets or amount of its liabilities to fair value for local tax purposes in a variety of circumstances, including where:

- a Constituent Entity is subject to exit tax because of a cross border re-organisation or change in Entity's tax residence; or
- a Constituent Entity joins or leaves a TCG.
[Chapter 6, subsections 6-70(1), (2) and (3) of the Rules]

6.51 The most common circumstance where a Constituent Entity would be required or permitted to adjust the basis of its assets, or the amount of its liabilities is where the Constituent Entity is subject to an exit tax because of a cross-border reorganisation or a change in the Entity's tax residence.

6.52 However, the fair value adjustment election does not apply to ordinary sales of assets (such as sales of inventory) by a Constituent Entity or transfer pricing adjustments. Moreover, if an election is made under section 6-70 of the Rules in connection with the acquisition of a Controlling Interest in a Constituent Entity that is governed by sections 6-15 to 6-45 of the Rules, the election does not affect the application of sections 3-30 and 3-35 of the Rules to the seller.

6.53 The election must specify the jurisdiction, the adjusting Constituent Entity, and the Fiscal Year in which the event that triggers the tax adjustment (the ***triggering event***) occurs. The election is required to be disclosed in the GloBE Information Return by the filing Constituent Entity, and the fair value adjustment applies when calculating GloBE Income or Loss in Fiscal Years which end after the triggering event. A choice is available to the Filing Constituent Entity of the MNE Group to include the amount of gain or loss in computing GloBE Income or Loss in the Fiscal Year in which the triggering event occurs or spread the gain or loss equally in the Fiscal Year that the triggering event occurs and 4 subsequent Fiscal Years. The election can be made separately for each triggering event.
[Chapter 6, subsections 6-70(1), (2), (3) and (4) of the Rules]

6.54 The difference between the carrying value for financial accounting purposes immediately before the triggering event, and the fair value immediately after the triggering event, adjusted to account for any Non-qualifying Gain or Loss, must also be included as income or loss in respect of each of the Constituent Entity's assets and liabilities.
[Chapter 6, subsection 6-70(5) of the Rules]

6.55 Where a fair value adjustment election applies, the fair value for accounting purposes immediately after the triggering event is used in calculating the Constituent Entity's GloBE Income or Loss.
[Chapter 6, subsection 6-70(6) of the Rules]

6.56 Pursuant to subsection 6-70(5) of the Rules, if the election is an Annual Election, include all amounts related to the Fiscal Year in which the triggering event occurs. If the election is a Five-Year election, include one fifth of that amount related to the Fiscal Year in which the triggering event occurs and in the subsequent four Fiscal Years.
[Chapter 6, subsection 6-70(7) of the Rules]

6.57 If the amount is spread across 5 Fiscal Years, and during that time the adjusting Constituent Entity ceases to be a Constituent Entity of the MNE Group in a Fiscal Year, then any remaining parts of the amount must be included in the Fiscal Year in which the adjusting Constituent Entity leaves the MNE Group.
[Chapter 6, subsection 6-70(8) of the Rules]

6.58 The Constituent Entity is not required to apply the consequences in subsections 6-70(5) to (8) of the Rules to both assets and liabilities if the Constituent Entity is only able to adjust the tax cost of its assets for tax purposes.

Interactions with Adjusted Covered Taxes

6.59 The deferred tax asset and liabilities that existed prior to the triggering event are reversed and included in Adjusted Covered Taxes. However, the deferred tax adjustment arising due to the triggering event itself is excluded from Adjusted Covered Taxes. The exclusion ensures no double counting arises as the increase in fair of assets or liabilities is included in GloBE Income or Loss. If recognition of deferred tax asset was also included in Adjusted Covered Taxes, it would lead to double inclusion of tax base fair value increase in calculating the ETR.

6.60 Total deferred tax adjustment amount for the Fiscal Year in which the triggering event occurs and subsequent fiscal years should be recalculated based on GloBE carrying values determined after including purchase accounting adjustments.

Joint Ventures

6.61 A common business practice undertaken by MNE Groups is entering into JVs with third parties. Generally, for accounting purposes, a JV is a business enterprise that is jointly controlled by two or more persons or entities. Given the enterprise is not controlled exclusively by one person or entity, its accounting is not consolidated with any of its owners on a line-by-line basis. Instead, JVs commonly report using the equity method in their CFS, which absent a special rule would exclude them from the scope of the GloBE Rules because they would not meet the definition of a Constituent Entity, see paragraphs 85 to 94 on pages 188 and 189 of the Consolidated Commentary.

6.62 A JV Entity or a deemed JV group, comprised of a JV and their Subsidiaries (each of which is a ***JV Entity***) are treated as Constituent Entities of a separate MNE Group for the purpose of computing Top-up Tax, including the relevant calculations for the ETR of the jurisdiction and the Jurisdictional Top-up Tax. ***[Chapter 6, section 6-75 of the Rules]***

6.63 A JV Entity or JV Subsidiary is only deemed a Constituent Entity for certain purposes, including the computation of Top-up Tax of the JV Entities and determining whether it is a LTCE.
[Chapter 6, subsection 6-75(3) of the Rules]

6.64 The Top-up Tax of a JV Entity or deemed JV Group is computed in accordance with Chapters 3 to 7 of the Rules. For a deemed JV Group, the separate calculations are done as if the JV Subsidiaries were Constituent Entities, and the JV Entity was the UPE of the deemed JV Group. In treating the JV Entity as separate from the MNE Group, this ensures that the GloBE Income or Loss and Covered Taxes of JV Entities are not blended with the Constituent Entities of the actual MNE Group for computing the JV Entity's or the MNE Group's jurisdictional ETR. Specific rules relating to eligibility of JV Entities for Safe Harbours are outlined in Chapter 8 of the Rules.

6.65 The amount and allocation of Top-up Tax for a JV Entity or JV group is computed in accordance with the relevant provisions under Chapter 2 of the Rules (as outlined in Chapter 2: from paragraph 2.7).

Multi-Parented MNE Groups

6.66 Where two or more MNE Groups prepare CFS in which the financial performance of these Groups is presented as a single economic unit, special rules ensure that GloBE Rules apply to these structures in the same way they would apply to a MNE Group with a single UPE with an appropriate allocation of Top-up Tax amongst Constituent Entities of the combined MNE Group. See paragraph 95 and following on page 189 of the Consolidated Commentary.

6.67 In a Multi-Parented MNE Group, each separate Group is treated as a single entity, such that the Constituent Entities of each separate Group are treated as Constituent Entities of a single MNE Group, which is the Multi-Parented MNE Group itself (the ***combined MNE Group***).
[Chapter 6, paragraph 6-80(2)(a) of the Rules]

6.68 Entities (other than Excluded Entities) are treated as Constituent Entities of the combined MNE Group an Entity if it is consolidated on a line-by-line basis or if a Controlling Interest is held. This ensures that the revenue of these entities is included in the revenue threshold for the combined MNE Group for the purposes of section 12 of the Assessment Act. Further, consistent with the

Assessment Act, references to 'the UPE' of the separate Groups are treated as references to UPEs of the combined MNE Group.
[Chapter 6, subsection 6-80(2) of the Rules]

6.69 A Multi-Parented MNE Group is formed where two UPE of an MNE Group enter into either a ***dual-listed arrangement*** or a ***stapled structure*** arrangement, and at least one Constituent Entity of any of the Groups must be located in a different jurisdiction, which may include an Excluded Entity. If there is such an Excluded Entity, then for the purposes of determining whether a Multi-Parent MNE Group is formed, it is treated as not being an Excluded Entity.
[Chapter 6, section 6-85 of the Rules]

6.70 For example, two separate domestic Groups may each hold 50 per cent of the Ownership Interests of an Entity located in another jurisdiction (or domestic Entity with a Permanent Establishment in another jurisdiction). Ordinarily, the Entity would be treated as a JV by each Group individually. However, in the case of a Multi-parented MNE Group the JV becomes a Constituent Entity of the combined MNE Group and because that Entity is located in another jurisdiction, the combined MNE Group becomes a Multi-Parented MNE Group.

Stapled Structure

6.71 A stapled structure is where at least 50 per cent of the Ownership Interests in the UPE of the separate Groups are combined with each other as if they were the Ownership Interests of a single entity. Those ownership interests are combined in a way that they cannot be transferred or traded independently. If stapled ownership interests are listed on a securities exchange, the combined ownership interests are quoted at a single price.
[Chapter 6, subsection 6-85(3) of the Rules]

Dual listed arrangement

6.72 A dual listed arrangement is where at least two UPEs combine their businesses through contract rather than through the ownership and control of a single entity. Under a dual-listed arrangement, each UPE makes distributions to its owners based on a fixed ratio pursuant to a contract, such as an equalisation agreement, and the activities of the combined MNE Groups are managed collectively as if they were carried out by a single entity. Contrasted to stapled structures, the Ownership Interests in the UPEs under a dual-listed arrangement may be quoted, traded or transferred independently in different capital markets.
[Chapter 6, subsection 6-85(4) of the Rules]

Multi-parented MNE Group requirements

6.73 Both Stapled Structures and Dual Listed Arrangements must prepare CFS in which the assets, liabilities, income, expenses and cash flows of all the Entities of the Groups are presented together those of a single economic unit. The CFS must also be externally audited pursuant to a regulatory regime. The external audit requirement is satisfied where an UPE prepares CFS in accordance with an Acceptable FAS that requires that the CFS must present fairly the financial position and performance of the Entities, and the CFS are audited by a professional external auditor in accordance with the auditing standards issued by the auditing standards board in the jurisdiction where the UPE is located. ***[Chapter 6, paragraphs 6-80(2)(c), 6-85(3)(d) and (4)(e) of the Rules]***

Chapter 7: Investment Entities

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Outline of chapter

7.1 Chapter 7 of the Rules sets out the application of the GloBE Rules to certain tax neutrality and distribution tax regimes for:

- UPEs that are subject to a tax neutrality regime;
- tax regimes that subject an Entity to tax on its earnings when those earnings are distributed or deemed to be distributed; and
- Investment Entities and Insurance Investment Entities.

7.2 Special rules are necessary as applying the standard adjustment rules in Chapters 3 and 4 to non-standard corporate tax regimes could result in unintended outcomes under the GloBE Rules.

Detailed explanation of new law

UPE that is a Flow-through Entity

7.3 A jurisdiction's tax system may contain rules designed to achieve a single level of taxation on business income. While some jurisdictions may achieve this by adjusting the treatment of income in the hands of the owner, for example, by exempting distributions received by shareholders. Other jurisdictions may provide for a similar result by adjusting the treatment of income in the hands of the business entity, for example, by treating certain entities or arrangements as transparent for tax purposes or permitting that entity or arrangement to deduct distributions to its investors from its taxable income. See paragraph 2 on page 195 of the Consolidated Commentary.

7.4 These approaches to single-level taxation could result in unintended outcomes under the GloBE Rules when they apply to the UPE. This is because the ETR of the UPE itself will be nil or very low, resulting in a significant Top-up Tax charge even though the burden of taxation has been borne by the Entity's owners, and not avoided. This outcome would result from the application of the relevant rules in Chapters 3 and 4 of the Rules.

7.5 Furthermore, the allocation of Covered Taxes paid by one Constituent Entity in connection with income earned by another Constituent Entity under Part 4-3 of the Rules, does not apply in the case of taxes paid by persons that are not Group Entities. Allocating the taxes accrued by the owners that are outside the MNE Group would be both against the policy intention of the GloBE Rules and administratively difficult.

7.6 Part 7-1 of the Rules addresses this issue in certain situations. The principle underlying the rules is the UPE's exposure to Top-up Tax is reduced to the extent that the tax neutrality regime imposes tax on the UPE's owners (e.g. partners, beneficiaries, or shareholders) at or above the Minimum Rate on the UPE's income contemporaneously or within a short time. This is achieved by reducing the GloBE Income of the UPE that corresponds to the share of its income that is subject to tax at or above the minimum rate in the hands of its owners.
[Chapter 7, section 7-5 of the Rules]

7.7 More specifically, the GloBE Income of a UPE of an MNE Group is reduced under Part 7-1 of the Rules (but not below zero) where the UPE is a Flow-through Entity and an amount (the attributable income) of the UPE's GloBE Income for a Fiscal Year is attributable to an Ownership Interest in the UPE, in respect of which the holder satisfies certain conditions. In this instance, the term "attributable to" takes its ordinary meaning and is not referring to an "attribution regime" of a jurisdiction.
[Chapter 7, subsections 7-5(1) and (2) of the Rules]

7.8 Where the holder of an Ownership Interest in such a UPE meets one of 3 criteria, the UPE will reduce its GloBE Income, for the Fiscal Year, by the amount of GloBE Income attributable to each such Ownership Interest. The remainder of the income, if any, will be included in the computation of the UPE's GloBE Income or Loss and included in the computation of the Net GloBE Income for the jurisdiction determined in accordance with section 5-10 of the Rules.
[Chapter 7, subsections 7-5(2), (3) and (4) of the Rules]

Conditions for a UPE to reduce its GloBE Income

7.9 The UPE can reduce its GloBE Income by the amount of GloBE Income attributable to each such Ownership Interest if the following 3 conditions are met:

- the holder of the Direct Ownership Interest is subject to tax in respect of the attributable income for a taxable period ending within 12 months of the end of the MNE Group's Fiscal Year, and is either:
  - subject to tax on the full amount of such income at a nominal rate of at least 15 per cent, or
  - it is reasonably expected that the sum of Covered Taxes paid on the income (paid by the UPE and other Entities that are part of the Tax Transparent Structure) and Taxes of the Ownership Interest holder will equal or exceed the full amount of the attributable income multiplied by the Minimum Rate (**Condition 1**);
- the holder of the Ownership Interest is an individual who is tax resident in the jurisdiction of the UPE and does not hold Ownership Interests that carry rights to more than a 5 per cent of the profits and assets of the UPE (Condition 2); or
- the holder of the Ownership Interest is a Government Entity, International Organisation, Non-Profit Organisation or Pension Fund that [is resident] in the jurisdiction where the UPE is located and does not hold Ownership Interests that carry rights to more than a 5 per cent of the UPE's profits and assets (Condition 3).
  [Chapter 7, subsections 7-5(2) and (3) of the Rules]

Condition 1

7.10 Generally for the condition 1 reduction to apply, two tests must be met regarding each Ownership Interest, being a taxable period test and a minimum tax test. The holder of the Ownership Interest is subject to tax within 12 months. It is sufficient for that income to be included in their taxable income in their resident jurisdiction - the tax liability does not need to be paid and either:

- the tax rate on the full amount of income is at least 15 per cent; or
- the expected sum of covered taxes (including those paid by the UPE and by entities included in the tax transparent structure plus taxes paid by the holder on their share of income) at least equals the full amount of income multiplied by 15 per cent.
  [Chapter 7, section 7-5 of the Rules]

7.11 A UPE can only reduce its GloBE Income in respect of Ownership Interests that meet both of the following tests:

- a taxable period test; and
- a minimum tax test.
  [Chapter 7, subsection 7-5(2)(a) of the Rules]

Taxable period test

7.12 The taxable period test requires that a holder of the Ownership Interest is subject to tax on its share of the UPE's GloBE Income if that income is eligible to be included in the holder's taxable income or includible in taxable income of a Permanent Establishment of the holder under the laws of the jurisdiction in which the holder is tax resident.

7.13 Specifically, the holder must be subject to tax on its share of the UPE's GloBE Income for a taxable period that ends within 12 months of the end of the MNE Group's Fiscal Year. The holder is not required to pay its tax liability within 12 months of the end of the MNE Group's Fiscal Year to meet this test. It is sufficient that the holder's share of the UPE's GloBE Income is included in its taxable income for a taxable year that ends within 12 months of the MNE Group's Fiscal Year end.
[Chapter 7, subsection 7-5(2)(a) of the Rules]

7.14 A temporary difference (such as a timing difference) between the time an item of income or expense is included in the computation of GloBE Income or Loss and the UPE's taxable income will not cause a holder to fail the requirements of the taxable period test. A holder is considered subject to tax on the full amount of its GloBE Income even if its taxable income includes expenses or losses related to other investments or businesses or profit-seeking activities.

Minimum tax test

7.15 The minimum tax test evaluates the Ownership Interest holder's level of taxation and can be satisfied if one of the two conditions are met.

7.16 The first condition is met if the holder is subject to tax on the full amount of its share of the GloBE Income and subject to tax at a nominal rate that equals or exceeds the Minimum Rate. Alternatively, this condition may be met if it can be reasonably expected that the sum of the Covered Taxes paid by the UPE and other Entities that are part of the Tax Transparent Structure and taxes paid by the holder on the income attributable to the Ownership Interest equals or exceeds the full amount of the attributable income multiplied by the Minimum Rate.
[Chapter 7, subsection 7-5(3) of the Rules]

7.17 The nominal rate is the statutory rate applicable to the holder on its share of the UPE's income. If the holder is subject to graduated rates, the nominal rate is the highest rate applicable to the holder determined as if its share of the UPE's GloBE Income were its total taxable income.

7.18 This requirement is met with respect to Ownership Interest holders that are not residents of the UPE's jurisdiction if that jurisdiction subjects them to tax at or above the Minimum Rate either because they are treated as having a Permanent Establishment there or because the income is sourced there and subject to a withholding or similar source-based tax. If the non-resident holders are not subject to tax in the UPE's jurisdiction at a nominal rate that equals or exceeds the Minimum Rate, additional information will be required in order for the UPE to demonstrate that those holders are subject to tax on their share of the income within 12 months at a nominal rate that equals or exceeds the Minimum Rate.

7.19 Whether the taxes paid can be reasonably expected to equal or exceed the tax at the Minimum Rate is determined based on all the facts and circumstances. The MNE Group bears the burden of proving that the expectations are reasonable.

7.20 This condition does not require an ETR computation. It requires that the taxes paid by the UPE and other Entities that are part of the Tax Transparent Structure are Covered Taxes and that the taxes paid by the holders are taxes on the income of the UPE. For instance, the UPE could be required to pay a local Covered Tax notwithstanding that its income is allocated to its holders under federal law. In this case the condition is met if it is expected that the net amount of tax paid by the UPE itself and the holder equals or exceeds the minimum tax on that income.

Example 7.1 UPE that is a Flow-through Entity – Condition 1

A Co is a Flow-through Entity that is the UPE of an MNE Group. A Co is located in Country A and the Fiscal Year ends on 31 January. Person 1 is an individual tax resident in Country A while Person 2 is an individual tax resident in Country B. Person 1 and Person 2 each hold a 50% of the Ownership Interests in A Co. For the Fiscal Year ended 31 January Year 1, A Co reports EUR 140,000 of income both for domestic income tax and GloBE purposes.

Under the tax laws of Country A, EUR 70,000 of A Co's income is included in the taxable income of Person 1 for the income tax year ending 30 June Year 1. The computation of the taxable income of Person 1 also includes a loss of EUR 50,000 from another business conducted in Country A. The taxable income of Person 1 under the tax laws of Country A is EUR 20,000 (70,000 – 50,000) and Person 1 is subject to tax in Country A at a rate of 20% on such taxable income.

Under the tax laws of Country A, Person 2 is treated as having a Permanent Establishment in Country A and the taxable income of that Permanent Establishment includes EUR 70,000 of A Co's taxable income. Person 2 is subject to tax in Country A at a rate of 20% on the income of its Permanent Establishment for the income tax year ending 31 December Year 1.

A Flow-through Entity that is the UPE reduces its GloBE Income pursuant to section 7-5 by the amount of GloBE Income attributable to an Ownership Interest if (1) the holder is subject to tax on that income for a taxable period that ends within 12 months of the end of the MNE Group's Fiscal Year and (2) the holder of the Ownership Interest is subject to tax on the full amount of such income at a nominal rate that equals or exceeds the Minimum Rate.

Person 1 is subject to tax on their share of A Co's GloBE Income for a taxable period that ends on 30 June Year 1, which is within 12 months of the end of A Co's Fiscal Year ended on 31 January Year 1, notwithstanding that payment of Person 1's tax liability is not due within 12 months of the end of A Co's Fiscal Year. Further, Person 1 is subject to tax on their share of A Co's GloBE Income at a nominal rate that equals or exceeds the Minimum Rate. Person 1 is subject to tax on the full amount of such income notwithstanding that they were allowed to offset their share of A Co's GloBE Income with a loss from another business in computing their Country A taxable income. Accordingly, A Co reduces its GloBE Income for the Fiscal Year ended 31 January Year 1 pursuant to subsection 7-5(2) by EUR 70,000 in respect of the Ownership

Interests held by Person 1. A Co will reduce its Covered Taxes proportionately under subsection 7-5(4).

Person 2 is subject to tax on their share of A Co's GloBE Income for a taxable period that ends on 31 December Year 1, which is within 12 months of the end of A Co's Fiscal Year. Person 2 is also subject to tax on the full amount of such income at a nominal rate that equals or exceeds the Minimum Rate. Accordingly, A Co reduces its GloBE Income for the Fiscal Year ended 31 January Year 1 pursuant to subsection 7-5(2) by EUR 70,000 in respect of the Ownership Interests held by Person 2. A table illustrating the results of this example is set out below.

	Person 1	**Person 2**
GloBE Income	70,000	70,000
Tax at Minimum Rate	15%	15%
Nominal Rate	20%	20%
GloBE Income reduction subsections 7-5(2)(a) and (3)(a)	Yes	Yes

Condition 2

7.21 The second condition applies to different types of Ownership Interest holders that both require the holder to be residents in the UPE's jurisdiction and holding a small ownership interest of 5 per cent or less to the UPE's profits and assets. The types of entities that may be holders are those outlined in condition 1.
[Chapter 7, section 7-5 of the Rules]

7.22 Condition 2 reduces the Flow-through UPE's GloBE Income for interests held by owners that is an individual tax resident in the UPE's jurisdiction and that hold small Ownership Interests in the UPE.
[Chapter 7, paragraph 7-5(2)(b) of the Rules]

7.23 Determining the tax position of minority owners may be burdensome for the UPE because individuals are typically not eligible for preferential tax rates on income derived through a Tax Transparent Entity. It is reasonable not to require the UPE to determine the tax position of an individual that holds Ownership Interests that in aggregate carry rights to 5 per cent or less of the profits and assets of the UPE. This rule means that a UPE could be required to determine the tax position of no more than 19 natural persons, and such persons would have relatively significant stakes in the UPE.

7.24 To qualify for such treatment, the individual must be a tax resident of the UPE's jurisdiction. An individual is a tax resident in a jurisdiction only if the

person is subject to individual income tax in that jurisdiction. Consequently, an individual cannot be tax resident in a jurisdiction that does not impose an individual income tax. The UPE may use reasonable means of determining whether its owners are tax resident in the jurisdiction. For example, a UPE in a jurisdiction that imposes a withholding tax on the profits or distributions from the UPE with respect to foreign owners of the UPE may rely on an owner's representation as to whether it is exempt from a withholding tax or eligible for a lower withholding tax rate based on a Tax Treaty.
[Chapter 7, subparagraph 7-5(2)(b)(i) of the Rules]

7.25 This treatment only applies to individuals that each hold Ownership Interests that in aggregate carry rights to 5 per cent or less of the profits and 5 per cent or less of the assets of the UPE. For example, this means that an Ownership Interest giving rights to 51 per cent of profits would fall outside of this rule, despite giving rights to less than 5 per cent of the assets. The extent of each person's Ownership Interests is determined as of the end of the Fiscal Year. This subsection only applies where the Ownership Interests of the UPE are held directly by individuals.
[Chapter 7, subparagraph 7-5(2)(b)(ii) of the Rules]

Example 7.2 UPE that is a Flow-through Entity – Condition 2

C Co is a Flow-through Entity and a Tax Transparent Entity that is the UPE of an MNE Group. C Co is located in Country C where a 5% corporate income tax rate applies. C Co's taxable income and GloBE Income for the Fiscal Year ended on 31 December Year 1 is EUR 200,000. The Adjusted Covered Taxes of C Co on its income are EUR 10,000 (= 5%* EUR 200,000) and such taxes meet the definition of Covered Taxes (see Part 4-2).

Person 3 is an individual tax resident in Country C that holds a 50% Ownership Interest in C Co. Person 3's share of C Co's income for Year 1 is EUR 95,000 (= 50% x [EUR 200,000 – 10,000]). Person 3 is subject to a nominal 11% personal income tax rate on a calendar year basis. Person 3's share of C Co's income for the Fiscal Year ended on 31 December Year 1 is included in Person 3's Country C taxable income for the calendar year that ended 31 December Year 1. Person 3 is not entitled to reduce its Country C tax imposed on its share of C Co's income as a result of Country C taxes imposed on such income.

C Co cannot reduce its GloBE Income pursuant to subsection 7-5(3)(a) because the personal income tax rate applicable to Person 3 is 11%, which is a nominal rate below the Minimum Rate. However, a Flow-through Entity that is the UPE reduces its GloBE Income pursuant to subsection 7-5(3)(b) by the amount of GloBE Income attributable to an Ownership Interest if (1) the holder is subject to tax on that income for a taxable period that ends within

12 months of the end of the MNE Group's Fiscal Year and (2) it can reasonably be expected that the aggregate amount of Adjusted Covered Taxes of the UPE and Taxes of the holder of the Ownership Interest on such income equals or exceeds the amount that results from multiplying the full amount of such income by the Minimum Rate (see subsection 7-5(3)(b)).

Person 3 is reasonably expected to pay EUR 10,450 of Taxes (= 11% x EUR 95,000 after-tax income of C Co) in Country C. The sum of the Taxes paid by Person 3 and C Co on the EUR 100,000 of GloBE Income attributable to Person 3 is EUR 15,450 (= EUR 10,450 paid by Person 3 + EUR 5,000 paid by C Co), which exceeds the amount (EUR 15,000) that results from multiplying the full amount of such income by the Minimum Rate (EUR 100,000 * 15%). C Co will therefore reduce its EUR 200,000 GloBE Income in Year 1 by the EUR 100,000 GloBE Income attributable to Person 3's Ownership Interest. C Co will reduce its Covered Taxes proportionally under subsection 7-5(4). A table illustrating the numerical results of this example is set out below.

	EUR
GloBE Income	100,000
Tax at Minimum Rate	15,000
Taxes (C Co)	5,000
Taxes (Person 3)	10,450
Aggregate Taxes	15,450
GloBE Income reduction subsection 7-5(3)(b)	Yes

C Co would not have been entitled to reduce its GloBE Income if Person 3 was granted a tax credit in Country C equal to the amount of Taxes paid by C Co. In that case, it would not be reasonable to expect the aggregate amount of Taxes (EUR 11,000) paid by Person 3 (EUR 6,000) and C Co (EUR 5,000) to equal or exceed the amount that results from multiplying the full amount of GloBE Income by the Minimum Rate. A table illustrating the numerical results of this subsection is set out below.

	EUR
GloBE Income	100,000
Tax at Minimum Rate	15,000
Taxes (C Co)	5,000
Taxes (Person 3)	6,000
Aggregate Taxes	11,000
GloBE Income reduction subsection 7-5(3)(b)	No

Condition 3

7.26 Condition 3 covers the case where the holder of the Ownership Interest in the UPE is a Governmental Entity, International Organisation, a Non-profit Organisation, or a Pension Fund.
[Chapter 7, paragraph 7-5(2)(c) of the Rules]

7.27 The Governmental Entity, International Organisation, Non-profit Organisation or Pension Fund must be resident in the UPE's jurisdiction. A Governmental Entity is resident only in the jurisdiction of the government (including any political subdivision or local authority thereof) of which it is a part or that wholly owns it.

7.28 The term "resident" means the jurisdiction where the UPE is located and is distinct from "tax residence" as used in Tax Treaties, Parts 10-2 or 10-3 of the Rules.

7.29 Additionally, the holder's Ownership Interests must in aggregate carry rights to 5 per cent or less of the profits and assets of the UPE. This ownership limitation is designed to ensure that Part 7-1 of the Rules cannot be used to circumvent the prohibition from carrying on a trade or business by carrying on a trade or business through a Tax Transparent Entity.
[Chapter 7, subparagraph 7-5(2)(c)(iii) of the Rules]

7.30 Ownership Interests in the Tax Transparent Entity held by Investment Entities are not included in Condition 3 because Investment Entities are tax neutral whereas the Entities described in Condition 3 are generally not subject to tax under the laws of the UPE's jurisdiction. An Investment Entity itself may be subject to tax at a rate below the Minimum Rate of 15 per cent and the UPE would have no knowledge of the taxability or residency of the Investment Entity's owners.

Proportional Reduction in Covered Taxes

7.31 Where a UPE reduces its GloBE Income under the above rules it is required to reduce its Covered Taxes, if any, in proportion to the income reduction. To avoid doubt, if the amount of the UPE's Covered Taxes associated with the GloBE Income is a negative amount, instead of reducing the amount of Covered Taxes by the proportion of reduced GloBE Income, the UPE's Covered Taxes will be increased by the proportion of reduced GloBE Income. ***[Chapter 7, subsection 7-5(4) of the Rules]***

7.32 For example, if the UPE reduces its GloBE Income by 80 per cent, the UPE must also reduce its Covered Taxes by 80 per cent. It is noted that Covered Taxes excluded by subsection 7-5(4) of the Rules whilst not taken into account in the ETR computation for the UPE Jurisdiction, are taken into account under paragraph 7-5(2)(a) of the Rules in determining whether the taxes on the holder's share of the UPE's GloBE Income equal or exceed the tax at the Minimum Rate on that income.

7.33 Section 7-5 of the Rules reduces the Flow-through Entity's GloBE Income by all of the GloBE Income (determined after adding back Covered Taxes) allocable to an Ownership Interest. Accordingly, no further adjustment is required to reduce the Entity's GloBE Income by the related Covered Taxes as required under subsection 7-20(4) of the Rules.

Flow-through Entity that is a UPE – reduce GloBE Loss

7.34 If the UPE is a Flow-through Entity and has a GloBE Loss for a Fiscal Year, the GloBE Loss is reduced by the amount attributable to each Ownership Interest in the UPE (but not below zero), except to the extent that the holders of Ownership Interests are not allowed to use the loss in computing their separate taxable income.
[Chapter 7, section 7-10 of the Rules]

7.35 This means that the GloBE Loss is not reduced to zero only if the loss does not flow through, in its entirety, to the holders of Ownership Interests under the tax laws applicable to the Entity and to the holders so as to allow the holders to use their share of such loss in computing their separate taxable income. To the extent that the GloBE Loss is not reduced to zero, the remaining GloBE Loss stays with the Flow-through UPE. Without this rule, losses that are passed through to the holders of Ownership Interests would also be available for use in the jurisdictional ETR calculation to shield GloBE Income of other Constituent Entities located in the UPE's Jurisdiction.

