<u>EXPLANATORY STATEMENT</u>

<u>Issued by authority of the Treasurer</u>

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

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

Section 20 of the *Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024* (the Assessment Bill) provides that the Minister may make Rules required or permitted by the Assessment Bill.

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

- computing and allocating income;
- computing and allocating adjusted covered taxes;
- application of the rules to investment and tax transparent entities; and
- transitional provisions for MNE Groups in the initial phases of being in scope of the Assessment Bill.

The Rules will implement the domestic framework for a multinational top-up tax. They are part of the OECD Two-Pillar Solution that seeks to reform the international taxation rules to ensure that MNEs pay a fair share of tax wherever they operate and generate profits in today's digitalised and globalised world economy.

The Rules determine the substantive computation of top-up tax under the GloBE Rules and operate to ensure that future administrative guidance released by the OECD can be incorporated in a timely and efficient manner. The Rules contain detail on Chapters 3 to 5 of the GloBE Rules that establish the computations for calculating an Effective Tax Rate. The ancillary Chapters 6 and 7 of the GloBE Rules are included to support the Effective Tax Rate computations for special entities. The safe harbours and transitional provisions from Chapters 8 and 9 of the GloBE Rules are also contained in the Rules.

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

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules commence the day after it is registered.

The Rules apply from 1 January 2024.

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

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

ATTACHMENT A

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

Section 1 – Name

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

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedule

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

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Glossary

This Explanatory Statement uses the following abbreviations and acronyms.

Abbreviation	***Definition***
AASB	Australian Accounting Standards Board
AFAS	Either an Authorised Financial Accounting Standard or Acceptable Financial Accounting Standard
Agreed Administrative Guidance	The following collection of documents: • *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)* published by the OECD on 2 February 2023 • *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, July 2023 published by the OECD on 17 July 2023 • *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, December 2023 published by the OECD on 18 December 2023.
Assessment Bill	*Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024*
CbC	Country-by-Country
CFC	Controlled Foreign Company
CFS	Consolidated Financial Statements
Commentary	*Tax Challenges Arising from the Digitalisation of the Economy –*

	Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), OECD 2022
Consequential Bill	*Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024*
DMT	Domestic minimum tax
ETR	Effective Tax Rate
FANIL	financial accounting net income or loss
FXGL	foreign currency exchange gains or losses
Imposition Bill	*Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024*
GloBE Rules	OECD GloBE Model Rules (as modified by the Commentary, Agreed Administrative Guidance and Safe Harbours Rules)
IIR	Income Inclusion Rule
IPE	Intermediate Parent Entity
ITAA 1997	*Income Tax Assessment Act 1997*
JV	Joint venture
LTCE	Low-Taxed Constituent Entity
MOCE	Minority-owned Constituent Entity
MNE	Multinational enterprise
OECD	Organisation for Economic Cooperation and Development
OECD GloBE Model Rules	*Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* published by the OECD on 20 December 2021

POPE	Partially-owned Parent Entity
RBA	Reserve Bank of Australia
QDMTT	Qualified Domestic Minimum top-up tax
QIIR	Qualified Income Inclusion Rules
Safe Harbours Rules	*Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)* published by the OECD on 20 December 2022
The Rules	*Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024*
UPE	Ultimate Parent Entity
UTPR	Undertaxed Profits Rules

Chapter 1: Overview of the Taxation (Domestic and Global Minimum Tax) Rules 2024

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Outline of the GloBE Rules Bill package

1.1 The package of legislation implementing the GloBE Rules consists of three complementary Bills – the Assessment Bill, Imposition Bill, Consequential Bill, and the Rules.

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

Outline of chapter

1.3 The Assessment Bill establishes a new taxation framework that assesses the domestic minimum tax and the global minimum top-up tax liability on certain MNEs as a part of coordinated global approach. The Assessment Bill, Imposition Bill and Consequential Bill (together, the Bills) will ensure that MNEs within scope of the OECD's GloBE Rules pay a minimum rate of 15 per cent on the GloBE income arising in each jurisdiction they operate, consistent with the GloBE Rules.

1.4 The Rules provide the specific computations required to arrive at calculating the top-up tax payable.

Context of amendments

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

1.6 The Two-Pillar Solution is a result of an OECD and G20 policy process with involvement of 140 countries.

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

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

1.9 The charging provisions in the GloBE Rules comprise two interlocking rules: the IIR and the UTPR.

1.10 The IIR applies by generally allocating the top-up tax amount on the Parent Entity closest to the top of the corporate structure (the ‘top-down’ approach). The top-up tax amount relates to LTCEs that are subject to an ETR below the 15 per cent minimum rate in that jurisdiction.

1.11 The UTPR serves as a backstop to the IIR. It denies deductions (or requires an equivalent adjustment) to certain Constituent Entities to the extent that an LTCE is not subject to tax under an IIR.

1.12 The two sets of rules provide a systematic solution to ensure all in scope MNE Groups are subject to a minimum of 15 per cent effective tax rate in the jurisdictions in which they operate.

1.13 The Bills implement the IIR and DMT for Fiscal Years commencing on or after 1 January 2025. The UTPR has an application date of 1 January 2025.

Summary of new law

1.14 Chapters 1 to 5 implement the core provisions of the GloBE Rules, including the application of the Rules and the computation of the ETR. Chapters 6 to 9 set out ancillary rules for investment and transparent entities and transitional rules. Chapter 10 sets out the definitions.

Detailed explanation of new law

Scope: Excluded entities

Excluded Exempt Income Entity, Excluded Non-Profit Subsidiary

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

1.16 Where the Entity is a Main Entity, then the income of any Permanent Establishment/s under the Main Entity is included in the value and activities assessment.

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

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

1.19 As the income of these Entities is excluded from the GloBE Income or Loss computation, these Entities would not be expected to be subject to tax under the GloBE Rules. The ownership percentage threshold for these Entities is lower than for Excluded Service Entities in order to provide greater flexibility to the ownership structures associated with these types of Entities.

1.20 An ***Excluded Non-Profit Subsidiary*** is a subsidiary Entity of a Non-profit Organisation. These subsidiary Entities typically undertake commercial activities to raise funds for the charitable activities of the parent Non-profit Organisation. The revenue of the Non-profit Organisation is included when

determining the consolidated revenue of the MNE Group and, as a result, could lead to the consolidated revenue of the MNE Group reaching the EUR 750 million threshold, despite the fact that the revenue of the subsidiary entities undertaking the commercial activities could be significantly below that threshold. In other words, the subsidiaries undertaking the commercial activities may only come within scope of the GloBE Rules because they are owned by the NPO. This outcome is inconsistent with the policy intention of the GloBE Rules and as such, this provision rectifies this unintended consequence. This rule applies regardless of the actual activities undertaken by the Excluded Non-Profit Subsidiary.
[Chapter 1, subsection 1-20(3) of the Rules]

1.21 For an Excluded Non-Profit Subsidiary that is wholly owned by a Non-profit Organisation, its activities will be considered ancillary to those carried out by the Excluded Entities if the aggregate revenue of other subsidiaries which are not Excluded Entities:

- do not exceed 25 per cent of the consolidated revenue of the MNE Group in a Fiscal Period; and
- do not exceed the EUR 750 million.
[Chapter 1, subsection 1-20(3)(b) of the Rules]

Chapter 2: Liability to Top-Up tax

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Outline of chapter

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

Income Inclusion Rule – Agreed rule order

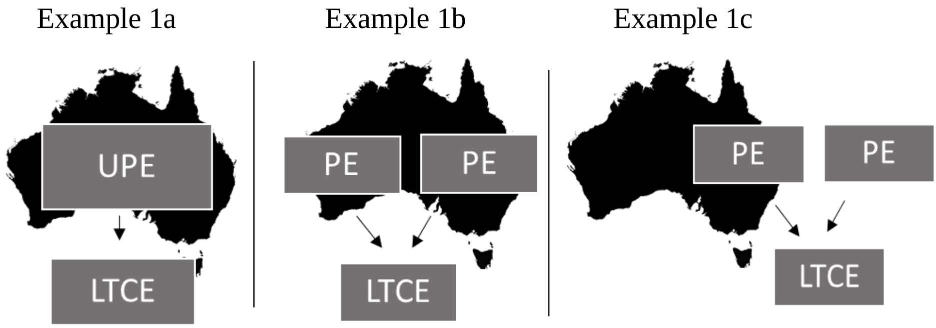
2.2 The IIR follows a linear, top-down approach, in imposing top-up tax on the Parent Entity.

2.3 Generally, the jurisdiction where the LTCE is located has the primary right to collect any top-up tax under the QDMTT. However, if that right is not exercised, then under the IIR agreed rule order, the jurisdiction where the UPE of the MNE Group is located will collect the top-up tax under the IIR. The top-up tax paid by the UPE is proportional to its ownership interest in the LTCE.

2.4 In most cases, the IIR is applied at the level of the UPE. However, in certain circumstances, the top-up tax in respect of a LTCE is imposed on an entity that is lower down in the MNE Group structure, such as an IPE or POPE. An example of where an IPE may have a liability to top-up tax in respect of an LTCE, rather than the UPE, is where the jurisdiction does not have a QIIR. ***[Chapter 2, subsection 2-5(5) of the Rules]***

2.5 Where the jurisdiction does not have a QIIR, then other jurisdictions with a Qualified UTPR may be able to exercise the right to claim any top-up tax.

Diagram 2.1 Base scenarios for IIR



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

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

Example 1c: Ownership is split between two parent entities one in Australia, the other overseas. Similar to the previous scenario, the LTCE will only be in one set of CFS and therefore in one MNE group with one UPE. If the UPE is the Australian parent, an Australian IIR will apply, and another foreign IIR will not apply. This example assumes that the other parent entity not a POPE that can apply IIR under the rule order.

Liability to tax and application of the IIR

2.6 A Parent Entity is liable to pay the sum of the top-up tax amounts in respect of LTCEs it has an ownership interest in for a Fiscal Year.
[Chapter 2, section 2-5 of the Rules]

2.7 The Parent Entity that has an Ownership Interest in the LTCE at any time in the relevant Fiscal Year must apply the IIR.
[Chapter 2, subsection)2-5(1)(b) of the Rules]

2.8 However, this rule does not apply in certain circumstances where the Parent Entity is an IPE or a POPE of the Applicable MNE Group. Different rules apply for determining the top-up tax amount for these Entities.
[Chapter 2, subsection 2-5(5) of the Rules]

Allocation of top-up tax under the IIR

2.9 The IIR imposes the top-up tax liability on a Parent Entity in the MNE Group based on its ***Allocable Share*** of the top-up tax of each LTCE of the MNE Group for the Fiscal Year, which is an amount equal to:

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

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

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

$$\textit{Inclusion Ratio} = \frac{\text{LTCE Total GloBE Income} - \text{GloBE Income of other owners}}{\text{LTCE GloBE Income for the Fiscal Year}}$$

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

2.11 The CFS generally reflect all of the assets, liabilities, income, expenses and cash flows of controlled subsidiaries. However, where the subsidiaries are partially owned by third party owners outside of the MNE Group, adjustments will be required to account for the Ownership Interests of the third-party owners. This ensures that the CFS do not overstate the portion of the income of the MNE Group that belongs to or inures to the benefit of the owners of the UPE. This is intended to remove both the Globe Income attributable to third-party owners, as well as to other owners within the MNE Group.

2.12 In determining the amount of an LTCE's GloBE Income that is attributable to other owners in the formula above, it is necessary to apply the same principles that the UPE applies, or would need to apply, in its CFS to determine the share of the FANIL that belongs to third party owners of a subsidiary that it does not wholly own. Consistent with the GloBE Rules, a hypothetical amount of GloBE Income is attributed to third party owners with Ownership Interests in the LTCE. This calculation is based on applying the AFAS used in the CFS of the UPE and with the following assumptions:

- First, the LTCE's net income is equal to its GloBE Income;
- Second, the Parent Entity had prepared the hypothetical CFS using the accounting standards it uses for its own CFS;

- Third, the Parent Entity owns a controlling interest in the LTCE such that all of the income and expenses of the LTCE is consolidated on a line by line basis with those of the Parent Entity in the hypothetical statements. This assumption is required to ensure that the LTCE's income and expenses will be included in the hypothetical CFS (even where the Parent Entity does not actually hold a controlling interest in the LTCE).
- Fourth, the entire GloBE Income of the LTCE is attributable to transactions with third parties outside of the Group. This assumption ensures that intragroup income and expenses transactions, which would otherwise be eliminated in the preparation of the CFS, are recognised in the hypothetical CFS.
- Finally, all Ownership Interests not held by the Parent Entity, directly or indirectly, are held by third-party owners. This assumption treats other CEs of the MNE Group that own an interest in the LTCE in the same manner as persons that are not Group Entities. This ensures that only the income attributable to direct and indirect Ownership Interests owned by the Parent Entity is included in the Parent Entity's Inclusion Ratio.
  [Chapter 2, subsection 2-15(2) of the Rules]

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

IIR Offset Mechanism

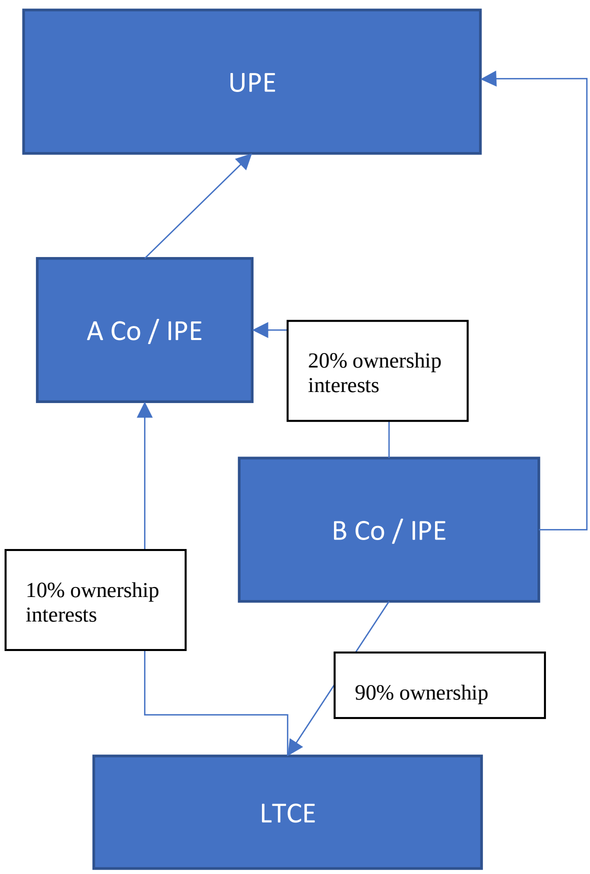
2.14 The purpose of the offset mechanism is to avoid any double taxation where top-up tax is allocated to more than one Parent Entity in the same ownership chain.

2.15 Consistent with the GloBE Rules, Australia imposes top-up tax under the IIR if it has a Qualified IIR, and the tax is typically imposed on the UPE located in Australia. Under the GloBE Rules, where a UPE is located in a jurisdiction without a Qualified IIR, an IPE located in a jurisdiction with a Qualified IIR will be liable for any top-up tax. Where there is more than one IPE, the highest-tier IPE, which is determined by whether it holds Controlling Interests over other Constituent Entities in the MNE Group, will have liability of the top-up tax Amount.

2.16 Where an IPE does not hold Controlling Interests over another IPE, then each IPE in the MNE Group will bear the top-up tax liability in respect of a LTCE that is proportional to its direct or indirect Ownership Interests in that LTCE.

In order to avoid double taxation, an IPE's Allocable Share of the top-up tax is reduced by the amount of top-up tax payable by the other IPEs that are lower down in the ownership chain. This reduction is made at the moment of allocating the amount of top-up tax among Parent Entities and not after the full amount or a portion of the top-up tax is effectively paid.
[Chapter 2, section 2-20 of the Rules]

Diagram 2.2 Offset Mechanism with Intermediate Parent Entities



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

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

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

However, applying the offset mechanism, B Co will have a top-up tax amount of $90 from its ownership interest of the LTCE, while A Co will have $10 in Top-Up Tax liability. Imposing the $18 liability on A Co from its 20% ownership interest in B Co would result in double taxation.

Partially Owned Parent Entities (POPEs) – offset mechanism

2.17 The above top-down Ordering Rule is modified for POPEs. Top-Up Tax liability in respect of a LTCE will be imposed on a POPE that directly or indirectly owns an Ownership Interest in the LTCE at any time during the Fiscal Year. This ensures that owners of the POPE who are outside the MNE Group also bear their share of the tax burden that is imposed on the POPE. This is called the Split-Ownership Ordering Rule. To achieve this result, the top-up tax of a LTCE for a Fiscal Year is imposed on the POPE, despite top-up

tax of the LTCE already being imposed on the UPE or an IPE. The IIR Offset Mechanism operates to reduce the top-up tax liability of the UPE or IPE by an amount equal to the portion of the UPE's or IPE's Allocable Share of top-up tax that is brought into charge by the POPE.
[Chapter 2, section 2-20 of the Rules]

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

Allocable share of Top-Up Tax

2.19 Any top-up tax liability that arises in respect of a PE will be imposed on the Main Entity. The Main Entity is that Entity that includes the FANIL of the Permanent Establishment in its Financial Statement.

2.20 A Parent Entity's Allocable Share of the top-up tax of a LTCE for a Fiscal Year is calculated by multiplying the top-up tax of the LTCE by the Parent Entity's Inclusion Ratio, as follows:

$$\text{Allocable share} = \text{Top} - \text{Up Tax of LTCE} \times \text{Parent Entity's Inclusion Ratio}$$

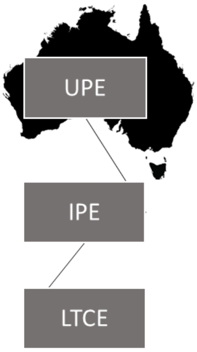
2.21 A Parent Entity's Inclusion Ratio for a LTCE for a Fiscal Year is the ratio of the LTCE's GloBE Income for the Fiscal Year (reduced by the LTCE's GloBE Income attributable to Ownership Interests held by other owners) to the LTCE's GloBE Income for the Fiscal Year.

$$Parent\ Entity's\ Inclusion\ Ratio\ = \frac{LTCE's\ \text{GloBE}\ income -\ LTCE's\ GloBE\ Income\ attributable\ to\ other\ owners}{LTCE's\ GloBE\ Income}$$

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

2.23 A Parent Entity that holds direct or indirect Ownership Interests in a JV or JV subsidiary may apply the IIR to its Allocable Share of the top-up tax of the JV. The MNE Group will determine its Allocable Share of the top-up tax in respect of a JV (or its JV Subsidiaries) located in a low-taxed jurisdiction and allocates any resulting top-up tax to the relevant Parent Entity to collect under the IIR.

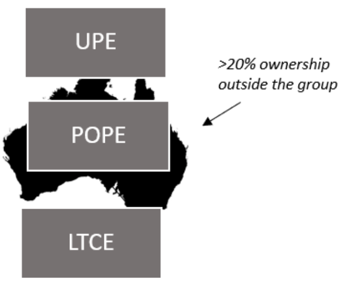
Example 2.1 IPE Interest outside of Australia



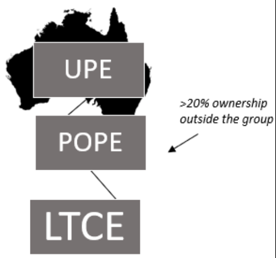
Example 2.1: The UPE is in Australia, with the other two entities overseas. Australia has a QIIR so Top-Up Tax is imposed on the UPE (Australia has primary taxing right). The LTCE will not be subject to another IIR.

Example 2.2 Ownership interests outside the group

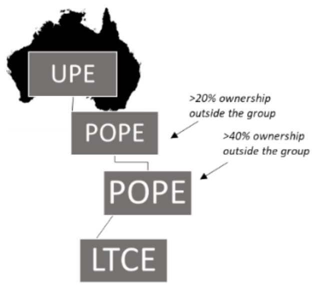
Example 2.2a



Example 2.2b



Example 2.2c



Example 2.2a: The UPE is in a foreign jurisdiction, the POPE is in Australia, and the LTCE is in a low-taxed jurisdiction. The Australian POPE’s Allocable Share of top-up tax of the LTCE is allocated to the POPE. The UPE and the POPE apply the IIR based on their ownership interests in the LTCE and, under the IIR Offset Mechanism, the UPE’s top-up tax liability is reduced by the portion that is brought into charge by the POPE.

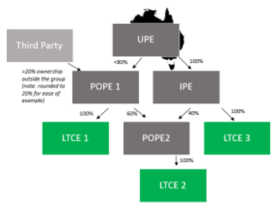
Example 2.2b: The UPE is in Australia, the POPE is overseas and the LTCE is overseas. The Allocable Share of top-up tax of the LTCE is allocated to the Australian UPE and the POPE. Both Parent Entities apply the IIR but the UPE top-up tax liability is reduced by the POPE’s top-up tax liability (in this example all the

Top-Up Tax of the LTCE). The rule applies even though Australia applies a Qualified IIR.

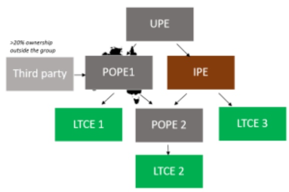
Example 2.2c: The UPE is in Australia and applies an IIR. Both POPEs also apply an IIR (as the lower POPE is not wholly owned by the upper POPE). The IIR Offset Mechanism will reduce the Top-Up Tax liability of the UPE and the POPE higher in the ownership structure.

Example 2.3 Complex MNE group

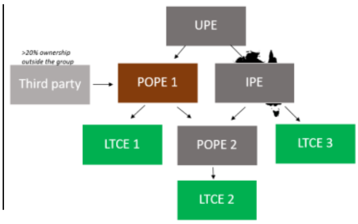
Example 2.3a



Example 2.3b



Example 2.3c



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

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

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

Placeholder for the UTPR

2.24 The application of the UTPR is deferred by 12 months until 1 January 2025.

Chapter 3: Computation of GloBE income or loss

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Outline of chapter

3.1 Chapter 3 of the Rules sets out the GloBE income or loss calculation.

Financial accounts

3.2 The GloBE income or loss of a Constituent Entity within a MNE Group is calculated starting from the FANIL for a Fiscal Year.
[Chapter 3, section 3-5 of the Rules]

3.3 The FANIL is the net income or loss for the Constituent Entity recorded in the CFS of the UPE of the MNE Group for the Fiscal Year, excluding any consolidation adjustments.

3.4 Generally, the UPE's CFS is relied upon to ensure consistency in the computations for the Constituent Entities and to avoid the risk of arbitrage from using different accounting standards.
[Chapter 3, subsection 3-10(1) of the Rules]

3.5 The FANIL does not include any purchase accounting adjustments that are reflected in the CFS of the UPE or the Constituent Entity's Financial Accounts and are a result of a Constituent Entity acquiring an Entity. However, these adjustments are included in the FANIL if the Entity was acquired before 1

December 2021. They are also not included if it is not reasonably practicable, due to the accounting standard used to prepare the CFS of the UPE, to compute the Constituent Entity's FANIL without the adjustment.
[Chapter 3, subsections 3-10(3) and (4) of the Rules]

3.6 A special rule applies where it is not reasonably practicable to compute the Constituent Entity's FANIL using the accounting standards for the UPE's CFS. If the information in the Constituent Entity's own financial accounts is reliable, and the use of another accounting standard does not result in a permanent difference of more than EUR 1 million, the Constituent Entity can maintain its entity-level financial accounts using an accounting standard that is different from the standard used in the preparation of the UPE's CFS. The Constituent Entity's FANIL may be determined using another Acceptable Financial Accounting Standard or Authorised Financial Accounting Standard (AFAS) (adjusted for Material Competitive Distortions). This rule is not expected to apply in many cases because an MNE Group will typically have mechanisms in place to convert a subsidiary's entity-level accounts to the UPE's accounting standard in connection with the preparation of the CFS.
[Chapter 3, subsections 3-10(5) and (6) of the Rules]

3.7 Where the financial accounts of a Constituent Entity are prepared for a Fiscal Year that is different from that of the UPE, the information reported in the GloBE Information Return should reflect on a consistent basis either:

(i) information for the Fiscal Fear of the relevant Constituent Entities that ends during the Reporting Fiscal Year; or

(ii) information for the relevant Constituent Entities reported in the CFS for the Reporting Fiscal Year.

Currency translation

3.8 MNE Groups are required to undertake all relevant GloBE calculations and report the relevant amounts in the GloBE Information Return in the presentation currency of the MNE Group's CFS. All relevant amounts will need to be translated to the presentation currency based on the Authorised Financial Accounting Standard in connection with the preparation of the Consolidated Financial Accounts of the MNE Group.

3.9 MNE Groups must translate amounts relevant to the GloBE calculations that are not already translated into the currency required for purposes of preparing CFS, to the presentation currency, in accordance with the applicable foreign currency translation rules in the Authorised Financial Accounting Standard used to compute the FANIL of Constituent Entities in the jurisdiction.

3.10 Monetary thresholds in the GloBE Rules are denominated in EUR to avoid annual rebasing calculations and to minimise the difference between the Australian threshold and thresholds set by other jurisdictions.
[Chapter 3, section 3-15 of the Rules]

3.11 Where a Constituent Entity uses a different currency to the UPE, the currency may be converted using the foreign currency translation principles of the financial accounting standard.
[Chapter 3, section 3-15 of the Rules]

3.12 If the European Central Bank does not have a specific rate for two currencies, daily rates as quoted by the RBA may be an acceptable alternative.
[Chapter 3, section 3-15 of the Rules]

3.13 Where Constituent Entities must convert an amount to be consistent with the UPE's currency in the CFS, the Constituent Entity may convert the currency based on the RBA's daily rate of exchange.
[Chapter 3, section 3-15 of the Rules]

3.14 Translation rules affect multiple thresholds in the Rules including:

- Section @12(2)-(3) of the Assessment Bill – which refer to revenue included in the Consolidated Financial Statements equal to or greater than EUR 750 million.
- Subsection 3-10(7)(c) of the Rules – which refers to permanent differences in excess of EUR 1 million.
- Subsection 4-120(4) of the Rules – which refer to an aggregate decrease of less than EUR 1 million for a Constituent Entity in the prior fiscal year.
- Subsections 5-100(1)(a)-(b) of the Rules – which refer to Average GloBE Revenue of less than EUR 10 million and Average GloBE Income or Loss of less than EUR 1 million.
- Section section 27 of the Assessment Bill - 'Material Competitive Distortion' – which refers to an aggregate variation of greater than EUR 75 million in a Fiscal Year.
- Section 3-80 of the Rules - 'Policy Disallowed Expenses' – which refers to expenses accrued by the Constituent Entity for fines and penalties that equal or exceed EUR 50 000.

Adjustments to determine GloBE Income or Loss

3.15 A series of adjustments are applied to the FANIL to account for the differences between financial accounting and taxable income. Different rules apply to the GloBE income and loss calculation for certain tax neutrality and distribution tax regimes and in relation to corporate restructuring (including mergers, acquisitions and demergers) and certain holding structures, such as multi-parented MNE Groups and joint venture investments.

3.16 The FANIL is adjusted through including, excluding or both including and excluding amounts for the purposes of computing the Constituent Entity's GloBE Income or Loss. The GloBE Income or Loss is therefore the FANIL with adjustments applied in accordance with Part 3-2 of the Rules. ***[Chapter 3, section 3-20 of the Rules]***

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

- Net Taxes Expense (being the net amount of various tax-related expenses and credits);
- Included Revaluation Method Gain or Loss (being gains or losses from included revaluation methods of adjusting the carrying value of property, plant and equipment to its fair value);
- Gain or loss from disposition of assets and liabilities that are excluded under section 6-65 of the Rules (being gains or losses from the transfer of assets and liabilities that are not taken into account under section 6-65 due to being transfers between group members);
- Asymmetric Foreign Currency Gains or Losses (being differences in foreign currency gains or losses that arise due to asymmetries in tax and financial reporting);
- Policy Disallowed Expenses (being expenses that are not allowed due to specific policies);
- Prior Period Errors and Changes in Accounting Principles (being adjustments made due to errors from previous periods or changes in accounting standards);
- Accrued Pension Expense (being expenses related to pension accruals);
- Adjustments which address misallocation of income among entities located in different jurisdictions, (For example, cross-border intra-group transactions must be computed at an arm's length price in the computation of GloBE Income or Loss. The rationale of this adjustment is to protect the integrity of jurisdictional blending).

3.18 For the purposes of calculating GloBE Income or Loss, the Constituent Entity must exclude the following amounts from FANIL:

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

ownership interest that is included under the equity method of accounting);

- a gain from the disposition of an ownership interest (other than a portfolio shareholding) that was not taken into account under section 6-65 of the Rules;
- policy expenses; and
- international shipping income.

3.19 Depending on the circumstances, the Constituent Entity must either include or exclude the following amounts in calculating its GloBE Income:

- refundable tax offsets;
- asymmetric foreign currency gains or losses; and
- specific taxes relating to insurance companies.

3.20 An entity may make the following annual or five-year elections to adjust their GloBE income based on their circumstances:

- stock-based compensation;
- realisation method;
- aggregate asset gain; or
- applying consolidated accounting treatment to eliminate income, expense, gain and losses from transactions between Constituent Entities that are located and included in a tax consolidated group.

Inclusions

3.21 Various adjustments are made to the financial accounting income to include amounts that would otherwise result in a permanent difference with the intention of protecting the tax base.

Net tax expenses

3.22 Certain tax expenses would ordinarily be taken into account in the calculation of the FANIL but must be added-back to the GloBE Income or Loss in order to produce a reliable ETR calculation for GloBE purposes.

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

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

- any deferred tax asset attributed to a loss for the fiscal year (this is recorded as a negative amount that arises from a GloBE loss election);
- any QDMTT;
- any taxes arising under the GloBE Rules;
- any Disqualified Refundable Imputation Tax; and
- tax paid by an insurance company in respect of returns to policyholders.
  [Chapter 3, section 3-25 of the Rules]

Distinction between refundable tax and imputation tax

3.24 Qualified Imputation Tax is distinguished from a Disqualified Refundable Imputation Tax, despite both taxes being imputation taxes, as they allow either the company or the shareholder to claim a full or partial credit or refund of the corporate income tax previously paid by the company when that income is subsequently distributed to the shareholder in the form of a dividend.

3.25 However, under a Disqualified Refundable Imputation Tax regime, the corporate tax previously paid may be refunded without subjecting the shareholders to tax on the dividend.

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

3.27 Australia's corporate income tax, similar to New Zealand's, meets the definition of a Qualified Imputation Tax and is therefore a covered tax.

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

Asymmetric treatment of dividends and distributions

3.29 A financial instrument issued by one Constituent Entity and held by another Constituent Entity in the same MNE Group must be classified as debt or equity consistently for both the issuer and holder and accounted for accordingly in the computation of their GloBE Income or Loss. However, this may not be the case for a compound financial instrument that has both equity and liability components under an Acceptable Financial Accounting Standard. This may lead to financial instruments being reported differently between the issuer and holder, where the issuer treats the instrument as debt and the holder treats the instrument as equity, resulting in the issuer's financial accounting expense not being offset by a corresponding amount of income to holder.

<u>Equity component is treated as an excluded dividend</u>

3.30 A Constituent Entity must not treat a payment as an Excluded Dividend to the extent the issuing Constituent Entity from the same MNE group treats the payment as an expense for GloBE. In the case of a dividend or other distribution that is a compound financial instrument being received only the amounts received or accrued in respect of the equity component of the Ownership Interest shall be treated as an Excluded Dividend.

