An Roinn Airgeadais
Department of Finance

Pillar Two Implementation

Feedback Statement

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www.gov.ie/finance

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1. Introduction

1.1 Pillar Two - Introduction

In October 2021, Ireland, along with over 130 other countries in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework), signed up to an historic agreement to reform the international tax framework as it applies to large corporate groups.

Building on the original Base Erosion and Profit Shifting (BEPS) project, the agreement contains a Two Pillar solution to address the tax challenges arising from digitalisation and globalisation. Recognising how large businesses across the globe now operate commercially and generate value, this significant reform will ensure that the international tax framework keeps pace with these developments in a coordinated way.

Pillar One

Pillar One of the OECD agreement envisages a re-allocation of a proportion of profits to be taxed in market jurisdictions, and involves the calculation of two new Amounts:

- ‘Amount A’ seeks to determine a value for ‘excess profits’ to allow for the reallocation of a proportion of the worldwide profits of an MNE to market jurisdictions, i.e. countries where the end-consumers and users of products and services are based, regardless of whether an MNE has a physical presence in those jurisdictions.

- ‘Amount B’ seeks to simplify and streamline the application of the arm’s length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries.

Work on Pillar One continues at the OECD.

Pillar Two

Pillar Two primarily consists of two interlocking domestic rules (together referred to as the Global anti-Base Erosion (GloBE) rules) which will introduce a global minimum effective tax rate of 15% for in-scope businesses and is the subject of this Feedback Statement.

The remaining element of Pillar Two, the Subject to Tax Rule (STTR), is a tax treaty rule which will apply where certain intra-group cross-border payments are subject to low levels of taxation. The STTR has not yet been finalised, but agreement on a model provision and associated commentary is expected to be reached shortly. It is expected that a multilateral instrument will be developed to assist countries in adopting the rule where required to do so.

The Inclusive Framework published the GloBE Model Rules[1] in December 2021, followed by an accompanying Commentary[2] in March 2022 to provide further technical guidance to taxpayers and tax administrations. An update on the work on safe harbours, including an agreed transitional safe harbour, was released in December 2022. In February 2023, the first of the OECD's Administrative Guidance[3] on the GloBE Model Rules was published.

Work on the GloBE Implementation Framework continues at the OECD. This will include ensuring coordination and consistency in the application of the rules across jurisdictions, as well as providing further administrative guidance.

At EU level, the Minimum Tax Directive was proposed in December 2021 immediately following the publication of, and largely following, the OECD GloBE Model Rules. During 2022, several further iterations / compromise texts were published. The final text was formally agreed by all Member States in December 2022 resulting in Council Directive 2022/2523[4] ("the Directive"). The Directive obliges EU Member States, including Ireland, to transpose its provisions into domestic legislation by 31 December 2023. It is planned to deliver this legislation in Ireland as part of the autumn 2023 Finance Bill.

The Pillar Two framework will have quite significant impacts for Ireland. We have engaged extensively at both OECD and EU level to ensure the agreed rules allow continued support for economic growth and prosperity, and also safeguarding our competitive tax regime for real and substantive activities in the State.

In the context of the above, it is now considered timely to invite views of interested parties on how the Pillar Two GloBE rules will be implemented in Irish legislation. As set out below, submissions are invited on the implementation of the Directive, and not the design of Pillar Two itself on which agreement has already been reached.

1.2 Pillar Two – Overview of GloBE rules

The policy objectives behind Pillar Two are to:

- Ensure large corporate groups pay a minimum amount of tax on the income arising in each jurisdiction in which they operate;
- Reduce the incentive to move profits to low or no tax jurisdictions; and
- Put a floor on excessive tax competition between countries.

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[1] OECD (2021), *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*, OECD, Paris, https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.pdf

[2] OECD (2022), *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)*, OECD, Paris, https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two-commentary.pdf

[3] OECD (2023), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS*, OECD, Paris. https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf

[4] Referred to as the 'COUNCIL DIRECTIVE (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large scale domestic groups in the Union' https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2523&from=EN

Main Provisions

The main provisions of the OECD GloBE rules may be summarised as follows:

- A new global minimum effective tax rate of 15% will be adopted, applying to multinationals (MNEs) with global annual turnover of at least €750m. This minimum rate will apply in each jurisdiction in which the MNE operates.
- In order to calculate the tax, an adjusted accounting measure of profit will need to be calculated for a group's operations in each jurisdiction.
- Where the tax payable by the group on profits in a jurisdiction falls below the 15% effective rate, a top-up tax will be levied to bring the overall level of taxation up to the minimum under GloBE rules.
- The top-up tax is provided for in two interlocking GloBE rules as follows:
    - A primary Income Inclusion Rule (IIR), which imposes top-up tax on a parent company in respect of the low taxed income of a constituent entity, and
    - A backstop provision, the Undertaxed Profits Rule (UTPR), which denies deductions or requires an equivalent adjustment to the extent that the low tax income of a constituent entity is not subject to tax under an IIR.
- Jurisdictions may introduce a Qualified Domestic Minimum Top-Up Tax (QDMTT) in domestic law. A QDMTT is a minimum tax provision designed to calculate and collect top-up tax locally in a jurisdiction in a manner equivalent to the GloBE rules.

EU Minimum Tax Directive

The Directive largely represents a direct transposition of the OECD GloBE Model Rules, with a number of amendments to ensure compatibility with EU law or to deal with certain operational matters. The main additional provisions in the Directive are:

- The extension of the GloBE rules to include large scale, purely domestic groups, so as not to contravene the EU fundamental freedoms.
- The Directive makes it mandatory for Member States to apply the IIR and UTPR. By contrast, jurisdictions could sign up to the OECD agreement on the basis that they themselves would not implement the GloBE rules domestically but would not object to their application on companies within their borders by other jurisdictions.
- A requirement for a Member State to apply the IIR to apply it not only to foreign subsidiaries but also to all domestic constituent entities. This is permitted but not mandatory under the GloBE Model Rules.

Arising from the negotiations at EU Council, the following additions or amendments were made to the original proposed text prior to its agreement in December 2022:

- Where a Member State elects to apply a Qualified Domestic Top-up Tax (the Directive's equivalent to a QDMTT), the Directive provides that, under certain circumstances, this will operate on a 'safe harbour' basis. Such a payment will meet the requirement of Pillar Two minimum taxation as it pertains to an entity situate in that jurisdiction and no further top-up tax liability will be calculated in another Member State.

- The Directive will apply from 31 December 2023, rather than 1 January 2023 as initially proposed by the European Commission.
- A transition provision[5] allows Member States to defer implementation of the rules where the ultimate parent entities of twelve or fewer multinational groups are in that Member State. In such cases, as is the case under the OECD agreement, the Member State could not object to the application of the GloBE rules on companies within their borders by other jurisdictions.
- Where the ultimate parent entity of a group is in a Member State that has elected to avail of this transitional provision, such a group will be subject to the GloBE rules, <u>including the UTPR</u>, in other Member States with effect from 31 December 2023.

1.3 Ireland's approach to transposing the EU Minimum Tax Directive

The Directive will provide the primary basis for the transposition of the minimum tax rules in Ireland. It is intended the legislation will be transposed into Irish law via the autumn 2023 Finance Bill. There will be four key elements to the transposition, as follows:

Income Inclusion Rule

The IIR will apply to corporate groups whose ultimate parent entity is Irish resident and whose annual consolidated group revenue is at least €750m in at least two of the previous four years. The top-up tax will apply in respect of the Irish ultimate parent itself, any constituent entities located in Ireland, and any constituent entities located in other jurisdictions, whether inside or outside the EU.

It will also apply to Irish intermediate parent entities of foreign-headquartered groups where those entities are more than 20% owned by minority investors or are controlled by parent entities that are not located in a jurisdiction that has introduced the IIR.
The IIR will impose a top-up tax on these parent entities based on their interests in subsidiaries and branches located in jurisdictions in which their Effective Tax Rate (ETR) is below 15%. The ETR is calculated on a jurisdictional basis, by reference to the agreed rules.

Undertaxed Profits Rule

The UTPR allows a top-up tax to be collected in instances where the IIR does not apply. Tax arising under the UTPR can be collected by other group entities regardless of whether or not they are parent entities. UTPR top-up tax is allocated amongst jurisdictions where the group operates using an allocation key based on employee headcount and the value of tangible assets per jurisdiction, weighted equally.

[5] Article 50 of the Directive - Election for a delayed application of the IIR and UTPR

Qualified Domestic Top-up Tax (QDTT[6])

Under the Directive, each Member State may elect to apply a QDTT to the constituent entities of a group located within its borders. The Model Rules provide that a qualified domestic top-up tax will be directly creditable against liabilities otherwise arising under the IIR and UTPR.

As noted above, and subject to certain conditions, the Directive provides that implementation of a QDTT by a Member State will be recognised as sufficient to satisfy the requirements of Pillar Two, meaning that other Member States are assured that sufficient tax has been paid by companies in the Member State applying a QDTT and no further top-up is required. In effect, each Member State applying a QDTT becomes a 'safe harbour'. A similar safe harbour is under consideration at the OECD.