7.36 To the extent that a GloBE loss of a Flow-through UPE is not reduced to zero and stays with the Flow-through UPE, a Filing Constituent Entity may make a GloBE Loss Election that is limited to the UPE as described from paragraph 4.213. As described from paragraph 4.222 the amount of GloBE Loss Deferred Tax Asset is based on the amount of the GloBE Loss remaining after applying subsection 7-10(2) and may be included in the UPE's Adjusted Covered Taxes in a subsequent year for purposes of paragraph 7-5(3)(b) of the Rules.

7.37 The reduction in GloBE Loss applies with respect to each Ownership Interest. Therefore, the MNE Group is required to demonstrate that each of its Ownership Interest holders is not able to deduct losses attributed to their Ownership Interest in the computation of their separate taxable income to include their share of the loss in the GloBE Loss Deferred Tax Asset computed under section 4-115 of the Rules.
[Chapter 7, section 7-10 of the Rules]

Application to Permanent Establishments

7.38 Sections 7-5 and 7-10 of the Rules apply to certain Permanent Establishments through which the UPE and certain other Flow-through Entities of the MNE Group conduct their business. The types of Permanent Establishments these rules apply to are:

- where the business of the Flow-through UPE is wholly or partly carried out through a Permanent Establishment;
- where the Flow-through UPE directly holds the Ownership Interests of another Tax Transparent Entity whose business is wholly or partly carried out through a Permanent Establishment; or
- where the Flow-through UPE holds the Ownership Interest of the Tax Transparent Entity and the Permanent Establishment through an ownership chain of Tax Transparent Entities.
[Chapter 7, subsection 7-15(1) of the Rules]

7.39 A Flow-through UPE that holds a direct Ownership Interests of another Tax Transparent Entity that conducts business through a Permanent Establishment is evident where the FANIL attributable to the Permanent Establishment is included in the financial statements of the Tax Transparent Entity held by the Flow-through UPE.

7.40 In all of these cases, the FANIL attributable to the Permanent Establishment is included in the financial statements of the UPE, but liability for the tax on that income may be borne by the UPE or by the holders of the UPE. Where the tax on the income of the Permanent Establishment is borne by the holders, the

Permanent Establishment's GloBE Income is reduced to the extent the conditions of paragraphs 7-5(2)(a) or 7-5(2)(b) of the Rules are met. In such cases, paragraph 7-5(2)(b) of the Rules takes into account any tax paid or payable in the jurisdiction where the Permanent Establishment is located regardless of whether that tax is paid or payable by a Constituent Entity or by the holders of the UPE.
[Chapter 7, section 7-15 of the Rules]

7.41 Furthermore, the test in section 7-5 of the Rules applicable to the GloBE Income of the Permanent Establishment is separate from the test applicable to the GloBE Income that has been allocated to the UPE. This means that the GloBE Income or Loss of the Permanent Establishment is not included in the GloBE Income of the UPE for purposes of applying section 7-5 of the Rules to the UPE. The Permanent Establishment is treated separately from the UPE because it is a separate Constituent Entity, and its income does not flow-through to the UPE under Chapter 3 of the Rules as does the income of a Tax Transparent Entity. However, the Permanent Establishment's GloBE Income is reduced to the extent that the conditions of subsection 7-5(2) of the Rules are met by a holder of an Ownership Interest in the UPE with respect to the income of the Permanent Establishment.
[Chapter 7, section 7-15 of the Rules]

Example 7.3 UPE that is a Flow-through Entity with a Permanent Establishment

A Co is a Flow-through UPE of ABC Group which conducts business operations in Countries A and B. A Co carries out business operations in Country B and therefore has a Permanent Establishment in Country B.

A Tax Transparent Entity is created in Country A with two owners, each of whom holds 50% of its Ownership Interests.

Under the rules of Parts 3-4 and 3-5, EUR 100 of A Co's income is allocated to a Permanent Establishment located in Country B (see section 3-165). Country B imposes 15% tax on the owners of A Co in respect of the EUR 100 income allocated to Permanent Establishment, resulting in each owner paying EUR 7.5 (100 x15% x 50%) of tax to Country B (total EUR 15).

In Country B, the holders of A Co's Ownership Interests are subject to a 15% tax and it is reasonable to expect that the EUR 7.5 tax paid by each holder equals the amount of each holders' share of the Permanent Establishment's income multiplied by the Minimum Rate, or EUR 7.5 (= 50 income x 15% Minimum Rate). Accordingly, Permanent Establishment's GloBE Income is reduced by EUR 100 in Country B pursuant to section 7-15.

UPE subject to Deductible Dividend Regime

7.42 Part 7-2 of the Rules collects the tax on the Entity's income at the level of the owner, either by taxing that owner directly on its Allocable Share of the entity's income in the case of a Tax Transparent Entity or by taxing the owners on a Deductible Dividend paid by the entity in the case of a Deductible Dividend Regime.

7.43 GloBE Income and Covered Taxes are reduced where a UPE is subject to a Deductible Dividend Regime.

7.44 ***Deductible Dividend Regime*** and ***Deductible Dividend*** are defined for the purposes of these rules to capture non-standard tax regimes designed to yield a single level of taxation by allowing an Entity a deduction for distributions of profits to the owners.
[Chapter 7, sections 7-30 and 7-35 of the Rules]

7.45 If a UPE is subject to a Deductible Dividend Regime and distributes an amount as a Deductible Dividend within 12 months after the end of a Fiscal Year, the UPE's GloBE Income for the Fiscal Year is reduced by that amount (but not to below zero). This rule applies where:

- the dividend recipient is a natural person that is tax resident in the UPE's jurisdiction and that holds Ownership Interests that in aggregate carry rights to 5 per cent or less of the profits and assets of the UPE; or
- the dividend recipient is resident in the UPE's jurisdiction and is a Governmental Entity, an International Organisation, a Non-profit Organisation or a Pension Fund that is not a Pension Services Entity.
[Chapter 7, subsections 7-20(1) and (2) of the Rules]

7.46 The rule also applies where the dividend is subject to tax in the hands of the recipient within 12 months after the end of the Fiscal Year, and:

- the dividend recipient's nominal tax rate on the dividend amount is at least 15 per cent;
- it can be reasonably expected that the aggregate amount of Covered Taxes paid by the UPE and taxes paid by the owner on the income attributable to its Ownership Interest equals or exceeds the amount that results from multiplying the full amount of such income by the 15 per cent; or
- the dividend is a patronage dividend from a supply Cooperative paid to an individual.
[Chapter 7, subsections 7-20(2) and (3) of the Rules]

7.47 The reduction of the UPE's Covered Taxes in proportion to the income distributed as a Deductible Dividend does not apply to any taxes paid on undistributed GloBE Income pursuant to the Deductible Dividend Regime itself.

7.48 The rules applicable to the UPE also apply to other Constituent Entities located in the UPE's jurisdiction and that are subject to the Deductible Dividend Regime. The Constituent Entities must be directly or indirectly held through an ownership chain of other Constituent Entities that the UPE holds an interest in. However, any income of the Constituent Entities that are not the UPE is only reduced to the extent it is distributed to the UPE and then the UPE distributes the income to recipients that meet the requirements of section 7-20 of the Rules.
[Chapter 7, section 7-25 of the Rules]

7.49 The UPE must maintain records sufficient to demonstrate that such distributions occurred within 12 months of the end of the Fiscal Year of the subsidiary Entity subject to the Deductible Dividend Regime. The UPE may use any reasonable method of determining the source of any intra-group distributions from other Entities, including determining the income of Entities that are subject to a Deductible Dividend Regime and Entities that are subject to an ordinary income tax, that have not been distributed to the UPE's owners.

Eligible Distribution Tax Systems

7.50 The rule in Part 7-3 of the Rules addresses unintended consequences that arise because of the differences between the time the income accrues in the financial accounts and the time it is subject to distribution tax to the extent that distributions are made within a four-year period.

7.51 A Constituent Entity that is subject to certain eligible tax regimes that subject an Entity to tax on its earnings when those earnings are distributed or deemed distributed may add the amount of that tax to the Adjusted Covered Taxes for the Fiscal Year.

7.52 To apply this rule, a Filing Constituent Entity for an MNE Group must make an Annual Election in respect of the specified jurisdiction that has an Eligible Distribution Tax System and each Constituent Entity of the MNE Group that is located in the jurisdiction. The effect of the Annual Election is that the amount of Deemed Distribution Tax is added to Adjusted Covered Taxes.
[Chapter 7, section 7-40 of the Rules]

7.53 ***Eligible Distribution Tax System*** is defined to capture tax regimes that were in force on or before 1 July 2021 and subject an Entity to at least a 15 per cent tax on its earnings when those earnings are distributed or deemed distributed to shareholders.
[Chapter 7, section 7-45 of the Rules]

7.54 An Eligible Distribution Tax System does not include taxes imposed on the shareholders in respect of distributions, despite these taxes may be withheld and remitted by the distributing corporation.

7.55 Where a distribution tax jurisdiction applies tax at a nominal rate but requires that before applying the rate, the distributed amount must be grossed up to reflect the gross tax basis before distribution tax, the statutory rate is the rate after the application of such gross up.

7.56 Deemed Distribution Tax is not defined under the law, but it is a concept under the GloBE Model Rules that is captured by subsection 7-50(3) of the Rules. It is the lesser of the amount necessary to raise the ETR computed under paragraph 5-5(a) of the Rules for the jurisdiction for the Fiscal Year to the Minimum Rate, or the amount of distribution tax that would have been paid if the Constituent Entities in the jurisdiction had distributed all of their income that was subject to the Eligible Distribution Tax Regime during such Fiscal Year. The amount is computed at the jurisdictional level.
[Chapter 7, section 7-50 of the Rules]

7.57 For the purposes of tracking the extent to which Deemed Distribution Tax is paid within the four-year period, at the end of the Fiscal Year a Deemed Distribution Tax Recapture Account is established for each Fiscal Year. This amount is equal to the Deemed Distribution Tax calculated in subsection 7-50(3) of the Rules.
[Chapter 7, subsection 7-50(3) of the Rules]

7.58 Deemed Distribution Tax Recapture Accounts are first reduced by distribution taxes actually paid by the Constituent Entities resulting from distributions or deemed distributions. The amount of Taxes applied as a reduction here is a jurisdictional amount. For the purposes of section 7-70 of the Rules, it is not necessary to apportion this amount between Constituent Entities located in the jurisdiction.

7.59 Second, the accounts are reduced when the jurisdiction has an overall GloBE Loss, meaning the aggregate GloBE Loss of Constituent Entities exceeds the aggregate GloBE Income of Constituent Entities located in the jurisdiction. Finally, the Deemed Distribution Tax Recapture Accounts are reduced by the amount of a Recapture Account Loss Carry-forward.
[Chapter 7, section 7-55 of the Rules]

7.60 When there is a Net GloBE Loss for the jurisdiction that exceeds the amount in all of the Deemed Distribution Tax Recapture Accounts, a Recapture Account Loss Carry-forward is created. This account is reduced in subsequent years as the loss carry-forward is applied to reduce the GloBE Income that would otherwise be subject to the Deemed Distribution Tax. The account ensures that the MNE Group is not taxed under the GloBE Rules in excess of its economic income earned through Entities subject to a Distribution Tax Regime.
[Chapter 7, section 7-60 of the Rules]

7.61 The balance of the Deemed Distribution Tax Recapture Account should be reduced to nil for each Fiscal Year after the original Fiscal Year for which such account was established.
[Chapter 7, section 7-65 of the Rules]

7.62 The Deemed Distribution Tax Recapture Account, the Net GloBE Income of the jurisdiction, the Adjusted Covered Taxes for the jurisdiction, and the Substance-based Income Exclusion for each Fiscal Year for which there was a Deemed Distribution Tax Recapture Account must be reduced in proportion to the Disposition Recapture Ratio.
[Chapter 7, section 7-75 of the Rules]

7.63 If the departing Constituent Entity had a GloBE Loss for a Fiscal Year, the Disposition Recapture Ratio for that year will be zero and there will be no recapture amount for that Fiscal Year.

7.64 If the departing Constituent Entity had a GloBE Loss in a Fiscal Year for which a Deemed Distribution Tax Recapture Account was established, that GloBE Loss and the account for that Fiscal Year is ignored in the computation of the Disposition Recapture Ratio because the account for that Fiscal Year was not attributable to GloBE Income of the departing Constituent Entity.

ETR computation for Investment Entities

7.65 Part 7-4 of the Rules provide a mechanism for calculating the ETR of a controlled Investment Entity or Insurance Investment Entity that is not subject to an Investment Entity tax transparent election or a taxable distribution method election under Parts 7-5 and 7-6 of the Rules. The income of Investment Entities and Insurance Investment Entities is often subject to little or no tax at the entity level. Part 7-4 calculates the ETR and Top-up Tax of these Entities on a standalone basis to prevent an MNE Group from blending this low-taxed income with income of other Constituent Entities. Part 7-4 also seeks to ensure that minority investors are not subject to Top-up Tax on their interest in a low-taxed Investment Entity controlled by an MNE Group. It does so by calculating the ETR and Top-up Tax of a controlled Investment Entity only to the extent that the income is attributable to the MNE Group.

7.66 Investment entities and Insurance Investment Entities compute their ETR separately from the MNE Group. Where there are multiple Investment Entities within the MNE Group in the same jurisdiction, those Investment Entities can combine the Adjusted Covered Taxes and GloBE Income or Loss to produce their ETR.
[Chapter 7, section 7-105 of the Rules]

Application

7.67 Investment Entities that are the UPE are excluded from the operation of the GloBE Model Rules because they are not ordinarily Constituent Entities of any MNE Group. However, the income of a controlled Investment Entity is consolidated with the MNE Group and brought within the GloBE Model Rules. Therefore, special rules are needed for controlled Investment Entities and

Insurance Investment Entities, see paragraph 73 on page 207 of the Consolidated Commentary.

7.68 Part 7-4 of the Rules applies in relation to an Insurance Investment Entity in the same way that it applies in relation to an Investment Entity.
[Chapter 7, subsection 7-85 of the Rules]

7.69 The rules contained in Part 3-5 of the Rules continue to apply to the income of Investment Entities that are Tax Transparent Entities. In addition, Part 7-4 of the Rules does not apply to the portion of an Investment Entity's income that is subject to an election under Part 7-5 or Part 7-6 of the Rules.
[Chapter 7, subsections 7-80(1) and (2) of the Rules]

7.70 Part 7-4 of the Rules only applies to a Constituent Entity of a MNE Group that is an Investment Entity that is not a Tax Transparent Entity. Where an Investment Entity is a part Tax Transparent Entity or part Reverse Hybrid Entity, Part 7-4 of the Rules applies with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which the owner is located. For example, if an Investment Entity is organised as a trust and taxable on its income that is not distributed to beneficiaries, Part 7-4 of the Rules applies to the extent the Investment Entity's income is not distributed.
[Chapter 10, section 10-40 of the Rules]

Allocable Share of GloBE Income

7.71 To determine the MNE Group's Allocable share of the Investment Entity's GloBE Income or Loss for a Fiscal Year is the:

- Investment Entity's GloBE Income or Loss; multiplied by the
- Inclusion ratio of the UPE for the Investment Entity.
[Chapter 7, subsection 7-110(1) of the Rules]

7.72 The MNE Group's Allocable Share of the Investment Entity's or Insurance Investment Entity's GloBE Income or Loss must be calculated in a similar way as would have been determined by the UPE in accordance with section 2-15 of the Rules. Given that the MNE Group's Allocable GloBE Income or Loss extends to negative amounts, it is the absolute value that is reduced by any amounts held outside of the MNE Group.

> For example, assume that IE1 has GloBE Loss of -100, the UPE has an 80% interest in IE1 and a third party holds the remaining 20%. To determine the numerator for the inclusion ratio of the UPE of the MNE Group for IE1 the GloBE Loss is reduced by the amount of GloBE Loss attributed to the other owners. The numerator would be calculated as follows:

Globe Loss of IE1 (-100) – GloBE Loss attributable to other owners of IE1 (-20) = -80

7.73 The calculations of the MNE Group's Allocable Share of the Investment Entity's GloBE Income and Parent Entity's Allocable Share of the Investment Entity's GloBE Income take into account GloBE Income or Loss only to the extent it is attributable to Ownership Interests in the Investment Entity that are not subject to an election under Part 7-5 or Part 7-6 of the Rules. By excluding GloBE Income or Loss attributable to Ownership Interests subject to an election under Parts 7-5 and 7-6 of the Rules, the ETR computation for the Investment Entity does not double count taxes that will be taken into account under those elections.
[Chapter 7, section 7-90 and subsection 7-110(3) of the Rules]

Allocable Share of Top-up Tax of an Investment Entity

7.74 When calculating the Allocable Share of Top-up Tax of an Investment Entity, a formula is used instead of what would otherwise be the Parent Entity's Inclusion Ratio under Chapter 2. This is due to the adjustment for non-group ownership interests that has already been made in the calculation of Top-up Tax under subsections 7-105 and 7-110 of the Rules. Therefore, there is no need make an additional adjust for that non-group ownership as it would lead to double counting.

7.75 Where a LTCE is an Investment Entity, the Inclusion Ratio must be adjusted when computing a Parent Entity's Allocable Share of top-up tax for that LTCE. This adjustment accounts for the fact that the top-up tax computed for the LTCE in accordance with section 7-100 of the Rules has, in effect, already been reduced by the amount that would have been attributable to other owners that are not Group Entities.
[Chapter 7, section 7-95 of the Rules]

7.76 The allocable share for a Parent Entity is computed in accordance with the following formula:

$$\begin{gathered}\textit{Top-up Tax of the Investment Entity} \\ \times \frac{\textit{Limited inclusion ratio of the UPE}}{\textit{Inclusion ratio of the UPE for the Investment Entity}}\end{gathered}$$

[Chapter 7, section 7-95 of the Rules]

7.77 The numerator refers to the limited inclusion ratio, which refers to only the direct Ownership Interest the Parent Entity has in the Investment Entity. The allocable share is computed for each individual Investment Entity or Insurance Investment Entity and are not aggregated as it is for the ETR computation.

For example, assume a Parent Entity owns 90% of the Ownership Interests of an Investment Entity and the remaining 10%

Ownership Interests are held by non-Group Entities. The Investment Entity earns 100 of GloBE Income for the Fiscal Year and has no Covered Taxes. The total amount of top-up tax is 13.5 (15% x 90). The Parent Entity's Inclusion Ratio is 1.0 and thus the Parent Entity is allocated all 13.5 of the Investment Entity's top-up tax.

Top-up tax of Investment Entities

7.78 Special rules apply for computing the top-up tax for Investment Entities and Insurance Investment Entities. These rules are designed to ensure that top-up tax arises only with respect to the MNE Group's ownership interest in the Investment Entity.

7.79 Investment Entities must compute a separate ETR to any other Constituent Entities in the same jurisdiction. This is achieved by treating the Investment Entities as the only Constituent Entities of the MNE Group. This approach avoids blending the GloBE Income or Loss and Covered Taxes of Investment Entities with other Constituent Entities in the jurisdiction. However, if the MNE Group owns interests in multiple Investment Entities located in the same jurisdiction, a single ETR is computed for all Investment Entities or Insurance Investment Entities in the jurisdiction.
[Chapter 7, section 7-100 of the Rules]

7.80 The ETR calculation for Investment Entities of the MNE Group for the jurisdiction operates similarly to the ordinary ETR calculation, by taking the Adjusted Covered Taxes of each Investment Entity located in the jurisdiction divided by the sum of the MNE Group's Allocable Share of the Investment Entity's GloBE Income for each Investment Entity located in the jurisdiction.
[Chapter 7, subsection 7-105(2) of the Rules]

7.81 An Investment Entity's Adjusted Covered Taxes is calculated as the sum of Covered Taxes accrued by the Investment Entity pursuant to Part 4-1 of the Rules and the Covered Taxes accrued by its Constituent Entity-owners allocable to the Investment Entity pursuant to Part 4-3 of the Rules. The Covered Taxes paid by the Investment Entity are only those that correspond to the MNE Group's Allocable Share of the Investment Entity's GloBE Income. The Covered Taxes accrued by Constituent Entity-owners taken into account are only those that arise with respect to their share of the Investment Entity's income.
[Chapter 7, subsections 7-105(3) and (4) of the Rules]

7.82 In computing the top-up tax of Investment Entities and Insurance Investment Entities for the Fiscal Year, the calculations under Chapter 5 of the Rules continue to apply by:

- firstly, computing the top-up tax percentage for the Investment Entity in accordance with section 5-20 of the Rules;

- then, the Investment Entity's Substance-based Income Exclusion is deducted from the MNE Group's Allocable Share of the Investment Entity's GloBE Income;
- finally, the top-up tax is computed by multiplying the top-up tax percentage by the excess of the MNE Group's Allocable Share of the Investment Entity's GloBE Income over the Substance-based Income Exclusion.
[Chapter 7, section 7-100, and subsection 7-105(1) of the Rules]

7.83 The deeming rule in paragraph 7-100(1)(a) does not affect the operation of Chapters 2, 3, 6, 8 and 9 of the Rules to the extent that they affect the application of Chapter 5 of the Rules for the purposes of computing the Top-up Tax of each of the Investment Entities.
[Chapter 7, subsection 7-100(2) of the Rules]

Substance-based Income Exclusion amounts

7.84 The Substance-based Income Exclusion must be reduced proportionally to correspond to the MNE Group's Allocable Share of the Investment Entity's GloBE Income or Loss. Consistent with computing the ETR, where there are multiple Investment Entities located in the same jurisdiction, the Substance-based Income Exclusion for all Investment Entities are combined and offset against the Net GloBE Income of those Entities to determine the aggregate Excess Profit.
[Chapter 7, subsection 7-105(3) of the Rules]

7.85 The rule in section 5-50 of the Rules operates to prevent double counting of assets and payroll expenses of Investment Entities from being included in the computation for both the MNE Group in the jurisdiction as well as the Investment Entity.

Investment Entity tax transparency election

7.86 Part 7-5 of the Rules allows a filing Constituent Entity to make a Five-Year election to treat an Investment Entity or Insurance Investment Entity as a Tax Transparent Entity.
[Chapter 7, section 7-120 of the Rules]

7.87 Investment Entities are defined as Entities that meet the definition of an Investment Fund or Real Estate Investment Vehicle. An Insurance Investment Entity is defined as an Entity that would qualify as an Investment Fund or Real Estate Investment Vehicle but for the fact that it is wholly-owned by an insurance company and established in relation to liabilities under one or more insurance or annuity contracts. An Insurance Investment Entity may be wholly-owned by a single Entity, or by multiple Entities which are all part of the same MNE Group. Additionally, the definition requires that the owner, or owners, are subject to regulation as insurance companies. This requirement

may also be met if the Insurance Investment Entity is owned by a Flow-through Entity which is subject to regulations in the same manner as an insurance company.
[Chapter 10, section 10-5 of the Rules]

Election

7.88 A Filing Constituent Entity may make a Five-Year election to treat an Investment Entity or Insurance Investment Entity as a Tax Transparent Entity for a Fiscal Year in respect of a particular Constituent Entity owner. It is not required for all Constituent Entity owners of the Investment Entity to make an election. However, where at least one election has been made for the relevant entity, the election then applies to all Constituent Entity owner's interests in the Investment Entity, that meet the following conditions.

7.89 The election can be made in respect of Constituent Entity-owners that satisfy two conditions:

- the Constituent Entity-owner of the specified Investment Entity is subject to tax in its location under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity; and
- the tax rate applicable to the Constituent Entity-owner with respect to such income is at least 15 per cent.
[Chapter 7, sections 7-125 and 7-130 of the Rules]

7.90 The election is available for Constituent Entity-owners that have a direct ownership interest in the Investment Entities as well as for Entities that are indirectly owned through a chain of Investment Entities or Insurance Investment Entities, consistent with paragraph 93 on page 210 of the Consolidated Commentary.

7.91 The general rules to compute a separate ETR for Investment Entities under Part 7-4 of the Rules does not apply when an election to treat an Investment Entity as a Tax Transparent Entity applies to an Investment Entity.
[Chapter 7, section 7-125 of the Rules]

7.92 For the purposes of Part 7-5 of the Rules, a Constituent Entity that is a policyholder-owned, regulated insurance Entity, (defined as a regulated mutual insurance company) and that owns an Ownership Interest in an Investment Entity, is considered to meet the conditions of being subject to tax under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity at a rate that exceeds 15 per cent, consistent with paragraph 91 on pages 209 and 210 of the Consolidated Commentary.
[*Chapter 7, section 7-130 of the Rules*]

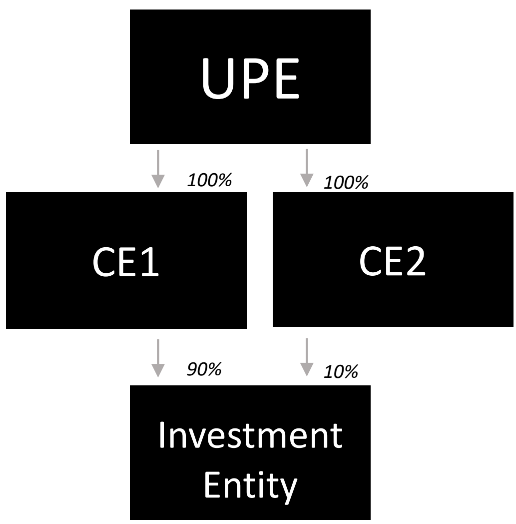
Effect of election

7.93 By treating the Investment Entity as tax transparent, the election allows the MNE Group to recognise the Constituent Entity-owner's share of the Investment Entity's amounts as income of the Constituent Entity-owner for GloBE purposes. This election matches the timing and location of income earned through an Investment Entity under the GloBE Rules and the local tax rules where the Constituent Entity-owner is subject to a mark-to-market or similar regime.

7.94 The Constituent Entity-owner's FANIL is determined pursuant to Chapter 3 of the Rules, including using the accounting standard that was used to determine the Constituent Entity's income in preparing the CFS. Whilst the Income of Investment entity or Insurance Investment Entity is likely to be determined using fair value accounting, the Constituent Entity-Owner should account for its interest in the Investment Entity or Insurance Investment Entity using a fair value method. Any share of income or loss that the Constituent Entity-owner accounts for using the fair value method must be excluded from the GloBE Income or Loss computation, consistent with paragraph 95 on page 210 of the Consolidated Commentary.

7.95 Under the election, the Constituent Entity-owner may apply the Substance-based Income Exclusion with respect to its share of the income of the Investment Entity.

Example 7.4 Effect of Investment Entity Tax Transparency Election



Consider the diagram above for this example, where a UPE owns 100% of CE1 and 100% of CE2. CE1 in turn owns 90% of an Investment Entity, while CE2 owns 10% of that same Investment Entity.

The insurance entity earns $100 of net income in Year 1, pays no tax. and makes no distributions.

An election under Part 7-5 is made on behalf of CE1 and CE2.

Accordingly, CE1 and CE2 include their share of Investment Entity's income, $90 and $10, respectively, in the computation of their GloBE Income or Loss.

On a standalone basis, CE1 controls the Investment Entity and would consolidate its accounts even if CE2 were an unrelated company.

CE2 only owns 10% of the Investment Entity and on a standalone basis might be required to apply fair value accounting to its interest in Fund under the Acceptable FAS used in the CFS.

For purposes of the GloBE Rules, however, CE2 does not include any fair value gains or distributions from Constituent Entities. Otherwise CE2 would recognise $10 of fair value gain in addition to the $10 of income included under the Part 7-5 election.

Revoking the election

7.96 If the election is revoked, gains or losses from the disposition of an asset or liability held by the Investment Entity shall be determined based on the fair value of the assets or liabilities on the first day of the revocation year. The fair value at the beginning of the revocation year is the starting point. ***[Chapter 7, section 7-135 of the Rules]***

7.97 If the Investment Entity's income is determined using a realisation method for, that value will continue to be the value of the asset for purposes of determining gains or losses under the GloBE Rules until it is disposed. If the Investment Entity's income is determined using a fair value method for the assets, then that method will re-value the assets at regular intervals and include the gains or losses in FANIL.

Taxable distribution method election

7.98 Part 7-6 of the Rules applies to both Investment Entities and Insurance Investment Entities and provides an alternative treatment to Part 7-4 and Part 7-5 of the Rules. The taxable distribution method reduces the exposure to top-up tax of income earned through an Investment Entity to the extent that the

Investment Entity makes distributions of its income within a four-year period that are taxable in the hands of the recipients at or above the 15 per cent Minimum Rate.
[Chapter 7, sections 7-140 and 7-145 of the Rules]

7.99 The taxable distribution method is available to any filing Constituent Entity that elects to apply this method. The Five-Year election is made be any Constituent Entity-owner of an Investment Entity or an Insurance Investment Entity that are not in themselves Investment Entities. The election applies to all Constituent Entity-owner's Ownership Interests in the Investment Entity, regardless of whether each Constituent Entity owner have made the taxable distribution method election.
[Chapter 7, section 7-145 of the Rules]

7.100 The election is only available where the Constituent Entity-owners:

- are subject to tax in their location on distributions from the Investment Entity; and
- can reasonably be expected to be subject to tax on such distributions at a rate of at least 15 per cent.

7.101 In determining whether a Constituent Entity-owner is subject to at least 15 per cent on distributions, any taxes arising on distributions, or taxes incurred by the Investment Entity in respect of income distributed to a Constituent Entity-owner are taken into account.

Effect of election

7.102 Once the election has been made, the Constituent Entity-owner must include all actual and deemed distributions it is subject to tax on in the computing GloBE Income for the Fiscal Year. A deemed distribution includes the income of an Investment Entity for a Fiscal Year to the extent that it is not distributed, and the Constituent Entity-owner is subject to taxation in the same Fiscal Year under domestic tax law. Whilst distributions are generally excluded from GloBE income, the deemed distributions under the Taxable Distribution Method are determined by reference to the law applicable to the Constituent Entity-owner. Deemed distributions may include certain transfers of an Ownership Interest.
[Chapter 7, subsection 7-150(2) and section 7-165 of the Rules]

7.103 An intermediate Investment Entity, which is a Constituent Entity-owner that is an Investment Entity, will not include distributions in the GloBE Income or Loss computation. Instead, distributions are only included in Undistributed Net GloBE Income when the Constituent Entity-owner is not an Investment Entity see paragraph 103 on page 212 of the Consolidated Commentary.

7.104 The Constituent Entity-owner must include the local creditable tax gross-up in its GloBE Income and Adjusted Covered Taxes. The local creditable tax gross-up amount is generally the amount of Covered Taxes paid by the

Investment Entity that is allowed as a credit in the computation of the Constituent Entity-owner's tax liability in respect of a distribution from the Investment Entity. The local creditable tax gross up is treated as additional GloBE Income so that the tax credit does not have the same effect as allowing both a deduction and a credit.

Example 7.5 Proportionate share of Undistributed Net GloBE Income Account

Assume that a Taxable Distribution Method Election was made for an Investment Entity that had a GloBE Income for the Tested Year of $100.