<u>Symmetric treatment</u>

3.31 To the extent the Constituent Entities have classified the instrument differently under the relevant accounting standards, the classification adopted by the issuer should also be applied by the holder. Aligning the classification of the instrument ensures that no amount in respect of a financial instrument shall be treated as an Excluded Dividend to the extent that another Constituent Entity in the same MNE Group that issued the instrument treats the payment as an expense in the computation of its GloBE Income or Loss. To the extent the issuer classifies the relevant instrument as a debt for accounting purposes, the MNE Group will still need to consider the application of intragroup payments under section 3-165 of the Rules.

Included revaluation method gain or loss

3.32 Under financial accounting standards, Constituent Entities can elect the cost model or revaluation model, as its accounting policy for property, plant and equipment.

3.33 Revaluation increases are generally recognised in other comprehensive income, rather than profit or loss. Absent a corrective measure, the revaluation model would impact the computation of GloBE Income because revaluation gains are generally excluded from FANIL, but then depreciation expense is determined based on the revalued amount.

3.34 The effect of this adjustment is to require any revaluation to be included in the GloBE income or loss computation. This includes revaluation losses or subsequent incremental increase in depreciation only if they are attributable to revaluation increases.
[Chapter 3, sections 3-55 and 3-60 of the Rules]

3.35 Any current or deferred Covered Taxes associated with an Included Revaluation Method Gain or Loss are taken into account in the computation of Adjusted Covered Taxes in Chapter 4.

Asymmetric Foreign Currency Gains or Losses

3.36 Where the Constituent Entity's Accounting Functional Currency is different from its Tax Functional Currency, then the FANIL must be adjusted to account for Asymmetric Foreign Currency Gain or Loss. These are generally foreign currency exchange gains or losses (FXGL) that arise due to differences between the functional currency for accounting purposes and the one used for local tax purposes.

3.37 No adjustments are necessary if the functional currency is the same as the tax currency in the CFS. The defined term “accounting functional currency” refers to the functional currency used by the Constituent Entity in its financial accounts – it is not the presentation functional currency used in the CFS.

3.38 The tax functional currency is the functional currency used to determine the Constituent Entity’s taxable income or loss for a Covered Tax in the jurisdiction in which it is located. The accounting functional currency is the functional currency used to determine the Constituent Entity’s FANIL.
[Chapter 3, section 3-75 of the Rules]

3.39 Where transactions in the accounting functional currency produce taxable gain or loss because the tax functional currency is different, the tax FXGL is included in the GloBE income.
[Chapter 3, subsection 3-70(1) of the Rules]

3.40 Where transactions in the tax functional currency produce an accounting gain or loss because the accounting functional currency is different, the accounting FXGL is excluded in computing the GloBE income.
[Chapter 3, subsection 3-70(2) of the Rules]

Prior period errors and changes in accounting principles

3.41 An adjustment is required where there are prior period errors or changes in accounting principles that changes the equity at the beginning of the Fiscal Year that affects income or expenses that are included in the computation of GloBE Income or Loss.

3.42 Where an error has been identified, the best accounting practice is that the entity is expected to re-determine the opening equity for the year in which the error was discovered or as soon as practicable.
[Chapter 3, section 3-85 of the Rules]

3.43 An adjustment is not required where an error correction requires a corresponding decrease in Covered Taxes in a previous Fiscal Year of greater than EUR 1 million, as these adjustments are subject to post-filing adjustments and tax rate changes under Part 4-6 of the Rules.
[Chapter 3, paragraph 3-85(a) of the Rules]

3.44 Adjustments are only required when corrections impact the GloBE income. That is, if the adjustment relates to Fiscal Years prior to the application of the Imposition Bill, Assessment Bill and the Rules to the Constituent Entity, it is excluded from the computation of GloBE income or loss.

Accrued Pension Expense

3.45 Adjustments for accrued pension applies regardless of whether the pension fund is in surplus, deficit, or liability position.

3.46 Adjustments only apply to amounts paid to a pension fund (self-managed superannuation fund, registrable superannuation entity, retirement savings account etc.) and does not include amounts directly paid to a person, nor does it include amounts paid into defined benefit funds.

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

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

[Chapter 3, section 3-90 of the Rules]

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

- accrued income as a positive amount (if it is larger than the contribution amount);
- resulting adjustment as negative (which will decease income);
- accrued expense as negative;
- resulting adjustment may be positive or negative, depending if expense exceeds contributions (positive) or if contributions exceed expense (negative);
- contribution amounts as positive.

Arm's Length requirement for cross border transactions

3.49 Transactions between group entities must be priced consistently with the Arm's Length Principle. In addition, losses from transactions between two Constituent Entities in the same jurisdiction must apply the Arm's Length Principle if the loss is factored into the computations for GloBE Income or Loss.

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

- there are different amounts in the financial accounts between entities located in different jurisdictions; or
- the amounts are inconsistent with the Arm's Length Principle as defined in Chapter 10 of the Rules.
  [Chapter 3, section 3-110 of the Rules]

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

3.52 The Arm's Length Principle is only applicable to transactions between group entities within the same jurisdiction where there is a loss that is taken into account for the GloBE income computation. If the loss is excluded from GloBE income, the Arm's Length Principle does not apply, because there is no amount to adjust. Where a Filing Constituent Entity has made an election to apply the consolidated accounting treatment, (under section 3-135 of the Rules) the loss will be eliminated in the jurisdiction in which the loss arises, due to the Constituent Entities being members of the same tax consolidated group such that the loss, being an intragroup transaction, is excluded from the computation of the Constituent Entity's GloBE Income or Loss.

3.53 Transactions between entities in the same jurisdiction but who compute a separate ETR must adhere to the Arm's Length Principle. This is the case for MOCEs and Investment Entities.
[Chapter 3, Section 3-105 of the Rules]

3.54 This adjustment also covers cases where the transfer price used in the financial accounts of the counterparties may differ from the transfer price used to compute a counterparty's taxable income, but not the transfer price used to compute another counterparty's taxable income in another jurisdiction.
[Chapter 3, section 3-100 of the Rules]

Specific taxes relating to insurance companies

3.55 Insurance companies are sometimes subject to current tax on returns that must be contractually paid over to policyholders. The insurance company passes that tax along to the policyholders through a charge so that the company is in effect reimbursed for taxes paid, in some sense, on behalf of the policyholder. It is normally the case that the insurance company passes that tax along to the policyholders through a charge, specifically by way of a reduction in policy liabilities equivalent to the tax. The reduction is recognised as income and so the company is in effect reimbursed for taxes paid on behalf of the policyholder.

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

3.57 To address this, any amount that is charged to policyholders for taxes paid by the Constituent Entity is excluded. However, amounts charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders, are only to be excluded from the GloBE Income and Loss calculation if that tax is not included as an expense within the profit or loss before tax in the financial accounts.
[Chapter 3, section 3-190 of the Rules]

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

Specific adjustment for Additional Tier One Capital

3.59 Additional Tier One Capital is generally treated as equity for financial accounting purposes. However, some areas treat it as debt for tax purposes. Therefore, a permanent difference arises because payments of additional tier one capital are deductible as interest expense and included as interest income and an adjustment is required.
[Chapter 3, section 3-195 of the Rules]

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

Exclusions

Dividends

3.61 Dividends and distributions from controlled Entities and Entities reported under the equity method will generally be excluded from the calculation of the group's consolidated income. The underlying income or loss of Entities that are consolidated on a line-by-line basis and Entities that are accounted for under the equity method is included directly in the Group's income. CFS exclude distributions from these Entities to avoid double-counting of the same income. The GloBE Rules, however, generally require the GloBE Income or Loss and Covered Taxes of Constituent Entities to be determined starting with the separate Financial Accounting Net Income or Loss of the Constituent Entity. Accordingly, the starting point for a Constituent Entity's income for financial accounting purposes is to include intragroup dividends, including distributions received or accrued in respect of an Ownership Interest held in a Flow-Through Entity, as well as dividends received in respect of Ownership Interests in JVs, associated Entities, and other Entities, including dividends on Portfolio Shareholdings.

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

- the MNE Group holds 10 per cent or more of the Ownership Interests in the issuer; or

- the Constituent Entity has held full economic ownership of the Ownership Interest for a period of 12 months or more.
  [Chapter 3, subsection 3-30(1)(b) and section 3-40 of the Rules]

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

3.64 A Filing Constituent Entity may make a five-year election for any Constituent Entity to include all dividends from all portfolio shareholdings on the basis that it is burdensome to differentiate long-term and short-term portfolio shareholdings.
[Chapter 3, subsections 3-30(2) and (3) of the Rules]

Equity gain or loss

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

- gains and losses from changes in fair value of an Ownership Interest where the MNE group holds more than 10 per cent of the ownership interests at the time of transfer;
- profit or loss in respect of an Ownership Interest included under the equity method of accounting; and
- gains and losses from disposition of an Ownership Interest where the MNE group holds more than 10 per cent of the ownership interests at the time of transfer.
  [Chapter 3, subsection 3-40(3) and sections 3-45 and 3-50 of the Rules]

Policy disallowed expenses

3.66 Bribes, kickbacks, and other illegal payments that may be allowed as expenses under financial accounting rules are not deductible for tax purposes. Therefore, for the GloBE Income computation, these types of expenses are excluded.
[Chapter 3, subsection 3-80(1)(a) of the Rules]

3.67 Fines and penalties may also be expenses under financial accounting rules. These expenses are also excluded when calculating the GloBE Income. This exclusion only applies if the fine or penalty, or the total expenses accrued by the Constituent Entity for fines and penalties, exceeds EUR 50,000.
[Chapter 3, subsections 3-80(b) and (c) of the Rules]

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

Intragroup financing arrangements

3.69 In calculating the GloBE Income or Loss of LTCEs, exclude any expenses from an intragroup financing arrangement that can reasonably be expected to increase the amount of expenses taken into account when calculating the GloBE Income or Loss of the low-tax entity, without a corresponding increase in the taxable income of the high-tax counterparty.
[Chapter 3, section 3-165 of the Rules]

3.70 This rule acts as an integrity compliance to prevent profit shifting from high tax jurisdictions to low tax jurisdictions.

3.71 'Intragroup Financing Arrangement', 'Low-Tax Entity, 'High-Tax Counterparty', and 'Low-Tax Jurisdiction' are defined terms. Low-tax jurisdictions are jurisdictions with an ETR that is lower than the 15 per cent minimum tax rate.
[Chapter 3, sections 3-170, 3-175 and 3-180 of the Rules]

Shipping income

3.72 International shipping income and Qualified Ancillary International Shipping Income are excluded from the GloBE income computations.
[Chapter 3, section 3-205 of the Rules]

3.73 This exclusion applies whether a ship is owned, leased or otherwise at the disposal of the Constituent Entity.

3.74 International shipping income does not include any profits from transportation of passengers or cargo by ships via inland waterways within the same jurisdiction.

3.75 Qualified Ancillary International Shipping Income of all Constituent Entities in a jurisdiction must be less than 51 per cent of those Constituent Entity's International Shipping Income.
[Chapter 3, Section 3-215 of the Rules]

Inclusions or exclusions, depending on circumstances

Refundable Tax Offsets

3.76 Non-Qualified Refundable Tax Credits are not treated as income in the computation of GloBE Income or Loss of a Constituent Entity and so are excluded. Only Qualified Refundable Tax Credits are treated as income, and therefore included, in the computation of GloBE Income or Loss of a Constituent Entity. The full amount of the qualified tax credit will be treated as GloBE Income of the recipient entity in the year the entitlement accrues.
[Chapter 3, subsections 3-115(a) and (b) of the Rules]

3.77 Where a Qualified Refundable Tax Credit has been recorded as a reduction in current income tax expense (or other Covered Taxes), an equivalent adjustment must be made to the covered taxes under section 3-100 of the Rules. The addition to covered taxes has the effect of reversing the accounting entry that treated it as a tax reduction instead of income.

3.78 Marketable Transfer Tax Credits are included in GloBE income or Loss, whereas Non-Marketable Tax Credits are excluded.
[Chapter 3, subsections 3-115(c) and (d) of the Rules]

3.79 Other Tax Credits are excluded when calculating the GloBE Income or Loss.
[Chapter 3, subsection 3-115(e) of the Rules]

Asymmetric Foreign Currency Gains or Losses

3.80 The FANIL must be adjusted to account for Asymmetric Foreign Currency Gain or Loss. These are generally foreign currency exchange gains or losses (FXGL) that arise due to differences between the functional currency for accounting purposes and the one used for local tax purposes.

3.81 Where transactions in the accounting functional currency produce taxable gain or loss because the tax functional currency is different, the tax FXGL is included in the GloBE income.
[Chapter 3, subsection 3-70(1) of the Rules]

3.82 Where transactions in the tax functional currency produce an accounting gain or loss because the accounting functional currency is different, the accounting FXGL is excluded in computing the GloBE income.
[Chapter 3, subsection 3-70(2) of the Rules]

Elections

3.83 A relevant entity may make elections on an annual basis or indefinitely, where no revocation can be made for five years. Appropriate adjustments are to be made if an election is revoked.

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

3.84 A Filing Constituent Entity may make a five-year election to use the amount of allowable deduction in its tax return in place of the amount expensed in its financial accounts. This is to minimise the effect of a permanent difference that arises if the stock option is recorded at present value and amortised over time.
[Chapter 3, section 3-95 of the Rules]

3.85 If the stock-based compensation expense arises in connection with an option that expires without exercise, the entity must include the total amount previously deducted in the computation of its GloBE Income or Loss for the Fiscal Year in which the option expires.
[Chapter 3, subsection 3-95(4)(c) of the Rules]

3.86 If the election is made in a Fiscal Year after some of the stock-based compensation of a transaction has been recorded in the financial accounts, the Constituent Entity must include in the computation of its GloBE Income or Loss for that Fiscal Year. The amount of stock-based compensation is equal to the excess of the cumulative amount allowed as an expense in the computation of the Constituent Entity's GloBE Income or Loss in previous Fiscal Years over the cumulative amount that would have been allowed as an expense if the election had been in place in those Fiscal Years.
[Chapter 3, subsection 3-95(4)(d) of the Rules]

3.87 The election must be applied consistently to the stock-based compensation of all entities located in the same jurisdiction for the duration of the five-year election.

3.88 If the election is revoked, the Constituent Entity must include in the computation of its GloBE Income or Loss for the revocation year the amount deducted pursuant to the election that exceeds financial accounting expense accrued in respect of the stock-based compensation that has not been paid.
[Chapter 3, subsection 3-95(5) of the Rules]

3.89 A stock-based compensation election under section 3-90 of the Rules does not impact the substance-based income exclusion that is calculated under Part 5-3 of the Rules.

Five-year election: Realisation method

3.90 A Filing Constituent Entity may elect to use the realisation principle method for assets and liabilities that are subject to fair value or impairment accounting for all entities within a jurisdiction. The election is a five-year election.
[Chapter 3, section 3-135 of the Rules]

3.91 The election applies to all assets and liabilities of entities, unless the Filing Constituent Entity chooses to limit the election to tangible assets of such Constituent Entities or to Constituent Entities that are Investment Entities.
[Chapter 3, subsection 3-135(1) of the Rules]

3.92 The realisation method has the effect of calculating gains or losses when the asset is disposed or liability is incurred rather than when market variations cause a change in value.

3.93 All gains or losses that are subject to fair value or impairment accounting with respect to an asset or liability are excluded from the computation of GloBE Income or Loss.
[Chapter 3, subsection 3-135(3)(a) of the Rules]

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

- the first day of election year; or
- the date asset was acquired or liability was incurred.
[Chapter 3, subsection 3-135(3)(b) of the Rules]

3.95 In the year an election is revoked, the GloBE Income or Loss is adjusted by the difference between the fair value of the asset or liability at the beginning of the year and the carrying value of the asset or liability determined pursuant to the election. This adjustment recaptures the net fair value gain or loss that arose during the election.
[Chapter 3, subsections 3-135(4) and (5) of the Rules]

Allocation of Aggregate Asset Gain

3.96 In the year of the election, the aggregate asset gain is allocated to the look-back period. The look back period is the election year plus the previous four fiscal years.
[Chapter 3, subsection 3-135(1) of the Rules]

3.97 Instead of evenly distributing the aggregate asset gain across the look back period, it is matched against the net asset losses in the look-back period, starting with the earliest loss year in the period. If the asset gain is not absorbed in the earliest loss year, the balance carries forward to the next loss year until the gain is fully absorbed or there are no remaining loss years in the look-back period.
[Chapter 3, section 3-150 of the Rules]

3.98 A Constituent Entity may have a net asset loss from disposing local tangible assets in that year, this loss is reduced by amounts set-off under previous Part 3-2 elections. When an Aggregate Asset Gain is set off against a Net Asset Loss, that Net Asset Loss is reduced by a corresponding amount, ensuring that there is no double benefit in the future.
[Chapter 3, subsection 3-150(3) of the Rules]

3.99 Where there is an excess gain because the gain exceeds the loss, the excess is allocated among Constituent Entities based on individual net asset gains in the election year in accordance with the following formula:

$$Remaining\ adjusted\ asset = \frac{Allocated\ Asset\ Gain \times CEs\ Net\ Asset\ Gain}{Net\ asset\ gain\ of\ all\ CEs}$$

3.100 This can be combined with an election under section 3-185 of the Rules for tangible assets, excluding fair value gains/losses and impairments during that period.

Recalculating top-up tax

3.101 The election is an ETR adjustment, meaning that the ETR and top-up tax for prior Fiscal Years in the Look-back Period must be recalculated.
[Chapter 3, subsection 3-145(4)-(5) of the Rules]

3.102 Any GloBE Loss generated in previous fiscal years must be recalculated after applying subsections 3-145(4) and (5) of the Rules. If a GloBE Loss is reduced due to this, the top-up tax for that Fiscal Year must also be recalculated in accordance with section 5-60 of the Rules.
[Chapter 3, section 3-145 of the Rules]

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

3.103 A Filing Constituent Entity may make a Five-Year Election to treat foreign exchange gains or losses reflected in a Constituent Entity's FANIL as also an Excluded Equity Gain or Loss if the following conditions are met:

(a) the foreign exchange gains or losses are attributable to hedging instruments that hedge the currency risk in Ownership Interests other than Portfolio Shareholdings;

(b) the gain or loss is recognised in OCI (other comprehensive income) at the level of the CFS; and

(c) the hedging instrument is considered an effective hedge under the Authorised Financial Accounting Standard used in the preparation of the CFS.

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

3.105 The net investment hedge may be issued by a Constituent Entity that services the MNE group as a finance function and that does not itself hold the Ownership Interest that is being hedged. The financing Constituent Entity may transfer the accounting effect of the hedge to the Constituent Entity that holds the Ownership Interest through intercompany loans or other instruments. However, where this transfer occurs, only the Constituent Entity that holds the Ownership Interest will treat the foreign exchange gain or loss on the net investment hedge as an Excluded Equity Gain or Loss under section 3-45 of the Rules and the issuing Constituent Entity makes no adjustment to the GloBE Income or Loss.

Five year election: Consolidated accounting treatment

3.106 A UPE may make a five-year election to apply its consolidated accounting treatment to eliminate income, expense, gains, and losses from transactions between entities provided they are in a tax consolidation group and all located in the same jurisdiction. This may be used in place of using the arm's length method and aims to eliminate intragroup transactions.
[Chapter 3, section 3-185 of the Rules]

Allocating income between entities

3.107 There are a series of special rules for the allocation of income for permanent establishments and flow-through entities.

Permanent Establishments

3.108 In general, the GloBE Income or Loss of Permanent Establishments are subtracted from the main entity. Due to a permanent establishment being a tax concept, generally no specific accounting rules apply, therefore allocating income to a permanent establishment is subject to rules under a Tax Treaty or domestic tax law.

3.109 A permanent establishment within a group should separate the financial accounting net income from the group. However, where there are no separate financial accounts for a permanent establishment, the financial accounting net income is the amount that would have been reflected in the separate financial accounts if prepared on a standalone basis.
[Chapter 3, subsection 3-225(1) of the Rules]

3.110 Adjustments to the FANIL of a Permanent Establishment are made based on the definition of a permanent establishment in section 15-2 of the Assessment Bill. If a permanent establishment exists and is taxed based on a tax treaty, domestic law, or as if a tax treaty were in place, income is allocated according to domestic law or tax treaty. However, if the permanent establishment operates outside a jurisdiction and exempts income, the permanent establishment is allocated any expenses and income that is exempt from tax in the main entity jurisdiction because it is attributable to activities occurring outside the jurisdiction.
[Chapter 3, subsection 3-225(2) and section 3-230 of the Rules]

3.111 Any adjustments made to the accounting income of a permanent establishment that are reflected in the main entity's accounts must be excluded to prevent double counting.
[Chapter 3, subsection 3-235(1) of the Rules]

3.112 An exception to rule is that losses of a Permanent Establishment may be allocated to the main entity but are treated as an expense. However, the loss must not be set off against an item of income that is subject to tax in both jurisdictions. A corresponding adjustment is required to treat subsequent GloBE Income of the PE as income of the main entity up to the amount of the loss that was previously recorded as an expense of the main entity.
[Chapter 3, subsection 3-235(2) of the Rules]

3.113 However, this exception may not apply to MNE Groups in an Australian context as the PE's expense is not deductible against Main Entity's taxable income located in Australia. Therefore, the GloBE Loss of a PE will not be treated as an expense of a Main Entity located in Australia for purpose of computing its taxable income.

Flow-through entities

3.114 A Flow-through Entity is an entity that is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it is created, unless

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

3.115 There are separate rules for Constituent Entities that are flow-through entities and UPEs that are flow-through entities. There are two steps to ensure that all income is appropriately allocated to produce a reliable ETR. The first step is to adjust the financial accounting income or loss of the Flow-through Entity by reducing the amount attributable to owners outside of the MNE Group.
[Chapter 3, subsection 3-240(1)(a) of the Rules]

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

- Through a permanent establishment: allocate to the permanent establishment, in accordance with Part 3-4 of the Rules.
- Tax transparent entities (non-UPE): allocate to Constituent Entity owners based on ownership interests. This rule continues to apply until the owner is either not tax transparent or is the UPE.
- Reverse hybrid: allocate to the entity. The income is not allocated to owners because it is not fiscally transparent.
[Chapter 3, subsections 3-240(1)(b) to (d) of the Rules]

3.117 Where the UPE is reached, the income is allocated to the UPE and Part 7-1 of the Rules applies. Part 7-1 of the Rules deals with the treatment of a UPE being a Flow-through entity and UPEs that directly own a flow through.
[Chapter 3, subsection 3-240(2) and Chapter 7, Part 7-1 of the Rules]

Chapter 4: Computation of adjusted covered taxes

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What is a Tax under the GloBE Rules?

4.2 The GloBE Rules define 'tax' as a compulsory unrequited payment to General Government. This definition is based on the OECD's long-standing definition and is consistent with the definition used by various international organisations.
[Chapter 10, section 10-5 of the Rules]

General Government

4.3 General Government is a defined term in the UNOECD National Accounts that includes the central administration, agencies whose operations are under its effective control, state and local governments and their administrations.

'Unrequited'

4.4 Taxes are unrequited, meaning the benefits the government provides to taxpayers are not proportional to their contributions. Consequently, fees for privileges, services, property or other government-provided benefits are not classified as taxes. Similarly, fines, penalties, and interest on late tax payments are excluded from the definition of taxes.

Definition of Covered Taxes

Meaning of Covered Taxes

What are Covered Taxes?

4.5 The term Covered Taxes is broadly defined to include Taxes imposed on a Constituent Entity's income or profits, as well as Taxes that are functionally equivalent to such income taxes and Taxes on retained earnings and corporate equity.

4.6 In summary, the definition of Covered Taxes specifically includes the following taxes:

- recorded in a Constituent Entity's financial accounts that relate to:
  - its income or profits, or
  - its share of the income or profits of another Constituent Entity of a Group in which it has an Ownership Interest;
- on distributed profits, deemed profit distributions and non-business expenses under an Eligible Distribution Tax System;
- imposed as an alternative to a generally applicable corporate income tax; and
- levied by reference to retained earnings and corporate equity, including taxes on multiple components based on both income and equity. ***[Chapter 4, subsection 4-35(1) of the Rules]***

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

- top-up tax;
- refundable taxes;
- consumption taxes;
- excise taxes;
- payroll taxes;
- transaction based taxes;
- taxes on inputs; and
- property taxes.

Taxes included in Covered Taxes

Taxes recorded in the financial accounts

<u>Income Taxes</u>

4.8 Income taxes generally refer to taxes levied on a flow of money (or its equivalent) accrued by a taxpayer during a period of time. Such taxes consider the related expenses of generating the taxpayer's money flow to determine the net wealth increase for the taxpayer during that period. There are, however, certain types of income taxes that are excluded from the definition of Covered Taxes.
[Chapter 4, subsections 4-35(1) and 4-35(2) of the Rules]

4.9 A definition of Covered Taxes that applies to income calculated on a net (rather than gross) basis is in line with the definition of income tax used for financial accounting purposes and therefore it is expected that a Tax recognised as an income tax for financial accounting purposes should generally qualify as a Covered Tax. The definition of Covered Taxes does not include a Tax on a gross amount unless such a tax is in lieu of an income tax.
[Chapter 4, subsections 4-35(1)(a) and (1)(c) of the Rules]

<u>Ownership Interest and profit distributions</u>

4.10 The definition of Covered Taxes extends to taxes on income at the point of earning and on subsequent profit distributions. The definition also includes Taxes on the income of the Constituent Entity as well as its share of income of another Constituent Entity in which it owns an Ownership Interest (including direct and indirect interest), including taxes imposed:

- on the Constituent Entity's share of undistributed profits from a Tax Transparent Entity such as a partnership;
- under a CFC Tax Regime; or
- on distributions from another Constituent Entity.
[Chapter 4, Part 4-3 of the Rules]

<u>Simplified net profit estimates</u>

4.11 A Tax does not require an exact or precise calculation of the change in a taxpayer's wealth for it to be considered an income tax under the definition of Covered Taxes. The definition includes Taxes that allow for simplified net profit estimates, including taxes with partial deductions for expenses or standardised deductions.

<u>Taxes on specific activities</u>

4.12 Taxes or surcharges imposed on the net income from specific activities (e.g., banking, or the exploration and production of oil and gas) fall within the general definition of a Covered Tax, irrespective of whether or not they apply in addition to a generally applicable income tax.

4.13 This includes a separate levy that is imposed on the net income or profits from natural resource extraction activity (or a part of a multi-component levy that is imposed on net income or profits).

4.14 However, natural resource levies closely linked to extractions, for example, those that are imposed on a fixed basis or on the quantity, volume or value of the resources extracted rather than on net income or profits, would not be treated as Covered Taxes (unless these levies satisfy the in-lieu test described below).

<u>Pillar One Adjustments</u>

4.15 Any adjustments arising under Pillar One will be captured in a Constituent Entity's ordinary corporate income tax calculation which precedes the application of the GloBE Rules.

Taxes imposed under an Eligible Distribution Tax System

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

- imposes tax at a rate equal to or exceeding the Minimum Rate, and
- imposes an income tax on the corporation with the tax generally payable only when:
  - it distributes profits to shareholders,
  - is deemed to distribute profits, or
  - incurs specific non-business expenses.
    [Chapter 4, subsection 4-35(b) of the Rules]

Taxes imposed in lieu of a generally applicable corporate income tax

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

- all resident corporations, or
- to resident corporations that are members of a large multinational group.

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

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

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

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

4.21 The concept of 'in lieu of' also includes taxes imposed on an alternative basis (i.e., other than net income) such as taxes based on units produced or commercial surface area, which are substitutes for a generally applicable income tax. For example, if:

- a jurisdiction uses a simplified method for calculating the income on a particular category of business or investment and this Tax is imposed in substitution for a generally applicable income tax, then the Tax is a Covered Tax.
- a tax is based on an alternative basis at the state or local government level and can be credited against a national level generally applicable income tax, then it qualifies as a Covered Tax. This is because such taxes can be seen as substitutes (either partially or fully) for a generally applicable income tax.

4.22 However, a tax on an alternative basis that is in addition to, and not a substitute for, a generally applicable income tax would not be considered a Covered Tax under the 'in lieu of' test.

Taxes levied by reference to retained earnings and corporate equity

4.23 The equity or capital of a corporation comprises retained earnings (the undistributed portion of after-tax income) and shareholder contributions. Some jurisdictions may tax a corporation's net equity in addition to the corporate income tax. For instance, a jurisdiction might allow crediting corporate income tax against a corporate equity tax, allowing the reduction of a company's equity tax by the corporate income tax amount paid in that jurisdiction.

4.24 Taxes on corporate equity may also act as a supplement to corporate income tax as part of a jurisdiction's overall approach to the taxation of a corporation's activities in that jurisdiction. For example, some taxes on corporate equity may incorporate a minimum tax element to their design.

4.25 These taxes on corporate equity are an integral part of the overall system of corporate taxation in those jurisdictions and are therefore considered Covered Taxes.

4.26 Where jurisdictions impose taxes that have multiple components to the base, if all the components of the tax base fall within the definition of income or profit covered by this law, then the tax, as a whole, is included within the definition of Covered Taxes.

4.27 Other taxes may be levied in respect of a corporation's activities in a jurisdiction and may consist of an income and a non-income element. These taxes should be treated entirely as Covered Taxes if they are predominately a tax on an entity's income and it would be administratively burdensome to split the tax into separate income and non-income components.

Taxes excluded from the definition of Covered Taxes

4.28 The types of taxes that are specifically excluded from covered taxes include:

- top-up tax accrued by a Parent Entity under a QIIR.
- top-up tax accrued by a Constituent Entity under a QDMTT .
- any Tax under or as a result of the application of a Qualified UTPR
- a Disqualified Refundable Imputation Tax.
- Taxes paid or accrued by an insurance company in respect of returns to policyholders.
- Consumption Taxes: Sales taxes and value-added taxes (VATs) are not Covered Taxes. They are determined by the consideration for a specific supply and are not taxes on a taxpayer's net income or equity.
- Excise and Input Taxes: These taxes arise from a specific input and do not represent income accumulation.
- Digital Services Taxes: These are generally designed to apply to certain digital services' gross revenues and are not considered income taxes.
- Transaction-based Taxes: Stamp duty, ad valorem taxes, and other transaction-specific taxes are not income, equity, or in lieu of income taxes.
- Employment-based Taxes: Payroll taxes, other employment-based taxes, and social security contributions are not Covered Taxes. They are levied on labour income and are typically deductible from business profits.
- Property Taxes: These are based on property's assessed value and are not based on income, retained earnings, or corporate equity. Property taxes are not imposed in lieu of a generally applicable income tax, therefore, distinguishable from taxes based on a corporation's equity and do not fall within the meaning of Covered Taxes.
  [Chapter 4, subsection 4-35(2) of the Rules]

Top-up taxes

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

4.30 Therefore, a top-up tax accrued by a Parent Entity under a QIIR is specifically excluded from the definition of Covered Taxes. Similarly, any Tax under, or as a result of, the application of a Qualified UTPR is excluded from the definition.
[Chapter 4, subsection 4-35(2)(a) and 4-35(2)(c) of the Rules]

4.31 For the same reasons provided above, a top-up tax accrued by a Constituent Entity under a QDMTT is excluded from the definition of Covered Taxes. However, these taxes remain creditable against top-up tax.
[Chapter 4, subsection 4-35(2)(b) of the Rules]

4.32 Ordinary domestic minimum taxes that are not QDMTTs are considered Covered Taxes if they meet the definition of Covered Taxes.
[Chapter 4, subsection 4-35(2)(b) of the Rules]

Refundable taxes

4.33 Disqualified Refundable Imputation Taxes are excluded from the definition of Covered Taxes. Since the timing of the refund of these Taxes is within the MNE Group’s control, they are similar to a deposit and therefore are not properly taken into account in the ETR computation. For example, a taxpayer can make a deposit by prepaying the tax liability in a jurisdiction for a subsequent Fiscal Year, such a prepayment will not increase Covered Taxes in the Current Fiscal Year.
[Chapter 4, subsection 4-35(2)(d) of the Rules]

Taxes paid or accrued by an insurance company

4.34 If a Tax is paid or accrued by insurance companies and relates to returns to policyholders, then it is excluded from the definition of Covered Taxes.
[Chapter 4, subsection 4-35(2)(e) of the Rules]

4.35 This rule applies to the extent of a corresponding adjustment when computing the GloBE Income or Loss for a Fiscal Year of a Constituent Entity of an MNE Group that is an insurance company.

