



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

I, Dr Jim Chalmers, Treasurer, make the following rules.

Dated 18 December 2024

Dr Jim Chalmers
Treasurer

Contents

Chapter 1—Preliminary etc	1
Part 1-1—Preliminary	1
1-5 Name	1
1-10 Commencement	1
1-15 Authority	1
Part 1-2—Excluded Entities	2
1-20 Excluded Entities	2
Part 1-3—Currency conversion	3
1-25 Foreign currency translation—general	3
Chapter 2—Liability amounts	4
Part 2-1—Application of the IIR	4
2-5 Meaning of <i>IIR Top-up Tax Amount</i>	4
Part 2-2—Allocation of Top-up Tax under the IIR	6
2-10 Meaning of <i>Allocable Share</i>	6
2-15 Meaning of <i>Inclusion Ratio</i>	6
Part 2-3—IIR offset mechanism	8
2-20 IIR offset mechanism	8
Part 2-4—Domestic Top-up Tax Amount	9
2-25 Meaning of <i>Domestic Top-up Tax Amount</i>	9
2-30 Amount of Domestic Top-up Tax Amount	10
2-35 Computing Top-up Tax for the purposes of section 2-30— principles	11
2-40 Domestic Top-up Tax Amount—special rule for consolidated groups	12
Part 2-5—UTPR Top-up Tax Amount	13
2-45 Meaning of <i>UTPR Top-up Tax Amount</i>	13
2-50 UTPR Top-up Tax Amount—special rule for consolidated groups	13
2-55 Meaning of <i>Total UTPR Top-up Tax Amount</i>	14
Part 2-6—Allocation of Top-Up Tax for the UTPR	16
2-60 Allocation of Total UTPR Top-Up Tax Amount to Australia	16
2-65 Meaning of <i>UTPR Percentage</i>	16
2-70 Distribution of allocated Total UTPR Top-Up Tax Amount to Australian Constituent Entity	17
2-75 Number of employees in a jurisdiction	18
2-80 Meaning of <i>Net Book Value of Tangible Assets</i>	18
2-85 Employees and the Net Book Value of Tangible Assets of Investment Entities and Securitisation Entities to be disregarded	18
2-90 Employees and the Net Book Value of Tangible Assets allocated to Permanent Establishment	18
2-95 Employees and the Net Book Value of Tangible Assets allocated from Flow-through Entity	19
Chapter 3—Computation of GloBE Income or Loss	20
Part 3-1—Financial accounts	20
3-5 Meaning of <i>GloBE Income or Loss</i>	20

3-10	Meaning of <i>Financial Accounting Net Income or Loss</i>	20
Part 3-2—Adjustments to determine GloBE Income or Loss		22
Division 1—Article 3.2.1 adjustments		22
3-15	Adjustment—net taxes expense	22
3-20	Adjustment—Excluded Dividends	22
3-25	Meaning of <i>Excluded Dividends, Short-term Portfolio Shareholding and Portfolio Shareholding</i>	22
3-30	Adjustment—Excluded Equity Gain or Loss	23
3-35	Meaning of <i>Excluded Equity Gain or Loss</i>	23
3-40	Adjustment—insurance reserves	24
3-45	Adjustment—Included Revaluation Method Gain or Loss	24
3-50	Meaning of <i>Included Revaluation Method Gain or Loss and Other Comprehensive Income</i>	25
3-55	Adjustment—asymmetric foreign currency gains or losses	25
3-60	Meaning of <i>tax functional currency and accounting functional currency</i>	26
3-65	Adjustment—policy disallowed expenses	26
3-70	Adjustment—prior period errors and changes in accounting principles	27
3-75	Adjustment—accrued pension expense	27
3-80	Adjustment—qualified debt release amount	27
3-85	Meaning of <i>qualified debt release amount</i>	28
Division 2—Other Article 3.2 adjustments		29
3-90	Adjustment—stock-based compensation expense	29
3-95	Adjustment—Arm’s Length Principle and tax/accounting permanent differences in respect of cross-border transactions	30
3-100	Adjustment—Arm’s Length Principle and transactions between Constituent Entities located in the same jurisdiction	31
3-105	Meaning of <i>Arm’s Length Principle</i>	32
3-110	Adjustment—Refundable Tax Credits and transferable tax credits	32
3-115	Qualified Refundable Tax Credits—amounts	33
3-120	Marketable Transferable Tax Credits—amounts	33
3-125	Meaning of <i>Qualified Refundable Tax Credit, Non-Qualified Refundable Tax Credit and Refundable Tax Credit</i>	34
3-130	Meaning of <i>Marketable Transferable Tax Credit</i>	35
3-135	Meaning of <i>Marketable Price Floor</i>	36
3-140	Meaning of <i>Non-Marketable Transferable Tax Credit and Other Tax Credit</i>	37
3-145	Adjustment—loss on transfer of purchased Non-Marketable Transferable Tax Credits	37
3-150	Adjustment—assets and liabilities that are subject to fair value or impairment accounting	38
3-155	Adjustment—Aggregate Asset Gain—election	39
3-160	Adjustment—Aggregate Asset Gain—effect	39
3-165	Adjustment—Aggregate Asset Gain—allocation of amounts	40
3-170	Meaning of <i>Aggregate Asset Gain, Net Asset Gain, etc</i>	41
3-175	Meaning of <i>Look-back Period and Loss Year</i>	42
3-180	Adjustment—Intragroup Financing Arrangements	42
3-185	Meaning of <i>Intragroup Financing Arrangement</i>	43
3-190	Meaning of <i>Low-Tax Entity and High-Tax Counterparty</i>	43
3-195	Meaning of <i>Low-Tax Jurisdiction</i>	43
3-200	Adjustment—election to apply consolidated accounting treatment	44
3-205	Adjustment—insurance company amounts charged to policyholders for taxes paid in respect of returns to policy holders	44

3-210	Adjustment—distributions paid or payable in respect of Additional Tier One Capital or Restricted Tier One Capital	45
3-215	Adjustments as necessary for Chapters 6 and 7	45
Part 3-3—International Shipping Income exclusion		46
3-220	Adjustment—certain shipping income	46
3-225	Meaning of <i>International Shipping Income</i> , etc.	46
3-230	Meaning of <i>Qualified Ancillary International Shipping Income</i> , etc.	47
3-235	International traffic	48
Part 3-4—Allocation of income or loss between a Main Entity and a Permanent Establishment		49
3-240	Meaning of <i>Financial Accounting Net Income or Loss</i> —Permanent Establishment.....	49
3-245	Adjustment of Permanent Establishment’s Financial Accounting Net Income or Loss.....	49
3-250	Computing GloBE Income or Loss of the Main Entity in respect of a Permanent Establishment.....	50
Part 3-5—Allocation of income or loss from a Flow-through Entity		51
3-255	Constituent Entity that is a Flow-through Entity—Financial Accounting Net Income or Loss	51
Chapter 4—Computation of Adjusted Covered Taxes		53
Part 4-1—Adjusted Covered Taxes		53
4-5	Meaning of <i>Adjusted Covered Taxes</i>	53
4-10	Meaning of <i>Accrued Current Covered Tax Expense</i>	53
4-15	Meaning of <i>Additions to Covered Taxes</i>	53
4-20	Meaning of <i>Reductions to Covered Taxes</i>	54
4-25	No double counting of Covered Taxes	55
4-30	Additional Current Top-up Tax where MNE Group has no Net GloBE Income and tax falls short of expected tax	55
4-35	Additional Current Top-up Tax under section 4-30—Excess Negative Tax Expense Carry-forward	56
Part 4-2—Definition of Covered Taxes		57
4-40	Meaning of <i>Covered Taxes</i>	57
Part 4-3—Allocation of Covered Taxes from one Constituent Entity to another Constituent Entity		58
4-45	Allocation of amounts from Constituent Entity to Permanent Establishment—general rule.....	58
4-50	Allocation of amounts from Tax Transparent Entity to a Constituent Entity-owner of the Tax Transparent Entity	58
4-55	Allocation of amounts from Constituent Entity-owner to CFC.....	58
4-60	Meaning of <i>Blended CFC Tax Regime</i>	60
4-65	Allocation of amounts from Constituent Entity-owner to Hybrid Entity or Reverse Hybrid Entity	60
4-70	Amounts accrued in financial accounts of Constituent Entity-owner on distribution from Constituent Entity to Constituent Entity-owner—allocation to Constituent Entity	61
4-75	Allocation of amounts in respect of Passive Income—inclusion in Constituent Entity’s Adjusted Covered Taxes.....	61
4-80	Allocation of amounts from Permanent Establishment to Main Entity.....	61

Part 4-4—Mechanism to address temporary differences	63
4-85	Meaning of <i>Total Deferred Tax Adjustment Amount</i>63
4-90	Total Deferred Tax Adjustment Amount—effect of Substitute Loss Carry-forward DTA64
4-95	Meaning of <i>Substitute Loss Carry-forward DTA</i>64
4-100	Effect of Recaptured Deferred Tax Liability65
4-105	Meaning of <i>Recaptured Deferred Tax Liability</i>65
4-110	Meaning of <i>Recapture Exception Accrual</i>65
4-115	Meaning of <i>Disallowed Accrual and Unclaimed Accrual</i>66
Part 4-5—The GloBE Loss Election	67
4-120	GloBE Loss Election67
4-125	GloBE Loss Deferred Tax Asset of an MNE Group67
4-130	GloBE Loss Election for an Ultimate Parent Entity68
4-135	GloBE Loss Deferred Tax Asset of an Ultimate Parent Entity69
Part 4-6—Post-filing adjustments and tax rate changes	71
4-140	Effect of adjustment to the liability for Covered Taxes.....71
4-145	Tax rate changes and unpaid current tax expense.....72
Chapter 5—Computation of Effective Tax Rate	73
Part 5-1—Determination of Effective Tax Rate	73
5-5	Meaning of <i>Effective Tax Rate</i>73
5-10	Effective Tax Rate—Excess Negative Tax Expense administrative procedure73
5-15	Meaning of <i>Net GloBE Income</i> and <i>Net GloBE Loss</i>74
Part 5-2—Top-up Tax	75
5-20	Meaning of <i>Top-up Tax Percentage</i>75
5-25	Meaning of <i>Excess Profit</i>75
5-30	Meaning of <i>Jurisdictional Top-up Tax</i>75
5-35	Certain amounts of Domestic Top-up Tax disregarded.....76
5-40	<i>Top-up Tax</i> of a Constituent Entity.....77
5-45	Treatment of Stateless Constituent Entities78
Part 5-3—Substance-based Income Exclusion	79
5-50	Substance-based Income Exclusion Amount.....79
5-55	Payroll Carve-out Amount.....79
5-60	Meaning of <i>Eligible Payroll Costs</i> and <i>Eligible Employee</i>80
5-65	Tangible Asset Carve-out Amount81
5-70	Operating leases and intragroup finance leases82
5-75	Meaning of <i>Eligible Tangible Asset</i>83
5-80	Allocation of amounts between a Main Entity and a Permanent Establishment.....83
5-85	Allocation of amounts in relation to Flow-through Entities84
5-90	Allocation of amounts in relation to Deductible Dividend Regimes85
Part 5-4—Additional Current Top-up Tax	86
5-95	Additional Current Top-up Tax—ETR Adjustment Provisions86
5-100	Additional Current Top-up Tax—Adjusted Covered Taxes less than expected amount86
Part 5-5—De minimis exclusion	88
5-105	De minimis exclusion88
5-110	Meaning of <i>Average GloBE Revenue</i> etc.88
5-115	Recalculations under an ETR Adjustment Provision89

Part 5-6—Minority-Owned Constituent Entities	90
5-120	Minority-Owned Constituent Entities that comprise a Minority-Owned Subgroup.....90
5-125	Minority-Owned Constituent Entities that are not part of a Minority-Owned Subgroup.....90
5-130	Meaning of <i>Minority-Owned Constituent Entity</i> and <i>Minority-Owned Parent Entity</i>91
5-135	Meaning of <i>Minority-Owned Subsidiary</i> and <i>Minority-Owned Subgroup</i>91
Chapter 6—Corporate restructurings and holding structures	92
Part 6-1—Application of consolidated revenue threshold to Group mergers and demergers	92
6-5	Applicable MNE Groups—mergers92
6-10	Applicable MNE Groups—demergers.....93
Part 6-2—Constituent Entities joining and leaving an MNE Group	94
Division 1—Transfers of Ownership Interests	94
6-15	Application of this Division.....94
6-20	Target’s assets etc. included in MNE Group’s Consolidated Financial Statements94
6-25	Target’s Financial Accounting Net Income or Loss and Adjusted Covered Taxes95
6-30	Historical carrying value of target’s assets and liabilities95
6-35	Target’s Eligible Payroll Costs and Tangible Asset Carve-out Amount95
6-40	Deferred tax assets and deferred tax liabilities95
6-45	Target’s Top-up Tax if Parent Entity in 2 or more MNE Groups96
Division 2—Transfer of Ownership Interests treated as transfer of assets and liabilities	97
6-50	Transfer of Ownership Interests treated as transfer of assets and liabilities.....97
Part 6-3—Transfer of assets and liabilities	98
6-55	Acquisitions and disposals of assets and liabilities98
6-60	GloBE Reorganisations.....98
6-65	Meaning of <i>GloBE Reorganisation</i> and <i>Non-qualifying Gain or Loss</i>98
6-70	Fair value adjustments99
Part 6-4—Joint Ventures	101
6-75	Joint Ventures101
Part 6-5—Multi-Parented MNE Groups	102
6-80	Multi-Parented MNE Groups.....102
6-85	Meaning of <i>Multi-Parented MNE Group</i> etc.....102
Chapter 7—Tax neutrality and distribution regimes	104
Part 7-1—Ultimate Parent Entity that is a Flow-through Entity	104
7-5	Flow-through Entity that is Ultimate Parent Entity—reduce GloBE Income and Covered Taxes.....104
7-10	Flow-through Entity that is Ultimate Parent Entity—reduce GloBE Loss105
7-15	Application of sections 7-5 and 7-10 to Permanent Establishment105

Part 7-2—Ultimate Parent Entity subject to Deductible Dividend Regime	107
7-20	Ultimate Parent Entity subject to Deductible Dividend Regime— reduce GloBE Income and Covered Taxes.....107
7-25	Ultimate Parent Entity subject to Deductible Dividend Regime— reduce GloBE Income and Covered Taxes of other Constituent Entities108
7-30	Meaning of <i>Deductible Dividend Regime</i>109
7-35	Meaning of <i>Deductible Dividend</i>109
Part 7-3—Eligible Distribution Tax Systems	110
7-40	Deemed distribution tax election110
7-45	Meaning of <i>Eligible Distribution Tax System</i>110
7-50	Effect of election—amount in respect of deemed distribution tax added to Adjusted Covered Taxes110
7-55	Deemed Distribution Tax Recapture Account.....111
7-60	Recapture Account Loss Carry-forward.....111
7-65	Effect of positive balance of Deemed Distribution Tax Recapture Account after 4 Fiscal Years—reduce Adjusted Covered Taxes for original year112
7-70	Distribution taxes excluded in Adjusted Covered Taxes112
7-75	Effect of Constituent Entity leaving jurisdiction, etc.112
Part 7-4—Effective Tax Rate computation for Investment Entities	114
Division 1—Application	114
7-80	Application of this Part114
7-85	Insurance Investment Entity treated as Investment Entity.....114
7-90	Computing GloBE Income or Loss of Investment Entity.....114
Division 2—Allocable Share of Top-up Tax of Investment Entity	115
7-95	Allocable Share of Top-up Tax of Investment Entity.....115
Division 3—Top-up Tax of Investment Entity etc.	116
7-100	Top-up Tax etc. of Investment Entity—primary deeming rule116
7-105	Computing Jurisdictional Top-up Tax for the purposes of computing Top-up Tax of Investment Entity116
7-110	Meaning of <i>Allocable GloBE Income or Loss</i>118
Division 4—Top-up Tax of non-Investment Entity	119
7-115	Top-up Tax of Constituent Entity that is not Investment Entity.....119
Part 7-5—Investment Entity tax transparency election	120
7-120	Application of this Part120
7-125	Investment Entity tax transparency election120
7-130	Effect of election—Investment Entity treated as Tax Transparent Entity.....120
7-135	Effect of revocation of election—Investment Entity treated as Tax Transparent Entity.....121
Part 7-6—Taxable distribution method election	122
7-140	Application of this Part122
7-145	Taxable distribution method election122
7-150	Effect of election—distributions and deemed distributions received by Constituent Entity-owner included in computing its GloBE Income, etc.122
7-155	Effect of election—where positive balance of Undistributed Net GloBE Income Account after 3 Fiscal Years, increase Top-up Tax for tested year.....123
7-160	Meaning of <i>Undistributed Net GloBE Income Account</i>123

7-165	Deemed distributions	124
7-170	Effect of revoking election	124
Chapter 8—Administration		126
Part 8-2—Safe harbours		126
Division 1—Preliminary		126
8-5	Application of this Part to Minority-Owned Constituent Entities, Joint Ventures and Investment Entities	126
Division 2—Transitional CbCR Safe Harbour		128
Subdivision A—Transitional CbCR Safe Harbour		128
8-10	Transitional CbCR Safe Harbour—general rule.....	128
8-15	Meaning of <i>Transition Period</i>	128
Subdivision B—De minimis test		129
8-20	Meeting the <i>De minimis test</i>	129
8-25	Meaning of <i>Total Revenue</i> of MNE Group	129
8-30	Meaning of <i>Profit (Loss) before Income Tax</i>	129
8-35	Meaning of <i>Qualified CbC Report</i>	130
Subdivision C—Simplified ETR test		131
8-40	Meeting the <i>Simplified ETR test</i>	131
8-45	Meaning of <i>Simplified ETR</i>	131
8-50	Meaning of <i>Simplified Covered Taxes</i>	131
8-55	Meaning of <i>Transition Rate</i>	131
Subdivision D—Routine profits test		131
8-60	Meeting the <i>Routine profits test</i>	131
8-65	Meaning of <i>CbCR Resident</i>	132
Subdivision E—Qualified Financial Statements		132
8-70	Meaning of <i>Qualified Financial Statements</i>	132
8-75	Use of same kind of Qualified Financial Statements.....	133
Subdivision F—Special rules for particular circumstances		134
8-80	Transitional CbCR Safe Harbour—special rule for Joint Ventures	134
8-85	Transitional CbCR Safe Harbour—special rule for Ultimate Parent Entity that is Flow-through Entity	135
8-90	Transitional CbCR Safe Harbour—special rule for Deductible Dividend Regimes.....	135
8-95	Transitional CbCR Safe Harbour—special rules for Investment Entities and their Constituent Entity-owners	135
8-100	Transitional CbCR Safe Harbour—special rule for Net Unrealised Fair Value Loss	137
8-105	Transitional CbCR Safe Harbour—exclusions.....	138
Subdivision G—Treatment of Hybrid Arbitrage Arrangements		138
8-110	Transitional CbCR Safe Harbour—Hybrid Arbitrage Arrangements	138
8-115	Meaning of <i>Hybrid Arbitrage Arrangement</i>	138
8-120	Meaning of <i>deduction/non-inclusion arrangement</i>	139
8-125	Meaning of <i>duplicate loss arrangement</i>	139
8-130	Meaning of <i>duplicate tax recognition arrangement</i>	140
8-135	Entities treated as Constituent Entities for purposes of this Subdivision	140
8-140	Financial statements for purposes of this Subdivision.....	140
8-145	Financial statements—Flow-through Entity	141
8-150	Arrangement treated as having been entered into after 15 December 2022	141

Division 3—Simplified Calculations Safe Harbour	142
Subdivision A—Simplified Calculations Safe Harbour	142
8-155 Simplified Calculations Safe Harbour—general rule	142
Subdivision B—SC De minimis test, SC ETR test and SC Routine profits test	142
8-160 Meeting the <i>SC De minimis test</i>	142
8-165 Meeting the <i>SC ETR test</i>	142
8-170 Meeting the <i>SC Routine profits test</i>	143
Subdivision C—NMCE simplified calculations	143
8-175 NMCE simplified calculations.....	143
8-180 NMCE simplified calculations election.....	144
8-185 Meaning of <i>Non-material Constituent Entity</i> (or <i>NMCE</i>)	144
Subdivision D—Miscellaneous	144
8-190 Meaning of <i>Total Revenue and Income Tax Accrued (Current Year)</i> of Constituent Entity.....	144
8-195 Meaning of <i>Relevant CbC Regulations and Country-by-Country</i> <i>Reporting regulations</i>	145
Division 4—Qualified Domestic Minimum Top-up Tax (QDMTT) Safe Harbour	146
8-200 QDMTT Safe Harbour—general rule.....	146
8-205 Disqualification from election—disputed amounts	146
8-210 Disqualification from election—switch-off rule.....	146
8-215 Meaning of <i>OECD Securitisation Entity</i>	148
8-220 Meaning of <i>Securitisation Arrangement</i>	149
Division 5—Transitional UTPR Safe Harbour	150
8-225 Transitional UTPR Safe Harbour	150
Chapter 9—Transition rules	151
Part 9-1—Tax attributes upon transition	151
9-5 Pre-Transition Year deferred tax assets and liabilities	151
9-10 Pre-Transition Year deferred tax assets and liabilities—amounts.....	151
9-15 Pre-Transition Year intra-MNE Group asset transfers	152
9-20 Meaning of <i>Transition Year</i>	154
Part 9-2—Transitional relief for the Substance-based Income Exclusion	155
9-25 Application of this Part.....	155
9-30 Transitional relief for Payroll Carve-out Amount	155
9-35 Transitional relief for Tangible Asset Carve-out Amount.....	155
Part 9-3—Exclusion from the UTPR of MNE Groups in the initial phase of their international activity	157
9-40 Total UTPR Top-up Tax Amount reduced to zero	157
9-45 If Australia is the Reference Jurisdiction, section 9-40 does not apply etc.....	157
9-50 Meaning of <i>Reference Jurisdiction</i>	158
Chapter 10—Definitions	159
Part 10-1—Defined terms	159
10-5 Definitions	159
10-10 GloBE Implementation Framework.....	167
10-15 Qualified GloBE taxes	167
10-20 Direct Ownership Interest—interest differently classified	167

Part 10-2—Definitions of Securitisation Entity, Flow-through Entity, Tax Transparent Entity, Reverse Hybrid Entity, and Hybrid Entity	168
10-25 Meaning of <i>Securitisation Entity</i>	168
10-30 Meaning of <i>Flow-through Entity</i>	168
10-35 Meaning of <i>Tax Transparent Entity</i>	168
10-40 Meaning of <i>Reverse Hybrid Entity</i>	168
10-45 Fiscal transparency and meaning of <i>Tax Transparent Structure</i>	168
10-50 Deemed Flow-through Entity and Tax Transparent Entity	169
10-55 Meaning of <i>Hybrid Entity</i>	169
Part 10-3—Location of dual-located entities	170
10-60 Dual-located entities	170
10-65 Dual-located Parent Entity located in non-IIR jurisdiction	170

Chapter 1—Preliminary etc

Part 1-1—Preliminary

1-5 Name

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

1-10 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	24 December 2024

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

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

1-15 Authority

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

Note: This instrument applies generally in relation to Fiscal Years starting on or after 1 January 2024: see subsection 5(1) of the Act. However, to the extent that this instrument applies to Australian UTPR Tax, it applies in relation to Fiscal Years starting on or after 1 January 2025: see subsection 5(2) of the Act.

Part 1-2—Excluded Entities

1-20 Excluded Entities

- (1) For the purposes of paragraph 20(1)(h) of the Act, the following Entities are prescribed:
 - (a) an Excluded Exempt Income Entity;
 - (b) an Excluded Non-Profit Subsidiary.
- (2) An Entity is an **Excluded Exempt Income Entity** if:
 - (a) at least 85% of the value of the Entity is owned (directly or through a chain of Excluded Entities) by one or more of the following (other than a Pension Services Entity):
 - (i) an Excluded Entity under paragraph 20(1)(a), (b), (c), (d), (e) or (f) of the Act;
 - (ii) if the Entity is an Ultimate Parent Entity—an Investment Fund or a Real Estate Investment Vehicle; and
 - (b) 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 this instrument.
- (3) An Entity is an **Excluded Non-Profit Subsidiary** if:
 - (a) 100% of the value of the Entity is owned (directly or indirectly) by one or more Non-profit Organisations; and
 - (b) 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):
 - (i) does not exceed the MNE Group's GloBE Threshold for the Fiscal Year; and
 - (ii) is less than 25% of the total revenue of the MNE Group.

Part 1-3—Currency conversion

1-25 Foreign currency translation—general

General foreign currency translation

- (1) Subsection (2) applies for the purposes of computing an amount under this instrument in relation to an MNE Group for a Fiscal Year, if the amount:
 - (a) is denominated in a currency other than the reporting currency of the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group (the **relevant reporting currency**); and
 - (b) is not converted to the relevant reporting currency in the course of preparing the Consolidated Financial Statements; and
 - (c) is not an amount to which subsection (4) applies.
- (2) Convert the amount to the relevant reporting currency using the foreign currency translation principles of the Authorised Financial Accounting Standard that would have been used to convert the amount to the relevant reporting currency if that conversion were undertaken in the course of preparing the Consolidated Financial Statements for the Fiscal Year.

Foreign currency translation for materiality or other threshold

- (3) Subsection (4) applies for the purposes of determining if a materiality or other threshold mentioned in subsection 12(4) or section 35 of the Act, or in this instrument, that is denominated in Euros is satisfied or exceeded by an amount in respect of a Group, Entity or jurisdiction for a particular Fiscal Year.
- (4) If the amount is denominated in another currency, convert the amount from that currency to Euros using the average of the daily rates of exchange, in respect of the 2 currencies for the month of December included in the Fiscal Year immediately preceding the particular Fiscal Year, as quoted by:
 - (a) the European Central Bank; or
 - (b) if the European Central Bank does not quote a daily rate of exchange in respect of the 2 currencies—the Reserve Bank of Australia; or
 - (c) if both the European Central Bank and the Reserve Bank of Australia do not quote a daily rate of exchange in respect of the 2 currencies—a source specified in a determination under subsection (5).
- (5) For the purposes of paragraph (4)(c), the Minister may, by legislative instrument, make a determination specifying a source quoting rates of exchange.

Section 2-5

Chapter 2—Liability amounts

Part 2-1—Application of the IIR

2-5 Meaning of *IIR Top-up Tax Amount*

Constituent Entities

- (1) 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 Low-Taxed Constituent Entity for the Fiscal Year of the Applicable MNE Group if:
 - (a) the Parent Entity is located in Australia; and
 - (b) the Parent Entity holds an Ownership Interest in the Low-Taxed Constituent Entity at any time during the Fiscal Year; and
 - (c) the Low-Taxed Constituent Entity is not located in Australia.

Note: A Parent Entity that is taken to be located in another jurisdiction under subsection 10-60(2) or (3) may be treated as being located in Australia for the purposes of paragraph (a) of this subsection: see section 10-65.

- (2) The ***IIR Top-up Tax Amount*** is equal to the Parent Entity's Allocable Share of the Top-up Tax of the Low-Taxed Constituent Entity for the Fiscal Year.

Joint Ventures and JV Subsidiaries

- (3) 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 Joint Venture of the Applicable MNE Group, or a JV Subsidiary of a Joint Venture of the Applicable MNE Group, for the Fiscal Year if:
 - (a) the Parent Entity is located in Australia; and
 - (b) the Parent Entity holds an Ownership Interest in the Joint Venture or JV Subsidiary at any time during the Fiscal Year; and
 - (c) the Joint Venture or JV Subsidiary is not located in Australia; and
 - (d) the Joint Venture or JV Subsidiary is a Low-Taxed Constituent Entity for the Fiscal Year.

Note: For the purposes of determining whether a Joint Venture or its JV Subsidiaries are Low-Taxed Constituent Entities, treat them as comprising a separate MNE Group, of which the Joint Venture is the Ultimate Parent Entity: see paragraph 6-75(3)(b).

- (4) The ***IIR Top-up Tax Amount*** is equal to the Parent Entity's Allocable Share of the Top-up Tax of the Joint Venture or JV Subsidiary for the Fiscal Year, computed in accordance with section 6-75.

Ordering rule

- (5) Despite subsections (1) and (3), the Parent Entity mentioned in those subsections does not have an ***IIR Top-up Tax Amount*** for the Fiscal Year in any of the following circumstances:
 - (a) in a case where the Parent Entity is an Intermediate Parent Entity of the Applicable MNE Group:

Section 2-5

- (i) the Ultimate Parent Entity of the Applicable MNE Group is required to apply a Qualified IIR for that Fiscal Year; or
 - (ii) another Intermediate Parent Entity of the Applicable MNE Group that holds (directly or indirectly) a Controlling Interest in the Intermediate Parent Entity is required to apply a Qualified IIR for that Fiscal Year;
- (b) in a case where the Parent Entity is a Partially-Owned Parent Entity of the Applicable MNE Group:
- (i) the Partially-Owned Parent Entity is wholly owned (directly or indirectly) by another Partially-Owned Parent Entity of the Applicable MNE Group; and
 - (ii) the other Partially-Owned Parent Entity is required to apply a Qualified IIR for that Fiscal Year.

Part 2-2—Allocation of Top-up Tax under the IIR

2-10 Meaning of *Allocable Share*

A Parent Entity's *Allocable Share* of the Top-up Tax of a Low-Taxed Constituent Entity for a Fiscal Year is an amount equal to:

- (a) the Top-up Tax of the Low-Taxed Constituent Entity for the Fiscal Year; multiplied by:
- (b) the Parent Entity's Inclusion Ratio for the Low-Taxed Constituent Entity for the Fiscal Year.

Note 1: See section 2-20 for the effect of the IIR offset mechanism on the Allocable Share.

Note 2: See section 7-95 for the computation of a Parent Entity's Allocable Share of the Top-up Tax of a Constituent Entity that is an Investment Entity.

2-15 Meaning of *Inclusion Ratio*

- (1) The *Inclusion Ratio*, of a Parent Entity of an MNE Group, for a Low-Taxed Constituent Entity for a Fiscal Year, is:

- (a) the GloBE Income of the Low-Taxed Constituent Entity for the Fiscal Year, reduced by the amount of that GloBE Income attributable to Ownership Interests held by other owners (see subsection (2));

divided by:

- (b) the GloBE Income of the Low-Taxed Constituent Entity for the Fiscal Year.

Note: See subsection (3) if the Low-Taxed Constituent Entity is a Flow-through Entity.

- (2) For the purposes of paragraph (1)(a), the amount of GloBE Income attributable to Ownership Interests in the Low-Taxed Constituent Entity held by other owners is the amount that would have been treated as attributable to such owners under the principles of the Acceptable Financial Accounting Standard used in the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group on the following assumptions:

- (a) the Low-Taxed Constituent Entity's net income were equal to its GloBE Income;
- (b) the Parent Entity had prepared Consolidated Financial Statements in accordance with that Acceptable Financial Accounting Standard (the *hypothetical Consolidated Financial Statements*);
- (c) the Parent Entity held a Controlling Interest in the Low-Taxed Constituent Entity such that all of the income and expenses of the Low-Taxed Constituent Entity were consolidated on a line-by-line basis with those of the Parent Entity in the hypothetical Consolidated Financial Statements;
- (d) all of the Low-Taxed Constituent Entity's GloBE Income were attributable to transactions with persons that are not Group Entities of the MNE Group;
- (e) all Ownership Interests not held by the Parent Entity were held by owners that are not Group Entities of the MNE Group.

Section 2-15

- (3) However, if the Low-Taxed Constituent Entity is a Flow-through Entity, treat references in this section to GloBE Income as not including any amount by which its Financial Accounting Net Income or Loss is reduced under paragraph 3-255(1)(a) (amounts attributable to an owner that is not a Group Entity of the MNE Group).

Part 2-3—IIR offset mechanism

2-20 IIR offset mechanism

- (1) A Parent Entity of an MNE Group's Allocable Share of the Top-up Tax of a Low-Taxed Constituent Entity is reduced if:
 - (a) the Parent Entity holds an Indirect Ownership Interest in the Low-Taxed Constituent Entity through an Intermediate Parent Entity or a Partially-Owned Parent Entity of the MNE Group; and
 - (b) the Intermediate Parent Entity or a Partially-Owned Parent Entity is not eligible for an exclusion under subsection 2-5(5), or an equivalent law of a non-Australian jurisdiction.
- (2) The amount of the reduction is 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 Partially-Owned Parent Entity under a Qualified IIR.

Part 2-4—Domestic Top-up Tax Amount

2-25 Meaning of *Domestic Top-up Tax Amount*

Constituent Entities generally

- (1) Subsection (2) applies if a Low-Taxed Constituent Entity for a Fiscal Year of an Applicable MNE Group for the Fiscal Year:
 - (a) is located in Australia for the Fiscal Year; or
 - (b) is a Stateless Constituent Entity of the Applicable MNE Group that:
 - (i) is created in Australia; or
 - (ii) is a Stateless Constituent Entity under subsection 41(3) or 42(3) of the Act; or
 - (iii) is a Permanent Establishment in relation to which paragraph 19(1)(d) of the Act applies, and is a place of business (including a deemed place of business) in Australia.
- (2) The Low-Taxed Constituent Entity has a ***Domestic Top-up Tax Amount*** for the Fiscal Year if it has Top-up Tax for the Fiscal Year.

Note: If the Low-Taxed Constituent Entity is a Securitisation Entity, its Domestic Top-up Tax Amount for the Fiscal Year will be zero (see subsection 2-35(3)) unless the only Constituent Entities of the MNE Group located in Australia are Securitisation Entities (see subsection 2-35(4)).

Permanent Establishments

- (3) Subsection (4) applies if:
 - (a) a Low-Taxed Constituent Entity for a Fiscal Year of an Applicable MNE Group for the Fiscal Year is a Permanent Establishment of a Main Entity; and
 - (b) the Low-Taxed Constituent Entity is located in Australia for the Fiscal Year; and
 - (c) the Main Entity is not located in Australia for the Fiscal Year.
- (4) If the Low-Taxed Constituent Entity has Top-up Tax for the Fiscal Year:
 - (a) despite subsection (2), the Low-Taxed Constituent Entity does not have a ***Domestic Top-up Tax Amount*** for the Fiscal Year; and
 - (b) the Main Entity has a ***Domestic Top-up Tax Amount*** for the Fiscal Year in respect of the Low-Taxed Constituent Entity.

Joint Ventures and JV Subsidiaries

- (5) Subsection (6) applies if:
 - (a) a Joint Venture of an MNE Group, or a JV Subsidiary of a Joint Venture of an MNE Group, is located in Australia for a Fiscal Year; and
 - (b) the MNE Group is an Applicable MNE Group for the Fiscal Year; and
 - (c) the Joint Venture, or the JV Subsidiary, is a Low-Taxed Constituent Entity for the Fiscal Year.

Section 2-30

Note: For the purposes of determining whether a Joint Venture or its JV Subsidiaries are Low-Taxed Constituent Entities, treat them as comprising a separate MNE Group, of which the Joint Venture is the Ultimate Parent Entity: see paragraph 6-75(3)(b).

- (6) The Joint Venture, 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.
- (7) Subsection (8) applies if:
 - (a) a JV Subsidiary of a Joint Venture of an MNE Group is a Permanent Establishment of a Main Entity that is:
 - (i) the Joint Venture; or
 - (ii) another JV Subsidiary of the Joint Venture; and
 - (b) the JV Subsidiary is a Low-Taxed Constituent Entity for the Fiscal Year; and
 - (c) the JV Subsidiary is located in Australia for the Fiscal Year; and
 - (d) the Main Entity is not located in Australia for the Fiscal Year.
- (8) If the JV Subsidiary has Top-up Tax for the Fiscal Year:
 - (a) despite subsection (6), the JV Subsidiary does not have a **Domestic Top-up Tax Amount** for the Fiscal Year; and
 - (b) the Main Entity has a **Domestic Top-up Tax Amount** for the Fiscal Year in respect of the JV Subsidiary.

2-30 Amount of Domestic Top-up Tax Amount

Constituent Entities generally and Permanent Establishments

- (1) For the purposes of subsection 2-25(2) or (4), 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

- (2) For the purposes of subsection 2-25(6) or (8), 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.
- (3) Subsection (4) applies if:
 - (a) any of the following circumstances exist:
 - (i) a Joint Venture of an MNE Group is also a Joint Venture of another MNE Group;
 - (ii) a JV Subsidiary of a Joint Venture of an MNE Group is also a JV Subsidiary of a Joint Venture of another MNE Group; and
 - (b) as a result of those circumstances, subsection 2-25(6) or (8) applies to the Joint Venture, or the JV Subsidiary, for a Fiscal Year, in relation to each of the MNE Groups.
- (4) Treat the reference in subsection (2) to “the amount of the Top-up Tax” as instead being a reference to “half the amount of the Top-up Tax”.

Note: This means that the Joint Venture or the JV Subsidiary (or if subsection 2-25(8) applies, the Main Entity) has a Domestic Top-up Tax Amount for the Fiscal Year of half the amount of the Top-up Tax, in relation to each MNE Group.

2-35 Computing Top-up Tax for the purposes of section 2-30—principles

- (1) This section sets out principles for the purposes of section 2-30.
- (2) Assume that the amount of Domestic Top-up Tax referred to in section 5-30, for the Fiscal Year mentioned in subsection 2-25(1) or (5), were zero.
- (3) If a Constituent Entity of an MNE Group is a Securitisation Entity:
 - (a) treat the GloBE Income of the Constituent Entity for any Fiscal Year as being zero for the purposes of the following:
 - (i) the definition of *Aggregate GloBE Income of all CEs* in subsection 5-40(2);
 - (ii) the definition of *Aggregate GloBE Income of all CEs for prior year* in subsection 5-40(5) (including that definition as it applies for the purposes of subsection 5-40(7));
 - (iii) the definition of *GloBE Income of the CE* in subsection 5-40(2);
 - (iv) the definition of *GloBE Income of the CE for prior year* in subsection 5-40(5) (including that definition as it applies for the purposes of subsection 5-40(7)); and
 - (b) for those purposes, do not apply paragraph 5-40(7)(b) in relation to the GloBE Income of the Constituent Entity.
- (4) Subsection (3) does not apply if the only Constituent Entities of the MNE Group that are located in Australia are Securitisation Entities.
- (5) If subsection (3) applies and no Constituent Entity of the MNE Group that is located in Australia and is not a Securitisation Entity has GloBE Income for the Fiscal Year:
 - (a) treat the GloBE Income of each such Constituent Entity as being one Euro for any Fiscal Year, for the purposes of the following:
 - (i) the definition of *Aggregate GloBE Income of all CEs* in subsection 5-40(2);
 - (ii) the definition of *Aggregate GloBE Income of all CEs for prior year* in subsection 5-40(5) (including that definition as it applies for the purposes of subsection 5-40(7));
 - (iii) the definition of *GloBE Income of the CE* in subsection 5-40(2);
 - (iv) the definition of *GloBE Income of the CE for prior year* in subsection 5-40(5) (including that definition as it applies for the purposes of subsection 5-40(7)); and
 - (b) for those purposes, do not apply paragraph 5-40(7)(b) in relation to the GloBE Income of each such Constituent Entity.
- (6) Assume that the following provisions did not apply in relation to the allocation of an amount in respect of Covered Taxes to a Constituent Entity covered by subsection (7):
 - (a) section 4-45 (Allocation of amounts from Constituent Entity to Permanent Establishment);

Section 2-40

- (b) section 4-55 (Allocation of amounts from Constituent Entity-owner to CFC);
 - (c) section 4-65 (Allocation of amounts from Constituent Entity-owner to Hybrid Entity or Reverse Hybrid Entity);
 - (d) section 4-70 (Amounts accrued in financial accounts of Constituent Entity-owner on distribution from Constituent Entity to Constituent Entity-owner—allocation to Constituent Entity), unless the amount in respect of Covered Taxes is an amount in respect of Australian final withholding tax.
- (7) For the purposes of subsection (6), this subsection covers any of the following:
- (a) a Constituent Entity that is located in Australia;
 - (b) a Constituent Entity that is a Stateless Constituent Entity that:
 - (i) is created in Australia; or
 - (ii) is a Stateless Constituent Entity under subsection 41(3) or 42(3) of the Act; or
 - (iii) is a Permanent Establishment in relation to which paragraph 19(1)(d) of the Act applies, and is a place of business (including a deemed place of business) in Australia.
- (8) Assume that section 4-75 (Allocation of amounts in respect of Passive Income) were omitted.