The Investment Entity is owned by two Constituent Entities, CE-Owner A and CE-Owner B, holding 80% and 20% Ownership Interests in the Investment Entity, respectively. CE-Owner A is part of MNE Group A, whereas CE-Owner B is not.

Given that none of the items mentioned in subsections 7-150(3)-(6) are applicable in the Testing Period, the Undistributed Net GloBE Income for the Tested Year is $100.

CE-Owner A's proportionate share of the Investment Entity's income is $80 (80% x $100) which is treated as the Investment Entity's GloBE Income for the Reporting Year. This figure also represents the "proportionate share of the Undistributed Net GloBE Income Account" in section 7-155(2) of the Rules.

Undistributed Net GloBE Income

7.105 Where a taxable distribution method election has been made, the MNE Group must establish an Undistributed Net GloBE Income Account for the Investment Entity for each Fiscal Year. The Undistributed Net GloBE Income is maintained over a four-year period to determine whether GloBE Income was distributed or offset by losses, consistent with paragraphs 107 to 113 on page 213 of the Consolidated Commentary.
[Chapter 7, subsection 7-160(2) of the Rules]

7.106 The balance of the Undistributed Net GloBE Income Account starts with the GloBE Income in the Fiscal Year the taxable distribution method election is made (the ***tested year***). If there is zero GloBE Income or a GloBE Loss for a Fiscal Year, the Undistributed Net GloBE Income Account for such year is zero. In the tested year, the account balance is reduced by:

- any amount of Covered Taxes paid by the Investment Entity; and
- distributions and deemed distributions to all other shareholders that are not Constituent Entities that are Investment Entities.
[Chapter 7, subsection 7-160(3) of the Rules]

7.107 For the Fiscal Year is the first, second or third Fiscal Year after the tested year, the balance of the Investment Entity's Undistributed Net GloBE Income Account for the tested year is subsequently reduced (but not below zero) by:

- any amount of Covered Taxes paid by the Investment Entity for the tested year;
- distributions and deemed distributions to all other shareholders that are not Constituent Entities that are Investment Entities, in the tested year and three subsequent Fiscal Years;
- GloBE Losses that arise in the three Fiscal Years after the tested year; and
- amounts of the Investment Entity's GloBE Losses carried forward from Fiscal Years before the tested year.
[Chapter 7, subsection 7-160(5) of the Rules]

7.108 The Undistributed Net GloBE Income Account balance is reduced by any amount of Covered Taxes paid by the Investment Entity. The Investment Entity's Covered Taxes that are included in the Local Creditable Tax Gross-up associated with a distribution or deemed distribution are subsequently included in the Adjusted Covered Taxes of the Constituent Entity-owner. However, to ensure the Investment Entity's income is distributable and the distributable earnings are not reduced by Covered Taxes, the amount of Covered Taxes are added to the FANIL in the computation of GloBE Income or Loss.

7.109 The balance is further reduced by distributions and deemed distributions to all other shareholders, including indirect ownership, other than Constituent Entities that are Investment Entities. MNE Groups may use any reasonable method of determining whether distributions through a chain of Investment Entities are distributed to a non-Investment Entity.

7.110 The Undistributed Net GloBE Income Account balance is also reduced for GloBE Losses because losses reduce the amount that can be distributed as a dividend. However, if the losses exceed the Undistributed Net GloBE Income Accounts, an Investment Loss carry-forward must be created to reduce the undistributed net GloBE Income arising in subsequent Fiscal Years. These carried forward losses may be applied to the Undistributed Net GloBE Income Account balance in subsequent Fiscal Years, to the extent they have not previously been applied. A GloBE Loss made before a Fiscal Year in which an Undistributed Net GloBE Income Account is created may not be carried forward.

Top-up Tax

7.111 The intention of Part 7-6 is to ensure that Income and taxes of the Investment Entity are appropriately allocated to the Constituent Entity-owners rather than the Investment Entity. By determining the Undistributed Net GloBE Income the Constituent Entity's owner proportionate share Undistributed Net GloBE

Income is included in the GloBE Income of the Constituent Entity-owner. Any income or Adjusted Covered Taxes of the Investment Entity that are included by the Constituent Entity-owner remain in the Constituent Entity-owner's accounts. All other income and Adjusted Covered Taxes of the Investment Entity's that are reported at the Investment Entity level are excluded from all ETR computations under Chapter 5 of the Rules.
[Chapter 7, section 7-150 of the Rules]

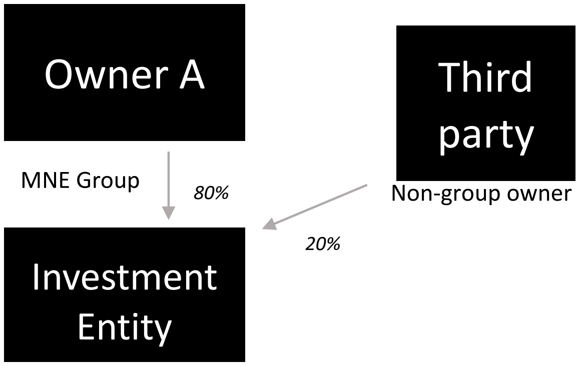
7.112 An increase in top-up tax may occur if there is an Undistributed Net GloBE Income Account for the Investment entity with a balance greater than zero at the end of the third subsequent Fiscal Year.

7.113 The allocation of any top-up tax is determined in accordance with Chapter 2 of the Rules, where the Investment Entity is treated as a LTCE of the MNE Group and the amount of top-up tax for the Reporting Year being calculated as follows.

- Include the Constituent Entity owner's proportionate share of the Undistributed Net GloBE Income when computing the Investment Entity's GloBE Income or Loss (the Constituent Entity-owner's undistributed share).
- Multiply the Constituent Entity owner's undistributed share by 15 per cent to arrive at the top-up tax of the Investment Entity for the Reporting Year.
[Chapter 7, section 7-155 of the Rules]

7.114 An Investment Entity can have multiple Constituent Entity-owners. In this case it is possible that those Constituent Entity-owners will make different elections in respect of their Ownership Interests in the Investment Entity. That is, some Constituent Entity-Owners may elect to apply Part 7-6 in respect of their Ownership Interests in the Investment Entity, while Part 7-4 may apply to the Investment Entity in respect of other Constituent Entity-Owners' Ownership Interests. Where this occurs, the Investment Entity may have Top-up Tax Amounts under both Parts 7-4 and 7-6 for the same Fiscal Year.

Example 7.6 Top-up tax under an eligible distribution taxable method election



Consider the diagram above for this example, where Constituent Entity-owner Owner A owns 80% of an Investment Entity. Owner A is part of an MNE Group. A third party (a non-group owner) owns the other 20% of that Investment Entity.

Owner A has made a Part 7-6 election to apply the taxable distribution method election.

The Investment Entity's GloBE Income for the Fiscal year was $100. Under subsection 7-160(3), the Undistributed Net GloBE Income for the Tested Year is $100.

Assume none of the items mentioned in subsection 7-160(3) and subsection 7-160(5) apply, so there is no reduction to the Undistributed Net GloBE Account.

Then:

- Owner A's proportionate share of $80 (80% x $100) is treated as Investment Entity's GloBE Income for the Reporting Year (under subsection 7-155(2))
- $12 (the result of 15% x $80), is treated as top-up tax of a LTCE in the Reporting Year for the purpose of Chapter 2 (under subsection 7-155(3)).

Revoking an election

7.115 Where an election is revoked and an increase to top-up tax applies, and there is an Undistributed Net GloBE Income Account for an Investment Entity at the end of the Fiscal Year preceding the revocation year, the Constituent

Entity-owner's proportionate share of the Undistributed Net GloBE Income Account is included in the Investment Entity's GloBE Income or Loss for the revocation year. Consistent with the top-up tax calculation mentioned from paragraph 7.112 and for the purposes of Chapter 2 of the Rules, the top-up tax of the Investment Entity for the reporting year will be an amount equal to the Constituent Entity-owner's undistributed share multiplied by 15 per cent. ***[Chapter 7, section 7-170 of the Rules]***

Chapter 8: Safe harbours

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Outline of chapter

8.1 Chapter 8 of the Rules identifies and explains the various types of Safe Harbours available to MNE Groups when determining whether Top-up Tax is payable.

8.2 Certain safe harbour rules are included to aid the administrative burden in computing the complex Top-up Tax calculations by deeming Top-up Tax for a jurisdiction to be zero for a Fiscal Year if certain conditions are met.

8.3 There are four safe harbours that may apply to an MNE Group in a jurisdiction for a Fiscal Year, including:

- Transitional Safe Harbour;
- Permanent Simplified Calculations Safe Harbour;
- QDMTT Safe Harbour; and
- UTPR Safe Harbour.

Detailed explanation of new law

Transitional CbC Reporting Safe Harbour

8.4 An MNE Group's Top-up Tax, including Additional Current Top-up Tax, for a jurisdiction is taken to be zero for a Fiscal Year in the Transition Period, if the following conditions are satisfied:

- the Filing Constituent Entity of the MNE Group elects to apply the Transitional CbC Reporting Safe Harbour for a specified Fiscal Year during the Transition Period and for a specified jurisdiction; and
- the MNE Group satisfies any of the following tests for the specified jurisdiction for the specified Fiscal Year:
  - the Simplified ETR test
  - the Routine profits test; or
  - the De minimis test.
    [Chapter 8, subsections 8-10(1) and (2) of the Rules]

8.5 The Transitional CbC Reporting Safe Harbour is designed to provide transitional relief for MNE Groups in the initial years during which the GloBE Rules come into effect. Therefore, the three alternative tests under the transitional CbC Reporting Safe Harbour may only be accessed for a Fiscal Year beginning on or before 31 December 2026, and not including a Fiscal Year that ends after 30 June 2028.
[Chapter 8, section 8-15 of the Rules]

Eligibility for the transitional CbC Reporting Safe Harbour

8.6 The Transitional CbC Reporting Safe Harbour operates using simplified jurisdictional revenue and income information contained in a MNE's Qualified CbC Report, and jurisdictional tax information contained in a MNE's Qualified Financial Statements. The Transitional CbC Reporting Safe Harbour applies on a jurisdictional basis to a tested jurisdiction.

8.7 The application of the Transitional CbC Reporting Safe Harbour to a Constituent Entity depends on which jurisdiction the Constituent Entity is located in under the GloBE Rules. Where the Constituent Entity is a CbC Resident in one jurisdiction, the relevant data is generally included in the Qualified CbC Report for that jurisdiction. However, if the Constituent entity is located in another jurisdiction in accordance with the GloBE Rules, the Transitional CbC Reporting Safe Harbour only applies for the Constituent Entity if the other jurisdiction also qualifies for the safe harbour.

8.8 Similar to the operation of calculating the ETR under Chapter 5 of the Rules, the Transitional CbC Reporting Safe Harbour tests apply separately for JVs and JV Groups (including where there are multiple JV groups located in the same jurisdiction).
[Chapter 8, section 8-80 of the Rules]

8.9 MOCEs may access the CbC Reporting Safe Harbour, but those entities are combined with the main Constituent Entities of the MNE Group. Given that the CbC Report does not have a separate reporting mechanism for MOCEs, they are combined with ordinary Constituent Entities of the MNE Group. This is a different application to the ordinary Jurisdictional Top-up Tax framework, where the MOCE is calculated separately from other standard Constituent Entities located in the same jurisdiction.

8.10 An MNE Group may make separate elections for separate entities that apply simultaneously to the same jurisdiction, for example:

- an election covering all standard CEs and MOCEs located in Australia; and
- a separate election covering JVs located in Australia; and
- a separate election covering Investment and Insurance Investment Entities.

Computation for a UPE that is a Flow-through Entity

8.11 There are special rules for a Flow-through Entity that is a UPE, where the Transitional CbC Reporting Safe Harbour can only apply if all ownership interests in the UPE are held by qualified persons under section 7-5 of the Rules. This is required even if a deductible dividend regime also applies to the UPE that is a Flow-through entity.
[Chapter 8, sections 8-85 and 8-90 of the Rules]

8.12 The amounts attributable to an Ownership Interest in the UPE that is a Flow-through Entity that is held by any of the following qualified persons is excluded when determining the MNE Group’s Profit (Loss) before Income Tax and any associated taxes:

- a holder of the ownership interest who is subject to tax within 12 months, a holder who is an individual, Governmental Entity, an International Organisation, a Non-profit Organisation, or a Pension Fund, if the UPE is just a Flow-through Entity; or
- a recipient who is an individual, Governmental Entity, an International Organisation, a Non-profit Organisation, or a Pension Fund, or the dividend is subject to tax within 12 months, if the UPE is subject to deductible dividend regime.

Investment entities

8.13 Investment and Insurance Investment Entities may apply the Transitional CbC Reporting Safe Harbour if:

(a) the investment entity makes a separate GloBE calculation under Parts 7-4, 7-5 or 7-6 of the Rules;

(b) the investment entity jurisdiction and the jurisdiction of residence of any constituent entity owner may continue to benefit from the Transitional CbC Reporting Safe Harbour; and

(c) the profit (loss) before income tax and total revenue of the investment entity (and any associated taxes) is only reflected in the jurisdiction of its direct parent entities in proportion to their ownership interests, consistent with paragraph 63 on page 302 of the consolidated commentary.
[Chapter 8, section 8-95 of the Rules]

8.14 The requirement to limit amounts to only the direct Constituent Entity owner's CbC Reporting jurisdiction is based on the Investment Entities and Insurance Investment Entities data potentially being reported twice - once in the jurisdiction of the Constituent Entity owner and again in the jurisdiction of the Investment Entities or Insurance Investment Entities.

8.15 Part 7-4 of the Rules does not apply to Investment Entities and Insurance Investment Entities that are covered by an election to apply the Transitional CbC Reporting Safe Harbour. This has the effect of combining the Investment Entities and Insurance Investment Entities data with the MNE Group, as if it were an ordinary Constituent Entity.
[Chapter 8, subsection 8-95(5) of the Rules]

8.16 Individual Investment Entities and Insurance Investment Entities that qualify for the Transitional CbC Reporting Safe Harbour will each have a Top-up Tax of zero. This contrasts with the approach of ordinary Constituent Entities that qualify for the Transitional CbC Reporting Safe Harbour that deems jurisdictional Top-up Tax as zero. Deeming the jurisdiction Top-up Tax for Investment Entities and Insurance Investment Entities located in a jurisdiction would inappropriately result in all Investment Entities and Insurance Investment Entities having a Top-up Tax of zero, including those that are not covered by an election and do not qualify for the benefits of the Transitional CbC Reporting Safe Harbour. Consequently, given that the calculation provisions under sections 7-90 and 7-95 of the Rules are computed on an aggregate basis, the Investment Entities and Insurance Investment Entities that have Top-up Tax deemed to be nil under the Transitional CbC Reporting Safe Harbour are excluded from those calculations.

8.17 Investment Entities or Insurance Investment Entities that are excluded from the benefit of the Transitional CbC Reporting Safe Harbour, those entities will apply the ordinary Top-up Tax rules under Part 7-4 of the Rules.

8.18 The Transitional CbC Reporting Safe Harbour cannot apply to Constituent Entities subject to an eligible distribution tax election under Part 7-3 of the Rules.

Exclusions

8.19 An MNE Group cannot apply the Transitional CbC Reporting Safe Harbour to the jurisdiction if any of the following conditions are satisfied:

- a stateless Constituent Entity (for example, certain Reverse Hybrids) is taken to be located in the jurisdiction;
- there is no single Qualified CbC report that covers all the information from the groups in a multi-parented MNE Group (for example, certain stapled structures);
- a Deemed Distribution Tax election has been made for the Fiscal Year in the jurisdiction; or
- the MNE Group did not benefit from the Transitional CbC Reporting Safe Harbour in a previous year unless the MNE did not have Constituent Entities in that jurisdiction in the previous year.
  [Chapter 8, section 8-105 of the Rules]

8.20 The last condition reflects the 'once out, always out' rule, that requires the Transitional CbC Reporting Safe Harbour to be consistently applied where there are Constituent Entities in the jurisdiction. If an MNE Group has not applied the Transitional CbC Reporting Safe Harbour with respect to a jurisdiction in a Fiscal Year in which the MNE Group is subject to the GloBE Rules, the MNE Group cannot qualify for that safe harbour for that jurisdiction in a subsequent year.

Simplified ETR test

8.21 The simplified ETR test is like the mechanics for computing the ETR under Chapter 5 of the Rules, but instead relies on data from the qualified financial statements and is calculated using the following formula:

$$Simplified\ ETR = \frac{simplified\ covered\ taxes}{(profit\ or\ (loss)\ before\ income\ tax)}$$

[Chapter 8, section 8-45 of the Rules]

8.22 If the Simplified ETR of the tested jurisdiction is equal to or greater than the Transition Rate then the tested jurisdiction would qualify for the Transitional CbC Reporting Safe Harbour.
[Chapter 8, section 8-40 of the Rules]

8.23 The safe harbour applies where the Simplified ETR exceeds the Transition Rate for a year, where the transition rate is:

- 15 per cent for Fiscal years beginning in 2023 and 2024;
- 16 per cent for Fiscal years beginning in 2025; and
- 17 per cent for fiscal years beginning in 2026.
[Chapter 8, section 8-55 of the Rules]

8.24 Simplified Covered Taxes equals the jurisdiction’s income tax expense as reported on the MNE Group’s Qualified Financial Statements and includes adjustments to the income tax expense provision of prior years and deferred items. However, the simplified covered taxes must exclude:

- income tax expense of Constituent Entities whose income is not included in the CbC Report (such as Entities held for sale), this includes Constituent Entities that are CbC residents in a different jurisdiction to the jurisdiction being tested for the Fiscal Year and therefore, have income or loss reported in another jurisdiction; and
- taxes that are not Covered Taxes; and
- uncertain tax positions.
[Chapter 8, section 8-50 of the Rules]

ETR test for Hybrids, CFCs, and Permanent Establishments

8.25 No cross allocation of taxes is needed for the purpose of simplified ETR computation. However, to prevent double counting of a Permanent Establishment’s income for the purposes of the simplified ETR test, the income tax expense of a Permanent Establishment is exclusively allocated to the Permanent Establishment’s jurisdiction. That income tax expense must not be included in the Simplified ETR Test for the Main Entity’s jurisdiction. If any income tax expense in respect of the Permanent Establishments income is included in the Main Entity’s jurisdiction, then it remains in the Main Entity’s jurisdiction and there is no allocation, consistent with paragraphs 87 to 89 on page 307 of the Consolidated Commentary.

8.26 The income tax expense of the Constituent Entity must be reported using data from the qualified financial statement. The purpose of this requirement is to ensure there are no asymmetries in the Transitional CbC Reporting Safe Harbour computations. However, there is an exception for Permanent Establishments. In practice, to populate the underlying data for the Permanent Establishment, the MNE Group would have to use the following sources which are derived from the qualified statement:

- the accounts used to prepare the CFS by the UPE; or
- separate financial accounts of the Constituent Entity.

8.27 However, the MNE Group could alternatively use data from sources specifically permitted by the Agreed Administrative Guidance and combine it with the data of the other Constituent Entities. This exception also applies to NMCEs, see paragraph 75 page 304 of the Consolidated Commentary.

8.28 Taxes paid or accrued by a Main Entity, or a Constituent Entity-owner of a Hybrid Entity or CFC do not need to be allocated in accordance with Chapter 4 of the Rules for the purposes of the simplified ETR calculation. This is because part or all of those taxes are also taken into account in the ETR computations of a jurisdiction that includes a CFC, Permanent Establishment or Hybrid Entity.

Routine profits test

8.29 The Routine profits test compares a tested jurisdiction's Substance-based Income Exclusion amount for the jurisdiction for the Fiscal Year to the tested jurisdiction's Profit (Loss) before Income Tax as reported in the MNE's Qualified CbC Report.
[Chapter 8, subsection 8-60(1) of the Rules]

8.30 For the purposes of the Routine profits test, the Substance-based Income Exclusion is computed in accordance with Part 5-3 of the Rules, using the same transitional percentage rates that are outlined under Part 9-2 of the Rules. The Substance-based Income Exclusion for the routine profits test is only to take into account Constituent Entities that are both located in the jurisdiction and that are CbC residents for the Fiscal Year. A CbC resident must be recorded as a resident in the CbC report.
[Chapter 8, subsections 8-60(2) and (3) and section 8-65 of the Rules]

8.31 This has the effect that the Routine profits test does not take into account the payroll costs and tangible assets of Entities that are not Constituent Entities under either the CbC Report or the ordinary GloBE rules, such as Entities held for sale or Excluded Entities.

8.32 A tested jurisdiction with a loss or zero profits will not have income that exceeds the routine profits amount, and will always meet the Routine profits test, therefore an MNE Group does not need to calculate the jurisdiction's Substance-based Income Exclusion. This outcome is similar to the outcome under Part 5-1 of the Rules, where an ETR computation is not necessary if a tested jurisdiction does not have any Net GloBE Income.

De minimis test

8.33 The MNE Group's Total Revenue and Profit (Loss) before Income Tax for each tested jurisdiction is extracted directly from the Qualified CbC Report. If a tested jurisdiction produces revenue and income that meet the de minimis test, then the tested jurisdiction qualifies for the safe harbour.

8.34 The MNE Group must satisfy two conditions to meet the de minimis test in a Fiscal Year:

- the Total Revenue for the fiscal year for the jurisdiction is less than EUR 10 million; and
- the profit (loss) before income tax for the Fiscal Year for the jurisdiction of under EUR 1 million.
  [Chapter 8, section 8-20 of the Rules]

8.35 However, if the total revenue of each Constituent Entity located in the jurisdiction, entities held for sale, NMCEs and the total CbC Reporting Revenue exceeds 10 million Euros, the MNE Group for the jurisdiction does not qualify for the De minimis test. The total revenue of a Constituent Entity is defined under section 8-190 of the Rules, which is defined separately to an MNE Group's Total Revenue.
[Chapter 8, subsection 8-20(2)(b) of the Rules]

8.36 For the purposes of the De minimis test, the definition of qualified CbC Reports removes the need to calculate CbC Reporting Revenue and Income over multiple years. It would extend the benefit of the safe harbour to those MNEs that have previously not been preparing their CbC Reports based on sources other than Qualified Financial Statements but have switched to use Qualified Financial Statements.

8.37 The Total Revenue and Profit (Loss) before Income Tax is an MNE Group's Profit (Loss) before Income Tax in a jurisdiction as reported on its Qualified CbC Report. If Qualified Financial Statements are not available for a Permanent Establishment, the MNE Group may determine the portion of the Main Entity's Total Revenue and Profit (Loss) before Income Tax that is attributable to the PE using separate financial statements prepared by the Main Entity for the Permanent Establishment for financial reporting, regulatory, tax reporting, or internal management control purposes consistent with paragraph 86 on page 306 of the Consolidated Commentary.
[Chapter 8, sections 8-25 and 8-30 of the Rules]

8.38 In determining the profit of loss before income tax, the MNE must disregard any Net Unrealised Fair Value Loss in excess of 50 million Euros for the jurisdiction for the Fiscal Year. The Net Unrealised Fair Value Loss for a jurisdiction for a Fiscal Year is the sum of all losses, reduced by any gains, which arise from changes in fair value of Ownership Interests (excluding those for Portfolio Shareholdings) held by any Constituent Entity of the MNE Group. The Net Unrealised Fair Value Loss is based on amounts as reported in the Qualified Financial Statements.
[Chapter 8, section 8-100 of the Rules]

Five-year elections continues to apply

8.39 A Filing Constituent Entity can continue to make a Five-Year Election to apply the treatment provided under Parts 7-5 or 7-6 notwithstanding that the Constituent Entity-owner of the non-qualifying Investment Entity or Insurance

Investment Entity benefits from the CbC Reporting Safe Harbour (consistent with paragraph 61 to 64 on page 302 of the Consolidated Commentary).

Qualified financial statements and qualified CbC Reports

Qualified financial statements

8.40 A qualified CbC report is based on what is considered qualified financial statements and is defined as any of the following:

- the financial accounts used to prepare the CFS of the UPE (the same requirement as under Part 3-2 of the Rules); or
- separate financial statements of each Constituent Entity (defined below); or
- in the case of an NMCE or Permanent Establishment: the financial accounts of that Constituent Entity that are used for preparation of the MNE Group's CbC Report.
[Chapter 8, subsection 8-70(1) of the Rules]

8.41 The inclusion of separate financial statements caters to individual Constituent Entities that prepare financial statements but does not require Constituent Entities to prepare financial statements. It is sufficient to use the separate financial accounts of a Constituent Entity that are used in the preparation of the CFS. To be qualified financial statements, separate financial statements of a Constituent Entity must:

- be prepared in accordance with an Acceptable FAS or Authorised FAS;
- include reliable information that is maintained based on that accounting standard; and
- meet the consistent reporting condition and the goodwill impairment adjustment, if the MNE Group allocated and incorporated purchase accounting adjustments.
[Chapter 8, subsections 8-70(2) and (3) of the Rules]

8.42 The consistent reporting condition is met where the MNE Group has not submitted a CbC Report for a Fiscal Year beginning after 31 December 2022 that was based on the Constituent Entity's reporting package or separate financial statements without the Purchase Price Accounting adjustments, except where the Constituent Entity was required by law or regulation to change its reporting package or separate financial statements to include Purchase Price Accounting adjustments.
[Chapter 8, subsection 8-70(4) of the Rules]

8.43 Any reduction to the Constituent Entity's income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 must be added back to the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year when applying either the:

- routine profits test; or
- simplified ETR test, but only if the financial accounts do not also have a reversal of deferred tax liability or recognition or increase of a deferred tax asset in respect of the impairment of goodwill.
  [Chapter 8, subsections 8-70(5) of the Rules]

8.44 For the Constituent Entity that prepares separate financial accounts, if there is an item (such as a deferred tax expense) that relates to a specific entity's accounts but is reflected in the UPE's CFS, then that item must be removed from the CFS and reflected in the individual constituent entity's data when using the standalone statements.

8.45 There are several requirements the MNE Group must comply with when preparing the qualified financial statements including:

- using the same source of qualified financial statements to apply the transitional safe harbour to a jurisdiction (including where there are multiple entities within the jurisdiction); and
- not adjusting any of the data contained in the qualified financial statements, even where the adjustments would be more consistent with the GloBE rules.
  [Chapter 8, section 8-75 of the Rules]

8.46 The specific exemption to using the same source of data for an entity refers to the deferred tax component of the income tax expense that relates to Profit (Loss) Before Tax for the entity. Instead of using the entity's separate financial accounts or statements, the consolidating parent entity may refer accounting entry that is used in preparing the CFS for data on the deferred tax component.

8.47 An MNE Group that has a presence across multiple jurisdictions will still qualify for the transitional safe harbour where different accounting standards are used in each jurisdiction.

Qualified CbC Reports

8.48 The types of qualified financial statements contribute to determining what is considered a Qualified CbC Report. A Qualified CbC report in relation to a jurisdiction is prepared and filed using Qualified Financial Statements.

8.49 MNE Groups that are in scope of the GloBE Rules but not required to file CbC Reports may still be eligible for the Transitional CbC Reporting Safe Harbour if the GloBE Information Return is completed using the data from Qualified Financial Statements that would have been reported as Total Revenue and Profit (Loss) Before Income Tax in a Qualified CbC Report if the MNE Group were required to file a CbC Report in accordance with the CbC requirements in the UPE Jurisdiction.

8.50 If the UPE Jurisdiction does not have CbC requirements, it is the amounts that would have been reported in accordance with the OECD BEPS Action 13 Final Report and the OECD Guidance on the Implementation of CbC Reporting, which is freely and publicly available from the OECD website. Alternatively, an MNE Group may voluntarily submit a CbC Report.
[Chapter 8, subsection 8-35(3) and (4) of the Rules]

8.51 For NMCEs that are not included in the CFS based on materiality grounds, the definition of Qualified Financial Statements allows the MNE Group to use the same financial accounts of the NMCEs that are used to prepare the MNE Group's CbC Report.
[Chapter 8, subsection 8-70(1)(c) of the Rules]

8.52 Given that JVs do not prepare CbC Reports, JVs will generally rely on the hypothetical option that allows access to the Transitional CbC Reporting Safe Harbour despite not being required to file CbC reports.

Anti avoidance rule – hybrid arbitrage arrangements

8.53 An anti-avoidance rule is included to prevent MNE Groups from entering or altering arrangements in an attempt to qualify for the Transitional CbC Reporting Safe Harbour to avoid paying Top-up Tax.

8.54 The Tested Jurisdiction's Profit or loss Before income Tax and income tax expense must be adjusted with respect to any Hybrid Arbitrage Arrangements entered into after 15 December 2022 (the release of the OECD's safe harbour guidance). This affects the Transitional CbC Reporting Safe Harbour calculation by excluding any:

- expense or loss arising from a deduction / non-inclusion arrangement or duplicate loss arrangement from the tested jurisdictions PBT; and
- income tax expense from a duplicate tax recognition arrangement from the tested jurisdictions income tax expense.
[Chapter 8, section 8-110 of the Rules]

8.55 A hybrid arbitrage arrangement extends to arrangements that existed prior to 15 December 2022, but were amended or transferred after the release of the safe harbour guidance. It also applies if the accounting treatment with respect to the arrangement changes after 15 December 2022. These extended treatments are intended to prevent parties from qualifying for the Transitional CbC Reporting Safe Harbour based on manipulating transactions to meet the conditions.
[Chapter 8, section 8-150 of the Rules]

8.56 Similarly, a Constituent Entity will also be considered to have entered into an arrangement if after 15 December 2022 the performance of any rights or obligations differs from the performance of those rights and obligations prior to 15 December 2022. This includes payments that are reduced or ceased, which has the effect of increasing the balance of a liability.
[Chapter 8, section 8-150 of the Rules]

8.57 A Hybrid Arbitrage Arrangement is defined with respect to either a:

- deduction / non-inclusion arrangement;
- a duplicate loss arrangement; or
- a duplicate tax recognition arrangement.
[Chapter 8, section 8-115 of the Rules]

Deduction / non-inclusion arrangement

8.58 A deduction / non-inclusion arrangement is an arrangement under which one Constituent Entity directly or indirectly provides credit or otherwise makes an investment in another Constituent Entity that results in an expense or loss in the financial statements of a Constituent Entity to the extent that:

- there is no commensurate increase in the revenue or gain in the financial statements off the Constituent entity counterparty; or
- the Constituent Entity counterparty is not reasonably expected, over the life of the arrangement, to have a commensurate increase in its taxable income.
[Chapter 8, section 8-120 of the Rules]

8.59 The deduction / non-inclusion arrangement does not extend to expenses exclusively arising from Additional Tier One Capital.

Duplicate loss arrangement

8.60 A duplicate loss arrangement is an arrangement that results in an expense or loss being included in the financial statement of a Constituent Entity to the extent that:

- the expense or loss is also being included as an expense or loss in the financial statement of another Constituent Entity; or
- the arrangement also gives rise to a duplicate amount that is deductible for purposes of determining the taxable income of another Constituent Entity in another jurisdiction.
[Chapter 8, section 8-125 of the Rules]

8.61 The duplicate loss arrangement does not capture an amount of expense to the extent that it is offset against revenue which is included in the financial accounts of both Constituent Entities.