As Ireland's 12.5% trading rate of corporation tax is below the agreed 15% minimum effective rate, it is considered appropriate that Ireland should introduce a QDTT as part of the Pillar Two implementation process. Consideration of this approach has been indicated in discussions to date on Ireland's implementation of the rules, and international adoption of a QDTT / QDMTT is expected to be widespread.

Administration

The introduction of the GloBE rules will give rise to new pay and file obligations for taxpayers – this is considered further in Section 4 of this paper.

1.4 Structure of Feedback Statement

This Feedback Statement builds on the May 2022 Public Consultation[7] on Pillar Two implementation. Most respondents noted the complexity of Pillar Two and proposed that further detailed consultation would take place during the development of the relevant legislation, to enable companies to comply with the new requirements when implemented. The Department of Finance is therefore publishing this Feedback Statement to respond to the views expressed in replies to the Public Consultation and to set out possible approaches to some of the technical aspects of the Directive / the GloBE rules.

This Feedback Statement brings forward possible draft legislative approaches to key elements of the Directive and outlines possible approaches that could be taken in respect of the QDTT and administration. Consultation questions are posed on a range of technical and policy issues. It is intended that this will allow the draft legislative approach to be tested by stakeholders, to identify any potential uncertainties or unintended consequences to be resolved, and also to inform preparations being made by businesses to enable compliance with the rules when they come into force from 31 December this year.

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[6] Termed 'Qualified Domestic Minimum Domestic Top-Up Tax' (QDMTUT) in the GloBE Model Rules.
[7] https://www.gov.ie/en/consultation/c68e4-public-consultation-on-pillar-two-minimum-tax-rate-implementation/

The views of stakeholders are important in ensuring that Ireland's legislation to transpose the Directive will, when introduced, be clearly understood and operable in practice, while also meeting the international standards required.

Interested stakeholders are therefore invited to:

- Give your views on the specific questions set out below, noting that there is no requirement to answer every question.
- Provide numerical examples where possible to illustrate your points.
- Provide details of alternative approaches that you feel might be beneficial (including minor suggestions).
- Where appropriate, estimate any Exchequer cost/yield of your preferred option.
- Provide details of relevant issues not covered in this Feedback Statement.

Where possible, when providing feedback stakeholders are asked to structure their responses in a similar manner to that followed for the purpose of this Feedback Statement, namely:

1. **General approach to legislation**
   Section 2 and Appendix 1 of this Feedback Statement outline the possible draft legislative approaches to the Directive.

2. **QDTT**
   Section 3 of the Feedback Statement outlines the possible approach to implementation of a QDTT.

3. **Administration**
   Section 4 of the Feedback Statement considers the administration aspects of the Directive and the possible approaches to same.

4. **Other issues**
   Views are sought on any issues relevant to the Directive not specifically covered in this Feedback Statement.

1.5 Consultation Period

The consultation period will run to close of business on **Monday 8 May** and any queries or requests for clarification can be directed to **businesstaxpolicy@finance.gov.ie** in advance of the consultation deadline. Any submissions received after the deadline may not be considered and early engagement is encouraged.

In view of the complexity of this project and the limited time available to meet the transposition deadline, legislative drafting work will be continuing during the consultation period. Respondents are therefore encouraged to respond early if possible.

1.6 How to Respond

The preferred means of response is by email to **businesstaxpolicy@finance.gov.ie**. Receipt of e-mail submissions will be acknowledged within 2 working days. If you do not receive an acknowledgement, please contact the Department to confirm receipt of your submission.

If it is not possible to reply by email, or if you wish to make a submission both electronically and in hard copy, submissions may also be sent by post to:

Pillar Two Consultation
Tax Division – Business Tax Policy
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2, D02 R583

Please include contact details if you are responding by post.

Please also indicate whether you are contributing to the consultation process as a professional adviser, business, representative body or member of the public.

1.7 Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Act 2014. Parties should also note that responses to the consultation may be published on the Department of Finance's website.

1.8 Next Steps

The Department of Finance will carefully consider the responses to this Feedback Statement and may invite key stakeholders to meet with them and with Revenue officials, by video conference or in person as appropriate.

It is planned that a second Feedback Statement will be published in mid-2023, to contain a further developed draft of legislation contained in Appendix 1, informed by stakeholder engagement, and draft approaches to the legislation required to transpose the remaining elements of the Directive.

2. Overview of proposed legislative approach

2.1 Transposition of EU Minimum Tax Directive

The Directive will provide the primary basis for the transposition of the minimum tax rules in Ireland. It is proposed that the legislation transposing the Directive will largely follow the structure of the Directive itself. Appendix 1 outlines the possible draft legislative approaches to the Directive.

Question 1
Comments are invited on the possible draft legislative approach as provided for in Appendix 1.

(When providing feedback on the possible draft legislative approaches (outlined in Appendix 1), stakeholders are asked to structure their responses in a similar manner to that in which the draft legislation has been structured and to reference the draft Chapter names/numbers and draft section titles, where appropriate. This will ensure an efficient review of all feedback received.)

2.2 OECD Model Rules, Commentary and Administrative Guidance

In addition to transposing the Directive, the possible draft legislation also contains specific provisions arising from the OECD Model Rules, Commentary and Administrative Guidance where it is considered appropriate (these are noted in relevant footnotes). Discussions are continuing at the OECD and further guidance is expected to issue in future. Recital 24 of the Directive notes the following:

> *"In implementing this Directive, Member States should use the OECD Model Rules and the explanations and examples in the Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) released by the OECD/G20 Inclusive Framework on BEPS, as well as the GloBE Implementation Framework, including its safe harbour rules, as a source of illustration or interpretation in order to ensure consistency in application across Member States to the extent that those sources are consistent with this Directive and Union law. Such safe harbour rules should be of relevance as regards MNE groups as well as large-scale domestic groups."*

Question 2
Comments are invited on what reference, if any, should be made to the OECD Model Rules, Commentary and Administrative Guidance (and any future Guidance) in the legislation.

3. QDTT

Following from the provisions of the Model Rules, Recital 13 of the Directive notes that Member States may elect to apply a QDTT system. The recital further provides that such a system should ensure that the minimum effective taxation of an in-scope entity is computed in the same way as the top-up tax is computed in accordance with the Directive. In this regard, Article 1(2) of the Directive notes that Member States may elect to apply a QDTT in accordance with which top-up tax is computed and paid on the excess profit of all of the low-taxed constituent entities located in their jurisdiction.

Article 3(28) of the Directive defines a QDTT as meaning a top-up tax that is implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that the top-up tax:

- provides for the determination of the excess profits of the constituent entities located in that jurisdiction in accordance with the rules laid down in the Directive or, as regards third-country jurisdictions, the OECD Model Rules;
- provides for the application of the minimum tax rate to those excess profits for the jurisdiction and the constituent entities in accordance with the rules laid down in the Directive or, as regards third-country jurisdictions, the OECD Model Rules; and
- is administered in a way that is consistent with the rules laid down in the Directive or, as regards third-country jurisdictions, the OECD Model Rules.

Article 11 of the Directive states that:

> *"Under a qualified domestic top-up tax, the domestic excess profits of the low-taxed constituent entities may be computed based on an acceptable financial accounting standard or an authorised financial accounting standard permitted by the authorised accounting body and adjusted to prevent any material competitive distortions, rather than the financial accounting standard used in the consolidated financial statements.*"

Article 11 then provides that a QDTT can be credited against top-up tax calculated in respect of the IIR as follows:

> *"Where a parent entity of an MNE group or of a large-scale domestic group is located in a Member State, and its directly or indirectly held constituent entities located either in that Member State or in another jurisdiction are subject to a qualified domestic top-up tax for the fiscal year in those jurisdictions, the amount of any top-up tax computed in accordance with Article 27 due by the parent entity pursuant to Articles 5 to 8 shall be reduced, up to zero, by the amount of qualified domestic top-up tax due either by itself or by those constituent entities."*

However, the article goes on to provide for a safe harbour from the application of the IIR by a Member State in respect of entities located in another Member State that have adopted a QDTT as follows:

> *"if the qualified domestic top-up tax has been computed for a fiscal year in accordance with the ultimate parent entity's acceptable financial accounting standard or International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002), no top-up tax shall be computed in accordance with Article 27 for that fiscal year in respect of the constituent entities of that MNE group or large-scale domestic group located in that Member State."*

The definition of a QDTT in Article 3 of the Directive follows closely the definition of Qualified Domestic Minimum Top-up Tax (QDMTT) in Article 10.1 of the OECD Model Rules. The OECD Administrative Guidance provides guiding principles for evaluating QDMTTs which are:

- The minimum tax must be consistent with the design of the GloBE Rules, and
- The minimum tax must provide for outcomes that are consistent with the GloBE Rules.