2-40 Domestic Top-up Tax Amount—special rule for consolidated groups

- (1) Subsection (2) applies if a Constituent Entity of an MNE Group is a subsidiary member of a consolidated group.
- (2) Despite section 2-30, the Constituent Entity's Domestic Top-up Tax Amount for the Fiscal Year is taken to be reduced to zero.
- (3) Subsection (4) applies if the Constituent Entity is the head company of a consolidated group.
- (4) The amount of the Constituent Entity's Domestic Top-up Tax Amount for the Fiscal Year is taken to be increased by the amount of each reduction under subsection (2) of this section (if any) in respect of a subsidiary member of the consolidated group.
- (5) This section applies in relation to a MEC group in the same way in which it applies in relation to a consolidated group.
- (6) The following terms have the same meaning in this section as they do in the *Income Tax Assessment Act 1997*:
 - (a) consolidated group;
 - (b) head company;
 - (c) MEC group;
 - (d) subsidiary member.

Part 2-5—UTPR Top-up Tax Amount

2-45 Meaning of *UTPR Top-up Tax Amount*

- (1) Subsection (2) applies if a Constituent Entity of an Applicable MNE Group for a Fiscal Year is located in Australia.
- (2) The Constituent Entity has a *UTPR Top-up Tax Amount* for the Fiscal Year if:
 - (a) the Total UTPR Top-up Tax Amount for the Applicable MNE Group for the Fiscal Year is greater than zero; and
 - (b) an amount of the Total UTPR Top-up Tax Amount is allocated to Australia under section 2-60; and
 - (c) an amount of that allocated amount is distributed to the Constituent Entity under section 2-70.
- (3) Subsection (4) applies if:
 - (a) 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
 - (b) the Constituent Entity is located in Australia for the Fiscal Year; and
 - (c) the Main Entity is not located in Australia for the Fiscal Year.
- (4) If, disregarding this subsection, the Constituent Entity has a UTPR Top-up Tax Amount for the Fiscal Year:
 - (a) despite subsection (2), the Constituent Entity does not have a *UTPR Top-up Tax Amount* for the Fiscal Year; and
 - (b) the Main Entity has a *UTPR Top-up Tax Amount* for the Fiscal Year.
- (5) For the purposes of subsections (2) and (4), the *UTPR Top-up Tax Amount* is equal to the amount distributed to the Constituent Entity as mentioned in paragraph (2)(c).
- (6) To avoid doubt, if the Constituent Entity is an Investment Entity or Insurance Investment Entity, it does not have a *UTPR Top-up Tax Amount* for the Fiscal Year.

Note 1: Under the formula in subsection 2-70(3), an amount of the Australian allocated amount will not be distributed to such a Constituent Entity (see section 2-85).

Note 2: If the Constituent Entity is a Securitisation Entity, it will not have a UTPR Top-up Tax Amount for the Fiscal Year unless the only Constituent Entities of the MNE Group that are located in its jurisdiction are Securitisation Entities (see paragraph 2-85(2)(c)).

2-50 UTPR Top-up Tax Amount—special rule for consolidated groups

- (1) Subsection (2) applies if a Constituent Entity of an MNE Group:
 - (a) is a subsidiary member of a consolidated group; and
 - (b) is not any of the following:
 - (i) an Investment Entity;
 - (ii) an Insurance Investment Entity;
 - (iii) a Securitisation Entity for the Fiscal Year.

Section 2-55

- (2) Despite section 2-45, the Constituent Entity's UTPR Top-up Tax Amount for the Fiscal Year is taken to be reduced to zero.
- (3) Subsection (4) applies if the Constituent Entity is the head company of a consolidated group.
- (4) The amount of the Constituent Entity's UTPR Top-up Tax Amount for the Fiscal Year is taken to be increased by the amount of each reduction under subsection (2) of this section (if any) in respect of a subsidiary member of the consolidated group.
- (5) This section applies in relation to a MEC group in the same way in which it applies in relation to a consolidated group.
- (6) The following terms have the same meaning in this section as they do in the *Income Tax Assessment Act 1997*:
 - (a) consolidated group;
 - (b) head company;
 - (c) MEC group;
 - (d) subsidiary member.

2-55 Meaning of *Total UTPR Top-up Tax Amount*

- (1) The ***Total UTPR Top-up Tax Amount*** for an MNE Group for a Fiscal Year is the sum of the following:
 - (a) the total of the Top-up Tax for the Fiscal Year of each Low-Taxed Constituent Entity for the Fiscal Year of the MNE Group, as adjusted in accordance with this section;
 - (b) if there are one or more Joint Ventures of the MNE Group—the total of the Ultimate Parent Entity's Allocable Share of the Top-up Tax of each Joint Venture, and of each of its JV Subsidiaries (if any), as adjusted in accordance with this section.

Note: The Total UTPR Top-up Tax Amount for an MNE Group for a jurisdiction may be modified by Part 8-2 (Safe harbours).

Reduction if required to apply a Qualified IIR

- (2) For the purposes of paragraph (1)(a), reduce the Top-up Tax for the Fiscal Year of a Low-Taxed Constituent Entity to zero if:
 - (a) the Low-Taxed Constituent Entity is the MNE Group's Ultimate Parent Entity; and
 - (b) the Ultimate Parent Entity is required to apply a Qualified IIR for that Fiscal Year.
- (3) For the purposes of paragraph (1)(a), reduce the Top-up Tax for the Fiscal Year of a Low-Taxed Constituent Entity to zero if:
 - (a) all of the Ownership Interests in the Low-Taxed Constituent Entity held by the MNE Group's Ultimate Parent Entity are any of the following:
 - (i) Direct Ownership Interests;
 - (ii) Indirect Ownership Interests held through one or more Parent Entities of the MNE Group; and

Section 2-55

- (b) if subparagraph (a)(i) applies (whether or not subparagraph (a)(ii) also applies)—the Ultimate Parent Entity is required to apply a Qualified IIR for that Fiscal Year; and
- (c) if subparagraph (a)(ii) applies (whether or not subparagraph (a)(i) also applies)—each of the Indirect Ownership Interests mentioned in subparagraph (a)(ii) arise because of Ownership Interests in the Low-Taxed Constituent Entity held by Parent Entities mentioned in subparagraph (a)(ii) that are required to apply a Qualified IIR for that Fiscal Year.

Reduction—amounts brought into charge under a Qualified IIR

- (4) For the purposes of paragraph (1)(a), reduce the Top-up Tax for the Fiscal Year of a Low-Taxed Constituent Entity if:
 - (a) subsection (3) does not apply in relation to the Fiscal Year and the Low-Taxed Constituent Entity; and
 - (b) a Parent Entity of the MNE Group holds an Ownership Interest in the Low-Taxed Constituent Entity.

Note: The Low-Taxed Constituent Entity may be located in Australia.

- (5) The amount of the reduction is the portion of the Parent Entity's Allocable Share of the Top-up Tax that is brought into charge by the Parent Entity under a Qualified IIR.

Reduction—amounts brought into charge under a Qualified IIR—JV Entities

- (6) For the purposes of paragraph (1)(b), reduce the Top-up Tax for the Fiscal Year of a Joint Venture, or of a JV Subsidiary, if a Parent Entity of the MNE Group holds an Ownership Interest in the Joint Venture or JV Subsidiary.

Note: The Joint Venture or JV Subsidiary may be located in Australia.

- (7) The amount of the reduction is the portion of the Parent Entity's Allocable Share of the Top-up Tax that is brought into charge by the Parent Entity under a Qualified IIR.

Section 2-60

Part 2-6—Allocation of Top-Up Tax for the UTPR

2-60 Allocation of Total UTPR Top-Up Tax Amount to Australia

- (1) For the purposes of this instrument, the Total UTPR Top-up Tax Amount for an MNE Group for a Fiscal Year is allocated to Australia in accordance with this section.
- (2) The amount of the Total UTPR Top-up Tax Amount allocated to Australia is:
 - (a) the Total UTPR Top-up Tax Amount;multiplied by:
 - (b) the MNE Group's UTPR percentage for the Fiscal Year for Australia.

2-65 Meaning of *UTPR Percentage*

- (1) An MNE Group's *UTPR Percentage* for a Fiscal Year for 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 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.

Note 1: Australia is a jurisdiction that has a Qualified UTPR in force for the Fiscal Year.

Note 2: For the treatment of Investment Entities, Insurance Investment Entities and Securitisation Entities, see section 2-85.

- (2) Despite subsection (1), the MNE Group's *UTPR Percentage* for the Fiscal Year (the *current Fiscal Year*) for the jurisdiction is zero if:
 - (a) an amount of the Total UTPR Top-up Tax Amount for the MNE Group for a prior Fiscal Year is allocated to the jurisdiction for the prior Fiscal Year under the provisions of a law of the jurisdiction that is equivalent to this Part; and

- (b) that amount (the **allocated amount**) has not resulted in the Constituent Entities of the MNE Group located in the jurisdiction having an additional cash tax expense equal, in total, to the allocated amount, by:
- (i) if the jurisdiction's Qualified UTPR operates by denying deductions for Tax on income—the end of the second year after the last day on which an assessment in relation to the MNE Group for that Tax in relation to the prior Fiscal Year may be amended; or
 - (ii) otherwise—the end of the second year after the end of the prior Fiscal Year.
- (3) If an MNE Group's UTPR Percentage for a Fiscal Year for a jurisdiction is zero under subsection (2), disregard the jurisdiction in computing the MNE Group's UTPR Percentage for the Fiscal Year of another jurisdiction under subsection (1).
- (4) Subsection (2) does not apply if, disregarding this subsection, the MNE Group's UTPR Percentage for the Fiscal Year for each jurisdiction that has a Qualified UTPR in force for the Fiscal Year is zero.

2-70 Distribution of allocated Total UTPR Top-Up Tax Amount to Australian Constituent Entity

- (1) For the purposes of this instrument, the amount of the Total UTPR Top-up Tax Amount for an MNE Group for a Fiscal Year that is allocated to Australia under section 2-60 (the **Australian allocated amount**) is distributed, in accordance with this section, to the Constituent Entities of the MNE Group that are located in Australia.
- (2) The amount of the Australian allocated amount distributed to a Constituent Entity of the MNE Group that is located in Australia is:
- (a) the Australian allocated amount;
- multiplied by:
- (b) the percentage computed under the formula in subsection (3).
- (3) The formula is as follows:

$$\left(50\% \times \frac{\text{Number of employees of CE in Australia}}{\text{Number of employees of all CEs in Australia}} \right) + \left(50\% \times \frac{\text{Total value of tangible assets of CE in Australia}}{\text{Total value of tangible assets of all CEs in Australia}} \right)$$

where:

Number of employees of all CEs in Australia means the total number of employees of all Constituent Entities of the MNE Group located in Australia.

Number of employees of CE in Australia means the total number of employees of the Constituent Entity located in Australia.

Total value of tangible assets of all CEs in Australia 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 Australia.

Section 2-75

Total value of tangible assets of CE in Australia means the sum of the Net Book Value of tangible assets for the Fiscal Year of the Constituent Entity located in Australia.

2-75 Number of employees in a jurisdiction

For the purposes of sections 2-65 and 2-70:

- (a) the total number of employees is the total number of employees on a full-time equivalent basis; and
- (b) treat independent contractors participating in the ordinary operating activities of a Constituent Entity as employees of the Constituent Entity.

2-80 Meaning of Net Book Value of Tangible Assets

- (1) 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 the Constituent Entity's tangible assets after taking into account accumulated depreciation, depletion, and impairment, as recorded in the financial statements of the Constituent Entity.
- (2) For the purposes of subsection (1), tangible assets do not include cash or cash equivalents, intangibles, or financial assets.

2-85 Employees and the Net Book Value of Tangible Assets of Investment Entities and Securitisation Entities to be disregarded

- (1) For the purposes of section 2-65, disregard the employees and the Net Book Value of Tangible Assets for a Fiscal Year of any of the following:
 - (a) an Investment Entity;
 - (b) an Insurance Investment Entity.
- (2) For the purposes of section 2-70, disregard the employees and the Net Book Value of Tangible Assets for a Fiscal Year of any of the following:
 - (a) an Investment Entity;
 - (b) an Insurance Investment Entity;
 - (c) a Securitisation Entity for the Fiscal Year.
- (3) Paragraph (2)(c) does not apply if:
 - (a) the Securitisation Entity is located in a jurisdiction in which no other Constituent Entities of the MNE Group are located; or
 - (b) the only Constituent Entities of the MNE Group that are located in that jurisdiction are Securitisation Entities.

2-90 Employees and the Net Book Value of Tangible Assets allocated to Permanent Establishment

For the purposes of sections 2-65 and 2-70, if a Constituent Entity of an MNE Group is a Permanent Establishment:

- (a) treat the employees of the Permanent Establishment as being the employees whose payroll costs are included in the separate financial accounts of the Permanent Establishment in accordance with Part 3-4 (for

Section 2-95

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- the purposes of computing the Financial Accounting Net Income or Loss of the Permanent Establishment); and
- (b) treat the employees of the Main Entity in respect of the Permanent Establishment as not including the employees mentioned in paragraph (a); and
 - (c) treat the tangible assets of the Permanent Establishment as being the tangible assets that are included in the separate financial accounts of the Permanent Establishment in accordance with Part 3-4 (for the purposes of computing the Financial Accounting Net Income or Loss of the Permanent Establishment); and
 - (d) treat the tangible assets of the Main Entity in respect of the Permanent Establishment as not including the tangible assets mentioned in paragraph (c).

2-95 Employees and the Net Book Value of Tangible Assets allocated from Flow-through Entity

- (1) For the purposes of sections 2-65 and 2-70, if a Constituent Entity of an MNE Group is a Flow-through Entity that is a Stateless Constituent Entity:
 - (a) allocate, in accordance with subsection (2), the employees and the Net Book Value of Tangible Assets of the Flow-through Entity to the Constituent Entities (if any) of the MNE Group that are located in the jurisdiction in which the Flow-through Entity was created (each of which is a *receiving Constituent Entity*); and
 - (b) to the extent that the employees and the Net Book Value of Tangible Assets of the Flow-through Entity are not allocated under paragraph (a)—disregard the employees and the Net Book Value of Tangible Assets.
- (2) The number of employees of the Flow-through Entity, or the Net Book Value of Tangible Assets of the Flow-through Entity, that are allocated under paragraph (1)(a) to a receiving Constituent Entity is:
 - (a) the number of those employees, or that Net Book Value of Tangible Assets;multiplied by:
 - (b) the percentage computed under the formula in subsection 2-70(3) in respect of the receiving Constituent Entity.
- (3) If the Flow-through Entity is a Main Entity in respect of a Permanent Establishment, subsection (1) operates subject to section 2-90.

Section 3-5

Chapter 3—Computation of GloBE Income or Loss

Part 3-1—Financial accounts

3-5 Meaning of *GloBE Income or Loss*

The *GloBE Income or Loss* of a Constituent Entity of an MNE Group for a Fiscal Year is the Financial Accounting Net Income or Loss for the Constituent Entity for the Fiscal Year, adjusted as provided in this instrument.

3-10 Meaning of *Financial Accounting Net Income or Loss*

- (1) The *Financial Accounting Net Income or Loss* 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 Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year.
- (2) For the purposes of subsection (1), take into account items of income and expense in the Consolidated Financial Statements only to the extent that those items:
 - (a) reliably and consistently reflect the affairs of the Constituent Entity; and
 - (b) are not reflected in the separate financial accounts of the Constituent Entity.
- (3) To avoid doubt, the *Financial Accounting Net Income or Loss* 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.

Note: Financial Accounting Net Income or Loss may be adjusted to exclude such income, expenses, gains and losses if an election under subsection 3-200(1) applies.

- (4) However, the *Financial Accounting Net Income or Loss* for the Constituent Entity for a Fiscal Year does not include any amount attributable to any purchase accounting adjustment that:
 - (a) is reflected in:
 - (i) the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year; or
 - (ii) the Constituent Entity's financial accounts for the Fiscal Year; and
 - (b) 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.
- (5) Subsection (4) does not apply if:
 - (a) the acquisition occurred before 1 December 2021; and
 - (b) it is not reasonably practicable to determine the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year in the absence of the adjustment.

Section 3-10

- (6) Subsection (7) applies if it is not reasonably practicable to compute the Financial Accounting Net Income or Loss for a Constituent Entity of an MNE Group for a Fiscal Year based on the accounting standard (the ***UPE accounting standard***) used in the preparation of Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year.
- (7) Compute the ***Financial Accounting Net Income or Loss*** for the Constituent Entity for the Fiscal Year using another Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard if:
- (a) the financial accounts of the Constituent Entity for the Fiscal Year are maintained based on the other accounting standard; and
 - (b) the information contained in those financial accounts is reliable; and
 - (c) in the case of an Authorised Financial Accounting Standard—the financial accounts have been prepared subject to adjustments to prevent any Material Competitive Distortions; and
 - (d) adjustments are made to eliminate permanent differences that:
 - (i) arise for the Fiscal Year; and
 - (ii) are, in the aggregate, in excess of 1 million Euros; and
 - (iii) arise because of the application of a particular principle or standard under the other accounting standard (instead of the application of the UPE accounting standard) to items of income or expense or transactions; and
 - (e) it appears from the content of the GloBE Information Return for the MNE Group for the Fiscal Year that the Financial Accounting Net Income or Loss for the Constituent Entity for the Fiscal Year has been computed in accordance with this section.

Part 3-2—Adjustments to determine GloBE Income or Loss

Division 1—Article 3.2.1 adjustments

3-15 Adjustment—net taxes expense

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to reverse any debits or credits in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year in respect of the following:

- (a) Covered Taxes (including Covered Taxes on income that is excluded in computing the GloBE Income or Loss);
- (b) to the extent it is not included in paragraph (a), a deferred tax asset attributable to a loss for the Fiscal Year;
- (c) IIR;
- (d) Qualified Domestic Minimum Top-up tax;
- (e) UTPR;
- (f) Disqualified Refundable Imputation Tax;
- (g) Tax paid or accrued by an insurance company in respect of returns to policyholders to the extent that 3-205 applies in relation to those taxes.

3-20 Adjustment—Excluded Dividends

- (1) In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year:
 - (a) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude any Excluded Dividends received or accrued by the Constituent Entity in the Fiscal Year; and
 - (b) if an election under subsection (2) applies to the Constituent Entity and the Fiscal Year—for the purposes of this section and the definition of ***Excluded Dividends*** in subsection 3-25(1), treat a Portfolio Shareholding of the Constituent Entity as a Short-term Portfolio Shareholding of the Constituent Entity.

Election

- (2) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified Constituent Entity of the MNE Group.
- (3) An election under subsection (2) is a Five-Year Election.

3-25 Meaning of ***Excluded Dividends***, ***Short-term Portfolio Shareholding*** and ***Portfolio Shareholding***

- (1) ***Excluded Dividends*** means dividends or other distributions received or accrued in respect of an Ownership Interest, except:
 - (a) where the Ownership Interest is a Short-term Portfolio Shareholding in respect of the distributions; or

- (b) where the Ownership Interest is in an Investment Entity or Insurance Investment Entity, to the extent that the distributions are included under subsection 7-150(2).

Note: If an election under subsection 3-20(2) applies to a Constituent Entity, a Portfolio Shareholding of the Constituent Entity is treated as a Short-term Portfolio Shareholding of the Constituent Entity for the purposes of the definition of **Excluded Dividends** in this subsection: see paragraph 3-20(1)(b).

- (2) However, if:
- (a) dividends or other distributions are received or accrued in respect of an Ownership Interest in an Entity; and
 - (b) 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** under subsection (1) 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 Financial Accounting Standard).
- (3) If:
- (a) 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
 - (b) the Portfolio Shareholding has been economically held by the Constituent Entity for less than one year at the date of the distribution;
- the Portfolio Shareholding is a **Short-term Portfolio Shareholding** in the Entity, of the Constituent Entity, in respect of the distributions.
- (4) If the Direct Ownership Interests in an Entity held by any of the following:
- (a) a Constituent Entity of an MNE Group;
 - (b) any other Constituent Entity of the MNE Group;
- together carry rights to less than 10% 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.

3-30 Adjustment—Excluded Equity Gain or Loss

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude any Excluded Equity Gain or Loss of the Constituent Entity for the Fiscal Year.

3-35 Meaning of Excluded Equity Gain or Loss

- (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 Financial Accounting Net Income or Loss of the Constituent Entity for the Fiscal Year arising from any of the following:
- (a) gains and losses from changes in fair value, or from the impairment, of an Ownership Interest, except for a Portfolio Shareholding;

Section 3-40

- (b) profit or loss in respect of an Ownership Interest included under the equity method of accounting;
- (c) 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;
- (d) if an election under subsection (3) applies to the Constituent Entity and the Fiscal Year—foreign exchange gains and losses, to the extent that they are covered by subsection (2).

Note: See Part 6-3 for the treatment of gains or losses from the disposition of assets and liabilities.

- (2) For the purposes of paragraph (1)(d), this subsection covers a foreign exchange gain or loss to the extent that:
 - (a) the foreign exchange gain or loss is attributable to hedging instruments that hedge the currency risk in Ownership Interests (other than Portfolio Shareholdings); and
 - (b) the gain or loss is recognised in Other Comprehensive Income at the level of the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group; and
 - (c) the hedging instrument is considered an effective hedge under the Authorised Financial Accounting Standard used in the preparation of those Consolidated Financial Statements; and
 - (d) the economic and accounting effect of the hedging instrument:
 - (i) if the Constituent Entity holds the hedging instrument—has not been transferred to another Entity; or
 - (ii) otherwise—has been transferred to the Constituent Entity.
- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified Constituent Entity of the MNE Group.
- (4) An election under subsection (3) is a Five-Year Election.

3-40 Adjustment—insurance reserves

- (1) Subsection (2) applies if a Constituent Entity is an insurance company.
- (2) In computing the Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude any expense in respect of the movement of insurance reserves of the Constituent Entity, to the extent that the movement is economically matched by:
 - (a) Excluded Dividends, net of any investment management fees, from a security held on behalf of a policyholder; or
 - (b) Excluded Equity Gain or Loss from a security held on behalf of a policyholder.

3-45 Adjustment—Included Revaluation Method Gain or Loss

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the

Fiscal Year so as to include any Included Revaluation Method Gain or Loss of the Constituent Entity for the Fiscal Year.

3-50 Meaning of *Included Revaluation Method Gain or Loss* and *Other Comprehensive Income*

- (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:
 - (a) periodically adjusts the carrying value of such property to its fair value; and
 - (b) records the changes in value in Other Comprehensive Income; and
 - (c) does not subsequently report the gains or losses recorded in Other Comprehensive Income through profit and loss.
- (2) ***Other Comprehensive Income*** means 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 Financial Accounting Standard used in the Consolidated Financial Statements.

Note: Other Comprehensive Income is usually reported as an adjustment to equity in the statement of financial position (balance sheet).

3-55 Adjustment—*asymmetric foreign currency gains or losses*

- (1) This section applies if a Constituent Entity's accounting functional currency for a Fiscal Year is different from its tax functional currency for the Fiscal Year.
- (2) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include a particular amount of taxable income or loss to the extent that:
 - (a) the particular amount is:
 - (i) attributable to fluctuations in the exchange rate between the accounting functional currency and tax functional currency; and
 - (ii) included in computing the Constituent Entity's taxable income or loss; and
 - (iii) not included in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year; or
 - (b) the particular amount is:
 - (i) attributable to fluctuations in the exchange rate between the tax functional currency and another currency that is not the accounting functional currency; and
 - (ii) not included in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year (whether or not the particular amount is included in the Constituent Entity's taxable income or loss).
- (3) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude a particular amount of income or loss to the extent that:

Section 3-60

- (a) the particular amount is:
 - (i) attributable to fluctuations in the exchange rate between the accounting functional currency and tax functional currency; and
 - (ii) included in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year; and
 - (iii) not included in computing the Constituent Entity's taxable income or loss; or
 - (b) the particular amount is:
 - (i) attributable to fluctuations in the exchange rate between the accounting functional currency and another currency that is not the tax functional currency; and
 - (ii) included in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year; and
 - (iii) not included in computing the Constituent Entity's taxable income or loss.
- (4) To avoid doubt, disregard the operation of subsections (2) and (3) in determining whether the condition in subparagraph (2)(a)(iii) or (b)(ii) or (3)(a)(ii) or (b)(ii) is met.

3-60 Meaning of *tax functional currency* and *accounting functional currency*

- (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:
- (a) unless paragraph (b) applies—in the jurisdiction in which it is located; or
 - (b) if the Constituent Entity is a Stateless Constituent Entity—in the jurisdiction in which it is created.
- (2) A Constituent Entity's *accounting functional currency* for a Fiscal Year is the functional currency used to compute the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year.

3-65 Adjustment—policy disallowed expenses

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude the following:

- (a) expenses accrued by the Constituent Entity for illegal payments, including bribes and kickbacks;
- (b) expenses accrued by the Constituent Entity for a fine or penalty that equals or exceeds 50,000 Euros (or an equivalent in the Constituent Entity's accounting functional currency for the Fiscal Year);
- (c) expenses accrued by the Constituent Entity for fines and penalties that are levied in respect of the same activity on a periodic basis (such as daily fines), the total of which equals or exceeds 50,000 Euros (or an equivalent in the Constituent Entity's accounting functional currency for the Fiscal Year).

3-70 Adjustment—prior period errors and changes in accounting principles

- (1) Subsection (2) applies if there has been a change in the opening equity of a Constituent Entity at the start of a Fiscal Year.
- (2) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include the amount of that change to the extent the change is attributable to:
 - (a) a correction of an error in the financial accounts for a previous Fiscal Year that affected the income or expenses includible in computing the Constituent Entity's GloBE Income or Loss for the previous Fiscal Year, except to the extent the correction resulted in a material decrease to a liability for Covered Taxes subject to Part 4-6 (Post-filing Adjustments and Tax Rate Changes); or
 - (b) a change in accounting principle or policy that affects income or expenses includible in computing the Constituent Entity's GloBE Income or Loss for a Fiscal Year.

3-75 Adjustment—accrued pension expense

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include the amount computed under the following formula:

$$\left(\text{Accrued expense or income} + \text{Pension contributions} \right) \times -1$$

where:

Accrued expense or income is:

- (a) the amount (expressed as a negative number) that is accrued, in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year, as pension liability expense in respect of a Pension Fund; or
- (b) the amount that is accrued, in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year, as income in respect of a Pension Fund.

Pension contributions is the amount of pension contributions made by the Constituent Entity to the Pension Fund in the Fiscal Year.

3-80 Adjustment—qualified debt release amount

- (1) Subsection (2) applies if an election under subsection (3) applies to:
 - (a) a Constituent Entity of an MNE Group; and
 - (b) a Fiscal Year.
- (2) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude each qualified debt release amount of the Constituent Entity for the Fiscal Year.

Section 3-85

Election

- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified Constituent Entity of the MNE Group.
- (4) An election under subsection (3) is an Annual Election.

3-85 Meaning of *qualified debt release amount*

- (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:
 - (a) the debt release is under a statutory insolvency or bankruptcy proceeding:
 - (i) that is supervised by a court or other judicial body; or
 - (ii) under which an independent insolvency administrator is appointed; or
 - (b) the following conditions are met:
 - (i) 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***);
 - (ii) 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;
 - (iii) the debtor obtains an independent expert opinion attesting that the condition in subparagraph (ii) is met; or
 - (c) if neither paragraph (a) nor (b) applies:
 - (i) 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
 - (ii) the amount is in respect of a debt owed to a third-party creditor; and
 - (iii) the debtor's liabilities exceed the fair market value of its assets, determined immediately before the debt release; and
 - (iv) the amount does not exceed the amount covered under subsection (2).
- (2) For the purposes of subparagraph (1)(c)(iv), this subsection covers the amount that is the lesser of the following amounts:
 - (a) if, as a result of the debt release, the debtor's assets are greater than or equal to its liabilities—the debtor's liabilities less the fair market value of its assets, determined immediately before the debt release;
 - (b) if any amount included, as a result of the debt release, in computing net income or loss is offset by a corresponding reduction in deferred tax assets—the reduction in the debtor's deferred tax assets resulting from the debt release.

Division 2—Other Article 3.2 adjustments

3-90 Adjustment—stock-based compensation expense

- (1) Subsection (2) applies if:
 - (a) an election under subsection (5) for an MNE Group applies to:
 - (i) the jurisdiction in which a Constituent Entity of the MNE Group is located; and
 - (ii) a Fiscal Year; and
 - (b) an amount (the *stock-based deduction amount*) is allowed under the law of the jurisdiction as a deduction, in respect of a stock-based compensation expense, in computing the Constituent Entity's taxable income for a period that ends in the Fiscal Year; and
 - (c) the Constituent Entity:
 - (i) incurred the stock-based compensation expense; and
 - (ii) received the property (including use of property) or services for which the stock-based compensation was provided; and
 - (d) the stock-based compensation expense is susceptible of being reliably and consistently traced to the Constituent Entity.
- (2) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year by applying the rules in subsection (3).
- (3) The rules are as follows:
 - (a) exclude as an expense the stock-based compensation expense, and instead include as an expense the stock-based deduction amount;
 - (b) if the stock-based compensation expense arises in connection with an option that expires without exercise in the Fiscal Year—include as income the total of the stock-based deduction amounts included as an expense under paragraph (a), in relation to the stock-based compensation expense, for:
 - (i) periods that end before the start of the Fiscal Year; and
 - (ii) the period that ends in the Fiscal Year;
 - (c) if some of the stock-based compensation expense arising from a transaction has been recorded in the Constituent Entity's financial accounts for one or more previous Fiscal Years—include as income an amount equal to the amount (if any) by which:
 - (i) the cumulative amount of the stock-based compensation expense allowed as an expense in the computation of the Constituent Entity's GloBE Income or Loss in the previous Fiscal Years;
exceeds:
 - (ii) the cumulative amount that would have been included under paragraph (a) in relation to the stock-based compensation expense if the election had applied to those Fiscal Years.

Section 3-95

- (4) The rule in paragraph (3)(c) does not apply in relation to a stock-based compensation expense that arises in connection with an option that expires without exercise before the end of the Fiscal Year.

Election

- (5) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction.
- (6) An election under subsection (5) is a Five-Year Election.

Revocation of election

- (7) Subsection (8) applies if:
- (a) the election mentioned in paragraph (1)(a) is revoked; and
 - (b) the stock-based compensation expense arises in connection with an option that has not been exercised, and that has not expired without exercise, before the start of the first Fiscal Year (the **subsequent year**) to which the election does not apply as a result of revocation.
- (8) In computing the GloBE Income or Loss of the Constituent Entity for the subsequent year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the subsequent year so as to include as income an amount equal to the amount (if any) by which:
- (a) the cumulative amount included as an expense under paragraph (3)(a), in relation to the stock-based compensation expense, for Fiscal Years prior to the subsequent year;
- exceeds:
- (b) the cumulative amount of the stock-based compensation expense that would have been allowed as an expense in the computation of the Constituent Entity's GloBE Income or Loss if the election had not applied to the prior Fiscal Years.

3-95 Adjustment—Arm's Length Principle and tax/accounting permanent differences in respect of cross-border transactions

- (1) In computing the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year in accordance with the following subsections.
- (2) Subsection (3) applies if:
- (a) the amount of a transaction that is between Constituent Entities of the MNE Group that are located in different jurisdictions:
 - (i) is not recorded in the financial accounts of both Constituent Entities in the same amount; or
 - (ii) is not recorded in the financial accounts of both Constituent Entities consistently with the Arm's Length Principle; or
 - (iii) is not recorded at all in the financial accounts of both Constituent Entities; and

- (b) as a result of adjustments to the taxable income of each of the Constituent Entities made in connection with transfer pricing, a tax/accounting permanent difference (see subsection (6)) arises in respect of the transaction for each of the Constituent Entities; and
 - (c) the tax/accounting permanent difference for each Constituent Entity corresponds to the tax/accounting permanent difference for the other Constituent Entity.
- (3) For the purposes of subsection (1), adjust the amount (the *recorded amount*) in which the transaction is recorded in the financial accounts of both Constituent Entities so that the recorded amount reflects the adjustments to the taxable income mentioned in paragraph (2)(b).
- (4) Subsection (5) applies if:
- (a) the amount of a transaction that is between Constituent Entities of the MNE Group that are located in different jurisdictions:
 - (i) is not recorded in the financial accounts of both Constituent Entities in the same amount; or
 - (ii) is not recorded in the financial accounts of both Constituent Entities consistently with the Arm’s Length Principle; or
 - (iii) is not recorded at all in the financial accounts of both Constituent Entities; and
 - (b) there is a tax/accounting permanent difference in respect of the transaction in relation to one of the Constituent Entities (the *high-tax Constituent Entity*) as a result of adjustments to the taxable income of the high-tax Constituent Entity made in connection with transfer pricing; and
 - (c) there is *not* a tax/accounting permanent difference in respect of the transaction in relation to the other Constituent Entity as a result of adjustments to the taxable income of the other Constituent Entity made in connection with transfer pricing; and
 - (d) the high-tax Constituent Entity is located in a jurisdiction that has a nominal tax rate that equals or exceeds the Minimum Rate; and
 - (e) the Effective Tax Rate of the MNE Group for the jurisdiction for at least one of the 2 Fiscal Years immediately preceding the Fiscal Year mentioned in subsection (1) equals or exceeds the Minimum Rate.
- (5) For the purposes of subsection (1), adjust the amount (the *recorded amount*) in which the transaction is recorded in the financial accounts of both Constituent Entities so that the recorded amount reflects the adjustments to the taxable income mentioned in paragraph (4)(b).
- (6) In this section, a reference to a tax/accounting permanent difference is a reference to a difference between the treatment of an amount for the purposes of Covered Taxes and for accounting purposes that is not eliminated over time (and accordingly does not give rise to deferred tax).

3-100 Adjustment—Arm’s Length Principle and transactions between Constituent Entities located in the same jurisdiction

- (1) In computing the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year, adjust the Constituent Entity’s Financial Accounting
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Section 3-105

Net Income or Loss for the Fiscal Year in accordance with the following subsections.

- (2) Subsection (3) applies if:
- (a) the amount of a transaction that is between Constituent Entities of the MNE Group that are located in the same jurisdiction:
 - (i) is not recorded in the financial accounts of both Constituent Entities in the same amount; or
 - (ii) is not recorded in the financial accounts of both Constituent Entities consistently with the Arm's Length Principle; or
 - (iii) is not recorded at all in the financial accounts of both Constituent Entities; and
 - (b) if subparagraph (a)(ii) applies—any of the following conditions are satisfied:
 - (i) the transaction is a sale or other transfer of an asset, that gives rise to a loss that is included in the computation of the GloBE Income or Loss of one of the Constituent Entities;
 - (ii) one of the Constituent Entities is an Investment Entity or Insurance Investment Entity, but the other is not;
 - (iii) one of the Constituent Entities is a Minority-Owned Constituent Entity, but the other is not.
- (3) For the purposes of subsection (1), adjust the amount in which the transaction is recorded in the financial accounts of each Constituent Entity so as to be consistent with the Arm's Length Principle.

Note: Part 3-4 sets out rules for allocating income or loss between a Main Entity and its Permanent Establishments.

3-105 Meaning of *Arm's Length Principle*

The *Arm's Length Principle* is 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.

3-110 Adjustment—Refundable Tax Credits and transferable tax credits

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to:

- (a) include tax credits in that Financial Accounting Net Income or Loss, in accordance with sections 3-115 and 3-120, to the extent they are:
 - (i) Qualified Refundable Tax Credits; or
 - (ii) Marketable Transferable Tax Credits; and
- (b) subject to paragraph (a), exclude tax credits from that Financial Accounting Net Income or Loss to the extent they are:
 - (i) Non-Qualified Refundable Tax Credits; or
 - (ii) Non-Marketable Transferable Tax Credits; or
 - (iii) Other Tax Credits.

3-115 Qualified Refundable Tax Credits—amounts

- (1) For the purposes of paragraph 3-110(a), include a Qualified Refundable Tax Credit as follows:
 - (a) if subsection (2) of this section applies—include the tax credit in accordance with the accounting policy mentioned in paragraph (2)(b);
 - (b) in any other case—include the face value of the tax credit as income in the Fiscal Year in which the entitlement under the tax credit accrues.
- (2) For the purposes of paragraph (1)(a), this subsection applies if all of the following conditions are met:
 - (a) the tax credit is related to the acquisition or construction of assets;
 - (b) the person to whom the tax credit was originally granted (the **Originator**) has an accounting policy of reducing the carrying value of its assets in respect of such tax credits or recognising the tax credit as deferred income;
 - (c) the holder of the tax credit is the Originator.

3-120 Marketable Transferable Tax Credits—amounts

- (1) For the purposes of paragraph 3-110(a), include a Marketable Transferable Tax Credit in accordance with this section.
- (2) If the holder of the tax credit is the person to whom the tax credit was originally granted (the **Originator**), the following rules apply:
 - (a) unless paragraph (b) or (c) of this subsection applies—include the face value of the tax credit as income in the Fiscal Year in which the Originator first satisfies the eligibility criteria for the credit (the **Origination Year**);
 - (b) if the Originator transfers the tax credit to another person within 15 months of the end of the Origination Year—include the transfer price (and not the face value) of the tax credit as income in the Origination Year;
 - (c) if all of the following conditions are met:
 - (i) paragraph (b) does not apply;
 - (ii) the tax credit is related to the acquisition or construction of assets;
 - (iii) the Originator has an accounting policy of reducing the carrying value of its assets in respect of such tax credits, or recognising the tax credit as deferred income, such that the income from the tax credit is recognised over the productive life of the asset;
include the tax credit in accordance with the accounting policy mentioned in subparagraph (iii);
 - (d) if the tax credit is transferred to another person more than 15 months after the end of the Origination Year and all or a portion of the tax credit was included under paragraph (c)—include as loss over the remaining productive life of the assets (on a pro rata basis):
 - (i) the face value of the tax credit;
reduced (but not below zero) by:
 - (ii) the transfer price of the tax credit;
 - (e) if the tax credit is transferred to another person more than 15 months after the end of the Origination Year and paragraph (d) does not apply—include as loss in the Fiscal Year of the transfer:

Section 3-125

- (i) the face value of the tax credit;
reduced (but not below zero) by:
 - (ii) the transfer price of the tax credit;
 - (f) if all or a portion of the tax credit expires without use—include the face value attributable to the expired portion of the tax credit as loss, or as an increase to the carrying value of the asset (as the case may be), in the Fiscal Year of the expiration.
- (3) If the tax credit has been transferred to an Entity (the *purchaser*) that is an unrelated party of the Originator for a price (the *purchase price*), the following rules apply:
- (a) if all or a portion (the *used proportion*) of the tax credit is used in a Fiscal Year (the *use year*) by the purchaser to satisfy its liability for a Covered Tax for a Fiscal Year—treat the used proportion of the following amount as income in the use year:
 - (i) the face value of the tax credit as transferred;
reduced (but not below zero) by:
 - (ii) the purchase price;
 - (b) if the tax credit is sold by the purchaser to another person for a price (the *sale price*)—treat as income or loss (as the case may be) in the Fiscal Year of the transfer:
 - (i) the sum of the sale price and so much of the credit as has been used by the purchaser;
reduced by:
 - (ii) the sum of the purchase price and any amounts treated as income under paragraph (a);
 - (c) if all or a portion of the tax credit expires without use—treat as loss in the Fiscal Year of the expiration:
 - (i) the total of the purchase price and any amounts treated as income under paragraph (a);
reduced (but not below zero) by:
 - (ii) the amount of the tax credit used by the purchaser.