8.62 The duplicate loss arrangement ensures there is no duplicate expense or loss being claimed or recorded across multiple Constituent Entities and that only one is claiming the amount. This ensures that regardless of how many Constituent Entities (for example, 10 Constituent Entities) are part of the transaction and attempt to claim the same expense, all will be disallowed the expense or loss, except one. This prevents duplicating the same amount across financial statements.
[Chapter 8, subsection 8-110(2) of the Rules]

Duplicate tax recognition arrangement

8.63 Duplicate tax recognition arrangement results in more than one Constituent Entity including part or all of the same income tax expense in its:

- adjusted Covered Taxes; or
- simplified ETR,

for purposes of applying the Transitional CbC Reporting Safe Harbour unless such arrangements also result in the income subject to the tax being included in the relevant financial statements of each such Constituent Entity. An arrangement will not be a duplicate tax recognition arrangement if it arises solely because the Simplified ETR of a Constituent Entity does not require adjustments for income tax expenses, which would be allocated to another Constituent Entity in determining the first Constituent Entity's Adjusted Covered Taxes.
[Chapter 8, section 8-130 of the Rules]

8.64 The Hybrid arbitrage arrangement applies to any Constituent Entity of the MNE Group, including deemed Constituent Entities, such as JVs and excluded entities that have an election under section 20 of the Assessment Act apply.
[Chapter 8, section 8-135 of the Rules]

8.65 For the purposes of applying the hybrid arbitrage rule, the meaning of financial statements has a broad meaning to capture either the Constituent Entity's accounts used to determine GloBE income, or the statements used for the calculations under the Transitional CbC Reporting Safe Harbour.
[Chapter 8, section 8-140 of the Rules]

8.66 A Constituent Entity will not be considered to have a commensurate increase in its taxable income to the extent that:

- the amount included in taxable income is offset by a tax attribute. Such as, a loss carry-forward or an unused interest carry-forward, with respect to which a valuation adjustment or an accounting recognition adjustment has been made. Alternately, if an adjustment determination would have been made without regard to the ability of a Constituent Entity to use the tax attribute with respect to any Hybrid Arbitrage Arrangement entered into after 15 December 2022; or

- the payment that gives rise to the expense or loss also gives rise to a taxable deduction or loss of a Constituent Entity that is located in the same jurisdiction as the Constituent Entity counterparty, without being included as an expense or loss in determining the Profit (Loss) Before Income Tax for that jurisdiction (including as a result of being an expense or loss in the financial statements of Flow-through Entity which is owned by a Constituent Entity in the jurisdiction of the Constituent Entity counterparty).
[Chapter 8, sections 8-120 and 8-145 of the Rules]

Permanent Safe Harbour: simplified calculations

8.67 The Simplified Calculations Safe Harbour allows MNE Groups to avoid making certain complex GloBE calculations in situations where the calculation could be simplified, without altering the MNE Group's GloBE outcomes or otherwise undermining the integrity of the GloBE Rules.
[Chapter 8, Division 2 of Part 8-2 of the Rules]

8.68 The permanent safe harbour framework enables the implementation of future permanent safe harbours that are agreed by the OECD.

Application of the safe harbour

8.69 A Filing Constituent Entity for an MNE Group may make an Annual Election in respect of a jurisdiction (the tested jurisdiction) to apply the Simplified Calculations Safe Harbour. Where a tested jurisdiction qualifies for the Simplified Calculations Safe Harbour for a Fiscal Year, the Top-up Tax for that jurisdiction will be deemed to be zero. The Simplified Calculations Safe Harbour will apply when the tested jurisdiction satisfies the requirements of any one of the following simplified calculations tests:

- De minimis test;
- ETR test; or
- Routine profits test.
[Chapter 8, Section 8-155 of the Rules]

8.70 The simplified calculations tests follow the same tests as outlined under Chapter 5, where the:

- simplified calculations Routine profit test mirrors the Substance-based Income Exclusion amount under Part 5-3 of the Rules;
- simplified calculations De minimis test follows the de minimis exclusion under Part 5-5 of the Rules; and

- simplified calculations ETR test is based on the ETR calculations under Chapter 5.
  [sections 8-160, 8-165 and 8-170 of the Rules]

8.71 The application of the permanent safe harbour does not impact any Additional Current top-up tax that may arise. An MNE Group may still be liable to Jurisdictional Top-up Tax for the Fiscal Year due to Additional Top-up Tax arising under Part 5-4 of the Rules.

Non-Material Constituent Entity Safe Harbour

8.72 The simplified income, revenue and tax calculations may apply to non-material Constituent Entities (NMCEs), as part of the Permanent Safe Harbour. These simplified calculations only apply in respect of NMCEs. If the jurisdiction does not qualify for the Permanent Safe Harbour, the MNE Group must use the standard GloBE calculations in respect of NMCEs.

8.73 The permanent safe harbour applies to NMCEs on the basis that it is common for MNEs to exclude NMCE's from the CFS in accordance with the definition of the materiality threshold in the relevant accounting standards.

Definition of NMCE

8.74 An NMCE must meet the following six conditions:

- the Constituent Entity must not be consolidated on a line-by-line basis in the CFS of the UPE for the Fiscal Year, based on size or materiality grounds;
- the MNE Group's CFS must meet paragraphs (a) or (c) of the definition of CFS in section 34 of the Assessment Act;
- the CFS must be externally audited;
- the external audit follows the auditing standards issued by the auditing standards board in the jurisdiction in which the UPE of the MNE Group is located;
- the external audit report is not qualified in a respect that is relevant to size or materiality; and
- where the Constituent Entity's revenues exceed EUR 50 million, the Constituent Entity can only be an NMCE if the financial accounts are prepared in accordance with an Acceptable FAS or an Authorised FAS.
  [Chapter 8, section 8-185 of the Rules]

8.75 It is not appropriate to allow the MNE Group to access the NMCE Safe Harbour if the CFS is prepared in accordance with paragraph (b) or (d) of the CFS definition in section 34 of the Assessment Act, due to paragraph (b) of that Act referring to the financial statements of a Main Entity and an MNE Group and an MNE Group made up only of a Main Entity and its Permanent Establishments cannot apply the NMCE simplified calculations.

8.76 The NMCE definition requires there to be CFS that have been externally audited to determine the non-materiality of the Entity. The external auditor that audits the CFS must be a legal person or individual with the relevant expertise to undertake the audit tasks. The auditor's opinion must not contain objections (i.e. qualifications) in relation to the exclusion of the Entity from the consolidation perimeter.

8.77 If a Main Entity is an NMCE then all its Permanent Establishments are also considered NMCEs.
[Chapter 8, subsection 8-185 of the Rules]

Applying the NMCE safe Harbour

8.78 The simplified calculations for NMCEs only applies where the MNE Group has made an Annual Election in respect of each NMCE located in the jurisdiction to which the safe harbour applies to. This has the effect of applying the NMCE safe harbour to the NMCE located in that jurisdiction that may then use the simplified income, simplified revenue and simplified tax calculations for that NMCE for the purposes of satisfying one of the simplified calculations tests.
[Chapter 8, subsections 8-155(3) and 8-180(3) of the Rules]

Simplified Calculations

8.79 The simplified calculations for NMCEs provide for an alternative method for determining the GloBE Income or Loss, revenue, and Adjusted Covered Taxes of such Entities for use in one of the simplified calculations tests, as part of the Permanent Safe Harbour. For the purposes of the Simplified Calculations Safe Harbour Tests (the De minimis Test, ETR Test, or Routine Profit Test), the following Simplified Income, Revenue and Tax Calculations shall be undertaken for each NMCE subject to the election. Note that both the NMCE’s GloBE Income or Loss and the Total Revenue may be positive or negative.

8.80 Under the simplified revenue calculation for an NMCE, the Total Revenue of the NMCE, as determined under the Relevant CbC Regulations, is taken to be its revenue for the purposes of applying the simplified calculations De minimis test and Routine profits test. This means that both the GloBE Income and revenue of the NMCE will be the same amount in the context of the NMCE simplified calculations.
[Chapter 8, sections 8-160 and 8-170, subsections 8-175(3) and 8-190(1) of the Rules]

8.81 Under the simplified tax calculation, the measure of Adjusted Covered Taxes of NMCEs is the Income Tax Accrued (Current Year) as determined under the Relevant CbC Regulations, for the purpose of applying the simplified calculations ETR test. This means that the simplified tax calculation excludes any deferred tax expenses, adjustments for non-current items, and provisions for uncertain tax liabilities.
[Chapter 8, section 8-165, subsections 8-175(5) and 8-190(2) of the Rules]

8.82 In the case of a Permanent Establishment that is an NMCE, the amount of the GloBE Income, revenue, and Adjusted Covered Tax is the Total Revenue and Income Tax Accrued (Current Year) as determined under the Relevant CbC Regulations with respect to such Permanent Establishment.

8.83 The Relevant CbC Regulations refers to the CbC Reporting regulations applicable in the UPE Jurisdiction or in the surrogate parent entity jurisdiction, if a CbC Report is not filed in the UPE Jurisdiction. If the UPE jurisdiction does not have CbC requirements and an MNE Group is not required to file a CbC Report in any jurisdiction, Relevant CbC Regulations means the OECD BEPS Action 13 Final Report and the OECD Guidance on the Implementation of CbC Reporting. The OECD's guidance on CbC Reporting is a document that is freely and publicly available from https://oecd.org.

8.84 CbC Reporting regulations means the reporting obligations for CbC reporting entities set out in Subdivision 815-E of the ITAA 1997 and the law of a jurisdiction corresponding to that Subdivision.
[Chapter 8, section 8-195 of the Rules]

8.85 The term Surrogate Parent Entity is defined in the OECD's guidance document and is defined as one Constituent Entity of the MNE Group that has been appointed by the MNE Group, as a sole substitute for the UPE, to file the CbC Report on behalf of the MNE Group, in that Constituent Entity's jurisdiction of tax residence. The surrogate parent entity in CbC Reporting is a similar concept to 'Designated Filing Entity' under section 127-25 of the *Taxation Administration Act 1953*.

QDMTT Safe Harbour

General rule

8.86 Where an MNE Group qualifies for the QDMTT Safe Harbour for a Fiscal Year, the Top-up Tax for the jurisdiction for the Fiscal Year is taken to be zero.

8.87 An MNE Group will be eligible for the QDMTT Safe Harbour in respect of a jurisdiction for a Fiscal Year where:

- the jurisdiction has a QDMTT for the Fiscal Year;

- the jurisdiction is specified in a determination made by the Minister; and
- a Filing Constituent Entity for the MNE Group has made an Annual Election to apply the QDMTT Safe Harbour to the jurisdiction for the Fiscal Year.

8.88 The QDMTT Safe Harbour operates by allowing an MNE Group to make an Annual Election to apply the QDMTT Safe Harbour for each subgroup or standalone Entity subject to a separate QDMTT calculation.
[Chapter 8, section 8-200 of the Rules]

8.89 For example, where three Constituent Entities of the main group, two members of the same JV Group, and one Investment Entity subject to Part 7-4, are located in a jurisdiction with a QDMTT that meets the standards of the safe harbour the Filing Constituent Entity would need to make a separate election for the three Constituent Entities, the two members of the JV Group and for the Investment Entity.

8.90 The Minister's determination is an appropriate mechanism to determine whether a jurisdiction has a QDMTT Safe Harbour status for the Fiscal Year. This ensures there is appropriate parliamentary oversight of the jurisdictions that have a qualifying DMT, and that the Rules do not incorporate the list of qualifying QDMTT Safe Harbours published by the OECD by reference.

Disputed amounts

8.91 A Filing Constituent Entity cannot elect to apply the QDMTT Safe Harbour where all or part of the top-up tax computed for the jurisdiction for the Fiscal Year under the QDMTT would not be treated as Domestic Top-up Tax for the purposes of section 5-30 of the Rules, assuming the safe harbour did not apply.

8.92 The term Domestic Top-up Tax refers to the amounts payable by each Constituent Entity of an MNE Group under a QDMTT of a jurisdiction for the Fiscal Year. However, pursuant to section 5-35 of the Rules, such amounts shall not include any amount of QDMTT that:

- the MNE Group directly or indirectly challenges in a judicial or administrative proceeding; or
- the tax authority of the jurisdiction has determined is not assessable or collectible,

based on constitutional grounds, other superior law, or based on a specific agreement with the government of the QDMTT jurisdiction limiting the MNE Group's tax liability, such as a tax stabilisation agreement, investment agreement, or similar agreement.

8.93 Where all or part of the MNE Group's Qualified QDMTT payable for the jurisdiction for a Fiscal Year under section 5-35 of the Rules would not be considered Domestic Top-up Tax for the purposes of section 5-30 of the Rules, then, the MNE Group is prevented from making the election to apply the QDMTT Safe Harbour to that jurisdiction for that Fiscal Year.
[Chapter 8, section 8-205 of the Rules]

Switch-off rule

8.94 There are specific scenarios where an MNE Group will be subject to a switch-off rule. Where the switch-off rule applies to an MNE Group, the MNE Group is prevented from applying the QDMTT Safe Harbour to Constituent Entities located or created in the QDMTT jurisdiction and will switch to the credit method for QDMTT provided under section 5-30 of the Rules.

8.95 The switch-off rule recognises that some QDMTT jurisdictions could be subject to certain restrictions on imposing the QDMTT with respect to a particular Constituent Entity or corporate structures. It recognises that in some scenarios it would be disproportionate to deny a QDMTT jurisdiction from qualifying for a QDMTT Safe Harbour for all MNE Groups because those restrictions might only impact on a small number of Constituent Entities or particular corporate structures.

8.96 The switch-off rule applies if a QDMTT jurisdiction decides:

- not to impose a QDMTT on Flow-through Entities created in its jurisdiction;
- not to impose a QDMTT on Investment Entities subject to equivalents of Parts 7-4, 7-5, and 7-6 of the Rules;
- to adopt an equivalent of Part 9-3 of the Rules without limitation;
- to include JVs or members of a JV Group within the scope of the QDMTT but imposes the liability on Constituent Entities of the main group instead of directly on the members of the JV Group;
- that a Constituent Entity that is an OECD Securitisation Entity:
  - is excluded from the scope of the QDMTT; or
  - is included in the scope of a QDMTT but the QDMTT is not imposed on that Entity.
    [Chapter 8, subsections 8-210(1) to (4), (6) to (8) of the Rules]

8.97 However, the switch-off rule does not apply if a QDMTT jurisdiction imposes the QDMTT liability of an OECD Securitisation Entity on other Constituent Entity of the MNE Group that is not an OECD Securitisation Entity, or imposes the QDMTT liability directly on the OECD Securitisation Entity only if it is the only Constituent Entity in the jurisdiction and the QDMTT liability could not otherwise be collected.
[Chapter 8, subsection 8-210(5) of the Rules]

8.98 In addition, the Minister may make a determination specifying that another jurisdiction's QDMTT is subject to certain restrictions, if a relevant restriction applies to the MNE Group for the Fiscal Year.
[Chapter 8, subsections 8-155(9) and (10) of the Rules]

8.99 The Minister's power to make determinations specifying a jurisdiction may access the QDMTT Safe Harbour as well as the determination to impose any restrictions on a jurisdictions QDMTT is appropriate to maintain alignment with the OECD's determination of jurisdictions that are qualified. This determination is a legislative instrument and is therefore subject to disallowance and sunsetting. Given the Safe Harbours, and in particular the QDMTT Safe Harbour, will be subject to ongoing review by the OECD, the Minister's determination by legislative instrument is an appropriate mechanism to not only ensure alignment with the OECD guidance, but also to provide the correct outcome that a jurisdiction cannot access the full QDMTT Safe Harbour if it is inconsistent with the OECD Guidance.

Defining an OECD Securitisation Entity

8.100 For the purposes of applying the switch off rule, the definition of OECD Securitisation Entity does not align with Division 820 of the ITAA 1997 but is instead defined as an Entity which is a participant in a Securitisation Arrangement which satisfies the following conditions:

- the Entity only carries out activities that facilitate one or more Securitisation Arrangements (which is defined below);
- the Entity grants security over its assets in favour of its creditors (or the creditors of another OECD Securitisation Entity);and
- the Entity pays out all cash received from its assets to its creditors (or the creditors of another OECD Securitisation Entity) on at least an annual basis, other than:
  - cash retained to meet an amount of profit required by the documentation of the arrangement, for eventual distribution to equity holders (or equivalent); or
  - cash reasonably required under the terms of the arrangement for either (or both) of the following purposes:

– to make provision for future payments which are required, or will likely be required, to be made by the Entity under the terms of the arrangement; or

– to maintain or enhance the creditworthiness of the Entity.

8.101 An Entity is not an OECD Securitisation Entity unless any profit for a given Fiscal Year is negligible relative to the revenues of the Entity (consistent with paragraphs 148.2-148.3 on page 143 of the June Administrative Guidance 2024).
[Chapter 8, section 8-215 of the Rules]

8.102 A securitisation arrangement does not arise when a Constituent Entity of the MNE Group is involved, but otherwise must satisfy the following two conditions:

- the arrangement is implemented for the purpose of pooling and repackaging a portfolio of assets (or exposures to assets) for investors in a manner that legally segregates one or more identified pools of assets; and
- the arrangement seeks through contractual agreements to limit the exposure of those investors to the risk of insolvency of an Entity holding the legally segregated assets by controlling the ability of identified creditors of that Entity (or of another Entity in the arrangement) to make claims against it through legally binding documentation entered into by those creditors (consistent with paragraphs 148.4 on page 143 of the June Administrative Guidance 2024).
[Chapter 8, section 8-220 of the Rules]

UTPR Safe Harbour

8.103 The Transitional UTPR deems Top-up Tax to be zero for an MNE Group for a Fiscal Year between 1 January 2026 and 31 December 2026 if the UPE jurisdiction has a corporate income tax rate of at least 20 per cent.
[Chapter 8, section 8-225 of the Rules]

8.104 An MNE Group that qualifies for both the transitional CbC Reporting safe harbour and the UTPR safe harbour may choose which safe harbour to apply for that jurisdiction.

8.105 The Transitional UTPR Safe Harbour deems the UTPR Top-up Tax Amount calculated for the UPE Jurisdiction to be zero. This only applies to Constituent Entities and JVs that are located in the jurisdiction of the UPE of the actual MNE Group and does not extend to the UPE of any deemed groups.

8.106 The Transitional UTPR Safe Harbour deems the Top-up Tax of each Constituent Entity, each JV and JV Subsidiary in respect of, the MNE Group, that is located in the jurisdiction of the UPE of the actual MNE Group to be nil for the purpose of computing the Total UTPR Top-up Tax Amount.

8.107 For example, if a UPE of an MNE Group is located in Jurisdiction A and a JV Group located in the Jurisdiction B, the UTPR safe harbour only operates to reduce Top-up Tax to zero for Jurisdiction A. The UTPR safe harbour does not extend to the JV Group in Jurisdiction B, on the basis that the JV is deemed as a separate group and is not in the same location as the UPE of the main MNE Group.

Chapter 9: Transitional provisions

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Outline of chapter

9.1 Smaller MNE Groups will become subject to the GloBE Rules if they increase their revenues above a threshold, either through growth or a merger or acquisition. A Constituent Entity could also become subject to the GloBE Rules when such a Constituent Entity is acquired by a MNE Group that is already subject to the GloBE Rules.

9.2 Failure to take appropriate account of operating losses that the MNE Group has incurred in the periods prior to becoming subject to the GloBE Rules could result in a distorted picture of the MNE Group's tax position. Similarly, timing differences between the local tax rules and the GloBE Rules (such as rules allowing for the pre-payment or deferment of tax) could lead to an incorrect Top-up Tax calculation.

9.3 To address these issues, Chapter 9 of the Rules provides for transitional provisions that set out:

- rules for bringing existing tax attributes into GloBE calculations (Part 9-1);
- transitional relief for the Substance-based Income Exclusion (Part 9-2); and
- special treatment for MNE Groups in their initial phase of international activity (Part 9-3).

Detailed explanation of new law

Tax attributes upon transition

9.4 Part 9-1 of the Rules provides rules for bringing existing tax attributes into relevant GloBE calculations. As the Consolidated Commentary explains, failing to account for pre-existing tax attributes could distort ETR calculations or lead to other unintended outcomes (see paragraph 2, page 224 of Consolidated Commentary).

9.5 Broadly, the provisions in this Part:

- set out how to compute the Total Deferred Tax Adjustment Amount (for the purposes of Chapter 9) using pre-existing deferred tax attributes;
- prevent the recognition of certain deferred tax assets that arise from transactions immediately before the Rules apply (particularly where these create permanent differences); and
- provide special treatment for asset transfers between related entities to prevent inappropriate step-ups in asset values or creation of deferred tax assets.

Meaning of Transition Year

9.6 These transitional rules operate by reference to a Constituent Entity's Transition Year. For the purposes of Part 9-1 of the Rules, the ***Transition Year*** for a jurisdiction is the first Fiscal Year in which a MNE Group comes within the scope of the GloBE Rules in respect of that jurisdiction.
[Chapter 9, section 9-20 of the Rules]

9.7 This can occur when the GloBE Rules are introduced in a jurisdiction where the MNE Group operates, when a smaller MNE Group increases its revenue above the threshold (either organically or as a result of a merger or acquisition), or when a Constituent Entity is acquired by an MNE Group already subject to the GloBE Rules (see paragraph 1 on page 224 of the Consolidated Commentary).

Bringing in pre-existing tax attributes

The simplified Total Deferred Tax Adjustment Amount

Application of Deferred Tax Adjustments

9.8 The transitional rules set out requirements for computing a Constituent Entity's Total Deferred Tax Adjustment Amount in the period when it first becomes subject to the GloBE Rules and afterwards. These computation requirements apply for a ***current year*** that is either:

- the MNE Group's Transition Year for the jurisdiction, or
- a subsequent Fiscal Year, if the Constituent Entity has not ceased to be a Constituent Entity of the MNE Group in the intervening period. ***[Chapter 9, subsection 9-5(1) of the Rules]***

9.9 Where the current year is a subsequent Fiscal Year, the 'intervening period' is the time between the Transition Year and the current year being considered. For example, if an MNE Group's Transition Year is Fiscal Year 1 and the current year is Fiscal Year 3, the Constituent Entity must have maintained its status within the MNE Group throughout Fiscal Years 1 to 3 for these rules to apply. This ensures continuity in the treatment of deferred tax attributes while they reverse or are utilised.

Scope of deferred tax attributes

9.10 For the intervening period, a Constituent Entity must take into account all deferred tax assets and deferred tax liabilities (collectively referred to as 'deferred tax attributes') that are reflected or disclosed in its financial accounts at the beginning of the Transition Year.

9.11 The amounts at which these attributes are considered are determined under specific calculation rules discussed from paragraphs 9.15 to 9.17 below. ***[Chapter 9, subsection 9-5(2) of the Rules]***

9.12 These rules provide a simplified approach for bringing existing deferred tax attributes into the GloBE Rules. For detailed examples of how this operates, including the treatment of tax losses and timing differences, see paragraphs 5 and 6 on page 225 of the Consolidated Commentary.

Special rules and other modifications

Limitations on certain Pre-Transition Year deferred tax assets

9.13 The simplified computation rules do not apply to a deferred tax asset that arises from a transaction that occurs between 1 December 2021 and the beginning of the Transition Year and relates to an amount that is:

- not included in the Constituent Entity's taxable income for a Fiscal Year; and

- would not have been considered in computing its GloBE Income or Loss for the Transition Year, if the amount arose in the Transition Year.
  [Chapter 9, subsection 9-5(3) of the Rules]

9.14 This limitation prevents the recognition of deferred tax assets arising from permanent differences between taxable income and GloBE Income or Loss in the period before the Rules apply. The Consolidated Commentary provides examples of such situations, including where a Constituent Entity triggers a domestic tax loss with respect to an item not considered in calculating GloBE Income or Loss, such as depreciation deductions in excess of an asset's cost (see paragraphs 8-9 on page 226 of Consolidated Commentary).

Computing the amounts of deferred tax attributes

9.15 Once the relevant deferred tax attributes have been identified, there are specific calculation rules to determine the amounts at which these attributes must be considered. These rules build on deferred tax accounting concepts but modify the amounts to ensure appropriate recognition at the lower of the Minimum Rate or applicable domestic tax rate (see paragraph 5 on page 225 of the Consolidated Commentary).

9.16 Specifically, the calculation provides different treatments for:

- general deferred tax attributes (including those relating to losses); and
- deferred tax assets relating to tax credits.

9.17 The differentiated treatment ensures that certain attributes, particularly those relating to losses or timing differences that straddle the implementation of the GloBE Rules, prevent distortions upon entry into the GloBE regime (see paragraph 4 on page 225 of the Consolidated Commentary).

Valuation adjustment or accounting recognition

9.18 However, for the purposes of these calculations, the impact of any valuation adjustment or accounting recognition adjustment with respect to the amount of a deferred tax asset must be disregarded.
[Chapter 9, subsection 9-10(2) of the Rules]

9.19 This ensures that deferred tax assets are appropriately recognised for GloBE purposes regardless of any accounting restrictions that might otherwise limit their recognition (see paragraph 5 on page 225 of the Consolidated Commentary).

General deferred tax attributes

9.20 For deferred tax attributes (not relating to tax credits), the amount to be considered is determined under different rules depending on whether the attribute relates to a GloBE Loss. Generally, the amount of a deferred tax asset or deferred tax liability to be considered is the lesser of the following:

- the amount of the deferred tax asset or deferred tax liability reflected or disclosed in the financial accounts; or
- that amount recast at the Minimum Rate.
[Chapter 9, paragraphs 9-10(1)(b) and 9-10(4)(a) of the Rules]

Special rule for losses

9.21 However, a different treatment will apply to a deferred tax asset that is attributable to a tax loss in certain circumstances. Specifically, the amount of the deferred tax asset reflected in the financial accounts is recast at the Minimum Rate where:

- the deferred tax asset is attributable to a tax loss; and
- that loss would have been considered in computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year in which the loss arose (assuming such a computation was required in that year).
[Chapter 9, paragraph 9-10(4)(b) of the Rules]

9.22 This rule ensures that losses incurred before the Rules apply are appropriately recognised when determining the ETR. Failure to take appropriate account of operating losses that the MNE Group has incurred in the periods prior to becoming subject to the GloBE Rules could result in a distorted picture of the MNE Group's tax position (paragraph 2 on page 224 of the Consolidated Commentary).

9.23 For example, if a Constituent Entity incurred a tax loss before the GloBE Rules applied (and that loss would have qualified as a GloBE Loss), the deferred tax asset for that loss is recast at the Minimum Rate even if it was originally recorded at a lower rate, providing the appropriate shelter against future GloBE Income (paragraph 6 on page 225 of the Consolidated Commentary).

Tax credit amounts

9.24 For deferred tax assets relating to tax credits, the amount to be considered depends on what the tax rate used to determine the deferred tax asset is relative to the 15 per cent Minimum Rate. If the tax rate used to determine the asset is:

- less than 15 per cent, then it is the amount reflected or disclosed in the financial accounts is used; or
- at least 15 per cent, then the amount that is computed using the following formula:

$$\frac{Deferred\ tax\ asset\ or\ liability}{Applicable\ domestic\ tax\ rate} \times minimum\ rate$$

[Chapter 9, paragraph 9-10(1)(a) and subsection 9-10(3) of the Rules]

9.25 For the purposes of this formula, ***deferred tax asset or liability*** means the amount of the deferred tax asset or deferred tax liability reflected or disclosed in the financial accounts. The ***applicable domestic tax rate*** is the tax rate that applied in the Fiscal Year preceding the Transition Year.

Re-application year

9.26 However, if the tax rate applicable to the Constituent Entity changes in a subsequent Fiscal Year (known as the re-application year), the formula must be reapplied to the outstanding balance of the tax credit reflected or disclosed in the financial accounts at the beginning of that year.

9.27 This ensures the recalculation is based on the rate at which the deferred tax asset was originally recorded (paragraph 6.1 on page 225 of the Consolidated Commentary). Importantly, any change in the amount of the deferred tax asset resulting from this reapplication is not treated as deferred tax expense in computing Adjusted Covered Taxes in the re-application year. Instead, the deferred tax expense for the re-application year and subsequent years shall be determined by reference to the amount of the reversal of the deferred tax asset after re-application of the formula (paragraph 6.2 on page 225 of the Consolidated Commentary).

Pre-transition asset transfers

9.28 The transitional rules also provide a framework for dealing with asset transfers that occurred before an MNE Group became in scope of the GloBE Rules. These provisions address the risk of asset transfers between related entities in a way that could undermine the Rules, for example by inappropriately reducing future top-up tax liabilities.

9.29 The Rules therefore require certain pre-transition asset transfers to be recognised at their historic carrying value rather than any stepped-up amount, with the broader intention of preserving the appropriate tax base.

Purpose and scope

9.30 These rules apply to transactions (including any transfer of rights) that occur, or are deemed to occur, in relation to an asset (including any item of economic value) owned by an Entity (referred to as the ***disposing Entity***). The transaction must occur in the period starting on 1 December 2021 and ending immediately before the disposing Entity's Transition Year.
[Chapter 9, paragraphs 9-15(1)(a) and (b) of the Rules]

9.31 The transaction is one in which another Entity (referred to as the ***acquiring Entity***) either:

- creates or increases the carrying value of the asset in its financial accounts and the disposing Entity recognising the corresponding amount of income; or
- records the carrying value of the asset in its financial accounts at cost and a deferred tax asset based on the difference between that carrying value and its tax basis.
  [Chapter 9, subparagraphs 9-15(1)(a)(i) and (ii) of the Rules]

9.32 Additionally, where the disposing Entity and the acquiring Entity are different, they must be entities that would have been Constituent Entities of the same MNE Group had these Rules been in force immediately before the transaction. ***[Chapter 9, paragraph 9-15(1)(d) of the Rules]***

Types of covered transactions

9.33 For these purposes, the concept of a 'transaction' in relation to an asset is interpreted broadly. This includes any transfer of rights to an item of economic value where the acquiring Entity creates or increases the carrying value of an asset in its financial accounts and the disposing Entity recognises the corresponding income (paragraph 10.2 on page 227 of the Consolidated Commentary). Importantly, these rules apply to both transactions between different Entities as well as transfers (or deemed transfers of assets) within the same Entity.
[Chapter 9, paragraph 9-15(1)(a) of the Rules]

9.34 A 'transfer of assets' has a broad application to include cross-border and domestic transactions that are treated like a sale of assets from an accounting perspective. Transfer of assets under paragraph 10.4 on page 228 of the Consolidated Commentary, may include, but are not limited to the following types of transactions or restructurings:

- sale of an asset;
- capital lease, which is accounted for in the same or similar manner as a purchase of an asset;
- a license that is effectively treated as a sale for accounting purposes;
- a transfer of assets through a sale of a Controlling Interest;
- a prepayment of royalty or rents, where the licensor/lessor records the prepayment as income and the licensee/lessee capitalizes and amortizes the asset in its financial accounts;
- a total return swap where the underlying asset is transferred to the financial accounts of the Entity that acquired the rights to income and capital gains generated by an underlying asset;
- a migration of an Entity/Entities where an MNE Group receives a step-up in the tax basis or carrying value (e.g. based on fair value of assets) of the relocated assets; and

- a change to fair value accounting where the Entity records the relevant gains or losses from fair value changes of the underlying asset and corresponding adjustments to the carrying value of the asset.