In general, the Administrative Guidance provides that a QDMTT should have no variations from the IIR rules with regard to the ETR calculation except for those that will always produce a higher tax outcome. However, it should be noted that at paragraph 118.30, the Administrative Guidance provides that a QDMTT shall exclude tax paid or incurred by a constituent entity-owner under a controlled foreign company (CFC) tax regime that is allocable to the constituent entity for the purposes of the IIR and UTPR rules (and similarly for tax paid or incurred by a head office that is allocable to a permanent establishment located in the jurisdiction for the purposes of the IIR and UTPR rules).

The above departure from the IIR rule order is aimed at attributing primary taxing rights to the jurisdiction applying the QDMTT in relation to its constituent entities. If the ordering rule were the opposite, so that CFC taxes or permanent establishment (PE) taxes were credited under a QDMTT, additional computations could be required in order to avoid the QDMTT resulting in taxation that is below the Minimum Rate, i.e. if a QDMTT were creditable against either a CFC or PE tax charge imposed by the parent or main entity jurisdiction, any crediting of that CFC or PE tax against a QDMTT would make the calculation of the correct amount of QDMTT problematic, due to the interaction of the two crediting mechanisms.

As Ireland's 12.5% trading rate of corporation tax is below the agreed 15% minimum effective rate, it is considered appropriate for Ireland to elect to introduce a QDTT as part of the Pillar Two implementation process. Taking into account the requirements as set out in the Directive and the guidance in the OECD Administrative Guidance, possible approaches to applying the QDTT in legislation would be to:

1. Prepare a detailed part of the legislation to set out all of the elements required to calculate and implement a QDTT, separate and stand-alone from the parts of the legislation required to implement the IIR and UTPR, or
2. Prepare shorter provision(s) which would reference the detailed provisions relating to the IIR with any necessary modifications.

Having regard to the substantial correspondence of the IIR and QDTT rules, it is proposed that the latter option may be the most efficient. For example, one possible approach would be that a QDTT for an in-scope entity would be the amount of top-up tax calculated for that entity in accordance with *section XXX [computation of the top-up tax]* for each constituent entity located in Ireland (see Appendix 1). However, in performing that calculation, *section XXX (2) and (4) [Specific allocation of covered taxes incurred by certain types of constituent entities]* would not apply, i.e. when calculating the QDTT, the taxpayer would exclude tax paid or incurred by a constituent entity-owner under a CFC tax regime and tax paid or incurred by a head office that is allocable to a permanent establishment.

In calculating the QDTT, any elections made in the GloBE Information Return (see section 4.3) for the purposes of calculating the IIR top-up tax would apply for the purposes of the QDTT. As the QDTT would be based on the amount of top-up tax calculated for that entity in accordance with *section XXX [computation of the top-up tax]*, the ownership interest in each entity would not be taken into account i.e. the QDTT would not be reduced due to minority interests.

The calculation of the QDTT could then mirror the calculation of top-up tax for a constituent entity under the IIR rules.

Question 3

Comments are invited on the possible approaches to legislative implementation of a QDTT in Ireland.

4. Administration

The purpose of this section of the Feedback Statement is to consider how the administration of the GloBE rules; in particular:

1. The IIR
2. The UTPR, and
3. The QDTT

will operate from an Irish perspective.

4.1 Proposed approach to administration

Recital 20 of the Directive provides that:

> *"…the rules on a top-up tax should not operate as a tax levied directly on the income of an entity but instead should apply to the excess profit in accordance with a standardised base and specific tax computation mechanics in order to identify low-taxed income within the groups concerned and impose a top-up tax that would bring a group's effective tax rate on that income up to the agreed minimum level of tax. The design of the IIR and UTPR as top-up taxes, however, does not prevent a jurisdiction from applying those rules under a corporate income tax system in its domestic law."*

There is no requirement for the top-up taxes to be part of a corporate tax regime. However, while not a requirement, it is open to jurisdictions to legislate for the top-up taxes under a corporate income tax system should they so wish.

The majority of the respondents to the Public Consultation requested that the administration of Pillar Two (e.g. pay and file obligations) be kept separate to the existing corporation tax regime.

Proposed Approach:
The administration of the GloBE rules and the associated top-up taxes will be kept separate to the existing corporation tax regime.

Questions
4.1.1 Comments are invited on the proposed approach that the administration of the GloBE rules and the associated top-up taxes will be kept separate to the existing corporation tax regime.

4.1.2 Do stakeholders foresee any issues / challenges in treating the top-up taxes as separate to corporation tax?

4.2 Registration and De-Registration

The Directive does not provide any requirement for taxpayers to register as being in scope of the rules or to de-register when they fall out of scope. However, such registrations will be needed from an administrative perspective.

Proposed Approach:

(i) All Constituents Entities located in Ireland must register within 12 months from the end of the first Fiscal Year that the group, of which it is a member, is within scope of the GloBE rules.

(ii) The registration would be a "once off" registration (i.e. it would not be required annually). However, if certain information needs to be updated, this can be done by editing the existing registration. The deadline to update a registration (or create a new one) will be 12 months after the end of the Fiscal Year in which the change (or requirement to register) occurred.

(iii) There will also be a requirement to de-register when a Constituent Entity falls out of scope of the GloBE rules. The deadline for this will be 12 months after the end of the first Fiscal Year in which the entity is no longer in scope.

(iv) The information to be provided at registration would be as follows:

- Name of the Constituent Entity.
- Tax reference number of the Constituent Entity.
- The name of the MNE group.
- The Ultimate Parent Entity of the group and its location as per the GloBE rules.
- If appropriate, the Designated Filing Entity and its location.
- A local contact person.
- The first Fiscal Year for which the group is in scope.
- The date on which the accounting period of the group normally ends.
- If appropriate, the name and tax reference number of the Designated Local Entity, including confirmation that it has been nominated by the other Constituent Entities to act as such.
- If a Designated Local Entity, the names and tax reference numbers of the Constituent Entities for which it has been appointed the Designated Local Entity and confirmation that it has been nominated by the Constituent Entities to act as such.
- Such other information as Revenue considers necessary.

Questions

4.2.1 Comments are invited on the overall approach to registration / de-registration proposed above.

4.3 Filing of GloBE Information Returns and Notifications

GloBE Information Return

In terms of the content of the GloBE Information Return (GIR), it is important to note that the OECD's Inclusive Framework is in the process of developing a standardised return. The purpose of this section is therefore to consider the filing processes relevant to the GIR, having regard to the group structure of the relevant Irish entity or entities, rather than the specific detail to be included in the return.

Article 44(2) of the Directive places an obligation on every Constituent Entity to file a top-up tax information return, known as the GloBE Information Return (GIR). However, the GIR may be filed by a Designated Local Entity:

> *"A Constituent Entity located in a Member State shall file a top-up tax information return with its tax administration in accordance with paragraph 5."*
> *"Such return may be filed by a designated local entity on behalf of the Constituent Entity."*

The definition of Designated Local Entity is a Constituent Entity of the group that is located in the Member State and has been appointed by other Constituent Entities within the same Member State to file the GIR or submit notifications[8].

The obligation to file a GIR may also be satisfied where it is filed by other group entities, provided certain conditions are satisfied, as per Article 44(3) of the Directive:

> *"By way of derogation from paragraph 2, a Constituent Entity shall not have the obligation to file a top-up tax information return with its tax administration if such a return has been filed, in accordance with the requirements set out in paragraph 5, by:*
>
> *(a) the ultimate parent entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the Constituent Entity is located; or*
>
> *(b) the designated filing entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the Constituent Entity is located."*

Notification

If Article 44(3) applies, the Constituent Entity will be required to notify Revenue of the identify and jurisdiction of the entity filing the GIR, as per Article 44(4).

> *"Where paragraph 3 applies, the Constituent Entity located in a Member State, or the designated local entity on its behalf, shall notify its tax administration of the identity of the entity that is filing the top-up tax information return as well as the jurisdiction in which it is located."*

[8] Article 44(1) of the Directive

Deadlines

In terms of deadlines, Article 44(7) requires that the GIR or notification be filed no later than 15 months from the end of the reporting fiscal year.

> *"The top-up tax information return referred to in paragraphs 5 and 6 and any relevant notifications shall be filed with the tax administration of the Member State in which the constituent entity is located no later than 15 months after the last day of the reporting fiscal year."*

Please note there are special provisions which allow the GIR to be filed 18 months after the end of the first fiscal year to which the rules apply ("the Transition Year").

Content

Article 44(5) outlines information which will be required in the GIR. It is broadly the same as that required in Article 8.1.4 of the GloBE Model Rules.