4.36 Insurance companies exclude amounts charged to policyholders for Taxes from the computation of GloBE Income or Loss. Insurance companies sometimes pass tax charges to policyholders, effectively reimbursing the company for taxes paid on the policyholder's behalf. Financial accounting standards treat returns to policyholders as the insurance company’s income and the tax paid on these returns might be treated as an income tax under some standards.

4.37 To address potential discrepancies, the law excludes the charge of tax from the GloBE Income or Loss computation. Accordingly, Taxes arising on policyholder returns from Covered Taxes are excluded from the definition of

Covered Taxes.
[Chapter 3, section 3-190 and Chapter 4, subsection 4-35(2)(e) of the Rules]

No Double Counting of covered taxes

4.38 Where an amount of Covered Taxes may overlap across multiple adjustment categories, that amount of Covered Taxes should not be taken into account more than once for the purposes of Chapter 4 of the Rules.
[Chapter 4, section 4-25 of the Rules]

Adjusted Covered Taxes

4.39 The Adjusted Covered Taxes is the amount that is included in the numerator of the ETR calculation.

Start with the Accrued Current Tax Expense amount

4.40 The starting point to determine the Adjusted Covered Taxes is the amount of Accrued Current Tax Expense for a Fiscal Year of a Constituent Entity of an MNE Group.

4.41 The Accrued Current Tax Expense is the amount of the Constituent Entity's current tax expense accrued, in respect of Covered Taxes, in the Constituent Entity's FANIL for the Fiscal Year.
[Chapter 4, section 4-10 of the Rules]

Make adjustments to determine the Adjusted Covered Taxes amount

4.42 Once the Accrued Current Tax Expense amount is determined, the following adjustments are made to derive the amount of Adjusted Covered Taxes:

- Adding the amounts related to the Additions to Covered Taxes for the Fiscal Year
- Subtracting the amounts related to the Reductions to Covered Taxes for the Fiscal Year
- Adding the Total Deferred Tax Adjustment Amount for the Constituent Entity for the Fiscal Year (unless there is a GloBE Loss Election applicable under Part 4-5)
- Adjusting for any increases or decreases in Covered Taxes that:
  - are recorded in the equity or Other Comprehensive Income of the Constituent Entity for the Fiscal Year, and
  - relate to amounts that are part of the GloBE Income or Loss computation of the Constituent Entity for the Fiscal Year and will be

taxed under the law of any jurisdiction.
[Chapter 4, section 4-5 of the Rules]

Additions to Covered Taxes

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

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

Adding the amount of Covered Taxes accrued as an expense

4.44 Covered Taxes have a broader definition than the scope of taxes that qualify as income taxes under financial accounting principles. As a result, some Covered Taxes may not be recorded as income tax expenses in a Constituent Entity's financial statements. These amounts could appear as ordinary expenses when computing for profit and loss before tax.

4.45 To ensure that such taxes are correctly accounted for, any accrued liability for Covered Taxes that was reported as an ordinary expense in the financial statements (rather than income tax expense) is added to the measure of Adjusted Covered Taxes.
[Chapter 4, subsection 4-15(a) of the Rules]

4.46 When a Covered Tax is added under this section, a corresponding adjustment is also made to the FANIL when computing the GloBE Income or Loss.
[Chapter 3, subsection 4-15(a) of the Rules]

4.47 For example, a Tax on corporate equity is a Covered Tax that may be recorded as an expense in determining a Constituent Entity's profit or loss before income tax, rather than in the current tax expense. To ensure consistency, this Tax is added back to GloBE Income or Loss and added to the Accrued Current Tax Expense in the determination of Adjusted Covered Taxes.

Adding the amount of GloBE Loss Deferred Tax Asset used

4.48 The GloBE Loss Deferred Tax Asset is available when an election is made under Part 4-5. This election provides for a deemed loss deferred tax asset in lieu of applying the modified deferred tax accounting rules of Part 4-4.

4.49 The GloBE Loss Deferred Tax Asset attribute is used when GloBE Income is earned in a Fiscal Year subsequent to having incurred a GloBE Loss. The amount of a GloBE Loss Deferred Tax Asset that is used in a Fiscal Year is added to the measure of Adjusted Covered Taxes.
[Chapter 4, subsections 4-15(b) and 4-15(c) of the Rules]

4.50 The addition ensures that the GloBE Loss Deferred Tax Asset is accurately reflected in the computation of the ETR for the jurisdiction in the Fiscal Year in which it is used.

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

Uncertain tax positions

4.51 Uncertain tax positions arise when a Constituent Entity takes a tax filing position that is not more likely than not to be sustained upon examination. Although the criteria for determining such positions may vary under different Acceptable Financial Accounting Standards, they generally require that a reserve be established for these positions.

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

Removing amount of Covered Taxes relating to uncertain tax positions

4.53 Given the nature of the accruals, movements in these amounts are not always included in Adjusted Covered Taxes unless and until the amount is actually paid.

4.54 As such, any amount of Accrued Current Tax Expense is removed from the Adjusted Covered Taxes under Reduction to Covered Taxes provisions, due to the high degree of uncertainty on whether such amounts will be paid in a future period.
[Chapter 4, subsection 4-20(d) of the Rules]

Adding amount of Covered Taxes relating to uncertain tax positions

4.55 However, once paid, the amounts are included in Covered Taxes by adding these paid amounts. This addition accurately reflects the actual tax positions of the entity once the uncertainty is resolved and the tax is paid. As a result, the ETR computation is based on actual tax payments (rather than uncertain

positions).
[Chapter 4, subsection 4-20(d)) of the Rules]

Does not include penalties or interest expense

4.56 Any penalties or interest expense accrued or paid with respect to such uncertain tax position is not included in the Addition to Covered Taxes.

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

4.57 A Qualified Refundable Tax Credit is a 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 satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit.
[Chapter 3, section 3-120(1) of the Rules]

4.58 A Marketable Transferable Tax Credit means a tax credit that can be used by the holder of the credit to reduce its liability for a Covered Tax in the jurisdiction that issued the tax credit and that meets the Legal Transferability Standard and the Marketability Standard in the hands of holder.
[Chapter 3, section 3-125 of the Rules]

4.59 Qualified Refundable Tax Credits and Marketable Transferable Tax Credits are treated as income items in the computation of GloBE Income or Loss.

4.60 However, the recorded amount is reversed-out in the same Fiscal Year the Accrued Current Tax Expense is recorded. This is to prevent the ETR for the jurisdiction being understated by such a reduction in Covered Taxes. This is achieved by adding the amounts of such refunds or credits to the measure of Adjusted Covered Taxes.
[Chapter 4, subsection 4-15(e) of the Rules]

4.61 When these amounts are added, a corresponding adjustment to the FANIL is made during the GloBE Income or Loss computation.

Reductions to Covered Taxes

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

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

- If a Constituent Entity’s income is excluded from the computation of the Constituent Entity’s GloBE Income or Loss under Chapter 3 of the Rules, the sum the entity’s Accrued Current Tax Expense and

Additions to Covered Taxes for the Fiscal Year that relates to that income.

- Any amount of credit or refund related to a Non-Qualified Refundable Tax Credit that is credited or refunded to a CE in respect of Covered Taxes in the Fiscal Year and that is not recorded as a reduction to the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year;
- Any amount of Covered Taxes refunded or credited to the Constituent Entity (other than a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit) that is not treated as an adjustment to the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year.
- Any amount of the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year that relates to an uncertain tax position;
- Any amount of the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year that is not expected to be paid within three years after the last day of the Fiscal Year.
  [Chapter 4, section 4-20 of the Rules]

Reducing the amount of Accrued Current Tax Expense related to income excluded from GloBE Income or Loss

4.64 When an income item is not part of the GloBE Income or Loss computation under Chapter 3, the associated taxes should not be in the ETR computation for that jurisdiction.

4.65 Many excluded income items, such as dividends and gains from equity investments, might have full or partial exemption regimes. However, in certain situations, these items could still face Covered Taxes.

4.66 Any amount that relates to income that is excluded from the GloBE Income or Loss computation under Chapter 3, is removed from the measure of Adjusted Covered Taxes.
[Chapter 4, subsection 4-20(a) of the Rules]

Example 4.1 Current tax expense related to excluded income

First, assume that a Constituent Entity is taxed on dividends from a significant minority investment in a corporation. Such a tax is related to income not considered under the GloBE Rules due to section 3-30 of the Rules. Therefore, these taxes are excluded from Adjusted Covered Taxes.

Second, an alternative scenario is where a Constituent Entity with a minority interest in a partnership, is accounted for using the equity method. If this entity faces net basis taxation on its share of the partnership's net income, it is generally excluded from the entity's GloBE Income or Loss. Any tax expense linked to this interest, if included in the current tax expense, is also deducted/excluded? to determine Adjusted Covered Taxes.

4.67 When reducing amounts under paragraph 4-20(a) of the Rules, it will be necessary to quantify the amount of Covered Taxes to be excluded. To the extent no tax is imposed upon the income item (i.e., a dividend that is exempt from taxation under domestic law) there will be no tax to exclude. Where the entire amount of the income item is excluded, the excluded taxes must be determined on the same basis without regard to any related expenses.

4.68 This means, for example, that in the case of a withholding tax on an excluded dividend, the entire withholding tax is excluded. However, in the case of a CFC charge on a minority interest, that portion of the shareholder's income tax attributable to the CFC inclusion must be excluded from the CE's Adjusted Covered Taxes when calculating the ETR. Note that if an item of income is partially excluded from GloBE Income or Loss, only the extent of the excluded portion is removed.

International shipping income

4.69 Adjustments under section 3-205 of the Rules also cover Covered Taxes on specific international shipping income. If a CE accrues CIT or tonnage tax for its International Shipping Income or Qualified Ancillary International Shipping Income, it is a Covered Tax. However, if this shipping income is excluded from the entity's GloBE Income or Loss due to section 3-205 of the Rules, the related Covered Taxes must also be excluded from the ETR calculation.

Other considerations

4.70 While this section removes some Taxes from an entity's Adjusted Covered Taxes, such Taxes might still be part of the GloBE tax computation if allocated to another Constituent Entity. For instance, Covered Taxes related to dividends from another Constituent Entity are removed from the receiving entity's Adjusted Covered Taxes but are allocated to the distributing entity according to section 4-60 of the Rules. The distinction here is that the income that funded the intragroup dividend was previously part of the MNE Group's GloBE Income or Loss.
[Chapter 4, section 4-60 of the Rules]

CFC Tax Regimes

4.71 Covered Taxes included in the financial accounts of a Constituent Entity-owner under a CFC Tax Regime are allocated to the Constituent Entity CFC under section 4-45 of the Rules. In respect of passive income, only the lesser amount of Covered Taxes allocated and the total of passive income multiplied by the jurisdictional top-up tax percentage are included in the Adjusted Covered Taxes of the Constituent Entity
[Chapter 4, section 4-65 of the Rules]

Reducing the amount of credit or refund related to a Non-Qualified Refundable Tax Credit

4.72 A Non-Qualified Refundable Tax may be treated as income of a Constituent Entity for financial accounting purposes. However, for GloBE purposes of the Rules, these Non-Qualified Refundable Tax Credits are excluded from the computation of GloBE Income or Loss under section 3-135 of the Rules and are treated as a reduction in the tax expense of the Constituent Entity.

4.73 This is achieved by reducing the amount of credit or refund related to a Non-Qualified Refundable Tax Credit from the Accrued Current Tax Expense (to the extent that such an amount is not already recorded as a reduction to the Accrued Current Tax Expense).
[Chapter 4, subsection 4-20(b) of the Rules]

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

4.74 If there is an amount of Covered Taxes credited or refunded to a Constituent Entity that has not already been treated as an adjustment to Accrued Current Tax Expense for the Fiscal Year, then that amount is removed. However, this reduction does not apply to Qualified Refundable Tax Credits or Marketable Transferable Tax Credit.
[Chapter 4, subsection 4-20(c) of the Rules]

4.75 This reduction ensures that, to the extent a Constituent Entity receives a refund or credit of claimed Covered Taxes, that amount is still treated as a reduction in the computation of Adjusted Covered Taxes for the Fiscal Year in which the refund or credit is accrued or received. The application of this reduction may be limited due to section 4-120 of the Rules, which deals with adjustments to the liability for Covered Taxes from a previous Fiscal Year.

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

4.77 The reduction also applies to refunds and credits in respect of Covered Taxes when the refund or credit is made to a different Constituent Entity than the entity that originally incurred the tax expense.

4.78 The reduction could also apply to refunds and credits in respect of Covered Taxes paid or accrued in a current or previous Fiscal Year (subject to the overriding operation of section 4-120 of the Rules).

Current tax expense related to uncertain tax positions

4.79 Any amounts of Accrued Current Tax Expenses relating to uncertain tax positions require a reduction to Adjusted Covered Taxes.
[Chapter 4, subsection 4-20(d) of the Rules]

Reducing the amount of Accrued Current tax expense not expected to be paid within three years of the Fiscal Year

4.80 Any amount of Accrued Current Tax Expense that is not expected to be paid within three years of the last day of the Fiscal Year is to be treated as a reduction to Covered Taxes.
[Chapter 4, subsection 4-125(3) of the Rules]

4.81 This reduction is consistent with section 4-120 of the Rules which requires the recapture of material amounts previously claimed as Covered Taxes and not paid within three years of the last day of the Fiscal Year.

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

4.83 This prevents an abuse where a Constituent Entity could assert that it does not intend to pay the tax in a year where the Constituent Entity is well over the Minimum Rate, and then subsequently pays the tax liability in a year in which it is below the Minimum Rate, using the rule to escape what would otherwise be top-up tax liability.

4.84 The reduction applies with respect to amounts of Accrued Current Tax Expense. Accordingly, post-filing adjustments, such as additional tax liability resulting from a subsequent audit, will not fall within the scope of this reduction since such amounts are not included in the Accrued Current Tax Expense.

4.85 Part 4-6 of the Rules provides the rules with respect to Covered Taxes paid as a result of a post-filing adjustment. In addition, there is a special rule in subsection 4-15(d) of the Rules to include amounts paid with respect to uncertain tax positions, which permits the inclusion of such amounts in Covered Taxes irrespective of the operation of this subsection.
[Chapter 4, subsections 4-15(d) and 4-20(e) of the Rules]

Adding the Total Deferred Tax Adjustment Amount for the CE for the Fiscal Year

4.86 Once determined under Part 4-4, the Total Deferred Tax Adjustment Amount for a CE for a Fiscal Year, with respect to Covered Taxes is added as part of

the adjustments to derive the amount of Adjusted Covered Taxes.
[Chapter 4, subsection 4-5(b) of the Rules]

Adjusting for any increases or decreases in Covered Taxes

4.87 The CE's Accrued Current Tax Expense is also adjusted by adding any increase in Covered Taxes and subtracting any decrease in Covered Taxes that is not included in current or deferred tax expense but is recorded in equity or other comprehensive income when the amounts of income or loss to which such taxes relate is taken into account in the computation of GloBE Income or Loss.
[Chapter 4, subsection 4-20(c) of the Rules]

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

4.89 This adjustment may apply, for example, where a Constituent Entity is subject to tax on gains and losses that were taken into account under other comprehensive income pursuant to the revaluation method for property, plant and equipment:

- When such a gain is included in the computation of GloBE Income or Loss, the associated increase in Covered Taxes will be taken into account.
- Conversely, when a loss arises in the same manner, the reduction in associated Covered Taxes will reduce Covered Taxes.

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

No Net GloBE income and permanent differences

4.90 A special rule may apply in limited circumstances when there is no Net GloBE Income in a jurisdiction for the Fiscal Year and the Constituent Entity has a deferred tax asset that has arisen due to a permanent difference (e.g., a loss attributable to an amount that is not deductible for GloBE purposes) in the same Fiscal Year.

4.91 This could occur when the local tax rules in the Constituent Entity's jurisdiction grant a deduction from income that is in excess of the amount that would be allowed for financial accounting purposes and where that difference between GloBE and local tax rules will not reverse over time. Examples of items that could give rise to these types of excess losses include notional interest deductions or a deduction that is in excess of economic cost (i.e. a super deduction).

4.92 Permanent differences that result in such excess losses may also arise where a jurisdiction exempts an item of income or gain that is included in GloBE Income or Loss in a Fiscal Year where the Constituent Entity still has an overall economic loss for the year. Accordingly, the local tax loss is greater than the amount of loss recognised for GloBE purposes.

Additional Current top-up tax

4.93 A special rule taxes the excess benefit resulting from a permanent difference in the year it is created at the Minimum Rate of 15 per cent. This is achieved by applying an Additional Current top-up tax.
[Chapter 4, section 4-30 of the Rules]

Conditions for when an Additional Current top-up tax arises

4.94 If in a Fiscal Year there is no Net GloBE Income for a jurisdiction, CEs in that jurisdiction are treated as having an Additional Current top-up tax, if:

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

4.95 The Adjusted Covered Taxes for the jurisdiction is the sum of the Adjusted Covered Taxes for the Fiscal Year of each CE of the MNE Group located in the jurisdiction.

4.96 The Expected Adjusted Covered Taxes Amount is determined by multiplying the Net GloBE Loss of the MNE Group for the Fiscal Year for the jurisdiction by the Minimum Rate.
[Chapter 4, subsection 4-30(1) of the Rules]

Calculating amount of Additional Current top-up tax

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

- the sum of the Adjusted Covered Taxes for the jurisdiction; and
- the Expected Adjusted Covered Taxes Amount.
[Chapter 4, subsection 4-30(2) of the Rules]

Allocating the Additional Current top-up tax

4.98 Section 5-95 of the Rules outlines the rules for allocating the top-up tax arising under this section among CEs in the jurisdiction.
[Chapter 5, section 5-95 of the Rules]

Example 4.2

> For example, if there is a Net GloBE Loss of (100) for a jurisdiction, the maximum amount of deferred tax asset generated in such year for GloBE purposes should be 15 (i.e. the GloBE Loss multiplied by the Minimum Rate). This amount is the "Expected Adjusted Covered Taxes Amount": section 4-20 of the Rules. Where the loss allowed for local tax purposes is in excess of the Net GloBE Loss (for example, a local tax loss of 150) and this difference is the result of permanent differences between the local and GloBE tax base, the Total Deferred Tax Adjustment Amount under section 4-75 will be greater than the Expected Adjusted Covered Taxes Amount. In this case, Additional Current top-up tax of 7.5 (50 ×15%) would be applicable under section 4-30, which will have the effect of taxing this difference at the minimum rate. Subsection 4-30(2) and section 5-95 provide rules related to the allocation of the top-up tax arising under section 4-30 among Constituent Entities located in the jurisdiction. This rule effectively allows a Constituent Entity to follow the local tax rules and apply the excess deferred tax asset arising for local tax purposes to shelter income in a future year, without giving rise to adverse outcomes under these rules.

Other considerations

4.99 The generation of a GloBE Loss Deferred Tax Asset under Part 4-5 of the Rules is not expected to result in top-up tax under this rule because, when elected Part 4-5 of the Rules applies in lieu of Part 4-4 of the Rules.

4.100 Although relevant in other scenarios, the most common fact pattern in which this rule applies is where there is a tax loss that is greater than the amount of loss recognised for GloBE purposes.

Allocation of Covered Taxes

Tax allocation

4.101 The Tax allocation provisions in Chapter 4 of the Rules follow the same pattern as the income allocation provisions. Covered Taxes are generally allocated to the Constituent Entity, including a Stateless Constituent Entity, which includes the corresponding income in the computation of its GloBE Income or Loss and then are taken into account in the ETR computation for the jurisdiction in which the Entity is located.

4.102 In many cases, Covered Taxes will be paid by the Constituent Entity with respect to its own income and to a tax authority in the jurisdiction in which it is located and no allocation is required. However, in some more complicated cases, Covered Taxes may be imposed on the Constituent Entity in respect of income included in another Constituent Entity's GloBE Income or Loss computation or by a jurisdiction other than the one in which the Constituent Entity is located (e.g. for CFC taxes and withholding taxes).

4.103 In such instances, it is necessary to allocate the Covered Taxes to the relevant Constituent Entity that earned the income, subject to certain limitations. Similarly, rules are needed to properly allocate Covered Taxes of Main Entities in the case of Permanent Establishments and Constituent Entity-owners in the case of Tax Transparent Entities as well as to properly allocate Covered Taxes on distributions.

4.104 The allocation of Covered Taxes under this Part is not limited to the current Taxes paid or accrued; it applies also to deferred Taxes under Part 4-4 of the Rules.

Allocation rules for cross-border taxes

4.105 Part 4-3 of the Rules introduces special allocation rules for specific cross-border taxes. This is to ensure that Covered Taxes align appropriately with the GloBE Income they relate to (subject to certain limitations). Part 4-3 of the Rules includes allocation rules to capture the following:

- allocation to a Permanent Establishment;
- allocation from a Tax Transparent Entity to its Constituent Entity-owner;
- CFCs;
- Hybrid Entities; and
- taxes on other distributions.

4.106 Part 4-3 of the Rules sets out the general approach to be followed in allocating Covered Taxes for each category of cross-border taxes. These general approaches are expected to be sufficient to allocate Covered Taxes imposed under many countries' tax regimes.

4.107 It is intended that the GloBE Rules (excluding a QDMTT) apply after the application of the Subject to Tax Rule and domestic tax regimes (including a DMT) and regimes for the taxation of Permanent Establishments or CFCs. Therefore, to preserve the intended rule order, domestic tax regimes should not provide a foreign tax credit for any tax imposed under a Qualified UTPR or QIIR which is implemented in a foreign jurisdiction.

Allocation of Covered Taxes to a Permanent Establishment

4.108 An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity to a Permanent Establishment.
[Chapter 4, section 4-40 of the Rules]

4.109 The rule applies when Covered Taxes are incurred by a Main Entity or another Constituent Entity relating to the income of a Permanent Establishment. Such Covered Taxes are excluded from the Adjusted Covered Taxes of the incurring CE and included in the Adjusted Covered Taxes of the Permanent Establishment.

Three-Step Process

4.110 Covered Taxes arising in the Main Entity relating to Permanent Establishment income can be computed using a three-step process:

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

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

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

<u>Identify the Permanent Establishment income amount included in the Main Entity's local taxable income</u>

4.111 The amount of PE income included may be readily available from the Main Entity's tax return or the work-papers used to prepare that return.

4.112 The amount included in the Main Entity's return may be more or less than the GloBE Income allocated to the Permanent Establishment under Part 3-4 of the Rules, because it is determined under the Rules for computing taxable income in the Main Entity's jurisdiction. However, the amount of income attributed to the Permanent Establishment in the local taxable income is the relevant figure for measuring how much local tax was paid in respect of the Permanent Establishment's GloBE Income.

<u>Determine the Main Entity's tax liability resulting from the inclusion of the Permanent Establishment income</u>

4.113 If the Permanent Establishment income inclusion is subject to Tax separate and apart from the other income of the Main Entity, the tax rate applicable to the included income can simply be multiplied by the amount of the income inclusion.

4.114 On the other hand, if the Permanent Establishment's income inclusion is mixed with the Main Entity's other income, the Main Entity's pre-foreign tax credit tax liability on all the income needs to be determined and allocated between the Permanent Establishment income inclusion and the rest of the Main Entity's taxable income.

4.115 In many cases, a pro rata allocation will be appropriate. In cases where the PE income is mixed with other income, if the Main Entity's total taxable income is less than the Permanent Establishment income inclusion, all of the pre-foreign tax credit liability is attributed to the inclusion. In other words, domestic losses and losses of other Permanent Establishment's allowed in the Main Entity's taxable income computation under a credit method are first used against domestic income and then applied to Permanent Establishment income inclusions.

<u>Identify any tax credit allowed relating to Taxes paid by the Permanent Establishment</u>

4.116 In many cases, the total credit allowed in respect of these income inclusions will be easily determinable from the Main Entity's tax returns. In some cases, however, the creditable Taxes of Permanent Establishments may be included in a broader base of foreign income that includes other foreign income of the Main Entity. In these cases, the amount of the foreign tax credit attributable to the Permanent Establishment's income has to be determined based on the rules of the jurisdiction and using reasonable assumptions where necessary.

Covered Taxes paid on Permanent Establishment's income inclusions

4.117 The amount of Covered Taxes paid on Permanent Establishment's income inclusions is the difference between:

- the tax liability arising from the Permanent Establishment's income inclusions, and
- any credit allowed for the Permanent Establishment's taxes on its income.

Multiple Permanent Establishments

4.118 The three-step process determines the amount of Tax to exclude from the Main Entity's Covered Taxes. Once that amount is determined, however, those Taxes have to be allocated to the jurisdiction of the relevant Permanent Establishments if the Main Entity was subject to tax on the income of more than one Permanent Establishment.

4.119 Generally, this will require the MNE to determine the pre-credit tax liability for each Permanent Establishment income inclusion and subtract the allowed credit for foreign taxes on each inclusion from the pre-credit tax liability.

4.120 The rules of the Main Entity jurisdiction, including tax credit limitations, apply in making these determinations. For example, in many cases, Tax paid by the Permanent Establishment will be creditable only to the extent of tax liability arising from the income inclusion of that Permanent Establishment. In other words, cross-crediting of taxes is not allowed. Under those circumstances, the amount of residual Tax (i.e. tax in excess of the allowed credit for foreign taxes) on a particular Permanent Establishment income inclusion is easily determined by subtracting the allowed credit from the pre-credit tax liability on the income inclusion.

4.121 In other cases, the creditable Taxes may be subject to limitations or cross-crediting may be allowed. In the case of credit limitations, the MNE Group will need to determine the allowed credit for foreign taxes on each Permanent

Establishment income inclusion based on the rules of the jurisdiction, and where necessary make reasonable assumptions.

4.122 Cross-crediting means that the tax paid with respect to an income inclusion from a low-taxed Permanent Establishment may not equal the pre-credit tax liability on the inclusion less the tax credit allowed for taxes paid by that Permanent Establishment.

4.123 Determining the amount of tax paid on a Permanent Establishment income inclusion is more complicated when cross crediting is allowed because Taxes paid by one Permanent Establishment are allowed to reduce the tax liability arising in respect of other Permanent Establishment income inclusions.

4.124 Where cross-crediting is allowed, the taxes paid in respect of an inclusion should be determined by subtracting the credit allowed for Taxes paid by the particular Permanent Establishment, and then further subtracting an appropriate amount of excess creditable taxes paid by other Permanent Establishments from the pre-credit tax liability of the Permanent Establishment.

4.125 The appropriate amount of excess creditable taxes should be determined by allocating the total amount of excess creditable taxes among Permanent Establishment inclusions based on the relative residual tax liability due to each Permanent Establishment inclusion taking into account only creditable taxes paid by that Permanent Establishment (i.e. the liability after the credit for taxes paid by the Permanent Establishment but before excess credits are allocated).

4.126 Allocating the excess creditable taxes based on relative residual tax liability determined based solely on the Permanent Establishment’s creditable taxes will ensure that the amount of the Main Entity’s Covered Taxes allocated to Permanent Establishments does not exceed the amount of taxes actually arising on the related income inclusions.

4.127 Deferred tax liabilities with respect to Permanent Establishment income are allocated in the same manner. The rules with respect to the recognition of deferred tax liabilities are set out in Part 4-4 of the Rules.

Flow-through Entity

4.128 For a Flow-through Entity, the underlying taxes are allocated to the Permanent Establishment consistent with the allocation of GloBE Income or Loss under section 3-240 of the Rules.

4.129 If for instance the Constituent Entity-owner of a Flow-through Entity (such as a partner of Tax Transparent Entity that is a partnership which is itself also a Constituent Entity) is required to pay the tax with respect to the income attributable to the Permanent Establishment due to the activities undertaken through a Tax Transparent Entity that tax is allocated under this section from the Partner to that Permanent Establishment.

Allocation from a Tax Transparent Entity to its Constituent Entity-owner

4.130 An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Tax Transparent Entity to a Constituent Entity-owner of the Tax Transparent Entity.
[Chapter 4, section 4-45 of the Rules]

4.131 Generally, Tax Transparent Entities are not subject to corporate income tax in the jurisdiction where they are created. However, some Covered Taxes could be imposed at the sub-national level or local level on Tax Transparent Entities without causing them to be considered a tax resident of that jurisdiction. In other cases, the operations carried out through the Tax Transparent Entity could give rise to source taxation that could be borne by the Tax Transparent Entity.

4.132 In most cases, where the Tax Transparent Entity is liable to tax on net income in a jurisdiction it will be because the activities and operations of that Entity give rise to a Permanent Establishment in that jurisdiction. In those cases, the appropriate portion of the income of the Tax Transparent Entity that is attributable to the Permanent Establishment is first allocated to the Permanent Establishment.
[Chapter 4, section 4-40 of the Rules]

4.133 Consistent with section 3-240 of the Rules, Covered Taxes that are not allocated to a Permanent Establishment will be assigned to the Constituent Entity-owners of the Tax Transparent Entity. Typically, this will mean that Covered Taxes imposed on a Tax Transparent Entity’s income (and not attributable to any Permanent Establishment) will be assigned to each Constituent Entity-owner in proportion to its share of the Tax Transparent Entity’s income.
[Chapter 4, section 4-45 of the Rules]

4.134 In the case of a Reverse Hybrid Entity, the income and taxes would remain with the Entity itself and therefore, no allocation of Covered Taxes is needed.

Allocation under a CFC Tax Regime

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

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

Allocation for Hybrid Entities

4.137 An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity-owner to a Hybrid Entity if the Constituent Entity-owner holds a direct Ownership Interest in the Hybrid Entity.
[Chapter 4, section 4-55 of the Rules]

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

4.139 The same general process described in section 4-40 (for allocating Covered Taxes imposed on the Main Entity in respect of a Permanent Establishment) can also be used to determine the amount of taxes allocated by a Constituent Entity owner to a Hybrid Entity. However, any taxes allocated to a Hybrid Entity by a Constituent Entity-owner in respect of Passive Income are subject to certain limitations (discussed further below).

4.140 If the Constituent Entity-owner is subject to a withholding tax or net basis taxes on distributions from the Hybrid Entity, such taxes would also be allocated to the Hybrid Entity under this section.