3-125 Meaning of *Qualified Refundable Tax Credit*, *Non-Qualified Refundable Tax Credit* and *Refundable Tax Credit*

- (1) 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.
- (2) However, the Refundable Tax Credit is *not* a *Qualified Refundable Tax Credit*:
 - (a) 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
 - (b) to the extent that it includes an amount of Tax creditable or refundable under a Qualified Imputation Tax or a Disqualified Refundable Imputation Tax.

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- (3) A **Non-Qualified Refundable Tax Credit** is a Refundable Tax Credit that is not a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit.
- (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):
- (a) after it has been used to reduce or discharge any liability to Covered Taxes; or
 - (b) in the absence of any liability for Covered Taxes.

3-130 Meaning of **Marketable Transferable Tax Credit**

- (1) A **Marketable Transferable Tax Credit** means a tax credit that:
- (a) 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
 - (b) meets:
 - (i) the requirement in subsection (3) or (4) (Legal Transferability Standard); and
 - (ii) the requirement in subsection (5) or (6) (Marketability Standard).

Marketable Transferable Tax Credit that is also Qualified Refundable Tax Credit

- (2) However, for the purposes of this instrument, treat a tax credit as not being a **Marketable Transferable Tax Credit** to the extent that it is also Qualified Refundable Tax Credit.

Legal Transferability Standard

- (3) A tax credit meets the requirement in this subsection if:
- (a) the tax credit was originally granted to a person (the **Originator**); and
 - (b) the Originator is the holder of the tax credit; and
 - (c) the Originator can transfer the credit to an unrelated party:
 - (i) in the Fiscal Year in which the Originator first satisfies the eligibility criteria for the credit (the **Origination Year**); or
 - (ii) within 15 months of the end of the Origination Year.
- (4) A tax credit meets the requirement in this subsection if:
- (a) the tax credit is held by a purchaser; and
 - (b) the purchaser can transfer the tax credit to an unrelated party in the Fiscal Year in which it purchased the tax credit; and
 - (c) the purchaser is *not* subject to more stringent legal restrictions on transfer of the tax credit than the person to whom the tax credit was originally granted.

Marketability Standard

- (5) A tax credit meets the requirement in this subsection if:
- (a) the tax credit meets the requirement in subsection (3); and
 - (b) within 15 months of the end of the Fiscal Year in which the Originator first satisfies the eligibility criteria for the credit (the **Origination Year**), either:

Section 3-135

- (i) if the tax credit has been transferred to an unrelated party of the Originator—the transfer price of the tax credit equals or exceeds its Marketable Price Floor; or
 - (ii) if the tax credit has not been transferred, or has been transferred to a related party—similar tax credits have been traded between unrelated parties at a price that equals or exceeds its Marketable Price Floor.
- (6) A tax credit meets the requirement in this subsection if:
- (a) the tax credit meets the requirement in subsection (4); and
 - (b) the purchaser acquired the tax credit from an unrelated party at a price that equals or exceeds its Marketable Price Floor.

Related parties

- (7) For the purposes of this section, 2 Entities are **related parties** of each other if:
- (a) one of the Entities owns, directly or indirectly:
 - (i) at least 50% of the beneficial interest in the other Entity; or
 - (ii) if the other Entity is a company—at least 50% of the aggregate vote and value of the other Entity’s shares; or
 - (b) another Entity owns, directly or indirectly, at least 50% of the beneficial interest in each of the 2 Entities; or
 - (c) if the 2 Entities are companies—another Entity owns, directly or indirectly, at least 50% of the aggregate vote and value of the shares in each of the 2 Entities; or
 - (d) if one of the 2 Entities is a company—another Entity owns, directly or indirectly:
 - (i) at least 50% of the aggregate vote and value of the shares in the Entity that is a company; and
 - (ii) at least 50% of the beneficial interest in the other Entity; or
 - (e) based on all the relevant facts and circumstances:
 - (i) one of the Entities controls the other Entity; or
 - (ii) one or more other Entities or individuals control both of the Entities.

3-135 Meaning of *Marketable Price Floor*

- (1) The **Marketable Price Floor** of a tax credit is 80% of the net present value (the **NPV**) of the amount of the tax credit, computed in accordance with subsections (2), (3) and (4).
- (2) Compute the NPV based on the yield to maturity on a debt instrument that:
 - (a) if the tax credit meets the requirement in subsection 3-130(3)—is issued in the Origination Year, by the government that issued the tax credit; and
 - (b) if the tax credit meets the requirement in subsection 3-130(4)—is issued in the Fiscal Year in which the tax credit is transferred to the purchaser, by the government that issued the tax credit; and
 - (c) has a maturity that is equal or similar to the period during which the tax credit can be used by the holder of the credit to reduce its liability for a Covered Tax (but not exceeding 5 years).

- (3) Base the cash flow projection used in computing the NPV on the maximum amount that can be used each year under the legal design of the credit, having regard to any amount used in a previous year.
- (4) In computing the NPV, treat the amount of the tax credit as being the lower of:
 - (a) the face value of the tax credit; and
 - (b) the remaining creditable amount in relation to the tax credit.

3-140 Meaning of *Non-Marketable Transferable Tax Credit* and *Other Tax Credit*

- (1) A *Non-Marketable Transferable Tax Credit* is:
 - (a) a tax credit that:
 - (i) is held by the person to whom the tax credit was originally granted; and
 - (ii) is transferable; and
 - (iii) is not a Marketable Transferable Tax Credit; or
 - (b) a tax credit that:
 - (i) is held by a purchaser; and
 - (ii) is not a Marketable Transferable Tax Credit.
- (2) However, for the purposes of this instrument, treat a tax credit as not being a *Non-Marketable Transferable Tax Credit* to the extent that it is also Qualified Refundable Tax Credit.
- (3) A tax credit is an *Other Tax Credit* to the extent that it is not any of the following:
 - (a) a Qualified Refundable Tax Credit;
 - (b) a Marketable Transferable Tax Credit;
 - (c) a Non-Marketable Transferable Tax Credit.

3-145 Adjustment—loss on transfer of purchased *Non-Marketable Transferable Tax Credits*

- (1) Subsection (2) applies if:
 - (a) a Constituent Entity transferred a Non-Marketable Transferable Tax Credit during a Fiscal Year; and
 - (b) the Constituent Entity is *not* the person to whom the tax credit was originally granted; and
 - (c) the transfer amount (see subsection (3)) is a negative number.
- (2) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include the transfer amount.
- (3) For the purposes of paragraph (1)(c) and subparagraph 4-20(1)(c)(ii), the transfer amount is:
 - (a) the sum of:
 - (i) the amount of the tax credit that has been used by the Constituent Entity; and

Section 3-150

- (ii) the amount (if any) received by the Constituent Entity in exchange for the transfer;

reduced by:

- (b) the sum of:
 - (i) the Constituent Entity's purchase price of the tax credit; and
 - (ii) each amount credited or refunded to the Constituent Entity mentioned in subsection 4-20(2), as reduced by subsection 4-20(3) (whether in the Fiscal Year or a previous Fiscal Year).

Note: If the transfer amount is a positive number, it is included in the Constituent Entity's Reduction to Covered Taxes: see subparagraph 4-20(1)(c)(ii).

3-150 Adjustment—assets and liabilities that are subject to fair value or impairment accounting

- (1) Subsection (2) applies if an election under subsection (3) for an MNE Group applies to a Constituent Entity of the MNE Group for a Fiscal Year.
- (2) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year:
 - (a) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude gains or losses attributable to fair value or impairment accounting with respect to assets or liabilities to which the election applies; and
 - (b) use the realisation principle to determine a gain or loss in respect of an asset or liability to which the election applies; and
 - (c) for the purpose of determining a gain or loss in respect of an asset or liability to which the election applies, treat the carrying value of the asset or liability as being its carrying value, adjusted for accumulated depreciation, at the later of:
 - (i) the beginning of the first Fiscal Year to which the election applies; or
 - (ii) the day on which the asset was acquired or the liability was incurred.

Election

- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to:
 - (a) a specified jurisdiction; and
 - (b) all Constituent Entities of the MNE Group that are:
 - (i) if the election specifies that it is to apply only to Investment Entities—Investment Entities located in the jurisdiction; or
 - (ii) otherwise—located in the jurisdiction; and
 - (c) all assets and liabilities of those Constituent Entities that are:
 - (i) if the election specifies that it is to apply only to tangible assets—tangible assets subject to fair value accounting or impairment accounting; or
 - (ii) otherwise—assets and liabilities subject to fair value accounting or impairment accounting.
- (4) An election under subsection (3) is a Five-Year Election.

Revocation of election

- (5) Subsection (6) applies if:
 - (a) an election under subsection (3) is revoked; and
 - (b) a Constituent Entity to which the election applied holds, at the beginning of the first Fiscal Year to which the election does not apply because of the revocation, an asset or liability to which the election applied.
- (6) In computing the GloBE Income or Loss of the Constituent Entity for that Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for that Fiscal Year so as to include the positive or negative amount that is:
 - (a) the fair value of the asset or liability at the beginning of that Fiscal Year; reduced by:
 - (b) the carrying value of the asset or liability as computed in accordance with paragraph (2)(c).

3-155 Adjustment—Aggregate Asset Gain—election

- (1) This section applies if an MNE Group has an Aggregate Asset Gain for a jurisdiction for a Fiscal Year.
- (2) A Filing Constituent Entity for the MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction.
- (3) An election under subsection (2) is an Annual Election.

3-160 Adjustment—Aggregate Asset Gain—effect

- (1) This section applies if an election for an MNE Group under subsection 3-155(2) applies to a jurisdiction and to a Fiscal Year (the *application year*).

Adjustments to Adjusted Covered Taxes

- (2) In computing the Adjusted Covered Taxes for the application year of a Constituent Entity of the MNE Group located in the jurisdiction, exclude Covered Taxes in respect of any Net Asset Gain or Net Asset Loss of the Constituent Entity for the application year.

Adjustments to GloBE Income or Loss—application year

- (3) In computing the GloBE Income or Loss for the application year of a Constituent Entity of the MNE Group located in the jurisdiction, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to:
 - (a) include any amounts allocated under section 3-165 to the Constituent Entity for the application year; and
 - (b) exclude any Net Asset Gain or Net Asset Loss of the Constituent Entity for the application year.

Section 3-165

Adjustments to GloBE Income or Loss and recalculation of ETR and Top-up Tax—prior years

- (4) If an amount is allocated under section 3-165 to a Constituent Entity of an MNE Group located in a jurisdiction for a Fiscal Year in the election's Look-back Period (a **Look-back Year**) that is not the application year:
 - (a) recalculate in accordance with section 5-95 the Effective Tax Rate and Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the Look-back Year; and
 - (b) for the purposes of that recalculation, make the adjustments to the GloBE Income or Loss of Constituent Entities of the MNE Group for the Look-back Year set out in subsection (5).
- (5) For the purposes of paragraph (4)(b), in computing the GloBE Income or Loss of a Constituent Entity of the MNE Group located in the jurisdiction for the Look-back Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include any amounts allocated under section 3-165 to the Constituent Entity for the Look-back Year.

3-165 Adjustment—Aggregate Asset Gain—allocation of amounts

- (1) This section applies if an election for an MNE Group under subsection 3-155(2) applies to a jurisdiction and to a Fiscal Year (the **application year**).
- (2) For the purposes of section 3-160, the amount allocated to a Constituent Entity of the MNE Group located in the jurisdiction for a Fiscal Year in the election's Look-back Period (a **Look-back Year**) is the sum of the following:
 - (a) the Constituent Entity's set-off amount for that year (see subsection (3) of this section);
 - (b) the Constituent Entity's remainder amount for that year (see subsection (5) of this section).

Set-off amounts

- (3) Compute set-off amounts as follows:
 - (a) first, compute the amount of the MNE Group's Aggregate Asset Gain for the application year;
 - (b) next, for each Loss Year, compute the amount of the Net Asset Loss for each Constituent Entity of the MNE Group located in the jurisdiction;
 - (c) next, apply the amounts of Net Asset Loss (to the extent they have not already been applied under this paragraph in respect of an election for a previous year), in accordance with subsection (4), to reduce the amount computed under paragraph (a) of this subsection (but not below zero).

A Constituent Entity's set-off amount for a Look-back Year is the amount of the Constituent Entity's Net Asset Loss for that year that is applied under paragraph (c).

- (4) For the purposes of paragraph (3)(c):
 - (a) apply the amounts in sequence, where an amount for an earlier Loss Year is applied before an amount for a later Loss Year; and
 - (b) amounts may be applied in part.

Note: As a result of paragraph (4)(b), part of an amount of Net Asset Loss of a Constituent Entity of the MNE Group for a Loss Year may be applied to reduce the amount of the MNE Group's Aggregate Asset Gain for the application year to zero.

Remainder amounts

- (5) If the result of paragraph (3)(c) is not zero, compute the remainder amount of a Constituent Entity of the MNE Group located in the jurisdiction for each Look-back Year in accordance with subsection (6) or (7).
- (6) If one or more Constituent Entities of the MNE Group located for the Look-back Year in the jurisdiction have a Net Asset Gain for the application year, compute the remainder amount in accordance with the following formula:

$$\frac{\text{Remainder}}{5} \times \frac{\text{CE's gain}}{\text{Total gain}}$$

where:

CE's gain means the Constituent Entity's Net Asset Gain for the application year.

remainder is the result of paragraph (3)(c).

total gain means the total of the amounts of Net Asset Gain of all Constituent Entities of the MNE Group located in the jurisdiction for the application year.

- (7) If subsection (6) does not apply, compute the remainder amount in accordance with the following formula:

$$\frac{\text{Remainder}}{5} \times \frac{1}{\text{Number of CEs}}$$

where:

number of CEs means the total number of Constituent Entities of the MNE Group located in the jurisdiction for the Look-back Year.

remainder is the result of paragraph (3)(c).

3-170 Meaning of *Aggregate Asset Gain*, *Net Asset Gain*, etc

- (1) If the result of the disposition of Local Tangible Assets by all Constituent Entities of an 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 MNE Group has an **Aggregate Asset Gain** for the jurisdiction for the Fiscal Year of the amount of that net gain.
- (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) a net gain in a Fiscal Year—then the Constituent Entity has a **Net Asset Gain** for the Fiscal Year of that amount; and
 - (b) 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.

Section 3-175

- (3) **Local Tangible Asset**, in relation to a Constituent Entity located in a jurisdiction, means immovable property located in the jurisdiction.

3-175 Meaning of Look-back Period and Loss Year

- (1) The **Look-back Period**, of an election for an MNE Group under subsection 3-155(2), means the Fiscal Year to which the election applies (the **application year**) and the 4 Fiscal Years immediately preceding it.
- (2) A **Loss Year**, in relation to an election for an MNE Group under subsection 3-155(2), 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) 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 (see subsection (3) of this section);
 - (b) 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.
- (3) For the purposes of subsection (2), the adjusted Net Asset Loss for a Fiscal Year of a Constituent Entity of the MNE Group located in the jurisdiction is:
- (a) the Net Asset Loss of the Constituent Entity for the Fiscal Year; reduced by:
 - (b) so much of that Net Asset Loss as has already been applied under paragraph 3-165(3)(c) in respect of an election that applies to a Fiscal Year that is before the application year.

3-180 Adjustment—Intragroup Financing Arrangements

- (1) In computing the GloBE Income or Loss for a Fiscal Year of a Constituent Entity of an MNE Group that is a Low-Tax Entity for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude any expense attributable to an Intragroup Financing Arrangement for the Fiscal Year that can reasonably be anticipated, over the expected duration of the arrangement, to:
- (a) increase the amount of expenses taken into account in computing the GloBE Income or Loss of the Low-Tax Entity for any Fiscal Year; and
 - (b) not result in a corresponding increase in the taxable income of another Constituent Entity of the MNE Group that is a High-Tax Counterparty for the Fiscal Year.
- (2) For the purposes of subsection (1), in determining whether a Constituent Entity is a Low-Tax Entity for the Fiscal Year, disregard that subsection.
- (3) For the purposes of paragraph (1)(b), disregard an amount of increase if:
- (a) the High-Tax Counterparty is eligible for an exclusion, exemption, deduction, credit or other tax benefit under local law; and
 - (b) it can reasonably be considered that the benefit is calculated by reference to the amount of the increase.

3-185 Meaning of *Intragroup Financing Arrangement*

An *Intragroup Financing Arrangement* for a Fiscal Year is an arrangement in respect of which all of the following apply:

- (a) the arrangement is entered into between 2 or more Constituent Entities of an MNE Group;
- (b) under the arrangement, one of the Constituent Entities (the *investor*) directly or indirectly provides credit to, or otherwise makes an investment in, another of the Constituent Entities (the *recipient*);
- (c) the investor is a High-Tax Counterparty for the Fiscal Year;
- (d) the recipient is a Low-Tax Entity for the Fiscal Year.

3-190 Meaning of *Low-Tax Entity* and *High-Tax Counterparty*

- (1) A Constituent Entity of an MNE Group is a *Low-Tax Entity* for a Fiscal Year if:
 - (a) the Constituent Entity is located in a jurisdiction for the Fiscal Year; and
 - (b) the jurisdiction:
 - (i) is a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year; or
 - (ii) 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.
- (2) A Constituent Entity of an MNE Group is a *High-Tax Counterparty* for a Fiscal Year if:
 - (a) the Constituent Entity is located in a jurisdiction for the Fiscal Year; and
 - (b) the jurisdiction:
 - (i) is not a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year; or
 - (ii) 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.

3-195 Meaning of *Low-Tax Jurisdiction*

A *Low-Tax Jurisdiction*, in respect of an MNE Group for a Fiscal Year, means a jurisdiction for which the MNE Group has:

- (a) Net GloBE Income for the Fiscal Year; and
- (b) an Effective Tax Rate for the Fiscal Year that is lower than the Minimum Rate.

Section 3-200

3-200 Adjustment—election to apply consolidated accounting treatment

Election

- (1) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to Constituent Entities of the MNE Group (each of which is a *consolidated local entity*):
 - (a) that are located in a specified jurisdiction; and
 - (b) that are included in a tax consolidation group (see subsection (4)).
- (2) An election under subsection (1) is a Five-Year Election.

Adjustment

- (3) If an election is made under subsection (1), the following paragraphs apply in computing the amount of the GloBE Income or Loss of a consolidated local entity to which the election applies:
 - (a) in computing that amount for a Fiscal Year to which the election applies, adjust the consolidated local entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude income, expenses, gains and losses arising from transactions between consolidated local entities located in the same jurisdiction, to the extent that this reflects the consolidated accounting treatment of the Ultimate Parent Entity;
 - (b) in computing that amount for the first Fiscal Year to which the election applies, adjust the consolidated local entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising as a result of making the election;
 - (c) where the election is revoked in a Fiscal Year—in computing that amount for the Fiscal Year, adjust the consolidated local entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising as a result of the revocation.

Interpretation—tax consolidation group

- (4) For the purposes of subsection (1), Constituent Entities of an MNE Group located in a jurisdiction are included in a tax consolidation group if, under the law of that jurisdiction, the income, expenses, gains or losses of those Constituent Entities may be shared for tax purposes because of a connection between the Constituent Entities based on ownership or common control.

3-205 Adjustment—insurance company amounts charged to policyholders for taxes paid in respect of returns to policy holders

- (1) Subsection (2) applies if a Constituent Entity of an MNE Group is an insurance company.
- (2) In computing the Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to:

- (a) exclude any amount that is charged to policyholders for Taxes paid by the Constituent Entity in respect of returns to the policyholders; and
- (b) include returns to policyholders that are not reflected in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year, to the extent that a corresponding increase or decrease in liability to policyholders is reflected in its Financial Accounting Net Income or Loss for that Fiscal Year.

3-210 Adjustment—distributions paid or payable in respect of Additional Tier One Capital or Restricted Tier One Capital

- (1) In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to:
 - (a) treat an amount recognised as a decrease to the equity of the Constituent Entity attributable to a distribution paid or payable in respect of Additional Tier One Capital or Restricted Tier One Capital issued by the Constituent Entity as an expense; and
 - (b) treat an amount recognised as an increase to the equity of the Constituent Entity attributable to a distribution received or receivable in respect of Additional Tier One Capital or Restricted Tier One Capital held by the Constituent Entity as income.
- (2) 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, is:
 - (a) if the requirements are applicable to the banking sector—***Additional Tier One Capital***; or
 - (b) if the requirements are applicable to the insurance sector—***Restricted Tier One Capital***.

3-215 Adjustments as necessary for Chapters 6 and 7

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year:

- (a) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include an amount as required by a provision in Chapter 6 or 7; and
- (b) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude an amount as required by a provision in Chapter 6 or 7; and
- (c) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to achieve a result as required by a provision in Chapter 6 or 7; and
- (d) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year by an amount as required by a provision in Chapter 6 or 7.

Part 3-3—International Shipping Income exclusion

3-220 Adjustment—certain shipping income

- (1) In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude the following amounts:
 - (a) the Constituent Entity's International Shipping Income for the Fiscal Year;
 - (b) the Constituent Entity's Qualified Ancillary International Shipping Income for the Fiscal Year.
- (2) However, subsection (1) does not apply if, during the Fiscal Year:
 - (a) a part of the Constituent Entity's International Shipping Income for the Fiscal Year arises from activities involving a ship; and
 - (b) the strategic or commercial management of the ship is not effectively carried on from within the jurisdiction in which the Constituent Entity is located.

3-225 Meaning of *International Shipping Income*, etc.

- (1) The *International Shipping Income* of a Constituent Entity of an MNE Group for a Fiscal Year is:
 - (a) the Constituent Entity's International Shipping Income Revenue for the Fiscal Year (see subsection (2));reduced by:
 - (b) the Constituent Entity's International Shipping Income Costs for the Fiscal Year (see subsection (3)).
- (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 the following activities (each of which is an *International Shipping Activity*):
 - (a) transporting passengers or cargo by a ship that it operates in international traffic, whether the ship is owned, leased or otherwise at its disposal;
 - (b) transporting passengers or cargo by a ship operated in international traffic under slot-chartering arrangements;
 - (c) leasing a ship, to be used for transporting passengers or cargo in international traffic, on charter fully equipped, crewed and supplied;
 - (d) leasing a ship on a bareboat charter basis, for transporting passengers or cargo in international traffic, to another Constituent Entity of the MNE Group;
 - (e) participating in a pool, a joint business or an international operating agency for transporting passengers or cargo by a ship in international traffic;
 - (f) 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 1 year—selling the ship.

- (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:

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

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.

3-230 Meaning of **Qualified Ancillary International Shipping Income, etc.**

- (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**);
 - the 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:

$$\frac{\text{CE's AISI}}{\text{Aggregate AISI}} \times \text{Cap}$$

where:

Aggregate AISI and **CE's AISI** have the same meanings as in paragraphs (a) and (b).

Cap means Aggregate ISI multiplied by 50%.

- (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;

Section 3-235

reduced by:

- (b) the Constituent Entity's Ancillary International Shipping Income Costs for the Fiscal Year.
- (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 the following activities, to the extent they are performed primarily in connection with transporting passengers or cargo by ships in international traffic (each an **Ancillary International Shipping Activity**):
- (a) 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:
 - (i) does not exceed 3 years; and
 - (ii) 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 3 years;
 - (b) selling tickets issued by other shipping enterprises for the domestic leg of an international voyage;
 - (c) leasing and short-term storage of a container (including levying detention charges for the late return of a container);
 - (d) providing services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel;
 - (e) 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.
- (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:

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

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 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.

3-235 International traffic

For the purposes of this Part, international traffic does not include transport by a ship operated solely between places within the same jurisdiction.

Part 3-4—Allocation of income or loss between a Main Entity and a Permanent Establishment

3-240 Meaning of *Financial Accounting Net Income or Loss*—Permanent Establishment

- (1) If a Constituent Entity is a Permanent Establishment because of paragraph 19(1)(a), (b) or (c) of the Act, the *Financial Accounting Net Income or Loss* for a Fiscal Year of the Constituent Entity is:
 - (a) 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
 - (b) 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 Statements of the Ultimate Parent Entity.
- (2) If a Constituent Entity is a Permanent Establishment because of paragraph 19(1)(d) of the Act, the *Financial Accounting Net Income or Loss* for a Fiscal Year of the Constituent Entity is the net income or loss of that Permanent Establishment computed on the assumptions that:
 - (a) the only income of the Permanent Establishment is its income that:
 - (i) is exempted from Tax in the jurisdiction in which the Main Entity is located; and
 - (ii) is attributable to operations conducted or activities carried on outside the jurisdiction in which the Main Entity is located; and
 - (b) the only expenses of the Permanent Establishment are its expenses that:
 - (i) are attributable to the operations described in subparagraph (a)(ii) of this subsection; and
 - (ii) are not deducted for tax purposes in the jurisdiction in which the Main Entity is located.

3-245 Adjustment of Permanent Establishment's Financial Accounting Net Income or Loss

Adjust the amount that would be, disregarding this section, a Permanent Establishment's Financial Accounting Net Income or Loss to reflect only the amounts of income and expense that are (or, if paragraph (c) applies, would be) attributable to the Permanent Establishment in accordance with:

- (a) if the Permanent Establishment is a Permanent Establishment because of paragraph 19(1)(a) of the Act—the Tax Treaty applicable to the Permanent Establishment; or

Section 3-250

- (b) if the Permanent Establishment is a Permanent Establishment because of paragraph 19(1)(b) of the Act—the law of the jurisdiction in which the Permanent Establishment is located; or
- (c) if the Permanent Establishment is a Permanent Establishment because of paragraph 19(1)(c) of the Act—Article 7 of the OECD Model Tax Convention.

3-250 Computing GloBE Income or Loss of the Main Entity in respect of a Permanent Establishment

- (1) Subject to subsection (2), in computing the GloBE Income or Loss of the Main Entity in respect of a Permanent Establishment, do not take into account the Financial Accounting Net Income or Loss of the Permanent Establishment.
- (2) If, disregarding this subsection, a Permanent Establishment would have a GloBE Loss for a Fiscal Year:
 - (a) in computing the GloBE Income or Loss of the Main Entity in respect of the Permanent Establishment for the Fiscal Year, treat the amount of the GloBE Loss (the **loss amount**) as an expense of the Main Entity (and not of the Permanent Establishment), to the extent that the loss amount:
 - (i) is treated as an expense in computing the Main Entity's taxable income in the jurisdiction in which the Main Entity is located; and
 - (ii) is not set off against an item of income that is subject to tax under the laws of both the jurisdiction in which the Permanent Establishment is located and the jurisdiction in which the Main Entity is located; and
 - (b) where, disregarding this paragraph, the Permanent Establishment would have GloBE Income for a subsequent Fiscal Year, treat the lesser of the following as GloBE Income of the Main Entity (and not of the Permanent Establishment):
 - (i) the amount of the GloBE Income;
 - (ii) the loss amount, to the extent that it is treated under paragraph (a) as an expense of the Main Entity (and not of the Permanent Establishment), reduced by amounts (if any) treated as GloBE Income of the Main Entity under a previous operation of this paragraph.
- (3) In computing the extent to which the loss amount is treated under paragraph (2)(a) as an expense of the Main Entity (and not of the Permanent Establishment), disregard so much of the loss amount as is offset, under the law of the jurisdiction in which the Main Entity is located, by an amount in respect of GloBE Income for the Fiscal Year of another Permanent Establishment in respect of the Main Entity.

Part 3-5—Allocation of income or loss from a Flow-through Entity

3-255 Constituent Entity that is a Flow-through Entity—Financial Accounting Net Income or Loss

- (1) If a Constituent Entity of a Group is a Flow-through Entity, deal with its Financial Accounting Net Income or Loss as follows:
 - (a) first, reduce the amount of that Financial Accounting Net Income or Loss by the amount attributable to its owners that:
 - (i) are not Group Entities of the Group; and
 - (ii) hold a Direct Ownership Interest in the Flow-through Entity, or hold an Indirect Ownership Interest in the Flow-through Entity through a Tax Transparent Structure;
 - (b) next, if there is a Permanent Establishment through which the business of the Flow-through Entity is wholly or partly carried out, allocate the remaining Financial Accounting Net Income or Loss to the Permanent Establishment to the extent set out in Part 3-4;
 - (c) next, if the Flow-through Entity is a Tax Transparent Entity that is not the Ultimate Parent Entity of the Group, allocate the remaining Financial Accounting Net Income or Loss to the Flow-through Entity's Constituent Entity-owners in proportion with their respective rights to a share of the profits of the Flow-through Entity carried by Ownership Interests that they hold;
 - (d) next, if the Flow-through Entity is a Tax Transparent Entity that:
 - (i) is the Ultimate Parent Entity of the Group; or
 - (ii) would be the Ultimate Parent Entity of the Group if any Controlling Interest in the Tax Transparent Entity held by an Excluded Entity were disregarded; or
 - (iii) is a Reverse Hybrid Entity;allocate the remaining Financial Accounting Net Income or Loss to the Flow-through Entity.
 - (2) Despite paragraph (1)(a):
 - (a) do not make the reduction in that paragraph if the Flow-through Entity is the Ultimate Parent Entity of the Group; and
 - (b) do not make the reduction in that paragraph to the extent that the Flow-through Entity is owned by the Ultimate Parent Entity of the Group (directly or through a Tax Transparent Structure).
- Note: See Part 7-1 for the rules dealing with an Ultimate Parent Entity that is a Flow-through Entity.
- (3) To avoid doubt, if an amount of the Financial Accounting Net Income or Loss of the Flow-through Entity is allocated to another Constituent Entity under subsection (1), the Financial Accounting Net Income or Loss of the Flow-through Entity is reduced by that amount.

Chapter 3 Computation of GloBE Income or Loss

Part 3-5 Allocation of income or loss from a Flow-through Entity

Section 3-255

- (4) Subsection (1) applies separately with respect to each Ownership Interest in the Flow-through Entity.

Chapter 4—Computation of Adjusted Covered Taxes

Part 4-1—Adjusted Covered Taxes

4-5 Meaning of *Adjusted Covered Taxes*

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:

- (a) adding 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
- (b) adding the Total Deferred Tax Adjustment Amount for the Constituent Entity for the Fiscal Year (see Part 4-4); and
- (c) adding any increase in Covered Taxes, and subtracting any decrease in Covered Taxes, that:
 - (i) are recorded in equity or Other Comprehensive Income of the Constituent Entity for the Fiscal Year; and
 - (ii) relate to amounts included in the computation of its GloBE Income or Loss for the Fiscal Year that will be subject to tax under the law of the jurisdiction in which it is located.

4-10 Meaning of *Accrued Current Covered Tax Expense*

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 Financial Accounting Net Income or Loss for the Fiscal Year.

4-15 Meaning of *Additions to Covered Taxes*

The *Additions to Covered Taxes* for a Fiscal Year of a Constituent Entity of an MNE Group is the sum of the following:

- (a) 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;
- (b) if:
 - (i) there is a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction in which the Constituent Entity is located; and
 - (ii) an amount of that GloBE Loss Deferred Tax Asset is used for the Fiscal Year under subsection 4-125(2); and
 - (iii) if there is a GloBE Loss Deferred Tax Asset of the Ultimate Parent Entity of the MNE Group—the Constituent Entity is not the Ultimate Parent Entity;
the Constituent Entity's share of that amount, computed based on the Constituent Entity's share of the MNE Group's Net GloBE Income for the Fiscal Year;
- (c) if:

Section 4-20

- (i) the Constituent Entity is the Ultimate Parent Entity of the MNE Group; and
- (ii) there is a GloBE Loss Deferred Tax Asset of the Ultimate Parent Entity; and
- (iii) an amount of that GloBE Loss Deferred Tax Asset is used for the Fiscal Year under subsection 4-135(2);
that amount;
- (d) the amount (if any) of Covered Taxes of the Constituent Entity for the Fiscal Year that is paid in the Fiscal Year, to the extent that the amount:
 - (i) relates to an uncertain tax position; and
 - (ii) was treated as a Reduction to Covered Taxes of the Constituent Entity for a previous Fiscal Year under paragraph 4-20(1)(e);
- (e) 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.

4-20 Meaning of *Reductions to Covered Taxes*

- (1) The ***Reductions to Covered Taxes*** of a Constituent Entity for a Fiscal Year is the sum of the following:
- (a) if income is excluded from the computation of the Constituent Entity's GloBE Income or Loss under Chapter 3—the sum of:
 - (i) the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year that relates to the income; and
 - (ii) the amount (if any) of Additions to Covered Taxes for the Fiscal Year of the Constituent Entity that relates to the income;

Note: An amount of Covered Taxes in respect of a Net Asset Gain or Net Asset Loss is excluded from the computation of Adjusted Covered Taxes by subsection 3-160(2).
 - (b) the amount (if any) of credit or refund, in respect of a tax credit (other than a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit), that:
 - (i) is credited or refunded to the Constituent Entity in respect of Covered Taxes in the Fiscal Year; and
 - (ii) is not recorded as a reduction to the Constituent Entity's Accrued Current Covered Tax Expense for the Fiscal Year;
 - (c) if the Constituent Entity transferred a Non-Marketable Transferable Tax Credit during the Fiscal Year:
 - (i) 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
 - (ii) where subparagraph (i) does not apply, and the transfer amount mentioned in subsection 3-145(3) is a positive number—that amount;

Note: If the transfer amount is a negative number, it is included in the Constituent Entity's GloBE Income or Loss: see subsection 3-145(2).
 - (d) 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;

- (e) 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;
- (f) 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.

Use of purchased Non-Marketable Transferable Tax Credits

- (2) Subsection (3) applies if an amount mentioned in paragraph (1)(b) is in respect of a tax credit that is a Non-Marketable Transferable Tax Credit purchased by the Constituent Entity.
- (3) Reduce the amount by the multiplying it by the following fraction:
 - (a) the excess of the face value of the tax credit over its purchase price;divided by:
 - (b) face value of the tax credit.

4-25 No double counting of Covered Taxes

For the purposes of this Chapter, do not take account of an amount of Covered Taxes more than once in computing the Adjusted Covered Taxes of:

- (a) a Constituent Entity for a particular Fiscal Year or another Fiscal Year; or
- (b) multiple Constituent Entities for a particular Fiscal Year or another Fiscal Year.

4-30 Additional Current Top-up Tax where MNE Group has no Net GloBE Income and tax falls short of expected tax

- (1) Subsection (2) applies if:
 - (a) an MNE Group has a Net GloBE Loss for a jurisdiction for a Fiscal Year; and
 - (b) the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction is less than zero; and
 - (c) that sum falls short of the Expected Adjusted Covered Taxes Amount computed under subsection (2).
- (2) For the purposes of paragraph (1)(c), the Expected Adjusted Covered Taxes Amount is:
 - (a) the Net GloBE Loss of the MNE Group for the jurisdiction for the Fiscal Year;multiplied by:
 - (b) the Minimum Rate.
- (3) Treat the amount of the shortfall mentioned in paragraph (1)(c) as an amount of ***Additional Current Top-up Tax*** of the MNE Group for the Fiscal Year for the jurisdiction, in respect of that Fiscal Year.

Section 4-35

4-35 Additional Current Top-up Tax under section 4-30—Excess Negative Tax Expense Carry-forward

- (1) Subsection (2) applies if:
 - (a) disregarding subsection (2), there is an amount of Additional Current Top-up Tax of the MNE Group for the Fiscal Year for the jurisdiction, in respect of that Fiscal Year, under subsection 4-30(3); and
 - (b) an election for the MNE Group under subsection (4) of this section applies to the jurisdiction for the Fiscal Year.
- (2) Despite subsection 4-30(3), the amount of Additional Current Top-up Tax of the MNE Group for the Fiscal Year for the jurisdiction, in respect of that Fiscal Year, under that subsection is taken to be reduced to:
 - (a) unless paragraph (b) of this subsection applies—nil; or
 - (b) if some or all of that amount of Additional Current Top-up Tax (computed disregarding this paragraph) is attributable to a tax loss that:
 - (i) was carried back from that Fiscal Year to a prior Fiscal Year; and
 - (ii) was deducted for the prior Fiscal Year under the tax law of the jurisdiction;that amount of Additional Current Top-up Tax, to the extent that is attributable to the tax loss.
- (3) If subsection (2) applies:
 - (a) where an Excess Negative Tax Expense Carry-forward has not been established for the MNE Group for the jurisdiction:
 - (i) an **Excess Negative Tax Expense Carry-forward** is established for the MNE Group for the jurisdiction; and
 - (ii) the balance of the Excess Negative Tax Expense Carry-forward is increased by the amount of the reduction under subsection (2); or
 - (b) otherwise—the balance of Excess Negative Tax Expense Carry-forward for the MNE Group for the jurisdiction is increased by the amount of the reduction under subsection (2).

Note 1: In some circumstances, the balance of the Excess Negative Tax Expense Carry-forward is applied to reduce the sum of Adjusted Covered Taxes in relation to the jurisdiction mentioned in paragraph 5-5(2)(a): see subsection 5-5(4).

Note 2: The balance of the Excess Negative Tax Expense Carry-forward may also be increased under section 5-10.

Election

- (4) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction.
- (5) An election under subsection (4) is an Annual Election.

Part 4-2—Definition of Covered Taxes

4-40 Meaning of *Covered Taxes*

- (1) The ***Covered Taxes*** of a Constituent Entity of a Group means:
 - (a) Taxes recorded in the financial accounts of the Constituent Entity in respect of:
 - (i) its income or profits; or
 - (ii) its share of the income or profits of a Constituent Entity of the Group, in which it holds an Ownership Interest; and
 - (b) Taxes on distributed profits, deemed profit distributions and non-business expenses imposed under an Eligible Distribution Tax System; and
 - (c) Taxes imposed in lieu of a generally applicable corporate income tax; and
 - (d) Taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity.
- (2) Despite subsection (1), ***Covered Taxes*** does not include any amount of the following:
 - (a) Top-up Tax accrued by a Parent Entity under a Qualified IIR;
 - (b) Top-up Tax accrued by a Constituent Entity under a Qualified Domestic Minimum Top-up Tax;
 - (c) any Tax under or as a result of the application of a Qualified UTPR;
 - (d) a Disqualified Refundable Imputation Tax;
 - (e) Taxes paid or accrued by an insurance company in respect of returns to policyholders.