> *"The top-up tax information return shall be filed in a standard template and include the following information with respect to the MNE group or large-scale domestic group:*
>
> *(a) identification of the constituent entities, including their tax identification numbers, if any, the jurisdiction in which they are located and their status under the rules of this Directive;*
>
> *(b) information on the overall corporate structure of the MNE group or large-scale domestic group, including the controlling interests in the constituent entities held by other constituent entities;*
>
> *(c) the information that is necessary in order to compute:*
>
> *(i) the effective tax rate for each jurisdiction and the top-up tax of each constituent entity;*
> *(ii) the top-up tax of a member of a joint venture group;*
> *(iii) the allocation of top-up tax under the IIR and the UTPR top-up tax amount to each jurisdiction; and*
>
> *(d) a record of the elections made in accordance with this Directive."*[9]

A derogation from Article 44(5) is provided for within Article 44(6), which will allow a Constituent Entity that has a UPE located in a third country jurisdiction that applies rules which have been assessed as equivalent to the Directive, to file a top-up tax information return with slightly different information. This information relates mainly to partially owned parent entities, the allocation of the IIR or UTPR top-up tax and qualified domestic top-up taxes.

> *"By way of derogation from paragraph 5, where a constituent entity is located in a Member State with an ultimate parent entity located in a third-country jurisdiction that applies rules which have been assessed as equivalent to the rules of this Directive*

[9] Article 44(5) of the Directive

pursuant to Article 52, the constituent entity or the designated local entity shall file a top-up tax information return containing the following information:

(a) all information that is necessary for the application of Article 8, including:

(i) identification of all the constituent entities in which a partially-owned parent entity located in a Member State holds, directly or indirectly, an ownership interest at any time during the fiscal year and the structure of such ownership interests;
(ii) all information that is necessary to compute the effective tax rate of the jurisdictions in which a partially-owned parent entity located in a Member State holds ownership interests in constituent entities identified under point (i) and the top-up tax due; and
(iii) all information that is relevant for that purpose in accordance with Article 9, 10 or 11;

(b) all information that is necessary for the application of Article 13, including:

(i) identification of all the constituent entities located in the ultimate parent entity jurisdiction and the structure of such ownership interests;
(ii) all information that is necessary in order to compute the effective tax rate of the ultimate parent entity's jurisdiction and its top-up tax due; and
(iii) all information necessary for the allocation of such top-up tax based on the UTPR allocation formula set out in Article 14;

(c) all information that is necessary for the application of a qualified domestic top-up tax by any Member State that has made the election to apply such a top-up tax, in accordance with Article 11."[10]

Proposed Approach

(i) Every Constituent Entity located in Ireland will have an obligation to file a GIR in Ireland. However, this obligation can be discharged if the GIR is filed by:

(a) A Designated Local Entity,*
*(b) The Ultimate Parent Entity**, or*
*(c) The Designated Filing Entity**.*

(ii) Where the GIR is being filed by either the Ultimate Parent Entity or the Designated Filing Entity, the Constituent Entity, must file a notification with Revenue. Such a notification must contain:

(a) Details of the entity that is filing the GIR, and
(b) The jurisdiction in which such an entity is located.

(iii) Where the GIR is filed by the Designated Local Entity it needs to outline the Constituent Entities that it is filing on behalf of.

[10] Article 44(6) of the Directive

(iv) *A Designated Local Entity may file the notification(s) on behalf of another group Constituent Entity(ies).*

(v) *Both the GIR and associated notifications must be filed no later than 15 months after the end of the fiscal year (with an 18-month deadline for the Transition Year).*

** Where a Constituent Entity has been appointed as such.*
*** Where there is a qualifying competent authority agreement for exchange in place between Ireland and the jurisdiction where the GIR is filed.*

Question
4.3.1 Comments are invited on the proposed approach for GloBE Information Returns and associated notifications.

4.4 Filing of Domestic Returns / Self-Assessment

The Directive does not require any additional domestic returns to be filed in addition to the GIR (and associated notifications). However, while the GIR must be filed by every Constituent Entity (or filed on their behalf), the GIR is designed to be an "information return", as opposed to a tax return or self-assessment. There will therefore be a need for Constituent Entities to file domestic self-assessment returns in order to declare their top-up tax liabilities.

In the context of considering additional domestic filing requirements, it is worth noting the below comments contained in Recital 22 of the Directive:

> *"Information filed as part of the top-up tax information return should allow the tax administrations where the constituent entities are located to evaluate the correctness of a constituent entity's liability for the top-up tax or the qualified domestic top-up tax, as the case may be, by application of domestic procedures, including for filing of domestic tax returns."*

As noted above, the content of the GIR has yet to be finalised. In relation to the possible content of a domestic return it is worth noting the following in paragraph 118.42 of the OECD's Administrative Guidance:

> *"The Inclusive Framework will consider providing further guidance on the information collection and reporting requirements under the QDMTT in the context of the development of the GloBE Information Return."*

It is therefore envisaged that the GIR should contain sufficient information to evaluate the Constituent Entity's liability to top-up tax and, where relevant, a qualified domestic minimum top-up tax. As a result, it is expected that limited information should be required as part of any additional domestic filings. The information requirements for both the GIR and the domestic filings should be clarified in the coming months in discussions at OECD level.

Proposed approach

(i) There should be an obligation to file an additional domestic top-up tax return and self-assessment (referred to as a 'GloBE Top-Up Tax Return') for Irish Constituent Entities. (Such a filing would be separate to the GIR and separate to existing filings in relation to Corporation Tax e.g. the Form CT1).

(ii) The deadline for filing this return would be 15 months after the end of the Fiscal Year (in line with the deadline for filing the GIR). Similar transitional provisions (an extension of the deadline to 18 months for the Transition Year) which apply for the purposes of the filing of the GIR, would also apply.

(iii) The additional GloBE Top-Up Tax Return would be supplementary to the GIR and would require limited additional information, including:

(a) Name and Tax Reference Numbers of the entity and the Designated Local Entity if appropriate.
(b) The name of the group for GloBE purposes.
(c) The top-up tax liabilities, split by charge (IIR, UTPR and QDTT).
(d) Additional items related to the specific top-up taxes (such as the allocation of UTPR between Constituent Entities in Ireland).

(Please note this proposed approach is subject to the outcome of future work at OECD level as referenced above.)

Questions

4.4.1 Comments are invited on the overall approach to domestic returns / self-assessment in relation to the GloBE rules.

4.4.2 Comments are invited in relation to the proposed approach of having an additional return, separate return to the Form CT1, which will cover all three top-up taxes arising.

4.4.3 Do stakeholders have any views on the interaction of GIR and GloBE Top-Up Tax return?

4.4.4 Do stakeholders have any views on the information to be contained in the GloBE Top-Up Tax return?

4.5 Payments

The Directive does not provide any deadlines regarding payment of the top up tax liabilities arising under the IIR or UTPR. In relation to the QDTT, Article 11(3) provides:

> *"Where the amount of qualified domestic top-up tax for a fiscal year has not been paid within the four fiscal years following the fiscal year in which it was due, the amount of qualified domestic top-up tax that was not paid shall be added to the jurisdictional top-up tax computed in accordance with Article 27(3) and shall not be collected by the Member State which made the election pursuant to paragraph 1 of this Article."*

While this paragraph outlines the implications where the QDTT is not paid within four years, it does not provide for an annual payment deadline.

However, the Commentary[11] notes:

> *"The GloBE Rules should be implemented and administered in such a way that any Top-up Tax liabilities incurred are due and paid within a reasonable period and in line with the intended outcomes under the GloBE Rules and the Commentary." [emphasis added]*

Proposed approach

(i) The top-up tax liabilities should be due for payment at the same time as the filing date for the GIR / GIR notifications and the GloBE Top-Up Tax Return (i.e. 15 months after the end of the Fiscal Year). The usual transitional provisions (i.e. deadline of 18 months after the Transition Year) should also apply.

(ii) The top-up tax liabilities should not be included in the corporation tax preliminary tax payments obligations.

Questions

4.5.1 Comments are invited on the proposed approach to payments.

[11] Article 8.1.1, paragraph 2 of the Commentary on the GloBE Model Rules

4.6 Record Keeping

The Directive is silent in respect of record keeping requirements. However, as is generally the case, taxpayers will be required to prepare and maintain records that support the filing of a correct return.

Proposed Approach

The provisions within section 886 TCA 1997[12], regarding the obligation to keep records, should apply, subject to appropriate modifications, to an Irish Constituent Entity in respect of:

(i) The GIR – the aspects of the GIR relating to that Irish Constituent Entity.
(ii) The GloBE Top-Up Tax Return.
(iii) Any top up tax liability payable in Ireland (regardless of whether the liability arises from the activities of an Irish or non-Irish Constituent Entity).

(Please note this is subject to the outcome of future work at OECD level regarding the GIR as referenced above.)

Question

4.6.1 Comments are invited regarding the proposed record keeping requirements.

[12] TCA 1997 – The 1997 Taxes Consolidation Act, as amended

4.7 Other Administration Provisions

The Directive and the GloBE Model Rules are silent regarding compliance (e.g. tax authority assessments, enquiries) and certain other areas of administration. However, the Commentary[13] notes:

> *"The rules set out in Article 8.1 do not seek to harmonise tax filing and payment obligations for the GloBE Rules themselves. They aim to provide core information to jurisdictions implementing the GloBE Rules information reporting requirements. The operation of tax filing and payment obligation rules, including, for example, late payment interest and time limits for auditing and correcting return, is left to the determination of each implementing jurisdiction based on the design of that jurisdiction's existing tax filing and payment procedures."*

It will be necessary to introduce new or extend existing administration provisions for the purposes of applying the GloBE rules.