Allocation of taxes on dividends and other distributions

4.141 An amount in respect of Covered Taxes for a Fiscal Year is allocated from a Constituent Entity owner to the Constituent Entity if the amount is included in respect of distributions from the Constituent Entity to the Constituent Entity owner during the Fiscal Year.
[Chapter 4, section 4-60 of the Rules]

4.142 This allocation includes withholding tax and net basis taxes incurred by direct Constituent Entity-owners on distributions by Constituent Entities in respect of their stock which are allocated to the distributing Constituent Entity.

4.143 Withholding taxes are imposed under the laws of the distributing Constituent Entity and are collected at the source, but the income tax is the legal liability of the Constituent Entity-owner. The rule applies to taxes with respect to any type of distribution with respect to the stock of the distributing Constituent Entity. Thus, the rule also applies to taxes in respect of a distribution that does not meet the definition of a dividend for tax purposes in the recipient jurisdiction or that would not be considered a distribution of retained earnings under the UPE's financial accounting standard.

4.144 In many cases, the distributing Constituent Entity is the Constituent Entity that originally earned the income. In other cases, the distributing Constituent Entity will be a direct or indirect shareholder of the Constituent Entity that originally earned the income.

4.145 Ideally, Covered Taxes incurred by Constituent Entities with respect to distributions should be assigned to the tax jurisdiction of the Constituent Entity that originally earned the underlying income. However, tracking and tracing distributions through the ownership chain would be extremely complex and burdensome, particularly where an entity controls multiple Constituent Entities.

4.146 Accordingly, under section 4-60 of the Rules, such taxes should be assigned to the jurisdiction of the immediate Constituent Entity that distributed the dividend that triggered the tax liability.

Deemed distributions

4.147 Covered Taxes incurred in respect of deemed distributions include taxes (other than CFC taxes) that a jurisdiction imposes on a shareholder in connection with undistributed earnings or capital of an Entity in which it holds an Ownership Interest, such as consent dividends.

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

Distributions made in respect of Ownership Interest

4.149 This section also applies to taxes in respect of a distribution that does not meet the definition of a dividend for tax purposes in the recipient jurisdiction, but is made in respect of an Ownership Interest in a Constituent Entity under the financial accounting standard used in the preparation of the Consolidated Financial Statements.

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

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

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

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

4.153 If an amount in respect of Covered Taxes for a Fiscal Year is allocated to a Constituent Entity of an MNE Group under sections 4-50 of the Rules (CFC

Regime) or 4-50 of the Rules (Hybrid Entity) in respect of Passive Income, an amount is included in the Constituent Entity's Adjusted Covered Taxes for the Fiscal Year.

4.154 This is the amount of Covered Taxes allocated under sections 4-50 of the Rules (CFC Regime) or 4-55of the Rules (Hybrid Entity) from a Constituent Entity-owner to a subsidiary in respect of Passive Income, limited to the lesser of:

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

4.155 The top-up tax percentage used for this computation disregards the taxes to be pushed down to the subsidiary under the CFC Tax Regime or fiscal transparency rule.
[Chapter 4, subsection 4-65(1) of the Rules]

4.156 Any Covered Taxes of the Constituent Entity-owner incurred with respect to such Passive Income that remain after the application of this rule is not allocated under sections 4-50 or 4-55 of the Rules.
[Chapter 4, subsection 4-65(2) of the Rules]

Adjusted Covered Taxes for Permanent Establishments and Main Entities

4.157 When the GloBE Income of a Permanent Establishment is treated as the GloBE Income of the Main Entity due to subsection 3-235(2)(b) of the Rules, any Covered Taxes that arise in the jurisdiction in which the Permanent Establishment is located and are associated with this income are treated as Adjusted Covered Taxes of the Main Entity.

4.158 The allocated amount is capped at the amount that is the result of multiplying the income with the highest corporate tax rate on ordinary income in the jurisdiction where the Main Entity is located.
[Chapter 4, subsection 4-70 of the Rules]

4.159 The highest corporate tax rate on ordinary income means the full marginal rate which a jurisdiction generally applies to categories of income which do not benefit from any exemption, exclusion, credit or other tax relief applicable to particular types of payments. This also does not include rates which are only applied to particular business sectors.

4.160 This situation arises after a loss of a Permanent Establishment has been treated as an expense of the Main Entity under subsection 3-235(2) of the Rules. In most cases, there will not be taxes in the location of the Permanent Establishment, either because the jurisdiction allows the Permanent

Establishment to carry-forward its loss or, more rarely, because the Permanent Establishment is not subject to tax in the jurisdiction.

4.161 Moreover, when a GloBE Loss of a Permanent Establishment is treated as an expense of a Main Entity under subsection 3-235(2) of the Rules, any deferred tax asset established with respect to a tax loss of the Permanent Establishment jurisdiction will not reduce the Adjusted Covered Taxes of the Permanent Establishment jurisdiction or the Main Entity jurisdiction.

4.162 Conversely, when the deferred tax asset established by the Permanent Establishment reverses in the Permanent Establishment jurisdiction, the Adjusted Covered Taxes of the Permanent Establishment jurisdiction or Main Entity jurisdiction will not be increase. Deferred tax attributes generated or used in the Main Entity jurisdiction with respect to a loss of the Permanent Establishment are available for use and remain subject to the other provisions of Chapter 4 of the Rules.

Mechanism to address temporary differences

4.163 This Part provides the mechanism to address temporary differences that arise when income or loss is recognised in a different year for financial accounting and tax, building on the principles of deferred tax accounting with certain modifications.

4.164 The Total Deferred Tax Adjustment Amount is also determined under Part 4-4 of the Rules.

4.165 Deferred tax expense for the Fiscal Year is comprised of the net movement in deferred tax assets and liabilities between the beginning and end of the Fiscal Year. When established:

- deferred tax assets result in a negative tax expense (i.e., income tax benefit),
- deferred tax liabilities are recorded as a (positive) tax expense.

Addressing timing differences

4.166 Timing differences that arise when income or loss is recognised in a different year for financial accounting and tax may result in an amount of top-up tax due if not addressed. This Part sets out certain adjustments in line with deferred tax accounting principles to address these differences.

Modifications to deferred tax accounting principles

4.167 While Part 4-4 of the Rules uses existing deferred tax accounts maintained by MNE Groups to the greatest extent possible to simplify compliance, certain adjustments are required under these rules, including:

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

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

The Total Deferred Tax Adjustment Amount

4.168 The Total Deferred Tax Adjustment Amount for a Constituent Entity for a Fiscal Year is added to the Adjusted Covered Taxes of an entity for a Fiscal Year. The Total Deferred Tax Adjustment Amount adjusts the Covered Taxes of a CE to take certain deferred tax assets and liabilities into account in order to address the impact of temporary differences.
[Chapter 4, subsection 4-5(b) of the Rules]

Start with the relevant deferred tax expense

4.169 To compute the Total Deferred Tax Adjustment Amount for a CE for a Fiscal Year (with respect to Covered Taxes), the amount of the relevant deferred tax expense is determined.

4.170 The amount of relevant deferred tax expense depends on whether the applicable tax rate is below the Minimum Rate of 15 per cent:

- If the applicable tax rate is below the Minimum Rate, then the relevant deferred tax expense is equal to the amount of deferred tax expense accrued in its financial accounts for the Fiscal Year.
[Chapter 4, subsection 4-75(1)(a) of the Rules]
- If the applicable tax rate is at or above the Minimum Rate, then relevant deferred tax expense is recast at the Minimum Rate.
[Chapter 4, subsection 4-75(1)(b) of the Rules]

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

Adjust the Total Deferred Tax Adjustment Amount

4.172 The Total Deferred Tax Adjustment Amount is adjusted as follows:

- It is increased by any amounts relating to the following items that have been paid during the Fiscal Year:
  - Disallowed Accrual
  - Unclaimed Accrual
  - Recaptured Deferred Tax Liability (if that amount was computed in a preceding Fiscal Year)
    [Chapter 4, subsections 4-75(3)(a) and 4-75(3)(b) of the Rules]

4.173 It is reduced by the amount that would be a reduction to the Total Deferred Tax Adjustment Amount due to recognition of a loss deferred tax asset for a current year tax loss, where a loss deferred tax asset has not been recognised because the recognition criteria are not met.
[Chapter 4, subsection 4-75(3)(c) of the Rules]

4.174 It is also reduced by the amount by which a deferred tax asset is increased if that increase is due to a recasting under subsection 4-70(4) of the Rules, where a deferred tax asset has been recorded at a rate lower than the Minimum Rate and the deferred tax asset is attributable to a GloBE Loss.
[Chapter 4, subsections 4-75(4) and 4-75(5) of the Rules]

Exclusions from the Total Deferred Tax Adjustment Amount

4.175 Any amount of relevant deferred tax expense related to items that are excluded from the computation of GloBE Income or Loss is excluded from the Total Deferred Tax Adjustment Amount.
[Chapter 4, subsection 4-70(2)(a) of the Rules]

4.176 For example, if a CE generates a deferred tax asset with respect to income excluded from the computation of GloBE Income or Loss, the deferred tax asset cannot subsequently be used to increase the amount of Adjusted Covered Taxes since the tax was paid with respect to an item outside of the GloBE base.

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

Example 4.3 Excluded relevant deferred tax expense items

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

This Excluded Equity Loss is not part of the GloBE Income or Loss for Country C due to its nature as an Excluded Equity Loss.

If there are no other differences between the GloBE base and the Country C tax base, the GloBE Loss for Country C stands at (300), while the domestic tax loss for Country C is (400).

A deferred tax asset of 60 is established. However, for GloBE purposes, only 45 of this can be considered. This is because 15 of the deferred tax asset is associated with the Excluded Equity Loss of 100.

In another scenario, if a Constituent Entity creates a deferred tax asset related to income excluded from the GloBE Income or Loss computation, this deferred tax asset cannot later be used to augment the Adjusted Covered Taxes. This is because the tax was paid in relation to an item outside of the GloBE base.

Exclude amounts relating to Disallowed and Unclaimed Accruals

4.178 Movements in deferred tax expenses accrued in the financial accounts relating to uncertain tax positions or distributions from any Constituent Entity of the Group are referred to as a ***Disallowed Accrual***. An ***Unclaimed Accrual*** is an increase in the deferred tax liability recorded in the financial accounts of a Constituent Entity if the liability is not expected to be paid within five subsequent Fiscal Years and an election made by the Filing Constituent Entity applies to the Constituent Entity.
[Chapter 4, section 4-95 of the Rules]

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

4.180 The uncertainty surrounding these accruals means that any amounts of relevant deferred tax expense that relate to Disallowed Accruals and Unclaimed Accruals, are excluded from the Total Deferred Tax Adjustment Amount.
[Chapter 4, subsection 4-75(2)(b) of the Rules]

Exclude valuation or accounting recognition adjustments

Valuation allowance or accounting recognition adjustment

4.181 When it is not probable that taxable profit will arise in the future against which all or part of a domestic tax loss can be applied, a valuation allowance or accounting recognition adjustment is generally required for financial accounting purposes. Such an adjustment is applied to the extent of the loss that is not forecast to be usable.

4.182 When an accounting recognition adjustment is recorded, the deferred tax asset is not recorded as a deferred tax asset in the financial statements to the extent it is not forecast to be usable in the future.

4.183 When accounting rules require a valuation allowance, the deferred tax asset associated with the domestic tax loss is recorded in the financial statements as a deferred tax asset, however, an offsetting liability is recorded as a valuation allowance to the extent of the deferred tax asset that is not forecast to be usable.

Reversal when forecast change

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

4.185 Since the generation of deferred tax assets reduces Adjusted Covered Taxes, it is necessary to ensure that a deferred tax asset relating to a domestic tax loss is recorded in the same year as such loss for GloBE purposes. Accordingly, this paragraph ensures that the deferred tax asset is recorded for GloBE purposes in the same year as the economic loss which gave rise to such asset.

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

Justification for exclusion

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

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

4.189 To prevent this, the Total Deferred Tax Adjustment Amount excludes valuation adjustments or accounting recognition adjustments with respect to deferred tax assets.
[Chapter 4, subsection 4-75(2)(c) of the Rules]

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

4.190 If additional relevant deferred tax expense amounts come through the financial statements because of a change in the applicable domestic tax rate (e.g., if a tax rate has increased), such amounts should not be added to Covered Taxes. This is because these amounts do not relate to GloBE Income in the current Fiscal Year.

4.191 Amounts accrued due to such re-measurements are simply changes to amounts already accrued and therefore, such amounts are excluded from the Total Deferred Tax Adjustment Amount.
[Chapter 4, subsection 4-75(2)(d) of the Rules]

Exclude amounts related to the generation and use of tax credits

Tax credits

4.192 A tax credit is an amount that taxpayers can subtract directly from taxes owed to a government. Tax credits directly reduce the amount of tax owed and are different from deductions (which reduce the amount of taxable income).

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

4.194 Tax credits captured by this exclusion include tax credits granted in a jurisdiction due to a tax liability imposed in another jurisdiction or imposed on profits distributed by another entity such as foreign tax credits.

Excluding tax credits from the Total Deferred Tax Adjustment Amount

4.195 Tax credits are excluded from the Total Deferred Tax Adjustment Amount because the inclusion of such amounts could lead to distortions in GloBE results. This exclusion captures the deferred tax benefit with respect to the generation of tax credits as well as the deferred tax expense with respect to the use of tax credits.
[Chapter 4, subsection 4-75(2)(e) of the Rules]

4.196 Qualified Refundable Tax Credits are addressed separately in subsection 4-15(e) of the Rules.

Excluding movement in related deferred tax expense from Adjusted Covered Taxes

4.197 Because the generation and use of tax credits is excluded from the Total Deferred Tax Adjustment Amount, any movement in related deferred tax expense arising from the generation and use of such tax credits is excluded from the computation of Adjusted Covered Taxes.

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

4.199 The generation of tax credits should not give rise to top-up tax under section 4-30 of the Rules because deferred tax assets arising from the generation of tax credits are excluded from the Total Deferred Tax Adjustment Amount (and will not reduce Adjusted Covered Taxes).

Increases to the Total Deferred Tax Adjustment Amount

4.200 The Total Deferred Tax Adjustment Amount is adjusted by increasing its amount by the amount of any Disallowed Accrual or Unclaimed Accrual paid during the Fiscal Year.
[Chapter 4, subsection 4-75(3)(a) of the Rules]

Disallowed Accruals

4.201 The Disallowed Accrual of a Constituent Entity of a Group for a Fiscal Year, means a movement in deferred tax expense accrued in the financial accounts of the Constituent Entity for the Fiscal Year that relates to:

- an uncertain tax position, or
- distributions from any Constituent Entity of the Group.
  [Chapter 4, subsection 4-95(1) of the Rules]

4.202 The Disallowed Accrual rule ensures that accruals related to uncertain tax positions and distributions from a Constituent Entity are not computed in the Adjusted Covered Taxes until they are actually paid.

Uncertain tax positions

4.203 Amounts accrued relating to uncertain tax positions are disallowed due to the MNE Group’s assessment (and possibly its explicit or implied assertion to the relevant tax authority) that these Taxes are not due.

4.204 Although the criteria may differ under Acceptable Financial Accounting Standards, uncertain tax positions generally result when a Constituent Entity takes a filing position that is not more likely than not to be sustained upon examination. Financial accounting standards require that a reserve is established for such positions. If the filing position is sustained, the reserve is released.

4.205 Given the nature of such accruals, these amounts may not be treated as Covered Taxes unless and until the amount is actually paid.

Taxes on distributions

4.206 Taxes on distributions (e.g., withholding taxes and net basis taxes on received dividends) are typically levied when an entity disburses to its shareholders. Given that the MNE Group generally decides the timing of such distributions between Constituent Entities, it would be inappropriate to provide a current increase to Adjusted Covered Taxes for deferred tax amounts accrued in respect of distribution taxes.

Unclaimed Accruals

4.207 An Unclaimed Accrual, of a Constituent Entity of an MNE Group for a Fiscal Year, means an increase in a deferred tax liability recorded in the financial accounts of the Constituent Entity for the Fiscal Year (the current year) if:

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

4.208 This item is a compliance simplification option with respect to the recapture rule and allows a Constituent Entity to exclude from the Total Deferred Tax Adjustment Amount any deferred tax liability that is not expected to be paid within the time period.

4.209 The simplification allows for the exclusion of deferred tax liabilities that are almost certain to require recapture, which reduces compliance monitoring such liabilities and recalculating top-up tax several years later.

Disallowed Accrual or Unclaimed Accrual paid during the Fiscal Year

4.210 As explained above, any amounts of Disallowed Accrual or Unclaimed Accrual are not taken into account when generated due to their speculative nature of when and whether such Taxes would be paid.

4.211 However, once such Taxes are paid it is appropriate to take them into account under the rules. Upon payment during a Fiscal Year, these Taxes will be included in the Accrued Current Tax Expense for the Fiscal Year.

4.212 However, this inclusion could be offset by the decrease in the deferred tax liability, to the extent the deferred tax liability is included in the Total Deferred Tax Adjustment Amount (and consequently in Adjusted Covered Taxes).

4.213 In order to ensure that the paid Taxes are taken into account for GloBE purposes, the Total Deferred Tax Adjustment Amount is increased by the amount of any Disallowed Accrual or Unclaimed Accrual paid during the Fiscal Year. In effect, this ensures there is no net movement in the Total

Deferred Tax Adjustment Amount.
[Chapter 4, subsection 4-75(3)(a) of the Rules]

Interaction with other rules

4.214 Since the movement in the relevant deferred tax expense relating to Disallowed Accruals is excluded from the Total Deferred Tax Adjustment Amount, the decrease in deferred tax liability when a Disallowed Accrual reverses, should be excluded from the Total Deferred Tax Adjustment Amount.
[Chapter 4, subsection 4-75(2)(b) of the Rules]

4.215 Correspondingly, the amount that reverses with respect to a Disallowed Accrual does not need to be added under Section 4-80 of the Rules since that amount is already accounted for in the Accrued Current Tax Expense (without an offsetting deferred tax liability reversal for GloBE purposes),

4.216 While the provisions relating to exclusions from the Total Deferred Tax Adjustment Amount apply equally to exclude both increases and decreases in the relevant deferred tax expense, an Unclaimed Accrual is defined solely by reference to an increase in a deferred tax liability. Therefore, any subsequent decrease will not be captured by the exclusion in subsection 4-75(2)(b) of the Rules.

Recaptured Deferred Tax Liabilities once paid

4.217 The Total Deferred Tax Adjustment Amount is also increased by the amount of any Recaptured Deferred Tax Liability computed in a preceding Fiscal Year that has been paid during the Fiscal Year.
[Chapter 4, subsection 4-75(3)(b) of the Rules]

4.218 As discussed in greater detail from paragraph 4.231 below, certain amounts claimed as Adjusted Covered Taxes must be recaptured if not paid within five subsequent Fiscal Years.

4.219 However, once paid, these previously recaptured Adjusted Covered Taxes amounts are to be included under the rules. This is achieved by increasing the Total Deferred Tax Adjustment Amount by the amount of any Recaptured Deferred Tax Liability computed in a preceding Fiscal Year that has been paid during the Fiscal Year.

Reductions to the Total Deferred Tax Adjustment Amount

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

4.220 The Total Deferred Tax Adjustment Amount is reduced by the amount that would be a reduction to the Total Deferred Tax Adjustment Amount due to the recognition of a loss deferred tax asset for a current year tax loss, where a loss deferred tax asset has not been recognised because the recognition criteria are

not met.
[Chapter 4, subsection 4-75(3)(c) of the Rules]

4.221 When a deferred tax asset should have been generated but was not because the recognition criteria had not been met, this reduction provides for the creation of a deemed deferred tax asset. This reduction is a corollary to the rule that disregards valuation adjustments or accounting recognition adjustments.
[Chapter 4, subsection 4-75(2)(c) of the Rules]

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

4.223 When the recognition criteria is met in subsequent years, the exclusion rule in subsection 4-75(2)(c) of the Rules disregards the creation of such deferred tax asset in subsequent years.

4.224 This aligns the deemed deferred tax asset generated with the loss to ensure that top-up tax is not triggered under the special rule under section 4-30 of the Rules, simply due to the fact that the recognition criteria have not been met.

Recasting Deferred Tax Assets at the Minimum Rate

4.225 The Total Deferred Tax Adjustment Amount is reduced by the amount by which a deferred tax asset is increased, if that increase is due to a recasting under subsection 4-75(5) of the Rules.

4.226 A recasting under this subsection is triggered where a deferred tax asset has been recorded at a rate lower than the Minimum Rate and the deferred tax asset is attributable to a GloBE Loss.
[Chapter 4, subsections 4-75(4) and 4-75(5) of the Rules]

4.227 It is at the discretion of the Constituent Entity to recast at the Minimum Rate of 15 per cent.

Timing of the Recast

4.228 To the extent an amount is recast at the Minimum Rate under subsection 4-75(5) of the Rules, the recast must be done in the Fiscal Year in which the tax loss becomes a GloBE Loss to prevent distortive outcomes.

4.229 For example, recasting in a year after the GloBE Loss is incurred could result in such recast resulting in additional top-up tax under the special rule under section 4-30 of the Rules.

4.230 To the extent a deferred tax asset is increased by operation of this rule, it follows that the Total Deferred Tax Adjustment Amount is decreased by the amount of incremental deferred tax asset generated.

Recaptured Deferred Tax Liability and Recapture Exception Accrual

4.231 The recapture rule ensures that deferred tax liabilities recorded with respect to categories that do not relate to specific policy allowed categories are settled within the required period of time.

Recaptured Deferred Tax Liability

4.232 If deferred tax liabilities do not reverse within five Fiscal Years and are not related to specific policy-allowed categories (i.e., not Recapture Exception Accruals), then, these deferred tax liabilities must be recaptured in the Fiscal Year they were initially included in the Total Deferred Tax Adjustment Amount.

4.233 To reflect this, the term Recaptured Deferred Tax Liability is defined by the rules. The Recaptured Deferred Tax Liability for a CE for a Fiscal Year is the amount of a deferred tax liability that was included in the Total Deferred Tax Adjustment Amount for the CE for the fifth preceding Fiscal Year and:

- has not reversed by the end of the last day of the Fiscal Year, and
- does not relate to a Recapture Exception Accrual.
  [Chapter 4, section 4-85 of the Rules]

4.234 For a Fiscal Year where there is a Recaptured Deferred Tax Liability for a CE, the amount of this Recaptured Deferred Tax Liability is treated as a reduction to Covered Taxes in the fifth preceding Fiscal Year. The ETR and top-up tax of the fifth preceding year also needs to be recalculated.
[Chapter 4, section 4-80 of the Rules]

Recapture Exception Accrual

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

4.236 The list of Recapture Exception Accruals sets out the temporary differences that are both common in Inclusive Framework jurisdictions and that are generally material to MNE Groups.

4.237 Such temporary differences are typically tied to substantive activities in a jurisdiction or are differences that are not prone to taxpayer manipulation. Accordingly, to reduce compliance burdens, these low-risk items that are certain to reverse over time are not required to be monitored for recapture. ***[Chapter 4, subsection 4-85(c) and section 4-90 of the Rules]***

Cost recovery allowances on tangible assets

4.238 The inclusion of cost recovery allowances with respect to tangible assets reflects the principle that accelerated depreciation and immediate expensing regimes are common in Inclusive Framework jurisdictions and that such timing differences are certain to reverse over the life of an asset.

4.239 Absent a Recapture Exception Accrual in relation to such allowances, the recapture mechanism could disgorge the benefit of such regimes and result in the distortion of jurisdictional ETRs for assets that have a lifespan longer than the time period set forth under the recapture rule.

4.240 Generally, tangible assets consist of property that is classified as Property, Plant, and Equipment or Stockpiles for financial accounting purposes. Property, Plant and Equipment are included as assets on the balance sheet if they are tangible items that are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes and are expected to be used during more than one period.

4.241 Tangible assets also include natural resources, such as mineral deposits, timber, oil and gas reserves, and exploration and evaluation assets. If natural resources are eligible for an accelerated cost recovery method, or other treatment in respect of associated costs that results in timing differences between tax and accounting, the Recapture Exception Accrual also applies to the corresponding timing differences.

4.242 Whether an asset constitutes tangible property should be evaluated under the accounting standard used to determine the Financial Accounting Net Income or Loss of the Constituent Entity. Further, the rule is intended to apply to deferred tax liabilities arising in connection with differences in capitalized costs associated with the particular asset. Thus, if the relevant financial accounting rules require capitalization of a broader range of costs than the relevant tax accounting rules, the associated deferred tax liabilities are treated as Recapture Exception Accruals.

4.243 Similarly, if costs such as mine or oil and gas exploration and development costs that are deducted as incurred or amortised over a brief period for tax purposes and capitalised into the natural resource asset for accounting purposes, the associated deferred tax liabilities are treated as Recapture Exception Accruals.

4.244 The Recapture Exception Accrual also applies in the case where a tangible asset has been leased. Generally, for financial accounting purposes, a lease is treated as a right of use that is depreciated and a lease liability (an obligation to make future lease payments). Upon initial recognition, the right to use the asset and the lease liability are equal and offsetting and as such there will be no net deferred tax asset or liability. Timing differences arise because when for local

tax purposes, the treatment of leased assets differs from accounting such that lease payments are treated as deductible operational expenses. When such timing differences arise, the Recapture Exception Accrual provides that they are not subject to the recapture rule.
[Chapter 4, subsection 4-90(a) of the Rules]

Cost of licences or similar arrangements from the government

4.245 The Recapture Exception Accrual also includes the cost of a licence or similar arrangement from the government, such as a lease or concession, for the use of immovable property or the exploitation of natural resources, where this entails significant investment in tangible assets.

4.246 A right to use immovable property includes licenses for the right to use radio spectrum for telecommunications services. When the right also imposes an obligation to incur significant investment in tangible assets, the cost will be within this category.

4.247 Thus, where there are differences between the relevant financial accounting rules and the relevant tax accounting rules regarding the timing of recognition of the cost of the licence or similar arrangement or related costs, or the accounting rules require capitalization of a broader range of such costs, the associated deferred tax liabilities are treated as Recapture Exception Accruals.

4.248 For example, local tax laws may require the amortisation of a radio spectrum license over a 15-year period, whereas for financial accounting purposes the useful life of such asset has been determined to be 20 years.
[Chapter 4, subsection 4-90(b) of the Rules]

Research and development expenses

4.249 Research and development expenses are included as a Recapture Exception Accrual category, given that tax rules in Inclusive Framework jurisdictions generally permit the deduction of research and development costs, whereas some of such costs may be capitalised for financial accounting purposes.

4.250 Adhering to the financial accounts with respect to the capitalisation of research and development costs could lead to unintended outcomes, including increased pressure on the application of accounting standards and differences in treatment depending upon the accounting standard utilised.

4.251 Accordingly, given the commonality of deductions in Inclusive Framework jurisdictions and the materiality of research and development expenses to MNE Groups, research and development expenses are included as a Recapture Exception Accrual.
[Chapter 4, subsection 4-90(c) of the Rules]

De-commissioning and Remediation Expenses

4.252 De-commissioning and remediation expenses are included in as Recapture Exception Accruals. These costs include the costs a taxpayer will incur to decommission certain types of assets upon reaching the end of their useful life and remediating the site environment.

4.253 For example, upon the end of the useful life of a nuclear power plant, the plant must be de-commissioned and environmental remediation will be required as part of the closure process. In order to reflect accurately the economic performance of an investment, accounting standards generally require the present value of anticipated de-commissioning costs to be capitalized and amortized over the life of the relevant asset. Such assets may include oil rigs, a well, a mine, or a power plant.

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

4.255 In some jurisdictions, however, these costs may not be deductible for tax purposes until the operation is decommissioned or the costs are paid. Some jurisdictions may allow a deduction based on contributions to a trust or similar fund that is created for purposes of funding the future reclamation or closure costs. The amount of these contributions may differ from the amount accrued as an expense in the financial accounts.

4.256 Inclusive Framework jurisdictions generally allow the deduction of these de-commissioning and remediation costs that are expected to be incurred in the future, thus a commonality exists. Decommissioning, closure, and remediation expenses are also material. For example, significant costs are incurred when a well is abandoned or a mine closed, which could be half a century or more after extraction begins. Including such costs avoids the unintended outcome of effectively denying a GloBE deduction for environmental and other clean up-costs.

[Chapter 4, subsection 4-90(d) of the Rules]

Fair value accounting on unrealised net gains

4.257 Fair value accounting on unrealised gains is included as a Recapture Exception Accrual. Some examples of fair value gains and losses for accounting purposes include increases in value of the investments assets of insurance companies or increases in the value of rights to timber held by a forestry company.

4.258 Gains on such investments may not brought into account for tax purposes until such amounts have been realised through a sale or other disposition of the asset. The taxation of realised gains and losses is relatively common amongst Inclusive Framework jurisdictions and can give rise to temporary differences, which can often be material to MNE Groups, both in terms of amount and length of deferral.

4.259 The Recapture Exception Accrual for these gains only applies to the extent the fair value accounting is also applied for GloBE purposes. Therefore, this rule would not apply to the extent the MNE Group had made an election under

subsection 3-135(1) of the Rules in relation to such gains.
[Chapter 4, subsection 4-90(e) of the Rules]

Foreign currency exchange net gains

4.260 Net gains of foreign currency exchange is captured as a Recapture Exception Accrual. Monetary items such as payables, receivables, and loans denominated in a foreign currency (i.e., different from the functional currency for financial accounting purposes of the Constituent Entity) are translated at the closing rate for accounting purposes, which is the spot exchange rate at the reporting date.

4.261 These foreign exchange gains and losses are generally recognised in the financial accounting income of a Constituent Entity. Domestic tax laws, however, may not recognise these unrealised foreign exchange gains and losses until a realisation event occurs, such as a repayment of a loan.
[Chapter 4, subsection 4-90(f) of the Rules]

Insurance reserves and insurance policy deferred acquisition costs

4.262 Insurance reserves are provided for as a Recapture Exception Accrual. Insurance companies generally collect premiums, invest such premiums, and pay claims with the earnings. When a premium is collected, it is known that some portion of the premium and earnings on such premium will be needed to pay claims, generally in a subsequent period.

4.263 Inclusive Framework jurisdictions generally allow a deduction with reference to the amount reserved for future claims, thus the full premium received is not subject to corporate income tax. The amount allowed as a tax deduction is typically determined by reference to the amount of reserve requirements set by insurance regulatory agencies, which require insurance companies to hold a certain amount of assets in high-grade, liquid investments to ensure they can pay policyholder claims.

4.264 Such regulatory capital requirements typically exceed accounting reserves by a significant amount. The difference between these accounting and tax reserves creates temporary differences that may be sustained over long periods, especially in the case of life insurance.

4.265 Given the commonality of treatment in Inclusive Framework jurisdictions and the materiality of insurance reserve amounts, insurance reserves are treated as Recapture Exception Accruals. These amounts are not prone to manipulation given that the timing rules are governed by regulatory requirements and accounting rules.

4.266 The amounts are also certain to reverse over a definite period. Absent the rule for insurance reserves, significant distortions would exist with respect to the ETR for insurance companies due to the material timing differences between accounting and tax treatment.