Section 4-45

Part 4-3—Allocation of Covered Taxes from one Constituent Entity to another Constituent Entity

4-45 Allocation of amounts from Constituent Entity to Permanent Establishment—general rule

An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity of an MNE Group (the *Main Entity*) to a Permanent Establishment, if the amount is:

- (a) accrued in the financial accounts of the Main Entity, or of another Constituent Entity, for the Fiscal Year; and
- (b) so accrued in respect of the GloBE Income or Loss of the Permanent Establishment for the Fiscal Year.

4-50 Allocation of amounts from Tax Transparent Entity to a Constituent Entity-owner of the Tax Transparent Entity

An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity that is a Tax Transparent Entity to a Constituent Entity-owner of the Tax Transparent Entity if the amount is:

- (a) accrued in the financial accounts of the Tax Transparent Entity for the Fiscal Year; and
- (b) so accrued in respect of the GloBE Income or Loss allocated to the Constituent Entity-owner under paragraph 3-255(1)(c).

4-55 Allocation of amounts from Constituent Entity-owner to CFC

- (1) An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity-owner of a Constituent Entity of an MNE Group to the Constituent Entity if:
 - (a) the Constituent Entity-owner is subject to a Controlled Foreign Company Tax Regime; and
 - (b) the amount is:
 - (i) accrued in the financial accounts of the Constituent Entity-owner for the Fiscal Year; and
 - (ii) so accrued in respect of Covered Taxes imposed under the Controlled Foreign Company Tax Regime on the Constituent Entity-owner's share of the Constituent Entity's income.

Blended CFC Tax Regimes

- (2) Subsection (3) applies for a Fiscal Year if:
 - (a) the Controlled Foreign Company Tax Regime mentioned in subsection (1) is a Blended CFC Tax Regime; and
 - (b) the Fiscal Year:
 - (i) begins on or before 31 December 2025; and
 - (ii) ends on or before 30 June 2027.

- (3) The amount allocated under subsection (1) for the Fiscal Year is the amount computed in accordance with the following formula:

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

where:

Allocable Blended CFC Tax means the total amount, in respect of Covered Taxes imposed under the Blended CFC Tax Regime, that is recorded in the financial accounts of the Constituent Entity-owner for the Fiscal Year.

Blended CFC Allocation Key means the Blended CFC Allocation Key of the Constituent Entity computed under subsection (4).

Sum of all Blended CFC Allocation Keys means the amount computed under subsection (5).

- (4) For the purposes of subsection (3), the Blended CFC Allocation Key of a Constituent Entity of the MNE Group is the amount computed in accordance with the following formula (treating a negative result as zero):

$$\text{Attributable Income of Entity} \times \left(\text{Applicable Rate} - \text{GloBE Jurisdictional ETR} \right)$$

where:

Applicable Rate is the lowest rate that, if it were the corporate tax rate applicable in the jurisdiction in which the Constituent Entity is located, would result in the tax charge in that jurisdiction in respect of the Constituent Entity being sufficient to prevent a tax charge on the Constituent Entity-owner under the Blended CFC Tax Regime in respect of its share of the income of the Constituent Entity for the Fiscal Year.

Attributable Income of Entity means the Constituent Entity-owner's share of the Constituent Entity's income, as determined under the Blended CFC Tax Regime in computing the Covered Taxes mentioned in subparagraph (1)(b)(ii).

GloBE Jurisdictional ETR is the rate that would be the Effective Tax Rate for the Fiscal Year of the MNE Group for the jurisdiction in which the Constituent Entity is located, if the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in that jurisdiction were:

- (a) computed without regard to any Covered Taxes imposed under the Blended CFC Tax Regime; and
 - (b) if that jurisdiction imposes a Qualified Domestic Minimum Top-up Tax—increased by an amount equal to the tax payable under the Qualified Domestic Minimum Top-up Tax for the Fiscal Year, in respect of the Constituent Entities of the MNE Group that are located in that jurisdiction, to the extent the Blended CFC Tax Regime allows a foreign tax credit for that tax payable on the same terms as any other creditable Covered Tax.
- (5) For the purposes of subsection (3), compute the Sum of all Blended CFC Allocation Keys as follows:
- (a) first, identify each Entity that:

Section 4-60

- (i) is an Entity in which the Constituent Entity-owner holds an Ownership Interest; and
 - (ii) is located in the jurisdiction in which the Constituent Entity mentioned in subsection (3) is located; and
 - (iii) is not a Constituent Entity of the MNE Group;
- (b) next, compute the sum of the following:
- (i) the Blended CFC Allocation Key of each Constituent Entity of the MNE Group located in the jurisdiction;
 - (ii) the Blended CFC Allocation Key of each Entity identified under paragraph (a), assuming that each such Entity were a Constituent Entity of the MNE Group.

4-60 Meaning of *Blended CFC Tax Regime*

A *Blended CFC Tax Regime* of a jurisdiction means a Controlled Foreign Company Tax Regime under which:

- (a) 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
- (b) 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
- (c) income of Entities located in the jurisdiction in which the owner is located is not taken into account.

4-65 Allocation of amounts from Constituent Entity-owner to Hybrid Entity or Reverse Hybrid Entity

- (1) An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity-owner of a Constituent Entity that is a Hybrid Entity to the Hybrid Entity if:
 - (a) the Constituent Entity-owner holds an Ownership Interest in the Hybrid Entity; and
 - (b) the amount is:
 - (i) accrued in the financial accounts of the Constituent Entity-owner for the Fiscal Year; and
 - (ii) so accrued in respect of income of the Hybrid Entity.
- (2) Subsection (1) applies in relation to a Constituent Entity-owner and a Constituent Entity that is a Reverse Hybrid Entity in the same way that it applies in relation to a Constituent Entity-owner and a Hybrid Entity.

4-70 Amounts accrued in financial accounts of Constituent Entity-owner on distribution from Constituent Entity to Constituent Entity-owner—allocation to Constituent Entity

An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity-owner of a Constituent Entity to the Constituent Entity if the amount is:

- (a) accrued in the financial accounts of the Constituent Entity-owner for the Fiscal Year; and
- (b) so accrued in respect of distributions or deemed distributions during the Fiscal Year from the Constituent Entity to the Constituent Entity-owner that arise from the direct Ownership Interests that it holds in the Constituent Entity.

4-75 Allocation of amounts in respect of Passive Income—inclusion in Constituent Entity’s Adjusted Covered Taxes

- (1) If an amount in respect of Covered Taxes for a Fiscal Year is allocated to a Constituent Entity of an MNE Group under section 4-55 or 4-65 in respect of Passive Income, the lesser of the following amounts is included in the Constituent Entity’s Adjusted Covered Taxes for the Fiscal Year:
 - (a) the amount in respect of Covered Taxes allocated in respect of the Passive Income;
 - (b) the amount that is:
 - (i) the Top-up Tax Percentage for the Fiscal Year of the MNE Group for the jurisdiction in which the Constituent Entity is located (computed disregarding the amount in respect of Covered Taxes allocated to the Constituent Entity under section 4-55 or 4-65 in respect of Passive Income);multiplied by:
 - (ii) the Constituent Entity’s Passive Income for the Fiscal Year, to the extent that is includible under any Controlled Foreign Company Tax Regime or fiscal transparency rule.
- (2) If, because of subsection (1), the amount in respect of Covered Taxes for the Fiscal Year allocated to the Constituent Entity falls short of what it would be disregarding subsection (1), do not allocate the shortfall to the Constituent Entity under sections 4-55 or 4-65.

4-80 Allocation of amounts from Permanent Establishment to Main Entity

- (1) This section applies if subsection 3-250(2) (Allocation of GloBE Loss from Permanent Establishment to Main Entity) applies in relation to a Permanent Establishment and the Main Entity in respect of the Permanent Establishment.
- (2) In computing the Adjusted Covered Taxes of the Permanent Establishment and the Main Entity, disregard a deferred tax asset if:
 - (a) it is attributable to a tax loss arising in the jurisdiction in which the Permanent Establishment is located; and
 - (b) the loss is treated as an expense of the Main Entity under paragraph 3-250(2)(a).

Section 4-80

(3) If:

- (a) an amount is treated as GloBE Income of the Main Entity in respect of a Permanent Establishment under paragraph 3-250(2)(b); and
- (b) Covered Taxes arise in the jurisdiction in which the Permanent Establishment is located, and are associated with the income amount mentioned in that paragraph;

treat those Covered Taxes as Covered Taxes of the Main Entity (but not beyond the amount computed by multiplying that income by the highest corporate tax rate on ordinary income in the jurisdiction where the Main Entity is located).

Part 4-4—Mechanism to address temporary differences

Note: The Total Deferred Tax Adjustment Amount is added to Adjusted Covered Taxes under paragraph 4-5(b).

4-85 Meaning of *Total Deferred Tax Adjustment Amount*

- (1) Subject to the following subsections, the *Total Deferred Tax Adjustment Amount* for a Constituent Entity for a Fiscal Year is equal to:
 - (a) if the applicable domestic tax rate is below the Minimum Rate—the deferred tax expense accrued in its financial accounts, to the extent that:
 - (i) it is in respect of Covered Taxes for the Fiscal Year (the *relevant deferred tax expense*); and
 - (ii) it relates to amounts included in the computation of the Constituent Entity's GloBE Income for the Fiscal Year; or
 - (b) otherwise—that deferred tax expense, to that extent, recast at the Minimum Rate.
- (2) That *Total Deferred Tax Adjustment Amount* does not include any of the following:
 - (a) 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;
 - (b) the amount of the relevant deferred tax expense that is in respect of Disallowed Accruals and Unclaimed Accruals;
 - (c) the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset;
 - (d) 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;
 - (e) the amount of the relevant deferred tax expense that is in respect of the generation and use of tax credits.
- (3) Adjust that Total Deferred Tax Adjustment Amount as follows:
 - (a) increase it by the amount of any Unclaimed Accrual paid during the Fiscal Year;
 - (b) increase it by the amount of any Recaptured Deferred Tax Liability computed in a preceding Fiscal Year that has been paid during the Fiscal Year;
 - (c) if a deferred tax asset has not been recognised in the deferred tax expense mentioned in subsection (1) only because the recognition criteria are not met—reduce it by the amount that would be a reduction to the deferred tax expense if the deferred tax asset were so recognised.
- (4) Subsection (5) applies if:
 - (a) a deferred tax asset has been recorded at a rate lower than the Minimum Rate; and
 - (b) the deferred tax asset is attributable to a GloBE Loss for a Fiscal Year.
- (5) If this subsection applies:

Section 4-90

- (a) recast the deferred tax asset at the Minimum Rate in the Fiscal Year mentioned in paragraph (4)(b) if this reflects the content of the GloBE Information Return for the MNE Group for the Fiscal Year; and
- (b) if the deferred tax asset is recast under paragraph (a)—reduce the **Total Deferred Tax Adjustment Amount** by the amount by which the deferred tax asset is increased because of that recasting.

4-90 Total Deferred Tax Adjustment Amount—effect of Substitute Loss Carry-forward DTA

- (1) This section applies if a Constituent Entity of an MNE Group has a Substitute Loss Carry-forward DTA.
- (2) Subsection (3) applies if the Substitute Loss Carry-forward DTA is a Substitute Loss Carry-forward DTA under subsection 4-95(2).
- (3) For the purposes of computing the **Total Deferred Tax Adjustment Amount** of the Constituent Entity for a Fiscal Year, treat the Substitute Loss Carry-forward DTA as a deferred tax asset in computing the relevant deferred tax expense mentioned in subsection 4-85(1) in relation to the Fiscal Year.
- (4) In computing the relevant deferred tax expense mentioned in subsection (3), take account of the Substitute Loss Carry-forward DTA only to the extent the foreign tax credit that gave rise to the Substitute Loss Carry-forward DTA is used to offset tax liability on income included in the Constituent Entity's GloBE Income or Loss.
- (5) Paragraph 4-85(2)(e) does not apply in relation to the Substitute Loss Carry-forward DTA.

4-95 Meaning of Substitute Loss Carry-forward DTA

- (1) A Constituent Entity of an MNE Group has a **Substitute Loss Carry-forward DTA** that arises in a Fiscal Year if:
 - (a) the jurisdiction in which the Constituent Entity is located requires that foreign source income covered by subsection (4) offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income covered by subsection (4); and
 - (b) the Constituent Entity has, in relation to the jurisdiction:
 - (i) a foreign tax credit; and
 - (ii) a domestic tax loss that is fully or partially offset by foreign source income covered by subsection (4); and
 - (c) 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.
- (2) A Constituent Entity of an MNE Group also has a **Substitute Loss Carry-forward DTA** arising in a Fiscal Year if:
 - (a) the conditions in paragraphs (1)(a) and (b) are satisfied, but the condition in paragraph (1)(c) is not satisfied; and

- (b) 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
 - (c) 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.
- (3) The amount of the Substitute Loss Carry-forward DTA is the lesser of the following:
- (a) the amount of the foreign tax credit mentioned in subparagraph (1)(b)(ii) 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;
 - (b) the amount of the Constituent Entity's tax loss that is offset as mentioned in subparagraph (1)(b)(ii), multiplied by the tax rate applicable in the jurisdiction.
- (4) For the purposes of paragraph (1)(a) and subparagraph (1)(b)(ii), this subsection covers foreign source income if both of the following conditions are satisfied:
- (a) the foreign source income is income of a controlled foreign company of a Constituent Entity of an MNE Group;
 - (b) the Constituent Entity is taxed on the foreign source income under a Controlled Foreign Company Tax Regime.

4-100 Effect of Recaptured Deferred Tax Liability

If there is Recaptured Deferred Tax Liability for a Constituent Entity of an MNE Group located in a jurisdiction for a Fiscal Year:

- (a) for the purposes of section 4-20, treat the amount of the Recaptured Deferred Tax Liability as increasing the Reduction to Covered Taxes of the Constituent Entity for the fifth preceding Fiscal Year; and
- (b) recalculate the Effective Tax Rate and Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the fifth preceding Fiscal Year in accordance with section 5-95.

4-105 Meaning of Recaptured Deferred Tax Liability

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:

- (a) was included in the Total Deferred Tax Adjustment Amount for the Constituent Entity for the fifth preceding Fiscal Year; and
- (b) has not reversed by the end of the last day of the Fiscal Year; and
- (c) does not relate to a Recapture Exception Accrual.

4-110 Meaning of Recapture Exception Accrual

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:

Section 4-115

- (a) cost recovery allowances on tangible assets;
- (b) 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;
- (c) research and development expenses;
- (d) de-commissioning and remediation expenses;
- (e) fair value accounting on unrealised net gains;
- (f) foreign currency exchange net gains;
- (g) insurance reserves and insurance policy deferred acquisition costs;
- (h) a gain that is:
 - (i) from the sale of tangible property located in the jurisdiction in which the Constituent Entity is located; and
 - (ii) reinvested in tangible property in that jurisdiction;
- (i) an additional amount accrued as a result of accounting principle changes with respect to a matter mentioned in any of paragraphs (a) to (h).

4-115 Meaning of *Disallowed Accrual* and *Unclaimed Accrual*

- (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:
 - (a) an uncertain tax position; or
 - (b) distributions from any Constituent Entity of the MNE Group (whether or not the Constituent Entity mentioned previously in this subsection).
- (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:
 - (a) it is not expected to be reversed by the end of the fifth following Fiscal Year; and
 - (b) an election under subsection (3) applies to the Constituent Entity for the current year.

Election

- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified Constituent Entity.
- (4) An election under subsection (3) is an Annual Election.

Part 4-5—The GloBE Loss Election

Note: The GloBE Loss Deferred Tax Asset of an MNE Group, or the GloBE Loss Deferred Tax Asset of an Ultimate Parent Entity of an MNE Group, to the extent that it is used, forms part of Additions to Covered Taxes under paragraph 4-15(b) or (c).

4-120 GloBE Loss Election

- (1) A **GloBE Loss Election** is:
 - (a) an election under subsection (2) (a GloBE Loss Election for an MNE Group); or
 - (b) an election under subsection 4-130(1) (a GloBE Loss Election for an Ultimate Parent Entity).

GloBE Loss Election for an MNE Group

- (2) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction if:
 - (a) the jurisdiction does not have an Eligible Distribution Tax System; and
 - (b) the election is made in the first GloBE Information Return of the MNE Group for the first Fiscal Year in respect of which the following conditions are met:
 - (i) a Constituent Entity of the MNE Group is located in the jurisdiction;
 - (ii) subsection 8-10(1) (Transitional CbCR Safe Harbour) does not apply in relation to the MNE Group, the jurisdiction and the Fiscal Year.
- (3) Unless the GloBE Loss Election for the MNE Group under subsection (2) is revoked, it applies to:
 - (a) 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
 - (b) each subsequent Fiscal Year.

Revocation

- (4) A Filing Constituent Entity for the MNE Group may revoke a GloBE Loss Election for the MNE Group made under subsection (2) of this section.
- (5) If the Filing Constituent Entity revokes a GloBE Loss Election for the MNE Group made under subsection (2), the election does not apply to:
 - (a) 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
 - (b) each subsequent Fiscal Year.

4-125 GloBE Loss Deferred Tax Asset of an MNE Group

Establishment and increase

- (1) If a GloBE Loss Election for an MNE Group made under subsection 4-120(2) applies to a jurisdiction and a Fiscal Year under subsection 4-120(3):

Section 4-130

- (a) Part 4-4 does not apply to a Constituent Entity of the MNE Group that is located in the jurisdiction in the Fiscal Year; and
- (b) 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:
 - (i) a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction is established; and
 - (ii) the amount of that GloBE Loss Deferred Tax Asset is the Net GloBE Loss multiplied by the Minimum Rate; and
- (c) 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 been established:
 - (i) the GloBE Loss Deferred Tax Asset is increased; and
 - (ii) the amount of that increase is the Net GloBE Loss multiplied by the Minimum Rate.

Note: Modifications may apply to the computation of Net GloBE Loss for the purposes of this subsection if a GloBE Loss Election for the Ultimate Parent Entity of the MNE Group also applies to the Fiscal Year: see subsections 4-135(3) and (4).

Use

- (2) If there is Net GloBE Income of the MNE Group for the jurisdiction for a Fiscal Year after the Fiscal Year in which the GloBE Loss Deferred Tax Asset is established, use an amount of the GloBE Loss Deferred Tax Asset for the Fiscal Year, for the purposes of paragraph 4-15(b), equal to the lower of the following:
 - (a) the Net GloBE Income multiplied by the Minimum Rate;
 - (b) the amount of the GloBE Loss Deferred Tax Asset that has not been previously used under this subsection.

Note: Modifications may apply to the computation of Net GloBE Income for the purposes of this subsection if a GloBE Loss Election for the Ultimate Parent Entity of the MNE Group also applies to the Fiscal Year: see subsections 4-135(3) and (4).

Reduction to zero

- (3) If a GloBE Loss Election for an MNE Group made under subsection 4-120(2) that applies to a jurisdiction is revoked:
 - (a) the GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction is reduced to zero on the first day of the first Fiscal Year to which the GloBE Loss Election is no longer applicable; and
 - (b) Parts 4-4 and 9-1 apply in respect of that and subsequent Fiscal Years to a Constituent Entity of the MNE Group that is located in the jurisdiction in the Fiscal Year.

4-130 GloBE Loss Election for an Ultimate Parent Entity

- (1) A Filing Constituent Entity for an MNE Group may make an election for the Ultimate Parent Entity of an MNE Group under this subsection if:
 - (a) the Ultimate Parent Entity is a Flow-through Entity; and
 - (b) the jurisdiction in which it is located does not have an Eligible Distribution Tax System; and

- (c) the election is made in the first GloBE Information Return of the MNE Group for the first Fiscal Year in respect of which subsection 8-10(1) (Transitional CbCR Safe Harbour) does not apply in relation to the MNE Group, the jurisdiction and the Fiscal Year.
- (2) Unless the GloBE Loss Election for the Ultimate Parent Entity made under subsection (1) is revoked, it applies to:
 - (a) 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
 - (b) each subsequent Fiscal Year.

Revocation

- (3) A Filing Constituent Entity for the MNE Group may revoke the GloBE Loss Election for the Ultimate Parent Entity made under subsection (1).
- (4) If the Filing Constituent Entity revokes a GloBE Loss Election for the Ultimate Parent Entity made under subsection (1), the election does not apply to:
 - (a) 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
 - (b) each subsequent Fiscal Year.

4-135 GloBE Loss Deferred Tax Asset of an Ultimate Parent Entity

Establishment and increase

- (1) If a GloBE Loss Election for an Ultimate Parent Entity of an MNE Group made under subsection 4-130(1) applies to a Fiscal Year under subsection 4-130(2):
 - (a) Part 4-4 does not apply to the Ultimate Parent Entity; and
 - (b) if the Ultimate Parent Entity has a GloBE Loss for the Fiscal Year and a GloBE Loss Deferred Tax Asset of the Ultimate Parent Entity has *not* been established:
 - (i) a GloBE Loss Deferred Tax Asset of the Ultimate Parent Entity is established; and
 - (ii) the amount of that GloBE Loss Deferred Tax Asset is the GloBE Loss multiplied by the Minimum Rate; and
 - (c) if the Ultimate Parent Entity has a GloBE Loss for the Fiscal Year and a GloBE Loss Deferred Tax Asset of the Ultimate Parent Entity has been established:
 - (i) the GloBE Loss Deferred Tax Asset is increased; and
 - (ii) the amount of that increase is the GloBE Loss multiplied by the Minimum Rate.

Note: The Ultimate Parent Entity's GloBE Loss for the Fiscal Year may have been reduced under section 7-10.

Use

- (2) If the Ultimate Parent Entity has GloBE Income for a Fiscal Year after the Fiscal Year in which the GloBE Loss Deferred Tax Asset is established, use an amount

Section 4-135

of the GloBE Loss Deferred Tax Asset of the Ultimate Parent Entity for the Fiscal Year, for the purposes of paragraph 4-15(c), equal to the lower of the following:

- (a) the GloBE Income multiplied by the Minimum Rate;
- (b) the amount of the GloBE Loss Deferred Tax Asset that has not been previously used under this subsection.

If GloBE Loss Elections for MNE Group and for Ultimate Parent Entity apply to the same Fiscal Year

- (3) Subsection (4) applies if both of the following apply to a Fiscal Year:
 - (a) a GloBE Loss Election for the Ultimate Parent Entity of an MNE Group made under subsection (1);
 - (b) a GloBE Loss Election for the MNE Group made under subsection 4-120(2).
- (4) For the purposes of applying section 4-125 in relation to the GloBE Loss Election for the MNE Group made under subsection 4-120(2), in computing the Net GloBE Loss or Net GloBE Income of the MNE Group, disregard the GloBE Income or GloBE Loss of the Ultimate Parent Entity.

Reduction to zero

- (5) If a GloBE Loss Election for an Ultimate Parent Entity made under subsection 4-130(1) is revoked:
 - (a) the GloBE Loss Deferred Tax Asset of the Ultimate Parent Entity is reduced to zero on the first day of the first Fiscal Year to which the GloBE Loss Election is no longer applicable; and
 - (b) Parts 4-4 and 9-1 apply in respect of a subsequent Fiscal Year to the Ultimate Parent Entity.

Part 4-6—Post-filing adjustments and tax rate changes

4-140 Effect of adjustment to the liability for Covered Taxes

- (1) This section applies if, in a Fiscal Year (the *current year*), there is an adjustment to the liability for Covered Taxes, recorded in the financial accounts, of a Constituent Entity (the *relevant Constituent Entity*) of an MNE Group for a prior Fiscal Year (the *prior year*).

Note: The treatment of adjustments under this section will not result in refunds of tax payable under section 6, 8 or 10 of the Act for the prior Fiscal Year.

Increase or immaterial decrease covered by an election under subsection (5)

- (2) If there is an increase, or an immaterial decrease covered by an election for the MNE Group under subsection (5), in the sum of the adjustments to liability for Covered Taxes for the prior year of each Constituent Entity of the MNE Group located in the same jurisdiction as the relevant Constituent Entity, treat the adjustment as an adjustment to the relevant Constituent Entity's Adjusted Covered Taxes for the current year.

Decrease, other than immaterial decrease covered by an election under subsection (5)

- (3) If there is a decrease (other than an immaterial decrease covered by an election for the MNE Group under subsection (5)) in the sum of the adjustments to liability for Covered Taxes for the prior year of each Constituent Entity of the MNE Group located in the same jurisdiction as the relevant Constituent Entity:
- (a) recalculate in accordance with section 5-95:
 - (i) the Effective Tax Rate of the MNE Group for the jurisdiction for the prior year; and
 - (ii) the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the prior year; and
 - (b) for the purposes of that recalculation:
 - (i) treat the relevant Constituent Entity's Adjusted Covered Taxes for the prior year as reduced by the amount of the decrease; and
 - (ii) treat the relevant Constituent Entity's GloBE Income and Loss for the prior year, and for all Fiscal Years ending after the end of the prior year but before the start of the current year, as being adjusted as necessary and appropriate.
- (4) For the purposes of the subsections (2) and (3), an immaterial decrease referred to in those sections is an aggregate decrease in that liability of less than 1 million Euros in the sum of adjustments to liability for Covered Taxes for the prior year of each Constituent Entity of the MNE Group located in the same jurisdiction as the relevant Constituent Entity.

Section 4-145

Election

- (5) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that covers an immaterial decrease in the sum of adjustments to liability for Covered Taxes.
- (6) An election under subsection (5) is an Annual Election.

4-145 Tax rate changes and unpaid current tax expense

- (1) If:
 - (a) there is an amount of deferred tax expense, recorded in the financial accounts, of a Constituent Entity, for a Fiscal Year resulting from a reduction to the applicable domestic tax rate; and
 - (b) the reduction results in the application of a rate that is less than the Minimum Rate;treat the amount as an adjustment to the Constituent Entity's liability for Covered Taxes for a prior Fiscal Year.
- (2) If:
 - (a) there is an amount of deferred tax expense, recorded in the financial accounts, of a Constituent Entity, for a Fiscal Year resulting from an increase to the applicable domestic tax rate; and
 - (b) that deferred tax expense has been reversed; and
 - (c) before the increase, the amount was recorded at a rate less than the Minimum Rate;treat the amount as an adjustment to the Constituent Entity's liability for Covered Taxes for a prior Fiscal Year. However, this adjustment is limited to an amount that is equal to an increase of deferred tax expense up to such deferred tax expense recast at the Minimum Rate.
- (3) If:
 - (a) the amount of current tax expense recorded in the financial accounts of a Constituent Entity of an MNE Group for a Fiscal Year (the *prior year*) is included in the Constituent Entity's Adjusted Covered Taxes for the prior year; and
 - (b) that amount is not fully paid by the end of the third Fiscal Year after the prior year; and
 - (c) the amount that remains unpaid exceeds 1 million Euros;then:
 - (d) recalculate in accordance with section 5-95:
 - (i) the Effective Tax Rate of the MNE Group for the jurisdiction in which the Constituent Entity is located, for the prior year; and
 - (ii) the Jurisdictional Top-up Tax of the MNE Group for that jurisdiction for the prior year; and
 - (e) for the purposes of that recalculation, exclude the amount that remains unpaid from the Constituent Entity's Adjusted Covered Taxes for the prior year.

Chapter 5—Computation of Effective Tax Rate

Part 5-1—Determination of Effective Tax Rate

Note: In computing amounts under Parts 5-1, 5-2, 5-3 and 5-4, special rules apply for MNE Groups which have any of the following:

- (a) a Minority-Owned Constituent Entity: see sections 5-120 and 5-125;
- (b) a Joint Venture (and any JV Subsidiaries): see section 6-75;
- (c) an Investment Entity or Insurance Investment Entity: see sections 7-100 and 7-115, and Parts 7-5 and 7-6.

5-5 Meaning of *Effective Tax Rate*

- (1) Subsection (2) applies in relation to an MNE Group for a jurisdiction for a Fiscal Year if it has Net GloBE Income for the jurisdiction for the Fiscal Year.
- (2) The *Effective Tax Rate* of the MNE Group for the jurisdiction for the Fiscal Year is equal to:
 - (a) the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction;divided by:
 - (b) the Net GloBE Income of the MNE Group for the jurisdiction for the Fiscal Year;expressed as a percentage.

Note: The sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction may be modified by subsection 5-10(2) or 7-50(2) or paragraph 7-65(a).

- (3) Subsection (4) applies if:
 - (a) the sum of the Adjusted Covered Taxes mentioned in paragraph (2)(a) exceeds zero; and
 - (b) there is an Excess Negative Tax Expense Carry-forward for the MNE Group for the jurisdiction with a balance that exceeds zero.
- (4) For the purposes of subsection (2), apply that balance to reduce the sum of the Adjusted Covered Taxes mentioned in paragraph (2)(a) (but not below zero).
- (5) Reduce the balance of the Excess Negative Tax Expense Carry-forward to the extent that it is applied under subsection (4).

5-10 Effective Tax Rate—Excess Negative Tax Expense administrative procedure

- (1) Subsection (2) applies if, disregarding that subsection, the sum of the Adjusted Covered Taxes mentioned in paragraph 5-5(2)(a) is less than zero.
- (2) For the purposes of subsection 5-5(2), treat that sum as being zero.
- (3) If subsection (2) applies:
 - (a) where an Excess Negative Tax Expense Carry-forward has not been established for the MNE Group for the jurisdiction:

Section 5-15

- (i) an **Excess Negative Tax Expense Carry-forward** is established for the MNE Group for the jurisdiction; and
 - (ii) the balance of the Excess Negative Tax Expense Carry-forward is increased by the absolute value of the sum mentioned in subsection (1); or
- (b) otherwise—the balance of Excess Negative Tax Expense Carry-forward for the MNE Group for the jurisdiction is increased by the absolute value of the sum mentioned in subsection (1).

Note 1: In some circumstances, the balance of the Excess Negative Tax Expense Carry-forward is applied to reduce the sum of Adjusted Covered Taxes in relation to the jurisdiction mentioned in paragraph 5-5(2)(a): see subsection 5-5(4).

Note 2: The balance of the Excess Negative Tax Expense Carry-forward may also be increased under section 4-35(3).

5-15 Meaning of *Net GloBE Income* and *Net GloBE Loss*

- (1) If, for an MNE Group for a jurisdiction for a Fiscal Year, the amount computed in accordance with the formula in subsection (2):
- (a) is a positive amount—the **Net GloBE Income** of the MNE Group for the jurisdiction for the Fiscal Year is that amount; or
 - (b) is zero or a negative amount—the **Net GloBE Loss** of the MNE Group for the jurisdiction for the Fiscal Year is the absolute value of that amount.
- (2) For the purposes of subsection (1), the formula is as follows:

GloBE Income of all Constituent Entities – GloBE Losses of all Constituent Entities
where:

GloBE Income of all Constituent Entities is the sum of the GloBE Income for the Fiscal Year of all Constituent Entities of the MNE Group located in the jurisdiction.

GloBE Losses of all Constituent Entities is the sum of the GloBE Losses for the Fiscal Year of all Constituent Entities of the MNE Group located in the jurisdiction.

Part 5-2—Top-up Tax

Note: The Jurisdictional Top-up Tax or the Top-up Tax Percentage of an MNE Group for a jurisdiction may be modified by Part 8-2 (Safe harbours).

5-20 Meaning of *Top-up Tax Percentage*

- (1) Subsection (2) applies in relation to an MNE Group for a jurisdiction for a Fiscal Year if it has an Effective Tax Rate for the jurisdiction for the Fiscal Year.
- (2) 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

where:

ETR is the Effective Tax Rate of the MNE Group for the jurisdiction for the Fiscal Year.

5-25 Meaning of *Excess Profit*

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-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.

5-30 Meaning of *Jurisdictional Top-up Tax*

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):

$$\left(\text{Top-up Tax Percentage} \times \text{Excess Profit} \right) + \frac{\text{Additional Current Top-up Tax}}{\text{Top-up Tax}} - \frac{\text{Domestic Top-up Tax}}{\text{Top-up Tax}}$$

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 Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year.

Section 5-35

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.

5-35 Certain amounts of Domestic Top-up Tax disregarded

- (1) This section applies if either of the following applies to all or part of an amount payable (the **disputed amount**) by a Constituent Entity of an MNE Group under a Qualified Domestic Minimum Top-up Tax of a jurisdiction for a Fiscal Year:
 - (a) a Constituent Entity of the MNE Group objects to paying the disputed amount in judicial or administrative proceedings under a law of the jurisdiction on any of the grounds set out in subsection (2);
 - (b) the tax authority of the jurisdiction has determined the disputed amount is not assessable or collectible on any of those grounds.
- (2) For the purposes of paragraphs (1)(a) and (b), the grounds are the following:
 - (a) the disputed amount is not payable on constitutional grounds or as a result of another superior law applying in the jurisdiction;
 - (b) the disputed amount is not payable under a specific agreement with the government of the jurisdiction as to the tax liability of the Constituent Entity or the MNE Group;
 - (c) the disputed amount is not payable because the Constituent Entity:
 - (i) is not liable for any tax in the jurisdiction; or
 - (ii) is entitled to compensation or reimbursement for any tax paid in the jurisdiction.
- (3) For the purposes of the definition of **Domestic Top-up Tax** in section 5-30, treat the disputed amount as not being an amount payable by the Constituent Entity under a Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year.
- (4) However, if subsequently:
 - (a) the Constituent Entity has paid all or part of the disputed amount (the **paid amount**); and
 - (b) no Constituent Entity of the MNE Group objects to paying the disputed amount in judicial or administrative proceedings under a law of the jurisdiction; and
 - (c) disregarding subsection (3), the paid amount would be all or part of an amount payable in relation to the Fiscal Year mentioned in subsection (1) by the Constituent Entity under a Qualified Domestic Minimum Top-up Tax of the jurisdiction for the purposes of the definition of **Domestic Top-up Tax** in section 5-30;for those purposes, treat the paid amount as an amount payable by the Constituent Entity under a Qualified Domestic Minimum Top-up Tax of the jurisdiction for that Fiscal Year.

5-40 Top-up Tax of a Constituent Entity

- (1) Subsection (2) applies if an MNE Group has Net GloBE Income for a jurisdiction for a Fiscal Year.
- (2) 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:

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

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 of the MNE Group in accordance with section 5-15 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.

- (3) Subject to the following subsections, if an MNE Group does not have 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 the Fiscal Year is zero.
- (4) Subsection (5) applies if:
 - (a) an MNE Group does not have Net GloBE Income for a jurisdiction for a Fiscal Year (the **current Fiscal Year**); and
 - (b) there are one or more amounts of Additional Current Top-up Tax of the MNE Group for the jurisdiction for the current Fiscal Year, in respect of a prior Fiscal Year.
- (5) Increase the **Top-up Tax** of a Constituent Entity of the MNE Group, located in the jurisdiction, for the current Fiscal Year by the amount computed in accordance with the following formula:

$$\text{Additional Current Top-up Tax in respect of prior year} \times \frac{\text{GloBE Income of the CE for prior year}}{\text{Aggregate GloBE Income of all CEs for prior year}}$$

where:

Additional Current Top-up Tax in respect of prior year is the sum of the amounts of Additional Current Top-up Tax mentioned in paragraph (4)(b).

Aggregate GloBE Income of all CEs for prior year is the sum of the GloBE Income of all Constituent Entities of the MNE Group that have GloBE Income for the prior Fiscal Year included in the computation of Net GloBE Income of the MNE Group in accordance with section 5-15 for the jurisdiction for the prior Fiscal Year.

Section 5-45

GloBE Income of the CE for prior year is the GloBE Income of the Constituent Entity for the jurisdiction for the prior Fiscal Year.

Note: Subsection (5) may apply multiple times in relation to the current Fiscal Year if there are amounts of Additional Current Top-up Tax of the MNE Group for the jurisdiction for the current Fiscal Year, in respect of more than one prior Fiscal Year.

- (6) Subsection (7) applies if:
- (a) an MNE Group does not have Net GloBE Income for a jurisdiction for a Fiscal Year (the ***current Fiscal Year***); and
 - (b) there is an amount of Additional Current Top-up Tax of the MNE Group for the jurisdiction for the current Fiscal Year, in respect of the current Fiscal Year, for the purposes of subsection 5-100(1).
- (7) Increase the ***Top-up Tax*** of a Constituent Entity of the MNE Group, located in the jurisdiction, for the current Fiscal Year by the amount computed in accordance with the formula in subsection (5), but in doing so:
- (a) treat all references in that subsection to the prior Fiscal Year as instead being references to the current Fiscal Year; and
 - (b) treat the GloBE Income for the current Fiscal Year of a Constituent Entity of the MNE Group located in the jurisdiction as being increased by the amount computed under subsection 5-100(2).

5-45 Treatment of Stateless Constituent Entities

For purposes of this Chapter, treat each Stateless Constituent Entity as a single Constituent Entity located in a separate jurisdiction.

Part 5-3—Substance-based Income Exclusion

5-50 Substance-based Income Exclusion Amount

- (1) The ***Substance-based Income Exclusion Amount*** of an MNE Group for a jurisdiction for a Fiscal Year is the sum of the following:
 - (a) the sum of the Payroll Carve-out Amounts for each Constituent Entity of the MNE Group located in the jurisdiction, for the Fiscal Year;
 - (b) 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.

Note: In computing the Substance-based Income Exclusion Amount of an MNE Group, further special rules (in addition to those mentioned in the note to the heading to Part 5-1) apply if the MNE Group has any of the following:

- (a) a Permanent Establishment: see section 5-80;
- (b) a Flow-through Entity: see section 5-85;
- (c) an Ultimate Parent Entity that is subject to a Deductible Dividend Regime: see section 5-90 and subsections 7-20(7) and 7-25(3);
- (d) an Entity that becomes, or ceases to be, a Constituent Entity of the MNE Group during the Fiscal Year: section 6-35.

- (2) However, the Substance-based Income Exclusion Amount of an MNE Group for a jurisdiction for a Fiscal Year is taken to be zero if an election for the MNE Group under subsection (3) applies to the jurisdiction and the Fiscal Year.

Election

- (3) A Filing Constituent Entity for the MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction.
- (4) An election under subsection (3) is an Annual Election.

Deemed election

- (5) If the GloBE Information Return filed for a Fiscal Year for an MNE Group by a Filing Constituent Entity for the MNE Group:
 - (a) does not compute the Substance-based Income Exclusion Amount for a jurisdiction; or
 - (b) does not claim the Substance-based Income Exclusion Amount for a jurisdiction in the computation of Jurisdictional Top-up Tax for the jurisdiction;the MNE Group is taken to have made an election under subsection (3) that applies to the jurisdiction and Fiscal Year.
- (6) If an MNE Group is taken, under subsection (5), to have made an election, the election cannot be revoked.