Proposed Approach

It is recommended that relevant provisions contained within TCA 1997 are extended, with necessary modifications, to apply to the Pillar Two GloBE related returns / assessments / liabilities. These include provisions within:

(i) Part 37 – Administration
(ii) Part 40A – Appeals to Appeals Commissioners
(iii) Chapter 5 of Part 41A – Revenue assessments and enquiries and related time limits
(iv) Part 42 – Collection and Recovery

Question

4.7.1 Comments are requested regarding the proposed approach to other administration provisions.

4.7.2 Comments are requested regarding the general approach to administration of the GloBE rules.

[13] Article 8.1.1, paragraph 1 of the Commentary on the GloBE Model Rules

4.8 Group Filings / Payments

Based on the proposed approaches outlined above, each Irish Constituent Entity that is a member of a group within scope, will be obliged to:

1. Register / correctly maintain their registration status,
2. File a GIR / GIR Notification,
3. File a GloBE Top-Up Tax Return, and
4. Pay any top-up tax liabilities arising.

As noted in Section 4.3 above, the obligation to file a GIR or GIR Notification may be satisfied where such a filing is made by another entity, provided certain conditions are satisfied.

As part of the Public Consultation, feedback was received requesting that Constituent Entities be allowed to file returns and make payments on a group basis. In this context there are a number of questions to be considered, which are outlined below.

In considering any such approach it is also worth noting the below extract from the OECD's Administrative Guidance on the GloBE Model Rules:

> *"118.11 This guidance does not require the QDMTT tax liability to be allocated to or among Constituent Entities in any particular manner, so long as all the tax liability is allocated to one or more Constituent Entities that are subject to tax in the jurisdiction. Tax arising under the QDMTT reduces (or eliminates) the GloBE Top-up Tax for the jurisdiction as a whole. If there is GloBE Top up Tax remaining after subtracting the QDMTT, the remainder is allocated among Constituent Entities under the GloBE Rules, including Articles 5.2.4 and 5.2.5. Thus, it is not necessary to allocate both the IIR Top-up Tax and the QDMTT tax Entity-by-Entity and then subtract the QDMTT tax allocated to an Entity from the IIR Top-up Tax allocated to the Entity.*
>
> *118.12 In designing the charging provisions of a QDMTT, jurisdictions should ensure that the legal liability for the tax is enforceable against at least one Constituent Entity in that jurisdiction. For example, a jurisdiction could impose joint and several liability for QDMTT tax on all the domestic Constituent Entities and collect it from any of the Constituent Entities without affecting the outcome under the GloBE Rules. In other cases, however, the laws of a jurisdiction may not permit imposition of tax on one of the Entities in respect of the average low-tax outcome of other Entities. In that case, the jurisdiction would need to allocate the QDMTT tax liability on a basis that complies with its domestic legal framework. The Inclusive Framework will consider providing further guidance in relation to the allocation of tax liability under a QDMTT among Constituent Entities where this is necessary for the proper functioning of the GloBE Rules."*

Questions

Registration

4.8.1 Should it be possible for one Constituent Entity within a group to register on behalf of other Constituent Entities within the group? If so, how should this operate in practice? How would the appropriate permissions (e.g. for an entity to act as a Designated Local Entity on behalf of another Constituent Entity) be granted?

GloBE Top-Up Tax Return

4.8.2 Should it be possible for one Constituent Entity within a group (a "group filer") to file a GloBE Top-Up Tax Return on behalf of other Constituent Entities within the group? If so, how should this operate? Should there be:

(i) One "joint return" filed by the group filer which covers numerous entities?
(ii) Separate returns for each Constituent Entity within the group but filed by the group filer?
(iii) Other "group filer" approach used? If so, please provide details of same.

4.8.3 If some form of "group filer" approach were available, how should it operate from a compliance perspective? If returns are filed late or filed incorrectly how should any surcharges / penalties be applied (e.g. which entities should be liable)? Which entity(ies) should be liable for any top-tax liabilities arising? Please provide an answer based on the possible options to group filing outlined at question 4.8.2 above.

Payments

4.8.4 Should it be possible for one Constituent Entity within a group (a "group payer") to pay top-up tax liabilities on behalf of other Constituent Entities within the group? If so, how should this operate?

4.8.5 If a group payment option were available, how should it operate from a compliance perspective? If payments are made late or incorrectly how should any interest be applied (e.g. which entities should be liable)?

Appendix 1 - Proposed legislative approach

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Chapter 1

Interpretation and general (Part XXX)

Interpretation (Part XXX)[1]

This section provides definitions and explanations for important terms and phrases used throughout the draft legislation. The definitions of 'intermediate parent entity' and 'partially-owned parent entity' reflect OECD Administrative Guidance with regard to insurance investment entities. In addition, some definitions have been included to aid interpretation and understanding.

XXX. (1) In this Part—

'acceptable financial accounting standard' means international financial reporting standards and generally accepted accounting principles;

'accounting functional currency' means the functional currency used to determine the constituent entity's financial accounting net income or loss;[2]

'adjusted covered taxes' has the meaning assigned to it in section XXX [Adjusted covered taxes];

'authorised financial accounting standard' means, in respect of an entity, generally acceptable accounting principles permitted by an authorised accounting body in the territory where that entity is located, where that authorised accounting body has legal authority in that territory to prescribe, establish or accept accounting standards for financial reporting purposes;

'consolidated financial statements' means—

(a) the financial statements prepared by an entity in accordance with an acceptable financial accounting standard, in which the assets, liabilities,

[1] Article 3 of the Directive
[2] Article 16(1)(e) of the Directive

income, expenses and cash flows of that entity, and of any entities in which it has a controlling interest are presented as those of a single economic unit,

(b) the financial statements of a group to which paragraph (b) of the definition of 'group' applies prepared by an entity in accordance with an acceptable financial accounting standard,

(c) where an ultimate parent entity has financial statements described in paragraphs (a) and (b), that are not prepared in accordance with an acceptable financial accounting standard, the financial statements that have been subsequently adjusted to prevent any material competitive distortions, or

(d) where an ultimate parent entity does not prepare financial statements under paragraph (a), (b) or (c), the financial statements that would have been prepared if the ultimate parent entity was required to prepare such financial statement in accordance with,

(i) an acceptable financial accounting standard, or

(ii) another financial accounting standard,

provided such financial statements have been adjusted to prevent any material competitive distortions;

'consolidated revenue threshold' –

(a) in respect of a fiscal year of 12 months, means €750,000,000,

(b) in respect of a fiscal year which is less than 12 months, the amount referred to in paragraph (a) shall be decreased *pro rata*, and

(c) in respect of a fiscal year which is greater than 12 months, the amount referred to in paragraph (a) shall be increased *pro rata*;

'constituent entity' means—

(a) an entity that is a member of an MNE group or of a large-scale domestic group, or

(b) any permanent establishment of a main entity that is a member of an MNE group referred to in paragraph (a);

‘constituent entity-owner’ means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or same large-scale domestic group;

‘controlled foreign company tax regime’ means a set of tax rules, other than a qualified IIR, under which an entity with a direct or indirect ownership interest in another entity which is not tax resident in the same territory as the first mentioned entity, or the main entity of a permanent establishment, is subject to taxation on its share of part or all of the income earned by that other entity or permanent establishment, irrespective of whether that income is distributed to the first mentioned entity;

‘controlling interest’ means an ownership interest in an entity whereby the interest holder—

(a) is required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis, in accordance with an acceptable financial accounting standard, or

(b) would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis if the interest holder had prepared consolidated financial statements;

‘covered taxes’ has the meaning assigned to it in section XXX [Covered taxes];

‘deferred tax expense’ means the amount of the net movement in the deferred tax assets and deferred tax liabilities of a constituent entity between the beginning and end of the fiscal year;

‘designated filing entity’ means the constituent entity, other than the ultimate parent entity, that has been appointed by the MNE group or large-scale domestic group to fulfil the filing obligations set out in section XXX [Filing Obligations] on behalf of the MNE group or the large-scale domestic group;

'Directive' means Council Directive 2022/2523 on ensuring a global minimum level of taxation for multinational groups in the Union;

'disqualified refundable imputation tax' means any tax, other than a qualified imputation tax, accrued, or paid by a constituent entity that is—

(a) refundable to the beneficial owner of a dividend distributed by such constituent entity in respect of that dividend or creditable by the beneficial owner against a tax liability other than a tax liability in respect of such dividend, or

(b) refundable to the distributing company upon distribution of a dividend to a shareholder;

'eligible distribution tax system' means a corporate income tax system that—

(a) imposes income tax on profits only when those profits are distributed or deemed to be distributed to shareholders, or when the company incurs certain non-business expenses,

(b) imposes tax at a rate equal to, or in excess of, the minimum tax rate, and

(c) was in force on or before 1 July 2021;

'entity' means—

(a) any legal arrangement of whatever nature or form that prepares separate financial accounts, or

(b) any legal person,

but does not include central, state or local government, or their administration or agencies that carry out government functions;[3]

'financial accounting net income or loss' means the net income or loss determined for a constituent entity in preparing consolidated financial statements of the ultimate parent entity for a fiscal year before any consolidation adjustments eliminating intra-group transactions;[4]

[3] Administrative Guidance section 1.2 provides for the exclusion of local or national government from the definition of entity.