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

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

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

4.270 It is similarly not prone to manipulation as timing of reversal of it is determined by accounting rules and local tax laws. The long-term nature of insurance contracts can also lead to significant timing differences, as a result of differences in tax rules and how insurance contracts are valued under different accounting standards. Recent changes to accounting standards may change how insurance contracts are measured and recognised and this includes for example how deferred acquisition costs may be referred to and recognised under such standards.
[Chapter 4, subsection 4-90(g) of the Rules]

Reinvestment in Tangible Property

4.271 Deferred tax liabilities associated with gains from the sale of tangible property located in the same jurisdiction as the CE that are reinvested in tangible property in the same jurisdiction are treated as Recapture Exception Accruals.

4.272 Some Inclusive Framework jurisdictions permit a taxpayer to benefit from roll-over or deferral relief with respect to gain on the disposition of capital assets if reinvested into a replacement asset within a prescribed time period.

4.273 The gain is not recognised but is treated as a reduction to the acquisition cost of the new asset, thereby preserving the gain for future taxation. Roll-over or deferral of gain treatment is equivalent to recognising the gain and then allowing an immediate expense of the same amount of the cost of the new asset. Thus, to the extent that the asset is depreciable for accounting purposes, the roll-over or deferral is akin to accelerated depreciation and immediate expensing.

4.274 However, in the case of land, the temporary difference will not reverse until the land is sold and the gain is not rolled over to a new investment. Such difference is material and common in Inclusive Framework jurisdictions, having characteristics similar to accelerated depreciation. This is because the underlying expenditure is directly connected with investment in tangible assets and the difference will reverse over a definite period. Adherence to financial

accounting treatment with respect to such property could lead to unintended outcomes including volatility in GloBE calculations.
[Chapter 4, paragraph 4-90(h) of the Rules]

Additional amounts as a result of accounting principle changes

4.275 Any deferred tax expense arising from a change in accounting principle deferred tax expense resulting from a change in accounting principles with respect to the categories in subsections 4-90(a) through 4-90(g) also benefit from the Recapture Exception Accrual rule.

4.276 For example, if a change in accounting principles or policies occurs in a Fiscal Year that results in additional deferred tax expense being accrued with respect to a previously recorded cost recovery allowance on tangible property, such accrual shall benefit from the Recapture Exception Accrual rule by virtue of the application of this paragraph.
[Chapter 4, subsection 4-90(i) of the Rules]

GloBE Loss Election

4.277 Part 4-5 of the Rules provides an elective rule to effectively carry GloBE losses forward with a deemed deferred tax asset. The election may be made for any jurisdiction when there is a Net GloBE Loss of the MNE Group for the jurisdiction for the Fiscal Year.

4.278 When elected, Part 4-5 applies in lieu of the modified deferred tax accounting rules in Part 4-4.
[Chapter 4, subsection 4-105(1)(a) of the Rules]

4.279 Therefore, Part 4-5 of the Rules is generally expected to be of greatest utility as a simplification in jurisdictions that do not impose a corporate income tax or impose one at a very low rate given that when the election is made (since Part 4-4 of the Rules no longer applies and temporary differences may result in top-up tax).

4.280 When made for an MNE Group, the GloBE Loss election applies to a specified jurisdiction.
[Chapter 4, subsection 4-100(a) of the Rules]

4.281 A Flow-through Entity that is the UPE of an MNE Group can also make a GloBE Loss Election independently from a GloBE Loss election for any jurisdiction.
[Chapter 4, subsection 4-100(b) of the Rules]

Making and revoking the election

4.282 A Filing Constituent Entity of an MNE Group may make an election. The GloBE Loss Election can only be filed with the first GloBE Information Return of the MNE Group that includes the jurisdiction for which the election

is made. This ensures that MNE Groups cannot opt in and out of the election as this could lead to potential distortions. Therefore, the GloBE Loss Election is an election that can only be made once.
[Chapter 4, subsection 4-100(2)(b) of the Rules]

4.283 The election can only be made for jurisdictions that do not have an Eligible. Distribution Tax System. This limitation is to prevent an overstated ETR for such jurisdictions, given that distribution tax is only applicable when positive earnings are distributed.
[Chapter 4, subsection 4-100(2)(a) of the Rules]

4.284 Unless the GloBE Loss Election is revoked, it applies to the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records the election is filed by the Filing Constituent Entity and each subsequent Fiscal Year.
[Chapter 4, section 4-100(3) of the Rules]

4.285 A Filing Constituent Entity for the MNE Group may revoke a GloBE Loss Election for an MNE Group. When revoked, the election does not apply to the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records the revocation is filed by the Filing Constituent Entity and each subsequent Fiscal Year.
[Chapter 4, section 4-100(5) of the Rules]

Establishing the GloBE Loss Deferred Tax Asset

4.286 The GloBE Loss Election allows for the establishment of a GloBE Loss Deferred Tax Asset when there is a Net GloBE Loss for the jurisdiction for the Fiscal Year.
[Chapter 4, subsection 4-105(1)(b)(i) of the Rules]

Calculating the GloBE Loss Deferred Tax Asset for jurisdictions

4.287 When established, the GloBE Loss Deferred Tax Asset for a jurisdiction is calculated by multiplying the Net GloBE Loss by the Minimum Rate of 15 per cent.
[Chapter 4, subsection 4-105(1)(b)(ii) of the Rules]

4.288 Once established, the GloBE Loss Deferred Tax Asset can either be carried forward or used in subsequent fiscal years, depending on whether there is a Net GloBE Loss or Net GloBE Income for the jurisdiction for the relevant Fiscal Year.

Calculating the GloBE Loss Deferred Tax Asset for flow-through entities

4.289 When a Flow-through Entity that is the UPE of an MNE Group makes a GloBE Loss Election, the GloBE Loss Deferred Tax Asset is calculated in accordance with the rules set out in Part 4-5 of the Rules.

4.290 However, the calculation for the Flow-through Entity is solely with UPE with reference to its GloBE Loss, after reduction in accordance with section 7-10 of the Rules. The GloBE Loss remains with the Flow-through Entity that is a UPE and can only be used to offset future GloBE Income of such UPE.

4.291 Accordingly, because other entities are not aggregated with the Flow-through Entity that is a UPE for purposes of calculating the GloBE Loss, this election is made with respect to only the Flow-through Entity that is the UPE. Even if a GloBE Loss Election has been made for the jurisdiction in which the UPE is located, other entities are not aggregated with the Flow-through Entity that is a UPE.

4.292 Calculating with reference to the GloBE Loss of the Flow-through Entity that is a UPE after reductions under section 7-10 of the Rules ensures that losses that flow through to shareholders are not double counted.
[Chapter 4, section 4-115 of the Rules]

Carry forward and use of the GloBE Loss Deferred Tax Asset

Carry forward when there is a subsequent Net GloBE Loss

4.293 In a subsequent Fiscal Year where there is a Net GloBE Loss, the balance of the GloBE Loss Deferred Tax Asset is carried forward. This is done by calculating the GloBE Loss Deferred Tax Asset for that subsequent year and increasing the balance of the existing GloBE Loss Deferred Tax Asset by that amount.
[Chapter 4, subsection 4-105(1)(c) of the Rules]

4.294 Calculating the GloBE Loss Deferred Tax Asset for subsequent fiscal years follows the same formula used to establish the asset (multiplying the Net GloBE Loss by the Minimum Rate of 15 per cent). However, this time it is the subsequent Fiscal Year's Net GloBE Loss that is taken into account.

4.295 The GloBE rules allow for an indefinite carry-forward of the GloBE Loss Deferred Tax Asset. However, certain domestic laws might restrict its practical application after a specific duration. Some jurisdictions might impose conditions, such as record-keeping and evidence requirements, to claim the benefits of a carried-forward loss.

Cary-forward when there is a subsequent Net GloBE Income

4.296 In a subsequent Fiscal Year where there is a Net GloBE Income, the amount of GloBE Loss Deferred Tax Asset must be used.
[Chapter 4, subsection 4-105(2) of the Rules]

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

- the Net GloBE Income multiplied by the Minimum Rate of 15 per cent; or

- the amount of the GloBE Loss Deferred Tax Asset that has not been previously used (i.e the balance of any existing GloBE Loss Deferred Tax Asset amount).
  [Chapter 4, subsections 4-105(1)(b) and 4-105(1)(c) of the Rules]

4.298 When used, the balance of the GloBE Loss Deferred Tax Asset that is carried forward to subsequent Fiscal Years is reduced by the amount that is used for the Fiscal Year in which it is used.

4.299 When a GloBE Loss Deferred Tax Asset is used in a subsequent Fiscal Year, the amount of GloBE Loss Deferred Tax Asset is added to Covered Taxes to ensure that the GloBE Loss Deferred Tax Asset is appropriately accounted for in the overall GloBE tax calculations.
[Chapter 4, subsection 4-15(b) of the Rules]

Effect of revocation of the GloBE Loss Election

4.300 If the GloBE Loss Election is subsequently revoked, any remaining GloBE Loss Deferred Tax Asset will be reduced to zero on the first day of the first Fiscal Year to which the GloBE Loss Election is no longer applicable.
[Chapter 4, section 4-125 of the Rules]

4.301 This adjustment is required because when a jurisdiction is transitioned to the modified deferred tax accounting method set out in these Rules, the historic deferred tax assets and liabilities will be taken into account as if they had been calculated under Part 4-4 (and Part 9-1) of the Rules for the prior Fiscal Years.

4.302 Allowing the GloBE Loss Deferred Tax Asset to be carried forward into these subsequent Fiscal Years would potentially permit double benefit for losses and other distorted outcomes.

Chapter 5: Effective tax rate and top-up tax

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Outline of chapter

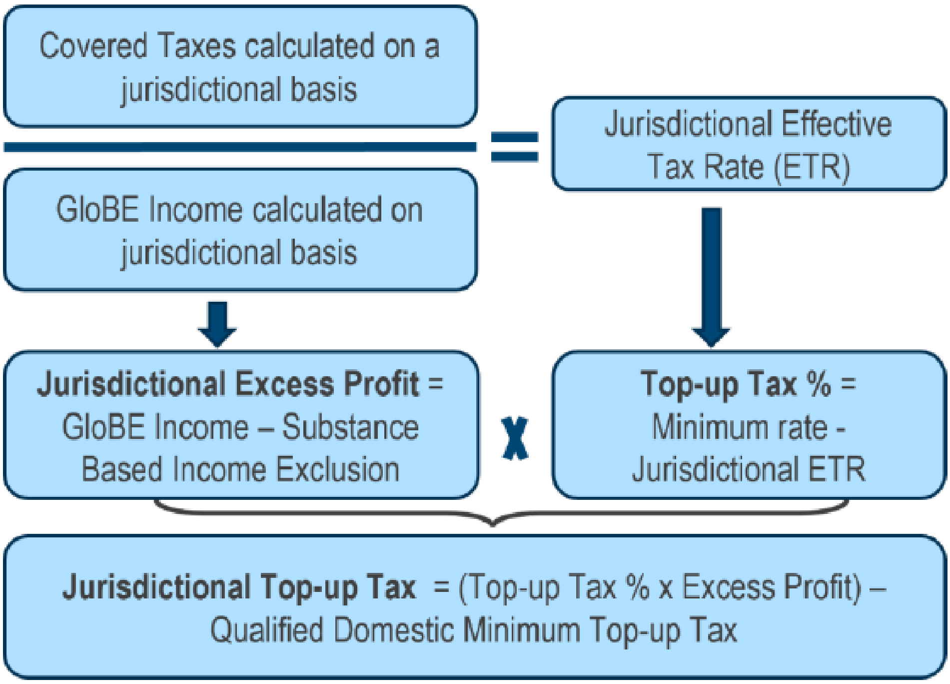
5.1 Chapter 5 of the Rules sets out the computation rules for determining the ETR of a jurisdiction and the top-up tax amount for a Low-Tax Jurisdiction.

5.2 The GloBE Income or Loss and Covered Taxes of each Constituent Entity located in the same jurisdiction are added together to compute the jurisdictional ETR.

5.3 The top-up tax due is the difference between the GloBE minimum rate of 15 per cent and the ETR in the jurisdiction. That top-up tax percentage is then applied to the GloBE Income or Loss in the jurisdiction, after deducting a substance-based income exclusion. The portion of the income exceeding the substance carveout (the excess profit) is then subject to the top-up tax which brings the MNE Group's total tax on its excess profits up to the minimum rate.

5.4 The resulting top-up tax of each LTCE is then charged to a Parent Entity under the QIIR or, if there is not Qualified IIR, to Constituent Entities located in a UTPR Jurisdiction.

Diagram 5.1 Calculating ETR and Top-Up Tax



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

Determination of effective tax rate

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

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

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

5.6 ETRs are calculated annually on a jurisdictional basis. However, if a jurisdiction has a Net GloBE Loss for a Fiscal Year, then no ETR calculation is required.

Entities that compute their ETR separately

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

- investment entities;
- minority-owned entities;
- stateless entities; and
- joint ventures

5.8 As such, depending on the composition of the MNE Group, it could be computing ETR using different rules for different Constituent Entities. The methodology for calculating the ETR is the same regardless of whether entities compute it on group basis or a standalone basis.
[Chapter 5, notes to sections 5-5 and 5-15 of the Rules]

Investment entities

5.9 Investment entities and insurance investment entities are to compute their ETR separately from the MNE group. Where there are multiple investment entities within the MNE group in the same jurisdiction, those investment entities can combine the adjusted covered taxes and GloBE income to produce their ETR.
Minority owned entities

5.10 The ETR calculations of a minority owned subgroup within a jurisdiction will be calculated separately to the main MNE group.

5.11 UPEs that have less than 30 per cent ownership (indirect or direct) of a Constituent Entity are referred to as minority owned Constituent Entities. Minority owned Constituent Entities may become parent entities where that entity owns controlling interest in another Constituent Entity. Multiple owned entities by minority owned parent entities become part of a minority owned subgroup.

5.12 A minority owned Constituent Entity that is not part of a minority owned subgroup, will compute the ETR separately to the MNE group on an entity basis. This does not apply where the minority owned Constituent Entity is an investment entity, as the investment rule above takes priority.

5.13 These Entities will compute their ETR separately to avoid including the income and taxes attributable to third-party owners outside of the MNE Group into the computation of GloBE Income or Loss and Covered Taxes.

Stateless entities

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

Joint ventures

5.15 JVs including any JV Subsidiaries with at least 50 per cent Ownership interests held by the MNE Group are to compute their ETR as if they were a separate MNE group with the joint venture being the equivalent of a UPE of that Group.

5.16 JVs' profits and taxes are not blended with other Constituent Entities in the MNE Group. As such, its ETR is calculated separately to address the practical challenges that would be experienced if the ETR computation needs to account for JV's profits and taxes.
[Chapter 5, notes after sections 5-5 and 5-15 of the Rules]

Net GloBE Income

5.17 The ***Net GloBE Income*** of an MNE Group for a jurisdiction for a Fiscal Year is equal to the ***GloBE Income of all Constituent Entities*** in the jurisdiction for the Fiscal Year, minus the ***GloBE Losses of all Constituent Entities*** in the jurisdiction for the Fiscal Year, to a minimum of zero.
[Chapter 5, section 5-10 of the Rules]

Top-up tax

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

Top-Up Tax percentage

5.19 Once the ETR calculation has been computed, this is compared to the minimum rate of 15 per cent. The top-up tax percentage is the difference between 15 per cent and the MNE group's ETR in that jurisdiction.
[Chapter 5, section 5-20 of the Rules]

$$Top\text{-}up\ tax\ percentage = 15\%\ (minimum\ rate) - ETR$$

5.20 Where the ETR in a jurisdiction is greater than 15 per cent, no top-up tax applies as entities and groups are paying the minimum rate. However, where the ETR in a jurisdiction is less than 15 per cent, a top-up tax applies.

Excess profit

5.21 The Excess profit is the amount of profit for a MNE group within a jurisdiction on which the top-up tax is levied. Provided that the entity has applied the substance-based income exclusion, the excess profit only refers to positive amounts and is calculated using the following formula:
[Chapter 5, section 5-25 of the Rules]

$$Excess\ profit =$$

$$Net\ GloBE\ Income - Substance\ based\ income\ exclusion$$

5.22 Where the substance-based income exclusion is greater than or equal to the Net GloBE Income, no excess profit and no top-up tax applies. Additional current top-up tax may still apply.

Jurisdictional Top-Up Tax

5.23 The results from the top-up tax percentage and excess profit formulas are used to arrive at the jurisdictional top-up tax. The jurisdictional top-up tax is calculated by multiplying the top-up tax percentage by the excess profits for the MNE group in each low-tax jurisdiction and reduce the result by the amount of any domestic minimum top-up tax and adding any additional top-up-tax:

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

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

Top-up-tax of a Constituent Entity

5.25 The jurisdictional top-up tax is allocated only to Constituent Entities that have GloBE Income for the relevant year; there is no allocation to entities with a GloBE loss.

$$Constituent\ Entity's\ top\ up\ tax =$$

$$jurisdictional\ top\ up\ tax \times \frac{GloBE\ income\ of\ the\ CE}{Aggregate\ GloBE\ income\ of\ all\ CEs}$$

5.26 An entity within the MNE group is allocated Top-Up Tax depending on its share of the MNE group’s income.

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

Substance-based income exclusion

5.28 The purpose of excluding substance-based income is to ensure that income is taxed in the jurisdictions where the underlying economic activities that generate that income take place. Generally, it represents the elements of the business that are referable to the group's activities in that jurisdiction, that should not be subject to international taxation. For example, if a company has sufficient presence and economic substance in a jurisdiction where the income is earned, the income is excluded from GloBE income.

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

$$Substance\ based\ exclusion =$$

$$Payroll\ carve\ + Tangible\ asset\ carve\ out$$

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

Election out of the substance-based income exclusion

5.31 The substance-based income exclusion applies automatically, however the filing entity may choose not to apply the substance-based income exclusion on an annual basis for all entities in the jurisdiction. Where the entity has elected not to apply the substance-based income exclusion, the excess profits is instead equal to the Net GloBE Income for the jurisdiction.

5.32 Where an election is made, the Substance-based Income Exclusion amount is taken to be zero for the Fiscal Year in which the election is made.
[Chapter 5, subsection 5-50(2) of the Rules]

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

5.34 Once an entity has filed the GloBE information return, an election cannot be varied or revoked. The entity is permitted to elect to apply the substance-based income exclusion in subsequent years as the election resets every year.
[Chapter 5, subsection 5-50(6) of the Rules]

Payroll carve-out amount

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

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

5.36 Where the substance-based exclusion exceeds the GloBE income, the resulting amount cannot be reduced below zero, that is, a GloBE Loss cannot arise. Any excess substance-based income exclusions cannot be carried forward or backward to reduce GloBE income for another year.

5.37 The payroll carve out is five per cent of the eligible payroll costs of each entity in the MNE group. The payroll carve out does not include costs that are included in the carrying value of eligible tangible assets or attributable to an entity's international shipping income and Qualified Ancillary Shipping Income (where excluded from the computation of GloBE Income or Loss for that Fiscal Year). The payroll carve-out design recognises a Constituent Entity's payroll expense as an appropriate proxy for substantive activities carried out by employees of the MNE Group in the relevant jurisdiction. ***[Chapter 5, subsections 5-55(1) and (2) of the Rules]***

Tangible asset carve-out

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

5.39 The carrying value of tangible assets is based on the average carrying value (net of accumulated depreciation, amortisation, or depletion and including any amount attributable to capitalisation of payroll expense) at the beginning and ending of the reporting year as recorded in the CFS of the UPE. ***[Chapter 5, subsection 5-65(2) of the Rules]***

Transitional rule

5.40 These carve out percentages are subject to a ten-year transitional rule outlined in Part 9-2 that starts with a higher percentage that is gradually reduced to 5 per cent by 2033.

Flow through entities

5.41 Separate rules are required for the tangible assets and payroll for permanent establishments and flow through entities.

Permanent Establishment

5.42 Eligible payroll costs and eligible tangible assets of a permanent establishment are those that are included in the separate financial accounts and adjusted accordingly to arrive at GloBE income or loss under Part 3. This is conditional on the employees and assets being located in the same jurisdiction as the permanent establishment, where employees and assets are located in a different location to the PE, those assets and employees are excluded from the substance-based income exclusion.

5.43 To prevent the possibility of costs being double counted, the eligible payroll costs and tangible assets of the permanent establishment are not allocated to the main entity. If a permanent establishment's income is allocated to the main entity under section 3-235 of the Rules, the definition of eligible payroll costs and tangible assets ensures that it remains in the jurisdiction it is located and is not attributed to the permanent establishment.
[Chapter 5, subsection 5-80(2) of the Rules]

5.44 A Permanent Establishment that has wholly or partly excluded income under sections 3-225 and 7-15 of the Rules are excluded from the Substance-based Income Exclusion computations of the MNE group in the same proportion
[Chapter 5, subsection 5-80(2) of the Rules]

5.45 Adjustments are made for a flow through entity in relation to tangible asset and payroll so that any amount not considered in determining underlying profits is excluded.

5.46 Employees and assets attributed to a permanent establishment are excluded from the allocation rules for flow through entities. There are three separate rules on allocating employees and assets of a flow through, which are allocated as follows:

1 to the Constituent Entity owner in the same proportion as the accounting income of the flow through that is allocated to the Constituent Entity owner under subsection 5-85(3) of the Rules;

2 to the UPE where the flow through is a UPE and reduced in the same proportion as the income allocated under subsection 7-5(2) of the Rules;

3 all other employees and assets of a flow through are excluded from the substance-based income exclusion.
[section 5-85 of the Rules]

Additional Current top-up tax

5.47 The ETR must be recalculated where certain circumstances require changes to prior year calculations. The resulting change in liability is treated as an additional current top-up-tax in the current fiscal year. Where an additional

top-up tax is calculated for an entity, that entity is deemed a low taxed entity for that year.
[Chapter 5, section 5-90 of the Rules]

Additional Current top-up tax – ETR Adjustment Provisions

5.48 An additional current top-up tax liability may arise where an ETR Adjustment Provision applies, including in the following circumstances:

- Section 3-155 (relating to asset gain);
- Subsection 4-80(b) (recaptured deferred tax liability);
- Subsection 4-120(3) (post-filing adjustments);
- Subsection 4-125(3) (current tax expense not paid within 3 years); or
- Subsection 7-75(2)(b) (deemed distribution tax).
[Chapter 5, subsections 5-90(1) and (2) of the Rules]

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

Calculation of Additional Current top-up tax

5.50 If an ETR Adjustment Provision applies in relation to a prior Fiscal Year, the ETR and Jurisdictional top-up tax for that prior year are recalculated using the method set out in this Chapter.
[Chapter 5, subsection 5-90(2) of the Rules]

5.51 However, the difference between the originally-calculated top-up tax and the recalculated top-up tax is not included in the MNE Group's Jurisdictional top-up tax for that prior Fiscal Year. Instead, the amount is treated as **Additional Current top-up tax** for the current fiscal Year.
[Chapter 5, subsection 5-90(3) of the Rules]

No GloBE Income

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

$$\frac{entity's\ top\ up\ tax}{15\%}$$

[Chapter 5, subsection 5-90(4) of the Rules]

5.53 This rule ensures that when a recalculation results in additional top-up tax that is payable in a Fiscal Year with no GloBE Income for a jurisdiction that there is still a mechanism in place by which the top-up tax that is ***owed*** can be allocated to Parent Entities that may be subject to an IIR. Where this rule applies, the Constituent Entity which applied the ETR adjustments resulting in Additional top-up tax is treated as a LTCE for the Fiscal Year.
[Chapter 5, subsection 5-90(5) of the Rules]

Adjusted Covered Taxes less than expected amount

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

$$\frac{entity's\ Additional\ Top-up\ Tax\ for\ the\ current\ Fiscal\ Year}{15\%}$$

[Chapter 5, subsections 5-95(1) and (2) of the Rules]

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

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

5.56 These Constituent Entities are allocated an amount of Additional Current top-up tax in proportion to their top-up tax amount, as calculated by:

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

[Chapter 5, subsection 5-95(3) of the Rules]

5.57 A Constituent Entity that is allocated Additional top-up tax for a Fiscal Year is treated as an LTCE for that Fiscal Year.
[Chapter 5, subsection 5-95(4) of the Rules]

De minimis exclusion

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

5.59 If a Constituent Entity in a jurisdiction meets the criteria for the de minimis exclusion in a Fiscal Year, its top-up tax is taken to be zero for that Fiscal Year.
[Chapter 5, subsection 5-100(1) of the Rules]

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

- the average GloBE Revenue of the MNE Group in the jurisdiction in the Fiscal Year must be less than EUR 10 million; and
- the average GloBE Income or Loss of the MNE Group in the jurisdiction in the Fiscal Year must be a loss or less than EUR 1 million
  [Chapter 5, subsections 5-100(1)(a) and (b) of the Rules]

5.61 To make use of the exclusion, the filing Constituent Entity must make an annual election to apply the exclusion to the Constituent Entities located in a jurisdiction and the Fiscal Year.
[Chapter 5, subsection 5-100(1)(c), 5-100(5) and (6) of the Rules]

5.62 ***Globe revenue*** and ***Average Globe Revenue*** are calculated in accordance with the following formulas:

$$GloBE\ Revenue = \sum(Revenue\ from\ all\ entities\ in\ the\ jurisdiction)$$

$$Average\ GloBE\ revenue \\ = \text{average of } (GloBE\ revenue\ from\ 3\ most\ recent\ years\ incl\ current\ year)$$

5.63 ***Average GloBE Income or Loss*** of an MNE Group in a jurisdiction is calculated as follows:

$$Average\ GloBE\ Income\ or\ Loss \\ = \text{avearage of } (GloBE\ Income\ or\ Loss\ from\ 3\ most\ recent\ years\ incl\ current\ year)$$

5.64 GloBE Income or Loss is the Net GloBE Income or Net GloBE Loss for the Fiscal Year of the MNE Group.
[Chapter 5, subsection 5-100(2) and (4)(a) and (b) of the Rules]

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

5.66 Both the Average GloBE Revenue and Average GloBE Income or Loss are determined by applying the same rules used to compute the GloBE Income or Loss of a jurisdiction. The Average GloBE revenue calculation must exclude any preceding years where there were no Constituent Entities of the MNE Group in that jurisdiction with GloBE Revenue or GloBE Losses. Before the GloBE Rules come into effect, there are also no Constituent Entities with GloBE Revenue or GloBE Income or Loss in any jurisdiction. This means that in the first year that the GloBE rules come into effect, the average GloBE Revenue and GloBE Income or Loss will be based off one year only.
[Chapter 5, subsection 5-100(3) of the Rules]

Stateless Constituent Entities and Investment Entities

5.67 Even if the filing Constituent Entity has made an election and the Constituent Entities in the jurisdiction meet the revenue and income requirements, a

Constituent Entity cannot use the de minimis exclusion if it is a Stateless Constituent Entity or an Investment Entity. This is because these entities must compute their ETR separately.
[Chapter 5, subsection 5-100(1)(d) of the Rules]

5.68 The revenue and GloBE Income or Loss of Stateless Constituent Entities and Investment Entities is not included when calculating whether the Constituent Entities in a jurisdiction meet the revenue and income thresholds.
[Chapter 5, subsection 5-100(4)(c) of the Rules]

Minority-owned Constituent Entities

5.69 Particular rules apply for calculating the jurisdictional ETR and top-up tax of MOCEs and ***Minority-owned Subgroups***, which comprise of two or more MOCEs of an MNE Group. These rules also apply to Permanent Establishments and Main Entities if they meet the definition of a MOCE.
[Chapter 5, subsection 5-105(1) of the Rules]

5.70 The computations for MOCEs and Minority-owned Subgroups are done separately to the MNE Group in recognition of the fact that MOCEs have different owners outside of the MNE Group. If MOCEs are included in the computations of the MNE Group, it could result in third-party owners outside of the MNE Group bearing top-up tax liability, which is not the policy intention. As such, ETR and Net GloBE Income or Loss computations of MOCE and Minority-owned Subgroups do not consider the other Constituent Entities of the MNE Group.
[Chapter 5, subsection 5-105(2) of the Rules]

5.71 The computation methods for jurisdictional ETR and top-up tax for the MOCEs and Minority-owned Subgroups are otherwise the same as the computation methods applied to the MNE Group.

5.72 If a MOCE is not in a Minority-owned Subgroup and is not an Investment Entity, it is treated as the only Constituent Entity of the MNE Group in its jurisdiction when calculating its jurisdictional ETR and top-up tax.
[Chapter 5, subsections 5-105(3) and (4) of the Rules]

Chapter 6: Corporate restructuring and holding structures

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Outline

6.1 Chapter 6 of the Rules sets out special rules for mergers and acquisitions and certain corporate structures.

Mergers and Demergers

6.2 The GloBE Threshold is modified for MNE Groups that merge or demerge during a fiscal year. An alternative threshold test must be used for MNE Groups with mergers or demergers to determine whether the GloBE Threshold has been met.

Mergers

6.3 The alternative threshold test applies if two entities merge to form a group, a group acquires another entity or a group demerges. The intention of the alternative test is to complement the standard test where the consolidated revenue is at least EUR 750 million in two of the last four years.

6.4 A merger is an arrangement where either:

- all or substantially all of the group entities of at least two separate groups are brought under common control such that they constitute group entities of a combined group; or

- an entity that is not a member of any group is brought under common control with another entity or group such that they constitute group entities of a combined group.
  [Chapter 6, section 6-10 of the Rules]

6.5 Where two groups merge or a group acquires an entity in a fiscal year (merger year) then the GloBE Rules apply if the sum of the revenue included in each of their financial statements or CFS is at least EUR 750 million in any of the four fiscal years prior to the merger year.
[Chapter 6, sections 6-5 and 6-10 of the Rules]

6.6 The groups may use separate financial statements to determine their combined revenue figure in the event that CFS were not prepared.

Demergers

6.7 A demerger is where a single MNE group separates into two or more groups that are no longer consolidated by the same UPE. The revenue threshold test for demergers is applicable if, prior to the demerger, the MNE group was subject to the GloBE rules.
[Chapter 6, subsections 6-15(1), (3) and (4) of the Rules]

6.8 For the first year after the demerger, if each demerged group has annual revenues of at least EUR 750 million, then those groups are within scope of the GloBE rules. This is instead of applying the general rule that takes into account the previous years' revenue. For the second to fourth years after the demerger, the annual revenue test is met if the demerged groups have at least EUR 750 million in any two years.
[Chapter 6, subsection 6-15(2) of the Rules]

Constituent Entities joining and leaving an MNE Group

6.9 Special rules apply to MNE groups that acquire or dispose of a Constituent Entity during the Fiscal Year. This has implications for calculating for GloBE Income or Loss, Adjusted Covered Taxes, Substance based Income Exclusion, and the application of the IIR.