5-55 Payroll Carve-out Amount

- (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:

Section 5-60

- (a) first, compute the total amount of Eligible Payroll Costs accrued for the Fiscal Year of Eligible Employees of the Constituent Entity;
 - (b) next, exclude from that total amount the Eligible Payroll Costs, to the extent they are:
 - (i) capitalised and included in the carrying value of Eligible Tangible Assets for the Fiscal Year of a Constituent Entity of the MNE Group; or
 - (ii) 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;
 - (c) next, multiply the result of paragraph (b) by 5%.
- (2) However, for the purposes of paragraph (1)(a), if, in the Fiscal Year:
- (a) an Eligible Employee performs activities for the MNE Group both in the jurisdiction and outside the jurisdiction; and
 - (b) the proportion of the Eligible Employee's time spent performing those activities in the jurisdiction is 50% or less;
- reduce the Eligible Payroll Costs accrued for the Fiscal Year of the Eligible Employee by multiplying it by that proportion.
- (3) For the purposes of paragraph (1)(a), if a Filing Constituent Entity for an MNE Group chooses, under subsection (4), to exclude certain Eligible Payroll Costs for certain Eligible Employees from the computation mentioned in that paragraph, exclude those Eligible Payroll Costs in computing the total amount mentioned in that paragraph.
- (4) For the purposes of subsection (3), a Filing Constituent Entity for an MNE Group may choose to exclude some or all Eligible Payroll Costs for some or all Eligible Employees from the computation mentioned paragraph (1)(a) by excluding relevant amounts from the MNE Group's GloBE Information Return for the Fiscal Year.

5-60 Meaning of *Eligible Payroll Costs* and *Eligible Employee*

- (1) ***Eligible Payroll Costs*** means the following amounts, as recorded in financial accounts:
 - (a) employee compensation expenditures, including salaries, wages, stock-based compensation and other expenditures that provide a direct and separate personal benefit to the employee (such as health insurance and pension contributions);
 - (b) payroll and employment taxes;
 - (c) employer social security contributions.
- (2) ***Eligible Employee*** of a Constituent Entity of an MNE Group means an individual who is:
 - (a) an employee (including a part-time employee) of the Constituent Entity; or
 - (b) 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.

5-65 Tangible Asset Carve-out Amount

- (1) 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:
- (a) first, compute the total amount of the carrying values for the Fiscal Year of each Eligible Tangible Asset of the Constituent Entity;
 - (b) 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;
 - (c) next, multiply the result of paragraph (b) by 5%.

Note: For paragraph (b), do not exclude certain amounts if the property held for lease is subject to an operating lease, or an intragroup lease that is a finance lease: see section 5-70.

- (2) For the purposes of paragraph (1)(a):
- (a) compute the carrying value of an Eligible Tangible Asset of the Constituent Entity for the Fiscal Year:
 - (i) based on the average of the carrying value of the Eligible Tangible Asset at the beginning and ending of the Fiscal Year as recorded for the purposes of preparing the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year; and
 - (ii) net of accumulated depreciation, amortisation, or depletion or impairment loss; and
 - (b) apply the rules in subsection (3) in computing each carrying value mentioned in subparagraph (a)(i) of this subsection.
- (3) For the purposes of paragraph (2)(b), the rules are as follows:
- (a) include any amount attributable to capitalisation of payroll expense;
 - (b) include any amount attributable to any purchase accounting adjustment relating to the asset;
 - (c) include any impairment loss;
 - (d) include so much of the reversal of a previous impairment loss as does not cause the carrying value to exceed the value it would have been had the impairment loss not been recognised;
 - (e) disregard any increase in the value of the Eligible Tangible Asset, and any subsequent incremental increase in depreciation, resulting from revaluation when applying the revaluation model;
 - (f) if, in the Fiscal Year, the Eligible Tangible Asset is located in the jurisdiction mentioned in paragraph (1)(a) for a proportion of the Fiscal Year that is 50% or less—reduce the carrying value by multiplying it by that proportion;
 - (g) if the Eligible Tangible Asset is used in the generation of the Constituent Entity’s Qualified Ancillary International Shipping Income for the Fiscal Year—reduce the carrying value by multiplying it by the proportion computed in accordance with the following formula:

$$1 - \frac{\text{Cap}}{\text{Aggregate AISI}}$$

Section 5-70

where *Aggregate AISI* and *Cap* have the same meanings as in subsection 3-230(1).

- (4) For the purposes of paragraph (1)(a), if a Filing Constituent Entity for an MNE Group chooses, under subsection (5), to exclude to a certain extent the carrying values of certain Eligible Tangible Assets from the computation of the total amount mentioned in that paragraph, exclude those carrying values to that extent in computing that total amount.
- (5) For the purposes of subsection (4), a Filing Constituent Entity for an MNE Group may choose to exclude to a specified extent the carrying values of specified Eligible Tangible Assets from the computation of the total amount mentioned paragraph (1)(a) by excluding relevant amounts from the MNE Group's GloBE Information Return for the Fiscal Year.

5-70 Operating leases and intragroup finance leases

- (1) This section applies if:
 - (a) in a Fiscal Year, the Constituent Entity holds property for lease; and
 - (b) the property is located in the jurisdiction mentioned in subsection 5-65(1); and
 - (c) if paragraph (d) does not apply—the lease is accounted for as an operating lease in the Constituent Entity's financial statements for the Fiscal Year; and
 - (d) if the lease is accounted for as a finance lease in the Constituent Entity's financial statements for the Fiscal Year—the parties to the lease are all Constituent Entities of the MNE Group.
- (2) Despite paragraph 5-65(1)(b):
 - (a) do not exclude from the result of paragraph 5-65(1)(a) the carrying value of the property held for lease; and
 - (b) if:
 - (i) the property is *not* a short-term rental asset under subsection (3) for the Fiscal Year; and
 - (ii) the parties to the lease are *not* all Constituent Entities of the MNE Group;exclude from that result the right-of-use amount for the lease computed in accordance with subsection (4).
- (3) For the purposes of subparagraph (2)(b)(i), a property is a short-term rental asset under this subsection for a Fiscal Year if:
 - (a) the property was leased regularly during the Fiscal Year to different lessees; and
 - (b) the average length of the periods for which it was leased does not exceed 30 days.
- (4) For the purposes of paragraph (2)(b), the right-of-use amount for the lease is the amount of the undiscounted value of any outstanding payments under the lease (see subsection (5)), computed based on the average of that amount at the beginning of the Fiscal Year and that amount at the end of the Fiscal Year.

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- (5) For the purposes of subsection (4), in determining the value of those outstanding payments:
- (a) apply the accounting standard used in determining the Financial Accounting Net Income or Loss of the Constituent Entity; and
 - (b) include the value of any outstanding payments that would be due under any extension to the lease that would fall to be accounted for in accordance with that standard.

5-75 Meaning of *Eligible Tangible Asset*

- (1) ***Eligible Tangible Asset***, of a Constituent Entity located in a jurisdiction, means any of the following:
- (a) property (including plant and equipment) located in the jurisdiction that are owned by the Constituent Entity;
 - (b) natural resources located in the jurisdiction that are owned by the Constituent Entity;
 - (c) the Constituent Entity's right of use, as a lessee, of tangible assets located in the jurisdiction;
 - (d) 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.
- (2) If the Constituent Entity holds part of a property mentioned in paragraph (1)(a) for lease and retains the other part of the property for its own use:
- (a) for the purposes of this Part, treat the parts of the property as separate ***Eligible Tangible Assets***; and
 - (b) allocate the carrying value of the property between those parts on a just and reasonable basis.
- (3) 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.

5-80 Allocation of amounts between a Main Entity and a Permanent Establishment

- (1) This section applies, in relation to a Fiscal Year, if a Constituent Entity of an MNE Group is a Permanent Establishment because of paragraph 19(1)(a), (b) or (c) of the Act.
- (2) For the purposes of sections 5-50, 5-55 and 5-65:
- (a) treat the Eligible Payroll Costs accrued for the Fiscal Year of Eligible Employees of the Permanent Establishment as being those that are or would be included in the separate financial accounts used to compute the Permanent Establishment's Financial Accounting Net Income or Loss for the Fiscal Year mentioned in section 3-240, as adjusted under section 3-245; and
 - (b) treat the Eligible Tangible Assets of the Permanent Establishment as being those whose carrying values are or would be included in those financial accounts for the Fiscal Year; and

Section 5-85

- (c) exclude those Eligible Payroll Costs and Eligible Tangible Assets from the Eligible Payroll Costs and Eligible Tangible Assets of the Main Entity of the Permanent Establishment for the Fiscal Year.
- (3) However, for the purposes of paragraphs (2)(a) and (b):
 - (a) treat Eligible Employees who are not located in the jurisdiction where the Permanent Establishment is located as *not* being Eligible Employees;
 - (b) treat Eligible Tangible Assets that are not located in that jurisdiction as *not* being Eligible Tangible Assets of the Permanent Establishment.
- (4) Subsection (5) applies if:
 - (a) a Flow-through Entity wholly or partly carries out its business through the Permanent Establishment; and
 - (b) under paragraph 3-255(1)(a) or section 7-15, the Permanent Establishment's Financial Accounting Net Income or Loss, GloBE Income or GloBE Loss (as the case may be) for the Fiscal Year has been reduced by an amount.
- (5) For the purposes of sections 5-50, 5-55 and 5-65:
 - (a) reduce the Eligible Payroll Costs accrued for the Fiscal Year of Eligible Employees of the Permanent Establishment by multiplying it by the proportion the amount mentioned in paragraph (4)(b) bears to the Permanent Establishment's Financial Accounting Net Income or Loss, GloBE Income or GloBE Loss (as the case may be) for the Fiscal Year, before the reduction mentioned in that paragraph; and
 - (b) reduce the carrying value for the Fiscal Year of the Eligible Tangible Assets of the Permanent Establishment by multiplying it by the same proportion.

5-85 Allocation of amounts in relation to Flow-through Entities

- (1) For the purposes of sections 5-50, 5-55 and 5-65, if, in relation to a Fiscal Year, a Constituent Entity of an MNE Group is a Flow-through Entity, deal with the Eligible Payroll Costs accrued for the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets by applying subsections (2) to (4) of this section in sequence.
- (2) If:
 - (a) the Flow-through Entity is a Tax Transparent Entity that is not the Ultimate Parent Entity of the MNE Group; and
 - (b) a proportion of the Financial Accounting Net Income or Loss of the Flow-through Entity for the Fiscal Year has been allocated to a Constituent Entity-owner of the Flow-through Entity under paragraph 3-255(1)(c);allocate to the Constituent Entity-owner the same proportion of the Flow-through Entity's Eligible Payroll Costs accrued for the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets (computed disregarding paragraph 5-80(2)(c), this section and section 5-90).
- (3) If:

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- (a) the Flow-through Entity is the Ultimate Parent Entity of the MNE Group; and
 - (b) the Flow-through Entity's GloBE Income for the Fiscal Year has been reduced by an amount under subsection 7-5(2);
- reduce the Flow-through Entity's Eligible Payroll Costs accrued for the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets by multiplying them by the proportion the amount mentioned in paragraph (b) bears to the Flow-through Entity's GloBE Income for the Fiscal Year, before the reduction mentioned in that paragraph.
- (4) If the Flow-through Entity is not the Ultimate Parent Entity of the MNE Group, disregard the Flow-through Entity's remaining Eligible Payroll Costs accrued for the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets.
 - (5) For the purposes of subsections (2) and (3):
 - (a) treat Eligible Employees who are not located in the jurisdiction where the Constituent Entity-owner or Ultimate Parent Entity is located as *not* being Eligible Employees; and
 - (b) treat Eligible Tangible Assets that are not located in that jurisdiction as *not* being Eligible Tangible Assets of the Flow-through Entity.

5-90 Allocation of amounts in relation to Deductible Dividend Regimes

- (1) This section applies, in relation to a Fiscal Year, if:
 - (a) the Ultimate Parent Entity of an MNE Group is subject to a Deductible Dividend Regime; and
 - (b) the GloBE Income of a Constituent Entity of the MNE Group has been reduced by an amount for the Fiscal Year under subsection 7-20(2) or 7-25(3).
- (2) For the purposes of sections 5-50, 5-55 and 5-65:
 - (a) reduce the Eligible Payroll Costs accrued for the Fiscal Year of Eligible Employees of the Constituent Entity by multiplying it by the proportion the amount mentioned in paragraph (1)(b) bears to the Constituent Entity's GloBE Income for the Fiscal Year, before the reduction mentioned in that paragraph; and
 - (b) reduce the carrying value for the Fiscal Year of the Eligible Tangible Assets of the Constituent Entity by multiplying it by the same proportion.

Part 5-4—Additional Current Top-up Tax

5-95 Additional Current Top-up Tax—ETR Adjustment Provisions

- (1) This section applies if, for a Fiscal Year (the *current Fiscal Year*), the Effective Tax Rate 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 an ETR Adjustment Provision (see subsection (6)).
- (2) Recalculate the Effective Tax Rate and Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the prior Fiscal Year in accordance with Parts 5-1 to 5-3, after taking into account the adjustments to Adjusted Covered Taxes and GloBE Income or Loss of Constituent Entities of the MNE Group for the jurisdiction for the prior Fiscal Year required by the relevant ETR Adjustment Provision.
- (3) If, disregarding this subsection, the recalculation results in an increase in the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the prior Fiscal Year:
 - (a) despite that recalculation, do not include the increase in the Jurisdictional Top-up Tax for the jurisdiction for the prior Fiscal Year; and
 - (b) instead, treat the amount of that increase as an amount of *Additional Current Top-up Tax* of the MNE Group for the jurisdiction for the current Fiscal Year, in respect of the prior Fiscal Year.
- (4) For the purposes of working out a Parent Entity's Inclusion Ratio under section 2-15, if there is no Net GloBE Income of the MNE Group for the jurisdiction for the current Fiscal Year, treat the GloBE Income for the current Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction as being:
 - (a) the Top-up Tax of the Constituent Entity for the jurisdiction for the current Fiscal Year;divided by:
 - (b) the Minimum Rate.
- (5) For the purposes of Chapter 2, if as a result of subsection (3) or (4), there is an increase to the Top-up Tax of a Constituent Entity of the MNE Group for a jurisdiction for a Fiscal Year, treat the Constituent Entity as a Low-Taxed Constituent Entity for the Fiscal Year.
- (6) *ETR Adjustment Provision* means section 3-160, 4-100, 4-140, 4-145, 7-65 or 7-75.

5-100 Additional Current Top-up Tax—Adjusted Covered Taxes less than expected amount

- (1) This section applies if, in a Fiscal Year (the *current Fiscal Year*), there is an amount of Additional Current Top-up Tax of an MNE Group for a jurisdiction for a Fiscal Year, in respect of the current Fiscal Year, under subsection 4-30(3).

Note: Section 4-35 (Excess Negative Tax Expense Carry-forward) may prevent an amount of Additional Current Top-up Tax from arising under subsection 4-30(3).

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- (2) For the purposes of section 2-15 (Inclusion Ratio), increase the GloBE Income for the current Fiscal Year of a Constituent Entity of the MNE Group located in the jurisdiction by the amount that is:
- (a) the Additional Current Top-up Tax mentioned in subsection (1) allocated to the Constituent Entity in accordance with subsection (3);
- divided by:
- (b) the Minimum Rate.
- (3) For the purposes of paragraph (2)(a), the Additional Current Top-up Tax is allocated as follows:
- (a) allocate such an amount only to Constituent Entities that have an amount of Adjusted Covered Taxes for the current Fiscal Year that is:
 - (i) less than zero; and
 - (ii) less than the GloBE Income or Loss of the Constituent Entity for the current Fiscal Year multiplied by the Minimum Rate;
 - (b) allocate such an amount to those Constituent Entities pro-rata based upon the following amount for each of those Constituent Entities:
$$\left(\text{GloBE Income or Loss} \times \text{Minimum Rate} \right) - \text{Adjusted Covered Taxes}$$
- where:
- Adjusted Covered Taxes** means the Adjusted Covered Taxes of the Constituent Entity for the current Fiscal Year.
- GloBE Income or Loss** means the GloBE Income or Loss of the Constituent Entity for the current Fiscal Year.
- (4) For the purposes of Chapter 2, if a Constituent Entity is allocated an amount of Additional Current Top-up Tax for a Fiscal Year under subsection (3), treat the Constituent Entity as a Low-Taxed Constituent Entity for the Fiscal Year.

Part 5-5—De minimis exclusion

5-105 De minimis exclusion

- (1) The Top-up Tax of a Constituent Entity of an MNE Group located in a jurisdiction is taken to be zero for a Fiscal Year if:
 - (a) the Average GloBE Revenue of the MNE Group for the jurisdiction for the Fiscal Year is less than 10 million Euros; and
 - (b) the Average GloBE Income or Loss of the MNE Group for the jurisdiction for the Fiscal Year is a loss or is less than 1 million Euros; and
 - (c) an election for the MNE Group under subsection (2) applies to the jurisdiction and the Fiscal Year; and
 - (d) the Constituent Entity is not a Stateless Constituent Entity, an Investment Entity or an Insurance Investment Entity.

Election

- (2) A Filing Constituent Entity for the MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction.
- (3) An election under subsection (2) is an Annual Election.

5-110 Meaning of *Average GloBE Revenue* etc.

- (1) For the purposes of this instrument:
 - (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 (see subsection (3)) for the jurisdiction for the Fiscal Year and the 2 preceding Fiscal Years; and
 - (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 (see subsection (3)) for the jurisdiction for the Fiscal Year and the 2 preceding Fiscal Years.
- (2) However, if, in a preceding Fiscal Year mentioned in subsection (1), there were no Constituent Entities of the MNE Group located in the jurisdiction with revenue or GloBE Losses, exclude that Fiscal Year from the computation of the Average GloBE Revenue and the Average GloBE Income or Loss of the MNE Group for the jurisdiction for the Fiscal Year.
- (3) For the purposes of subsections (1) and (2):
 - (a) the ***GloBE Revenue*** of an MNE Group for a jurisdiction for a Fiscal Year is the sum of the revenue for the Fiscal Year of all Constituent Entities of the MNE Group located in the jurisdiction, taking into account the adjustments computed in accordance with Chapter 3; and
 - (b) the ***GloBE Income or Loss*** of an MNE Group for a jurisdiction for a Fiscal Year is the amount computed for the MNE Group for the jurisdiction for the Fiscal Year in accordance with the formula in subsection 5-15(2) (Net GloBE Income or Net GloBE Loss); and

Section 5-115

- (c) in making computations under paragraphs (a) and (b), disregard the revenue and GloBE Income or Loss of a Constituent Entity that is:
 - (i) a Stateless Constituent Entity; or
 - (ii) an Investment Entity or Insurance Investment Entity.
- (4) However, for the purposes of subsections (1), (2) and (3), if a Fiscal Year of a Constituent Entity of the MNE Group is a period less than 12 months, treat each of the following amounts:
 - (a) the revenue for the Fiscal Year of the Constituent Entity;
 - (b) the GloBE Income or GloBE Loss for the Fiscal Year of the Constituent Entity;as being that amount multiplied by 12, then divided by the period of the Fiscal Year (expressed in months).

5-115 Recalculations under an ETR Adjustment Provision

- (1) This section applies if, in a Fiscal Year (the *current Fiscal Year*) the Effective Tax Rate 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 an ETR Adjustment Provision.
- (2) In computing, for the purposes of section 5-110, the GloBE Revenue of the MNE Group for the jurisdiction for the prior Fiscal Year, make adjustments as necessary and appropriate to correspond to the adjustments to GloBE Income or Loss of Constituent Entities of the MNE Group for the jurisdiction for the prior Fiscal Year required by the relevant ETR Adjustment Provision.
- (3) If, disregarding this subsection, the recalculation results in the condition in paragraph 5-105(1)(a) or (b) being met in relation to the MNE Group for the jurisdiction for a Fiscal Year that is before the current Fiscal Year, treat the condition as not being met.
 - Note: If the recalculation results in the condition in paragraph 5-105(1)(a) or (b) no longer being met in relation to the MNE Group for the jurisdiction for a Fiscal Year, subsection 5-105(1) will cease to apply.

Part 5-6—Minority-Owned Constituent Entities

5-120 Minority-Owned Constituent Entities that comprise a Minority-Owned Subgroup

- (1) This section applies if 2 or more Constituent Entities of an MNE Group (the *actual group*) are Minority-Owned Constituent Entities (each of which is a *MOCE*) that comprise a Minority-Owned Subgroup.
 - (2) For the purposes mentioned in subsection (3):
 - (a) treat the MOCEs as comprising a separate MNE Group (the *deemed group*); and
 - (b) treat the MOCEs as not being Constituent Entities of the actual group.
 - (3) The purposes are as follows:
 - (a) computing the Top-up Tax of each MOCE;
 - (b) computing the Top-up Tax of each Constituent Entity of the actual group (other than a MOCE);
 - (c) determining whether each Constituent Entity of the actual group (including a MOCE) is a Low-Taxed Constituent Entity.
- Note 1: For paragraph (a), to compute the Top-up Tax of a MOCE, it is necessary to compute the Effective Tax Rate and Jurisdictional Top-up Tax of the deemed group for the jurisdiction in which it is located.
- Note 2: For paragraph (c), to determine whether a MOCE is a Low-Taxed Constituent Entity, it is necessary to compute the Effective Tax Rate and Net GloBE Income of the deemed group for the jurisdiction in which it is located (see section 3-195).
- (4) Subsection (2) does not apply for the purposes of Part 5-5 (De minimis exclusion).

5-125 Minority-Owned Constituent Entities that are not part of a Minority-Owned Subgroup

- (1) This section applies if a Constituent Entity of an MNE Group is a Minority-Owned Constituent Entity (the *MOCE*) that:
 - (a) is not a part of a Minority-Owned Subgroup; and
 - (b) is not an Investment Entity.
- (2) For the purposes mentioned in subsection (3), treat the MOCE as the only Constituent Entity of the MNE Group located in the jurisdiction in which it is located.
- (3) The purposes are as follows:
 - (a) computing the Top-up Tax of the MOCE;
 - (b) determining whether the MOCE is a Low-Taxed Constituent Entity.

Note 1: For paragraph (a), to compute that Top-up Tax, it is necessary to compute the Effective Tax Rate and Jurisdictional Top-up Tax of the MNE Group for the jurisdiction in which it is located, on the assumption that the MOCE is the only Constituent Entity of the MNE Group located in the jurisdiction.

Section 5-130

Note 2: For paragraph (b), to determine whether the MOCE is a Low-Taxed Constituent Entity, it is necessary to compute the Effective Tax Rate and Net GloBE Income of the MNE Group for the jurisdiction in which it is located (see section 3-195), on the assumption that the MOCE is the only Constituent Entity of the MNE Group located in the jurisdiction.

- (4) For the purposes mentioned in subsection (5), treat the MOCE as not being a Constituent Entity of the MNE Group.
- (5) The purposes are as follows:
 - (a) computing the Top-up Tax of each Constituent Entity of the MNE Group (other than the MOCE);
 - (b) determining whether each Constituent Entity of the MNE Group (other than the MOCE) is a Low-Taxed Constituent Entity.
- (6) Subsections (2) and (4) do not apply for the purposes of Part 5-5 (De minimis exclusion).

5-130 Meaning of *Minority-Owned Constituent Entity* and *Minority-Owned Parent Entity*

- (1) A Constituent Entity of an MNE Group is a ***Minority-Owned Constituent Entity*** if the Ultimate Parent Entity of the MNE Group has an Ownership Interest Percentage in the Constituent Entity of 30% or less.
- (2) A Minority-Owned Constituent Entity is a ***Minority-Owned Parent Entity*** if:
 - (a) it holds a Controlling Interest in another Minority-Owned Constituent Entity; and
 - (b) a Controlling Interest in it is not held by another Minority-Owned Constituent Entity.

5-135 Meaning of *Minority-Owned Subsidiary* and *Minority-Owned Subgroup*

- (1) 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.
- (2) A ***Minority-Owned Subgroup*** means a Minority-Owned Parent Entity and its Minority-Owned Subsidiaries.

Section 6-5

Chapter 6—Corporate restructurings and holding structures

Part 6-1—Application of consolidated revenue threshold to Group mergers and demergers

6-5 Applicable MNE Groups—mergers

- (1) This section specifies conditions for the purposes of paragraph 12(1)(b) of the Act.
- (2) An MNE Group (the **merged Group**) meets the conditions specified in this section for a Fiscal Year (the **test year**) if:
 - (a) during the test year or the previous 4 Fiscal Years (the **test period**):
 - (i) 2 or more Groups (the **pre-merger Groups**) merged (see subsection (4)) to form the merged Group; or
 - (ii) an Entity that is not part of a Group (the **acquirer**) acquired or merged (see subsection (4)) with one or more other Entities or Groups (the **targets**) to form the merged Group; and
 - (b) the merged Group would be an Applicable MNE Group for the test year under paragraph 12(1)(a) of the Act, on the assumption in subsection (3) of this section.
- (3) For the purposes of paragraph (2)(b), assume that the following amounts were included in the annual revenue of the merged Group for a Fiscal Year in the test period (whether or not the merged Group existed in the Fiscal Year):
 - (a) if subparagraph (2)(a)(i) applies—each amount shown as annual revenue in the Consolidated Financial Statements of the Ultimate Parent Entity of a pre-merger Group for an accounting period ending within the Fiscal Year;
 - (b) if subparagraph (2)(a)(ii) applies—the following amounts:
 - (i) an amount shown as annual revenue in the financial statements of the acquirer for an accounting period ending within the Fiscal Year;
 - (ii) in the case of a target that is part of a Group for the Fiscal Year—an amount shown as annual revenue in the Consolidated Financial Statements of the Ultimate Parent Entity of the target for an accounting period ending within the Fiscal Year;
 - (iii) in the case of a target that is not part of a Group for the Fiscal Year—an amount shown as annual revenue in the financial statements of the target for an accounting period ending within the Fiscal Year.
- (4) For the purposes of this section, a **merger** means any arrangement under which:
 - (a) all of the Group Entities of 2 or more separate Groups are brought under common control such that they are Group Entities of one Group; or
 - (b) all (or substantially all) of the Group Entities of a Group, or 2 or more separate Groups, are brought under common control with one or more Entities such that they are Group Entities of one Group; or

- (c) an Entity that is not a member of any Group is brought under common control with another Entity or Group such that they are Group Entities of one Group.

6-10 Applicable MNE Groups—demergers

- (1) This section specifies conditions for the purposes of paragraph 12(1)(b) of the Act.
- (2) An MNE Group (the *demerged Group*) meets the conditions specified in this section for a Fiscal Year (the *test year*) if:
 - (a) an Applicable MNE Group demerges (see subsection (3)) into 2 or more Groups; and
 - (b) the demerged Group is one of those Groups; and
 - (c) the demerged Group is an MNE Group throughout the test year; and
 - (d) if the test year is the first Fiscal Year ending after the demerger—the demerged Group’s annual revenue for the test year equals or exceeds its GloBE Threshold for the test year; and
 - (e) if the test year is the second, third or fourth Fiscal Year ending after the demerger—in at least:
 - (i) the test year and a previous Fiscal Year ending after the demerger; or
 - (ii) two of the Fiscal Years ending after the demerger and before the test year;the demerged Group has annual revenues equalling or exceeding its GloBE Threshold for the relevant year.
- (3) For the purposes of this section, a *demerger* means any arrangement under which the Group Entities of a Group are separated into 2 or more Groups that are no longer consolidated with the same Ultimate Parent Entity.

Part 6-2—Constituent Entities joining and leaving an MNE Group

Division 1—Transfers of Ownership Interests

6-15 Application of this Division

- (1) This Division applies if:
 - (a) there is a transfer of Ownership Interests in an Entity (the *target*) in a Fiscal Year (the *transfer year*); and
 - (b) any of the following situations result from the transfer:
 - (i) the target becomes a Constituent Entity of an MNE Group (the *acquiring MNE Group*);
 - (ii) the target ceases to be a Constituent Entity of an MNE Group (the *disposing MNE Group*).

Note: This Division does not apply if the transfer is treated and taxed as an asset sale by a relevant jurisdiction: see subsection 6-50(2).

- (2) To avoid doubt, the situations mentioned in paragraph (1)(b) can arise where any of the following occur:
 - (a) the target ceases to be a Constituent Entity of the disposing MNE Group and becomes a Constituent Entity of the acquiring MNE Group;
 - (b) the target becomes a Constituent Entity of the acquiring MNE Group because the acquiring MNE Group is a new Group and the target becomes the Ultimate Parent Entity of the acquiring MNE Group.

6-20 Target's assets etc. included in MNE Group's Consolidated Financial Statements

- (1) For the purposes of this instrument, if any portion of the target's assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the Consolidated Financial Statements of the Ultimate Parent Entity of the disposing MNE Group in the transfer year:
 - (a) in applying this instrument in relation to the disposing MNE Group, treat the target as a Constituent Entity of that MNE Group for the transfer year; and
 - (b) the rules set out in sections 6-25 to 6-45 apply.
- (2) For the purposes of this instrument, if any portion of the target's assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the Consolidated Financial Statements of the Ultimate Parent Entity of the acquiring MNE Group in the transfer year:
 - (a) in applying this instrument in relation to the acquiring MNE Group, treat the target as a Constituent Entity of that MNE Group for the transfer year; and
 - (b) the rules set out in sections 6-25 to 6-45 apply.

- (3) To avoid doubt, if both subparagraphs 6-15(1)(b)(i) and (ii) apply in the transfer year, the target may be treated as a Constituent Entity of both MNE Groups under subsections (1) and (2).

6-25 Target's Financial Accounting Net Income or Loss and Adjusted Covered Taxes

For the purposes of this instrument, take into account the Financial Accounting Net Income or Loss and Adjusted Covered Taxes of the target for the transfer year only to the extent that they are taken into account in:

- (a) in applying this instrument in relation to the disposing MNE Group—the Consolidated Financial Statements of the Ultimate Parent Entity of the disposing MNE Group for the transfer year; or
- (b) in applying this instrument in relation to the acquiring MNE Group—the Consolidated Financial Statements of the Ultimate Parent Entity of the acquiring MNE Group for the transfer year.

6-30 Historical carrying value of target's assets and liabilities

For the purposes of applying this instrument in relation to the acquiring MNE Group, in computing the GloBE Income or Loss and Adjusted Covered Taxes of the target in the transfer year and each later Fiscal Year, use the target's historical carrying value of its assets and liabilities.

6-35 Target's Eligible Payroll Costs and Tangible Asset Carve-out Amount

- (1) For the purposes of this instrument, in computing the target's Eligible Payroll Costs for the transfer year, take into account only those costs reflected in:
 - (a) in applying this instrument in relation to the disposing MNE Group—the Consolidated Financial Statements of the Ultimate Parent Entity of the disposing MNE Group for the transfer year; or
 - (b) in applying this instrument in relation to the acquiring MNE Group—the Consolidated Financial Statements of the Ultimate Parent Entity of the acquiring MNE Group for the transfer year.
- (2) For the purposes of this instrument, in computing the Tangible Asset Carve-out Amount for the target for the transfer year, adjust the carrying value of the target's Eligible Tangible Assets for the transfer year proportionally to correspond with the period in the transfer year in which that the target was a Group Entity of:
 - (a) in applying this instrument in relation to the disposing MNE Group—the disposing MNE Group; or
 - (b) in applying this instrument in relation to the acquiring MNE Group—the acquiring MNE Group.

6-40 Deferred tax assets and deferred tax liabilities

- (1) Subsection (2) applies if:
 - (a) the target becomes a Constituent Entity of the acquiring MNE Group; and

Section 6-45

- (b) a deferred tax asset or deferred tax liability is transferred to the acquiring MNE Group as a result of the transfer of Ownership Interests mentioned in subsection 6-15(1).
- (2) In applying this instrument in relation to the acquiring MNE Group, take the deferred tax asset or deferred tax liability into account in the same manner and to the same extent as if the acquiring MNE Group controlled the target when the deferred tax asset or deferred tax liability arose.
- (3) To avoid doubt, subsection (2) does not apply in relation to a GloBE Loss Deferred Tax Asset.
- (4) Subsections (5) and (6) apply if:
 - (a) the target ceases to be a Constituent Entity of the disposing MNE Group; and
 - (b) the target becomes a Constituent Entity of the acquiring MNE Group; and
 - (c) a deferred tax liability of the target has previously been included in the target's Total Deferred Tax Adjustment Amount.
- (5) In applying sections 4-100, 4-105 and 4-110 in relation to the disposing MNE Group, treat the deferred tax liability as reversed at the end of the last day of the transfer year.
- (6) In applying section 4-100 in relation to the acquiring MNE Group:
 - (a) treat the deferred tax liability as arising in the transfer year; and
 - (b) treat any subsequent increase to the Reductions to Covered Taxes of the target under section 4-100 that results from paragraph (a) as having effect for the Fiscal Year in which the amount is recaptured.

6-45 Target's Top-up Tax if Parent Entity in 2 or more MNE Groups

If, in the transfer year, the target is:

- (a) a Parent Entity; and
- (b) a Group Entity of 2 or more MNE Groups;

in computing the Top-up Tax of the target for the transfer year, apply the provisions of this instrument separately in relation to each of the MNE Groups.

Division 2—Transfer of Ownership Interests treated as transfer of assets and liabilities

6-50 Transfer of Ownership Interests treated as transfer of assets and liabilities

- (1) Subsections (2) and (3) apply if:
 - (a) there is an acquisition or disposal of a Controlling Interest in a Constituent Entity (the *target*); and
 - (b) the following jurisdiction treats that acquisition or disposal in the same or similar manner as an acquisition or disposition of the assets and liabilities of the target:
 - (i) unless subparagraph (ii) applies—the jurisdiction in which the target is located;
 - (ii) if the target is a Tax Transparent Entity—the jurisdiction in which those assets are located; and
 - (c) that jurisdiction imposes a Covered Tax on the person disposing of the Controlling Interest based on the difference between:
 - (i) the tax basis of those assets and liabilities; and
 - (ii) the consideration paid in exchange for the Controlling Interest, or the fair value of the assets and liabilities.
- (2) Division 1 of this Part does not apply in relation to the acquisition or disposal of the Controlling Interest.
- (3) For the purposes of this instrument, treat the acquisition or disposal of the Controlling Interest as an acquisition or disposal of the assets and liabilities of the target.

Note: For acquisitions and disposals of assets and liabilities, see Part 6-3.

Part 6-3—Transfer of assets and liabilities

6-55 Acquisitions and disposals of assets and liabilities

- (1) If a Constituent Entity of an MNE Group (the *disposing Constituent Entity*) disposes of an asset or liability, in computing the GloBE Income or Loss of the disposing Constituent Entity for the Fiscal Year in which the disposal occurs, include the gain or loss on the disposal.
- (2) If a Constituent Entity of an MNE Group (the *acquiring Constituent Entity*) acquires an asset or liability, in determining the GloBE Income or Loss of the acquiring Constituent Entity for a Fiscal Year ending after the acquisition:
 - (a) if subsections 6-50(2) and (3) apply in relation to the acquisition—use the fair value of the asset or liability; or
 - (b) otherwise—use the acquiring Constituent Entity’s carrying value of the asset or liability determined under the accounting standard used in preparing Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group.

6-60 GloBE Reorganisations

- (1) This section applies if the disposal or acquisition of the asset or liability is part of a GloBE Reorganisation.
- (2) Despite section 6-55:
 - (a) in the case of a disposal—in computing the disposing Constituent Entity’s GloBE Income or Loss for the Fiscal Year in which the disposal occurs:
 - (i) if the disposing Constituent Entity recognises a Non-qualifying Gain or Loss in the GloBE Reorganisation—include the Non-qualifying Gain or Loss; or
 - (ii) otherwise—exclude the gain or loss on the disposal; and
 - (b) in the case of an acquisition—in computing the GloBE Income or Loss of the acquiring Constituent Entity for a Fiscal Year ending after the acquisition:
 - (i) use the disposing Entity’s carrying value of the asset or liability immediately before the disposal; and
 - (ii) adjust the carrying value in a manner consistent with the tax laws of the jurisdiction in which the acquiring Constituent Entity is located, to take into account any Non-qualifying Gain or Loss arising from the disposal.

6-65 Meaning of *GloBE Reorganisation* and *Non-qualifying Gain or Loss*

- (1) A transformation (see subsection (2)), 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:
 - (a) the transformation or transfer involves the disposal or acquisition of assets or liabilities by a Constituent Entity of an MNE Group;

- (b) 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;
 - (c) if consideration is provided for the transfer—the consideration is, in whole or in significant part:
 - (i) where the transfer is a liquidation—the cancellation of equity interests of the Entity that is the subject of the liquidation; or
 - (ii) otherwise—equity interests issued by the Entity acquiring the assets or liabilities (the **acquiror**) or by a person connected with that Entity;
 - (d) 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;
 - (e) 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).
- (2) For the purposes of subsection (1), 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.
- (3) To avoid doubt, for the purposes of subsection (1), a transformation or transfer includes a contribution of assets to the capital of an existing Entity, where the Entity does not issue new or additional Ownership Interests in exchange for the contributed assets.
- (4) For the purposes of paragraph (1)(e), the amount covered by this subsection is the lesser of the following:
- (a) 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;
 - (b) the transferor’s financial accounting gain or loss arising in connection with the GloBE Reorganisation.

This amount is the transferor’s **Non-qualifying Gain or Loss** in relation to the GloBE Reorganisation.

Note: The Non-qualifying Gain or Loss is:

- (a) if the amount mentioned in paragraph (a) or (b) is a gain—a positive amount; or
- (b) if the amount mentioned in paragraph (a) or (b) is a loss—a negative amount.

6-70 Fair value adjustments

Election

- (1) Subsection (2) applies if, because of an event (the **triggering event**), a Constituent Entity of an MNE Group (the **adjusting Constituent Entity**) is required or permitted to adjust the basis of its assets or the amount of its liabilities to fair value for tax purposes in the jurisdiction in which it is located.
- (2) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to the adjusting Constituent Entity.

Section 6-70

- (3) An election under subsection (2) is:
- (a) an Annual Election (if the election specifies that it is an Annual Election);
or
 - (b) a Five-Year Election (if the election specifies that it is a Five-Year Election).

Adjustments

- (4) In computing the GloBE Income or Loss of the adjusting Constituent Entity for a Fiscal Year, apply the rules in subsections (5), (6) and (7) if:
- (a) an election under subsection (2) applies to the adjusting Constituent Entity and the Fiscal Year; and
 - (b) the Fiscal Year ends after the triggering event occurred.
- (5) Include an amount of gain or loss in respect of each of the adjusting Constituent Entity's assets and liabilities computed as follows:
- (a) first, compute the difference between:
 - (i) the carrying value for financial accounting purposes of the asset or liability immediately before the day of the triggering event; and
 - (ii) the fair value of the asset or liability immediately after the triggering event;
 - (b) then, if the triggering event is in connection with a GloBE Reorganisation in relation to which the adjusting Constituent Entity has an amount of Non-Qualifying Gain or Loss, reduce the result of paragraph (a) by that amount.
- Note: If the amount of Non-Qualifying Gain or Loss is a negative number, reducing the result of paragraph (a) by that amount would increase it.
- (6) Use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event.
- (7) Include the amount mentioned in subsection (5) as follows:
- (a) if the election is an Annual Election—include all of that amount in relation to the Fiscal Year in which the triggering event occurs;
 - (b) if the election is a Five-Year Election—include one fifth of that amount in relation to the Fiscal Year in which the triggering event occurs and in relation to each of the subsequent 4 Fiscal Years.
- (8) If paragraph (7)(b) applies, and the adjusting Constituent Entity ceases to be a Constituent Entity of the MNE Group in a Fiscal Year (the *leaving year*) that is one of the 5 Fiscal Years mentioned in that paragraph, then despite that paragraph:
- (a) include one-fifth of the amount mentioned in subsection (5) in relation to the Fiscal Year in which the triggering event occurs; and
 - (b) include one-fifth of that amount in relation to each of the subsequent 4 Fiscal Years that end before the leaving year; and
 - (c) include any remaining part of that amount in relation to the leaving year.