[4] Article 3.1.2 of the Model Rules

'fiscal year' means—

(a) the accounting period in respect of which the ultimate parent entity of an MNE group or of a large-scale domestic group prepares its consolidated financial statements, or

(b) if the ultimate parent entity does not prepare consolidated financial statements, the calendar year;

'fiscally transparent entity' means an entity whose income, expenditure, profit or loss is treated by the laws of a territory as if it were derived or incurred by the direct owner of that entity in proportion to its interest in that entity;

'flow-through entity' means an entity, to the extent it is fiscally transparent with respect to its income, expenditure, profit or loss in the territory where it was created, unless it is tax resident and subject to a covered tax on its income or profit in another territory;

'generally accepted accounting principles' means standards that accounts of entities are to comply with which are laid down by such body or bodies having authority to lay down standards of that kind in Australia, Brazil, Canada, the Member States of the European Union, the members of the European Economic Area, Hong-Kong (China), Japan, Mexico, New-Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom and the United States of America;

'governmental entity' means an entity that meets all the following criteria—

(a) it is part of, or wholly-owned by a government (including any political subdivision or local authority thereof),

(b) it does not carry on a trade or business and has the principal purpose of—

  (i) fulfilling a government function, or

  (ii) managing or investing that government's or territory's assets through the making and holding of investments, asset management, and related investment activities for that government's or territory's assets,

(c) it is accountable to a government on its overall performance, and provides annual information reporting to that government, and

(d) its assets vest in a government upon dissolution and, to the extent it distributes net earnings, such net earnings are distributed solely to that government with no portion of its net earnings inuring to the benefit of any person other than that government;

'group' means—

(a) all entities which are related through ownership or control for the purpose of the preparation of consolidated financial statements by the ultimate parent entity, including any entity that is excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on materiality grounds, or on the grounds that it is held for sale, or

(b) an entity that has one or more permanent establishments, provided that it is not part of another group as defined in paragraph (a);[5]

'hybrid entity' means an entity not treated as fiscally transparent in the territory where it is located but as fiscally transparent in the territory in which its owner is located;[6]

'insurance investment entity' means an entity that would meet the definition of an investment fund or a real estate investment vehicle, if it had not been established in relation to liabilities under an insurance or annuity contract and if it were not wholly owned by an entity that is subject to regulation in the territory where it is located as an insurance company;

'intermediate parent entity' means a constituent entity that—

(a) owns, directly or indirectly, an ownership interest in another constituent entity in the same MNE group or large-scale domestic group, and

[5] Articles 1.2.2 and 1.2.3 of the Model Rules.

[6] Article 24(4) of the Directive

(b) is not an ultimate parent entity, a partially-owned parent entity, a permanent establishment, an insurance investment entity or an investment entity;[7]

'International Financial Reporting Standards' means International Financial Reporting Standards (IFRS and IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council);[8]

'international organisation' means an intergovernmental organisation, including a supranational organisation, or wholly-owned agency or instrumentality thereof, that—

(a) is comprised primarily of governments,

(b) has in effect a headquarters or substantially similar agreement with the territory in which it is established, such as arrangements that entitle the organisation's offices or establishments in that territory to privileges and immunities, and

(c) its law or its governing documents prevent its income inuring to the benefit of any person other than that government;

'investment entity' means—

(a) an investment fund or a real estate investment vehicle,

(b) an entity that is at least 95 per cent owned, directly by an entity referred to in paragraph (a) or through a chain of such entities, and that operates exclusively or almost exclusively to hold assets or invest funds for their benefit, or

(c) an entity where a minimum of 85 per cent of its value is owned by an entity referred to in paragraph (a) provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income or loss for the purposes of this Part;

'investment fund' means an entity that—

[7] Administrative Guidance section 3.2 provides for the exclusion of 'an insurance investment entity' from the definition of 'intermediate parent entity'.

[8] Article 3(25) of the Directive – to be read with definition of "acceptable financial accounting standard" and "generally accepted accounting principles".

(a) is designed to pool financial or non-financial assets from a number of investors, some of which are not connected,

(b) invests in accordance with a defined investment policy,

(c) allows investors to reduce transaction, research and analytical costs or to spread risk collectively,

(d) has as its main purpose to generate investment income or gains, or protection against a particular or general event or outcome,

(e) its investors have a right to return from the assets of the fund or income earned on those assets, based on the contribution they made,

(f) is, or its management, is subject to the regulatory regime, including appropriate anti-money laundering and investor protection regulation for investment funds in the territory in which it is established or managed, and

(g) is managed by investment fund management professionals on behalf of the investors;

'large-scale domestic group' means a group of which all constituent entities are located in the same Member State;

'local tangible assets' means immovable property located in the same territory as the constituent entity;

'low-tax territory' means, in respect of an MNE group or a large-scale domestic group in any fiscal year, a Member State or a third country territory in which the MNE group or the large-scale domestic group has qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate;

'low-taxed constituent entity' means—

(a) a constituent entity of an MNE group or large-scale domestic group that is located in a low-tax territory, or

(b) a stateless constituent entity that, in respect of a fiscal year, has qualifying income and an effective tax rate which is lower than the minimum tax rate;

‘main entity’ means an entity that includes the financial accounting net income or loss of a permanent establishment in its financial statements;

‘material competitive distortion’ means, in respect of a specific principle or procedure under a set of generally acceptable accounting principles, an application that results in an aggregate variation of income or expense of more than €75,000,000 in a fiscal year as compared to the amount that would have been determined by applying the corresponding principle or procedure under International Financial Reporting Standards;

‘minimum tax rate’ means 15 per cent;

‘MNE group’ means a group that includes at least one entity or permanent establishment which is not located in the territory of the ultimate parent entity and ‘member of a MNE group’ shall be construed accordingly;

‘net book value of tangible assets’ means the average of the beginning and end values of tangible assets after taking into account accumulated depreciation, depletion and impairment, as recorded in the financial statements;

‘net qualifying income’ means the positive amount, if any, of qualifying income less qualifying loss in respect of a constituent entity or territory as the case may be;

‘net qualifying loss’ means the negative amount, if any, of qualifying income less qualifying loss in respect of a constituent entity or territory as the case may be;

‘non-profit organisation’ means an entity that meets all of the following criteria—

(a) it is established and operated in its territory of residence—
  - (i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational, or other similar purposes, or
  - (ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civil league,

or an organisation operated exclusively for the promotion of social welfare,

(b) substantially all the income from the activities mentioned in paragraph (a) is exempt from income tax in its territory of residence,

(c) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets,

(d) the income or assets of the entity may not be distributed to, or applied for the benefit of, a private person or non-charitable entity other than-

  (i) pursuant to the conduct of the entity's charitable activities,

  (ii) as payment of reasonable compensation for services rendered or for the use of property or capital, or

  (iii) as payment representing the fair market value of property which the entity has purchased,

(e) upon termination, liquidation or dissolution of the entity, all of its assets are to be distributed or revert to a non-profit organisation or to the government (including any government entity) of the entity's territory of residence or any political subdivision thereof, and

(f) it does not carry on a trade or business that is not directly related to the purposes for which it was established;

'non-qualified refundable tax credit' means a tax credit that is not a qualified refundable tax credit but that is refundable in whole or in part;

'OECD Model Rules' means the Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) approved on 14 December 2021 by the OECD / G20 Inclusive Framework on BEPS[9];

'OECD Model Tax Convention on Income and Capital'[10] means the Model Tax Convention on Income and on Capital as published by the OECD on 21 November 2017;

[9] https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm

[10] https://www.oecd.org/ctp/model-tax-convention-on-income-and-on-capital-full-version-9a5b369e-en.htm

‘ownership interest’ means any interest that carries rights to the profits, capital, or reserves of an entity, or a permanent establishment;

‘parent entity’ means an ultimate parent entity other than an excluded entity, an intermediate parent entity, or a partially-owned parent entity;

‘partially-owned parent entity’ means a constituent entity—

(a) that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group,

(b) with more than 20 per cent of the ownership interest in its profits held, directly or indirectly, by one or several persons that are not constituent entities of that MNE group or large-scale domestic group, and

(c) that is not an ultimate parent entity, a permanent establishment, an insurance investment entity or an investment entity;[11]

‘pension fund’ means—

(a) an entity that is established and operated in a territory exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals where—

  (i) that entity is regulated by that territory or one of its political subdivisions or local authorities, or

  (ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trustor to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the MNE group or large-scale group,