6.10 An Entity that becomes or ceases to be a Constituent Entity of an MNE Group is referred to as the ***target***. The Fiscal Year in which the Ownership Interests in the target are transferred to facilitate the acquisition or disposal is referred to as the ***acquisition year***.
[Chapter 6, subsection 6-20(1) of the Rules]

6.11 The special rules apply where the target ceases to be a Constituent Entity of the disposing MNE Group, regardless of whether the target then becomes the Constituent Entity of another MNE Group (the acquiring MNE Group). The

rules also apply where the target becomes a Constituent Entity of an MNE Group, including if the MNE Group is a new Group and the target becomes the UPE of the acquiring MNE Group
[Chapter 6, section 6-20 of the Rules]

Group membership

6.12 The target is considered a Constituent Entity of a MNE group if at any point in the financial year any of the target's financial amounts are included in the CFS. In the acquisition year, this may result in the target's financials being included in both MNE group's CFS.
[Chapter 6, section 6-25 of the Rules]

6.13 Despite, the target potentially being considered across different MNE groups and multiple CFS, the relevant income and taxes to compute the ETR and apply any top-up tax are only taken into consideration once in the acquisition year. In the acquisition year, the FANIL and adjusted covered taxes of the target are only considered by the MNE group that:

- disposed the entity or
- acquired the entity.
[Chapter 6, section 6-30 of the Rules]

FANIL and GloBE Income or Loss calculations

6.14 Where an MNE group must use a carrying value for the target entity in the acquisition year or later years, the MNE group must use the target's historical carrying value.
[Chapter 6, section 6-35 of the Rules]

6.15 This may be relevant for the purposes of applying the election to use the realisation method, under section 3-135, or the eligible tangible assets for the substance-based income exclusion under Part 5-3.

6.16 However, in computing the eligible tangible assets carve out, the carrying value must be adjusted in the acquisition year to reflect the period the target entity was a member of the MNE group. The carrying value of eligible tangible assets adjustment should be proportionate to the period the target was a member of the disposing MNE group or acquiring MNE group, as relevant.
[Chapter 6, subsection 6-40(2) of the Rules]

6.17 Similarly, the amount of eligible payroll costs of target entity is the amount reflected in the CFS of the disposing MNE group or the acquiring MNE group.
[Chapter 6, subsection 6-40(1) of the Rules]

6.18 Any deferred tax assets or deferred tax liabilities (excluding a GloBE loss deferred tax asset) of a target entity are transferred to the acquiring MNE group. The timing of when deferred tax assets or deferred tax liabilities were

first recorded is also transferred to the acquiring MNE group. The transfer of deferred tax assets and deferred tax liabilities only extends between MNE groups, where the target has been a Constituent Entity of the disposing MNE group.
[Chapter 6, subsections 6-45(1) and (2) of the Rules]

6.19 An MNE group must make appropriate adjustments for a target entity that joins or leaves an MNE group and has deferred tax liabilities that were included in the deferred tax adjustment amount under Part 4-4. At the time a target ceases to be a Constituent Entity of an MNE group, the disposing MNE group must treat the deferred tax liability recorded under Part 4-4 as reversed in the acquisition year. This is intended to relieve the disposing MNE Group of the need to recapture deferred tax liabilities that do not reverse within five years.
[Chapter 6, subsections 6-45(3) and (4) of the Rules]

6.20 Conversely, an MNE group that acquires a target with a deferred tax liability must treat that liability as arising in the acquisition year, regardless of the year it actually arose. This restarts the five-year period, meaning that any subsequent increases to reductions to covered taxes have effect for the fiscal year that the amount was recaptured. This application only applies to deferred tax liabilities that fall within the meaning of recapture exception accruals under Part 4-4.
[Chapter 6, subsections 6-45(3) and (5) of the Rules]

Transfer of Assets and Liabilities

6.21 Part 6-3 provides rules for the recognition or non-recognition of gain or loss on the disposition of assets and liabilities and for determining the carrying values of assets and liabilities. MNE Groups must apply the Arm's Length Principle to cross-border intra-group transactions in order to protect the integrity of jurisdictional blending.

6.22 The treatment of the disposition in calculating the GloBE Income of the disposing and acquiring Constituent Entities depends on whether or not the disposition is part of a GloBE Reorganisation.
[Chapter 6, sections 6-60 and 6-65]

6.23 Different rules also apply where a disposition occurs as part of a GloBE Reorganisation where there is a Non-qualifying Gain or Loss – that is, where the disposing Constituent Entity is subject to tax on the gain (or loss) on disposition, in whole or part.
[Chapter 6, subsections 6-70(1) and (4)]

Table 6.1 Treatment of dispositions when calculating GloBE Income or Loss

Scenario	Disposing Constituent Entity	Acquiring Constituent Entity
GloBE Reorganisation	Exclude the gain or loss on disposition.	Use the disposing Constituent Entity's carrying value of the asset/liability upon disposition.
GloBE Reorganisation where the disposing Constituent Entity has a Non-qualifying Gain or Loss	Include the gain or loss on disposition to the extent of the Non-qualifying Gain or Loss.	Use the disposing Constituent Entity's carrying value of the asset/liability upon disposition, adjusted consistent with the local tax rules to account for the Non-qualifying Gain or Loss.
Disposition other than a GloBE Reorganisation	Include the gain or loss on disposition.	Use the acquiring Constituent Entity's carrying value of the asset/liability, as determined under the accounting standard used in preparing the CFS of the UPE.

Fair value adjustments

6.24 A Constituent Entity may be required or permitted to adjust the tax basis of its assets and liabilities in a variety of circumstances under the local tax rules. If this is the case, a Filing Constituent Entity may elect to apply a fair value adjustment.
[Chapter 6, subsections 6-75(1) and (2) of the Rules]

6.25 The election must specify the jurisdiction, the adjusting Constituent Entity, and the Fiscal Year in which the event that triggers the tax adjustment (the ***triggering event***) occurs. The election is a [Five-Year Election] and the fair value adjustment applies when calculating GloBE Income or Loss in Fiscal Years which end after the triggering event.
[Chapter 6, subsections 6-75(2), (3) and (4) of the Rules]

6.26 In calculating the Constituent Entity's GloBE Income or Loss where a fair value adjustment election applies, the fair value for accounting purposes immediately after the triggering event is used.
[Chapter 6, subsection 6-75(6) of the Rules]

6.27 The difference between the carrying value for financial accounting purposes immediately before the triggering event, and the fair value immediately after the triggering event, adjusted to account for any Non-qualifying Gain or Loss, must also be included.
[Chapter 6, subsection 6-75(5) of the Rules]

6.28 This amount may be included in the Fiscal Year in which the triggering event occurs, or spread equally across that Fiscal Year and the following 4 Fiscal Years.
[Chapter 6, subsection 6-75(7) of the Rules]

6.29 If the amount is spread across 5 Fiscal Years, and during that time the adjusting Constituent Entity ceases to be a Constituent Entity of the MNE Group in a Fiscal Year, then any remaining parts of the amount must be included in the Fiscal Year in which the adjusting Constituent Entity leaves the MNE Group.
[Chapter 6, subsection 6-75(8) of the Rules]

Definition of GloBE Reorganisation

6.30 A GloBE Reorganisation is an acquisition or disposition where the sellers of the target entity are compensated with equity interests in the acquiring Entity or Group and the gains or losses on the acquired assets and liabilities are deferred under the local tax rules.
[Chapter 6, section 6-65 of the Rules]

6.31 To qualify as a GloBE Reorganisation, the consideration for a transfer of assets and liabilities must be, in whole or in significant part, equity interests issued by the acquiring Constituent Entity or by a person connected with the acquiring Constituent Entity. No consideration may be provided only where the issuance of an equity interest as consideration would have no economic significance.
[Chapter 6, subsections 6-65(2)(a) and (b) of the Rules]

6.32 Additionally, the disposing Constituent Entity’s gain or loss on the assets and liabilities must be partially or wholly non-taxable at the time of the transformation or transaction. The transformation or transaction does not need to be wholly non-taxable.
[Chapter 6, subsection 6-65(2)(c) of the Rules]

6.33 Finally, the tax laws of the jurisdiction in which the acquiring Constituent Entity is located must require the acquiring Constituent Entity to compute taxable income after the acquisition using the disposing Constituent Entity’s tax basis in the assets and the same amount of liabilities, adjusted for any Non-Qualifying Gain or Loss on the disposition or acquisition.
[Chapter 6, subsection 6-65(2)(d) of the Rules]

Gain or loss from GloBE Reorganisation of disposal assets and liabilities

6.34 In the case of a GloBE Reorganisation, where there is a transfer of assets and liabilities, the entity disposing of the assets and liabilities will exclude any gain or loss from its GloBE Income. The acquiring entity will adjust their GloBE Income based on the disposing entity's carrying values of the acquired assets and liabilities upon disposal.

6.35 The gain or loss of a transfer of assets and liabilities resulting from a GloBE Reorganisation is included in the computation of GloBE Income or Loss only to the extent it relates to a Non-qualifying Gain or Loss, defined in subsection 6-70(4) of the Rules generally as the lesser of the taxable or financial accounting gain or loss on the transfer. In most cases, there will not be any Non-qualifying Loss because jurisdictions typically do not allow losses to be taken into account in connection with a tax-free reorganisation.

6.36 There is an inverse relationship with the gain and adjustment to GloBE income. Where there is a gain that is excluded, a negative adjustment is required and to the extent a loss is excluded, a positive adjustment is required

6.37 Gains or losses arising from the transfer of assets and liabilities are generally included in GloBE Income attempts to align the GloBE values with accounting values where accounting values generally reflect fair market value of assets and liabilities at the time of disposition. Some MNE Groups account for intragroup transactions at cost, meaning the selling member does not recognise income, gain or loss on the transaction and the buying member records an asset in its financial accounts at the selling member's cost.

6.38 Section 6-60 of the Rules generally requires inclusion of gain or loss arising from a transfer of assets (other than ownership interests that are not portfolio shareholdings) and liabilities in the computation of GloBE Income or Loss. A loss from a transfer of Ownership Interests in another Constituent Entity is not included under Section 6-60 of the Rules.

Multi-Parented MNE Groups

6.39 The GloBE rules apply in a consistent manner to multi-parented MNE groups, where two UPEs of an MNE group enter into either a ***dual-listed arrangement*** or a ***stapled structure*** arrangement. Similar to the general scope of the rules, at least one Constituent Entity of the groups must be located in a different jurisdiction, which may include an excluded entity.

6.40 A stapled structure is where at least 50 per cent of the Ownership Interests in the UPE of the separate Groups are combined with each other as if they were the Ownership Interests of a single entity. Those ownership interests are combined in a way that they cannot be transferred or traded independently. If stapled ownership interests are listed on a securities exchange, the combined

ownership interests are quoted at a single price.
[Chapter 6, subsection 6-90(3) of the Rules]

6.41 A dual listed arrangement is where at least two UPEs combine their businesses through contract rather than through the ownership and control of a single entity. Under a dual-listed arrangement, each UPE makes distributions to its owners based on a fixed ratio pursuant to a contract, such as an equalization agreement, and the activities of the combined groups are managed collectively as if they were carried out by a single entity. Contrasted to stapled structures, the Ownership Interests in the UPEs under a dual-listed arrangement may be quoted, traded or transferred independently in different capital markets.
[Chapter 6, subsection 6-90(4) of the Rules]

6.42 Regardless of whether a multi-parented MNE group is a stapled structure or dual listed arrangement, one UPE must prepare the CFS which includes all relevant financial data of the entities within both the groups such that it is presented as a single economic unit.
[Chapter 6, subsections 6-85(c), 6-90(3)(d) and (4)(e) of the Rules]

6.43 In a multi-parented MNE group, each group is considered a single entity. All entities (apart from excluded entities) under the multi-parented MNE group are Constituent Entities if the entity is consolidated on a line-by-line basis or if a controlling interest is held. Further, any references to 'the UPE' throughout the Act apply to both UPE's of the multi-parented group.
[Chapter 6, subsections 6-85(a), (b), (d), and (e) of the Rules]

6.44 Both parent entities are required to lodge a GloBE information return unless a single ***designated filing entity*** is appointed. The GloBE information return must include all relevant information from each separate group.
[Chapter 6 subsection 6-85(f) of the Rules]

Chapter 7: Tax Neutrality and Distribution Regimes

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Outline

7.1 Chapter 7 of the Rules sets out the application of the GloBE Rules to certain tax neutrality and distribution tax regimes. There are special rules for:

- UPEs that are subject to a tax neutrality regime;
- tax regimes that subject an Entity to tax on its earnings when those earnings are distributed or deemed to be distributed; and
- Investment Entities and Insurance Investment Entities.

7.2 The special rules mean that GloBE Income and Covered Taxes can be reduced. Special rules are necessary as applying the adjustment rules in Chapter 3 and Chapter 4 to these non-standard corporate tax regimes could result in unintended outcomes under the GloBE Rules.

UPE that is a Flow-through Entity

7.3 A jurisdiction's tax system may contain rules designed to achieve a single level of taxation on business income. While some jurisdictions may achieve this by adjusting the treatment of income in the hands of the owner (e.g. by exempting distributions received by shareholders), others may provide for a similar result by adjusting the treatment of income in the hands of the business entity (e.g. by treating certain entities or arrangements as transparent for tax purposes or permitting that entity or arrangement to deduct distributions to its investors from its taxable income).

7.4 In these regimes, tax on the entity's income is collected at the level of the owner, either by taxing that owner directly on its Allocable Share of the entity's income (in the case of a Tax Transparent Entity) or by taxing the owners on a Deductible Dividend paid by the entity in the case of a Deductible Dividend Regime (see Part 7-2 of the Rules).

7.5 These approaches to single-level taxation could result in unintended outcomes under the GloBE Rules when they apply to the UPE. This is because the ETR of the UPE itself will be nil (or very low), potentially resulting in a significant top-up tax charge even though the burden of taxation has not been avoided but rather is borne by the Entity's owners. Furthermore, Part 4-3 of the Rules, which allocates Covered Taxes paid by one Constituent Entity in connection with income earned by another Constituent Entity, does not apply in the case of taxes paid by persons that are not Group Entities. Allocating the taxes accrued by the owners that are outside the MNE Group would be both against the policy intention of the GloBE Rules and administratively difficult.

7.6 Part 7-1 of the Rules deals with this issue in certain situations. The principle underlying the Part 7-1 of the Rules is that, to the extent that the tax neutrality regime imposes tax on the UPE's owners (e.g. partners, beneficiaries or shareholders) at or above the Minimum Rate on the UPE's income contemporaneously or within a short time, the UPE's exposure to top-up tax liability can be reduced. This is achieved by reducing the GloBE income of the UPE that corresponds to the share of its income that is subject to tax at or above the minimum rate in the hands of its owners.
[Chapter 7, section 7-5 of the Rules]

7.7 More specifically, the GloBE Income of a UPE of an MNE Group may be reduced under Part 7-1 of the Rules (but not below zero) where the UPE is a Flow-through Entity and an amount (the attributable income) of the UPE's GloBE Income for a Fiscal Year is attributable to an Ownership Interest in the UPE, in respect of which the holder satisfies certain conditions.
[Chapter 7, subsection 7-5(2) of the Rules]

7.8 In this instance, the term "attributable to" takes its ordinary meaning and is not referring to an "attribution regime" of a jurisdiction.

7.9 Where the holder of an Ownership Interest in such a UPE meets one of 3 criteria, the UPE will reduce its GloBE Income, for the Fiscal Year, by the amount of GloBE Income attributable to each such Ownership Interest. The remainder of the income, if any, will be included in the computation of the UPE's GloBE Income or Loss and included in the computation of the Net GloBE Income for the jurisdiction determined in accordance with section 5-10

of the Rules.
[Chapter 7, subsection 7-5(2) of the Rules]

Conditions for a UPE to reduce its GloBE Income

7.10 The UPE reduces its GloBE Income by the amount of GloBE Income attributable to each such Ownership Interest if:

- The holder is subject to tax in respect of the attributable income for a taxable period ending within 12 months of the end of the MNE Group's Fiscal Year and is either subject to tax on the full amount of such income at a nominal rate of at least 15 per cent, or it is reasonable to expect that the sum of Covered Taxes paid on the income (paid by the UPE and other Entities that are part of the Tax Transparent Structure) and Taxes of the Ownership Interest holder will equal or exceed the full amount of the attributable income multiplied by the Minimum Rate (Condition 1);
- The direct holder of the Ownership Interest is an individual who is tax resident in the jurisdiction of the UPE and does not hold Ownership Interests that carry rights to more than a 5 per cent of the profits and assets of the UPE (Condition 2); or
- The direct holder of the Ownership Interest is a Government Entity, International Organisation, Non-Profit Organisation or Pension Fund that [is resident] in the jurisdiction where the UPE is located and does not hold Ownership Interests that carry rights to more than a 5 per cent of the UPE's profits and assets (Condition 3).
[Chapter 7, subsections 7-5(2) and (3) of the Rules]

Condition 1

7.11 In the general case, the holder of the ownership interest is subject to tax within 12 months. It is sufficient for that income to be included in their taxable income in their resident jurisdiction - the tax liability does not need to be paid and either:

- the tax rate on the full amount of income is at least 15 per cent; or
- the expected sum of covered taxes (including those paid by the UPE and by entities included in the tax transparent structure plus taxes paid by the holder on their share of income) at least equals the full amount of income multiplied by 15 per cent.
[Chapter 7, section 7-5 of the Rules]

7.12 A UPE can only reduce its GloBE Income in respect of Ownership Interests that meet both of the following tests:

- a taxable period test and

- a minimum tax test.
  [Chapter 7, subsection 7-5(2)(a) of the Rules]

Taxable period test

7.13 The taxable period test requires that the holder is subject to current taxation on such income. Specifically, the holder must be subject to tax on its share of the UPE's GloBE Income for a taxable period that ends within 12 months of the end of the MNE Group's Fiscal Year. The holder is not required to pay its tax liability within 12 months of the end of the MNE Group's Fiscal Year to meet this test. It is sufficient that the holder's share of the UPE's GloBE Income is included in its taxable income for a taxable year that ends within 12 months of the MNE Group's Fiscal Year end.
[Chapter 7, subsection 7-5(2)(a) of the Rules]

7.14 A holder is subject to tax on its share of the UPE's GloBE Income if that income is includible in the holder's taxable income under the laws of the jurisdiction in which the holder is tax resident or includible in taxable income of a permanent establishment of the holder.

Minimum tax test

7.15 The minimum tax test evaluates the holder's level of taxation.

7.16 It can be satisfied if the holder is subject to tax on the full amount of its share of the GloBE Income (that is, for example, without the benefit of an exemption) and subject to tax at a nominal rate that equals or exceeds the Minimum Rate.
[Chapter 7, subsection 7-5(3)(a) of the Rules]

7.17 A temporary difference (i.e. a timing difference) between the time an item of income or expense is included in the computation of GloBE Income or Loss and the UPE's taxable income will not cause a holder to fail the requirement that it be subject to tax on the full amount of such income (as well as meeting the 12 month requirement).

7.18 A holder is considered subject to tax on the full amount of its GloBE Income even if its taxable income includes expenses or losses related to other investments or businesses or profit-seeking activities.

7.19 The nominal rate is the statutory rate applicable to the holder on its share of the UPE's income. If the holder is subject to graduated rates, the nominal rate is the highest rate applicable to the holder determined as if its share of the UPE's GloBE Income were its total taxable income.

7.20 This requirement is met with respect to holders that are not residents of the UPE Jurisdiction if the UPE Jurisdiction subjects them to tax at or above the Minimum Rate either because they are treated as having a permanent establishment in the UPE Jurisdiction or because the income is sourced in the UPE's jurisdiction and subject to a withholding or similar source-based tax. In the event that the non-resident holders are not subject to tax in the UPE's jurisdiction at a nominal rate that equals or exceeds the Minimum Rate, additional information will be required in order for the UPE to demonstrate that those holders are subject to tax on their share of the income within 12 months at a nominal rate that equals or exceeds the Minimum Rate.

7.21 Alternatively, the test may be satisfied if it can be reasonably expected that the sum of the Covered Taxes (paid by the UPE and other Entities that are part of the Tax Transparent Structure) and taxes paid by the holder on the income attributable to the Ownership Interest equals or exceeds the full amount of the attributable income multiplied by the Minimum Rate.
[Chapter 7, subsection 7-5(3)(b) of the Rules]

7.22 Whether the taxes paid can be reasonably expected to equal or exceed the tax at the Minimum Rate is determined based on all the facts and circumstances. The MNE Group bears the burden of proving that the expectations are reasonable.

7.23 This condition does not require an ETR computation. It requires that the taxes paid by the UPE and other Entities that are part of the Tax Transparent Structure are Covered Taxes and that the taxes paid by the holders are taxes on the income of the UPE. For instance, the UPE could be required to pay a local Covered Tax notwithstanding that its income is allocated to its holders under federal law. In this case the condition is met if it is expected that the net amount of tax paid by the UPE itself and the holder equals or exceeds the minimum tax on that income.

Example 7.1 UPE that is a Flow-through Entity – Condition 1

A Co is a Flow-through Entity that is the UPE of an MNE Group. A Co is located in Country A and has a Fiscal Year that ends on 30 June. Person 1 is an individual tax resident in Country A while Person 2 is an individual tax resident in Country B. Person 1 and Person 2 each hold a 50% of the Ownership Interests in A Co. For the Fiscal Year ended 31 January Year 1, A Co reports EUR 140,000 of income both for domestic income tax and GloBE purposes.

Under the tax laws of Country A, EUR 70,000 of A Co's income is included in the taxable income of Person 1 for the income tax year ending 31 December Year 1. The computation of the taxable income of Person 1 also includes a loss of EUR 50,000 from another business conducted in Country A. The taxable income of Person 1 under the tax laws of Country A is EUR 20,000 (= 70,000 – 50,000) and Person 1 is subject to tax in Country A at a rate of 20% on such taxable income.

Under the tax laws of Country A, Person 2 is treated as having a PE in Country A and the taxable income of that PE includes EUR 70,000 of A Co's taxable income. Person 2 is subject to tax in

Country A at a rate of 20% on the income of its PE for the income tax year ending 31 December Year 1.

A Flow-Through Entity that is the UPE reduces its GloBE Income pursuant to Section 7-5 by the amount of GloBE Income attributable to an Ownership Interest if (1) the holder is subject to tax on that income for a taxable period that ends within 12 months of the end of the MNE Group’s Fiscal Year and (2) the holder of the Ownership Interest is subject to tax on the full amount of such income at a nominal rate that equals or exceeds the Minimum Rate.

Person 1 is subject to tax on their share of A Co’s GloBE Income for a taxable period that ends on 30 June Year 1, which is within 12 months of the end of A Co’s Fiscal Year ended on 31 January Year 1, notwithstanding that payment of Person 1’s tax liability is not due within 12 months of the end of A Co’s Fiscal Year. Further, Person 1 is subject to tax on their share of A Co’s GloBE Income at a nominal rate that equals or exceeds the Minimum Rate. Person 1 is subject to tax on the full amount of such income notwithstanding that they were allowed to offset their share of A Co’s GloBE Income with a loss from another business in computing their Country A taxable income. Accordingly, A Co reduces its GloBE Income for the Fiscal Year ended 31 January Year 1 pursuant to subsection 7-5(3)(a) by EUR 70,000 in respect of the Ownership Interests held by Person 1. A Co will reduce its Covered Taxes proportionately under subsection 7-5(4).

Person 2 is subject to tax on their share of A Co’s GloBE Income for a taxable period that ends within 12 months of the end of A Co’s Fiscal Year. Person 2 is also subject to tax on the full amount of such income at a nominal rate that equals or exceeds the Minimum Rate. Accordingly, A Co reduces its GloBE Income for the Fiscal Year ended 31 January Year 1 pursuant to subsection 7-5(3)(a) by EUR 70,000 in respect of the Ownership Interests held by Person 2. A table illustrating the results of this example is set out below.

	Person 1	**Person 2**
GloBE Income	70,000	70,000
Tax at Minimum Rate	15%	15%
Nominal Rate	20%	20%
GloBE Income reduction subsections 7-5(2)(a) and (3)(a)	Yes	Yes

Condition 2

7.24 The second test applies to different types of holders that both require the holder to be residents in the UPE jurisdiction and holding a small ownership interest of 5% or less to the UPE's profits and assets. The types of entities that may be holders include:

- natural persons (this must be a tax resident);
- governmental Entities;
- international Organisation;
- non-profit Organisation; or
- pension funds.
  [Chapter 7, section 7-5 of the Rules]

7.25 Condition 2 provides a safe harbour to a Flow-through UPE with owners that are individuals that hold small Ownership Interests in the UPE.
[Chapter 7, subsection 7-5(2)(b) of the Rules]

7.26 Determining the tax position of minority owners may be burdensome for the UPE. Because individuals are typically not eligible for preferential tax rates on income derived through a Tax Transparent Entity, it is reasonable not to require the UPE to determine the tax position of an individual that holds Ownership Interests that in aggregate carry rights to 5 per cent or less of the profits and assets of the UPE. This rule means that a UPE could be required to determine the tax position of no more than 19 natural persons, and such persons would have relatively significant stakes in the UPE.

7.27 To qualify for the safe harbour, the individual must be a tax resident of the UPE Jurisdiction. An individual is a tax resident in a jurisdiction only if the person is subject to individual income tax in that jurisdiction. Consequently, an individual cannot be tax resident in a jurisdiction that does not impose an individual income tax. The UPE may use reasonable means of determining whether its owners are tax resident in the jurisdiction. For example, a UPE in a jurisdiction that imposes a withholding tax on the profits or distributions from the UPE with respect to foreign owners of the UPE may rely on an owner's representation as to whether it is exempt from a withholding tax or eligible for a lower withholding tax rate based on a Tax Treaty.
[Chapter 7, subsection 7-5(2)(b)(i) of the Rules]

7.28 The safe harbour only applies to individuals that each hold Ownership Interests that in aggregate carry rights to 5 per cent or less of the profits and 5 per cent or less of the assets of the UPE. For example, this means that an Ownership Interest giving rights to 51 per cent of profits would fall outside the safe harbour, despite giving rights to less than 5 per cent of the assets. The extent of each person's Ownership Interests is determined as of the end of the Fiscal Year. This subsection only applies where the Ownership Interests of the UPE

are held directly by individuals.
[Chapter 7, subsection 7-5(2)(b)(ii) of the Rules]

Example 7.2 Example 7-1 UPE that is a Flow-through Entity – Condition 2

C Co is a Flow-through Entity and a Tax Transparent Entity that is the UPE of an MNE Group. C Co is located in Country C where a 5% CIT rate applies. C Co's taxable income and GloBE Income for the Fiscal Year ended on 31 December Year 1 is EUR 200,000. The Adjusted Covered Taxes of C Co on its income are EUR 10,000 (= 5%* EUR 200,000) and such taxes meet the definition of Covered Taxes (see Part 4-2).

Person 3 is an individual tax resident in Country C that holds a 50% Ownership Interest in C Co. Person 3's share of C Co's income for Year 1 is EUR 95,000 (= 50% * [EUR 200,000 – 10,000]). Person 3 is subject to a nominal 11% personal income tax rate on a calendar year basis. Person 3's share of C Co's income for the Fiscal Year ended on 31 December Year 1 is included in Person 3's Country C taxable income for the calendar year that ended 31 December Year 1. Person 3 is not entitled to reduce its Country C tax imposed on its share of C Co's income as a result of Country C taxes imposed on such income.

C Co cannot reduce its GloBE Income pursuant to subsection 7-5(3)(a) because the personal income tax rate applicable to Person 3 is 11%, which is a nominal rate below the Minimum Rate. However, a Flow-Through Entity that is the UPE reduces its GloBE Income pursuant to subsection 7-5(3)(b) by the amount of GloBE Income attributable to an Ownership Interest if (1) the holder is subject to tax on that income for a taxable period that ends within 12 months of the end of the MNE Group's Fiscal Year and (2) it can reasonably be expected that the aggregate amount of Adjusted Covered Taxes of the UPE and Taxes of the holder of the Ownership Interest on such income equals or exceeds the amount that results from multiplying the full amount of such income by the Minimum Rate (see subsection 7-5(3)(b)).

Person 3 is reasonably expected to pay EUR 10,450 of Taxes (= 11% * EUR 95,000 after-tax income of C Co) in Country C. The sum of the Taxes paid by Person 3 and C Co on the EUR 100,000 of GloBE Income attributable to Person 3 is EUR 15,450 (= EUR 10,450 paid by Person 3 + EUR 5,000 paid by C Co), which exceeds the amount (EUR 15,000) that results from multiplying the full amount of such income by the Minimum Rate (EUR 100,000 * 15%). C Co will therefore reduce its EUR 200,000 GloBE Income in Year 1 by the EUR 100,000 GloBE Income attributable to Person 3's Ownership Interest. C Co will reduce its Covered Taxes proportionally under subsection subsection 7-5(4). A table illustrating the numerical results of this example is set out below.

	EUR
GloBE Income	100,000
Tax at Minimum Rate	15,000
Taxes (C Co)	5,000
Taxes (Person 3)	10,450
Aggregate Taxes	15,450
GloBE Income reduction subsection 7-5(3)(b)	Yes

C Co would not have been entitled to reduce its GloBE Income if Person 3 was granted a tax credit in Country C equal to the amount of Taxes paid by C Co. In that case, it would not be reasonable to expect the aggregate amount of Taxes (EUR 11,000) paid by Person 3 (EUR 6,000) and C Co (EUR 5,000) to equal or exceed the amount that results from multiplying the full amount of GloBE Income by the Minimum Rate. A table illustrating the numerical results of this subsection is set out below.

	EUR
GloBE Income	100,000
Tax at Minimum Rate	15,000
Taxes (C Co)	5,000
Taxes (Person 3)	6,000
Aggregate Taxes	11,000
GloBE Income reduction subsection 7-5(3)(b)	No

Condition 3

7.29 Condition 3 covers the case where the holder of the Ownership Interest in the UPE is a Governmental Entity, International Organisation, a Non-profit Organisation, or a Pension Fund.
[Chapter 7, subsection 7-5(2)(c) of the Rules]

7.30 The Governmental Entity, International Organisation, Non-profit Organisation or Pension Fund must be resident in the UPE Jurisdiction. The term “resident” in subsection (c) is not the same as “tax residence” as used in Tax Treaties, Part 10-2 or Part 10-3. For purposes of section 7-5, these Entities are resident in the jurisdiction where the UPE is located.
[Chapter 7, subsection 7-5(2)(c)(i) of the Rules]

7.31 Additionally, the holder’s Ownership Interests must in aggregate carry rights to 5 per cent or less of the profits and assets of the UPE. This ownership limitation is designed to ensure that Part 7-1 cannot be used to circumvent the prohibition from carrying on a trade or business by carrying on a trade or business through a Tax Transparent Entity.
[Chapter 7, subsection 7-5(2)(c)(ii) of the Rules]

7.32 Ownership Interests in the Tax Transparent Entity held by Investment Entities are not included in Condition 3 because Investment Entities are tax neutral whereas the Entities described in Condition 3 are generally not subject to tax under the laws of the UPE’s jurisdiction. An Investment Entity itself may be subject to tax at a rate below the Minimum Rate of 15 per cent and the UPE would have no knowledge of the taxability or residency of the Investment Entity’s owners.

Proportional Reduction in Covered Taxes

7.33 Where a UPE reduces its GloBE Income under the above rules it is required to reduce its Covered Taxes, if any, in proportion to the income reduction.
[Chapter 7, subsection 7-5(4) of the Rules]

7.34 For example, if the UPE reduces its GloBE Income by 80 per cent, the UPE must also reduce its Covered Taxes by 80 per cent. It is noted that Covered Taxes excluded by Subsection 7-5(4) whilst not taken into account in the ETR computation for the UPE Jurisdiction, are taken into account under subsection 7-5(2)(a) in determining whether the taxes on the holder’s share of the UPE’s GloBE Income equal or exceed the tax at the Minimum Rate on that income.