Treatment of qualifying transfers

General treatment of carrying values

9.35 For the purposes of applying these transitional provisions in relation to Constituent Entities of the MNE Group, the relevant asset is treated as having been acquired for an amount equal to the disposing Entity's carrying value immediately before the transaction.
[Chapter 9, paragraph 9-15(2)(a) of the Rules]

9.36 The carrying value of the asset at the beginning of the Transition Year is treated as being that amount, adjusted for:

- subsequent capitalised expenditure incurred in respect of the asset after the transaction; and
- amortisation and depreciation, assuming any increase in the carrying value resulting from the transaction had not occurred.
[Chapter 9, paragraph 9-15(2)(b) of the Rules]

9.37 This treatment ensures that any step-up in the asset's value resulting from the transfer is disregarded for the purposes of the transitional rules and preserves the appropriate tax base by preventing artificial increases in asset values that could shield future income from top-up tax (paragraph 10.1 on page 227 of the Consolidated Commentary).

9.38 The requirement to calculate amortisation and depreciation as if the transfer had not occurred means that any increased depreciation or amortization attributable to recording the asset at a higher value in the financial accounts must be excluded from GloBE calculations. Similarly, any gain or loss from a subsequent sale of the asset must be determined based on this adjusted carrying value (paragraph 10 on page 226 of the Consolidated Commentary).

Treatment of deferred tax attributes

9.39 Any deferred tax asset or deferred tax liability that arises as a result of the transaction must be disregarded, subject to specific exceptions discussed below.
[Chapter 9, paragraph 9-15(2)(c) of the Rules]

9.40 This limitation on recognising deferred tax attributes works together with the carrying value rules to prevent transactions from inappropriately affecting future GloBE calculations. Allowing such deferred tax attributes could effectively shield the same amount of income from top-up tax as a step-up in carrying value (paragraph 10.7 on page 228 of the Consolidated Commentary).

9.41 There are instances where a deferred tax asset may be recognised despite the general limitation explained in paragraph 9.40 above. The amount of any such deferred tax asset is limited to the lesser of the following amounts:

- (Amount 1) The Minimum Rate multiplied by the difference between the tax basis in the asset and the carrying value of the asset (determined under the basic rules above); and
- (Amount 2) The sum of:
  - tax paid by the disposing Entity in respect of the transaction;
  - Covered Taxes that would have been allocated to the disposing Entity under Part 4-3 of the Rules;
  - the amount of any deferred tax asset that would have been recognised under the general transitional rules but was reversed or not created because gain from the transaction was included in the disposing Entity's taxable income.
    [Chapter 9, subsection 9-15(3) of the Rules]

9.42 In working out the sum for Amount 2 above, carrying values and deferred tax assets are adjusted to ensure that the amounts are appropriately updated to reflect changes after the transaction. Similarly, where group taxation regimes apply, adjustments are required to ensure that the rules operate appropriately. Specifically, the following adjustments are required:

- the carrying value of the asset and any deferred tax assets that arose in relation to the asset before the transaction must be adjusted for subsequent capitalised expenditure, amortisation and depreciation (only to the extent these items are incurred, or would have been recognised, in or after the Transition Year); and
- treat the other Constituent Entities of the MNE Group that are included in the tax consolidation group as being part of the disposing Entity, only if the disposing Entity is included in a TCG by virtue of an election having been made under section 3-185 of the Rules (paragraph 10.8 on page 229 of the Consolidated Commentary).
  [Chapter 9, subsection 9-15(4) of the Rules]

9.43 As an example, of the first adjustment to carrying values and deferred tax assets for subsequent events, if the asset is depreciated after the transaction, both its carrying value and any related deferred tax assets must be adjusted accordingly.

Treatment of transactions recorded at fair value

9.44 The Rules provide an alternative treatment for a Filing Constituent Entity to choose not to apply the basic carrying values for an asset where an acquiring Entity has recorded an asset at fair value in its financial accounts. This alternative is available if:

- after the transaction, the acquiring Entity records the asset at fair value in its financial accounts; and
- the amount computed under Amount 2 (see paragraph 9.58 above) is greater than Amount 1.
  [Chapter 9, subsection 9-15(5), (6) and (7) of the Rules]

9.45 Where an acquiring Entity would otherwise be entitled to recognise a deferred tax asset (based on the tax paid by the disposing Entity), it may instead simply use the fair value recorded in its financial accounts. This alternative treatment recognises situations where sufficient tax has been paid on the transfer to justify using the fair value for GloBE purposes (paragraph 10.9 on page 229 of the Consolidated Commentary).

9.46 As an example, the acquiring Entity can choose to use its recorded fair value rather than the historic carrying value for GloBE calculations if all of the following are satisfied:

- the acquiring Entity records an asset at its fair value;
- the disposing Entity has paid sufficient tax on the transfer gain; and
- the tax paid amount exceeds what would be recognised through the normal carrying value rules.

Transitional relief for the Substance-based Income Exclusion

9.47 Transitional rules apply when calculating the Substance-based Income Exclusion in Fiscal Years beginning from 1 January 2023 to 31 December 2032.
[Chapter 9, section 9-25 of the Rules]

9.48 For the purposes of the payroll carve-out amount and the tangible asset carve-out amount, the reference to 5 per cent should be replaced with the percentage in the below table for each Fiscal Year beginning in each of the following calendar years.

Fiscal Year	**Payroll carve-out**
2023	10.0%
2024	9.8%
2025	9.6%
2026	9.4%
2027	9.2%
2028	9.0%
2029	8.2%
2030	7.4%
2031	6.6%
2032	5.8%

Fiscal Year	**Tangible asset carve-out**
2023	8.0%
2024	7.8%
2025	7.6%
2026	7.4%
2027	7.2%
2028	7.0%
2029	6.6%
2030	6.2%
2031	5.8%
2032	5.4%

[sections 9-30 and 9-35 of the Rules]

Transitional Exclusion from the UTPR for an MNE Group in the initial phase of activity

9.49 The total UTPR Top-up Tax Amount for a Fiscal Year is reduced to zero during the initial phase of an MNE Group's international activity if:

- the MNE Group has begun operations within five years after the first day of the first fiscal year the MNE Group originally came within the scope of the GloBE Rules;
- it has Constituent Entities in six jurisdictions or less; and
- the sum of the Net Book Values of Tangible Assets of all Constituent Entities located in all jurisdictions other than the Reference Jurisdiction does not exceed 50 million Euros.
[Chapter 9, section 9-40 of the Rules]

9.50 For stateless entities, a tangible asset that is physically located in that reference jurisdiction throughout the Fiscal Year is treated as being part of the MNE Group located in the reference jurisdiction. In all other situations, the tangible asset of a Constituent Entity is treated as being in a jurisdiction that is not the reference jurisdiction.
[Chapter 9, section 9-40 of the Rules]

9.51 The reference jurisdiction of an MNE Group is where the MNE Group has the highest total value of tangible assets for the first Fiscal Year for which the MNE Group is an Applicable MNE Group.
[Chapter 9, section 9-50 of the Rules]

Carve outs

9.52 The exclusion does not apply to Investment Entities or Insurance Investment Entities. Therefore, the tangible assets of those entities are not included in the total value that counts towards determining the MNE Group's reference jurisdiction.
[Chapter 9, subsections 9-40(3), 9-40(3) and (4) of the Rules]

9.53 If Australia is the Reference Jurisdiction of the MNE Group, then the transitional rule does not apply and any top-up tax calculated for a LTCE that would be taken into account in calculating the MNE Group's total UTPR Top-up Tax Amount is reduced to zero if the LTCE is located in the Reference Jurisdiction. If the LTCE is located in another jurisdiction, the UTPR Percentage of those jurisdictions is reduced to zero, which has the effect of allocating the full amount of top-up tax arising in other jurisdictions to Australia.
[Chapter 9, section 9-45 of the Rules]

Chapter 10: Definitions

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Outline of chapter

10.1 Chapter 10 contains essential terms that are defined throughout the Rules.

Detailed explanation of new law

Qualified GloBE taxes

10.2 Section 10-15 of the Rules allows the Minister to make a determination specifying an IIR, DMT or UTPR as qualified, consistent with the OECD's qualification determination of a jurisdiction implementing an IIR, UTPR or DMT.
[Chapter 10, section 10-15 of the Rules]

10.3 This power is to ensure there is appropriate oversight of the taxes the OECD deems qualified for certain jurisdictions. The alternative to a Ministerial Determination would be directly rely on the list produced by the OECD. This would limit the oversight Parliament has and would directly incorporate a list published on the OECD website. Allowing the Minister to specify qualified GloBE taxes in a Determination ensures there is adequate parliamentary oversight and removes the incorporation by reference of OECD materials. The Ministerial power is limited to only be in effect for a specified fiscal year and can only apply to the extent that the Rules continue to remain functionally equivalent to the OECD's Agreed Administrative Guidance.

Direct ownership interest – interest differently classified

10.4 For the purposes of subsection 38(8) of the Assessment Act, there is not a Direct Ownership Interest in the issuer if:

- a Constituent Entity of an MNE Group (the ***holder***) holds an interest in another Constituent Entity of the MNE Group (the ***issuer***); and

- the holder has classified the interest as debt under the financial accounting standard used in the preparation of the relevant Consolidated Financial Statements; and
- the issuer has classified the interest as equity under that financial accounting standard.
[Chapter 10, section 10-20 of the Rules]

Location of dual located entities

10.5 The principle underlying the location of an entity is to follow the treatment prescribed under local law. In the Australian context, an entity would be considered to be an Australian entity if it falls within the meaning of the ITAA 1997 (see section 40 of the Assessment Act). In most cases, the entity will be a tax resident in the jurisdiction of its place of business, which will be the jurisdiction for the purposes of the Rules. In the case where the application of a local law results in an entity being located in more than one jurisdiction, section 10-60, relating to dual located entities applies (as under section 43 of the Assessment Act). If there is no resolution after consideration of Tax Treaties, the Entity will be deemed to be located in the place with the higher total of Covered Taxes or Substance Substance-based Income. In the event that there is still no single outcome, the location will be the place of creation. In limited cases, the Entity may be stateless. The location of a Flow-through Entity is not relevant as there are separate rules for the ownership interests in a Flow-through Entity.
[Chapter 10, section 10-60 of the Rules]

10.6 Section 10-65 operates as an integrity provision to ensure that the correct amount of top-up tax is collected and there is no under-taxation. Where a foreign Parent Entity is required to apply an IIR, but it has not been correctly applied, Australia still has rights to tax the Parent Entity.
[Chapter 10, section 10-65 of the Rules]

Defined terms throughout the rules

10.7 Various defined terms that are used throughout the Rules are consolidated in section 10-5 to assist in finding the defined term. The table below consolidates meanings contained within section 10-5 and the remainder of the Rules.

Defined term	***Explanation***
Accounting functional currency 3-60(2)	A Constituent Entity’s accounting functional currency for a Fiscal Year is the functional currency used to compute the Constituent Entity’s FANIL for the Fiscal Year.

Defined term	***Explanation***
Accrued Current Covered Tax Expense 4-10	The ***Accrued Current Covered Tax Expense*** for a Fiscal Year of a Constituent Entity of an MNE Group is the amount (if any) of the Constituent Entity's current tax expense accrued, in respect of Covered Taxes, in the Constituent Entity's FANIL for the Fiscal Year.
Additional Current Top-up Tax	The amount of additional tax calculated under subsection 4-30(3), paragraph 5-90(3)(b), or paragraph 7-75(2)(c) as appropriate.
Additional Tier One Capital 3-210(2)	An instrument issued by a Constituent Entity of an MNE Group pursuant to prudential regulatory requirements applicable to the banking or insurance sector that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.
Additions to Covered Taxes 4-15	The ***Additions to Covered Taxes*** for a Fiscal Year of a Constituent Entity of an MNE Group is the sum of the following: • the amount (if any) of Covered Taxes of the Constituent Entity for the Fiscal Year accrued as an expense in the profit before taxation in the Constituent Entity's financial accounts for the Fiscal Year; • the Constituent Entity's share of the amount of the GloBE Loss Deferred Tax Asset used in the Fiscal Year where there is a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction in which the Constituent Entity is located; • the amount of the GloBE Loss Deferred Tax Asset used by the UPE in the Fiscal Year where there is a GloBE Loss Deferred Tax Asset of the UPE • the amount (if any) of Covered Taxes of the Constituent Entity for the Fiscal Year that is paid in the Fiscal Year and related to an uncertain tax position and was treated as a Reduction to Covered Taxes of the Constituent Entity for a previous Fiscal Year; • the amount (if any) of credit or refund, in respect of a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit, that is recorded as a reduction, in respect of Covered Taxes, to its Accrued Current Covered Tax Expense for the Fiscal Year.

<table>
<tr><th>Defined term</th><th>Explanation</th></tr>
<tr><td>Adjusted Covered Taxes
4-5</td><td>The Adjusted Covered Taxes for a Fiscal Year of a Constituent Entity of an MNE Group is the Constituent Entity’s Accrued Current Covered Tax Expense for the Fiscal Year, adjusted by:
• its Additions to Covered Taxes for the Fiscal Year (see section 4-15) and subtracting its Reductions to Covered Taxes for the Fiscal Year (see section 4-20); and
• the Total Deferred Tax Adjustment Amount for the Constituent Entity for the Fiscal Year (see Part 4-4); and
• any increase in Covered Taxes, and subtracting any decrease in Covered Taxes, that:
– are recorded in equity or Other Comprehensive Income of the Constituent Entity for the Fiscal Year; and
– relate to amounts included in the computation of GloBE Income or Loss of the Constituent Entity for the Fiscal Year that will be subject to tax under the law of any jurisdiction.</td></tr>
<tr><td>Allocable GloBE Income or Loss
7-110(1)</td><td>An MNE Group’s Allocable GloBE Income or Loss for an Investment Entity for a Fiscal Year is the Investment Entity’s GloBE Income or Loss for the Fiscal Year multiplied by the Inclusion Ratio of the UPE of the MNE Group for the Investment Entity for the Fiscal Year.</td></tr>
<tr><td>Allocable Share
2-10</td><td>A Parent Entity’s Allocable Share of the Top-up Tax of a LTCE for a Fiscal Year is an amount equal to the Top-up Tax of the LTCE for the Fiscal Year multiplied by the Parent Entity’s Inclusion Ratio for the LTCE for the Fiscal Year.</td></tr>
<tr><td>Ancillary International Shipping Activity
3-230(3)</td><td>Any of the following activities:
• leasing a ship on a bareboat charter basis to another shipping enterprise that is not a Constituent Entity of the MNE Group, if the charter:
– does not exceed three years; and
– is not part of a series of leases, or leases and other transactions, that result in the charter being in effect for an aggregate period exceeding three years;
• selling tickets issued by other shipping enterprises for the domestic leg of an international voyage;
• leasing and short-term storage of a container (including levying detention charges for the late return of a container);</td></tr>
</table>

Defined term	Explanation
	• providing services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel; investing, where the investment that generates the income is made as an integral part of the carrying on the business of operating the ships in international traffic.
Ancillary International Shipping Income 3-230(2)	The ***Ancillary International Shipping Income*** of a Constituent Entity of an MNE Group for a Fiscal Year is the Constituent Entity's Ancillary International Shipping Income Revenue for the Fiscal Year, reduced by the Constituent Entity's Ancillary International Shipping Income Costs for the Fiscal Year.
Ancillary International Shipping Income Costs 3-230(4)	The ***Ancillary International Shipping Income Costs***, of a Constituent Entity for a Fiscal Year, means the amount computed in accordance with the following formula: $$Direct\ costs + \left(Indirect\ costs \times \frac{Shipping\ revenue}{Total\ revenue}\right)$$ where: • ***direct costs*** is the total costs incurred by the Constituent Entity for the Fiscal Year that are directly attributable to the Constituent Entity's performance of Ancillary International Shipping Activities. • ***indirect costs*** is the total costs incurred by the Constituent Entity for the Fiscal Year that are indirectly attributable to the Constituent Entity's performance of Ancillary International Shipping Activities. • ***shipping revenue*** is the Constituent Entity's Ancillary International Shipping Income Revenue for the Fiscal Year. ***total revenue*** is the Constituent Entity's total revenue for the Fiscal Year.
Ancillary International Shipping Income Revenue 3-230(3)	The ***Ancillary International Shipping Income Revenue*** of a Constituent Entity of an MNE Group for a Fiscal Year means the revenue obtained by the Constituent Entity for the Fiscal Year from an Ancillary International Shipping Activity, to the extent they are performed primarily in connection with transporting passengers or cargo by ships in international traffic.
Arm's Length Principle 3-105	The principle under which transactions between Constituent Entities of the same MNE Group must be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.

Defined term	Explanation
Average GloBE Income or Loss 5-110(1)(b)	The ***Average GloBE Income or Loss*** of an MNE Group for a jurisdiction for a Fiscal Year is the average of the GloBE Income or Loss of the MNE Group for the jurisdiction for the Fiscal Year and the 2 preceding Fiscal Years.
Average GloBE Revenue 5-110(1)(a)	The ***Average GloBE Revenue*** of an MNE Group for a jurisdiction for a Fiscal Year is the average of the GloBE Revenue of the MNE Group for the jurisdiction for the Fiscal Year and the 2 preceding Fiscal Years.
Blended CFC Tax Regime 4-60	A ***Blended CFC Tax Regime*** of a jurisdiction means a Controlled Foreign Company Tax Regime under which: • the tax liability of an owner located in the jurisdiction is determined by reference to an aggregate of the income, losses and creditable taxes of other Entities, located in one or more other jurisdictions, in which the owner holds an Ownership Interest; and • the lowest rate that, if it were the corporate tax rate applicable in the one or more jurisdictions in which the other Entities are located, would result in the tax charge in those jurisdictions being sufficient to prevent a tax charge on the owner under the Controlled Foreign Company Tax Regime in respect of [its share of the income of] the other Entities for a Fiscal Year, is less than the Minimum Rate; and • income of Entities located in the jurisdiction in which the owner is located is not taken into account.
CbCR Resident 8-65	A Constituent Entity of an MNE Group is a ***CbCR Resident*** of a jurisdiction for a Fiscal Year if it is recorded as a resident of the jurisdiction in the CbC Report of the MNE Group for the Fiscal Year.
Constituent Entity-owner	If a Constituent Entity of an MNE Group holds an Ownership Interest in another Constituent Entity of the MNE Group, the Constituent Entity is a ***Constituent Entity-owner*** of the other Constituent Entity.
Controlled Foreign Company Tax Regime	A set of tax rules (other than an IIR or any Tax equivalent to an IIR) under which an Entity located in a jurisdiction (the ***owner***) that holds an Ownership Interest in another Entity located in another jurisdiction (the ***CFC***) is subject to current taxation on its share of part or all of the income earned by the CFC, irrespective of whether that income is distributed currently to the owner.

Defined term	***Explanation***
Cooperative	An Entity that: • collectively markets or acquires goods or services on behalf of its members; and • is subject to a tax regime in the jurisdiction in which it is located that is designed to ensure tax neutrality in respect of: – members' property or services sold through the cooperative; and – property or services acquired by members through the cooperative.
Country-by-Country Reporting regulations 8-195(2)	Subdivision 815-E of the *Income Tax Assessment Act 1997* (Reporting obligations for country-by-country reporting entities), and/or a law of a non-Australian jurisdiction corresponding to that Subdivision.
Covered Taxes 4-40	The ***Covered Taxes*** of a Constituent Entity of a Group means: • Taxes recorded in the financial accounts of the Constituent Entity in respect of: – its income or profits; or – its share of the income or profits of a Constituent Entity of the Group, in which it holds an Ownership Interest; and • Taxes on distributed profits, deemed profit distributions and non-business expenses imposed under an Eligible Distribution Tax System; and • Taxes imposed in lieu of a generally applicable corporate income tax; and • Taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity, but does not include any amount of the following: • Top-up Tax accrued by a Parent Entity under a Qualified IIR; • Top-up Tax accrued by a Constituent Entity under a QDMTT; • any Tax under or as a result of the application of a Qualified UTPR; • a Disqualified Refundable Imputation Tax; • Taxes paid or accrued by an insurance company in respect of returns to policyholders.

Defined term	Explanation
Deductible Dividend 7-35	A distribution by a Constituent Entity of an MNE Group that is subject to a Deductible Dividend Regime is a ***Deductible Dividend*** if either of the following apply: • it is a distribution of profits to the holder of an Ownership Interest in the Constituent Entity that is deductible from the taxable income of the Constituent Entity under the laws of the jurisdiction in which it is located; • if the Constituent Entity is a Cooperative—it is a patronage dividend to a member of the Cooperative.
Deductible Dividend Regime 7-30	***Deductible Dividend Regime*** means a tax regime designed to yield a single level of taxation on the holders of Ownership Interests in an Entity through a deduction from the income of the Entity for distributions of profits to the holders, treating patronage dividends of a Cooperative as distributions to holders of Ownership Interests in the Cooperative. A Deductible Dividend Regime is taken to include a tax regime applicable to Cooperatives that exempts them from taxation.
Deduction/Non-Inclusion Arrangement 8-120	A ***deduction/non-inclusion arrangement*** is an arrangement: • under which a Constituent Entity of an MNE Group directly or indirectly provides credit or otherwise makes an investment in another Constituent Entity of the MNE Group; and • the provision of the credit or making of the investment results in an expense or loss in the financial statements of a Constituent Entity; to the extent that: • there is no commensurate increase in the revenue or gain in the financial statements of the Constituent Entity counterparty; or • the Constituent Entity counterparty is not reasonably expected over the life of the arrangement to have a commensurate increase in its taxable income. An arrangement is not a ***deduction/non-inclusion arrangement*** to the extent that the relevant expense or loss is solely with respect to Additional Tier One Capital.
Deemed Distribution Tax Recapture Account 7-50(4)	If an election under subsection 7-40(1) applies to: • a jurisdiction that has an Eligible Distribution Tax System; and • Constituent Entities of an MNE Group that are located in the jurisdiction; and • a Fiscal Year, then, at the end of the Fiscal Year:

Defined term	***Explanation***
	• a ***Deemed Distribution Tax Recapture Account*** is established for the Fiscal Year for the jurisdiction for the MNE Group; and • the balance of the Deemed Distribution Tax Recapture Account is the amount covered by subsection (3) for the jurisdiction for the MNE Group.
De minimis test 8-20	An MNE Group meets the ***De minimis test*** for a jurisdiction for a Fiscal Year if: • the MNE Group's Total Revenue for the jurisdiction for the Fiscal Year is less than 10 million Euros; and • the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year is less than 1 million Euros. However, the MNE Group does not meet the ***De minimis test*** for a jurisdiction for a Fiscal Year if the sum of the following exceeds 10 million Euros: • the total Revenue for the Fiscal Year of each Constituent Entity of the MNE Group that: – is located in the jurisdiction; and – is covered by subsection 8-10(3); • the total CbCR Revenue for the MNE Group in the jurisdiction (as reported in the MNE Group's Qualified CbC Report in relation to the jurisdiction). Subsection 8-10(3) covers a Constituent Entity of the MNE Group if the Constituent Entity's assets, liabilities, income, expenses and cash flows are excluded from the CFS of the UPE of the MNE Group solely on size or materiality grounds, or on the grounds that the Constituent Entity is held for sale.
Disallowed Accrual 4-115(1)	A ***Disallowed Accrual***, of a Constituent Entity of an MNE Group for a Fiscal Year, means a movement in deferred tax expense accrued in the financial accounts of the Constituent Entity for the Fiscal Year that relates to: • an uncertain tax position; or • distributions from any Constituent Entity of the MNE Group (whether or not the Constituent Entity mentioned previously in this subsection).
Disposition Recapture Ratio 7-75(3)	The ***Disposition Recapture Ratio*** for the Constituent Entity is computed in according with the following formula: $\dfrac{GloBE\ Income\ of\ the\ CE}{Net\ GloBE\ Income\ of\ the\ jurisdiction}$

<table>
<tr><th>Defined term</th><th>Explanation</th></tr>
<tr><td></td><td>where:
• GloBE Income of the CE is the sum of the GloBE Income of the Constituent Entity for each Fiscal Year corresponding to the Deemed Distribution Tax Recapture Accounts for the jurisdiction.
Net Income of the jurisdiction is the sum of the Net GloBE Income of the MNE Group for the jurisdiction for each Fiscal Year corresponding to the Deemed Distribution Tax Recapture Accounts for the jurisdiction.</td></tr>
<tr><td>Disqualified Refundable Imputation Tax</td><td>An amount of Tax, other than a Qualified Imputation Tax, accrued or paid by a Constituent Entity that is:
• refundable to the beneficial owner of a dividend distributed by the Constituent Entity in respect of the dividend or creditable by the beneficial owner against a tax liability other than a tax liability in respect of such dividend; or
• refundable to the distributing corporation upon distribution of a dividend.</td></tr>
<tr><td>Domestic Top-up Tax Amount
2-25, 2-30</td><td>The amount of the Domestic Top-up Tax Amount is equal to the amount of the Top-up Tax mentioned in that subsection, computed in accordance with the principles set out in sections 2-35 and 6-75.
Constituent Entities generally
A LTCE of an Applicable MNE Group has a Domestic Top-up Tax Amount for the Fiscal Year if it has Top-up Tax for the Fiscal Year and:
• is located in Australia for the Fiscal Year; or
• is a Stateless Constituent Entity of the Applicable MNE Group that:
– is created in Australia; or
– is a Permanent Establishment in relation to which paragraph 19(1)(d) of the Assessment Act applies that is a place of business in Australia.
However, if:
• a LTCE for a Fiscal Year of an Applicable MNE Group for the Fiscal Year is a Permanent Establishment of a Main Entity; and
• the LTCE is located in Australia for the Fiscal Year; and
• the Main Entity is not located in Australia for the Fiscal Year,
the LTCE does not have a Domestic Top-up Tax Amount for the Fiscal Year if it has Top-up Tax for the Fiscal Year, and the Main</td></tr>
</table>

Defined term	Explanation
	Entity has a ***Domestic Top-up Tax Amount*** for the Fiscal Year in respect of the LTCE. The amount of the ***Domestic Top-up Tax Amount*** is equal to the amount of the Top-up Tax mentioned in that subsection, computed in accordance with the principles set out in section 2-35. ***Joint Ventures and JV Subsidiaries*** The JV, or the JV Subsidiary, has a ***Domestic Top-up Tax Amount*** for the Fiscal Year if it has Top-up Tax for the Fiscal Year and: • a JV of an MNE Group, or a JV Subsidiary of a JV of an MNE Group, is located in Australia for a Fiscal Year; and • the MNE Group is an Applicable MNE Group for the Fiscal Year, However, if: • a JV Subsidiary of a JV of an MNE Group is a Permanent Establishment of a Main Entity that is: – the JV, or – another JV Subsidiary of the JV; and • the JV Subsidiary is located in Australia for the Fiscal Year; and • the Main Entity is not located in Australia for the Fiscal Year, the JV Subsidiary does not have a ***Domestic Top-up Tax Amount*** for the Fiscal Year if it has Top-up Tax for the Fiscal Year, and the Main Entity has a ***Domestic Top-up Tax Amount*** for the Fiscal Year in respect of the LTCE.
Dual-listed Arrangement 6-85(4)	***Dual-listed Arrangement*** means an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, under which all of the following apply: • the Ultimate Parent Entities agree to combine their business by contract alone; • pursuant to contractual arrangements, the Ultimate Parent Entities will make distributions (with respect to dividends and in liquidation) to their owners based on a fixed ratio; • the Ultimate Parent Entities' activities are managed as a single economic entity under contractual arrangements while retaining their separate legal identities; • the Ownership Interests in each of the Ultimate Parent Entities are quoted, traded or transferred [independently] in different capital markets; • the Ultimate Parent Entities prepare CFS:

Defined term	Explanation
	– in which the assets, liabilities, income, expenses and cash flows of all the Entities that comprise the Groups are presented together as those of a single economic unit; and – that are required by a regulatory regime to be externally audited.
Duplicate loss arrangement 8-125	A ***duplicate loss arrangement*** is an arrangement that results in an expense or loss being included in the financial statement of a Constituent Entity of an MNE Group located in a jurisdiction to the extent that: • (a) the expense or loss is also included as an expense or loss in the financial statements of another Constituent Entity of the MNE Group; or • (b) the arrangement also gives rise to a duplicate amount that is deductible for purposes of determining the taxable income of another Constituent Entity of the MNE Group located in another jurisdiction. An arrangement is not a ***duplicate loss arrangement*** to the extent that the amount of the expense or loss is offset against revenue which is included in the financial statements of both Constituent Entities. An arrangement is not a ***duplicate loss arrangement*** to the extent that the amount of the expense or loss is offset against revenue or income which is included in both: • if paragraph (a) applies— the financial statements of the Constituent Entity including the expense or loss in its financial statements; and • if paragraph (b) applies— the taxable income of the Constituent Entity claiming the deduction for the relevant expense or loss.
Duplicate tax recognition arrangement 8-130	A ***duplicate tax recognition arrangement*** is an arrangement that results in more than one Constituent Entity of an MNE Group (the ***relevant Constituent Entities***) including part or all of the same income tax expense in its Adjusted Covered Taxes or Simplified ETR.
Effective Tax Rate 5-5	If an MNE Group for a jurisdiction for a Fiscal Year has Net GloBE Income for the jurisdiction for the Fiscal Year, the ***Effective Tax Rate*** of the MNE Group for the jurisdiction for the Fiscal Year is equal to: $$\frac{\text{Sum of Adjusted Covered Taxes for each Constituent Entity of the MNE Group in the jurisdiction}}{\text{Net GloBE Income}}$$