(b) a pension services entity;

‘pension services entity’ means an entity that is established and operated exclusively or almost exclusively to invest funds for the benefit of an entity referred to in

[11] Administrative Guidance section 3.2 provides for the exclusion of ‘an insurance investment entity’ from the definition of ‘partially-owned parent entity’.

paragraph (a) of the definition of pension fund, or to carry out activities that are ancillary to the regulated activities referred to paragraph (a) of the definition of pension fund, where the pension services entity forms part of the same group as the entities carrying out those regulated activities;

'permanent establishment' means—

(a) a place of business or a deemed place of business located in a territory where it is treated as a permanent establishment in accordance with a tax treaty provided that such territory taxes the income attributable to it, that income being attributable to it in accordance with a provision drafted in a like manner to Article 7 of the OECD Model Tax Convention on Income and Capital,

(b) if there are no tax treaty, a place of business or a deemed place of business located in a territory which taxes the income attributable to such place of business on a net basis in a manner similar to which it taxes its own tax residents,

(c) if a territory has no corporate income tax system, a place of business or a deemed place of business located therein that would be treated as a permanent establishment in accordance with the OECD Model Tax Convention on Income and Capital, provided that such territory would have had the right to tax the income that would have been attributable to the place of business in accordance with Article 7 of that Convention, or

(d) a place of business or a deemed place of business, that is not described in paragraph (a), (b) or (c), through which operations are concluded outside the territory where the entity is located if such territory exempts the income attributable to such operations;

'qualified domestic top-up tax' means a top-up tax that is implemented in the domestic law of a territory and that—

(a) provides for the determination of the excess profits of the constituent entities located in that territory in accordance with the rules laid down in the Directive or, as regards third country territories, the OECD Model Rules, and the application of the minimum tax rate to those excess profits for the territory and

the constituent entities in accordance with the rules laid down in the Directive or, as regards third country territories, the OECD Model Rules, and

(b) is administered in a way that is consistent with the rules laid down in the Directive or, as regards third country territories, the OECD Model Rules,

provided that such territory does not provide any benefits that are related to those rules;

'qualified IIR' means a set of rules that is—

(a) implemented in the domestic law of a territory,

(b) equivalent to the rules laid down in the Directive or, as regarding third country territories, the OECD Model Rules in accordance with which the parent entity of an MNE group or of a large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of that group, and

(c) implemented and administered in a way that is consistent with the rules laid down in the Directive or, as regards third country territories, the OECD Model Rules,

provided that such territory does not provide any benefits that are related to those rules;

'qualifying income or loss' means the financial accounting net income or loss of a constituent entity adjusted in accordance with the rules defined in Chapter 3, Chapter 4 and Chapter 5 of this Part;

'qualifying income or loss for a territory' means the sum of the qualifying income or loss of each constituent entity of a group located in the same territory;

'qualified imputation tax' means a covered tax accrued or paid by a constituent entity, including a permanent establishment, that is refundable or creditable to the beneficial owner of the dividend distributed by the constituent entity or, in the case of a covered tax accrued or paid by a permanent establishment, a dividend

distributed by the main entity, to the extent that the refund is payable, or the credit is provided—

(a) by a territory other than the territory which imposed the covered taxes,

(b) to a beneficial owner of the dividend that is subject to tax at a nominal rate that equals or exceeds the minimum tax rate on the dividend received under the domestic law of the territory which imposed the covered taxes on the constituent entity,

(c) to an individual who is the beneficial owner of the dividend and tax resident in the territory which imposed the covered taxes on the constituent entity and who is subject to tax at a nominal rate that equals or exceeds the standard tax rate applicable to ordinary income, or

(d) to a governmental entity, an international organisation, a resident non-profit organisation, a resident pension fund, a resident investment entity that is not part of an MNE group or a large-scale domestic group or a resident life insurance company to the extent that the dividend is received in connection with resident pension fund activities, and is subject to tax in a similar manner as a dividend received by a pension fund, where—

    (i) a non-profit organisation or pension fund is resident in a territory if it is created and managed in that territory,

    (ii) an investment entity is resident in a territory if it is created and regulated in that territory, and

    (iii) a life insurance company is resident in the territory in which it is located;

'qualified refundable tax credit' means—

(a) a refundable tax credit that is designed such that it is to be paid as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the territory granting the credit, or

(b) if the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive partial refundable tax credit,

and shall not include any amount of tax creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax;

'qualified UTPR' means a set of rules implemented in the domestic law of a territory that is—

(a) equivalent to the rules laid down in the Directive or, as regards third country territories, the OECD Model Rules, in accordance with which a territory collects its allocable share of top-up tax of an MNE group that was not charged under the IIR in respect of the low-taxed constituent entities of that MNE group, and

(b) administered in a way that is consistent with the rules laid down in the Directive or, as regards third country territories, the OECD Model Rules,

provided that such territory does not provide any benefits that are related to those rules;

'real estate investment vehicle' means a widely held entity that—

(a) holds predominantly immovable property, and

(b) is subject to a tax system which is designed to achieve a single level of taxation on the income gains or profits of the entity, either at the level of the entity or at the level of its interest holders, with the deferral of taxation on such income, gains or profits either at the level of the entity or at the level of its interest holders being no more than one year from the end of the accounting period in which the income, profits or gains arise;

'stateless constituent entity' means a constituent entity to which section XXX(3)(b), (4)(d), or (6)(d)(i)[Location of a constituent entity] applies;

'tax functional currency' means the functional currency used to determine the constituent entity's taxable income or loss for a covered tax in the territory in which it is located;[12]

[12] Article 16(1)(e) of the Directive

‘tax treaty’ means an agreement for the avoidance of double taxation with respect to taxes on income and on capital;

‘third country territory’ means a territory that is not a Member State;

‘top-up tax’ means the top-up tax computed for a territory or a constituent entity pursuant to section XXX [Computation of the top-up tax];

‘third foreign currency’ means a currency that is not the constituent entity’s tax functional currency or accounting functional currency;[13]

‘ultimate parent entity’ means—

(a) an entity that owns, directly or indirectly, a controlling interest in any other entity and that is not owned, directly or indirectly, by another entity with a controlling interest in it, or

(b) a main entity of a group as defined in paragraph (b) of the definition of ‘group’ in this section;

(2) For the purposes of this Part, a person or entity is connected with another person or entity if they are “closely related” within the meaning of Article 5(8) of the OECD Model Tax Convention on Income and Capital.

(3) For the purpose of the definition of ‘controlling interest’ in subsection (1), a main entity is deemed to have the controlling interest of its permanent establishments.

(4) (a) A flow-through entity is deemed to be—

(i) a tax transparent entity with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the territory in which its owner it located, and

[13] Article 16(1)(e) of the Directive

(ii) a reverse hybrid entity with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the territory in which its owner it located.

(b) An ownership interest in an entity or a permanent establishment that is a constituent entity shall be treated as held through a tax transparent structure if that ownership interest is held indirectly through a chain of tax transparent entities.

(c) A constituent entity that—

(i) is not tax resident in any territory, and

(ii) is not subject to a covered tax or a qualified domestic top-up tax based on its place of management place of creation or similar criteria,

shall be treated as a flow-through entity and a tax transparent entity in respect of its income, expenditure, profit or loss, to the extent that—

(I) its owners are located in a territory that treats the entity as fiscally transparent,

(II) it does not have a place of business in the territory where it was created, and

(III) its income, expenditure, profit or loss is not attributable to a permanent establishment.

(5) A word or expression which is used in this Part and is also used in the Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Directive.

Scope of this Part[14]

This section provides provisions relating to the entities that are within scope and are excluded from scope of the legislation.

XXX. (1) Subject to subsection (2), subsection (3) and section XXX [Application of consolidated revenue threshold to group mergers and demergers], this Part shall

[14] Article 2 of the Directive

apply for a fiscal year to constituent entities, located in the State, that are members of an MNE group or of a large-scale domestic group, where the revenue of the group recorded in the group's consolidated financial statements is no less than consolidated revenue threshold, for at least two of the four fiscal years immediately preceding that fiscal year.

(2) Subject to subsection (3), this Part shall not apply to the following entities (hereinafter referred to as "excluded entities")—

(a) (i) a governmental entity,

(ii) an international organisation,

(ii) a non-profit organisation,

(iv) a pension fund,

(v) an investment fund that is an ultimate parent entity, and

(vi) a real estate investment vehicle that is an ultimate parent entity,

(b) an entity, where at least 95% of the value of that entity, is owned by one or more entities referred to in paragraph (a), directly or through one or more excluded entities, other than a pension services entity, and that,

(i) operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the entities referred to in paragraph (a), or

(ii) exclusively carries out activities ancillary to those performed by the entities referred to in paragraph (a),

and

(c) an entity, where at least 85% of the value of that entity, is owned, by one or more entities referred to in paragraph (a), directly or through one or more excluded entities, other than a pension services entity, where substantially all of the income of the entity is derived from dividends or equity gains or losses that are excluded from the computation of qualifying income or loss to which section XXX(2)(b) or (2)(c) [Adjustments to determine the qualifying income or loss] applies.