7.35 Section 7-5 reduces the Flow-through Entity’s GloBE Income by all of the GloBE Income (determined after adding back Covered Taxes) allocable to an Ownership Interest. Accordingly, no further adjustment is required to reduce the Entity’s GloBE Income by the related Covered Taxes as required under subsection 7-20(4) of the Rules.

Flow-through Entity that is UPE – reduce GloBE Loss

7.36 If the UPE is a Flow-Through Entity has a GloBE Loss for a Fiscal Year, the GloBE Loss is reduced by the amount attributable to each Ownership Interest in the UPE (but not below zero), except to the extent that the holders of Ownership Interests are not allowed to use the loss in computing their separate taxable income.
[Chapter 7, section 7-10 of the Rules]

7.37 This means that the GloBE Loss is not reduced to zero only if the loss does not flow through, in its entirety, to the holders of Ownership Interests under the tax laws applicable to the Entity and to the holders so as to allow the holders to use their share of such loss in computing their separate taxable income. To the extent that the GloBE Loss is not reduced to zero, the remaining GloBE Loss stays with the Flow-through UPE. Without this rule, losses that are passed through to the holders of Ownership Interests would also be available for use in the jurisdictional Effective Tax Rate calculation to shield GloBE income of other Constituent Entities located in the UPE's Jurisdiction.

7.38 To the extent that a GloBE loss of a Flow-through UPE is not reduced to zero (and thus stays with the Flow-through UPE), a Filing Constituent Entity may make a GloBE Loss Election that is limited to the UPE under section 4-115 of the Rules, and carry forward the balance as a GloBE Loss Deferred Tax Asset to subsequent Fiscal Years. The GloBE Loss Deferred Tax Asset is calculated based on the amount of the GloBE Loss remaining after application of Subsection 7-10(2) and may be included in the UPE's Adjusted Covered Taxes in a subsequent year for purposes of applying subsection 7-5(3)(b) of the Rules.

7.39 The reduction in GloBE Loss applies with respect to each Ownership Interest. Therefore, the MNE Group is required to demonstrate that each of its holders is not able to deduct losses attributed to their Ownership Interest in the computation of their separate taxable income in order to include their share of the loss in the GloBE Loss Deferred Tax Asset computed under section 4-115 of the Rules.

Application to Permanent Establishments

7.40 The above rules (sections 7-5 and 7-10 of the Rules) apply to certain Permanent Establishments through which the UPE and certain other Flow-through Entities of the MNE Group conduct their business. The types of Permanent Establishments these rules apply to are:

- where the business of the flow-through UPE is wholly or partly carried out through a Permanent Establishment.
- where the flow-through UPE directly holds the Ownership Interests of another Tax Transparent Entity whose business is wholly or partly

carried out through a PE. This is the case where the Financial Accounting Net Income or Loss attributable to the PE is included in the financial statements of the Flow-through Entity held by the UPE.

- where the Flow-through UPE holds the Ownership Interest of the Tax Transparent Entity and the PE through a Tax Transparent Structure. This allows subsection 7-15(b) of the Rules also to apply to Permanent Establishments held by the UPE through a chain of Tax Transparent Entities.
  [Chapter 7, subsection 7-15(1) of the Rules]

7.41 In all of these cases, the Financial Accounting Net Income or Loss attributable to the Permanent Establishment is included in the financial statements of the UPE, but liability for the tax on that income may be borne by the UPE or by the holders of the UPE. Where the tax on the income of the Permanent Establishment is borne by the holders, the PE's GloBE Income is reduced to the extent the conditions of subsections 7-5(2)(a) or 7-5(2)(b) of the Rules are met. In such cases, subsection 7-5(2)(b) of the Rules takes into account any tax paid or payable in the jurisdiction where the Permanent Establishment is located regardless of whether that tax is paid or payable by a Constituent Entity or by the holders of the UPE.
[Chapter 7, section 7-15 of the Rules]

7.42 Furthermore, the test in section 7-5 of the Rules applicable to the GloBE Income of the Permanent Establishment is separate from the test applicable to the GloBE Income that has been allocated to the UPE. This means that the GloBE Income or Loss of the Permanent Establishment is not included in the GloBE Income of the UPE for purposes of applying section 7-5 of the Rules to the UPE. The Permanent Establishment is treated separately from the UPE because it is a separate Constituent Entity and its income does not flow-through to the UPE under Chapter 3 of the Rules as does the income of a Tax Transparent Entity. However, to the extent that the conditions of subsection 7-5(2) of the Rules are met by a holder of an Ownership Interest in the UPE with respect to the income of the Permanent Establishment, the Permanent Establishment's GloBE Income is reduced.
[Chapter 7, section 7-15 of the Rules]

Example 7.3 Example 7.1 UPE that is a Flow-through Entity – Permanent Establishment

A Co is the UPE of ABC Group. A Co is a Flow-through Entity and a Tax Transparent Entity created in Country A with two owners, each of whom holds 50% of its Ownership Interests. A Co conducts business operations in Countries A and B. The place of business through which A Co carries out business operations in Country B creates a PE in Country B. Overall, A Co generated GloBE Income of EUR 300 in Countries A and B during a Fiscal Year.

Under the rules of Parts 3-4 and 3-5, EUR 100 of A Co's income is allocated to a PE located in Country B (see section 3-165). Country B imposes tax on the owners of A Co in respect of the EUR 100 income allocated to PE at a 15% nominal rate and each owner paid EUR 7.5 of tax to Country B (total EUR 15).

In Country B, the holders of A Co's Ownership Interests are subject to tax at a nominal rate that equals the Minimum Rate and it is reasonable to expect that the EUR 7.5 tax paid by each holder equals the amount of each holders' share of the PE's income multiplied by the Minimum Rate, or EUR 7.5 (= 50 income x 15% Minimum Rate). Accordingly, PE's GloBE Income is reduced by EUR 100 in Country B pursuant to section 7-15.

A table illustrating the numerical results of this example is set out below.

A Co	**Country B**
Allocation income	EUR 100
Tax rate	15%
Tax Paid	EUR 15
Tax above/(below) Minimum Rate	EUR 0
Tax reduction section 7-15	Yes

UPE subject to Deductible Dividend Regime

7.43 GloBE Income and Covered Taxes are reduced where a UPE is subject to a Deductible Dividend Regime.

7.44 ***Deductible Dividend Regime*** and ***Deductible Dividend*** are defined for the purposes of these special rules to capture non-standard tax regimes designed to yield a single level of taxation by allowing an Entity a deduction for distributions of profits to the owners.
[Chapter 7, sections 7-30 and 7-35 of the Rules]

7.45 If a UPE distributes an amount as a Deductible Dividend within 12 months after the end of a Fiscal Year, the UPE's GloBE Income for the Fiscal Year is reduced by that amount (but not to below zero). This rule applies where:

- the dividend recipient is a natural person that is tax resident in the UPE Jurisdiction and that holds Ownership Interests that in aggregate carry rights to 5 per cent or less of the profits and assets of the UPE; or
- the dividend recipient is resident in the UPE's jurisdiction and is a Governmental Entity, an International Organisation, a Non-profit Organisation or a Pension Fund that is not a Pension Services Entity. ***[Chapter 7, subsections 7-20(1) and (2) of the Rules]***

7.46 The rule also applies where the dividend is subject to tax in the hands of the recipient within 12 months after the end of the Fiscal Year, and:

- the dividend recipient's nominal tax rate on the dividend amount is at least 15 per cent;
- it can be reasonably expected that the aggregate amount of Covered Taxes (paid by the UPE) and taxes paid by the owner on the income attributable to its Ownership Interest equals or exceeds the amount that results from multiplying the full amount of such income by the 15 per cent; or
- the dividend is a patronage dividend from a supply Cooperative paid to an individual. ***[Chapter 7, subsection 7-20(2)(a) and subsection 7-20(3) of the Rules]***

7.47 The rules applicable to the UPE apply to other Constituent Entities located in the UPE Jurisdiction that are subject to the Deductible Dividend Regime and held through an ownership chain made up exclusively of such Entities. However, the income of the Constituent Entities that are not the UPE is reduced only to the extent it is distributed to the UPE and then by the UPE to recipients that meet the requirements of section 7-20 of the Rules. ***[Chapter 7, section 7-25 of the Rules]***

7.48 The UPE must maintain records sufficient to demonstrate that such distributions occurred within 12 months of the end of the Fiscal Year of the subsidiary Entity subject to the Deductible Dividend Regime. The UPE may use any reasonable method of determining the source of any intra-group distributions from other Entities, including determining the income of Entities that are subject to a Deductible Dividend Regime and Entities that are subject to an ordinary income tax, that have not been distributed to the UPE's owners.

Eligible Distribution Tax Systems

7.49 The special rule in Part 7-3 of the Rules addresses unintended consequences that arise because of the differences between the time the income accrues in the financial accounts and the time it is subject to distribution tax to the extent that distributions are made within a four-year period.

7.50 A Constituent Entity that is subject to certain eligible tax regimes that subject an Entity to tax on its earnings when those earnings are distributed or deemed distributed may add the amount of that tax to the Adjusted Covered Taxes for the Fiscal Year.

7.51 To apply this rule, a filing Constituent Entity for an MNE Group must make an election respect of the specified jurisdiction that has an Eligible Distribution Tax System and each Constituent Entity of the MNE group that is located in the jurisdiction. Such an election is an Annual Election.
[Chapter 7, section 7-40 of the Rules]

7.52 ***Eligible Distribution Tax System*** is defined to capture tax regimes that subject an Entity to tax on its earnings when those earnings are distributed or deemed distributed to shareholders and the tax imposed is at a rate equal to in in excess of the Minimum Rate. Only taxes in force on or before 1 July 2021 are eligible.
[Chapter 7, section 7-45 of the Rules]

7.53 The effect of the Annual Election is that the amount of Deemed Distribution Tax added to Adjusted Covered Taxes. Deemed Distribution Tax is not defined under the law, but it is a concept under the GloBE Rules that is captured by subsection 7-50(3) of the Rules. It is the lesser of the amount necessary to raise the Effective Tax Rate computed under subsection 5-5(a) for the jurisdiction for the Fiscal Year to the Minimum Rate, or the amount of distribution tax that would have been paid if the Constituent Entities in the jurisdiction had distributed all of their income that was subject to the Eligible Distribution Tax Regime during such Fiscal Year.
[Chapter 7, section 7-50 of the Rules]

7.54 For the purposes of tracking the extent to which Deemed Distribution Tax is paid within the four-year period, at the end of the Fiscal Year a Deemed Distribution Tax Recapture Account is established for each Fiscal Year. This amount is equal to the Deemed Distribution Tax calculated in subsection 7-50(3) of the Rules.
[Chapter 7, section 7-50(4) of the Rules]

7.55 The Deemed Distribution Tax Recapture Account, the Net GloBE Income of the jurisdiction, the Adjusted Covered Taxes for the jurisdiction, and the Substance-based Income Exclusion for each Fiscal Year for which there was a Deemed Distribution Tax Recapture Account must be reduced in proportion to the Disposition Recapture Ratio.
[Chapter 7, section 7-75 of the Rules]

7.56 Deemed Distribution Tax Recapture Accounts are first reduced by distribution taxes actually paid by the Constituent Entities as a result of distributions or deemed distributions. Second, the accounts are reduced when the jurisdiction has an overall GloBE Loss, meaning the aggregate GloBE Loss of Constituent Entities exceeds the aggregate GloBE Income of Constituent Entities located in the jurisdiction. Finally, the Deemed Distribution Tax Recapture Accounts are reduced by the amount of a Recapture Account Loss Carry-forward.
[Chapter 7, section 7-55 of the Rules]

7.57 When there is a Net GloBE Loss for the jurisdiction that exceeds the amount in all of the Deemed Distribution Tax Recapture Accounts, a Recapture Account Loss Carry-forward is created. This account is reduced in subsequent years as the loss carry-forward is applied to reduce the GloBE Income that would otherwise be subject to the Deemed Distribution Tax. The account ensures that the MNE Group is not taxed under the GloBE Rules in excess of its economic income earned through Entities subject to a Distribution Tax Regime.
[Chapter 7, section 7-60 of the Rules]

ETR computation for Investment Entities

7.58 Investment entities and insurance investment entities are to compute their ETR separately from the MNE group. Where there are multiple investment entities within the MNE group in the same jurisdiction, those investment entities can combine the adjusted covered taxes and GloBE income to produce their ETR.

Application

7.1 Part 7-4 of the Rules applies in relation to an Insurance Investment Entity in the same way that it applies in relation to an Investment Entity.
[Chapter 7, subsection 7-80(4) of the Rules]

7.2 Part 7-4 only applies to a Constituent Entity of a MNE Group that is an Investment Entity where they are not a Tax Transparent Entity. The rules contained in Part 3-5 of the Rules continue to apply to the income of Investment Entities hat are Tax Transparent Entities. In addition, Part 7-4 of the Rules does not apply to the portion of an Investment Entity’s income that is subject to an election under Part 7-5 or Part 7-6 of the Rules.
[Chapter 7, subsections 7-80(1) and (2) of the Rules]

7.3 Where an Investment Entity is a part Tax Transparent Entity and part Reverse Hybrid Entity, Part 7-4 of the Rules applies with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which the owner is located. For example, if an Investment Entity is organised as a trust and taxable on its income that is not distributed to beneficiaries, Part 7-4 of the Rules applies to the extent the Investment Entity’s income is not distributed.
[Chapter 7, subsection 7-80(3) of the Rules]

Allocable Share of GloBE Income

7.59 To determine the MNE Group’s Allocable share of the Investment Entity’s GloBE Income for an Investment Entity:

- compute the Investment Entity's GloBE Income or Loss and the UPE's Inclusion Ratio; then
- multiply both results by each other.
  [Chapter 7, subsection 7-100(1) of the Rules]

7.60 The same steps apply to calculate the Parent Entity's Allocable share of the Investment Entity's GloBE Income for an Investment Entity of the MNE Group for a Fiscal Year.
[Chapter 7, subsection 7-100(2) of the Rules]

7.61 The calculations of the MNE Group's Allocable Share of the Investment Entity's GloBE Income and Parent Entity's Allocable Share of the Investment Entity's GloBE Income take into account GloBE Income or Loss only to the extent it is attributable to Ownership Interests in the Investment Entity that are not subject to an election under Part 7-5 or Part 7-6 of the Rules. By excluding GloBE Income or Loss attributable to Ownership Interests subject to an election under Parts 7-5 and 7-6 of the Rules, the Effective Tax Rate computation for the Investment Entity does not double count taxes that will be taken into account under those elections.
[Chapter 7, subsection 7-100(3) of the Rules]

Allocable Share of the top-up tax of an Investment Entity

7.4 Where a LTCE is an Investment Entity, for the purposes of computing a Parent Entity's Allocable Share of top-up tax for that Low-taxed Constituent Entity pursuant to section 2-10 of the Rules, the Inclusion Ratio must be adjusted.
[Chapter 7, section 7-80 of the Rules]

7.5 In applying Part 2-2 of the Rules, Parent Entities must adjust the computation of their Inclusion Ratio of an Investment Entity that is a LTCE to account for the fact that the top-up tax computed for the Entity in accordance with section 7-90 of the Rules has, in effect, already been reduced by the amount that would have been attributable to other owners that are not Group Entities.

7.6 For example, assume a Constituent Entity owns 90 per cent of the Ownership Interests that carry rights to 90 per cent of the profits of an Investment Entity and the remaining Ownership Interests are held by persons that are not Group Entities. The Investment Entity earns 100 of GloBE income for the Fiscal Year and has no Covered Taxes. Section 7-90 of the Rules computes 13.5 of top-up tax based on the Constituent Entity's share of the income, of 90. The Parent Entity's Inclusion Ratio is 1.0 and thus the Parent Entity is allocated all 13.5 of the Investment Entity's top-up tax.

Top-up tax of Investment Entities

7.7 Special rules apply for computing the top-up tax for each Investment Entity. These rules are designed to ensure that top-up tax arises only with respect to the MNE Group's interest in the Investment Entity and taking into account all Covered Taxes arising in respect of that interest.

7.8 The top-up tax of such Constituent Entities for the Fiscal Year is calculated in accordance with the rules in section 5-40 of the Rules, with additional assumptions and modifications.
[Chapter 7, section 7-90 of the Rules]

7.9 First, the top-up tax Percentage for the Investment Entity is using the rules in section 5-20 of the Rules and the modifications in Part 7-4 of the Rules. Second, the Investment Entity's Substance-based Income Exclusion is deducted from the MNE Group's Allocable Share of the Investment Entity's GloBE Income The excess of the MNE Group's Allocable Share of the Investment Entity's GloBE income over its Substance-based Income Exclusion is then multiplied by the top-up tax Percentage to determine the top-up tax. If there is more than one Investment Entity located in the jurisdiction, their attributes are combined to determine the top-up tax for all such Entities.
[Chapter 7, section 7-90, and subsection 7-95(1) of the Rules]

Modification – Top-Up Tax Percentage and Excess Profit

7.10 The Effective Tax Rate is calculated separately from any other Constituent Entities in the same jurisdiction (in other words, the GloBE Income or Loss and Covered Taxes are not blended with those of other Constituent Entities in the jurisdiction). However, if the MNE Group owns interests in multiple Investment Entities located in the same jurisdiction, a single ETR is computed for all such Entities in the jurisdiction.

7.11 For the purpose of calculating the top-up tax for these Entities, the Effective Tax Rate of the MNE Group for the jurisdiction is the Adjusted Covered Taxes of each Investment Entity located in the jurisdiction divided by the sum of the MNE Group's Allocable Share of the Investment Entity's GloBE Income for each such Entity located in the jurisdiction.
[Chapter 7, subsection 7-95(2) of the Rules]

Modification – Adjusted Covered Taxes

7.12 An Investment Entity's Adjusted Covered Taxes is calculated as the sum of Covered Taxes accrued by the Investment Entity pursuant to Part 4-1 of the Rules and the Covered Taxes accrued by its Constituent Entity-owners allocable to the Investment Entity pursuant to Part 4-3 of the Rules. The Covered Taxes paid by the Investment Entity are only those that correspond to the MNE Group's Allocable Share of the Investment Entity's GloBE Income. The Covered Taxes accrued by Constituent Entity-owners taken into account are only those that arise with respect to their share of the Investment Entity's income.
[Chapter 7, subsections 7-95(3) and (4) of the Rules]

Modification – Substance-based Income Exclusion amounts

7.13 When computing the Substance-based Income Exclusion of Investment Entities, the Substance-based Income Exclusion must be reduced proportionally to correspond to the MNE Group's Allocable Share of the Investment Entity's GloBE Income or Loss. If there are multiple Investment Entities located in the same jurisdiction, their Substance-based Income Exclusions are combined and offset against the Net GloBE Income of those Entities to determine their aggregate Excess Profit.
[Chapter 7, section 7-105 of the Rules]

7.14 This applies notwithstanding the rule in section 5-50 of the Rules, which generally excludes assets and payroll expenses of an Investment Entity from the computation of the Substance-based Income Exclusion. The rule in section 5-50 of the Rules is intended to prevent those assets and payroll expenses from being included in the computation of the carve-outs for both the jurisdiction and the Investment Entity.
[Chapter 7, subsection 7-105(a) of the Rules]

Investment Entity Tax Transparency Election

7.62 Part 7-5 of the Rules allows a filing Constituent Entity to make an election to treat an investment entity as a tax transparent entity.

Election

7.63 A Filing Constituent Entity may make a Five-Year election to treat an Investment Entity or insurance investment entity as a Tax Transparent Entity for a Fiscal Year in respect of a particular Constituent Entity owner. The election applies for all purposes of the Rules. All Constituent Entity owners of the investment entity do not need to make an election, however, the election applies to all Constituent Entity owner's interests in the Investment Entity, subject to conditions.

7.64 The election can be made in respect of Constituent Entity-owners that satisfy two conditions:

- the Constituent Entity-owner of the specified Investment Entity is subject to tax in its location under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity; and
- the tax rate applicable to the Constituent Entity-owner with respect to such income is at least 15 per cent.
[Chapter 7, sections 7-110, 7-115 and 7-120 of the Rules]

7.65 The election is available for both directly owned Investment Entities as well as such Entities that are indirectly owned through other Investment Entities. Therefore, the tax effect of changes in value of a lower-tier Investment Entity in a chain of such Entities that is reflected in the valuation of the interest in a directly held Investment Entity can be matched with the GloBE Income or Loss of that Entity.

7.66 To the extent an election to treat an investment entity as a tax transparent entity applies to an Investment Entity, the general rules to compute a separate ETR for investment entities under Part 7-4 of the Rules does not apply.
[Chapter 7, section 7-115 of the Rules]

Application of election

7.67 Under section 10-5 of the Rules, Investment Entities are defined as Entities that meet the definition of an Investment Fund or Real Estate Investment Vehicle. An Insurance Investment Entity is defined as an Entity that would qualify as an Investment Fund or Real Estate Investment Vehicle but for the fact that it is wholly-owned by an insurance company and established in relation to liabilities under one or more insurance or annuity contracts. An Insurance Investment Entity may be wholly-owned by a single Entity, or by a number of Entities which are all part of the same MNE Group. The definition also requires that the owner, or owners, are subject to regulation as insurance companies. This requirement may also be met if the Insurance Investment Entity is owned by a Flow Through Entity which is subject to regulations in the same manner as an insurance company.
[Chapter 10, section 10-5 of the Rules]

7.68 For the purposes of Part 7-5 of the Rules, a Constituent Entity that is a policyholder-owned, regulated insurance Entity, (a regulated mutual insurance company) that owns an Ownership Interest in an Investment Entity, is considered to be subject to tax under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity at a rate that exceeds 15 per cent.
[*Chapter 7, section 7-110 of the Rules*]

Example 7.4 Application to mutual insurance company

Company A is a regulated mutual insurance company which is wholly policyholder-owned. Company A decides to set up an insurance investment entity, Subsidiary B, to invest funds for the benefit of its policyholders. Subsidiary B is 100% owned by Company A and is a Constituent Entity in Company A’s MNE Group.

Subsidiary B’s FANIL for the Fiscal Year is 100.

Company A's financial accounts include a fair value gain of 100 on the increase in the value of its Ownership Interests in Subsidiary B.

This is offset by an expense of 100 in respect of the increase in Company A's liabilities to its policyholders, meaning that Company A has no FANIL for the Fiscal Year. However, the fair value gain is excluded from Company A's GloBE Income or Loss under section 3-45. Consequently, Company A would have a GloBE Loss of 100, while Subsidiary B would have a GloBE Income of 100.

From the MNE Group's perspective, there is no net income as the 100 of income from the fund is economically the income of the policyholders rather than the income of the MNE Group. As Company A is a regulated mutual insurance company, it is eligible to make a Part 7-5 election to treat Subsidiary B as a Tax Transparent Entity. While the election is in effect, Subsidiary B's income is allocated to Company A in accordance with Part 3-5. Company A therefore includes the 100 of Financial Accounting Income or Loss, which is matched against the expense of 100 from the movement in liabilities to policyholders, and results in GloBE Income of zero. Subsidiary B also has GloBE Income of zero as its FANIL has been allocated to Company A.

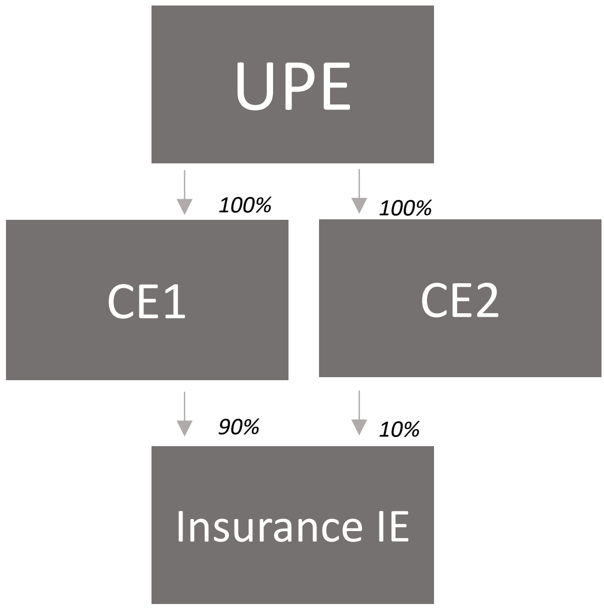
Effect of election

7.69 By treating the Investment Entity as tax transparent, the election allows the MNE Group to include the Constituent Entity-owner's share of the Investment Entity's results as income of the Constituent Entity owner for GloBE purposes. This election matches the timing and location of income earned through an Investment Entity under the GloBE Rules and the local tax rules where the Constituent Entity-owner is subject to a mark-to-market or similar regime.

7.70 The election enables the Constituent Entity-owner to apply the Substance-based Income Exclusion with respect to its share of the income of the Investment Entity. In many cases, the MNE Group's Eligible Payroll Expenses and Eligible Tangible Assets related to managing the Investment Entity's activities will not arise in the Investment Entity itself, but instead will be those of the Constituent Entity-owners.

7.71 Where a Constituent Entity-owner accounts for its interest in the Investment Entity or insurance investment entity using a fair value method, that income or loss is to be excluded from the computation of its GloBE Income or Loss.

Example 7.5 Effect of Investment Entity Tax Transparency Election



The insurance entity earns $100 of net income in Year 1, pays no tax. and makes no distributions.

An election under Part 7-5 is made on behalf of CE1 and CE2.

Accordingly, CE1 and CE2 include their share of investment entity’s income, $90 and $10, respectively, in the computation of their GloBE Income or Loss.

On a standalone basis, CE1 controls the investment entity and would consolidate its accounts even if CE2 were an unrelated company.

CE2 only owns 10% of the investment entity and on a standalone basis might be required to apply fair value accounting to its interest in Fund under the Acceptable Financial Accounting Standard used in the CFS.

For purposes of the GloBE Rules, however, CE2 does not include any fair value gains or distributions from Constituent Entities. Otherwise CE2 would recognise $10 of fair value gain in addition to the $10 of income included under the Part 7-5 election.

Revoking the election

7.72 If the election is revoked, gains or losses from the disposition of an asset or liability held by the Investment Entity shall be determined based on the fair value of the assets or liabilities on the first day of the revocation year. The fair value at the beginning of the revocation year is the starting point.

7.73 If the Investment Entity's income is determined using a realisation method, that value will continue to be the value of the asset for purposes of determining gains or losses under the GloBE Rules until it is disposed. If the Investment Entity's income is determined using a fair value method for the assets, then that method will re-value the assets at regular intervals and include the gains or losses in FANIL.
[Chapter 7, section 7-115, section 7-125 of the Rules]

Tax Distribution Method Election

7.74 Part 7.6 provides an alternative the treatment of Investment Entities and Insurance Investment Entities under Part 7-4 and Part 7-5 of the Rules. The Taxable Distribution Method, reduces the exposure to top-up tax of income earned through an Investment Entity to the extent that the Investment Entity makes distributions of its income within a four-year period that are taxable in the hands of the recipients at or above the Minimum Rate.
[Chapter 7, section 7-130 of the Rules]

7.75 The taxable distribution method is available to any filing Constituent Entity that elects to apply this method. The five-year election is made be any Constituent Entity-owner of an Investment or insurance investment Entity that are not in themselves Investment Entities. The election applies to all Constituent Entity-owner's Ownership Interests in the Investment Entity, regardless of whether each Constituent Entity owner have made the taxable distribution method election.
[Chapter 7, section 7-135 of the Rules]

7.76 The election is only available where the Constituent Entity-owners:

- are subject to tax in their location on distributions from the Investment Entity; and
- can reasonably be expected to be subject to tax on such distributions at a rate of at least 15 per cent.

7.77 In determining whether a Constituent Entity owner is subject to at least 15 per cent on distributions, any taxes arising on distributions, or taxes incurred by the Investment Entity in respect of income distributed to a Constituent Entity-owner are taken into account.

Effect of election

7.78 Once the election has been made, the Constituent Entity owner must include all actual and deemed distributions in the computing GloBE income for the Fiscal year it is subject to tax on the distribution. The reference to deemed distribution is intended to ensure that the Taxable Distribution Method is coordinated with the tax treatment under local tax rules, meaning that it is the applicable laws relevant to the Constituent Entity owner. A deemed distribution includes the income of an Investment Entity for a Fiscal Year to the extent that it is not distributed and under domestic tax law the Constituent Entity-owner is subject to taxation in the same Fiscal Year. Deemed distributions may include certain transfers of an Ownership Interest.
[Chapter 7, subsection 7-140(2) and section 7-155 of the Rules]

7.79 The Constituent Entity-owner includes the Local Creditable Tax Gross-up in its GloBE Income and Adjusted Covered Taxes. This is generally the amount of Covered Taxes paid by the Investment Entity that is allowed as a credit in the computation of the Constituent Entity-owner's tax liability in respect of a distribution from the Investment Entity. The local creditable tax gross up is treated as additional GloBE Income so that the tax credit does not have the same effect as allowing both a deduction and a credit.

7.80 The intention is to ensure that income of an investment entity is allocated to the Constituent Entity owner. Any income or adjusted covered taxes of the investment entity that are included by the Constituent Entity owner remain in the Constituent Entity owner's accounts. All other income and adjusted covered taxes of the Investment Entity's that are reported at the investment entity level are excluded from all ETR computations under Chapter 5.
[Chapter 7, section 7-140 of the Rules]

Undistributed net GloBE income

7.81 Where a taxable distribution method election has been made, the MNE group must establish an Undistributed Net GloBE Income Account for the investment entity for each fiscal year.

7.82 The balance of the Undistributed Net GloBE Income Account starts with the GloBE Income for the Tested Year. If there is zero GloBE Income or a GloBE Loss for a Fiscal Year, the Undistributed Net GloBE Income Account for such year is zero.

7.83 Where an election under Part 7-6 of the Rules has been made, under subsection 7-150(2) of the Rules, the MNE Group must establish an Undistributed Net GloBE Income Account for the Investment Entity, for each fiscal year (the tested year).

7.84 Under subsection 7-150(3) of the Rules the balance of the Undistributed Net GloBE Income Account starts with the GloBE Income for the Tested Year, if any. If there is zero GloBE Income or a GloBE Loss for a Fiscal Year, the

Undistributed Net GloBE Income Account for such year is zero. The account balance is subsequently reduced by:

- any amount of Covered Taxes paid by the Investment Entity;
- distributions and deemed distributions to all other shareholders that are not Constituent Entities that are Investment Entities;
- losses that arise during a fiscal year; and
- amounts of the Investment Entity's Covered Taxes and certain distributions and deemed distributions in subsequent years.

7.85 The Undistributed Net GloBE Income Account balance is reduced by any amount of Covered Taxes paid by the Investment Entity. Instead the amount of Covered Taxes are added to the FANIL in the computation of GloBE Income or Loss. These two adjustments are necessary because to ensure the Investment Entity's GloBE Income is distributable and the distributable earnings is not reduced by Covered Taxes. As mentioned above, the Investment Entity's Covered Taxes that are included in the Local Creditable Tax Gross-up associated with a distribution or deemed distribution are subsequently included in the Adjusted Covered Taxes of the Constituent Entity-owner.

7.86 The balance is further reduced by distributions and deemed distributions to all other shareholders, including indirect ownership, other than Constituent Entities that are Investment Entities. MNE Groups may use any reasonable method of determining whether distributions through a chain of Investment Entities are distributed to a non-Investment Entity. For example, an MNE Group may treat distributions of an Investment Entity as being first attributable to distributions received from other Investment Entities of the MNE Group.