Defined term	***Explanation***
	The ***Effective Tax Rate*** of an MNE Group for a jurisdiction may be modified by the following provisions: • section 5-45 (Stateless entities); • section 5-105 (Minority owned entities); • Part 6-4 (Joint ventures); • Parts 7-4 and 7-6 (Investment entities).
Eligible Distribution Tax System 7-45	An ***Eligible Distribution Tax System*** is a corporate income tax system that: • generally, imposes an income tax on the amount of the profits, or certain non-business expenses, of a corporation only on or after the time that the corporation: • distributes those profits to its shareholders; or – is deemed to distribute those profits to its shareholders; or – incurs those expenses; and – imposes Tax at a rate equal to or in excess of the Minimum Rate; and – was in force on or before 1 July 2021.
Eligible Employee 5-60(2)	***Eligible Employee*** of a Constituent Entity of an MNE Group means an individual who is: • an employee (including a part-time employee) of the Constituent Entity; or • an independent contractor participating in the ordinary operating activities of the MNE Group under the direction and control of one or more Constituent Entities of the MNE Group.
Eligible Payroll Costs 5-60(1)	The following amounts, as recorded in financial accounts: • employee compensation expenditures, including salaries, wages and other expenditures that provide a direct and separate personal benefit to the employee (such as health insurance and pension contributions); • payroll and employment taxes; • employer social security contributions.
Eligible Tangible Asset 5-75	Any of the following: • property (including plant and equipment) located in the jurisdiction that are owned by the Constituent Entity;

Defined term	Explanation
	• natural resources located in the jurisdiction that are owned by the Constituent Entity; • the Constituent Entity's right of use, as a lessee, of tangible assets located in the jurisdiction; • a licence or similar arrangement from a government for the use by the Constituent Entity of immovable property in the jurisdiction, or exploitation of natural resources in the jurisdiction, that entails significant investment in tangible assets. However, an asset is not an ***Eligible Tangible Asset*** at any time during a Fiscal Year if it is used in the generation of a Constituent Entity's International Shipping Income for the Fiscal Year.
ETR Adjustment Provision 5-95(6)	The ETR and Jurisdictional Top-up Tax of an MNE Group for a jurisdiction for a prior Fiscal Year are required or permitted to be recalculated under sections 3-160, 4-100, 4-140, 4-145, 7-65 or 7-75.
Excess Negative Tax Expense Carry-forward 5-10(3)(a)(i)	An ***Excess Negative Tax Expense Cary-forward*** is established for the MNE Group for the jurisdiction and its balance is increased by the absolute value of the sum in paragraph (a), if: • the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction of the MNE Group is less than zero, and • an Excess Negative Tax Expense Carry-forward has not already been established for the MNE Group for the jurisdiction.
Excess Profit 5-25	The ***Excess Profit*** of an MNE Group for a jurisdiction for a Fiscal Year is the amount computed in accordance with the following formula (but not less than zero): $Net\ GloBE\ Income - Substance\text{-}based\ Income\ Exclusion\ amount$ where: • ***Net GloBE Income*** is the Net GloBE Income of the MNE Group for the jurisdiction for the Fiscal Year. • ***Substance-based Income Exclusion Amount*** is the Substance-based Income Exclusion Amount of the MNE Group for the jurisdiction for the Fiscal Year.
Excluded Dividends 3-25(1) and (2)	Dividends or other distributions received or accrued in respect of an Ownership Interest, except for a Short-term Portfolio Shareholding in respect of the distributions or an Ownership Interest in an Investment Entity, or Insurance Investment Entity, to which an election under Part 7-6 applies. However, if:

Defined term	Explanation
	• dividends or other distributions are received or accrued in respect of an Ownership Interest in an Entity; and • the Ownership Interest is a compound financial instrument having both equity and liability components under the Acceptable Financial Accounting Standard used in the preparation of the financial accounts of the Entity; the dividends or other distributions are ***Excluded Dividends*** only to the extent that they are received or accrued in respect of the equity component of the Ownership Interest (as determined in accordance with that Acceptable FAS).
Excluded Equity Gain or Loss 3-35(1)	***Excluded Equity Gain or Loss*** of a Constituent Entity of an MNE Group for a Fiscal Year means the gain, profit or loss included in the FANIL of the Constituent Entity for the Fiscal Year arising from any of the following: • gains and losses from changes in fair value of an Ownership Interest, except for a Portfolio Shareholding; • profit or loss in respect of an Ownership Interest included under the equity method of accounting; • gains and losses from disposition of an Ownership Interest, except for a disposition of an Ownership Interest that is a Portfolio Shareholding [at the date of the disposition]; • if an election under subsection 3-50(3) applies to the Constituent Entity and the Fiscal Year—foreign exchange gains and losses, to the extent that they are covered by subsection 3-50(4). For the purposes of paragraph (d), the subsection covers a foreign exchange gain or loss to the extent that: • the foreign exchange gain or loss is attributable to hedging instruments that hedge the currency risk in Ownership Interests (other than Portfolio Shareholdings); and • the gain or loss is recognised in other comprehensive income at the level of the CFS of the UPE of the MNE Group; and • the hedging instrument is considered an effective hedge under the Authorised Financial Accounting Standard used in the preparation of those CFS.
Excluded Exempt Income Entity 1-20(2)	An Entity is an ***Excluded Exempt Income Entity*** if: • at least 85 per cent 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):

Defined term	Explanation
	– an Excluded Entity under paragraph 20(1)(a), (b), (c), (d), (e) or (f) of the Assessment Act; – if the Entity is an UPE—an Investment Fund or a Real Estate Investment Vehicle; and • substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or Loss that is excluded from the computation of GloBE Income or Loss in accordance with section 3-20 or 3-30 of the Rules.
Excluded Non-Profit Subsidiary 1-20(3)	An Entity is an ***Excluded Non-Profit Subsidiary*** if: • 100 per cent of the value of the Entity is owned (directly or indirectly) by one or more Non-profit Organisations; and • the sum of the revenue of all Group Entities of the MNE Group of which the Entity is a Group Entity (other than such revenue as is attributable to a Group Entity of the MNE Group that is a Non-profit Organisation, an Excluded Service Entity or an Excluded Exempt Income Entity): – does not exceed the MNE Group's GloBE Threshold for the Fiscal Year; and – is less than 25 per cent of the total revenue of the MNE Group.
FANIL 3-10 and 3-240	The ***FANIL*** for a Constituent Entity of an MNE Group for a Fiscal Year is the net income or loss determined for the Constituent Entity (before any consolidation adjustments eliminating intra-group transactions) in preparing CFS of the UPE of the MNE Group for the Fiscal Year. However, the ***FANIL*** for the Constituent Entity for a Fiscal Year does not include any amount attributable to any purchase accounting adjustment that: • is reflected in: – the CFS of the UPE of the MNE Group for the Fiscal Year; or – the Constituent Entity's financial accounts for the Fiscal Year; and • arises as a result of an Entity becoming a Constituent Entity of the MNE Group as a result of the acquisition of Ownership Interests in that Entity by an existing Constituent Entity. If a Constituent Entity is a Permanent Establishment because of paragraph 19(1)(a), (b) or (c) of the Assessment Act, the ***FANIL*** for a Fiscal Year of the Constituent Entity is:

Defined term	***Explanation***
	• the net income or loss reflected in the separate financial accounts of the Permanent Establishment, if those financial accounts are prepared in accordance with an Acceptable Financial Accounting Standard, or in accordance with an Authorised Financial Accounting Standard and subject to adjustments to prevent any Material Competitive Distortions; or • if the Permanent Establishment does not have separate financial accounts described in paragraph (a) of this subsection—the amount that would be the net income or loss of that Permanent Establishment reflected in separate financial accounts prepared on a standalone basis in accordance with the accounting standard used in the preparation of the Consolidated Financial Accounts of the UPE.
Flow-through Entity 10-30	An Entity is a ***Flow-through Entity*** to the extent it is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it was created unless it is tax resident and subject to a Covered Tax on its income or profit in another jurisdiction. If a Constituent Entity: • is not a tax resident of any jurisdiction; and • is not subject to a Covered Tax or a QDMTT based on its place of management, place of creation, or similar criteria; treat the Constituent Entity as a ***Flow-through Entity*** and a Tax Transparent Entity in respect of its income, expenditure, profit or loss to the extent that: • its owners are located in a jurisdiction that treats the Entity as fiscally transparent; and • it does not have a place of business in the jurisdiction where it was created; and • the income, expenditure, profit or loss is not attributable to a Permanent Establishment in respect of which it is the Main Entity.
GloBE Implementation Framework 10-10	***GloBE Implementation Framework*** means the procedures mentioned in the definition of GloBE Implementation Framework in the GloBE Rules, as those procedures exist from time to time.
GloBE Income	If the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year is a positive amount, the Constituent Entity's ***GloBE Income*** for the Fiscal Year is that amount.

Defined term	Explanation
GloBE Income or Loss 3-5	The ***GloBE Income or Loss*** of a Constituent Entity of an MNE Group for a Fiscal Year is the FANIL for the Constituent Entity for the Fiscal Year, adjusted as provided in Parts 3-2 to 3-5.
GloBE Loss	If the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year is a negative amount, the Constituent Entity's ***GloBE Loss*** for the Fiscal Year is the absolute value of that amount.
GloBE Loss Deferred Tax Asset 4-125(1) and 4-135(1)	If there is a Net GloBE Loss of the MNE Group for the jurisdiction for the Fiscal Year and a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction has *not* been established: • a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction is established; and • the amount of that GloBE Loss Deferred Tax Asset is the Net GloBE Loss multiplied by the Minimum Rate. If the UPE has a GloBE Loss for the Fiscal Year and a GloBE Loss Deferred Tax Asset of the UPE has *not* been established: • a GloBE Loss Deferred Tax Asset of the UPE is established; and • the amount of that GloBE Loss Deferred Tax Asset is the GloBE Loss multiplied by the Minimum Rate.
GloBE Loss Election 4-120(1)	A ***GloBE Loss Election*** is: • a GloBE Loss Election for an MNE Group under subsection 4-125(2); or • a GloBE Loss Election for an UPE under subsection 4-130(1).
GloBE Reorganisation 6-65(1)	A transformation or transfer of assets and liabilities (such as a merger, demerger, liquidation or other similar transaction), is a ***GloBE Reorganisation*** if all of the following apply: • the transformation or transfer involves the disposal or acquisition of assets or liabilities by a Constituent Entity of an MNE Group; • if no consideration is provided for the transformation or transfer—the issuance of an equity interest as consideration for the transformation or transfer would have no economic significance; • if consideration is provided for the transfer—the consideration is, in whole or in significant part:

Defined term	Explanation
	– where the transfer is a liquidation—the cancellation of equity interests of the Entity that is the subject of the liquidation; – otherwise—equity interests issued by the Entity acquiring the assets or liabilities (the acquiror) or by a person connected with that Entity; • the gain or loss on the disposed assets or liabilities by the Entity disposing the assets or liabilities (the ***transferor***) is not subject to Tax, in whole or in part; • the tax laws of the jurisdiction in which the acquiror is located require the acquiror to compute taxable income arising from the acquisition using the transferor's tax basis in the assets or liabilities, adjusted for the amount covered by subsection (4). For the purposes of this definition, a transformation is a change in the form of a business in which the transferor or acquiror is involved, such as a change from a partnership to a corporation.
High-Tax Counterparty 3-190	A Constituent Entity of an MNE Group is a ***High-Tax Counterparty*** for a Fiscal Year if: • the Constituent Entity is located in a jurisdiction for the Fiscal Year; and • the jurisdiction: – is not a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year; or – would not be a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year if the Effective Tax Rate of the MNE Group for the jurisdiction for the Fiscal Year were determined without regard to any income or expense accrued by the Constituent Entity in respect of an Intragroup Financing Arrangement.
Hybrid Arbitrage Arrangement 8-115	Any of the following: • a deduction/non-inclusion arrangement; • a duplicate loss arrangement; • a duplicate tax recognition arrangement.
Hybrid Entity 10-55	An Entity that is treated as a separate taxable person for income tax purposes in the jurisdiction where it is located is a ***Hybrid Entity*** with respect to its income, expenditure, profit or loss, to the extent that it is fiscally transparent in the jurisdiction in which its owner is located.

Defined term	Explanation
IIR	Any law of a jurisdiction that may reasonably be considered to have been enacted with the intention of implementing, in whole or in part, Articles 2.1 to 2.3 of the GloBE Rules.
IIR Top-up Tax Amount 2-5	***Constituent Entities*** A Parent Entity of an Applicable MNE Group for a Fiscal Year has an ***IIR Top-up Tax Amount*** for the Fiscal Year in respect of a LTCE for the Fiscal Year of the Applicable MNE Group if: • the Parent Entity is located in Australia; and • the Parent Entity holds an Ownership Interest in the LTCE at any time during the Fiscal Year; and • the LTCE is not located in Australia. The ***IIR Top-up Tax Amount*** is then equal to the Parent Entity's Allocable Share of the Top-up Tax of the LTCE for the Fiscal Year. ***Joint ventures*** In respect of JVs and JV Subsidiaries, a Parent Entity of an Applicable MNE Group for a Fiscal Year has an IIR Top-up Tax Amount for the Fiscal Year in respect of a JV of the Applicable MNE Group, or a JV Subsidiary of a JV of the Applicable MNE Group, for the Fiscal Year if: • the Parent Entity is located in Australia; and • the Parent Entity holds an Ownership Interest in the JV or JV Subsidiary at any time during the Fiscal Year; and • the JV or JV Subsidiary is not located in Australia; and • the JV or JV Subsidiary is a LTCE for the Fiscal Year (in accordance with section 6-75 of the Rules) The ***IIR Top-up Tax Amount*** is then equal to the Parent Entity's Allocable Share of the Top-up Tax of the JV or JV Subsidiary for the Fiscal Year, computed in accordance with section 6-75 of the Rules.
Included Revaluation Method Gain or Loss 3-50(1)	***Included Revaluation Method Gain or Loss*** for a Fiscal Year means the net gain or loss, increased or decreased by any associated Covered Taxes, for the Fiscal Year in respect of all property, plant and equipment that arises under an accounting method or practice that: • periodically adjusts the carrying value of such property to its fair value; and • records the changes in value in Other Comprehensive Income; and

Defined term	**Explanation**
	• does not subsequently report the gains or losses recorded in Other Comprehensive Income through profit and loss.
Inclusion Ratio 2-15(1)	The ***Inclusion Ratio***, of a Parent Entity of an MNE Group, for a LTCE of the MNE Group for a Fiscal Year, is: $$\frac{GloBE\ income\ of\ the\ LTCE - GloBE\ income\ held\ by\ non\text{-}group\ owners}{total\ GloBE\ income\ of\ the\ LTCE}$$
Income Tax Accrued (Current Year) 8-190(2)	The ***Income Tax Accrued (Current Year)*** of a Constituent Entity of an MNE Group for a Fiscal Year means the Constituent Entity's income tax accrued (current year) for the Fiscal Year as determined in accordance with the MNE Group's Relevant CbC Regulations.
Insurance Investment Entity	An Entity that: • is established in relation to liabilities under an insurance or annuity contract; and • is wholly-owned by one or more Entities (the ***owners***) that are subject to regulation as an insurance company in the jurisdiction in which they are located, and if there is more than one owner, are all part of the same MNE Group; and • but for the preceding paragraphs, would be an Investment Fund or a Real Estate Investment Vehicle.
Intermediate Parent Entity	A Constituent Entity of an MNE Group (other than an UPE, Partially-Owned Parent Entity, Permanent Establishment, Investment Entity or Insurance Investment Entity) that holds an Ownership Interest in another Constituent Entity of the MNE Group.
International Shipping Activity 3-225(2)	Any of the following activities: • transporting passengers or cargo by a ship that it operates in international traffic, whether the ship is owned, leased or otherwise at its disposal; • transporting passengers or cargo by a ship operated in international traffic under slot-chartering arrangements; • leasing a ship, to be used for transporting passengers or cargo in international traffic, on charter fully equipped, crewed and supplied; • leasing a ship on a bareboat charter basis, for transporting passengers or cargo in international traffic, to another Constituent Entity of the MNE Group;

Defined term	Explanation
	• participating in a pool, a joint business or an international operating agency for transporting passengers or cargo by a ship in international traffic; • if a ship is used for transporting passengers or cargo in international traffic and has been held for use by the Constituent Entity for at least 12 months—selling the ship.
International Shipping Income 3-225(1)	The ***International Shipping Income*** of a Constituent Entity of an MNE Group for a Fiscal Year is the Constituent Entity's International Shipping Income Revenue for the Fiscal Year reduced by the Constituent Entity's International Shipping Income Costs for the Fiscal Year.
International Shipping Income Costs 3-225(3)	The ***International Shipping Income Costs*** of a Constituent Entity of an MNE Group for a Fiscal Year means the amount computed in accordance with the following formula: $\text{Direct costs} + \left(\text{Indirect costs} \times \dfrac{\text{Shipping revenue}}{\text{Total revenue}}\right)$ where: ***direct costs*** is the total costs incurred by the Constituent Entity for the Fiscal Year that are directly attributable to the Constituent Entity's performance of International Shipping Activities. ***indirect costs*** is the total costs incurred by the Constituent Entity for the Fiscal Year that are indirectly attributable to the Constituent Entity's performance of International Shipping Activities. ***shipping revenue*** is the Constituent Entity's International Shipping Income Revenue for the Fiscal Year. ***total revenue*** is the Constituent Entity's total revenue for the Fiscal Year.
International Shipping Income Revenue 3-225(2)	The ***International Shipping Income Revenue*** of a Constituent Entity of an MNE Group for a Fiscal Year means the revenue obtained by the Constituent Entity for the Fiscal Year from an International Shipping Activity.
Intragroup Financing Arrangement 3-185	An ***Intragroup Financing Arrangement*** for a Fiscal Year is an arrangement entered into between 2 or more Constituent Entities of an MNE Group under which a Constituent Entity of the MNE Group that is a High-Tax Counterparty for the Fiscal Year directly or indirectly provides credit to, or otherwise makes an investment in, a Constituent Entity of the MNE Group that is a Low-Tax Entity for the Fiscal Year.
Investment Entity	An ***Investment Entity*** is any of the following: • an Investment Fund or a Real Estate Investment Vehicle; or

Defined term	Explanation
	• an Entity that is at least 95 per cent owned directly by an Investment Fund or a Real Estate Investment Vehicle or through a chain of such Entities and that operates exclusively or almost exclusively to hold assets or invest funds for the benefit of such Investment Entities; or • an Entity, where: – at least 85 per cent of the value of the Entity is owned by an Investment Fund or a Real Estate Investment Vehicle; and – substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or Loss that is excluded from the computation of GloBE Income or Loss under section 3-20 or 3-30.
Jurisdictional Top-up Tax 5-30	The ***Jurisdictional Top-up Tax*** of an MNE Group for a jurisdiction for a Fiscal Year is the amount computed in accordance with the following formula (but not less than zero): $\left(\begin{array}{c}\text{Top-up Tax}\\\text{Percentage}\end{array} \times \text{Excess Profit}\right) + \begin{array}{c}\text{Additional Current}\\\text{Top-up Tax}\end{array} - \begin{array}{c}\text{Domestic}\\\text{Top-up Tax}\end{array}$ where: ***Additional Current Top-up Tax*** is the sum of the amounts determined or treated as Additional Current Top-up Tax of the MNE Group for the jurisdiction for the Fiscal Year. ***Domestic Top-up Tax*** is the sum of the amounts payable by each Constituent Entity of the MNE Group under a QDMTT of the jurisdiction for the Fiscal Year. ***Excess Profit*** is the Excess Profit of the MNE Group for the jurisdiction for the Fiscal Year. ***Top-up Tax Percentage*** is the Top-up Tax Percentage of the MNE Group for the jurisdiction for the Fiscal Year.
Local Tangible Asset 3-170	***Local Tangible Asset***, in relation to a Constituent Entity located in a jurisdiction, means immovable property located in the jurisdiction.
Look-back Period 3-175	The ***Look-back Period***, of an election under subsection 3-155(2) for an MNE Group, means the Fiscal Year to which the election applies and the 4 Fiscal Years immediately preceding it.
Loss Year 3-175	A ***Loss Year***, in relation to an election under subsection 3-155(2) for an MNE Group, means a Fiscal Year in the Look-back Period of the election if both of the following apply in relation to the Fiscal Year: • a Constituent Entity of the MNE Group located in the jurisdiction to which the election applies has an adjusted net asset loss for the Fiscal Year greater than zero;

Defined term	Explanation
	• the sum of adjusted net asset losses for the Fiscal Year of all Constituent Entities of the MNE Group located in that jurisdiction exceeds the sum of the Net Asset Gains for the Fiscal Year of all those Constituent Entities.
LTCE	***LTCE***, of an MNE Group for a Fiscal Year, means either of the following: • a Constituent Entity of the MNE Group that is located in a Low-Tax Jurisdiction; • a Stateless Constituent Entity of the MNE Group that has GloBE Income and an ETR for the Fiscal Year that is less than the 15 per cent Minimum Rate.
Low-Tax Entity 3-190	A Constituent Entity of an MNE Group is a ***Low-Tax Entity*** for a Fiscal Year if: • the Constituent Entity is located in a jurisdiction for the Fiscal Year; and • the jurisdiction: – is a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year; or – would be a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year if the Effective Tax Rate of the MNE Group for the jurisdiction for the Fiscal Year were determined without regard to any income or expense accrued by the Constituent Entity in respect of an Intragroup Financing Arrangement.
Low-Tax Jurisdiction 3-195	A ***Low-Tax Jurisdiction***, in respect of an MNE Group for a Fiscal Year, means a jurisdiction for which the MNE Group has net GloBE Income for the Fiscal Year and an ETR for the Fiscal Year that is lower than the 15 per cent Minimum Rate.
Marketable Price Floor 3-135(1)	The ***Marketable Price Floor*** of a tax credit is 80 per cent of the net present value (the ***NPV***) of the amount of the tax credit, computed in accordance with subsections 3-135(2), (3) and (4).
Marketable Transferable Tax Credit 3-130	A tax credit that: • can be used by the holder of the tax credit to reduce its liability for a Covered Tax in the jurisdiction that issued the tax credit; and • meets:

Defined term	**Explanation**
	– the requirement in subsection 3-125(2) or (3) (Legal Transferability Standard); and – the requirement in subsection 3-125(4) or (5) (Marketability Standard).
Minimum Rate	15 per cent
Minority-Owned Constituent Entity 5-130(1)	A Constituent Entity of an MNE Group is a ***Minority-Owned Constituent Entity*** if the UPE of the MNE Group has an Ownership Interest Percentage in the Constituent Entity of 30% or less.
Minority-Owned Parent Entity 5-130(2)	A Minority-Owned Constituent Entity is a ***Minority-Owned Parent Entity*** if: • it holds a Controlling Interest in another Minority-Owned Constituent Entity; and • a Controlling Interest in it is not held by another Minority-Owned Constituent Entity.
Minority-Owned Subgroup 5-135(2)	A Minority-Owned Constituent Entity in which a Controlling Interest is held by a Minority-Owned Parent Entity is a ***Minority-Owned Subsidiary*** of the Minority-Owned Parent Entity.
Minority-Owned Subsidiary 5-135(1)	A ***Minority-Owned Subgroup*** means a Minority-Owned Parent Entity and its Minority-Owned Subsidiaries.
Multi-Parented MNE Group 6-85(1)	Two or more Groups comprise a ***Multi-Parented MNE Group*** if: • the UPEs of those Groups enter into an arrangement that is a Stapled Structure or a Dual listed Arrangement; and • at least one of the controlled Entities of those Groups is located in a different jurisdiction to another of the other controlled Entities of those Groups. If the controlled Entity is an Excluded Entity, it is treated as not being an Excluded Entity.
Net Asset Gain 3-170(2)	If the result of the disposition of Local Tangible Assets by a Constituent Entity of the MNE Group located in a jurisdiction, excluding any gain or loss on a transfer of assets between Group Members, is a net gain in a Fiscal Year—then the Constituent Entity has a ***Net Asset Gain*** for the Fiscal Year of that amount.
Net Asset Loss 3-170(2)	If the result of the disposition of Local Tangible Assets by a Constituent Entity of the MNE Group located in a jurisdiction, excluding any gain or loss on a transfer of assets between Group Members, is a net loss in a Fiscal Year—then the Constituent Entity has a ***Net Asset Loss*** for the Fiscal Year of that amount, expressed as a positive amount.

Defined term	Explanation
Net Book Value of Tangible Assets 2-80	The ***Net Book Value of Tangible Assets*** for a Fiscal Year of a Constituent Entity of an MNE Group means the average of the beginning and end values for the Fiscal Year of Tangible Assets after taking into account accumulated depreciation, depletion, and impairment, as recorded in the financial statements of the Constituent Entity. Tangible Assets do not include cash or cash equivalents, intangibles, or financial assets.
Net GloBE Income 5-15	If, for an MNE Group for a jurisdiction for a Fiscal Year, the GloBE Income of all Constituent Entities minus the GloBE Losses of all Constituent Entities is a positive amount, the ***Net GloBE Income*** of the MNE Group for the jurisdiction for the Fiscal Year is that amount.
Net GloBE Loss 5-15	If, for an MNE Group for a jurisdiction for a Fiscal Year, the GloBE Income of all Constituent Entities minus the GloBE Losses of all Constituent Entities is a negative amount or nil, the ***Net GloBE Loss*** of the MNE Group for the jurisdiction for the Fiscal Year is the absolute value of that amount.
Net Unrealised Fair Value Loss 8-100(2)	An MNE Group's ***Net Unrealised Fair Value Loss*** for a jurisdiction for a Fiscal Year means the sum of all losses, as reduced by any gains, which arise from changes in fair value of Ownership Interests (except for Portfolio Shareholdings) held by any Constituent Entity of the MNE Group.
Non-Marketable Transferable Tax Credit 3-140	A tax credit that is held by the person to whom the tax credit was originally granted, is transferable and is not a Marketable Transferable Tax Credit; or is held by a purchaser and is not a Marketable Transferable Tax Credit.
Non-material Constituent Entity (NMCE) 8-185	A ***Non-material Constituent Entity*** (or ***NMCE***) is a Constituent Entity of an MNE Group for a Fiscal Year if: • where it is an Entity: – the Entity is not consolidated on a line-by-line basis in the CFS of the UPE of the MNE Group for the Fiscal Year solely on size or materiality grounds; and – those CFS are described in paragraph (a) or (c) of the definition of CFS in section 34 of the Assessment Act; and – those CFS are externally audited; and – the external audit was performed in accordance with the auditing standards issued by the auditing standards board in

Defined term	***Explanation***
	the jurisdiction in which the UPE of the MNE Group is located; and – the report from the external audit is not qualified in a respect that is relevant to the matter mentioned in subparagraph (i); and – if the Entity's Total Revenue for the Fiscal Year exceeds 50 million Euros—its financial accounts are prepared in accordance with an Acceptable FAS or an Authorised FAS; and • where it is a Permanent Establishment—the Main Entity in respect of the Permanent Establishment is an NMCE for the Fiscal Year under paragraph (a).
Non-Qualified Refundable Tax Credit 3-125(3)	A Refundable Tax Credit that is not a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit.
Non-Qualifying Gain or Loss 6-65(4)	In relation to a GloBE Reorganisation, a ***Non-Qualifying Gain or Loss*** is the lesser of the following: • the portion of the gain or loss of the transferor arising in connection with the GloBE Reorganisation that is subject to Tax in the jurisdiction in which the transferor is located; • the transferor's financial accounting gain or loss arising in connection with the GloBE Reorganisation.
OECD Model Tax Convention	The Model Tax Convention on Income and on Capital published (from time to time) by the Council of the OECD.
OECD Securitisation Entity 8-215(1)	An Entity is an OECD Securitisation Entity if: • the Entity is a participant in a Securitisation Arrangement; and • the Entity only carries out activities that facilitate one or more Securitisation Arrangements; and • the Entity grants security over its assets in favour of its creditors (or the creditors of another OECD Securitisation Entity); and • the Entity pays out all cash received from its assets to its creditors (or the creditors of another OECD Securitisation Entity), on an annual or more frequent basis, other than:

Defined term	Explanation
	– cash retained to meet an amount of profit required by the documentation of the Securitisation Arrangement, for eventual distribution to equity holders (or equivalent) – any profit for a Fiscal Year is negligible relative to the revenues of the Entity for the Fiscal Year; or – cash reasonably required under the terms of the Securitisation Arrangement for either or both of the following purposes: – to make provision for future payments which are required, or will likely be required, to be made by the Entity under the terms of the Securitisation Arrangement; or – to maintain or enhance the creditworthiness of the Entity.
Other Comprehensive Income 3-50(2)	Items of income and expense that are recognised, outside of the profit or loss account, in financial statements as required or permitted by the Authorised FAS used in the CFS.
Other Tax Credit 3-140(2)	A tax credit that is not refundable or transferable and can only be used to offset a liability for Covered Tax of the person to whom the tax credit was originally granted.
Parent Entity	Either: • an UPE that is not an Excluded Entity; or • an Intermediate Parent Entity; or • a Partially-Owned Parent Entity.
Partially-Owned Parent Entity (POPE)	A Constituent Entity of an MNE Group (other than an UPE, Permanent Establishment, Investment Entity or Insurance Investment Entity): • that holds an Ownership Interest in another Constituent Entity of the MNE Group; and • in which Ownership Interests carrying rights to more than 20 per cent of its profits are held by persons that are not Constituent Entities of the MNE Group.
Passive Income	Income included in GloBE Income that is any of the following: • a dividend or dividend equivalents; • interest or interest equivalent; • rent; • royalty;

Defined term	Explanation
	• annuity; • net gains from property of a type that produces income described in the dot points above; but only to the extent a Constituent Entity owner is subject to Tax on such income under a Controlled Foreign Company Tax Regime or as a result of an Ownership Interest in a Hybrid Entity.
Payroll Carve-out Amount 5-55(1)	The ***Payroll Carve-out Amount*** for a Constituent Entity of an MNE Group located in a jurisdiction, for a Fiscal Year, is computed as follows: • first, compute the total amount of Eligible Payroll Costs accrued for the Fiscal Year of Eligible Employees of the Constituent Entity; • next, exclude from that total amount the Eligible Payroll Costs, to the extent they are: – capitalised and included in the carrying value of Eligible Tangible Assets for the Fiscal Year of a Constituent Entity of the MNE Group; or – included in the Constituent Entity's International Shipping Income Costs or Ancillary International Shipping Income Costs for the Fiscal Year, and excluded from the computation of the Constituent Entity's GloBE Income or Loss for the Fiscal Year under section 3-220; • next, multiply the result of paragraph (b) by 5 per cent.
Portfolio Shareholding 3-25(4)	If the Direct Ownership Interests in an Entity held by a Constituent Entity of an MNE Group or any other Constituent Entity of the MNE Group together carry rights to less than 10 per cent of the profits, capital, reserves or voting rights of the Entity, the Direct Ownership Interests in the Entity that are held by a Constituent Entity of the MNE Group is a ***Portfolio Shareholding*** of that Constituent Entity in the Entity.
Profit (Loss) before Income Tax 8-30	An MNE Group's ***Profit (Loss) before Income Tax***, for a jurisdiction for a Fiscal Year, means the MNE Group's profit or loss before income tax for the jurisdiction for the Fiscal Year, as reported on its Qualified CbC Report in relation to the jurisdiction for the Fiscal Year. If an intragroup payment is made that • is treated as income in the Qualified Financial Statements of the recipient Group Entity; and • is treated as expense in the Qualified Financial Statements of the paying Group Entity,

Defined term	Explanation
	include the amount of the intragroup payment in the MNE Group's profit or loss before income tax mentioned in that subsection.
Qualified Ancillary International Shipping Income 3-230(1)	The ***Qualified Ancillary International Shipping Income*** of a Constituent Entity of an MNE Group located in a jurisdiction for a Fiscal Year is: • if paragraphs (b) and (c) do not apply—the Constituent Entity's Ancillary International Shipping Income for the Fiscal Year (***CE's AISI***); or • if one, but not the other, of the following numbers is a negative number—zero: – the aggregate of the amounts of Ancillary International Shipping Income of each Constituent Entity of the MNE Group that is located in the jurisdiction (Aggregate AISI); – aggregate of the amounts of International Shipping Income of those Constituent Entities (Aggregate ISI); or • if paragraph (b) does not apply and the absolute value of Aggregate AISI is greater than 50% of the absolute value of Aggregate ISI—the amount computed in accordance with the following formula: $$\frac{CEs\ AISI}{Aggregate\ AISI} \times Cap$$ where: ***Aggregate AISI*** and ***CE's AISI*** have the same meanings as in paragraphs (a) and (b). ***Cap*** means Aggregate ISI multiplied by 50%.
Qualified CbC Report 8-35	***Qualified CbC Report*** in relation to a jurisdiction means a CbC Report prepared and filed, in relation to the jurisdiction, using Qualified Financial Statements.
Qualified Debt Release Amount 3-85(1)	The ***qualified debt release amount*** for a Fiscal Year, of a Constituent Entity that is a debtor, means an amount in respect of a debt release if to the extent that: • the debt release is under a statutory insolvency or bankruptcy proceeding: – that is supervised by a court or other judicial body in the jurisdiction in which the debtor is located; or – under which an independent insolvency administrator is appointed; or • the following conditions are met:

Defined term	***Explanation***
	– the debt release arises under an arrangement with one or more creditors that are not connected with the debtor (each of which is a third-party creditor); – it is reasonable to consider that, in the absence of the release of debts owed to one or more third-party creditors under the arrangement, the debtor would be insolvent within 12 months of the date of the release; – the debtor obtains provides an independent expert opinion attesting that the condition in subparagraph (ii) is met; or • if neither paragraph (a) nor (b) applies: – the debt release arises under an arrangement with one or more creditors that are not connected with the debtor (each of which is a third-party creditor); and – the amount is in respect of a debt owed to a third-party creditor; and – the debtor's liabilities exceed the fair market value of its assets, determined immediately before the debt release; and – the amount does not exceed the amount covered under subsection (2).
Qualified Domestic Minimum Top-up Tax	A tax that is imposed under a law of a jurisdiction and is specified in a Determination under paragraph 1-07(b).
Qualified Financial Statements 8-70	• the financial accounts used to prepare the CFS of the UPE of the MNE Group; or • separate financial statements of a Constituent Entity of the MNE Group, if: – they are prepared in accordance with an Acceptable FAS or an Authorised FAS; and – the information contained in them is maintained based on that accounting standard and is reliable; or • the separate financial accounts of a Constituent Entity of the MNE Group, if: – they are used for preparation of the MNE Group's CbC Report; and – the Constituent Entity is not included in the MNE Group's CFS on a line-by-line basis, and this is solely due to size or materiality grounds.