Part 6-4—Joint Ventures

6-75 Joint Ventures

- (1) This section applies to a Joint Venture of an MNE Group (the **actual group**) and its JV Subsidiaries (if any).
- (2) For the purposes mentioned in subsection (3):
 - (a) treat the Joint Venture and its JV Subsidiaries (each of which is a **JV Entity**) as Constituent Entities that comprise a separate MNE Group (the **deemed group**); and
 - (b) treat the Joint Venture as the Ultimate Parent Entity of the deemed group.

Note: The JV Entities are not Constituent Entities of the actual group, as their assets, liabilities, income, expenses and cash flows are not included in the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group. Therefore, they are not part of the actual group for which Effective Tax Rate and Jurisdictional Top-up Tax are computed.

- (3) The purposes are as follows:
 - (a) computing the Top-up Tax of the JV Entities;
 - (b) determining whether each of the JV Entities is a Low-Taxed Constituent Entity.

Note 1: For paragraph (a), to compute the Top-up Tax of a JV Entity, it is necessary to compute the Effective Tax Rate and Jurisdictional Top-up Tax of the deemed group for the jurisdiction in which it is located.

Note 2: The Top-up Tax of a JV Entity is used to compute:

- (a) the IIR Top-up Tax Amount of a Parent Entity of the actual group that holds an ownership interest in the JV entity (see subsection 2-5(4)); and
- (b) the Domestic Top-up Tax Amount of the JV Entity (see subsections 2-25(5) to (8)); and
- (c) the Total UTPR Top-up Tax Amount of the actual group (see paragraph 2-55(1)(b)).

Note 3: For paragraph (b), to determine whether a JV Entity is a Low-Taxed Constituent Entity, it is necessary to compute the Effective Tax Rate and Net GloBE Income of the deemed group for the jurisdiction in which it is located (see section 3-195).

Part 6-5—Multi-Parented MNE Groups

6-80 Multi-Parented MNE Groups

- (1) This section is made for the purposes of section 28 of the Act.
- (2) In applying the Act and this instrument in relation to 2 or more Groups (the *separate Groups*) that comprise a Multi-Parented MNE Group in respect of a Fiscal Year:
 - (a) treat the Group Entities and Constituent Entities of each separate Group as Group Entities and Constituent Entities respectively of a single MNE Group (the *combined MNE Group*); and
 - (b) treat an Entity (other than an Excluded Entity) as a Constituent Entity of the combined MNE Group if:
 - (i) it is consolidated on a line-by-line basis with the combined MNE Group; or
 - (ii) Constituent Entities in the combined MNE Group hold a Controlling Interest in it; and
 - (c) treat the Consolidated Financial Statements referred to in subsection 6-85(3) or (4) (as the case may be) as the Consolidated Financial Statements of each of the Ultimate Parent Entities of the combined MNE Group; and
 - (d) treat:
 - (i) the Ultimate Parent Entities of the separate Groups as the Ultimate Parent Entities of the combined MNE Group; and
 - (ii) references in the Act and this instrument to an Ultimate Parent Entity as being a reference to each of those Ultimate Parent Entities, for the purposes of applying the Act and this instrument in relation to the combined MNE Group; and
 - (e) for the purposes of computing, under section 2-5, the IIR Top-up Tax Amounts of a Parent Entity of the combined MNE Group (including an Ultimate Parent Entity of the combined MNE Group) for a Fiscal Year, compute in accordance with Parts 2-1 to 2-3 its Allocable Share of the Top-up Tax of a Constituent Entity of the combined MNE Group that is a Low-Taxed Constituent Entity.

6-85 Meaning of *Multi-Parented MNE Group* etc.

- (1) Two or more Groups comprise a *Multi-Parented MNE Group* if:
 - (a) the Ultimate Parent Entities of those Groups enter into an arrangement that is a Stapled Structure or a Dual-listed Arrangement; and
 - (b) at least one of the controlled Entities (see subsection (2)) of those Groups is located in a different jurisdiction to another of the other controlled Entities of those Groups.
- (2) For the purposes of paragraph (1)(b), the following are controlled Entities of those Groups:
 - (a) a Group Entity of any of those Groups;

- (b) a Permanent Establishment of any of those Groups;
 - (c) an Entity in which a Controlling Interest is held by one or more Group Entities of any of those Groups.
- (3) **Stapled Structure** means an arrangement entered into by 2 or more Ultimate Parent Entities of separate Groups, under which all of the following apply:
- (a) 50% or more of the Ownership Interests in the Ultimate Parent Entities of the separate Groups are (by reason of form of ownership, restrictions on transfer, or other terms or conditions) combined with each other;
 - (b) those combined Ownership Interests cannot be transferred or traded independently;
 - (c) if the combined Ownership Interests are listed—they are quoted at a single price;
 - (d) one of the Ultimate Parent Entities prepares Consolidated Financial Statements:
 - (i) 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
 - (ii) that are required by a regulatory regime to be externally audited.
- (4) **Dual-listed Arrangement** means an arrangement entered into by 2 or more Ultimate Parent Entities of separate Groups, under which all of the following apply:
- (a) the Ultimate Parent Entities agree to combine their business by contract alone;
 - (b) 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;
 - (c) the Groups' activities are managed as a single economic entity under contractual arrangements while retaining their separate legal identities;
 - (d) the Ownership Interests in each of the Ultimate Parent Entities are quoted, traded or transferred independently in different capital markets;
 - (e) the Ultimate Parent Entities prepare Consolidated Financial Statements:
 - (i) 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
 - (ii) that are required by a regulatory regime to be externally audited.

Section 7-5

Chapter 7—Tax neutrality and distribution regimes

Part 7-1—Ultimate Parent Entity that is a Flow-through Entity

7-5 Flow-through Entity that is Ultimate Parent Entity—reduce GloBE Income and Covered Taxes

- (1) This section applies if:
 - (a) the Ultimate Parent Entity of an MNE Group is a Flow-through Entity; and
 - (b) an amount (the *attributable income*) of the Ultimate Parent Entity's GloBE Income for a Fiscal Year is attributable to a Direct Ownership Interest held by another Entity in the Ultimate Parent Entity.
- (2) Reduce the Ultimate Parent Entity's GloBE Income for the Fiscal Year by the attributable income (but not below zero) if any of the following conditions are satisfied:
 - (a) the holder of the Direct Ownership Interest is subject to Tax in respect of such income for a taxable period that ends within 12 months after the end of the Fiscal Year and the condition in subsection (3) is met;
 - (b) the holder is an individual that:
 - (i) is a tax resident in the jurisdiction in which the Ultimate Parent Entity is located; and
 - (ii) holds Ownership Interests in the Ultimate Parent Entity that, in the aggregate, are a right to 5% or less of the profits and assets of the Ultimate Parent Entity;
 - (c) the holder is a Governmental Entity, an International Organisation, a Non-profit Organisation, or a Pension Fund that:
 - (i) if the holder is a Governmental Entity—is a Governmental Entity of the jurisdiction in which the Ultimate Parent Entity is located; and
 - (ii) if the holder is not a Governmental Entity—was created and is managed in the jurisdiction in which the Ultimate Parent Entity is located; and
 - (iii) holds Ownership Interests in the Ultimate Parent Entity that, in the aggregate, are a right to 5% or less of the profits and assets of the Ultimate Parent Entity.
- (3) For the purposes of paragraph (2)(a), the condition in this subsection is met if:
 - (a) 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; or
 - (b) it can be reasonably expected that the sum of:
 - (i) the Covered Taxes for the Fiscal Year payable by the Ultimate Parent Entity on the attributable income; and
 - (ii) if one or more other Constituent Entities of the MNE Group are Tax Transparent Entities—the Covered Taxes for the Fiscal Year payable by the other Constituent Entities, to the extent (if any) that those Covered Taxes relate directly to the attributable income; and

- (iii) the Taxes payable by the holder of the Ownership Interest in respect of the attributable income;
equals or exceeds the full amount of the attributable income multiplied by the Minimum Rate.
- (4) If an Ultimate Parent Entity's GloBE Income for a Fiscal Year is reduced under subsection (2), reduce its Covered Taxes for the Fiscal Year as follows:
 - (a) first, compute the amount by which:
 - (i) the Ultimate Parent Entity's GloBE Income for the Fiscal Year after the reduction;
falls short of:
 - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
 - (b) next, compute the fraction that is:
 - (i) that shortfall;divided by:
 - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
 - (c) next, multiply the Ultimate Parent Entity's Covered Taxes for the Fiscal Year by that fraction.

The result of paragraph (c) is the amount of the reduction under this subsection of the Ultimate Parent Entity's Covered Taxes for the Fiscal Year.

7-10 Flow-through Entity that is Ultimate Parent Entity—reduce GloBE Loss

- (1) This section applies if:
 - (a) the Ultimate Parent Entity of an MNE Group is a Flow-through Entity; and
 - (b) an amount (the *attributable loss*) of the Ultimate Parent Entity's GloBE Loss for a Fiscal Year is attributable to a Direct Ownership Interest held by another Entity in the Ultimate Parent Entity.
- (2) Reduce the Ultimate Parent Entity's GloBE Loss for the Fiscal Year by the attributable loss (but not below zero), except to the extent that the holder of the Ownership Interest is not allowed to use the attributable loss in computing their separate taxable income.

7-15 Application of sections 7-5 and 7-10 to Permanent Establishment

- (1) This section applies if:
 - (a) the Ultimate Parent Entity of an MNE Group is a Flow-through Entity; and
 - (b) either:
 - (i) the Ultimate Parent Entity; or
 - (ii) if subsection (2) applies—the Tax Transparent Entity mentioned in that subsection;wholly or partly carries out its business through a Permanent Establishment.

Section 7-15

- (2) For the purposes of subparagraph (1)(b)(ii), this subsection applies if the Ultimate Parent Entity holds an Ownership Interest in a Tax Transparent Entity that is:
 - (a) a Direct Ownership Interest; or
 - (b) an Indirect Ownership Interest held through a Tax Transparent Structure.
- (3) Subsection (4) applies if an amount (the *attributable income*) of the Permanent Establishment's GloBE Income for a Fiscal Year is attributable to a Direct Ownership Interest held by another Entity in the Ultimate Parent Entity.
- (4) Subsections 7-5(2), (3) and (4) apply to the Permanent Establishment in the same way that they apply to an Ultimate Parent Entity.
- (5) Subsection (6) applies if an amount (the *attributable loss*) of the Permanent Establishment's GloBE Loss for a Fiscal Year is attributable to a Direct Ownership Interest held by another Entity in the Ultimate Parent Entity.
- (6) Subsection 7-10(2) applies to the Permanent Establishment in the same way that it applies to an Ultimate Parent Entity.

Part 7-2—Ultimate Parent Entity subject to Deductible Dividend Regime

7-20 Ultimate Parent Entity subject to Deductible Dividend Regime—reduce GloBE Income and Covered Taxes

- (1) This section applies if:
 - (a) the Ultimate Parent Entity of an MNE Group is subject to a Deductible Dividend Regime; and
 - (b) the Ultimate Parent Entity distributes an amount (the *dividend amount*) referable to its GloBE Income for a Fiscal Year as a Deductible Dividend within 12 months after the end of the Fiscal Year.
- (2) Reduce the Ultimate Parent Entity's GloBE Income for the Fiscal Year by the dividend amount (but not below zero) if any of the following conditions are satisfied:
 - (a) both of the following apply:
 - (i) the dividend is subject to Tax in the hands of the recipient of the dividend for a taxable period that ends within 12 months after the end of the Fiscal Year;
 - (ii) the condition in subsection (3) is met;
 - (b) the recipient of the dividend is an individual that:
 - (i) is a tax resident in the jurisdiction in which the Ultimate Parent Entity is located; and
 - (ii) holds Ownership Interests in the Ultimate Parent Entity that, in the aggregate, are a right to 5% or less of the profits and assets of the Ultimate Parent Entity;
 - (c) the recipient of the dividend is:
 - (i) a Governmental Entity of the jurisdiction in which the Ultimate Parent Entity is located; or
 - (ii) an International Organisation, a Non-profit Organisation, or a Pension Fund (other than a Pension Fund that is a Pension Services Entity) that was created and is managed in the jurisdiction in which the Ultimate Parent Entity is located.
- (3) For the purposes of subparagraph (2)(a)(ii), the condition in this subsection is met if:
 - (a) the dividend is subject to Tax in the hands of the recipient of the dividend at a nominal rate that equals or exceeds the Minimum Rate; or
 - (b) it can be reasonably expected that the sum of:
 - (i) the Covered Taxes for the Fiscal Year paid by the Ultimate Parent Entity on an amount of GloBE Income to which the dividend amount relates; and
 - (ii) the Taxes payable by the recipient of the dividend on the dividend amount;equals or exceeds the dividend amount multiplied by the Minimum Rate; or

Section 7-25

- (c) the recipient of the dividend is an individual and the dividend is a patronage dividend from a supply Cooperative.
- (4) For the purposes of subsections (2) and (3), an amount of a patronage dividend from a supply Cooperative is taken to be subject to Tax in the hands of the recipient of the dividend to the extent it reduces an expense or cost that is deductible in computing the taxable income of the recipient of the dividend.
- (5) If an Ultimate Parent Entity's GloBE Income for a Fiscal Year is reduced under subsection (2), reduce its Covered Taxes for the Fiscal Year as follows:
 - (a) first, compute the amount by which:
 - (i) the Ultimate Parent Entity's GloBE Income for the Fiscal Year after the reduction;falls short of:
 - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
 - (b) next, compute the fraction that is:
 - (i) that shortfall;divided by:
 - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
 - (c) next, multiply the Ultimate Parent Entity's Covered Taxes for the Fiscal Year (other than any taxes paid on undistributed GloBE Income pursuant to the Deductible Dividend Regime itself, including taxes that are based on corporate equity or retained earnings) by that fraction.

The result of paragraph (c) is the amount of the reduction under this subsection of the Ultimate Parent Entity's Covered Taxes for the Fiscal Year.
- (6) If an Ultimate Parent Entity's Covered Taxes for the Fiscal Year are reduced under subsection (5) by an amount, reduce its GloBE Income for the Fiscal Year by that amount in addition to the reduction of that GloBE Income under subsection (2).
- (7) If:
 - (a) an Ultimate Parent Entity's GloBE Income for the Fiscal Year is reduced under subsection (2); and
 - (b) its Covered Taxes for the Fiscal Year are reduced under subsection (5);reduce the Eligible Payroll Costs incurred in the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets by the amount computed by multiplying them by the fraction computed under paragraph (5)(b).

7-25 Ultimate Parent Entity subject to Deductible Dividend Regime—reduce GloBE Income and Covered Taxes of other Constituent Entities

- (1) This section applies if:
 - (a) the Ultimate Parent Entity of an MNE Group is subject to a Deductible Dividend Regime; and
 - (b) the Ultimate Parent Entity holds:

- (i) a Direct Ownership Interest in a Constituent Entity of the MNE Group; or
 - (ii) an Indirect Ownership Interest in a Constituent Entity of the MNE Group through a chain of other Constituent Entities of the MNE Group; and
 - (c) the Constituent Entity is (or all of the Constituent Entities in the chain are) subject to the Deductible Dividend Regime; and
 - (d) the Constituent Entity is (or all of the Constituent Entities in the chain are) located in the same jurisdiction as the Ultimate Parent Entity.
- (2) Subsection (3) applies if:
- (a) the Constituent Entity distributes an amount (the **dividend amount**) in respect of its GloBE Income for a Fiscal Year as a Deductible Dividend within 12 months after the end of the Fiscal Year; and
 - (b) the Constituent Entity distributes some or all of the dividend amount to the Ultimate Parent Entity (directly or through the chain); and
 - (c) the Ultimate Parent Entity distributes some or all of the dividend amount as a Deductible Dividend within 12 months after the end of the Fiscal Year; and
 - (d) the condition in paragraph 7-20(2)(a), (b) or (c) is satisfied in relation to the recipient of the dividend distributed by the Ultimate Parent Entity.
- (3) Subsections 7-20(2), (3), (4), (5), (6) and (7) apply to the Constituent Entity in the same way that they apply to an Ultimate Parent Entity.

7-30 Meaning of *Deductible Dividend Regime*

- (1) ***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.
- (2) For the purposes of subsection (1), treat patronage dividends of a Cooperative as distributions to holders of Ownership Interests in the Cooperative.
- (3) A Deductible Dividend Regime is taken to include a tax regime applicable to Cooperatives that exempts them from taxation.

7-35 Meaning of *Deductible Dividend*

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:

- (a) 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;
- (b) if the Constituent Entity is a Cooperative—it is a patronage dividend to a member of the Cooperative.

Section 7-40

Part 7-3—Eligible Distribution Tax Systems

Note: Taxes on distributed profits, deemed profit distributions and non-business expenses imposed under an Eligible Distribution Tax System are Covered Taxes (see paragraph 4-40(1)(b)).

7-40 Deemed distribution tax election

- (1) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to:
 - (a) a specified jurisdiction that has an Eligible Distribution Tax System; and
 - (b) each Constituent Entity of the MNE Group that is located in the jurisdiction.
- (2) An election under subsection (1) is an Annual Election.

7-45 Meaning of *Eligible Distribution Tax System*

An *Eligible Distribution Tax System* is a corporate income tax system that:

- (a) 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:
 - (i) distributes those profits to its shareholders; or
 - (ii) is deemed to distribute those profits to its shareholders; or
 - (iii) incurs those expenses; and
- (b) imposes Tax at a rate equal to or in excess of the Minimum Rate; and
- (c) was in force on or before 1 July 2021.

7-50 Effect of election—amount in respect of deemed distribution tax added to Adjusted Covered Taxes

- (1) This section applies if an election under subsection 7-40(1) applies to:
 - (a) a jurisdiction that has an Eligible Distribution Tax System; and
 - (b) Constituent Entities of an MNE Group that are located in the jurisdiction; and
 - (c) a Fiscal Year.
- (2) For the purposes of paragraph 5-5(2)(a), increase the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction by the lesser of the following:
 - (a) the amount by which that sum would need to be increased to raise the Effective Tax Rate of the MNE Group for the jurisdiction for the Fiscal Year to the Minimum Rate;
 - (b) the amount of Tax that would have been due under the Eligible Distribution Tax System if the Constituent Entities of the MNE Group located in the jurisdiction had distributed all of their income that was subject to the Eligible Distribution Tax System during the Fiscal Year.
- (3) At the end of the Fiscal Year:

- (a) a **Deemed Distribution Tax Recapture Account** is established for the Fiscal Year for the jurisdiction for the MNE Group; and
- (b) the balance of the Deemed Distribution Tax Recapture Account is the amount of the increase under subsection (2).

7-55 Deemed Distribution Tax Recapture Account

- (1) This section applies if, at the end of a Fiscal Year (the **current year**), there are one or more Deemed Distribution Tax Recapture Accounts for a jurisdiction for an MNE Group for earlier Fiscal Years.
- (2) At the end of the current year, reduce the balance of the Deemed Distribution Tax Recapture Accounts in accordance with the following subsections.
- (3) Make reductions under subsection (4) to the balance of a Deemed Distribution Tax Recapture Account for an earlier Fiscal Year before making a reduction under subsection (4) to the balance of a Deemed Distribution Tax Recapture Account for a later Fiscal Year.
- (4) Reduce the balance of a Deemed Distribution Tax Recapture Account by applying amounts mentioned in paragraphs (a), (b) and (c) as follows:
 - (a) first, reduce that balance by applying the amount of Taxes mentioned in paragraph 4-40(1)(b) paid by the Constituent Entities of the MNE Group located in the jurisdiction during the current year in relation to actual or deemed distributions;
 - (b) next, reduce that balance by applying the amount that is:
 - (i) the Net GloBE Loss (if any) for the current year of the MNE Group for the jurisdiction;
multiplied by:
 - (ii) the Minimum Rate;
 - (c) next, if there are one or more Recapture Account Loss Carry-forwards for the jurisdiction for the MNE Group for earlier Fiscal Years, reduce that balance by applying the amount of those Recapture Account Loss Carry-forwards.
- (5) However, do not apply an amount mentioned in paragraph (4)(a), (b) or (c) to the extent that doing so would reduce the balance of the Deemed Distribution Tax Recapture Account below zero.
- (6) For the purposes of paragraph (4)(c), apply an amount of a Recapture Account Loss Carry-forward for an earlier Fiscal Year before applying an amount of a Recapture Account Loss Carry-forward for a later Fiscal Year.

7-60 Recapture Account Loss Carry-forward

- (1) Subsection (2) applies if:
 - (a) there is a Net GloBE Loss for a Fiscal Year of an MNE Group for a jurisdiction; and
 - (b) at the end of the Fiscal Year, the amount mentioned in paragraph 7-55(4)(b) (Net GloBE Loss for current year multiplied by Minimum Rate)

Section 7-65

- in respect of that Net GloBE Loss has not been applied fully under subsection 7-55(4); and
- (c) there is at least one Deemed Distribution Tax Recapture Account for the jurisdiction for the MNE Group for an earlier Fiscal Year.
- (2) At the end of the Fiscal Year:
- (a) a **Recapture Account Loss Carry-forward** is established for the Fiscal Year for the jurisdiction for the MNE Group; and
 - (b) 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.
- (3) Reduce a Recapture Account Loss Carry-forward for a Fiscal Year for a jurisdiction for an MNE Group to the extent that it is applied under 7-55(4)(c).

7-65 Effect of positive balance of Deemed Distribution Tax Recapture Account after 4 Fiscal Years—reduce Adjusted Covered Taxes for original year

If the balance of a Deemed Distribution Tax Recapture Account for a jurisdiction for an MNE Group for a Fiscal Year (the **original year**) is above zero at the end of the fourth subsequent Fiscal Year:

- (a) for the purposes of paragraph 5-5(2)(a), in computing the Effective Tax Rate of the MNE Group for the jurisdiction for the original year, reduce the sum of the Adjusted Covered Taxes for the original year of each Constituent Entity of the MNE Group located in the jurisdiction by the amount of the balance; and
- (b) recalculate the Effective Tax Rate and Jurisdictional Top-up Tax for the original year of the MNE Group for the jurisdiction in accordance with section 5-95; and
- (c) reduce the balance of the Deemed Distribution Tax Recapture Account for the original year to zero.

7-70 Distribution taxes excluded in Adjusted Covered Taxes

In computing the Adjusted Covered Taxes for a Fiscal Year of the Constituent Entities of an MNE Group that are located in a jurisdiction, exclude the amount of Taxes mentioned in paragraph 4-40(1)(b) paid in relation to actual or deemed distributions by those Constituent Entities during the Fiscal Year, to the extent this amount is applied under paragraph 7-55(4)(a).

7-75 Effect of Constituent Entity leaving jurisdiction, etc.

- (1) This section applies if, in a Fiscal Year (the **departure year**), a Constituent Entity of an MNE Group that is located in a jurisdiction:
 - (a) ceases to be a Constituent Entity of the MNE Group; or
 - (b) transfers substantially all of its assets outside the MNE Group or outside that jurisdiction.

Section 7-75

- (2) If the balance of a Deemed Distribution Tax Recapture Account for an earlier Fiscal Year for that jurisdiction for the MNE Group is above zero at the end of the departure year:
- (a) for the purposes of section 4-20, treat the amount of the balance as increasing the Reduction to Covered Taxes of the Constituent Entities of the MNE Group that are located in the jurisdiction for the earlier Fiscal Year; and
 - (b) recalculate the Effective Tax Rate and Jurisdictional Top-up Tax for the earlier Fiscal Year of the MNE Group for the jurisdiction in accordance with section 5-95; and
 - (c) despite paragraph 5-95(3)(b), treat as **Additional Current Top-up Tax** of the MNE Group for the jurisdiction for the departure year the amount that is:
 - (i) any increase in Jurisdictional Top-up Tax for the earlier Fiscal Year as a result of paragraph (b) of this subsection;multiplied by:
 - (ii) the Disposition Recapture Ratio mentioned in subsection (3) for the Constituent Entity; and
 - (d) reduce the balance of the Deemed Distribution Tax Recapture Account for the earlier Fiscal Year to zero.
- (3) The **Disposition Recapture Ratio** for the Constituent Entity is computed in according with the following formula:

$$\frac{\text{GloBE Income of the CE}}{\text{Net Income of the jurisdiction}}$$

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.

Part 7-4—Effective Tax Rate computation for Investment Entities

Division 1—Application

7-80 Application of this Part

- (1) This Part applies if one or more Constituent Entities of an MNE Group for a Fiscal Year are Investment Entities.
- (2) This Part does not apply in relation to an Investment Entity for a Fiscal Year to the extent it is a Tax Transparent Entity for the Fiscal Year.

7-85 Insurance Investment Entity treated as Investment Entity

For the purposes of this Part, treat an Insurance Investment Entity as an Investment Entity.

7-90 Computing GloBE Income or Loss of Investment Entity

For the purposes of this Part, in computing the GloBE Income or Loss of an Investment Entity, disregard that GloBE Income or Loss to the extent that the Investment Entity's GloBE Income or Loss is attributable to interests that are subject to an election under Part 7-5 or 7-6.

Division 2—Allocable Share of Top-up Tax of Investment Entity

7-95 Allocable Share of Top-up Tax of Investment Entity

- (1) Section 2-10 does not apply for the purposes of computing a Parent Entity's Allocable Share of the Top-up Tax of an Investment Entity for a Fiscal Year.
- (2) Instead, that Allocable Share is an amount equal to:
 - (a) the Top-up Tax of the Investment Entity for the Fiscal Year;
multiplied by:
 - (b) the fraction that is:
 - (i) the Inclusion Ratio of the Parent Entity for the Investment Entity for the Fiscal Year, computed on the assumption that all Ownership Interests in the Investment Entity not held by the Parent Entity were held by owners that are not Group Entities of the MNE Group;
divided by:
 - (ii) the Inclusion Ratio of the Parent Entity for the Investment Entity for the Fiscal Year.
- (3) In computing the fraction mentioned in subsection (2), treat the Investment Entities as:
 - (a) Low-Taxed Constituent Entities; and
 - (b) the only Constituent Entities of the MNE Group.
- (4) For the purposes of this section:
 - (a) treat references in section 2-15 to GloBE Income as references to GloBE Income or Loss; and
 - (b) treat the reference in paragraph 2-15(2)(a) to net income as a reference to net income or loss.

Section 7-100

Division 3—Top-up Tax of Investment Entity etc.

7-100 Top-up Tax etc. of Investment Entity—primary deeming rule

- (1) Treat the Investment Entities as the only Constituent Entities of the MNE Group for the purposes of:
 - (a) computing the Top-up Tax of each of the Investment Entities; and
 - (b) computing the MNE Group's Allocable GloBE Income or Loss for each of the Investment Entities (see section 7-110); and
 - (c) determining whether each of the Investment Entities is a Low-Taxed Constituent Entity.

Note 1: To compute the Top-up Tax mentioned in paragraph (a), it is necessary to compute various amounts on the assumption that the Investment Entities located in the jurisdiction in which the relevant Investment Entity is located are the only Constituent Entities of the MNE Group located in that jurisdiction, including the following:

- (a) Jurisdictional Top-up Tax for the jurisdiction (see subsection 7-105(1));
- (b) Net GloBE Income or Net GloBE Loss for the jurisdiction (see subsection 7-105(2));
- (c) Substance-based Income Exclusion Amount for the jurisdiction (see subsection 7-105(3)).

Note 2: For paragraph (c), to determine whether an Investment Entity is a Low-Taxed Constituent Entity, it is necessary to compute the Effective Tax Rate and Net GloBE Income of the MNE Group for the jurisdiction in which it is located (see section 3-195), on the assumption that the Investment Entities are the only Constituent Entities of the MNE Group located in the jurisdiction.

- (2) Paragraph (1)(a) does not affect the operation of Chapters 2, 3, 4 (other than sections 4-30 and 4-35, and Parts 4-5 and 4-6), 6, 8 and 9 to the extent that they affect the application of Chapter 5 for the purposes of computing the Top-up Tax of each of the Investment Entities.

Example: In computing the GloBE Income or Loss of one of the Investment Entities, do not treat the Investment Entities as the only Constituent Entities of the MNE Group. That GloBE Income or Loss will affect the computation of the Top-up Tax of the Investment Entity under Chapter 5. In applying Chapter 5 to compute that Top-up Tax, treat the Investment Entities as the only Constituent Entities of the MNE Group.

7-105 Computing Jurisdictional Top-up Tax for the purposes of computing Top-up Tax of Investment Entity

- (1) For the purposes of computing the Top-up Tax mentioned in paragraph 7-100(1)(a) for a Fiscal Year of the Investment Entities that are located in a particular jurisdiction, compute the Jurisdictional Top-up Tax (see section 5-30) of the MNE Group for the jurisdiction for the Fiscal Year in accordance with this section.

Note: For the purposes of this section, treat the Investment Entities as the only Constituent Entities of the MNE Group (see section 7-100).

- (2) In computing the Net GloBE Income or Net GloBE Loss of the MNE Group for the jurisdiction for the Fiscal Year under subsection 5-15(1), treat the amount computed in accordance with the formula in subsection 5-15(2) as being the sum of the MNE Group's Allocable GloBE Income or Loss for the Fiscal Year for each of the Investment Entities mentioned in subsection (1) of this section.

Example 1: That Net GloBE Income can be relevant to computing:

- (a) the Effective Tax Rate of the MNE Group for the jurisdiction for a Fiscal Year;
and
- (b) the Excess Profit of the MNE Group for the jurisdiction for a Fiscal Year.

Example 2: That Net GloBE Loss can be relevant to computing any Additional Current Top up Tax of the MNE Group for the jurisdiction for a Fiscal Year under sections 4-30 and 5-100 (Adjusted Covered Taxes less than expected amount).

- (3) For the purposes of computing the Substance-based Income Exclusion Amount (see section 5-50) of the MNE Group for the jurisdiction for the Fiscal Year:
 - (a) take into account only Eligible Tangible Assets and Eligible Payroll Costs of Eligible Employees of the Investment Entities; and
 - (b) reduce the Payroll Carve-out Amount and Tangible Asset Carve-out Amount for each Investment Entity by multiplying it by the Ultimate Parent Entity's Inclusion Ratio for the Investment Entity; and
 - (c) for the purposes of computing that Inclusion Ratio, treat each Investment Entity as a Low-Taxed Constituent Entity.

Note: That Substance-based Income Exclusion Amount is relevant to computing the Excess Profit of the MNE Group for the jurisdiction for a Fiscal Year.

- (4) If a Constituent Entity of the MNE Group that is not an Investment Entity has an amount payable for the Fiscal Year in respect of an Investment Entity under a Qualified Domestic Minimum Top-up Tax of the jurisdiction, treat it as an amount payable by the Investment Entity (see the definition of **Domestic Top-up Tax** in section 5-30).

Note: The amount is also treated as not being an amount payable by the Constituent Entity: see subsection 7-115(4).

- (5) Treat the Adjusted Covered Taxes of an Investment Entity for the Fiscal Year as being the sum of:
 - (a) the Adjusted Covered Taxes for the Fiscal Year of the Investment Entity, to the extent that they are attributable to the MNE Group's Allocable GloBE Income or Loss for the Investment Entity for the Fiscal Year; and
 - (b) any Covered Taxes for the Fiscal Year allocated to the Investment Entity under Part 4-3.

Example: Those Adjusted Covered Taxes can be relevant to computing the following:

- (a) the Effective Tax Rate of the MNE Group for the jurisdiction for a Fiscal Year;
- (b) any Additional Current Top-up Tax of the MNE Group for the jurisdiction for a Fiscal Year under sections 4-30 and 5-100 (Adjusted Covered Taxes less than expected amount).

- (6) To avoid doubt, the Adjusted Covered Taxes mentioned in subsection (5) do not include any Covered Taxes for the Fiscal Year accrued by the Investment Entity, to the extent that they are attributable to income that is not part of the MNE Group's Allocable Share for the Investment Entity for the Fiscal Year.
- (7) In computing any Additional Current Top-up Tax of the MNE Group for the jurisdiction for a Fiscal Year under section 5-100 (Adjusted Covered Taxes less than expected amount), treat the MNE Group's Allocable GloBE Income or Loss for an Investment Entity as the Investment Entity's GloBE Income or Loss.

Section 7-110

7-110 Meaning of *Allocable GloBE Income or Loss*

- (1) An MNE Group's *Allocable GloBE Income or Loss* for an Investment Entity for a Fiscal Year is:
 - (a) the Investment Entity's GloBE Income or Loss for the Fiscal Year;
multiplied by:
 - (b) the Inclusion Ratio of the Ultimate Parent Entity of the MNE Group for the Investment Entity for the Fiscal Year.

Note: In computing that Inclusion Ratio, treat the Investment Entities as the only Constituent Entities of the MNE Group (see section 7-100).
- (2) For the purposes of this section, treat the Investment Entity as a Low-Taxed Constituent Entity.
- (3) For the purposes of this section:
 - (a) treat references in section 2-15 to GloBE Income as references to GloBE Income or Loss; and
 - (b) treat the reference in paragraph 2-15(2)(a) to net income as a reference to net income or loss.

Division 4—Top-up Tax of non-Investment Entity

7-115 Top-up Tax of Constituent Entity that is not Investment Entity

- (1) Treat the Investment Entities mentioned in subsection 7-80(1) as *not* being Constituent Entities of the MNE Group, for the purposes of:
 - (a) computing the Top-up Tax of each Constituent Entity (other than an Investment Entity) of the MNE Group; and
 - (b) determining whether each Constituent Entity (other than an Investment Entity) of the MNE Group is a Low-Taxed Constituent Entity.
- (2) Paragraph (1)(a) does not affect the operation of Chapters 2, 3, 4 (other than sections 4-30 and 4-35, and Parts 4-5 and 4-6), 6, 8 and 9 to the extent that they affect the application of Chapter 5 for the purposes of computing the Top-up Tax of each Constituent Entity (other than an Investment Entity) of the MNE Group.
- (3) Subsection (4) applies if a Constituent Entity of the MNE Group that is not an Investment Entity has an amount payable for a Fiscal Year in respect of an Investment Entity under a Qualified Domestic Minimum Top-up Tax of a jurisdiction.
- (4) In computing the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction under section 5-30, treat the amount as not being an amount payable by the Constituent Entity under a Qualified Domestic Minimum Top-up Tax of the jurisdiction (see definition of *Domestic Top-up Tax* in that section).

Note: The amount is treated as an amount payable by the Investment Entity: see subsection 7-105(4).

Part 7-5—Investment Entity tax transparency election

7-120 Application of this Part

This Part applies in relation to an Insurance Investment Entity in the same way that it applies in relation to an Investment Entity.

7-125 Investment Entity tax transparency election

- (1) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to:
 - (a) a specified Constituent Entity of the MNE Group, if the Constituent Entity is an Investment Entity; and
 - (b) one or more specified Constituent Entity-owners of the Investment Entity.
- (2) An election under subsection (1) is a Five-Year Election.

7-130 Effect of election—Investment Entity treated as Tax Transparent Entity

- (1) This section applies if an election under subsection 7-125(1) applies to:
 - (a) an Investment Entity that is a Constituent Entity of an MNE Group; and
 - (b) a Constituent-Entity owner of the Investment Entity; and
 - (c) a Fiscal Year.
- (2) For the purposes of this instrument, treat the Investment Entity as a Tax Transparent Entity for the Fiscal Year in respect of Ownership Interests held by the Constituent Entity-owner if, for the Fiscal Year:
 - (a) the Constituent Entity-owner of the Investment Entity is subject to tax, in the jurisdiction in which the Constituent Entity-owner is located, 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
 - (b) the tax rate applicable to the Constituent Entity-owner with respect to income arising from those annual changes equals or exceeds the Minimum Rate.
- (3) Subsection (4) applies if:
 - (a) a Constituent Entity owns an Indirect Ownership Interest in an Investment Entity (the *first Investment Entity*) through a Direct Ownership Interest in another Investment Entity (the *other Investment Entity*); and
 - (b) the Constituent Entity is subject to a mark-to-market or similar regime in the jurisdiction in which it is located based on the annual changes in the fair value of its Direct Ownership Interest in the other Investment Entity.
- (4) For the purposes of the subsection (2), treat the Constituent Entity as being subject to tax under a mark-to-market or similar regime in the jurisdiction in which it is located based on the annual changes in the fair value of its Indirect Ownership Interest in the first Investment Entity.

**7-135 Effect of revocation of election—Investment Entity treated as Tax
Transparent Entity**

- (1) Subsection (2) applies if:
 - (a) an election under subsection 7-125(1) is revoked; and
 - (b) a gain or loss arises from the disposition of an asset or liability held by the Investment Entity; and
 - (c) the gain or loss arises in a Fiscal Year to which the election does not apply because of the revocation.
- (2) For the purposes of this instrument, compute the gain or loss based on the fair value of the asset or liability on the first day of the first Fiscal Year to which the election does not apply because of the revocation.

Part 7-6—Taxable distribution method election

7-140 Application of this Part

This Part applies in relation to an Insurance Investment Entity in the same way that it applies in relation to an Investment Entity.

7-145 Taxable distribution method election

- (1) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to:
 - (a) a specified Constituent Entity of the MNE Group that is an Investment Entity; and
 - (b) a specified Constituent Entity-owner of the Investment Entity that:
 - (i) is not an Investment Entity; and
 - (ii) if the Constituent Entity-owner holds an Indirect Ownership Interest in the Investment Entity—holds the Indirect Ownership Interest through a chain of Investment Entities.
- (2) An election under subsection (1) is a Five-Year Election.

7-150 Effect of election—distributions and deemed distributions received by Constituent Entity-owner included in computing its GloBE Income, etc.

- (1) This section applies if an election under subsection 7-145(1) applies to:
 - (a) an Investment Entity that is a Constituent Entity of an MNE Group; and
 - (b) a Constituent Entity-owner of the Investment Entity; and
 - (c) a Fiscal Year (the *reporting year*).
- (2) In computing the Constituent Entity-owner's GloBE Income or Loss for the reporting year, include distributions and deemed distributions on which it is subject to Tax for the reporting year to the extent that they are attributable to the GloBE Income of the Investment Entity.
- (3) In computing the Constituent Entity-owner's:
 - (a) GloBE Income for the reporting year; and
 - (b) Adjusted Covered Taxes for the reporting year;include an amount equal to so much of the Investment Entity's Covered Taxes for the reporting year as is allowed, under local tax law, as a credit against the Constituent Entity-owner's Tax liability for the reporting year arising in connection with a distribution from the Investment Entity.
- (4) In computing the MNE Group's Effective Tax Rate under Chapter 5 and Part 7-4 for the Fiscal Year for the jurisdiction in which the Investment Entity is located, exclude:
 - (a) the Investment Entity's GloBE Income or Loss for the Fiscal Year; and

- (b) the Investment Entity's Adjusted Covered Taxes for the Fiscal Year, to the extent that they are attributable to such income (except as provided in subsection (3)).