7.87 The Undistributed Net GloBE Income Account balance is also reduced for losses because losses reduce the amount that can be distributed as a dividend. However, if the losses exceed the Undistributed Net GloBE Income accounts, an Investment Loss carry-forward must be created to reduce the undistributed net GloBE Income arising in subsequent Fiscal Years. These carried forward losses may be applied to the Undistributed Net GloBE Income Account balance in subsequent Fiscal Years, to the extent they have not previously been applied.

7.88 Where the Fiscal Year is the first, second or third Fiscal Year after the tested year, the balance of the Investment Entity's Undistributed Net GloBE Income Account for the tested year is reduced, at the end of a Fiscal year, by the Investment Entity's Covered Taxes and certain distributions and deemed distributions.
[Chapter 7, section 7-150 of the Rules]

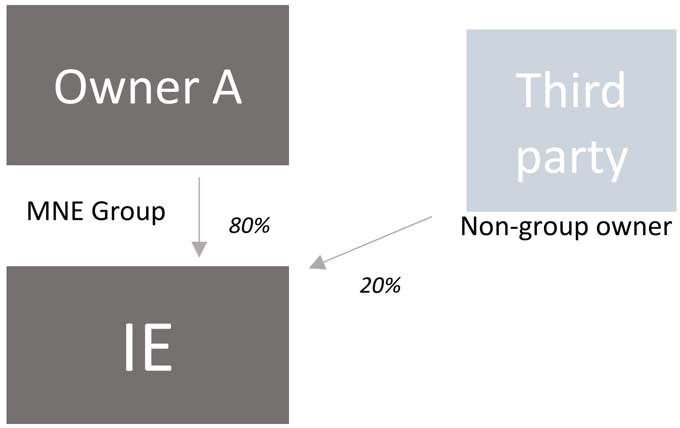
Top up tax

7.89 An increase in top-up tax may occur if there is an Undistributed Net GloBE Income Account for the Investment entity with a balance greater than zero at the end of the third subsequent Fiscal Year.

7.90 The following two steps are needed to increase top up tax for the reporting year:

- first, include the Constituent Entity owner's proportionate share of the undistributed net GloBE Income when computing the Investment Entity's GloBE Income or Loss; this amount is the Constituent Entity-owner's undistributed share.
- secondly, for the purposes of Chapter 2 of the Rules, treat the Investment Entity as a LTCE of the MNE Group and treat the top-up tax of the Investment Entity for the reporting year as being equal to the Constituent Entity owner's undistributed share multiplied by 15 per cent.
  [Chapter 7, section 7-145 of the Rules]

Example 7.6 Top-up tax under an eligible distribution taxable method election



Owner A has made a Part 7-6 election to apply the taxable distribution method election.

The Investment Entity's (IE) GloBE Income for the Fiscal year was $100. Under subsection 7-150(3), the Undistributed Net GloBE Income for the Tested Year is $100.

Assume none of the items mentioned in subsection 7-150(3) and subsection 7-150(5), which reduce the Undistributed Net GloBE Account, are applicable.

Then:

- Under subsection 7-145(2) Owner A's proportionate share of $80 (80% x $100) is treated as IE's GloBE Income for the Reporting Year.
- Under subsection 7-145(3), $12 (the result of 15% x $80), is treated as top-up tax of a LTCE in the Reporting Year for the purpose of Chapter 2.

Revoking an election

7.91 Where an election is revoked but an increase to top-up tax applies, and there is an Undistributed Net GloBE Income Account for an Investment Entity at the end of the Fiscal Year preceding the revocation year, the Constituent Entity-owner's proportionate share of the Undistributed Net GloBE Income Account is included in the Investment Entity's GloBE Income or Loss for the revocation year. Further, for the purposes of Chapter 2 of the Rules, the top-up tax of the Investment Entity for the reporting year will be an amount equal to the Constituent Entity-owner's undistributed share multiplied by 15 per cent. ***[Chapter 7, section 7-160 of the Rules]***

Chapter 8: Safe harbours

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Chapter outline

8.1 Chapter 8 of the Rules identifies and explains the various types of Safe Harbours available to MNE Groups when determining their GloBE and DMT obligations.

8.2 Certain safe harbour rules are included to aid the administrative burden in computing the complex top-up tax calculations by deeming top-up tax for a jurisdiction to be zero for a Fiscal Year if certain conditions are met.

8.3 There are three safe harbours that may apply to an MNE group in a jurisdiction for a Fiscal Year, including:

- transitional safe harbour;
- permanent simplified calculations safe harbour; and
- QDMTT safe harbour.

Transitional Safe Harbour

8.4 An MNE Group's top-up tax, including Additional Current top-up tax, for a jurisdiction is taken to be zero for a Fiscal Year in the Transition Period, if the following conditions are satisfied:

- the Filing Constituent Entity of the MNE Group elects to apply the Transitional CbC Reporting (CbCR) Safe Harbour for a specified Fiscal Year during the Transition Period and for a specified jurisdiction; and
- the MNE Group satisfies any of the following tests for the specified jurisdiction for the Fiscal Year:
  - the De minimis test;
  - the Simplified ETR test; or
  - the Routine profits test.
    [Chapter 8, subsections 8-5(1) and (2) of the Rules]

8.5 The Transitional CbCR Safe Harbour is designed to provide transitional relief for MNE Groups in the initial years during which the GloBE Rules come into effect. Therefore, these three alternative transitional safe harbour tests may only be accessed for a Fiscal Year beginning on or before 31 December 2026, and not including a Fiscal Year that ends after 30 June 2028.
[Chapter 8, section 8-85 of the Rules]

Entities eligible for the transitional CbCR safe harbour

8.6 The Transitional CbCR Safe Harbour operates through the use of simplified jurisdictional revenue and income information contained in an MNE's Qualified CbC Report, and jurisdictional tax information contained in an MNE's Qualified Financial Statements. The Transitional CbCR Safe Harbour applies on a jurisdictional basis to a tested jurisdiction.

8.7 The application of the Transitional CbCR Safe Harbour to a Constituent Entity depends on which jurisdiction the Constituent Entity is located in under the GloBE Rules. Where the Constituent Entity is a CbC Resident in one jurisdiction, the relevant data is generally included in the Qualified CbC Report for that jurisdiction. However, if the Constituent entity is located in another jurisdiction in accordance with the GloBE Rules, the Transitional CbCR Safe Harbour would only apply for the Constituent Entity if the other jurisdiction also qualifies for the safe harbour.

8.8 Similar to the operation of calculating the ETR under Chapter 5 of the Rules, the Transitional CbCR Safe Harbour tests apply separately for the following entities located in the same jurisdiction:

- Constituent Entities;
- Joint Ventures; or
- JV Groups (including where there are multiple JV groups in the same jurisdiction).

8.9 Investment and insurance investment entities may apply a transitional safe harbour if:

(a) the investment entity makes a separate GloBE calculation under Parts 7-4, 7-5 or 7-6 of the Rules;

(b) the investment entity jurisdiction and the jurisdiction of residence of any constituent entity owner may continue to benefit from the transitional CbCR safe harbour; and

(c) the profit (loss) before income tax and total revenue of the investment entity (and any associated taxes) is only reflected in the jurisdiction of its direct parent entities in proportion to their ownership interests.

8.10 There are special rules for UPE that are flow-through entities. A UPE that is a flow through may only apply the transitional CbCR in two scenarios:

- if all ownership interests in the UPE are held by qualified persons; or
- where deductible dividend regime applies the profit or (loss) before tax must be reduced by amounts attributed to or distributed as a result of an ownership interest held by a qualified person.

Exclusions

8.11 The following are excluded from the Transitional CbCR Safe Harbour:

- Stateless Constituent Entities (e.g. certain Reverse Hybrids);
- multi-parented MNE Groups where there is no single Qualified CbCR (e.g. certain stapled structures);
- jurisdictions where an Eligible Distribution Tax System election has been made; and
- jurisdictions that have not benefited from a Transitional CbCR Safe Harbour in a previous year unless the MNE did not have Constituent Entities in that jurisdiction in the previous year.
[Chapter 8, section 8-95 of the Rules]

8.12 If an MNE Group has not applied the Transitional CbCR Safe Harbour with respect to a jurisdiction in a Fiscal Year in which the MNE Group is subject to the GloBE Rules, the MNE Group cannot qualify for that safe harbour for that jurisdiction in a subsequent year – this is a 'once out, always out' approach.

Simplified ETR test

$$Simplified\ ETR = \frac{simplified\ covered\ taxes}{(profit\ or\ (loss)\ before\ income\ tax)}$$

8.13 The simplified ETR test mirrors the mechanics set out in Chapter 5 of the Rules.

8.14 If the Simplified ETR of the tested jurisdiction is equal to or greater than the Transition Rate then the tested jurisdiction would qualify for the safe harbour. ***[Chapter 8, sections 8-30 and 8-35 of the Rules]***

8.15 The safe harbour applies where the Simplified ETR exceeds the Transition Rate for a year then the safe harbour applies. The transition rate is:

- 15 per cent for Fiscal years beginning in 2023 and 2024;
- 16 per cent for fiscal years beginning in 2025; and
- 17 per cent for fiscal years beginning in 2026. ***[Section 8-45 of the Rules]***

8.16 Simplified Covered Taxes equals the jurisdiction's income tax expense as reported on the MNE Group's Qualified Financial Statements and includes adjustments to the income tax expense provision of prior years and deferred items. It must exclude:

- income tax expense of Constituent Entities whose income is not included in the CbC Report (such as Entities held for sale); and
- taxes that are not Covered Taxes; and
- uncertain tax positions ***[Chapter 8, section 8-40 of the Rules]***

ETR test for Hybrids, CFCs, and Permanent Establishments

8.17 To prevent double counting, the income tax expense in the jurisdiction in which a Permanent Establishment is located, on the Permanent Establishment's income, must be allocated exclusively to the Permanent Establishment's jurisdiction. That income tax expense must not be included in the Simplified ETR Test for the Main Entity's jurisdiction.

8.18 In a case where the Transitional CbCR Safe Harbour does not apply in a jurisdiction in which a Permanent Establishment, CFC or Hybrid Entity is located, the MNE Group will need to compute the jurisdictional ETR under the GloBE Rules and take into account Covered Taxes paid or accrued on its income by the Constituent Entity-owner or the Main Entity.

8.19 Taxes paid or accrued by a Main Entity, or a Constituent Entity-owner of a Hybrid Entity or CFC do not need to be allocated (that is, excluded) for the purposes of determining the Simplified ETR for the jurisdiction of the Constituent Entity-owner or Main Entity, notwithstanding the fact that part or all of such taxes are also taken into account in the ETR computations of a jurisdiction that includes a CFC, Permanent Establishment or Hybrid Entity.

8.20 Contrasted to Chapter 4 of the Rules, CFC taxes do not have to be allocated. This is broadly a compliance concession allowing any amounts allocated from lower tier entities to remain at the top tier entities for the purposes of the transitional Safe Harbour.

Routine profits test

8.21 The Routine profits test compares a tested jurisdiction's Substance-based Income Exclusion amount for the jurisdiction for the Fiscal Year to the tested jurisdiction's Profit (Loss) before Income Tax as reported in such MNE's Qualified CbC Report.

8.22 If a tested jurisdiction's Substance-based Income Exclusion amount equals or exceeds its Profit (Loss) before Income Tax, it means that it is likely that little (or no) Excess Profits arise in such jurisdiction, and the tested jurisdiction would qualify for the safe harbour.

8.23 For the purposes of the Transitional CbCR Safe Harbour, the SBIE shall be computed in accordance with Part 5-3 of the Rules. The SBIE amount computed for purposes of the Routine profits test does not take into account the payroll and tangible assets of Entities that are not Constituent Entities under the CbCR (such as Entities held for sale) or under GloBE (such as Excluded Entities).

8.24 A tested jurisdiction with a loss or zero profits will not have income that exceeds the routine profits amount, and therefore will always meet the Routine profits test. It will not be necessary for the MNE to calculate the jurisdiction's SBIE in these circumstances. This outcome mirrors the outcome under Part 5-1 of the Rules, where an ETR computation is not necessary if a tested jurisdiction does not have any Net GloBE Income.

8.25 MNE Groups shall calculate their Substance-based Income Exclusion amount for the Transitional CbCR Safe Harbour using the same percentage that would be used to calculate their Substance-based Income Exclusion amount under Part 5-3 of the Rules including based on the transitional rates stated under Part 9-2 of the Rules.
[Chapter 8, section 8-50 of the Rules]

De minimis test

8.26 The MNE Group's Total Revenue and Profit (Loss) before Income Tax for each tested jurisdiction is extracted directly from the Qualified CbC Report. If a tested jurisdiction produces revenue and income that meet the de minimis test, then the tested jurisdiction qualifies for the safe harbour.

8.27 The MNE Group must satisfy two conditions to rely on the de minimis exclusion in a Fiscal Year:

- report Total Revenue for the fiscal year for the jurisdiction of under EUR 10 million; and
- have a profit or (loss) before income tax for the Fiscal Year for the jurisdiction of under EUR 1 million.
  [Chapter 8, section 8-10 of the Rules]

8.28 The Total Revenue is an MNE Group's Total Revenues in a jurisdiction as reported on its Qualified CbC Report.

8.29 Profit (Loss) before Income Tax is an MNE Group's Profit (Loss) before Income Tax in a jurisdiction as reported on its Qualified CbC Report.
[Chapter 8, sections 8-15, 8-20 and 8-25 of the Rules]

Ancillary definitions for the three tests

Qualified financial statements

8.30 Qualified financial statements are defined as either:

- the accounts used to prepare the CFS of the UPE (the same requirement as under Part 3-2 of the Rules; or
- separate financial statements of each CE (defined below); or
- in the case of an NMCE or Permanent Establishment: the financial accounts of that CE that are used for preparation of the MNE Group's CbC Report

8.31 Separate financial statements must meet the following requirements:

- prepared in accordance with an Acceptable Financial Accounting Standard or Authorised Financial Accounting Standard and
- the information contained in such statements is maintained based on that accounting standard and is reliable.

8.32 Qualified Financial Statements focuses on the financial accounts of the Constituent Entity that are used in the preparation of the CFS (the reporting package); it does not further require the preparation of separate financial statements. The definition of separate financial statements caters to individual Constituent Entities that prepare financial statements.
[Chapter 8, subsection 8-60(1) of the Rules]

8.33 For the Constituent Entity that prepares separate financial accounts, if there is an item (such as a deferred tax expense) that relates to a specific entity's accounts but is reflected in the UPE's CFS, then that item must be removed from the CFS and reflected in the individual constituent entity's data when using the standalone statements.

8.34 There are several requirements the MNE group must adhere to when preparing the qualified financial statements including:

- using the same source of qualified financial statements to apply the transitional safe harbour to a jurisdiction (including where there are multiple entities within the jurisdiction); and
- not adjusting any of the data contained in the qualified financial statements, even where the adjustments would be more consistent with the GloBE rules.

8.35 An MNE group that has a presence across multiple jurisdictions will still qualify for the transitional safe harbour where different accounting standards are used in each jurisdiction.

Qualified CbC Reports

8.36 Qualified CbC Report is prepared and filed using Qualified Financial Statements, but is determined based on the tested jurisdiction.

8.37 MNE Groups that are in scope of the GloBE Rules but not required to file CbC Reports may still be eligible for the Transitional CbCR Safe Harbour if section 2.2.1.3(a) of the GloBE Information Return is completed using the data from Qualified Financial Statements that would have been reported as Total Revenue and Profit (Loss) Before Income Tax in a Qualified CbC Report if the MNE Group were required to file a CbC Report in accordance with the CbC requirements in the UPE Jurisdiction (or, if the UPE Jurisdiction does not have CbC requirements, the amounts that would have been reported in accordance with the OECD BEPS Action 13 Final Report and the OECD Guidance on the Implementation of CbC Reporting). Similarly, an MNE group may voluntarily submit a CbCR.

8.38 This test removes the need to calculate CbCR Revenue and Income over multiple years and would extend the benefit of the safe harbour to those MNEs that have previously not been preparing their CbC Reports based on sources other than Qualified Financial Statements but have switched to use Qualified Financial Statements. This condition will be met even in the case of a loss.
[Chapter 8, subsection 8-10(b) of the Rules]

8.39 For NMCEs that are not included in the CFS based on materiality grounds, the definition of Qualified Financial Statements allows the MNE Group to use the same financial accounts of the NMCEs that are used to prepare the MNE Group's CbC Report.
[Chapter 8, subsection 8-60(1)(c) of the Rules]

Purchase price accounting adjustments

8.40 Generally, the GloBE rules operate to remove purchase price adjustments with the aim to find income at the individual entity level.

8.41 The consistent reporting condition is met where the MNE Group has not submitted a CbC Report for a Fiscal Year beginning after 31 December 2022

that was based on the Constituent Entity's reporting package or separate financial statements without the Purchase Price Accounting adjustments, except where the Constituent Entity was required by law or regulation to change its reporting package or separate financial statements to include Purchase Price Accounting adjustments.
[Chapter 8, subsection 8-60(4) of the Rules]

8.42 Any reduction to the Constituent Entity's income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 must be added back to the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year when applying either the:

- routine profits test; or
- simplified ETR test, but only if the financial accounts do not also have a reversal of deferred tax liability or recognition or increase of a deferred tax asset in respect of the impairment of goodwill.
[Chapter 8, subsections 8-60(2) to (5) of the Rules]

Permanent Safe Harbour: simplified calculations

8.43 The framework for the permanent safe harbour attempts to simplify compliance with the OECD GloBE Model Rules by reducing the number and complexity of calculations. The permanent safe harbour framework enables the implementation of future agreed safe harbours that are agreed by the OECD.
[Chapter 8, Division 2 of Part 8-2 of the Rules]

8.44 The Simplified Calculations Safe Harbour allows MNE Groups to avoid making certain complex GloBE calculations in situations where the calculation could be simplified without altering the MNE Group's GloBE outcomes or otherwise undermining the integrity of the GloBE Rules.

Application of the safe harbour

8.45 A Filing Constituent Entity of an MNE Group may make an annual election in respect of a jurisdiction (the tested jurisdiction) to apply the Simplified Calculations Safe Harbour. Where a tested jurisdiction qualifies for the Simplified Calculations Safe Harbour for a Fiscal Year, the top-up tax for that jurisdiction will be deemed to be zero. The Simplified Calculations Safe Harbour will apply when the tested jurisdiction satisfies the requirements of any one of the following simplified calculations tests:

- De Minimis test;
- ETR test; or
- Routine profits test,
[Chapter 8, Section 8-100 of the Rules]

8.46 The simplified calculations tests follow the same tests as outlined under Chapter 5, where the:

- simplified calculations Routine profit test mirrors the Substance-based Income Exclusion amount under Part 5-3;
- simplified calculations De minimis test follows the de minimis exclusion under Part 5-5 of the Rules; and
- simplified calculations ETR test is based on the ETR calculations under Chapter 5.
[sections 8-105, 8-110 and 8-115 of the Rules]

8.47 The modified simplified calculations or adjustments made to the standard Part 5 rules are yet to be determined. Only the simplified calculations for NMCEs have been agreed at the OECD level.

8.48 The application of the permanent safe harbour does not impact any Additional Current top-up tax that may arise. An MNE Group may still be liable to Jurisdictional top-up tax for the Fiscal Year due to any Additional top-up tax under Part 5-4 of the Rules.

NMCE Safe Harbour

8.49 The simplified income, revenue and tax calculations may apply to non-material Constituent Entities (NMCEs), as part of the Permanent Safe Harbour. These simplified calculations only apply in respect of NMCEs. If the jurisdiction does not qualify for the Permanent Safe Harbour, the MNE group must use the standard GloBE calculations in respect of NMCEs.

8.50 The permanent safe harbour applies to NMCEs on the basis that it is common for MNEs to exclude non-material Constituent Entity’s from the CFS in accordance with the definition of the materiality threshold in the relevant accounting principles.

Definition of NMCE

8.51 An NMCE must meet the following four conditions:

- the Constituent Entity must not be consolidated on a line-by-line basis in the CFS of the UPE for the Fiscal Year, based on size or materiality grounds;
- the MNE Group's CFS must meet paragraphs (a) or (c) of the definition of CFS in section 10-5 of the Rules;
- the CFS must be externally audited; and
- where the Constituent Entity’s revenues exceed EUR 50 million, the Constituent Entity can only be an NMCE if the financial accounts are

prepared in accordance with an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard.

8.52 With respect to meeting the definition of paragraph (a) or (c) of the CFS definition, it is not appropriate to allow the MNE group to access the NMCE safe harbour if the CFS is prepared in accordance with paragraph (b) or (d) of the CFS definition. This is because paragraph (b) refers to the financial statements of a Main Entity and an MNE Group that is composed exclusively of a Main Entity and its Permanent Establishments cannot apply the NMCE simplified calculations. Similarly, paragraph (d) is a deeming provision that applies where the UPE has not prepared a set of consolidated financial accounts. The NMCE definition requires the existence of financial statements that have been consolidated and that have been externally audited to determine the non-materiality of the Entity.

8.53 The external auditor that audits the CFS must be a legal person or individual with relevant the expertise to undertake the audit tasks. The auditor's opinion must not contain objections (i.e. qualifications) in relation to the exclusion of the Entity from the consolidation perimeter.

8.54 If a Main Entity is an NMCE then all of its Permanent Establishments are also considered NMCEs.
[Chapter 8, subsection 8-130(a) of the Rules]

Applying the NMCE safe Harbour

8.55 The simplified calculations for NMCEs only apply where the MNE group has made an annual election in respect of each NMCEs located in the jurisdiction the safe harbour applies to. This has the effect of applying the NMCE safe harbour to the NMCE located in that jurisdiction that may then use the simplified income, simplified revenue and simplified tax calculations for that NMCE for the purposes of satisfying one of the simplified calculations tests.
[Chapter 8, subsection 8-100(3) and 8-125(3) of the Rules]

Simplified Calculations

8.56 The simplified calculations for NMCEs provide for an alternative method for determining the GloBE Income or Loss, revenue, and Adjusted Covered Taxes of such Entities for use in one of the simplified calculations tests, as part of the Permanent Safe Harbour.

8.57 Under the simplified income calculation, instead of an NMCE computing the GloBE Income or Loss of an NMCE for the purposes of applying one of the simplified calculations tests, the GloBE Income or Loss of the NMCE will be equal to its Total Revenue as determined under the Relevant CbC Regulations.
[Chapter 8, subsections 8-120(2) and 8-135(1) of the Rules]

8.58 Under the simplified revenue calculation for an NMCE, the Total Revenue of the NMCE, as determined under the Relevant CbC Regulations, is taken to be its revenue for the purposes of applying the simplified calculations De minimis

test. This means that both the GloBE Income and revenue of the NMCE will be the same amount in the context of the NMCE simplified calculations.
[Chapter 8, subsections 8-120(3) and 8-135(1) of the Rules]

8.59 Under the simplified tax calculation, the measure of Adjusted Covered Taxes of NMCEs is the Income Tax Accrued (Current Year) as determined under the Relevant CbC Regulations, for the purpose of applying the simplified calculations ETR test. This means that the simplified tax calculation excludes any deferred tax expenses, adjustments for non-current items, and provisions for uncertain tax liabilities.
[Chapter 8, subsections 8-120(4) and 8-135(2) of the Rules]

8.60 In the case of a PE that is an NMCE, the amount of the GloBE Income, revenue, and Adjusted Covered Tax is the Total Revenue and Income Tax Accrued (Current Year) as determined under the Relevant CbC Regulations with respect to such PE.

8.61 The Relevant CbC Regulations refers to the Country-by-Country Reporting regulations applicable in the UPE Jurisdiction or in the parent entity jurisdiction if a Country-by-Country Report is not filed in the UPE Jurisdiction. If the UPE jurisdiction does not have CbC requirements and an MNE Group is not required to file a CbC Report in any jurisdiction, Relevant CbC Regulations means the OECD BEPS Action 13 Final Report and the OECD Guidance on the Implementation of Country-by-Country Reporting.

8.62 Country-by-Country Reporting regulations means the reporting obligations for country-by-country reporting entities set out in Subdivision 815-E of the ITAA 1997 and the law of a jurisdiction corresponding to that Subdivision.
[Chapter 8, section 8-140 of the Rules]

QDMTT Safe Harbour

General rule

8.63 Where an MNE Group qualifies for the QDMTT Safe Harbour for a Fiscal Year, the top-up tax for the jurisdiction for the Fiscal Year is taken to be zero.

8.64 An MNE Group will be eligible for the QDMTT Safe Harbour in respect of a jurisdiction for a Fiscal Year where:

- the jurisdiction has a QDMTT for the Fiscal Year;
- the jurisdiction is specified in a determination made by the Minister. Such a determination may be made where the Minister is satisfied that the jurisdiction's QDMTT has QDMTT Safe Harbour status for the Fiscal Year; and

- a Filing Constituent Entity of the MNE Group has made an annual election to apply the QDMTT Safe Harbour to the jurisdiction for the Fiscal Year.

8.65 The QDMTT Safe Harbour operates by allowing an MNE Group to make an annual election to apply the QDMTT Safe Harbour for each subgroup or standalone Entity subject to a separate Qualified Domestic Minimum top-up tax calculation.
[Chapter 8, section 8-145 of the Rules]

8.66 For example, three Constituent Entities of the main group, two members of the same JV Group, and one Investment Entity subject to Part 7-4, are located in a jurisdiction with a QDMTT that meets the standards of the safe harbour. In this case, the Filing Constituent Entity would need to make a separate election for the three Constituent Entities, the two members of the JV Group and for the Investment Entity.

Disputed amounts

8.67 A Filing Constituent Entity cannot elect to apply the QDMTT Safe Harbour where all or part of the top-up tax computed for the jurisdiction for the Fiscal Year under the QDMTT would not be treated as Domestic top-up tax for the purposes of section 5-30 of the Rules, assuming the safe harbour did not apply.

8.68 The term Domestic Top up Tax refers to the amounts payable by each Constituent Entity of an MNE Group under a QDMTT of a jurisdiction for the Fiscal Year. However, pursuant to section 5-32 of the Rules, such amounts shall not include any amount of QDMTT that:

- the MNE Group directly or indirectly challenges in a judicial or administrative proceeding; or
- the tax authority of the jurisdiction has determined is not assessable or collectible

based on constitutional grounds or other superior law, or based on a specific agreement with the government of the QDMTT jurisdiction limiting the MNE Group's tax liability, such as a tax stabilisation agreement, investment agreement, or similar agreement.

8.69 Where all or part of the MNE Group's Qualified QDMTT payable for the jurisdiction for a Fiscal Year under section 5-32 of the Rules would not be considered Domestic top up-tax for the purposes of section 5-30 of the Rules, then, the MNE Group is prevented from making the election to apply the QDMTT Safe Harbour to that jurisdiction for that Fiscal Year.
[Chapter 8, section 8-150 of the Rules]

Switch off rule

8.70 There are specific scenarios where an MNE Group will be subject to a Switch-off Rule. The switch off rule prevents the MNE Group from applying the QDMTT Safe Harbour in relation to some or all Constituent Entities located in a Qualified Domestic Minimum top-up tax jurisdiction.

8.71 The Switch-off Rule recognises that, in some cases, a QDMTT jurisdiction could be subject to certain restrictions on imposing the QDMTT with respect to a particular Constituent Entity or corporate structures. It recognises that in some scenarios it would be disproportionate to deny a QDMTT jurisdiction from qualifying for a QDMTT Safe Harbour for all MNE Groups because those restrictions might only impact on a small number of Entities or particular corporate structures.

8.72 The switch-off rule prevents an MNE Group from making a QDMTT Safe Harbour election for a jurisdiction for a Fiscal Year if the Minister has made a determination specifying a restriction to that jurisdiction's QDMTT and that restriction applies to the MNE Group being tested, for the Fiscal Year. If the specified restriction does not apply to the particular MNE Group's circumstances, then the Switch off Rule does not apply to it.
[Chapter 8, section 8-145 of the Rules]

8.73 Where the Switch off Rule applies to an MNE Group, the MNE Group will switch to the credit method for QDMTT provided under section 5-30 of the Rules (Meaning of Jurisdictional top-up tax).
[Chapter 8, section 8-155 of the Rules]

Chapter 9: Transitional Provisions

Outline

9.1 Smaller MNE Groups will become subject to the GloBE Rules for the first time if they grow their revenues above a threshold, either through growth or a merger or acquisition. A Constituent Entity could also become subject to the GloBE Rules for the first time when such Constituent Entity is acquired by a MNE Group that is already subject to the GloBE Rules.

9.2 Failure to take appropriate account of operating losses that the MNE Group has incurred in the period(s) prior to becoming subject to the GloBE Rules could result in a distorted picture of the MNE Group's tax position. Similarly, timing differences between the local tax rules and the GloBE Rules (such as rules allowing for the pre-payment or deferment of tax) could lead to an incorrect top-up tax calculation.

9.3 To address these issues, Chapter 9 of the Rules provides for transitional rules.

Tax attributes upon transition

9.4 At the start of the first accounting period when a member becomes a qualifying MNE (the ***Transition Year***), each deferred tax asset and deferred tax liability that is reflected in the consolidated financial statements of the ultimate parent entity should be accounted for in its deferred tax expense either:

- at its nominal tax rate, if that rate is less than 15 per cent; or
- in the case of a deferred tax asset attributable to a loss that would have been taken into account in determining adjusted profits for this Part, as if the rate of tax applicable was 15 per cent; or
- otherwise, as if the rate of tax applicable was 15 per cent.
[Chapter 9, sections 9-5, 9-10 and 9-20 of the Rules]

9.5 A deferred tax asset is to be excluded from an entity's deferred tax expense if it arises as a result of a transaction after 30 November 2021, and before the commencement of the first accounting period the GloBE Rules commence, in relation to an item which was either:

- included in the member's taxable income but which would be excluded from the member's adjusted profits; or
- which was not included in taxable income, but which would have been included in the member's adjusted profit.
[Chapter 9, subsection 9-5(3) of the Rules]

9.6 If an asset is transferred between entities after 30 November 2021 and before the Transition Year of a MNE Group, and such entities would have been Constituent Entities of that MNE Group had the GloBE Rules been in effect with respect to that MNE Group, such asset must be recorded at its historic carrying value for GloBE purposes to limit the ability to step-up the basis in such assets without including the resulting gain in the computation of GloBE Income or Loss.
[Chapter 9, section 9-15 of the Rules]

Transitional relief for the Substance-based Income Exclusion

9.7 Transitional rules apply when calculating the Substance-based Income Exclusion in Fiscal Years beginning from 1 January 2023 to 31 December 2032.
[Chapter 9, section 9-25 of the Rules]

9.8 For the purposes of the payroll carve-out amount and the tangible asset carve-out amount, the reference to 5 per cent should be replaced with the percentage in the below table for each Fiscal Year beginning in each of the following calendar years.

Fiscal Year	**Payroll carve-out**
2023	10.0%
2024	9.8%
2025	9.6%
2026	9.4%
2027	9.2%
2028	9.0%
2029	8.2%
2030	7.4%
2031	6.6%
2032	5.8%

Fiscal Year	**Tangible Asset carve-out**
2023	8.0%
2024	7.8%
2025	7.6%
2026	7.4%
2027	7.2%
2028	7.0%
2029	6.6%
2030	6.2%
2031	5.8%
2032	5.4%

[sections 9-30 and 9-35 of the Rules]