Defined term	***Explanation***
Qualified IIR	A tax that is imposed under a law of a jurisdiction and specified in a determination under paragraph 10-15(a).
Qualified Imputation Tax	A Covered Tax imposed by a jurisdiction (the ***imposing jurisdiction***) and accrued or paid by a Constituent Entity of a Group that is refundable or creditable to the beneficial owner of a dividend distributed by the Constituent Entity (or, in the case of a Covered Tax accrued or paid by a Permanent Establishment, a dividend distributed by the Main Entity), to the extent that any of the following apply: • the refund is payable, or the credit is provided, under a foreign tax credit regime, by a jurisdiction other than the imposing jurisdiction; • the beneficial owner is subject to tax on the dividend on a current basis, under the domestic law of the imposing jurisdiction, at a nominal rate that equals or exceeds the Minimum Rate; • the beneficial owner is an individual who is: – a tax resident in the imposing jurisdiction; and – subject to tax on the dividends as ordinary income; • if the dividends are received in connection with a pension fund business and subject to tax in a similar manner as a dividend received by a Pension Fund—the refund is payable, or the credit is provided, by a jurisdiction (the ***benefit jurisdiction***) to an Entity that is any of the following: – a Governmental Entity; – an International Organisation; – a Nonprofit Organisation that is created and managed in the benefit jurisdiction; – a Pension Fund that is created and managed in the benefit jurisdiction; – an Investment Entity that is not a Group Entity of the Group and is created and regulated in the benefit jurisdiction; – a life insurance company that is located in the benefit jurisdiction.
Qualified Refundable Tax Credit	A Refundable Tax Credit is a ***Qualified Refundable Tax Credit*** to the extent that it must be paid as cash or available as cash equivalents within 4 years from when a Constituent Entity [first] satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit.

Defined term	***Explanation***
	However, the Refundable Tax Credit is *not* a ***Qualified Refundable Tax Credit***: • if it is issued under a tax credit regime with a refund mechanism that has no practical significance for those taxpayers that will be entitled to the tax credit; or • to the extent that it includes an amount of Tax creditable or refundable under a Qualified Imputation Tax or a Disqualified Refundable Imputation Tax.
Qualified UTPR	A tax that is imposed under a law of a jurisdiction and specified in a determination under paragraph 10-15(c).
Recapture Account Loss Carry-forward 7-60(2)	At the end of the Fiscal Year a ***Recapture Account Loss Carry-forward*** is established for the Fiscal Year for the jurisdiction for the MNE Group if: • there is a Net GloBE Loss for a Fiscal Year of an MNE Group for a jurisdiction; and • at the end of the Fiscal Year, the amount mentioned in paragraph 7-55(4)(b) (Net GloBE Loss for current year multiplied by 15 per cent) in respect of that Net GloBE Loss has not been applied fully under subsection 7-55(4); and • there is at least there one or Recapture Account Loss Carry-forward for the jurisdiction for the MNE Group for an earlier Fiscal Year, The balance of the Recapture Account Loss Carry-forward is the amount mentioned in paragraph 7-55(4)(b), to the extent that it has not been so applied.
Recaptured Deferred Tax Liability 4-105	The ***Recaptured Deferred Tax Liability*** for a Constituent Entity for a Fiscal Year is the amount of a deferred tax liability, to the extent that the deferred tax liability: • was included in the Total Deferred Tax Adjustment Amount for the Constituent Entity for the fifth preceding Fiscal Year; and • has not reversed by the end of the last day of the Fiscal Year; and • does not relate to a Recapture Exception Accrual (see section 4-90).
Recapture Exception Accrual 4-110	A ***Recapture Exception Accrual*** means a tax expense accrued in the financial accounts of a Constituent Entity attributable to changes in associated deferred tax liabilities, in respect of any of the following: • cost recovery allowances on tangible assets;

Defined term	***Explanation***
	• the cost of a licence or similar arrangement from a government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets; • research and development expenses; • de-commissioning and remediation expenses; • fair value accounting on unrealised net gains; • foreign currency exchange net gains; • insurance reserves and insurance policy deferred acquisition costs; • a gain that is: – from the sale of tangible property located in the jurisdiction in which the Constituent Entity is located; and – reinvested in tangible property in that jurisdiction; • an additional amount accrued as a result of accounting principle changes with respect to a matter mentioned in any of paragraphs (a) to (h).
Reductions to Covered Taxes 4-20	The ***Reductions to Covered Taxes*** of a Constituent Entity for a Fiscal Year is the sum of the following: • if income is excluded from the computation of the Constituent Entity's GloBE Income or Loss under Chapter 3—the sum of: – the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year that relates to the income; and – the amount (if any) of Additions to Covered Taxes for the Fiscal Year of the Constituent Entity that relates to the income; • the amount of any credit or refund, in respect of a tax credit (other than a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit), that: – is credited or refunded to the Constituent Entity in respect of Covered Taxes in the Fiscal Year; and – is not recorded as a reduction to the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year; • if the Constituent Entity transferred a Non-Marketable Transferable Tax Credit during the Fiscal Year:

Defined term	Explanation
	– where the Constituent Entity is the person to whom the tax credit was originally granted—the amount (if any) received by the Constituent Entity in exchange for the transfer; or – where subparagraph (i) does not apply, and the transfer amount mentioned in subsection 3-145(3) is a positive number—that amount; • the amount (if any) of Covered Taxes refunded or credited to the Constituent Entity (other than a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit) that is not treated as an adjustment to the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year; • the amount (if any) of the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year that relates to an uncertain tax position; • the amount (if any) of the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year that is not expected to be paid within 3 years after the last day of the Fiscal Year.
Reference Jurisdiction 9-50	The ***Reference Jurisdiction*** of an MNE Group is the jurisdiction where the MNE Group has the highest total value of Tangible Assets for the first Fiscal Year starting on or after 1 January 2024 for which the MNE Group is an Applicable MNE Group.
Refundable Tax Credit 3-125(4)	A tax credit is a ***Refundable Tax Credit*** if it is payable in cash or cash equivalents (including by way of discharge against a liability to a Tax which is not a Covered Tax) after it has been used to reduce or discharge any liability to Covered Taxes or in the absence of any liability for Covered Taxes.
Relevant CbC Regulations 8-195(1)	***Relevant CbC Regulations*** of an MNE Group means: • if the jurisdiction in which the UPE of the MNE Group is located (the ***UPE jurisdiction***) does not have CbC Reporting regulations and the MNE Group is not required to file a CbC Report in any jurisdiction—the following documents: – the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the OECD and last amended on 7 January 2022; – Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13 (2022) of the OECD; or • if paragraph (a) does not apply and the MNE Group is does not file a CbC Report in the UPE Jurisdiction—the CbC Reporting regulations of the surrogate parent entity jurisdiction (determined in accordance with the documents mentioned in subparagraphs (a)(i) and (ii)); or

Defined term	Explanation
	• otherwise—the CbC Reporting regulations of the UPE jurisdiction.
Restricted Tier One Capital 3-210(2)	An instrument issued by a Constituent Entity of an MNE Group pursuant to prudential regulatory requirements that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis is: • if the requirements are applicable to the insurance sector – ***Restricted Tier One Capital.***
Reverse Hybrid Entity 10-40	A Flow-through Entity is a ***Reverse Hybrid Entity*** with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which the owner is located.
Routine profits test 8-60	An MNE Group meets the ***Routine profits test*** for a jurisdiction for a Fiscal Year if the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year is equal to or less than the MNE Group's Substance-based Income Exclusion Amount for the jurisdiction for the Fiscal Year. In computing the Substance-based Income Exclusion Amount mentioned in that subsection, treat a Constituent Entity of the MNE Group as being located in the jurisdiction for the Fiscal Year if, and only if the Constituent Entity is: • a CbC Reporting Resident of the jurisdiction for the Fiscal Year; and • is located in the jurisdiction.
SC De minimis test 8-160	An MNE Group meets the ***SC De minimis test*** for a jurisdiction for a Fiscal Year if: • the MNE Group's Average GloBE Revenue for the jurisdiction for the Fiscal Year, computed in accordance with this Division, is less than 10 million Euros; and • the MNE Group's Average GloBE Income or Loss for the jurisdiction for the Fiscal Year, computed in accordance with this Division, is less than 1 million Euros.
SC ETR test 8-165	An MNE Group meets the ***SC ETR test*** for a jurisdiction for a Fiscal Year if the MNE Group's Effective Tax Rate for the jurisdiction for the Fiscal Year, computed in accordance with this Division, is equal to or greater than the Minimum Rate. However, the MNE Group does not meet the ***SC ETR test*** for the jurisdiction for the Fiscal Year if the jurisdiction is a jurisdiction in which a Stateless Constituent Entity is taken to be located under section 5-45.

Defined term	***Explanation***
SC Routine profits test 8-170	An MNE Group meets the ***SC Routine profits test*** for a jurisdiction for a Fiscal Year if the MNE Group's Net GloBE Income for the jurisdiction for the Fiscal Year, computed in accordance with this Division, is equal to or less than the MNE Group's Substance-based Income Exclusion Amount for the jurisdiction for the Fiscal Year.
Securitisation Arrangement 8-220	A ***Securitisation Arrangement*** means an arrangement that satisfies the following conditions: • it is implemented for the purpose of pooling and repackaging a portfolio of assets (or exposures to assets) for investors in a manner that legally segregates on or more identified pools of assets; • it seeks through contractual agreements to limit the exposure of those investors to the risk of insolvency of an Entity holding the legally segregated assets by controlling the ability of identified creditors of that Entity (or of another Entity in the arrangement) to make claims against it through legally binding documentation entered into by those creditors.
Securitisation Entity 10-25	An Entity is a ***Securitisation Entity*** for a period if it meets the conditions in subsection 820-39(3) of the *Income Tax Assessment Act 1997* throughout the period. To avoid doubt, subsections 820-39(4) and (5) of that Act apply for the purposes of the meaning of ***Securitisation Entity***
Short-term Portfolio Shareholding 3-25(3)	The Portfolio Shareholding is a ***Short-term Portfolio Shareholding*** in the Entity, of the Constituent Entity, in respect of the distributions, if: • a Constituent Entity of an MNE Group receives or accrues dividends or other distributions as a result of a Portfolio Shareholding of the Constituent Entity in an Entity; and • the Portfolio Shareholding has been economically held by the Constituent Entity for less than one year at the date of the distribution.
Simplified Covered Taxes 8-50	An MNE Group's ***Simplified Covered Taxes*** for a jurisdiction for a Fiscal Year is its income tax expense for the jurisdiction for the Fiscal Year that would be reported in its Qualified Financial Statements for the Fiscal Year, if the following assumptions were made: • the following were disregarded:

Defined term	Explanation
	– taxes that are not included in the MNE Group's Qualified CbC Report in relation to the jurisdiction for the Fiscal Year; – taxes that are not Covered Taxes; – uncertain tax positions. • sections 4-40, 4-50 and 4-55 applied in relation to the MNE Group's income tax expense for the jurisdiction for the Fiscal Year; and • a reference in those sections to Covered Taxes were a reference to that income tax expense.
Simplified ETR 8-45	An MNE Group's ***Simplified ETR***, for a jurisdiction for a Fiscal Year, is the amount equal to: • the MNE Group's Simplified Covered Taxes for the jurisdiction for the Fiscal Year; • divided by: • the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year.
Simplified ETR test 8-40	An MNE Group meets the ***Simplified ETR test*** for a jurisdiction for a Fiscal Year if the MNE Group's Simplified ETR for the jurisdiction for the Fiscal Year is equal to or greater than the Transition Rate for the Fiscal Year.
Stapled Structure 6-85(3)	***Stapled Structure*** means an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, under which all of the following apply: • at least 50 per cent of the Ownership Interests in the UPEs of the separate Groups are (by reason of form of ownership, restrictions on transfer, or other terms or conditions) combined with each other; • those combined Ownership Interests cannot be transferred or traded independently; • if the combined Ownership Interests are listed—they are quoted at a single price; • one of the UPEs prepares CFS: – in which the assets, liabilities, income, expenses and cash flows of all the Entities that comprise the Groups are presented together as those of a single economic unit; and – that are required by a regulatory regime to be externally audited.

<table>
<tr><th>Defined term</th><th>Explanation</th></tr>
<tr><td>Substance-based Income Exclusion Amount
5-50</td><td>The Substance-based Income Exclusion Amount of an MNE Group for a jurisdiction for a Fiscal Year is the sum of the following:
• the sum of the Payroll Carve-out Amounts for each Constituent Entity of the MNE Group located in the jurisdiction, for the Fiscal Year;
• the sum of the Tangible Asset Carve-out Amounts for each Constituent Entity of the MNE Group located in the jurisdiction, for the Fiscal Year.</td></tr>
<tr><td>Substitute Loss Carry-forward DTA
4-95</td><td>A Constituent Entity of an MNE Group has a Substitute Loss Carry-forward DTA that arises in a Fiscal Year if:
• the jurisdiction in which the Constituent Entity is located requires that foreign source income that is income of a CFC of a Constituent Entity of an MNE Group and the Constituent Entity is taxed on the foreign source income under a CFC Tax Regime offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income; and
• the Constituent Entity has, in relation to the jurisdiction:
– a foreign tax credit; and
– a domestic tax loss that is fully or partially offset by foreign source income; and
• the tax law of the jurisdiction allows foreign tax credits to be used to offset a tax liability in a subsequent Fiscal Year in relation to income that is included in the computation of the Constituent Entity’s GloBE Income or Loss for that subsequent Fiscal Year.
The amount of the Substitute Loss Carry-forward DTA is the lesser of the following:
• the amount of the foreign tax credit that the tax law of the jurisdiction allows to be carried forward from the Fiscal Year in Substitute Loss Carry forward DTA arises to a subsequent Fiscal Year; and
• the amount of the Constituent Entity’s tax loss that is offset, multiplied by the applicable tax rate in the jurisdiction.</td></tr>
<tr><td>Tangible Asset Carveout Amount
5-65(1)</td><td>The Tangible Asset Carve-out Amount for a Constituent Entity of an MNE Group located in a jurisdiction, for a Fiscal Year, is computed as follows:
• first, compute the total amount of the carrying values for the Fiscal Year of each Eligible Tangible Asset of the Constituent Entity;</td></tr>
</table>

Defined term	Explanation
	• next, exclude from the result of paragraph (a) amounts to the extent they are the carrying value of property (including land or buildings) that is held for sale, lease or investment; • next, multiply the result of paragraph (b) by 5%.
Tax	A compulsory unrequited payment to general government.
tax functional currency 3-60(1)	A Constituent Entity's ***tax functional currency*** for a Fiscal Year is the functional currency used to compute the Constituent Entity's taxable income or loss for the Fiscal year for a Covered Tax: • unless paragraph (b) applies—in the jurisdiction in which it is located; or • if the Constituent Entity is a Stateless Constituent Entity—in the jurisdiction in which it is created.
Tax Transparent Entity 10-35	A Flow-through Entity is a ***Tax Transparent Entity*** with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located, if a Constituent Entity: • is not a tax resident of any jurisdiction; and • is not subject to a Covered Tax or a QDMTT based on its place of management, place of creation, or similar criteria; • treat the Constituent Entity as a Flow-through Entity and a ***Tax Transparent Entity*** in respect of its income, expenditure, profit or loss to the extent that: – its owners are located in a jurisdiction that treats the Entity as fiscally transparent; and – it does not have a place of business in the jurisdiction where it was created; and – the income, expenditure, profit or loss is not attributable to a Permanent Establishment in respect of which it is the Main Entity.
Tax Transparent Structure 10-45	An Ownership Interest in an Entity or a Permanent Establishment that is a Constituent Entity is held through a ***Tax Transparent Structure*** if that Ownership Interest is an Indirect Ownership Interest held through a chain of Tax Transparent Entities.
Top-up Tax 5-40	If an MNE Group has Net GloBE Income for a jurisdiction for a Fiscal Year, the ***Top-up Tax*** of a Constituent Entity of the MNE Group, located in the jurisdiction, for a Fiscal Year is the amount computed in accordance with the following formula:

Defined term	***Explanation***
	$$\text{Jurisdictional Top-up Tax} \times \frac{\text{GloBE Income of the CE}}{\text{Aggregate GloBE Income of all CEs}}$$ where: ***Aggregate GloBE Income of all CEs*** is the sum of the GloBE Income of all Constituent Entities of the MNE Group that have GloBE Income for the Fiscal Year included in the computation of Net GloBE Income in accordance with section 5-10 for the jurisdiction for the Fiscal Year. ***GloBE Income of the CE*** is the GloBE Income of the Constituent Entity for the jurisdiction for the Fiscal Year. ***Jurisdictional Top-up Tax*** is the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the Fiscal Year.
Top-up Tax Percentage 5-20	If an MNE Group for a jurisdiction for a Fiscal Year has an Effective Tax Rate for the jurisdiction for the Fiscal Year, the ***Top-up Tax Percentage*** of the MNE Group for the jurisdiction for the Fiscal Year is the amount computed in accordance with the following formula (but not less than zero): $$Minimum\,rate - ETR$$
Total Deferred Tax Adjustment Amount 4-85 and 4-90	The ***Total Deferred Tax Adjustment Amount*** for a Constituent Entity for a Fiscal Year is equal to: • if the applicable domestic tax rate is below the Minimum Rate—the deferred tax expense accrued in its financial accounts, to the extent that it: – is in respect of Covered Taxes for the Fiscal Year (the relevant deferred tax expense); and – relates to amounts included in the computation of the Constituent entity's GloBE Income for the Fiscal Year; or • otherwise—that deferred tax expense, to that extent, recast at the Minimum Rate, • but does not include any of the following: • the amount of the relevant deferred tax expense that is in respect of items excluded from the computation of GloBE Income or Loss under Chapter 3; • the amount of the relevant deferred tax expense that is in respect of Disallowed Accruals and Unclaimed Accruals; • the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset;

Defined term	***Explanation***
	– the amount of the relevant deferred tax expense that arises from a re-measurement with respect to a change in the applicable domestic tax rate; – the amount of the relevant deferred tax expense that is in respect of the generation and use of tax credits.
Total Revenue 8-25 and 8-190	The ***Total Revenue*** of a Constituent Entity of an MNE Group for a Fiscal Year means the Constituent Entity's total revenue for the Fiscal Year as determined in accordance with the MNE Group's Relevant CbC Regulations. An MNE Group's ***Total Revenue***, for a jurisdiction for a Fiscal Year, means the MNE Group's total revenues in the jurisdiction, as reported on its Qualified CbC Report in relation to the jurisdiction for the Fiscal Year, including the amount of any intragroup payment that is treated as income in the Qualified Financial Statements of the recipient Group Entity and is treated as expense in the Qualified Financial Statements of the paying Group Entity.
Total UTPR Top-up Tax Amount 2-55(1)	The ***Total UTPR Top-up Tax Amount*** for an MNE Group for a Fiscal Year is the sum of the following: • the total of the Top-up Tax for the Fiscal Year of each LTCE for the Fiscal Year of the MNE Group, as adjusted in accordance with this section; • if there are one or more JV Groups of the MNE Group—the total of the UPE's Allocable Share of the Top-up Tax of each JV, and of each of its JV Subsidiaries (if any), that comprise each such JV Group, as adjusted in accordance with this section. However, for the purposes of paragraph (a), reduce the Top-up Tax for the Fiscal Year of a LTCE to zero if: • all of the Ownership Interests in the LTCE held by the MNE Group's UPE are any of the following: – Direct Ownership Interests; – Indirect Ownership Interests held through one or more Parent Entities of the MNE Group; and • the UPE, and each of those Parent Entities mentioned in paragraph (2)(b), is required to apply a Qualified IIR for that Fiscal Year in the jurisdiction in which it is located with respect to that LTCE.
Transition Period 8-15	The ***Transition Period*** covers a Fiscal Year that: • starts on or before 31 December 2026; and • ends on or before 30 June 2028.

Defined term	***Explanation***
Transition Rate 8-55	The ***Transition Rate*** for a Fiscal Year means: • if the Fiscal Year starts in the 2023 or 2024 calendar year—15%; or • if the Fiscal Year starts in the 2025 calendar year—16%; or • if the Fiscal Year starts in the 2026 calendar year—17%.
Transition Year 9-20	***Transition Year***, for a jurisdiction, means the first Fiscal Year that the MNE Group comes within the scope of the GloBE Rules in respect of that jurisdiction.
Unclaimed Accrual 4-115(2)	An ***Unclaimed Accrual***, of a Constituent Entity of an MNE Group for a Fiscal Year, means an increase in a deferred tax liability recorded in the financial accounts of the Constituent Entity for the Fiscal Year (the ***current year***) if: • it is not expected to be reversed by the end of the fifth following Fiscal Year; and • an election under subsection (3) applies to the Constituent Entity for the current year.
Undistributed Net GloBE Income Account 7-160	At the end of the tested year, an ***Undistributed Net GloBE Income Account*** is established for the Investment Entity for the tested year, if: • an election under subsection 7-135(1) applies to: – an Investment Entity that is a Constituent Entity of an MNE Group; and – a Fiscal Year (the tested year); and • the Investment Entity has GloBE Income for the tested year.
UTPR	Any law of a jurisdiction that may reasonably be considered to have been enacted with the intention of implementing, in whole or in part, Articles 2.4 to 2.6 of the GloBE Rules.
UTPR Percentage 2-65	An MNE Group's ***UTPR Percentage*** for a Fiscal Year of a jurisdiction that has a Qualified UTPR in force for the Fiscal Year is the percentage computed under the following formula: $$\left(50\% \times \frac{\text{Number of employees in the jurisdiction}}{\text{Number of employees in all UTPR jurisdictions}}\right) + \left(50\% \times \frac{\text{Total value of tangible assets in the jurisdiction}}{\text{Total value of tangible assets in all UTPR jurisdictions}}\right)$$ where: • ***Number of employees in all UTPR Jurisdictions*** means the total number of employees of all Constituent Entities of the

Defined term	Explanation
	MNE Group located in each jurisdiction that has a Qualified UTPR in force for the Fiscal Year. • ***Number of employees in the jurisdiction*** means the total number of employees of all Constituent Entities of the MNE Group located in the jurisdiction. • ***Total value of tangible assets in all UTPR Jurisdictions*** means the sum of the Net Book Value of Tangible Assets for the Fiscal Year of all Constituent Entities of the MNE Group located in each jurisdiction that has a Qualified UTPR in force for the Fiscal Year. • ***Total value of tangible assets in the jurisdiction*** means the sum of the Net Book Value of Tangible Assets for the Fiscal Year of all Constituent Entities of the MNE Group located in the jurisdiction.
UTPR Top-up Tax Amount 2-45	A Constituent Entity of an Applicable MNE Group for a Fiscal Year that is located in Australia has an ***UTPR Top-up Tax Amount*** for the Fiscal Year if: • the Total UTPR Top-up Tax Amount for the Applicable MNE Group for the Fiscal Year is greater than zero; and • an amount of the Total UTPR Top-up Tax Amount is allocated to Australia under section 2-70; and • an amount of that allocated amount is distributed to the Constituent Entity under section 2-80. However, if: • a Constituent Entity for a Fiscal Year of an Applicable MNE Group for the Fiscal Year is a Permanent Establishment of a Main Entity; and • the Constituent Entity is located in Australia for the Fiscal Year; and • the Main Entity is not located in Australia for the Fiscal Year, then if the Constituent Entity would otherwise have a ***UTPR Top-up Tax Amount*** for the Fiscal Year, the Constituent Entity does not have a ***UTPR Top-up Tax Amount*** for the Fiscal Year.

Chapter 11: Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

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

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Overview of Legislative Instrument

11.1 This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

11.2 The GloBE Rules under Pillar 2 ensure that in scope MNEs will be subject to a global minimum tax rate of 15 per cent. This is achieved through a set of rules which identify low taxed pools of income within a MNE Group and which allow parent jurisdictions, or in some cases, other jurisdictions, to claim taxing rights over that income.

11.3 The Rules implement the domestic framework for a multinational top up tax, by providing for the substantive computations of top up tax under the GloBE Rules and operate to ensure that future administrative guidance released by the OECD can be incorporated in a timely and efficient manner. It is imperative that the Rules reflect OECD approved documents so that Australia's implementation of the GloBE Rules achieves qualified status, which can only be achieved if the Rules are implemented in a manner consistent with the GloBE Rules.

Human rights implications

11.4 This Legislative Instrument does not engage any of the applicable rights or freedoms.

11.5 The computation of top-up taxes imposed under the Rules generally apply to multinational enterprises, and are not applicable to natural persons, therefore not engaging human rights.

Conclusion

11.6 This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Attachment 1: Conversion tables

The following conversion table has been included to assist readers in identifying the comparable legislative reference to the OECD GloBE Model Rules, Commentary and Agreed Administrative Guidance released by the OECD. The conversion tables identify each provision's corresponding Article in the OECD GloBE Model Rules, Commentary or Agreed Administrative Guidance. Where applicable, it may also refer to sections of the Agreed Administrative Guidance and Commentary relevant for each provision and Article.