7-155 Effect of election—where positive balance of Undistributed Net GloBE Income Account after 3 Fiscal Years, increase Top-up Tax for tested year

- (1) This section applies if:
 - (a) an election under subsection 7-145(1) applies to:
 - (i) an Investment Entity that is a Constituent Entity of an MNE Group; and
 - (ii) a Constituent Entity-owner of the Investment Entity; and
 - (iii) a Fiscal Year (the *tested year*); and
 - (b) there is an Undistributed Net GloBE Income Account for the Investment Entity for the tested year with a balance above zero at the end of the third subsequent Fiscal Year (the *reporting year*).
- (2) In computing the Investment Entity's GloBE Income or Loss for the reporting year, include the Constituent Entity-owner's proportionate share of the Undistributed Net GloBE Income Account for the Investment Entity for the tested year (the *Constituent Entity-owner's undistributed share*).
- (3) For purposes of Chapter 2:
 - (a) treat the Investment Entity as a Low-Taxed Constituent Entity of the MNE Group for the reporting year; and
 - (b) increase the Top-up Tax of the Investment Entity for the reporting year by the amount that is:
 - (i) the Constituent Entity-owner's undistributed share; multiplied by:
 - (ii) the Minimum Rate.

7-160 Meaning of *Undistributed Net GloBE Income Account*

- (1) This section applies if:
 - (a) an election under subsection 7-145(1) applies to:
 - (i) an Investment Entity that is a Constituent Entity of an MNE Group; and
 - (ii) a Fiscal Year (the *tested year*); and
 - (b) the Investment Entity has GloBE Income for the tested year.
- (2) At the end of the tested year, an *Undistributed Net GloBE Income Account* is established for the Investment Entity for the tested year.
- (3) At the end of the tested year, the balance of the Undistributed Net GloBE Income Account is the Investment Entity's GloBE Income for the tested year, reduced (but not below zero) by applying the following against that balance:
 - (a) the Investment Entity's Covered Taxes (if any) for the tested year;
 - (b) distributions and deemed distributions in the tested year to shareholders other than Constituent Entities that are Investment Entities.

Section 7-165

- (4) For the purposes of subsection (5), this subsection covers a Fiscal Year if the Fiscal Year is the first, second or third Fiscal Year after the tested year.
- (5) At the end of a Fiscal Year covered by subsection (4), reduce the balance of the Undistributed Net GloBE Income Account for the Investment Entity for the tested year (but not below zero) by applying the following against that balance:
 - (a) the Investment Entity's Covered Taxes (if any) for the Fiscal Year;
 - (b) distributions and deemed distributions in the Fiscal Year to shareholders other than Constituent Entities that are Investment Entities;
 - (c) if the Investment Entity has a GloBE Loss for the Fiscal Year—the GloBE Loss;
 - (d) if the Investment Entity has a GloBE Loss for a previous Fiscal Year covered by subsection (3)—the GloBE Loss, to the extent that it has not been applied under a previous operation of paragraph (c) or this paragraph.
- (6) For the purposes of subsection (5):
 - (a) apply an amount mentioned in paragraph (5)(a) before applying an amount mentioned in paragraph (5)(b); and
 - (b) apply an amount mentioned in paragraph (5)(b) before applying an amount mentioned in paragraph (5)(c); and
 - (c) apply an amount mentioned in paragraph (5)(c) before applying an amount mentioned in paragraph (5)(d).
- (7) For the purposes of paragraph (5)(d), apply a GloBE Loss for an earlier Fiscal Year before applying a GloBE Loss for a later Fiscal Year.

7-165 Deemed distributions

- (1) This section applies if:
 - (a) an Investment Entity is a Constituent Entity of an MNE Group; and
 - (b) there is an Undistributed Net GloBE Income Account for the Investment Entity for a Fiscal Year; and
 - (c) the balance of the Undistributed Net GloBE Income Account is above zero at the end of the Fiscal Year; and
 - (d) a Constituent Entity-owner of the Investment Entity has a proportionate share of the Undistributed Net GloBE Income Account at a time in the Fiscal Year; and
 - (e) an Ownership Interest of the Constituent Entity-owner in the Investment Entity is transferred at that time to an Entity that is not a Group Entity of the MNE Group.
- (2) For the purposes of this Part:
 - (a) treat the Investment Entity as having made a deemed distribution to the Constituent Entity-owner at that time; and
 - (b) treat the amount of the deemed distribution as being the amount of the proportionate share at that time (disregarding this section).

7-170 Effect of revoking election

- (1) This section applies if:
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- (a) an election under subsection 7-145(1) applies to:
 - (i) an Investment Entity that is a Constituent Entity of an MNE Group;
and
 - (ii) a Constituent Entity-owner of the Investment Entity; and
 - (b) the election is revoked in a Fiscal Year (the **revocation year**); and
 - (c) there is an Undistributed Net GloBE Income Account for the Investment Entity for the Fiscal Year that is the second Fiscal Year preceding the revocation year; and
 - (d) the balance of the Undistributed Net GloBE Income Account is above zero at the end of the revocation year.
- (2) In computing the Investment Entity's GloBE Income or Loss for the revocation year, include the Constituent Entity-owner's proportionate share of the balance of the Undistributed Net GloBE Income Account (the **Constituent Entity-owner's undistributed share**).
- (3) For purposes of Chapter 2:
- (a) treat the Investment Entity as a Low-Taxed Constituent Entity of the MNE Group for the reporting year; and
 - (b) treat the Top-up Tax of the Investment Entity for the reporting year as being the amount equal to:
 - (i) the Constituent Entity-owner's undistributed share;
multiplied by:
 - (ii) the Minimum Rate.

Chapter 8—Administration

Part 8-2—Safe harbours

Division 1—Preliminary

8-5 Application of this Part to Minority-Owned Constituent Entities, Joint Ventures and Investment Entities

Minority-Owned Constituent Entities (MOCEs)

- (1) Subsections (2) and (3) apply unless an MNE Group meets the SC De minimis test for a jurisdiction for a Fiscal Year.

Note: In determining whether an MNE Group meets the SC De minimis test, MOCEs are not treated as if they comprised a separate MNE Group or were the only Constituent Entities of the MNE Group located in a jurisdiction.

- (2) In applying Divisions 3 and 4:
- (a) treat the purposes mentioned in subsection 5-120(3) (MOCEs that comprise a Minority-Owned Subgroup) as including the purposes of this Part; and
 - (b) treat paragraph 8-155(2)(a) as having been repealed.
- (3) In applying Divisions 3 and 4:
- (a) treat the purposes mentioned in subsection 5-125(3) (MOCEs that are not part of a Minority-Owned Subgroup treated as only Constituent Entities of the MNE Group) as including the purposes of this Part; and
 - (b) treat the purposes mentioned in subsection 5-125(5) (MOCEs that are not part of a Minority-Owned Subgroup treated as not being Constituent Entities of the MNE Group) as including the purposes of this Part; and
 - (c) treat paragraph 8-155(2)(a) as having been repealed.

Note: As a result of subsections (2) and (3), Divisions 2 and 3 are applied separately in relation to MOCEs.

Joint Ventures

- (4) In applying Divisions 2, 3 and 4, treat the purposes mentioned in subsection 6-75(3) (Joint Ventures) as including the purposes of this Part.

Note: As a result of this subsection, Divisions 2, 3 and 4 are applied separately to a Joint Venture and its JV Subsidiaries (which are treated as a separate MNE Group because of section 6-75).

Investment Entities

- (5) In applying Divisions 3 and 4:
- (a) treat the purposes mentioned in subsection 7-100(1) (Investment Entities treated as only Constituent Entities of the MNE Group) as including the purposes of this Part; and
 - (b) treat the purposes mentioned in subsection 7-115(1) (Investment Entities treated as not being Constituent Entities of the MNE Group) as including the purposes of this Part.

Section 8-5

- Note 1: As a result of this subsection, this Part is applied separately to Investment Entities.
- Note 2: For the application of Division 2 of this Part to Investment Entities, see section 8-95.

Section 8-10

Division 2—Transitional CbCR Safe Harbour

Subdivision A—Transitional CbCR Safe Harbour

8-10 Transitional CbCR Safe Harbour—general rule

- (1) An MNE Group's Jurisdictional Top-up Tax for a jurisdiction for a Fiscal Year is taken to be zero if:
 - (a) an election for the MNE Group under subsection (3) applies to the jurisdiction and the Fiscal Year; and
 - (b) the MNE Group meets any of the following tests for the jurisdiction for the Fiscal Year:
 - (i) the De minimis test;
 - (ii) the Simplified ETR test;
 - (iii) the Routine profits test.

Note: Despite this subsection, Top-up Tax may still need to be computed for certain Investment Entities of the MNE Group: see subsection 8-95(4).
- (2) Subsection (1) only applies in relation to the MNE Group, the jurisdiction and the Fiscal Year (the *application year*) if:
 - (a) the application year is the first Fiscal Year (the *initial year*) to which the following apply:
 - (i) the Fiscal Year is covered by the Transition Period;
 - (ii) one or more Constituent Entities of the MNE Group are located in the jurisdiction for the Fiscal Year; or
 - (b) subsection (1) has applied in relation to the MNE Group, the jurisdiction and the following Fiscal Years:
 - (i) the initial year;
 - (ii) if there are one or more Fiscal Years between the initial year and the application year—each of those Fiscal Years.

Election

- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to:
 - (a) a specified Fiscal Year covered by the Transition Period; and
 - (b) a specified jurisdiction.
- (4) Unless the election is revoked, it applies to the specified Fiscal Year and the specified jurisdiction.

8-15 Meaning of *Transition Period*

- A Fiscal Year is covered by the *Transition Period* if it:
- (a) starts on or before 31 December 2026; and
 - (b) ends on or before 30 June 2028.

Subdivision B—De minimis test

8-20 Meeting the *De minimis test*

- (1) An MNE Group meets the *De minimis test* for a jurisdiction for a Fiscal Year if:
 - (a) the MNE Group's Total Revenue for the jurisdiction for the Fiscal Year is less than 10 million Euros; and
 - (b) the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year is less than 1 million Euros.
- (2) However, the MNE Group does not meet the *De minimis test* for a jurisdiction for a Fiscal Year if the sum of the following equals or exceeds 10 million Euros:
 - (a) the total revenue for the Fiscal Year of each Constituent Entity of the MNE Group that:
 - (i) is located in the jurisdiction; and
 - (ii) is covered by subsection (3);
 - (b) the MNE Group's Total Revenue for the jurisdiction for the Fiscal Year.
- (3) For the purposes of subparagraph (2)(a)(ii), this subsection covers a Constituent Entity of the MNE Group if the Constituent Entity's assets, liabilities, income, expenses and cash flows are excluded from the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group solely on the grounds that the Constituent Entity is held for sale.

8-25 Meaning of *Total Revenue* of MNE Group

- (1) 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 in its Qualified CbC Report in relation to the jurisdiction for the Fiscal Year.
- (2) Subsection (3) applies if an intragroup payment that is made between Group Entities of the MNE Group:
 - (a) is treated as income in the Qualified Financial Statements of the recipient Group Entity; and
 - (b) is treated as expense in the Qualified Financial Statements of the paying Group Entity.
- (3) For the purposes of subsection (1), include the amount of the intragroup payment in the MNE Group's total revenues mentioned in that subsection.

8-30 Meaning of *Profit (Loss) before Income Tax*

- (1) 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 in its Qualified CbC Report in relation to the jurisdiction for the Fiscal Year.
- (2) Subsection (3) applies if an intragroup payment that is made between Group Entities of the MNE Group:
 - (a) is treated as income in the Qualified Financial Statements of the recipient Group Entity; and

Section 8-35

- (b) is treated as expense in the Qualified Financial Statements of the paying Group Entity.
- (3) For the purposes of subsection (1), include the amount of the intragroup payment in the MNE Group's profit or loss before income tax mentioned in that subsection.
- (4) For the purposes of subsection (1), if:
 - (a) a Constituent Entity of the MNE Group is a Permanent Establishment; and
 - (b) a loss arising in respect of the Permanent Establishment is allocated to the Permanent Establishment (and not to the Main Entity in respect of the Permanent Establishment);increase the MNE Group's profit or loss before income tax for the jurisdiction in which the Main Entity is located by the amount of the loss.

8-35 Meaning of *Qualified CbC Report*

- (1) ***Qualified CbC Report*** in relation to a jurisdiction means a Country-by-Country Report that is prepared in relation to the jurisdiction, and filed, using Qualified Financial Statements.
- (2) Subsections (3) and (4) apply if an MNE Group is not required have a Qualified CbC Report in relation to a jurisdiction.
- (3) For the purposes of this Division, if:
 - (a) the jurisdiction in which the Ultimate Parent Entity of the MNE Group is located has requirements for the filing of Country-by-Country Reports; and
 - (b) on the assumption that the MNE Group filed a Country-by-Country Report in accordance with those requirements, data from the MNE Group's Qualified Financial Statements would have been reported as total revenue and profit or loss before tax in that Country-by-Country Report;treat that data as being reported in the MNE Group's Qualified CbC Report.
- (4) For the purposes of this Division, if:
 - (a) the jurisdiction in which the Ultimate Parent Entity of the MNE Group is located does *not* have requirements for the filing of Country-by-Country Reports; and
 - (b) on the assumption that the MNE Group filed a Country-by-Country Report in accordance with the following, data from the MNE Group's Qualified Financial Statements would have been reported as total revenue and profit or loss before tax in that Country-by-Country Report:
 - (i) *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report* of the OECD/G20 Base Erosion and Profit Shifting Project;
 - (ii) *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13* (Updated May 2024) of the OECD;treat that data as being reported in the MNE Group's Qualified CbC Report.

Subdivision C—Simplified ETR test

8-40 Meeting the *Simplified ETR test*

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.

8-45 Meaning of *Simplified ETR*

An MNE Group's *Simplified ETR*, for a jurisdiction for a Fiscal Year, is the amount equal to:

- (a) the MNE Group's Simplified Covered Taxes for the jurisdiction for the Fiscal Year;

divided by:

- (b) the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year.

8-50 Meaning of *Simplified Covered Taxes*

- (1) 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 assumption in subsection (2) were made.
- (2) For the purposes of subsection (1), assume that the following were disregarded:
 - (a) if the income or loss of a Constituent Entity of the MNE Group is not included in the MNE Group's Qualified CbC Report in relation to the jurisdiction for the Fiscal Year—income tax expense for that Constituent Entity;
 - (b) taxes that are not Covered Taxes;
 - (c) uncertain tax positions.

8-55 Meaning of *Transition Rate*

The *Transition Rate* for a Fiscal Year means:

- (a) if the Fiscal Year starts in the 2023 or 2024 calendar year—15%; or
- (b) if the Fiscal Year starts in the 2025 calendar year—16%; or
- (c) if the Fiscal Year starts in the 2026 calendar year—17%.

Subdivision D—Routine profits test

8-60 Meeting the *Routine profits test*

- (1) 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.
- (2) For the purposes of subsection (1), in computing the Substance-based Income Exclusion Amount mentioned in that subsection, treat a Constituent Entity of the

Section 8-65

MNE Group as being located in the jurisdiction for the Fiscal Year if, and only if:

- (a) the Constituent Entity is a CbCR Resident of the jurisdiction for the Fiscal Year; and
 - (b) the Constituent Entity is located in the jurisdiction for the Fiscal Year.
- (3) To avoid doubt, for the purposes of subsection (1), in computing the Substance-based Income Exclusion Amount mentioned in that subsection, apply the rules in Part 9-2 (Transitional relief for Substance-based Income Exclusion).

8-65 Meaning of *CbCR Resident*

A Constituent Entity of an MNE Group is a ***CbCR Resident*** of a jurisdiction for a Fiscal Year if:

- (a) it is recorded as a resident of the jurisdiction in the Country-by-Country Report of the MNE Group for the Fiscal Year; or
- (b) if subsection 8-35(3) or (4) applies in relation to the MNE Group—the Constituent Entity would have been recorded as a resident of the jurisdiction in the data reported in the MNE Group’s Qualified CbC Report.

Subdivision E—Qualified Financial Statements

8-70 Meaning of *Qualified Financial Statements*

- (1) An MNE Group’s ***Qualified Financial Statements*** means the following:
- (a) the financial accounts used to prepare the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group;
 - (b) separate financial statements of a Constituent Entity of the MNE Group, if:
 - (i) they are prepared in accordance with an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard; and
 - (ii) the information contained in them is maintained based on that accounting standard and is reliable;
 - (c) the separate financial accounts of a Constituent Entity of the MNE Group, if:
 - (i) they are used for preparation of the MNE Group’s Country-by-Country Report; and
 - (ii) the Constituent Entity is not included in the MNE Group’s Consolidated Financial Statements on a line-by-line basis, and this is solely due to size or materiality grounds;
 - (d) if a Permanent Establishment that is a Constituent Entity of the MNE Group does not have separate financial accounts mentioned in paragraph (a) or separate financial statements mentioned in paragraph (b)—the separate financial statements prepared by the Main Entity of the Permanent Establishment for financial reporting, regulatory, tax reporting or internal management control purposes.
- (2) Subsection (3) applies if the MNE Group allocated and incorporated purchase accounting adjustments into any of the following:

- (a) where paragraph (1)(a) applies—the separate financial accounts of a Constituent Entity that are used in the preparation of the Consolidated Financial Statements mentioned in that paragraph;
 - (b) where paragraph (1)(b) applies—the separate financial statements mentioned in that paragraph;
 - (c) where paragraph (1)(c) applies—the separate financial accounts mentioned in that paragraph;
 - (d) where paragraph (1)(d) applies—the separate financial statements mentioned in that paragraph.
- (3) Despite subsection (1), those separate financial accounts or separate financial statements are not **Qualified Financial Statements**, unless the conditions in subsections (4) and (5) are met.

Consistent reporting condition

- (4) The condition in this subsection is met if:
- (a) the MNE Group has *not* submitted a Country-by-Country Report for a Fiscal Year beginning after 31 December 2022 that was based on the Constituent Entity’s separate financial accounts or separate financial statements without the purchase accounting adjustments; or
 - (b) where the MNE Group has submitted such a Country-by-Country Report for a Fiscal Year beginning after 31 December 2022—the Constituent Entity was required by law or regulation to change its separate financial accounts or separate financial statements for the Fiscal Year to include purchase accounting adjustments.

Goodwill impairment adjustment

- (5) The condition in this subsection is met if any reduction to the Constituent Entity’s income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 is added back to the MNE Group’s profit or loss before income tax:
- (a) for the purposes of applying the Routine profits test; and
 - (b) for the purposes of applying the Simplified ETR test, but only if the financial accounts or separate financial statements 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.

8-75 Use of same kind of Qualified Financial Statements

- (1) Subsections (2) and (3) apply if:
- (a) a Constituent Entity of an MNE Group is a CbCR Resident of a jurisdiction; and
 - (b) an amount in respect of a Fiscal Year is ascertained for the purposes of this Part in relation to the Constituent Entity; and
 - (c) the amount is ascertained by reference to Qualified Financial Statements of the MNE Group to the extent that they relate to the Constituent Entity.
- (2) Ascertain any other amount that is:
- (a) in respect of the Fiscal Year; and

Section 8-80

- (b) for the purposes of this Part; and
 - (c) in relation to the Constituent Entity;
- by reference to the same Qualified Financial Statements.
- (3) In ascertaining an amount in respect of the Fiscal Year for the purposes of this Part in relation to another Constituent Entity of the MNE Group that is a CbCR Resident of the jurisdiction, the following rules apply:
 - (a) where the Qualified Financial Statements mentioned in subsection (1) are of a kind mentioned in paragraph 8-70(1)(a)—disregard paragraphs 8-70(1)(b) and (c);
 - (b) where the Qualified Financial Statements mentioned in subsection (1) are of a kind mentioned in paragraph 8-70(1)(b)—disregard paragraphs 8-70(1)(a) and (c);
 - (c) where the Qualified Financial Statements mentioned in subsection (1) are of a kind mentioned in paragraph 8-70(1)(c)—disregard paragraphs 8-70(1)(a) and (b).
 - (4) A reference in this section to Constituent Entity does not include a reference to:
 - (a) a Permanent Establishment; or
 - (b) an NMCE for the Fiscal Year.
 - (5) A reference in this section to an amount does not include a reference to the deferred tax component of income tax expense.

Subdivision F—Special rules for particular circumstances

8-80 Transitional CbCR Safe Harbour—special rule for Joint Ventures

- (1) This section applies if there is a separate MNE Group mentioned in subsection 6-75(2) (Joint Ventures).
- (2) For the purposes of section 8-10, in computing:
 - (a) the Profit (Loss) before Income Tax of the separate MNE Group; and
 - (b) the Total Revenue of the separate MNE Group;treat a reference in Subdivision B (other than section 8-35) to a Qualified CbC Report in relation to the jurisdiction as being a reference to Qualified Financial Statements.
- (3) For the purposes of this Division, treat the separate financial accounts of the Joint Venture of the separate MNE Group, or of a JV Subsidiary of the Joint Venture, as meeting the condition in subparagraph 8-70(1)(c)(i) (definition of **Qualified Financial Statements**) if, on the assumption that the separate MNE Group filed a Country-by-Country Report in accordance with the following, the financial accounts would have been used for preparation of that Country-by-Country Report:
 - (a) *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report* of the OECD/G20 Base Erosion and Profit Shifting Project;
 - (b) *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13* (Updated May 2024) of the OECD.

Note: Under paragraph 8-70(1)(c), if a Constituent Entity is not included in the MNE Group's Consolidated Financial Statements on a line-by-line basis, and this is solely due to size or materiality grounds, its separate financial accounts are part of the MNE Group's Qualified Financial Statements if it meets the condition in subparagraph 8-70(1)(c)(i).

8-85 Transitional CbCR Safe Harbour—special rule for Ultimate Parent Entity that is Flow-through Entity

- (1) This section applies if a Constituent Entity of an MNE Group is:
 - (a) the Ultimate Parent Entity of the MNE Group; and
 - (b) a Flow-through Entity; and
 - (c) located in a jurisdiction for a Fiscal Year.
- (2) Subsection (3) applies in relation to the Fiscal Year if there are Direct Ownership Interests in the Ultimate Parent Entity that are *not* held by a holder described in paragraph 7-5(2)(a), (b) or (c).
- (3) Section 8-10 does not apply in relation to the MNE Group for the jurisdiction for the Fiscal Year.
- (4) Subsection (5) applies if subsection (3) does not apply.
- (5) For the purposes of section 8-10, in computing the MNE Group's Profit (Loss) before Income Tax, and Simplified Covered Taxes, for the jurisdiction for the Fiscal Year, disregard amounts to the extent that they are attributable to a Direct Ownership Interest in the Ultimate Parent Entity held by a holder described in paragraph 7-5(2)(a), (b) or (c).

8-90 Transitional CbCR Safe Harbour—special rule for Deductible Dividend Regimes

- (1) Subsection (2) applies if a Constituent Entity of an MNE Group is:
 - (a) the Ultimate Parent Entity of the MNE Group; and
 - (b) subject to a Deductible Dividend Regime; and
 - (c) where it is a Flow-through Entity—subsection 8-85(3) does not prevent section 8-10 from applying in relation to the MNE Group for the jurisdiction in which it is located for a Fiscal Year.
- (2) For the purposes of section 8-10, in working out the MNE Group's Profit (Loss) before Income Tax, and Simplified Covered Taxes, for the jurisdiction in which the Ultimate Parent Entity is located for the Fiscal Year, disregard amounts to the extent that they are distributed as a result of an Ownership Interest in the Ultimate Parent Entity held by a recipient described in paragraph 7-20(2)(a), (b) or (c).

8-95 Transitional CbCR Safe Harbour—special rules for Investment Entities and their Constituent Entity-owners

Non-qualifying Investment Entities

- (1) Subsections (2), (3) and (4) apply in relation to a Fiscal Year if both of the following apply to one or more Constituent Entities of an MNE Group that are Investment Entities (the *non-qualifying Investment Entities*):

Section 8-95

- (a) the non-qualifying Investment Entities are CbCR Residents of a jurisdiction (the *Investment Entity Jurisdiction*) for the Fiscal Year;
 - (b) an election under subsection (7) does not apply in relation to the non-qualifying Investment Entities and the Fiscal Year.
- (2) For the purposes of section 8-10, apply the principles in subsection (3) in computing the MNE Group's:
- (a) Profit (Loss) before Income Tax; and
 - (b) Total Revenue; and
 - (c) Simplified Covered Taxes;
- for the Fiscal Year for each of the following jurisdictions (the *relevant jurisdictions*):
- (d) the Investment Entity Jurisdiction;
 - (e) each jurisdiction of which a Constituent Entity-owner of a non-qualifying Investment Entity is a CbCR Resident.
- (3) For the purposes of subsection (2), the principles are as follows:
- (a) include a proportion of each non-qualifying Investment Entity's profit or loss before income tax for the Fiscal Year in the profit or loss before income tax for the Fiscal Year of each Constituent Entity-owner of the non-qualifying Investment Entity;
 - (b) include a proportion of each non-qualifying Investment Entity's total revenues for the Fiscal Year in the total revenues for the Fiscal Year of each Constituent Entity-owner of the non-qualifying Investment Entity;
 - (c) include a proportion of each non-qualifying Investment Entity's associated taxes for the Fiscal Year in the associated taxes for the Fiscal Year of each Constituent Entity-owner of the non-qualifying Investment Entity;
 - (d) exclude so much of each non-qualifying Investment Entity's profit or loss before income tax, total revenues and associated taxes for the Fiscal Year as is attributable to Direct Ownership Interests in the non-qualifying Investment Entity that are held by Entities that are not Group Entities of the MNE Group;
 - (e) adjust the MNE Group's Profit (Loss) before Income Tax for the relevant jurisdictions as necessary to ensure that the income and associated taxes of each non-qualifying Investment Entity are only taken into account in the MNE Group's Profit (Loss) before Income Tax for the jurisdictions of which the Constituent Entity-owner is a CbCR Resident for the Fiscal Year.
- For the purposes of paragraphs (a), (b) and (c), the proportion, for a particular Constituent Entity-owner of a non-qualifying Investment Entity, is the proportion of the Ownership Interests in the non-qualifying Investment Entity held by the Constituent Entity-owner.
- (4) If section 8-10 applies in relation to the MNE Group, the jurisdictions in which the non-qualifying Investment Entities are located, and the Fiscal Year, compute the Top-up Tax of the non-qualifying Investment Entities for the Fiscal Year in accordance with Parts 7-4, 7-5 and 7-6. In doing so:
- (a) disregard section 8-10; and
 - (b) in computing amounts under Parts 7-4, 7-5 or 7-6 in relation to the non-qualifying Investment Entities for the Fiscal Year, take into account

amounts only to the extent that they are attributable to the non-qualifying Investment Entities.

Qualifying Investment Entities

- (5) Subsection (6) applies in relation to a Fiscal Year if:
 - (a) a Constituent Entity of an MNE Group is an Investment Entity (the **qualifying Investment Entity**); and
 - (b) an election under subsection (7) applies in relation to the qualifying Investment Entity and the Fiscal Year.
- (6) For the purposes of section 8-10, treat the qualifying Investment Entity as being a Constituent Entity of the MNE Group that is not an Investment Entity.

Election

- (7) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified Constituent Entity of the MNE Group and a specified Fiscal Year covered by the Transition Period if:
 - (a) the Constituent Entity is an Investment Entity; and
 - (b) an election under subsection 7-125(1) (Investment Entity Transparency Election) does not apply to the Investment Entity and the Fiscal Year; and
 - (c) an election under subsection 7-145(1) (Taxable Distribution Method Election) does not apply to the Investment Entity and the Fiscal Year; and
 - (d) each Constituent Entity-owner of the Investment Entity is a CbCR Resident of the same jurisdiction as the Investment Entity.

Interpretation

- (8) For the purposes of this section, treat an Insurance Investment Entity as if it were an Investment Entity.
- (9) For the purposes of this section, treat each reference to a Constituent Entity-owner of an Investment Entity as only including Constituent Entity-owners that hold a Direct Ownership Interest in the Investment Entity.

8-100 Transitional CbCR Safe Harbour—special rule for Net Unrealised Fair Value Loss

- (1) For the purposes of section 8-10, in working out the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year, disregard the MNE Group's Net Unrealised Fair Value Loss for the jurisdiction for the Fiscal Year if that Net Unrealised Fair Value Loss exceeds 50 million Euros.
- (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.

Section 8-105

8-105 Transitional CbCR Safe Harbour—exclusions

Section 8-10 does not apply in relation to an MNE Group for a jurisdiction for a Fiscal Year if any of the following conditions are satisfied:

- (a) the jurisdiction is a jurisdiction in which a Stateless Constituent Entity is taken to be located under section 5-45;
- (b) the MNE Group is a combined MNE Group referred to in paragraph 6-80(2)(a) (Multi-Parented MNE Groups) and there is no single Qualified CbC Report that includes the information of the all the separate Groups referred to in that paragraph;
- (c) an election for the MNE Group under section 7-40 (Deemed Distribution Tax election) applies to the Fiscal Year and the jurisdiction;
- (d) all of the following conditions are satisfied:
 - (i) in a previous Fiscal Year, one or more Constituent Entities of the MNE Group were located in the jurisdiction;
 - (ii) section 8-10 did not apply in relation to the MNE Group for the jurisdiction for the previous Fiscal Year;
 - (iii) the MNE Group was an Applicable MNE Group for the previous Fiscal Year.

Subdivision G—Treatment of Hybrid Arbitrage Arrangements

8-110 Transitional CbCR Safe Harbour—Hybrid Arbitrage Arrangements

- (1) For the purposes of applying subsection 8-10(1) in relation to an MNE Group and a jurisdiction:
 - (a) exclude from the MNE Group's profit or loss before income tax for the jurisdiction any expense or loss arising as a result of a deduction/non-inclusion arrangement, or duplicate loss arrangement, entered into after 15 December 2022; and
 - (b) exclude from the MNE Group's income tax expense for the jurisdiction any income tax expense arising as a result of a duplicate tax recognition arrangement entered into after 15 December 2022.
- (2) Subsections (3) and (4) apply if:
 - (a) the expense or loss mentioned in paragraph (1)(a) arises as a result of an arrangement that is a duplicate loss arrangement; and
 - (b) the arrangement is a duplicate loss arrangement because of paragraph 8-125(1)(a); and
 - (c) all Constituent Entities of the MNE Group including the expense or loss in their financial statements are located in the same jurisdiction.
- (3) A Filing Constituent Entity for the MNE Group must choose one of the Constituent Entities for the purposes of subsection (4).
- (4) Treat subsection (1) as not applying with respect to the expense or loss in the financial statements of that Constituent Entity.

8-115 Meaning of *Hybrid Arbitrage Arrangement*

A Hybrid Arbitrage Arrangement is any of the following:

- (a) a deduction/non-inclusion arrangement;
- (b) a duplicate loss arrangement;
- (c) a duplicate tax recognition arrangement.

8-120 Meaning of *deduction/non-inclusion arrangement*

- (1) A ***deduction/non-inclusion arrangement*** is an arrangement:
 - (a) under which a Constituent Entity (the ***investor***) of an MNE Group directly or indirectly provides credit or otherwise makes an investment in another Constituent Entity of the MNE Group (the ***recipient***); and
 - (b) the provision of the credit or making of the investment results in an expense or loss in the financial statements of the recipient;to the extent that:
 - (c) there is no commensurate increase in the revenue or gain in the financial statements of the investor; or
 - (d) the investor is not reasonably expected over the life of the arrangement to have a commensurate increase in its taxable income.
- (2) Despite subsection (1), 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.
- (3) For the purposes of paragraph (1)(d), the investor does not have a commensurate increase in its taxable income to the extent that:
 - (a) if an amount is included in its taxable income—the amount included in its 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 accounting recognition adjustment:
 - (i) has been made; or
 - (ii) would have been made if the adjustment determination were made without regard to the investor's ability to use the tax attribute with respect to any Hybrid Arbitrage Arrangement entered into after 15 December 2022; or
 - (b) the provision of the credit or making of the investment that results in the expense or loss of the recipient mentioned in paragraph (1)(b):
 - (i) gives rise to a taxable deduction or loss of a Constituent Entity of the MNE Group that is located in the same jurisdiction as the investor; and
 - (ii) is not included as an expense or loss in determining the MNE Group's Profit (Loss) before Income Tax for the jurisdiction (including as a result of being an expense or loss in the financial statements of a Flow-through Entity which is owned by a Constituent Entity of the MNE Group that is located in the jurisdiction of the investor).

8-125 Meaning of *duplicate loss arrangement*

- (1) A ***duplicate loss arrangement*** is an arrangement that results in an expense or loss being included in the financial statements of a Constituent Entity of an MNE Group located in a jurisdiction to the extent that:

Section 8-130

- (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.
- (2) Despite paragraph (1)(a), 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.
- (3) Despite paragraph (1)(b), 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:
- (a) the financial statements of the Constituent Entity including the expense or loss in its financial statements; and
 - (b) the taxable income of the Constituent Entity claiming the deduction for the relevant expense or loss.

8-130 Meaning of *duplicate tax recognition arrangement*

- (1) 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:
- (a) Adjusted Covered Taxes; or
 - (b) income tax expense used for the purposes of computing the MNE Group's Simplified ETR for the jurisdiction in which the Constituent Entity is located.
- (2) Despite subsection (1), an arrangement is not a ***duplicate tax recognition arrangement*** if the arrangement results in the income subject to the tax that gives rise to the income tax expense being included in the relevant financial statements of each relevant Constituent Entity.
- (3) Despite subsection (1), an arrangement is not a ***duplicate tax recognition arrangement*** if it arises solely because, in determining a relevant Constituent Entity's Adjusted Covered Taxes, the relevant Constituent Entity's income tax expense used for the purposes of computing the MNE Group's Simplified ETR does not require adjustments for income tax expenses that are allocated to another relevant Constituent Entity.

8-135 Entities treated as Constituent Entities for purposes of this Subdivision

For the purposes of this Subdivision, treat each of the following as a Constituent Entity of an MNE Group:

- (a) a Joint Venture of the MNE Group;
- (b) a JV Subsidiary of a Joint Venture of the MNE Group.

8-140 Financial statements for purposes of this Subdivision

For the purposes of this Subdivision, the financial statements of a Constituent Entity of an MNE Group are:

- (a) the financial statements used to compute the Constituent Entity's GloBE Income; or
- (b) the Qualified Financial Statements of the MNE Group to the extent they relate to the Constituent Entity.

8-145 Financial statements—Flow-through Entity

- (1) Subsection (2) applies to:
 - (a) the financial statements of a Constituent Entity that is a Flow-through Entity; and
 - (b) the financial statements of its Constituent Entity-owners.
- (2) For the purposes of this Subdivision, disregard an expense or loss in the Flow-through Entity's financial statements to the extent that the expense or loss is included in the financial statements of its Constituent Entity-owners.

8-150 Arrangement treated as having been entered into after 15 December 2022

For the purposes of this Subdivision, treat an arrangement as having been entered into after 15 December 2022 if:

- (a) the arrangement is amended or transferred after 15 December 2022; or
- (b) the performance of any rights or obligations at any time after 15 December 2022 under the arrangement differs from the performance of those rights or obligations on or before 15 December 2022 (including where payments are reduced or ceased with the effect of increasing the balance of a liability); or
- (c) there is a change in the accounting treatment with respect to the arrangement after 15 December 2022.

Division 3—Simplified Calculations Safe Harbour

Subdivision A—Simplified Calculations Safe Harbour

8-155 Simplified Calculations Safe Harbour—general rule

- (1) Subsection (2) applies if an election for an MNE Group under subsection (3) applies to a Fiscal Year and a jurisdiction.
- (2) The MNE Group's Top-up Tax Percentage for the jurisdiction for the Fiscal Year is taken to be zero if the MNE Group meets any of the following tests for the jurisdiction for the Fiscal Year:
 - (a) the SC De minimis test;
 - (b) the SC ETR test;
 - (c) the SC Routine profits test.

Note: If the Top-up Tax Percentage is taken to be zero under this subsection, the MNE Group's Jurisdictional Top-up Tax for the jurisdiction for the Fiscal Year may still be above zero due to any relevant Additional Current Top-up Tax under Part 5-4.

Election

- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction.
- (4) An election under subsection (3) is an Annual Election.

Stateless Constituent Entity

- (5) However, subsection (2) does not apply in relation to a jurisdiction if the jurisdiction is a jurisdiction in which a Stateless Constituent Entity is taken to be located under section 5-45.

Subdivision B—SC De minimis test, SC ETR test and SC Routine profits test

8-160 Meeting the *SC De minimis test*

An MNE Group meets the *SC De minimis test* for a jurisdiction for a Fiscal Year if:

- (a) 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
- (b) 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.

8-165 Meeting the *SC ETR test*

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.

8-170 Meeting the *SC Routine profits test*

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.

Subdivision C—NMCE simplified calculations

8-175 NMCE simplified calculations

- (1) This section applies if:
 - (a) an election under subsection 8-180(2) applies in relation to a Fiscal Year and a Constituent Entity of an MNE Group; and
 - (b) the Constituent Entity is an NMCE for the Fiscal Year.
- (2) This section applies for the purpose of working out whether the MNE Group meets the tests mentioned in subsection 8-155(2) for the Fiscal Year.

Simplified income calculation

- (3) Treat the NMCE's Total Revenue for a Fiscal Year as its GloBE Income or Loss for the Fiscal Year in the following computations:
 - (a) in computing the MNE Group's Average GloBE Income or Loss for the jurisdiction for the Fiscal Year as mentioned in paragraph 8-160(b) (SC De minimis test);
 - (b) in computing the MNE Group's Effective Tax Rate for the jurisdiction for the Fiscal Year as mentioned in section 8-165 (SC ETR test);
 - (c) in computing the MNE Group's Net GloBE Income for the jurisdiction for the Fiscal Year as mentioned in section 8-170 (SC Routine profits test).

Simplified revenue calculation

- (4) Treat the NMCE's Total Revenue for a Fiscal Year as its revenue for the Fiscal Year in the following computations:
 - (a) in computing the MNE Group's GloBE Revenue for a Fiscal Year mentioned in paragraph 5-110(3)(a);
 - (b) as a result of paragraph (a), in computing the MNE Group's Average GloBE Revenue for a Fiscal Year as mentioned in paragraph 8-160(a) (SC De minimis test).

Simplified tax calculation

- (5) Treat the NMCE's Income Tax Accrued (Current Year) for a Fiscal Year as its Adjusted Covered Taxes for the Fiscal Year in computing the MNE Group's Effective Tax Rate for the jurisdiction for a Fiscal Year as mentioned in section 8-165 (SC ETR test).

Section 8-180

8-180 NMCE simplified calculations election

- (1) Subsection (2) applies if an election for an MNE Group under subsection 8-155(3) applies in relation to a Fiscal Year and a jurisdiction.
- (2) A Filing Constituent Entity for the MNE Group may make an election for the MNE Group under this subsection that applies to a specified Constituent Entity of the MNE Group that is an NMCE for the Fiscal Year.
- (3) An election under subsection (2) is an Annual Election.

8-185 Meaning of *Non-material Constituent Entity* (or *NMCE*)

A *Non-material Constituent Entity* (or *NMCE*) is a Constituent Entity of an MNE Group for a Fiscal Year if:

- (a) where it is an Entity:
 - (i) the Entity is not consolidated on a line-by-line basis in the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year solely on size or materiality grounds; and
 - (ii) those Consolidated Financial Statements are described in paragraph (a) or (c) of the definition of *Consolidated Financial Statements* in section 34 of the Act; and
 - (iii) those Consolidated Financial Statements are externally audited; and
 - (iv) the external audit was performed in accordance with the auditing standards issued by the auditing standards board in the jurisdiction in which the Ultimate Parent Entity of the MNE Group is located; and
 - (v) the report from the external audit is not qualified in a respect that is relevant to the matter mentioned in subparagraph (i); and
 - (vi) if the Entity's Total Revenue for the Fiscal Year exceeds 50 million Euros—its financial accounts are prepared in accordance with an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard; and
- (b) 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) of this section.

Subdivision D—Miscellaneous

8-190 Meaning of *Total Revenue* and *Income Tax Accrued (Current Year)* of Constituent Entity

- (1) 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.
- (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.

8-195 Meaning of *Relevant CbC Regulations* and *Country-by-Country Reporting regulations*

- (1) ***Relevant CbC Regulations*** of an MNE Group means:
- (a) if the jurisdiction in which the Ultimate Parent Entity of the MNE Group is located (the ***UPE jurisdiction***) does not have Country-by-Country Reporting regulations and the MNE Group is not required to file a Country-by-Country Report in any jurisdiction—the following documents:
 - (i) 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;
 - (ii) *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13* (Updated May 2024) of the OECD; or
 - (b) if paragraph (a) does not apply and the MNE Group is does not file a Country-by-Country Report in the UPE Jurisdiction—the Country-by-Country Reporting regulations of the surrogate parent entity jurisdiction (determined in accordance with the documents mentioned in subparagraphs (a)(i) and (ii)); or
 - (c) otherwise—the Country-by-Country Reporting regulations of the UPE jurisdiction.
- (2) ***Country-by-Country Reporting regulations*** means any of the following:
- (a) Subdivision 815-E of the *Income Tax Assessment Act 1997* (Reporting obligations for country by country reporting entities);
 - (b) a law of a non-Australian jurisdiction corresponding to that Subdivision.

Division 4—Qualified Domestic Minimum Top-up Tax (QDMTT) Safe Harbour

8-200 QDMTT Safe Harbour—general rule

- (1) An MNE Group's Jurisdictional Top-up Tax for a jurisdiction for a Fiscal Year is taken to be zero if:
 - (a) the jurisdiction applies a Qualified Domestic Minimum Top-up Tax for the Fiscal Year; and
 - (b) the jurisdiction is specified in a determination under subsection (2); and
 - (c) an election for the MNE Group under subsection (3) applies to the jurisdiction and the Fiscal Year.

Note: The condition in paragraph (b) will not be satisfied if the jurisdiction is a jurisdiction in which a Stateless Constituent Entity is taken to be located under section 5-45.

- (2) The Minister may, by legislative instrument, make a determination specifying a jurisdiction if the Minister is satisfied that the jurisdiction's Qualified Domestic Minimum Top-up Tax has QDMTT Safe Harbour status for the Fiscal Year.

Election

- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to a specified jurisdiction.

Note: A Filing Constituent Entity for an MNE Group may not make an election under this subsection in certain circumstances: see sections 8-205 and 8-210.

- (4) An election under subsection (3) is an Annual Election.

8-205 Disqualification from election—disputed amounts

- (1) Despite subsection 8-200(3), a Filing Constituent Entity for the MNE Group may not make an election for the MNE Group that applies to the Fiscal Year and the jurisdiction if subsection (2) applies.
- (2) This subsection applies if all or part of an amount payable by the Constituent Entity under a Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year is a disputed amount mentioned in subsection 5-35(1).

8-210 Disqualification from election—switch-off rule

- (1) Despite subsection 8-200(3), a Filing Constituent Entity for the MNE Group may not make an election for the MNE Group that applies to a Fiscal Year and a jurisdiction if subsection (2), (3), (4), (6), (7), (8) or (9) of this section applies.

Flow-through Entity UPEs not required to apply QDMTT

- (2) This subsection applies if:
 - (a) the Ultimate Parent Entity of the MNE Group meets the following conditions:
 - (i) it is located in the jurisdiction;

- (ii) it is a Flow-through Entity; and
- (b) an Ultimate Parent Entity that meets those conditions is not required to apply the Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year in any circumstance.

Flow-through Entity Constituent Entities not required to apply QDMTT

- (3) This subsection applies if:
 - (a) a Constituent Entity of the MNE Group meets the following conditions:
 - (i) it is located in the jurisdiction;
 - (ii) it is not an Ultimate Parent Entity;
 - (iii) it is a Flow-through Entity; and
 - (b) a Constituent Entity of an MNE Group that meets those conditions is not required to apply the Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year in any circumstance.

OECD Securitisation Entities not required to apply QDMTT

- (4) This subsection applies if:
 - (a) a Constituent Entity of the MNE Group meets the following conditions:
 - (i) it is located in the jurisdiction;
 - (ii) it is an OECD Securitisation Entity; and
 - (b) a Constituent Entity of an MNE Group that meets those conditions is not required to apply the Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year in any circumstance (including where liability under the Qualified Domestic Minimum Top-up Tax in respect of the Constituent Entity is imposed on other Constituent Entities of the MNE Group).
- (5) However, subsection (4) does not apply if, under the Qualified Domestic Minimum Top-up Tax of the jurisdiction, the liability for the Fiscal Year in respect of a Constituent Entity of an MNE Group that meets those conditions is:
 - (a) imposed on one or more other Constituent Entities of the MNE Group that are not OECD Securitisation Entities; or
 - (b) if there are no other Constituent Entities of the MNE Group located in the jurisdiction—imposed on the Constituent Entity.

JV entities not required to apply QDMTT

- (6) This subsection applies if:
 - (a) the MNE Group is a separate MNE Group mentioned in subsection 6-75(2) (Joint Ventures); and
 - (b) the Joint Venture of the MNE Group, or a JV Subsidiary of the Joint Venture of the MNE Group, is located in the jurisdiction; and
 - (c) a Joint Venture of an MNE Group, or a JV Subsidiary of a Joint Venture of an MNE Group, that is located in the jurisdiction is not required to apply the Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year in any circumstance (including where liability under the Qualified Domestic Minimum Top-up Tax in respect of the Joint Venture

Section 8-215

or the JV Subsidiary is imposed on Constituent Entities of the MNE Group).

Investment Entities not required to apply QDMTT

- (7) This subsection applies if:
- (a) the MNE Group is an MNE Group mentioned in subsection 7-100(1) (Investment Entities); and
 - (b) a Constituent Entity of the MNE Group meets the following conditions:
 - (i) it is located in the jurisdiction;
 - (ii) it is an Investment Entity or an Insurance Investment Entity; and
 - (c) a Constituent Entity of an MNE Group that meets those conditions is not required to apply the Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year in any circumstance.

Initial phase of international activity year

- (8) This subsection applies if:
- (a) the Qualified Domestic Minimum Top-up Tax of the jurisdiction provides that it does not apply to an MNE Group and a Fiscal Year in relation to which subsection 9-40(1) applies; and
 - (b) that provision is not limited in application to circumstances where the Constituent Entities of the MNE Group located in the jurisdiction are not subject to a Qualified IIR applied by another jurisdiction; and
 - (c) that provision applies to the MNE Group and the Fiscal Year mentioned in subsection (1).

Other specified restrictions

- (9) This subsection applies if:
- (a) the jurisdiction has a Qualified Domestic Minimum Top-up Tax for a Fiscal Year; and
 - (b) the jurisdiction is specified in a determination under subsection 8-200(2); and
 - (c) a determination under subsection (10) of this section specifies the jurisdiction and a restriction of the jurisdiction's Qualified Domestic Minimum Top-up Tax; and
 - (d) the restriction applies to the MNE Group for the Fiscal Year.
- (10) The Minister may, by legislative instrument, make a determination specifying:
- (a) a jurisdiction; and
 - (b) a restriction of the jurisdiction's Qualified Domestic Minimum Top-up Tax.

8-215 Meaning of *OECD Securitisation Entity*

- (1) An Entity is a ***OECD Securitisation Entity*** if:
- (a) the Entity is a participant in a Securitisation Arrangement; and
 - (b) the Entity only carries out activities that facilitate one or more Securitisation Arrangements; and

- (c) the Entity grants security over its assets in favour of its creditors (or the creditors of another OECD Securitisation Entity); and
 - (d) 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:
 - (i) cash retained to meet an amount of profit required by the documentation of the Securitisation Arrangement mentioned in paragraph (a), for eventual distribution to equity holders (or equivalent); or
 - (ii) cash reasonably required under the terms of the Securitisation Arrangement for either (or both) of the purposes specified in subsection (2); and
 - (e) any profit referred to in subparagraph (d)(i) for a Fiscal Year is negligible relative to the revenues of the Entity for the Fiscal Year.
- (2) For the purposes of subparagraph (1)(d)(ii), the following purposes are specified:
- (a) 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;
 - (b) to maintain or enhance the creditworthiness of the Entity.

8-220 Meaning of *Securitisation Arrangement*

- (1) A ***Securitisation Arrangement*** means an arrangement that satisfies the following conditions:
- (a) 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 one or more identified pools of assets;
 - (b) 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.
- (2) However, if:
- (a) the Entity or the other Entity mentioned in paragraph (1)(b) is a Constituent Entity of an MNE Group; and
 - (b) one or more investors mentioned in paragraph (1)(a) is also a Constituent Entity of the MNE Group;
- the arrangement is not a ***Securitisation Arrangement***.

Division 5—Transitional UTPR Safe Harbour

8-225 Transitional UTPR Safe Harbour

- (1) Subsection (2) applies if an election for an MNE Group under subsection (3) applies to a Fiscal Year and the jurisdiction in which the Ultimate Parent Entity of the MNE Group is located (the *UPE jurisdiction*).
- (2) In computing the Total UTPR Top-up Tax Amount for the MNE Group for the Fiscal Year, treat the following as being zero:
 - (a) the Top-up Tax for the Fiscal Year of each Low-Taxed Constituent Entity for the Fiscal Year of the MNE Group that is located in the UPE jurisdiction;
 - (b) if there are one or more Joint Ventures of the MNE Group—the Ultimate Parent Entity’s Allocable Share of the Top-up Tax of each Joint Venture, and of each of its JV Subsidiaries (if any), that is located in the UPE jurisdiction.

Election

- (3) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group under this subsection that applies to the Fiscal Year and the UPE jurisdiction if:
 - (a) the Fiscal Year:
 - (i) does not exceed 12 months; and
 - (ii) starts on or before 31 December 2025; and
 - (iii) ends before 31 December 2026; and
 - (b) the UPE jurisdiction has a corporate income tax that applies at a rate of at least 20%.
- (4) An election under subsection (3) is an Annual Election.

Chapter 9—Transition rules

Part 9-1—Tax attributes upon transition

9-5 Pre-Transition Year deferred tax assets and liabilities

- (1) This section applies for the purposes of computing the Total Deferred Tax Adjustment Amount, for a Constituent Entity of an MNE Group located in a jurisdiction, for a Fiscal Year (the *current year*) that is:
 - (a) the MNE Group's Transition Year for the jurisdiction; or
 - (b) a subsequent Fiscal Year, if the Constituent Entity has not ceased to be a Constituent Entity of the MNE Group in the intervening period.
- (2) In computing the Constituent Entity's Total Deferred Tax Adjustment Amount for the current year, despite subsections 4-85(2), (3), (4) and (5):
 - (a) take account of each deferred tax asset and deferred tax liability that is reflected or disclosed in the Constituent Entity's financial accounts at the beginning of the Transition Year; and
 - (b) take account of the deferred tax asset or deferred tax liability in the amount set out in section 9-10.
- (3) Subsection (2) does not apply in relation to a deferred tax asset that arises:
 - (a) as a result of a transaction that occurs in the period that:
 - (i) starts on 1 December 2021; and
 - (ii) ends immediately before the start of the Transition Year; and
 - (b) in respect of an amount that:
 - (i) is not included in the Constituent Entity's taxable income for a Fiscal Year; and
 - (ii) assuming the amount arose in the Transition Year, would not have been taken into account in computing the Constituent Entity's GloBE Income or Loss for the Transition Year.
- (4) If the Constituent Entity has a Recaptured Deferred Tax Liability for the current year under section 4-105 in respect of a deferred tax liability mentioned in paragraph (2)(a) of this section, section 4-100 does not apply in relation to that Recaptured Deferred Tax Liability.

9-10 Pre-Transition Year deferred tax assets and liabilities—amounts

- (1) For the purposes of subsection 9-5(2), take account of a deferred tax asset or deferred tax liability:
 - (a) if it relates to a tax credit (including a tax credit carry-forward or a foreign tax credit) and is reflected or disclosed in the Constituent Entity's financial accounts—in the amount set out in subsection (3); or
 - (b) otherwise—in the amount set out in subsection (4).
- (2) For the purposes of subsection (1), disregard the impact of any valuation adjustment or accounting recognition adjustment with respect to the amount of a deferred tax asset.

Section 9-15

- (3) For the purposes of paragraph (1)(a), the amount is as follows:
- (a) if the tax rate used to determine the deferred tax asset or deferred tax liability is below the Minimum Rate—the amount of the deferred tax asset or deferred tax liability reflected or disclosed in the financial accounts;
 - (b) otherwise—the amount computed using the following formula:

$$\frac{\text{Deferred tax asset or liability}}{\text{Applicable domestic tax rate}} \times \text{Minimum Rate}$$

where:

applicable domestic tax rate means the tax rate in the Fiscal Year preceding the Transition Year;

deferred tax asset or liability means the amount of the deferred tax asset or deferred tax liability reflected or disclosed in the financial accounts.

- (4) For the purposes of paragraph (1)(b), the amount is as follows:
- (a) if paragraph (b) of this subsection does not apply—the lesser of the following:
 - (i) the amount of the deferred tax asset or deferred tax liability reflected or disclosed in the financial accounts;
 - (ii) that amount recast at the Minimum Rate;
 - (b) in the case of a deferred tax asset that is attributable to a loss that, assuming the Constituent Entity computed its GloBE Income or Loss for the Fiscal Year in which the loss arose, would have been taken into account in that computation—the amount of the deferred tax asset reflected in the financial accounts recast at the Minimum Rate.

9-15 Pre-Transition Year intra-MNE Group asset transfers

- (1) This section applies if:
- (a) a transaction (including any transfer of rights) occurs, or is deemed to occur, in relation to an asset (including any item of economic value) owned by an Entity (the **disposing Entity**) in which:
 - (i) an Entity (the **acquiring Entity**) creates or increases the carrying value of the asset in its financial accounts and the disposing Entity recognises the corresponding amount of income in its financial accounts; or
 - (ii) an Entity (the **acquiring Entity**) 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; and
 - (b) the transaction occurs, or is deemed to occur, in the period that:
 - (i) starts on 1 December 2021; and
 - (ii) ends immediately before the disposing Entity's Transition Year; and
 - (c) the asset was not inventory; and
 - (d) if the disposing Entity and the acquiring Entity are not the same Entity—immediately before the transaction, the disposing Entity and the acquiring Entity would have been Constituent Entities of the same MNE Group, assuming that this instrument had been in force immediately before the transaction.

Section 9-15

- (2) For the purposes of applying this instrument in relation to Constituent Entities of the MNE Group:
- (a) treat the asset as having been acquired for an amount equal to the disposing Entity's carrying value of the asset immediately before the transaction; and
 - (b) treat the carrying value of the asset at the beginning of the Transition Year as being the carrying value mentioned in paragraph (a), adjusted for the following items (to the extent they are incurred, or would have been recognised, before the Transition Year):
 - (i) subsequent capitalised expenditure incurred in respect of the asset after the transaction;
 - (ii) amortisation and depreciation of the asset, assuming that any increase in the carrying value resulting from the transaction had not occurred; and
 - (c) disregard the amount of a deferred tax asset or deferred tax liability that arises as a result of the transaction, except to the extent specified in subsection (3).
- (3) This subsection covers an amount of deferred tax asset up to the lesser of the following:
- (a) the amount equal to:
 - (i) the Minimum Rate;multiplied by:
 - (ii) the difference between the tax basis in the asset and the carrying value of the asset mentioned in paragraph (2)(b);
 - (b) the sum of the following:
 - (i) the amount of Tax paid in respect of the transaction by the disposing Entity;
 - (ii) the amount of Covered Taxes paid in respect of the transaction that are allocated to the disposing Entity under Part 4-3;
 - (iii) the amount of a deferred tax asset arising in relation to the asset that would have been taken account of under paragraph 9-5(2)(b) but was reversed or was not created by the disposing Entity because gain from the transaction was included in the taxable income of the disposing Entity.
- (4) In working out amounts under paragraph (3)(b):
- (a) adjust the carrying value of the asset and the value of deferred tax assets that arose in relation to the asset before the transaction for the items in subparagraphs (2)(b)(i) and (ii) (to the extent they are incurred, or would have been recognised, in or after the Transition Year); and
 - (b) if, under subsection 3-200(4), the disposing Entity is included in a tax consolidation group for the purposes of subsection 3-200(1)—treat other Constituent Entities of the MNE Group that are included in the tax consolidation group as being part of the disposing Entity.
- (5) Subsections (6) and (7) apply if:
- (a) after the transaction, the acquiring Entity records the asset at fair value in its financial accounts; and

Section 9-20

- (b) the amount computed under paragraph (3)(b) is greater than the amount computed under paragraph (3)(a).
- (6) If a Filing Constituent Entity for the MNE Group makes a choice under subsection (7), subsection (2) does not apply in relation to the asset.
- (7) For the purposes of subsection (6), a Filing Constituent Entity for the MNE Group may choose for subsection (2) to not apply in relation to the asset.

9-20 Meaning of *Transition Year*

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.

Part 9-2—Transitional relief for the Substance-based Income Exclusion

9-25 Application of this Part

This Part applies in relation to a Fiscal Year if it begins during the period that:

- (a) starts on 1 January 2023; and
- (b) ends on 31 December 2032.

9-30 Transitional relief for Payroll Carve-out Amount

For the purposes of working out the Payroll Carve-out Amount for a Constituent Entity of an MNE Group located in a jurisdiction, for a Fiscal Year, under section 5-55, treat the reference to 5% in paragraph 5-55(1)(c) as a reference to the percentage specified in the following table:

Payroll carve-out amount transitional percentages		
Item	If the Fiscal Year begins in:	the percentage specified is:
1	2023	10.0%
2	2024	9.8%
3	2025	9.6%
4	2026	9.4%
5	2027	9.2%
6	2028	9.0%
7	2029	8.2%
8	2030	7.4%
9	2031	6.6%
10	2032	5.8%

9-35 Transitional relief for Tangible Asset Carve-out Amount

For the purposes of working out the Tangible Asset Carve-out Amount for a Constituent Entity of an MNE Group located in a jurisdiction, for a Fiscal Year, under section 5-65, treat the reference to 5% in paragraph 5-65(1)(c) as a reference to the percentage specified in the following table:

Tangible Asset Carve-out Amount transitional percentages		
Item	If the Fiscal Year begins in:	the percentage specified is:
1	2023	8.0%
2	2024	7.8%

Section 9-35

Tangible Asset Carve-out Amount transitional percentages		
Item	If the Fiscal Year begins in:	the percentage specified is:
3	2025	7.6%
4	2026	7.4%
5	2027	7.2%
6	2028	7.0%
7	2029	6.6%
8	2030	6.2%
9	2031	5.8%
10	2032	5.4%

Part 9-3—Exclusion from the UTPR of MNE Groups in the initial phase of their international activity

9-40 Total UTPR Top-up Tax Amount reduced to zero

- (1) The Total UTPR Top-up Tax Amount for an MNE Group for a Fiscal Year covered by subsection (2) is taken to be zero if:
 - (a) the Constituent Entities of the MNE Group are located in no more than 6 jurisdictions for the Fiscal Year; and
 - (b) the sum of the Net Book Value of Tangible Assets for the Fiscal Year of each Constituent Entity of the MNE Group located in a jurisdiction other than the Reference Jurisdiction of the MNE Group does not exceed 50 million Euros.
- (2) This subsection covers a Fiscal Year if:
 - (a) it starts on or after the first day of the first Fiscal Year for which the MNE Group is an Applicable MNE Group; and
 - (b) it starts on or after 1 January 2024.
- (3) For the purposes of subsection (1), disregard a Constituent Entity of the MNE Group that is an Investment Entity or an Insurance Investment Entity.
- (4) For the purposes of paragraph (1)(b), in relation to a tangible asset of a Stateless Constituent Entity of the MNE Group:
 - (a) if the tangible asset is physically located in the Reference Jurisdiction throughout the Fiscal Year—treat it as a tangible asset of a Constituent Entity of the MNE Group located in the Reference Jurisdiction; or
 - (b) otherwise—treat it as a tangible asset of a Constituent Entity of the MNE Group located in a jurisdiction other than the Reference Jurisdiction.

9-45 If Australia is the Reference Jurisdiction, section 9-40 does not apply etc.

- (1) This section applies in relation to a Fiscal Year covered by subsection 9-40(2) if:
 - (a) disregarding subsection (2) of this section, subsection 9-40(1) applies in relation to the Fiscal Year; and
 - (b) Australia is the Reference Jurisdiction of the MNE Group.
- (2) Subsection 9-40(1) does not apply in relation to the Fiscal Year.
- (3) For the purposes of Part 2-5, the Top-up Tax for the Fiscal Year of a Low-Taxed Constituent Entity of the MNE Group is taken to be zero if the Low-Taxed Constituent Entity is located in Australia.
- (4) For the purposes of Part 2-6:
 - (a) the UTPR Percentage of each jurisdiction other than Australia is deemed to be zero; and
 - (b) the UTPR Percentage of Australia is deemed to be 100%.

Section 9-50

9-50 Meaning of *Reference Jurisdiction*

- (1) 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.
- (2) For the purposes of subsection (1), the MNE Group's total value of tangible assets in a jurisdiction for a Fiscal Year is the sum of the Net Book Value of Tangible Assets for the Fiscal Year of each of the Constituent Entities of the MNE Group that are located in the jurisdiction.
- (3) For the purposes of subsection (2), disregard a Constituent Entity of the MNE Group that is an Investment Entity.
- (4) For the purpose of this section, treat an Insurance Investment Entity as if it were an Investment Entity.

Chapter 10—Definitions

Part 10-1—Defined terms

10-5 Definitions

- Note: A number of expressions used in this instrument are defined in the Act, including the following:
- (a) Annual Election;
 - (b) Constituent Entity;
 - (c) Entity;
 - (d) Fiscal Year;
 - (e) Five-Year Election;
 - (f) Main Entity;
 - (g) MNE Group;
 - (h) Ownership Interest;
 - (i) Permanent Establishment;
 - (j) Tax Treaty.

In this instrument:

accounting functional currency: see subsection 3-60(2).

Accrued Current Covered Tax Expense: see section 4-10.

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

Additional Current Top-up Tax: see subsection 4-30(3), paragraph 5-95(3)(b) and paragraph 7-75(2)(c).

Additional Tier One Capital: see subsection 3-210(2).

Additions to Covered Taxes: see section 4-15.

Adjusted Covered Taxes: see section 4-5.

Aggregate Asset Gain: see section 3-170.

Allocable GloBE Income or Loss: see subsection 7-110(1).

Allocable Share: see section 2-10.

Ancillary International Shipping Activity: see subsection 3-230(3).

Ancillary International Shipping Income: see subsection 3-230(2).

Ancillary International Shipping Income Costs: see subsection 3-230(4).

Ancillary International Shipping Income Revenue: see subsection 3-230(3).

Arm's Length Principle: see section 3-105.

Average GloBE Income or Loss: see paragraph 5-110(1)(b).

Average GloBE Revenue: see paragraph 5-110(1)(a).

Section 10-5

Blended CFC Tax Regime: see section 4-60.

CbCR Resident: see section 8-65.

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 means 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.

Cooperative means an Entity that:

- (a) collectively markets or acquires goods or services on behalf of its members; and
- (b) is subject to a tax regime in the jurisdiction in which it is located that is designed to ensure tax neutrality in respect of:
 - (i) members' property or services sold through the cooperative; and
 - (ii) property or services acquired by members through the cooperative.

Country-by-Country Reporting regulations: see subsection 8-195(2).

Covered Taxes: see section 4-40.

Deductible Dividend: see section 7-35.

Deductible Dividend Regime: see section 7-30.

deduction/non-inclusion arrangement: see section 8-120.

Deemed Distribution Tax Recapture Account: see subsection 7-50(3).

De minimis test: see section 8-20.

Disallowed Accrual: see subsection 4-115(1).

Disposition Recapture Ratio: see subsection 7-75(3).

Disqualified Refundable Imputation Tax means an amount of Tax, other than a Qualified Imputation Tax, accrued or paid by a Constituent Entity that is:

- (a) 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
- (b) refundable to the distributing corporation upon distribution of a dividend.

Domestic Top-up Tax Amount: see sections 2-25 and 2-30.

Dual-listed Arrangement: see subsection 6-85(4).

duplicate loss arrangement: see section 8-125.

duplicate tax recognition arrangement: see section 8-130.

Effective Tax Rate: see section 5-5.

Eligible Distribution Tax System: see section 7-45.

Eligible Employee: see subsection 5-60(2).

Eligible Payroll Costs: see subsection 5-60(1).

Eligible Tangible Asset: see section 5-75.

ETR Adjustment Provision: see subsection 5-95(6).

Excess Negative Tax Expense Carry-forward: see subparagraphs 4-35(3)(a)(i) and 5-10(3)(a)(i).

Excess Profit: see section 5-25.

Excluded Dividends: see subsections 3-25(1) and (2).

Excluded Equity Gain or Loss: see subsection 3-35(1).

Excluded Exempt Income Entity: see subsection 1-20(2).

Excluded Non-Profit Subsidiary: see subsection 1-20(3).

Financial Accounting Net Income or Loss: see sections 3-10 and 3-240.

Flow-through Entity: see section 10-30.

GloBE Implementation Framework: see section 10-10.

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.

GloBE Income or Loss: see section 3-5.

Note: The GloBE Income or Loss could be a positive or negative amount.

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:

- (a) of an MNE Group—means a GloBE Loss Deferred Tax Asset established under subsection 4-125(1); and
- (b) of an Ultimate Parent Entity—means a GloBE Loss Deferred Tax Asset established under subsection 4-135(1).

GloBE Loss Election: see subsection 4-120(1).

GloBE Reorganisation: see subsection 6-65(1).

High-Tax Counterparty: see section 3-190.

Hybrid Arbitrage Arrangement: see section 8-115.

Section 10-5

Hybrid Entity: see section 10-55.

IIR means 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: see section 2-5.

Included Revaluation Method Gain or Loss: see subsection 3-50(1).

Inclusion Ratio: see subsection 2-15(1).

Income Tax Accrued (Current Year): see subsection 8-190(2).

Insurance Investment Entity means an Entity that:

- (a) is established in relation to liabilities under an insurance or annuity contract; and
- (b) is wholly-owned by one or more Entities (the *owners*) that:
 - (i) are subject to regulation as an insurance company in the jurisdiction in which they are located; and
 - (ii) if there is more than one owner—are all part of the same MNE Group; and
- (c) but for paragraphs (a) and (b), would be an Investment Fund or a Real Estate Investment Vehicle.

Intermediate Parent Entity means a Constituent Entity of an MNE Group (other than an Ultimate Parent Entity, 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: see subsection 3-225(2).

International Shipping Income: see subsection 3-225(1).

International Shipping Income Costs: see subsection 3-225(3).

International Shipping Income Revenue: see subsection 3-225(2).

Intragroup Financing Arrangement: see section 3-185.

Investment Entity means:

- (a) an Investment Fund or a Real Estate Investment Vehicle; or
- (b) an Entity that is at least 95% owned directly by an Entity described in paragraph (a) 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
- (c) an Entity, where:
 - (i) at least 85% of the value of the Entity is owned by an Entity referred to in paragraph (a); and
 - (ii) 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: see section 5-30.

Section 10-5

Local Tangible Asset: see section 3-170.

Look-back Period: see section 3-175.

Loss Year: see section 3-175.

Low-Taxed Constituent Entity, of an MNE Group for a Fiscal Year, means either of the following:

- (a) a Constituent Entity of the MNE Group that is located in a Low-Tax Jurisdiction;
- (b) a Stateless Constituent Entity of the MNE Group that has GloBE Income and an Effective Tax Rate for the Fiscal Year that is lower than the Minimum Rate.

Note: See also subsections 5-95(5) and 5-100(4) and paragraphs 7-155(3)(a) and 7-170(3)(a).

Low-Tax Entity: see section 3-190.

Low-Tax Jurisdiction: see section 3-195.

Marketable Price Floor: see subsection 3-135(1).

Marketable Transferable Tax Credit: see section 3-130.

Minimum Rate means 15%.

Minority-Owned Constituent Entity: see subsection 5-130(1).

Minority-Owned Parent Entity: see subsection 5-130(2).

Minority-Owned Subgroup: see subsection 5-135(2).

Minority-Owned Subsidiary: see subsection 5-135(1).

Multi-Parented MNE Group: see subsection 6-85(1).

Net Asset Gain: see section 3-170.

Net Asset Loss: see section 3-170.

Net Book Value of Tangible Assets: see section 2-80.

Net GloBE Income: see section 5-15.

Net GloBE Loss: see section 5-15.

Net Unrealised Fair Value Loss: see subsection 8-100(2).

Non-Marketable Transferable Tax Credit: see section 3-140.

Non-material Constituent Entity (or *NMCE*): see section 8-185.

Non-Qualified Refundable Tax Credit: see subsection 3-125(3).

Non-qualifying Gain or Loss: see subsection 6-65(4).

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

Section 10-5

OECD Securitisation Entity: see subsection 8-215(1).

Other Comprehensive Income: see subsection 3-50(2).

Other Tax Credit: see subsection 3-140(3).

Parent Entity means:

- (a) an Ultimate Parent Entity that is not an Excluded Entity; or
- (b) an Intermediate Parent Entity; or
- (c) a Partially-Owned Parent Entity.

Partially-Owned Parent Entity means a Constituent Entity of an MNE Group (other than an Ultimate Parent Entity, Permanent Establishment, Investment Entity or Insurance Investment Entity):

- (a) that holds an Ownership Interest in another Constituent Entity of the MNE Group; and
- (b) in which Ownership Interests carrying rights to more than 20% of its profits are held by persons that are not Constituent Entities of the MNE Group.

Passive Income means income included in GloBE Income that is any of the following:

- (a) a dividend or dividend equivalents;
- (b) interest or interest equivalent;
- (c) rent;
- (d) royalty;
- (e) annuity;
- (f) net gains from property of a type that produces income described in paragraphs (a) to (e);

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: see subsection 5-55(1).

Portfolio Shareholding: see subsection 3-25(4).

Profit (Loss) before Income Tax: see section 8-30.

Qualified Ancillary International Shipping Income: see subsection 3-230(1).

Qualified CbC Report: see section 8-35.

qualified debt release amount: see subsection 3-85(1).

Qualified Domestic Minimum Top-up Tax means a Tax that is:

- (a) imposed under a law of a jurisdiction; and
- (b) specified in a determination under paragraph 10-15(b).

Qualified Financial Statements: see section 8-70.

Qualified IIR means a Tax that is:

- (a) imposed under a law of a jurisdiction; and

Section 10-5

(b) specified in a determination under paragraph 10-15(a).

Qualified Imputation Tax means 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:

- (a) the refund is payable, or the credit is provided, under a foreign tax credit regime, by a jurisdiction other than the imposing jurisdiction;
- (b) 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;
- (c) the beneficial owner is an individual who is:
 - (i) a tax resident in the imposing jurisdiction; and
 - (ii) subject to tax on the dividends as ordinary income;
- (d) 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:
 - (i) a Governmental Entity;
 - (ii) an International Organisation;
 - (iii) a Non-profit Organisation that is created and managed in the benefit jurisdiction;
 - (iv) a Pension Fund that is created and managed in the benefit jurisdiction;
 - (v) an Investment Entity that is not a Group Entity of the Group and is created and regulated in the benefit jurisdiction;
 - (vi) a life insurance company that is located in the benefit jurisdiction.

Qualified Refundable Tax Credit: see subsections 3-125(1) and (2).

Qualified UTPR means a Tax that is:

- (a) imposed under a law of a jurisdiction; and
- (b) specified in a determination under paragraph 10-15(c).

Recapture Account Loss Carry-forward: see subsection 7-60(2).

Recaptured Deferred Tax Liability: see section 4-105.

Recapture Exception Accrual: see section 4-110.

Reductions to Covered Taxes: see section 4-20.

Reference Jurisdiction: See section 9-50.

Refundable Tax Credit: see subsection 3-125(4).

Relevant CbC Regulations: see subsection 8-195(1).

Restricted Tier One Capital: see subsection 3-210(2).

Reverse Hybrid Entity: see section 10-40.

Section 10-5

Routine profits test: see section 8-60.

SC De minimis test: see section 8-160.

SC ETR test: see section 8-165.

SC Routine profits test: see section 8-170.

Securitisation Arrangement: see section 8-220.

Securitisation Entity: see section 10-25.

Short-term Portfolio Shareholding: see subsection 3-25(3).

Simplified Covered Taxes: see section 8-50.

Simplified ETR: see section 8-45.

Simplified ETR test: see section 8-40.

Stapled Structure: see subsection 6-85(3).

Substance-based Income Exclusion Amount: see section 5-50.

Substitute Loss Carry-forward DTA: see section 4-95.

Tangible Asset Carve-out Amount: see subsection 5-65(1).

Tax means a compulsory unrequited payment to general government.

tax functional currency: see subsection 3-60(1).

Tax Transparent Entity: see section 10-35.

Tax Transparent Structure: see section 10-45.

Top-up Tax: see section 5-40.

Top-up Tax Percentage: see section 5-20.

Total Deferred Tax Adjustment Amount: see sections 4-85 and 4-90.

Total Revenue: see sections 8-25 and 8-190.

Total UTPR Top-up Tax Amount: see subsection 2-55(1).

Transition Period: see section 8-15.

Transition Rate: see section 8-55.

Transition Year: see section 9-20.

Unclaimed Accrual: see subsection 4-115(2).

Undistributed Net GloBE Income Account: see section 7-160.

UTPR means 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: See section 2-65.

UTPR Top-up Tax Amount: see section 2-45.

10-10 GloBE Implementation Framework

- (1) This section is made for the purposes of paragraph (a) of the definition of **GloBE Implementation Framework** in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.
- (2) **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.

10-15 Qualified GloBE taxes

The Minister may, by legislative instrument, make a determination:

- (a) specifying a Tax, for a specified Fiscal Year, that is a Qualified IIR; and
- (b) specifying a Tax, for a specified Fiscal Year, that is a Qualified Domestic Minimum Top-up Tax; and
- (c) specifying a Tax, for a specified Fiscal Year, that is a Qualified UTPR.

10-20 Direct Ownership Interest—interest differently classified

For the purposes of subsection 38(3) of the Act, if:

- (a) a Constituent Entity of an MNE Group (the **holder**) holds an interest in another Constituent Entity of the MNE Group (the **issuer**); and
- (b) the holder has classified the interest as debt under the financial accounting standard used in the preparation of the relevant Consolidated Financial Statements; and
- (c) the issuer has classified the interest as equity under that financial accounting standard;

the interest is not a Direct Ownership Interest in the issuer.

Part 10-2—Definitions of Securitisation Entity, Flow-through Entity, Tax Transparent Entity, Reverse Hybrid Entity, and Hybrid Entity

10-25 Meaning of *Securitisation Entity*

- (1) 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.
- (2) To avoid doubt, subsections 820-39(4) and (5) of that Act apply for the purposes of subsection (1) of this section.

10-30 Meaning of *Flow-through Entity*

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.

Note: A Constituent Entity may be treated as a Flow-through Entity in accordance with section 10-50.

10-35 Meaning of *Tax Transparent Entity*

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.

Note: A Constituent Entity may be treated as a Tax Transparent Entity in accordance with section 10-50.

10-40 Meaning of *Reverse Hybrid Entity*

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.

10-45 Fiscal transparency and meaning of *Tax Transparent Structure*

- (1) For the purposes of this Part, treat an Entity as fiscally transparent under the laws of a jurisdiction, if that jurisdiction treats the income, expenditure, profit or loss of that Entity as if it were derived or incurred by the direct owner of that Entity in proportion to its interest in that Entity.
- (2) 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.

10-50 Deemed Flow-through Entity and Tax Transparent Entity

- (1) Subsection (2) applies if a Constituent Entity:
 - (a) is not a tax resident of any jurisdiction; and
 - (b) is not subject to a Covered Tax or a Qualified Domestic Minimum Top-up Tax based on its place of management, place of creation, or similar criteria.
- (2) For the purposes of this instrument, 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:
 - (a) its owners are located in a jurisdiction that treats the Entity as fiscally transparent; and
 - (b) it does not have a place of business in the jurisdiction where it was created; and
 - (c) the income, expenditure, profit or loss is not attributable to a Permanent Establishment in respect of which it is the Main Entity.

10-55 Meaning of *Hybrid Entity*

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.

Part 10-3—Location of dual-located entities

10-60 Dual-located entities

- (1) Subsections (2) and (3) specify, for the purposes of section 43 of the Act, the jurisdiction a Constituent Entity of an MNE Group is located in for a Fiscal Year if, disregarding that section, it would be located in more than one jurisdiction under section 40 of the Act.
- (2) If:
 - (a) the jurisdictions are party to a Tax Treaty; and
 - (b) the Constituent Entity is deemed to be resident in only one of the jurisdictions for purposes of the Tax Treaty;the Constituent Entity is taken to be located in that jurisdiction for the Fiscal Year.
- (3) If subsection (2) does not apply to the Constituent Entity, the Entity is taken to be located in the following jurisdiction for the Fiscal Year:
 - (a) if the Constituent Entity has, for the Fiscal Year, a greater amount of Covered Taxes (determined without reference to any taxes paid under a Controlled Foreign Company Tax Regime) paid or due to be paid in one of the jurisdictions than in the other jurisdictions—that jurisdiction;
 - (b) if paragraph (a) does not apply, and the MNE Group has a greater Substance-based Income Exclusion Amount for the Fiscal Year (computed under Part 5-3 on the assumption that the Constituent Entity were the only Constituent Entity of the MNE Group located in the jurisdiction) in one of the jurisdictions than in the other jurisdictions—that jurisdiction;
 - (c) if neither paragraph (a) nor (b) applies, and the Constituent Entity is the Ultimate Parent Entity of the MNE Group—the jurisdiction in which it was created.

Note: Under paragraph 43(2)(b) of the Act, a Constituent Entity of an MNE Group mentioned in subsection (1) of this section is a Stateless Constituent Entity of the MNE Group for a Fiscal Year if the Constituent Entity is not taken to be located in a jurisdiction for the Fiscal Year under subsections (2) and (3) of this section.

10-65 Dual-located Parent Entity located in non-IIR jurisdiction

- (1) This section applies if:
 - (a) disregarding section 43 of the Act, a Parent Entity of an MNE Group is located in more than one jurisdiction (each of which is a **relevant jurisdiction**) for a Fiscal Year under section 40 of the Act; and
 - (b) under subsection 10-60(2) or (3) of this instrument, the Parent Entity is taken to be located in one of those jurisdictions (the **location jurisdiction**) for the Fiscal Year; and
 - (c) the Parent Entity is not required, under the laws of the location jurisdiction, to apply a Qualified IIR for the Fiscal Year.
- (2) If:
 - (a) Australia is a relevant jurisdiction and is not the location jurisdiction; and

Section 10-65

- (b) if Australia and the location jurisdiction are party to a Tax Treaty:
 - (i) the Parent Entity is treated as a resident of the location jurisdiction for purposes of the Tax Treaty; and
 - (ii) the location jurisdiction does not apply a Qualified IIR; and
 - (c) Australia is not restricted from taxing the Parent Entity under the Tax Treaty for income tax purposes;
- treat the Parent Entity as being located in Australia for the purposes of paragraph 2-5(1)(a) of this instrument.