Table 11.1 Conversion Table 1: GloBE articles to Australian law

GloBE reference	***Brief description***	***Rule section***
Chapter 1 – Scope		
1.3 of the February 2023 AG	Consolidated deferred tax amounts	4-85
1.5.2(b) of the February 2023 AG	Excluded entity	1-20
1.6 of the February 2023 AG	Ancillary not-for-profits	1-20
Chapter 1 of the July 2023 AG	Currency guidance	1-25
1.1 of the February AG	Monetary thresholds	No equivalent
Chapter 2 – Charging Provisions		
2.1	Application of the IIR	Part 2-1
2.1.2	An Intermediate Parent Entity that owns an Ownership Interest in a LTCE will pay Top-up Tax equal to its Allocable Share of the Top-up Tax of that LTCE for the Fiscal Year	2-5(1) (a)-(b) and 10-5
2.1.3	The IPE under 2.1.2 only applies an IIR if the UPE has not applied an IIR or another IPE has applied the IIR	2-5(5)(a)

GloBE reference	Brief description	Rule section
2.1.4	A POPE will pay a tax equal to its Allocable Share of the Top-up Tax of that LTCE for the Fiscal Year	2-5(1) (a)-(b) and 10-5
2.1.5	Wholly owned POPE's (owned by another POPE) will not apply an IIR (2.1.4 does not apply to a POPE that is wholly owned by another POPE that is required to apply a Qualified IIR)	2-5(5)(b)
2.1.6	Parent entities may apply the IIR to entities not located in the same jurisdiction	2-5(1)(c)
2.2	**Allocation of Top-up Tax under the IIR**	**Part 2-2**
2.2.1	A Parent Entity's Allocable Share of the Top-up Tax of a LTCE equals the Top-up Tax of the LTCE multiplied by the Parent Entity's Inclusion Ratio for the LTCE for the Fiscal Year.	2-5(2) and 2-10
2.2.2	Formula of Parent Entity's Inclusion Ratio	2-15(1)
2.2.3	Hypothetical income attributable to ownership interests in LTCE held by other owners	2-15(2)
2.2.4	If a Flow-through Entity: exclude any income allocated, pursuant to Article 3.5.3, to an owner that is not a Group Entity.	2-15(3)
2.3	**IIR offset mechanism**	**Part 2-3**
2.3.1	A Parent Entity that owns an Ownership Interest in a LTCE indirectly through an Intermediate Parent Entity or a POPE that is not eligible for an exclusion from the IIR under Article 2.1.3 or 2.1.5 shall reduce its Allocable Share of a Top-up Tax of the LTCE in accordance with Article 2.3.2.	2-20(1)
2.3.2	The reduction is equal to the portion of the Parent Entity's Allocable Share of the Top-up Tax that is brought into charge by the Intermediate Parent Entity or the POPE under a Qualified IIR.	2-20(2)
2.4	**Application of the UTPR**	**Part 2-5**

GloBE reference	***Brief description***	***Rule section***
2.4.1	Constituent Entities of an MNE Group are required to make an equivalent adjustment equal to the UTPR Top-up Tax Amount.	2-45 and 2-50
2.4.2	Additional cash tax expense in relation to denial of deduction	No equivalent
2.4.3	The Constituent Entity does not have an UTPR Top up Tax Amount for the Fiscal Year if it is an Investment Entity or Insurance Investment Entity	2-50(6)
2.5	**UTPR Top-up Tax Amount**	**Part 2-5**
2.5.1	The Total UTPR Top-up Tax Amount for a Fiscal Year equals the sum of the Top up Tax for each LTCE	2-55(1)
2.5.2	Where the Top up Tax is reduced to zero	2-55(2)
2.5.3	Where the Top up Tax is not reduced to zero but by a Parent Entity's Allocable Share	2-55(4)
2.6	**Allocation of Top-up Tax for the UTPR**	**Part 2-6**
2.6.1	Allocation of the Total UTPR Top-up Tax Amount to Australia by Australia's UTPR Percentage	2-60, 2-65(1)-(2), 2-70, 2-75 and 2-85
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2.6.4	When Art 2.6.3 does not apply	2-65(4)
Chapter 5 of February 2023 AG	**Application of DMT**	**Part 2-4**
118.10 Chapter 5 of February 2023 AG and Chapter 4 of July 2023 AG	DMT –jurisdiction may optionally limit their DMTT so that an MNE Group is only subject to the DMTT if wholly owned or 100% held	No equivalent
118.40.4	DMT – jurisdictions may optionally treat Investment Entities as Excluded Entities	No equivalent

GloBE reference	***Brief description***	***Rule section***
118.51	DMT – jurisdictions may optionally exclude MNE Groups in the initial phase of international expansion from DMTT	No equivalent
118.1	DMT – jurisdictions may optionally apply to purely domestic groups	No equivalent
118.1	DMT – jurisdictions may optionally lower the revenue threshold	No equivalent
118.8.1	DMT may apply to Stateless Flow-through Entities created in the DMT jurisdiction	2-25(1)(b) and (2)
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GloBE reference	***Brief description***	***Rule section***
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2.2 of the February 2023 AG	Excluded equity gains or loss and hedged of investments in foreign operations	3-30 and 3-35
2.9 of the February 2023 AG	Excluded Equity Gain or Loss inclusion election and Qualified Flow-through tax benefits	No equivalent
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GloBE reference	Brief description	Rule section
Paras 45 to 52 of Chapter 2 July 2023 AG	Qualified Flow-Through Tax Benefits timing rule	No equivalent
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3.3 of the February 2023 AG	Restricted Tier One Capital	3-210
10.1.1	Short-term Portfolio Shareholding	3-25(3)

GloBE reference	***Brief description***	***Rule section***
10.1.1	Stapled Structure	6-85(3)
10.1.1	Substance-based Income Exclusion	5-50
10.1.1	Tax	10-5
10.1.1	Taxable Distribution Method	7-145
10.1.1	Tested Year	7-155(1)(a)(iii) and 7-160(1)(a)(ii)
10.1.1	Top-up Tax	5-40
10.1.1	Top-up Tax Percentage	5-20
10.1.1	Total Deferred Tax Adjustment Amount	4-85
10.1.1	Total UTPR Top up Tax Amount	2-55
10.1.1 and 118.49.1-2	Transition Year	9-20
10.1.1	UPE Jurisdiction	No equivalent
10.1.1	UTPR	Parts 2-4 to 2-6
10.1.1	UTPR Jurisdiction	No equivalent
10.1.1	UTPR Percentage	2-75

Table 11.2 Conversion Table 2: Australian law to GloBE Rules

Rule section	Brief description	GloBE reference
Chapter 1 - Preliminary		
Part 1-3	**Currency Conversion**	
1-20	Excluded entity	1.5 of the February 2023 AG
1-20	Ancillary not-for-profits	1.6 of the February 2023 AG
1-25	Currency guidance	Chapter 1 of the July 2023 AG
Chapter 2 - Liability amounts		
Part 2-1	**Application of the IIR**	**2.1**
2-5(1)(a)-(b) and 10-5	An Intermediate Parent Entity that owns an Ownership Interest in a LTCE will pay top up tax equal to its Allocable Share of the Top-up Tax of that LTCE for the Fiscal Year	2.1.2
2-5(1)(a)-(b) and 10-5	POPE's will always pay a tax equal to its Allocable Share of the Top-up Tax of that LTCE for the Fiscal Year	2.1.4
2-5(1)(c)	Parent entities may apply the IIR to entities not located in the same jurisdiction	2.1.6
2-5(2) and 2-10	A Parent Entity's Allocable Share of the Top-up Tax of a LTC equals the Top-up Tax of the LTCE multiplied by the Parent Entity's Inclusion Ratio for the LTCE for the Fiscal Year	2.2.1
2-5(5)(a)	The IPE under 2.1.2 only applies an IIR if the UPE has not applied an IIR or another IPE has applied the IIR	2.1.3
2-5(5)(b)	Only wholly owned POPE's (owned by another POPE) will not apply an IIR (2.1.4 does not apply to the lowest owned POPE that is wholly owned another POPE)	2.1.5
Part 2-2	**Allocation of Top-up Tax under the IIR**	**2.2**

Rule section	Brief description	GloBE reference
2-15(1)	Formula of Parent Entity's Inclusion ratio	2.2.2
2-15(2)	Hypothetical income attributable to ownership interests in LTCE held by other owners	2.2.3
2-15(3)	If a Flow-through Entity: exclude any income allocated, pursuant to Article 3.5.3, to an owner that is not a Group Entity.	2.2.4
Part 2-3	**IIR offset mechanism**	**2.3**
2-20(1)	A Parent Entity that owns an Ownership Interest in a LTCE indirectly through an Intermediate Parent Entity or a POPE that is not eligible for an exclusion from the IIR under Article 2.1.3 or 2.1.5 shall reduce its allocable share of a Top-up Tax of the LTCE in accordance with Article 2.3.2.	2.3.1
2-20(2)	The reduction is equal to the portion of the Parent Entity’s Allocable Share of the Top-up Tax that is brought into charge by the Intermediate Parent Entity or the POPE under a Qualified IIR.	2.3.2
Part 2-4	**Application of Domestic Top-up Tax**	Chapter 5 of February 2023 AG
No equivalent	DMT –jurisdiction may optionally limit their DMTT so that an MNE Group is only subject to the DMTT if wholly owned or 100% held.	118.10 Chapter 5 of February 2023 AG and Chapter 4 of July 2023 AG
No equivalent	DMT – jurisdictions may optionally treat Investment Entities as Excluded Entities	118.40.4
No equivalent	DMT – jurisdictions may optionally exclude MNE Groups in the initial phase of international expansion from DMTT.	118.51
No equivalent	DMT – jurisdictions may optionally apply to purely domestic groups	118.1

Rule section	***Brief description***	***GloBE reference***
No equivalent	DMT – jurisdictions may optionally lower the revenue threshold	118.1
2-25(1)(b) and (2)	DMT may apply to Stateless Flow-through Entities created in the DMT jurisdiction	118.8.1
2-25(1)(b) and (2)	DMT may apply to Stateless Permanent Establishments with a place of business or deemed place of business in the DMT jurisdiction	118.8.1
2-25, 2-30, 2-35	Charging provision for DMT	118.12
2-35(3)	A DMT should exclude certain covered tax expenses with some exceptions	118.30
No equivalent	DMT – jurisdictions may optionally implement the Local Financial Accounting Standard and local currency rule	118.54 118.14-118.15
2-45 and 2-50	Constituent Entities of an MNE Group are required to make an equivalent adjustment equal to the UTPR Top-up Tax Amount	2.4.1
Not applicable	Additional cash tax expense in relation to denial of deduction	2.4.2
2-45(6)	The Constituent Entity does not have an UTPR Top up Tax Amount for the Fiscal Year if it is an Investment Entity or Insurance Investment Entity	2.4.3
Part 2-5	**UTPR Top-up Tax Amount**	**2.5**
2-55(1)	The Total UTPR Top-up Tax Amount for a Fiscal Year is the sum of the Top-up Tax for each LTCE, as calculated in Article 5.2, subject to adjustments	2.5.1
2-55(2)	The Top-up Tax for a LTCE in Article 2.5 of the Rules is reduced to zero if the UPE’s Ownership Interest is held by one or more Parent Entities applying a Qualified IIR in their jurisdiction for the Fiscal Year	2.5.2
2-55(4)	Top-up Tax is reduced by a Parent Entity’s Allocable Share of the Top-up Tax brought into charge under a Qualified IIR	2.5.3
Part 2-6	**Allocation of Top-up Tax for the UTPR**	**2.6**

Rule section	Brief description	GloBE reference
2-60, 2-65(1)-(2), 2-70, 2-75, 2-85 2-60 and 2-65	Allocation of the Total UTPR Top up tax Amount to Australia by Australia’s UTPR Percentage	2.6.1
2-65(2) and (3)	Where the UTPR Percentage is deemed to zero	2.6.3
2-65(4)	When Art 2.6.3 does not apply	2.6.4
2-85	Allocation disregarding Investment Entities	2.6.2(a)
2-90 and 2-95	Employees and assets held by a Flow-through Entity	2.6.2(b)
Chapter 3 - Computation of GloBE Income or Loss		
Part 3-1	**Financial Accounts**	**3.1**
3-5	Definition of GloBE Income or Loss for each Constituent Entity: FANIL of the Constituent Entity adjusted for the items described in Article 3.2 to Article 3.5	3.1.1
3-10(1), (2), (4) and (5) and 3-15(1) and (2)	Definition of FANIL is the net income or loss determined for a Constituent Entity (before any consolidation adjustments eliminating intra-group transactions) in preparing CFS of the UPE	3.1.2
3-10(6) and (7)	Alternate option to determine FANIL using different accounting standard to UPE - conditions apply	3.1.3
Part 3-2	**Adjustments to determine GloBE Income or Loss**	**3.2**
3-15	Net Taxes Expense	3.2.1(a)
3-20 and 3-25	Excluded dividends – Asymmetric treatment of dividends and distributions	2.3 of the February AG
3-20 and 3-25	Excluded Dividends	3.2.1(b)
3-20(1)(b) and (2)	Simplification for Short-term Portfolio Shareholdings	3.5 of the February AG
3-30 and 3-35	Excluded Equity Gain or Loss	3.2.1(c)
3-30 and 3-35	Excluded equity gains or loss	2.2 of the February AG

Rule section	***Brief description***	***GloBE reference***
No equivalent	Excluded Equity Gain or Loss inclusion election and Qualified Flow Through tax benefits	2.9 of the February AG
3-40	Liabilities related to Excluded Dividends and Excluded Equity Gain or Loss from securities held on behalf of policyholders	3.4 of the February AG
3-45 and 3-50	Included Revaluation Method Gain or Loss	3.2.1(d)
3-55 and 3-60	Asymmetric Foreign Currency Gains or Losses	3.2.1(f)
3-65	Policy Disallowed Expenses	3.2.1(g)
3-70	Prior Period Errors and Changes in Accounting Principles	3.2.1(h)
3-75	Accrued Pension Expense	3.2.1(i)
3-80 and 3-85	Treatment of debt releases	2.4 of the February AG
3-80	Stock based compensation - Five-Year Election	3.2.2
3-95, 3-100 and 3-105	Arm's length principle	3.2.3
3-110, 3-115, 3-125	Qualified refundable tax credits	3.2.4
3-120, 3-130, and 3-135	Marketable Transferable Tax Credits	Paras 34 to 39 of Chapter 2 July 2023 AG
-140, and 3-145	Non-Marketable Transferable Tax Credits	Paras 40 to 44 of Chapter 2 July 2023 AG
No equivalent	Qualified Flow-Through Tax Benefits timing rule	Paras 45 to 52 of Chapter 2 July 2023 AG
3-150	Realisation principle of gains and losses - Five-Year Election	3.2.5
3-155 to 3-175	Spread aggregate asset gain over 5 years - Annual Election	3.2.6
3-180 to 3-195	Exclude expenses relating to intragroup financing	3.2.7
3-200	Consolidated accounting treatment - Five-Year Election	3.2.8
3-205	Exclude certain insurance expenses charged onto policyholders	3.2.9

Rule section	***Brief description***	***GloBE reference***
3-210	Additional tier one capital	3.2.10
3-210	Restricted tier one capital	3.3 of the February AG
3-215	Adjustments under Chapters 6 and 7	3.2.11
Part 3-2	Accrued pension expense	2.5 of the February AG
Part 3-3	**International Shipping Income exclusion**	**3.3**
3-220	Exclude International Shipping Income and qualified ancillary International Shipping Income	3.3.1
3-225(2)	Definition of International Shipping Income	3.3.2
3-225(3) and 3-230(4)	Costs associated with ancillary international or international shipping are deducted from the revenue	3.3.5
3-230(1)	Cap on qualified ancillary international shipping income: max. is 50% of International Shipping Income	3.3.4
3-230(3)	Definition of qualified ancillary International Shipping Income	3.3.3
3-235	Condition to exclude international shipping income: prove that strategic management of ships is in the same jurisdiction as the Constituent Entity	3.3.6
Part 3-4	**Allocation of Income or Loss between a Main Entity and a Permanent Establishment**	**3.4**
3-240(1)	FANIL of a Permanent Establishment (definition (a), (b) and (c))	3.4.1
3-240(2)	FANIL of a Permanent Establishment (definition (d))	3.4.3
3-245	Adjustments to the FANIL of a Permanent Entity	3.4.2
3-250(1)	Main entity does not account for the FANIL of a Permanent Entity	3.4.4
3-250(2)	GloBE loss of a Permanent Entity is an expense of the Main entity	3.4.5

Rule section	***Brief description***	***GloBE reference***
Part 3-5	**Allocation of Income or Loss from a Flow-through Entity**	**3.5**
3-255(1)(a)	Reduce the FANIL of a flow through by amounts allocated to non-group entities	3.5.3
3-255(1)(b)	Allocation rules for a Flow-through Entity	3.5.1
3-255(2)	3.5.3 does not apply to a UPE that is a flow through or a flow through owned by a flow through UPE	3.5.4
3-255(3)	Reduce FANIL of a Flow through by amounts allocated to another Constituent Entity	3.5.5
3-255(4)	Apply 3.5.1 to each ownership interest in the Flow-through Entity	3.5.2
Chapter 4 - Computation of Adjusted Covered Taxes		
Part 4-1	**Adjusted Covered Taxes**	**4.1**
4-5	Meaning of Adjusted Covered Taxes	4.1.1
4-15	Additions to covered taxes	4.1.2
4-20	Reductions to covered taxes	4.1.3
4-25	No double counting of covered taxes	4.1.4
4-30	Expected Adjusted Covered Taxes	4.1.5
4-30 and 4-35	Excess negative tax carry-forward guidance	2.7 of the February AG
Part 4-2	**Definition of Covered Taxes**	**4.2**
4-40	Included taxes in the meaning of covered taxes	4.2.1
4-40	Excluded taxes in the meaning of covered taxes	4.2.2
4-40(1)(a)	Taxes in respect of a Constituent Entity’s owner's interest in another entity	4.2.1(a)
4-40(1)(b)	Taxes on certain distributions and expenses under an Eligible Distribution Tax System	4.2.1(b)
4-40(1)(c)	Taxes imposed in lieu of a corporate income tax	4.2.1(c)
4-40(1)(d)	Taxes levied on retained earnings and corporate equity	4.2.1(d)

Rule section	***Brief description***	***GloBE reference***
4-40(2)(a)	Top-up Tax under a Qualified IIR	4.2.2(a)
4-40(2)(b)	Top-up Tax under a QDMTT	4.2.2(b)
4-40(2)(c)	Top-up-tax under a QUTPR	4.2.2(c)
4-40(2)(d)	A Disqualified Refundable Imputation Tax;	4.2.2(d)
4-40(2)(e)	Taxes paid by an insurance company in respect of returns to policyholders.	4.2.2(e)
Part 4-3	**Allocation of Covered Taxes from one Constituent Entity to another Constituent Entity**	**4.3**
4-45 to 4-80	Scope of application of covered taxes	4.3.1
4-5	Allocated covered taxes of a Constituent Entity to the Permanent Establishment	4.3.2(a)
4-50	Allocate covered taxes of a Tax Transparent Entity to the Constituent Entity-owner	4.3.2(b)
4-55	Allocate covered taxes of a Constituent Entity where the direct or indirect Constituent Entity-owners are subject to a CFC Tax Regime to the Constituent Entity	4.3.2(c)
4-65	Allocate covered taxes of a Hybrid Entity to the Hybrid Entity	4.3.2(d)
4-70	Allocate covered taxes on distributions from the Constituent Entity to the distributing Constituent Entity	4.3.2(e)
4-70	Covered taxes on deemed distributions	2.6 of the February 2023 AG
4-55 and 4-60	Allocation of taxes arising under a Blended CFC Tax Regime	2.10 of the February 2023 AG
4-75	Covered taxes in respect of passive income for CFC regimes and Hybrids are not allocated	4.3.3
4-80	Treat covered taxes of the PE as of the Main entity if GloBE income of the PE allocated to the Main entity under 3.4.5	4.3.4

Rule section	***Brief description***	***GloBE reference***
Part 4-4	**Mechanism to address temporary differences**	**4.4**
4-85	Consolidated deferred tax amounts	1.3 of the February 2023 AG
4-85(1) and (2)	Meaning of total deferred tax adjustment amount subject to exclusions	4.4.1
4-85(1) and (2)	Consolidated deferred tax amounts	1.3 of the February 2023AG
4-85(1) and (2)	Loss making parent entities of CFCs	2.8 of the February 2023AG
4-85(3)	Adjustments to total deferred tax adjustment amount	4.4.2
4-85(4) and (5)	Recasting the deferred tax asset when recorded at less than 15%	4.4.3
4-100	Rule for a deferred tax liability that is not a recapture exception accrual and not paid within 5 years	4.4.4
4-110	Meaning of recapture exception accrual	4.4.5
4-115(1)	Meaning of disallowed accrual	4.4.6
4-115(2)	Meaning of unclaimed accrual	4.4.7
Part 4-5	**The GloBE Loss Election**	**4.5**
4-120	GloBE loss election to be filed with the GIR	4.5.5
4-125	Details of the GloBE loss election	4.5.1
4-125	Carrying forward the balance of the GloBE loss deferred tax asset	4.5.2
4-125(2)	Using the GloBE loss deferred tax asset	4.5.3
4-120(4)	Effect of revoking a GloBE loss election	4.5.4
4-130 and 4-135	Flow through UPE may make a GloBE loss election	4.5.6
Part 4-6	**Post-filing Adjustments and Tax Rate Changes**	**4.6**
4-140(1)-(8)	Election and criteria for post filing adjustment	4.6.1

Rule section	***Brief description***	***GloBE reference***
4-145(1)	Treatment of deferred tax expense from a decrease tax rate change (decrease)	4.6.2
4-145(2)	Treatment of deferred tax expense from an increase in tax rate	4.6.3
4-145(3)	Treatment of current tax expense greater than EUR 1 Mil and not paid within 3 years	4.6.4
Chapter 5 - Computation of Effective Tax Rate		
Part 5-1	**Determination of Effective Tax Rate**	**5.1**
5-5	ETR formula	5.1.1
5-10	Net GloBE income formula	5.1.2
Notes to 5-5 Part 7-4	Investment entities compute ETR separately	5.1.3
Part 5-2	**Top-up Tax**	**5.2**
5-20	Top up tax percentage	5.2.1
5-25	Excess profit formula	5.2.2
5-30	Jurisdictional top up tax formula	5.2.3
5-40	Top up Tax of CE formula	5.2.4
5-40	Recalculation of top up tax - additional current top up tax	5.2.5
5-45	Stateless entities	5.1.1
Part 5-3	**Substance-based Income Exclusion**	**5.3**
5-25, 5-50(2)-(6), 5-55(4) and 5-65(5)	Operation of SBIE and election to opt out	5.3.1
5-50(1)	SBIE formula	5.3.2
5-55 and 5-60	Payroll carve-out	5.3.3
5-65, 5-70 and 5-75	Tangible asset carve-out	5.3.4
5-65(2) and (3)(c) and (e)	Computation of carrying value of Eligible Tangible Assets	5.3.5
5-80 and 5-85(2)	SBIE of Permanent Establishment	5.3.6
5-85(3)-(5)	SBIE of Flow through Entity	5.3.7

Rule section	***Brief description***	***GloBE reference***
5-55(2), 5-65(3)(f)	SBIE - Interjurisdictional Assets and Employees	Paras 28 to 31 Chapter 3 of the July 2023 AG
5-55(3)-(4) and 5-65(4)-(5).	SBIE – Simplification	Para 36 Chapter 3 of the July 2023 AG
5-60	SBIE – Stock-based compensation	Para 45 Chapter 3 of the July 2023 AG
5-70	SBIE – Lease	Para 53 Chapter 3 of the July 2023 AG
5-65(2)(a)(ii) and 5-65(3)(c) and (d)	SBIE – Impairment Losses	Para 61 Chapter 3 of the July 2023 AG
5-90	SBIE – Reduction due to Article 7.2	Paras 69 to 72 Chapter 3 of July 2023 AG
Part 5-4	**Additional Current Top-up Tax**	**5.4**
5-95(1)-(3)	Conditions for ETR recalculation	5.4.1
5-95(4)	Top up tax under ETR recalculation	5.4.2
5-95(1)-(3)	Allocation of additional current top up tax	5.4.3
5-95(5) and 5-100(4)	Deeming of a Constituent Entity as a LTCE	5.4.4
Part 5-5	**De minimis exclusion**	**5.5**
5-105(1) and (5)-(6)	Election to apply De minimis	5.5.1
5-105(2)-(3)	De minimis formula	5.5.2
5-105(4)(a)-(b)	Definitions within formula of de minimis	5.5.3
5-105(1)(d) and (4)(c)	Exclusion of stateless entities	5.5.4
Part 5-6	**Minority-Owned Constituent Entities**	**5.6**
5-120(1)-(2)	ETR of MOCE subgroup	5.6.1
5-120(3)-(4)	ETR of MOCE	5.6.2

Rule section	***Brief description***	***GloBE reference***
Chapter 6 - Corporate restructurings and holding structures		
Part 6-1	**Application of Consolidated Revenue Threshold to Group Mergers and Demergers**	**6.1**
6-5 and 6-10	Modified GloBE threshold for mergers and demergers	6.1.1
6-5	Definition of merger	6.1.2
6-10(3)	Definition of demerger	6.1.3
Part 6-2	**Constituent Entities joining and leaving an MNE Group**	**6.2**
6-20, 6-25, 6-30, 6 35, 6-40 and 6 45	Effects of the treatment of acquisition or disposal of controlling interest under GloBE	6.2.1
6-50	Treatment of acquisition or disposal of controlling interest under GloBE	6.2.2
Part 6-3	**Transfer of Assets and Liabilities**	**6.3**
6-55	Accounting for a gain or a loss in a transfer of assets or liabilities	6.3.1 and 3.2.1(e)
6-55	Intragroup transactions accounted at cost	2.1 of the February 2023 AG
6-60(1) and (2)	Alternate outcome in recognising a GloBE reorganisation to article 6.3.1	6.3.2
6-60(3) and (4)	Alternate outcome in recognising a GloBE reorganisation to articles 6.3.1 and 6.3.2	6.3.3
6-70	Details of the election	6.3.4
6-75, 2-5(3)-(4)	Joint Ventures	6.4.1
6-80	Multi-Parented MNE Groups	6.5.1
Chapter 7 - Tax Neutrality and Distribution Regimes		
Part 7-1	**UPE that is a Flow-through Entity**	**7.1**
7-5	Calculating GloBE income for a UPE that is a Flow-through Entity	7.1.1
7-5(4)	Rule for covered taxes	7.1.3

Rule section	***Brief description***	***GloBE reference***
7-10	Calculating GloBE loss for a UPE that is a flow through	7.1.2
7-15	Application to a Permanent Establishment	7.1.4
Part 7-2	**UPE subject to Deductible Dividend Regime**	**7.2**
7-20(1)-(3), 7-25, 7-30, 7-35	UPE to reduce GloBE income if subject to a deductible dividend regime	7.2.1
7-20(4)	Patronage dividends subject to tax in certain circumstances	7.2.4
7-20(5)	UPE to reduce adjusted covered taxes if GloBE income reduced	7.2.2
7-20(6)	UPE ownership interest in another Constituent Entity subject to a deductible dividend regime	7.2.3
Part 7-3	**Eligible Distribution Tax Systems**	**7.3**
7-40 and 7-50(1)	Annual election for eligible distribution tax system	7.3.1
7-50(2)-(3)	Amount of deemed distribution tax	7.3.2
7-50(4) and 7-55	Annual Distribution tax recapture account	7.3.3
7-60	Recapture account loss carry forward	7.3.4
7-65	Outstanding balance of deemed distribution tax recapture account	7.3.5
7-70	Exclude certain taxes paid on distributions from adjusted covered taxes	7.3.6
7-75(1)-(2)	Departing Constituent Entity leaving the MNE Group or transferring assets	7.3.7
7-75(3)	Calculation of disposition recapture ratio	7.3.8
Part 7-4	**Effective Tax Rate Computation for Investment Entities**	**7.4**
7-80	Application of Part 7-4	7.4.1
7-95 and 7-105	ETR for an Investment Entity	7.4.2
7-100	Top up tax for an Investment Entity	7.4.5
7-105(3)	SBIE modification	7.4.6
7-105(4) and 7-110(1)-(2)	Adjusted Covered Taxes of an Investment Entity	7.4.3

Rule section	***Brief description***	***GloBE reference***
7-110(3)	Allocable share of Investment Entity's income	7.4.4
Part 7-5	**Investment Entity Tax Transparency Election**	**7.5**
7-120, 7-125 and 7 130	Details of the election	7.5.1
7-130(2)	Application of Article 7.5 to Mutual insurance companies	3.6 of the February 2023 AG
7-125(1), 7-135	Five-Year Election	7.5.2
Part 7-6	**Taxable Distribution Method Election**	**7.6**
7-140, 7-145 and 7-150(1)	Application of the Taxable Distribution method	7.6.1
7-150(2)-(4), and 7-155(1)-(2)	Computation of the taxable distribution method	7.6.2
7-160(5)	Undistributed Net GloBE Income	7.6.3
7-160(6) and (7)	Undistributed Net GloBE Income reduced by certain distributions	7.6.4
7-160(1)-(4) and 7-165	Definitions used in Part 7-6	7.6.5
7-170 and 7-145(2)	Five-Year Election	7.6.6
7-85, 7-120 and 7-140	Application of Chapter 7 Articles to Insurance Investment Entities	3.1 of the February 2023 AG
Chapter 8 – Administration		
Part 8-1	**Safe Harbours**	**8.2**
8-5 and 8-155	*Safe harbour document: transitional CbC data, transitional penalty relief*	8.2.1
Part 8-2	Safe Harbour election	8.2.2
Division 1 of Part 8-2	Transitional CbC Safe Harbour and associated definitions	Chapter 1 of the 2022 Safe Harbour document
Division 1 of Part 8-2	Purchase price accounting adjustments in Qualified Financial Statements	Chapter 1 of the December 2023 AG

Rule section	***Brief description***	***GloBE reference***
8-135(c)	Tested Jurisdictions	2.2 of the December 2023 AG
8-75	Qualified Financial Statements: Consistent use of data	2.3.1 of the December 2023 AG
8-70	Qualified Financial Statements: Using different accounting standards	2.3.2 of the December 2023 AG
8-25(2)-(3) and 8-30(2)-(3)	Adjustments to Qualified Financial Statements	2.3.3 of the December 2023 AG
8-35	MNE Groups not required to file CbCR	2.3.4 of the December 2023 AG
8-50(2)	Simplified Covered Taxes	2.4 of the December
8-50(3)	Covered Taxes on income of PEs, CFCs, and Hybrid Entities	2.4.2 of the December 2023 AG
8-60(3)	Routine Profits Test	2.5 of the December 2023 AG
8-110 to 8-150	Treatment of hybrid arbitrage arrangements	2.6 of the December 2023 AG
8-155 to 8-170	Simplified Calculations Safe Harbour	Chapter 2 of the 2022 Safe Harbours document
8-175 to 8-185	Simplified Calculation Safe Harbour for Non-Material Constituent Entities	Chapter 6 of the December 2023 AG
Division 3 of Part 8-2	QDMTT Safe Harbour	Chapter 5 of the July 2023 AG
Division 4 of Part 8-2	Transitional UTPR Safe Harbour	5.2 of the July 2023 AG
Chapter 9 – Transition rules		
Part 9-1	**Tax Attributes Upon Transition**	**9.1**

Rule section	***Brief description***	***GloBE reference***
9-5 and 9-10	Deferred tax assets and liabilities in a transition year for the ETR	9.1.1
9-5(3)(a)	Deferred tax assets from excluded items under chapter 3	9.1.2
9-15	Transfer of assets between Constituent Entities	9.1.3
Part 9-1	Deferred tax assets with respect to tax credits	4.1 of the February 2023 AG
9-15	Applicability of Article 9.1.3 to transactions similar to asset transfers	4.2 of the February 2023 AG
9-15	Clarifies aspect of the ‘carrying value’	4.3 of the February 2023 AG
9-20	Transition Year for the purpose of Art 9.1.3	Para 53 Chapter 4 of the July 2023 AG
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Rule section	***Brief description***	***GloBE reference***
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Rule section	Brief description	GloBE reference
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10-65	Dual located parent entity	10.1.1
6-85(4)	Dual-listed Arrangement	10.1.1
8-125	Duplicate loss arrangement	10.1.1
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5-60(1)	Eligible Payroll Costs	10.2.1
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4-30(5)(a)(i) and 5--10(3)(a)(i)	Excess Negative Tax Expense Carry-forward	10.1.1
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3-35	Excluded Equity Gain or Loss	10.1.1
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10-45(1)	Fiscally transparent entity	10.1.1
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Rule section	***Brief description***	***GloBE reference***
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Rule section	Brief description	GloBE reference
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Rule section	***Brief description***	***GloBE reference***
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10-5	Qualified Domestic Minimum Top-up Tax	10.1.1
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4-110	Recapture Exception Accrual	10.1.1
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3-210	Restricted Tier One Capital	3.3 of the February 2023 AG
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10-5	Tax	10.1.1
7-145	Taxable Distribution Method	10.1.1
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5-40	Top-up Tax	10.1.1
5-20	Top-up Tax Percentage	10.1.1
4-85	Total Deferred Tax Adjustment Amount	10.1.1
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Rule section	Brief description	GloBE reference
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