(3) A member of a group that would otherwise be an excluded entity, as a result of paragraph (b) or (c) of subsection (2), shall not be an excluded entity, where a filing

constituent entity makes an election, in accordance with section XXX[Elections], that the entity is not to be an excluded entity.

Location of a constituent entity[15]

This section details the rules relating to the location of an entity or permanent establishment, including where it is not possible to determine the location of that entity or permanent establishment, and where an entity may be considered located in more than one territory.

XXX. (1) Subject to subsections (2) to (8), an entity other than a flow-through entity shall, for the purposes of this Part, be located in the territory in which it is considered to be resident for tax purposes, based on its place of management, its place of creation or similar criteria.

(2) Where it is not possible to determine the location of an entity other than a flow-through entity based on where it is considered to be a tax resident, or where the entity is considered to be tax resident in more than one territory, the entity shall be located where it was created.

(3) (a) Where a constituent entity is a flow-through entity, and that constituent entity is—

(i) an ultimate parent entity of an MNE group or a large-scale domestic group, or

(ii) required to apply an IIR in line with section XXX [ultimate parent entity in the State], section XXX [Intermediate parent entity in the State] or section XXX [Partially-owned parent entity in the State],

then that constituent entity shall be located in the territory where it was created.

(b) Where a constituent entity is a flow-through entity and paragraph (a) does not apply, the constituent entity shall be considered to be stateless.

[15] Article 4 of the Directive

(4) Where a constituent entity is a permanent establishment as defined in —

(a) paragraph (a) of the definition of permanent establishment in section XXX [Interpretation (Part XXX)], it shall be deemed to be located in the territory where it is treated as a permanent establishment and liable to tax under a tax treaty,

(b) paragraph (b) of the definition of permanent establishment in section XXX [Interpretation (Part XXX)], it shall be deemed to be located in the territory where it is subject to income taxation based on its business presence,

(c) paragraph (c) of the definition of permanent establishment in section XXX [Interpretation (Part XXX)], it shall be deemed to be located in the territory where it is situated, or

(d) paragraph (d) of the definition of permanent establishment in section XXX [Interpretation (Part XXX)], it shall be considered to be stateless.

(5) (a) Subject to paragraphs (b) and (c), where a constituent entity is regarded as located in more than one territory, and those territories have a tax treaty, the constituent entity shall be regarded as located in the territory where it is regarded to be tax resident under those arrangements.

(b) Where the tax treaty referred to in paragraph (a) requires the competent authorities to reach a mutual agreement on the deemed residence for tax purposes of the constituent entity, and no agreement is reached, paragraph (6) shall apply.

(c) Where no relief from double taxation is available under a tax treaty as a result of the constituent entity being a tax resident of more than one territory, paragraph (6) shall apply.

(6) (a) Subject to paragraph (b), where a constituent entity is regarded as located in more than one territory, and those territories do not have a tax treaty or subsection 5(b) or 5(c) apply, the constituent entity shall be regarded as located in the territory where the greater part of its covered taxes are charged to corporate income taxes for the fiscal year.

(b) For the purpose of computing the covered taxes in paragraph (a), no account shall be taken of any tax paid in accordance with a controlled foreign company tax regime.

(c) Subject to paragraph (d), where the amount of covered taxes referred to in paragraph (a) is the same in both territories, or is zero, then the constituent entity shall be regarded as located in the territory in which the greater amount of the substance-based income exclusion under section XXX [substance-based income exclusion] is computed on an entity basis.

(d) Where the amount of the substance-based income exclusion referred to in paragraph (c) is the same in both territories, or is zero, then—

(i) the constituent entity shall be regarded to be stateless, or

(ii) where the constituent entity is an ultimate parent entity, the constituent entity will be regarded as located in the territory in which it is created.

(7) Where, on the application of paragraphs (5) and (6), a parent entity is considered to be located in a jurisdiction where it is not subject to a qualified IIR, it shall be deemed to be subject to the qualified IIR of the other jurisdiction, unless an applicable tax treaty prohibits the application of such rule.

(8) For the purpose of this Part, the location of a constituent entity, determined at the beginning of a fiscal year, shall remain the same throughout the fiscal year.

Chapter 2

IIR and UTPR

Ultimate parent entity in the State[16]

This section contains the charging provision for the IIR top-up tax levied on an ultimate parent entity.

XXX. (1) An ultimate parent entity that—

(a) is a constituent entity located in the State, and

(b) owns directly or indirectly an ownership interest in a low-taxed constituent entity at any time during a fiscal year,

shall be subject to a top-up tax (referred to as the "IIR top-up tax") in respect of that low-taxed constituent entity.

(2) Where an ultimate parent entity located in the State is a low-taxed constituent entity in a fiscal year, that ultimate parent entity shall be subject to the IIR top-up tax for the fiscal year.

Intermediate parent entity in the State[17]

This section contains the charging provision for the IIR top-up tax levied on an intermediate parent entity owned by an ultimate parent entity located in a third country territory or a Member State that has deferred the implementation of the IIR under Article 50 of the Directive.

XXX. (1) Subject to subsection (3), an intermediate parent entity located in the State—

(a) whose ownership interests are owned directly or indirectly by an ultimate parent entity that is located in a third-country territory or a Member State that has not applied a qualifying IIR to the ultimate parent entity, and

[16] Article 5 of the Directive
[17] Article 6 of the Directive

(b) that owns directly or indirectly an ownership interest in a low-taxed constituent entity at any time during a fiscal year,

shall be subject to a top-up tax (referred to as the “IIR top-up tax”) in respect of that low-taxed constituent entity for the fiscal year.

(2) Subject to subsection (3), where an intermediate parent referred to in subsection (1) is a low-taxed constituent entity in a fiscal year, that intermediate parent entity shall be subject to the IIR top-up tax for the fiscal year in respect of itself.

(3) Subsections (1) and (2) shall not apply where—

(a) the ultimate parent entity of the intermediate parent entity is subject to a qualified IIR for that fiscal year, or

(b) another intermediate parent entity is located in a territory where it is subject to a qualified IIR for that fiscal year and owns, directly or indirectly, a controlling interest in the intermediate parent entity referred to in subsection (1) and (2).

Intermediate parent entity located in the State and held by an excluded ultimate parent entity[18]

This section contains the charging provision for the IIR top-up tax levied on an intermediate parent entity owned by an ultimate parent entity that is an excluded entity.

XXX. (1) Subject to subsection (3), an intermediate parent entity located in the State—

(a) whose ownership interests are owned directly or indirectly by an ultimate parent entity that is an excluded entity, and

(b) that owns directly or indirectly an ownership interest in a low-taxed constituent entity at any time during a fiscal year,

shall be subject to a top-up tax (referred to as the “IIR top-up tax”) in respect of that low-taxed constituent entity for the fiscal year.

[18] Article 7 of the Directive

(2) Subject to subsection (3), where an intermediate parent referred to in subsection (1) is a low-taxed constituent entity in a fiscal year, that intermediate parent entity shall be subject to the IIR top-up tax for the fiscal year in respect of itself.

(3) Subsections (1) and (2) shall not apply where another intermediate parent entity is located in a territory where it is subject to a qualified IIR for that fiscal year and owns, directly or indirectly, a controlling interest in the intermediate parent entity referred to in subsection (1) and (2).

Partially-owned parent entity in the State[19]

This section contains the charging provision for the IIR top-up tax levied on partially-owned parent entity.

XXX. (1) Subject to subsection (3), a partially-owned parent entity located in the State that owns directly or indirectly an ownership interest in a low-taxed constituent entity at any time during a fiscal year shall be subject to a top-up tax (referred to as the "IIR top-up tax") in respect of that low-taxed constituent entity for the fiscal year.

(2) Subject to subsection (3), where a partially-owned parent entity referred to in subsection (1) is a low-taxed constituent entity in a fiscal year, that partially-owned parent entity shall be subject to the IIR top-up tax for the fiscal year in respect of itself.

(3) Subsections (1) and (2) shall not apply where the ownership interests of the partially-owned parent entity referred to in subsection (1) and (2) are wholly owned, directly or indirectly, by another partially-owned parent entity that is subject to a qualified IIR for that fiscal year.

[19] Article 8 of the Directive

Allocation of the top-up tax under the IIR[20]

Entities subject to the IIR pay tax in an amount equal to their "allocable share" of top-up tax. This section provides the rules pertaining to the allocation of that share of the top-up tax.

XXX. (1) The IIR top-up tax due by a parent entity in respect of a low-taxed constituent entity for a fiscal year pursuant to—

(a) section XXX(1) [Ultimate parent entity in the State],

(b) section XXX(1) [Intermediate parent entity in the State],

(c) section XXX(1) [Intermediate parent entity located in the State and held by an excluded ultimate parent entity], and

(d) section XXX(1) [Partially-owned parent entity in the State],

shall be equal to an amount calculated as—

$$A \times B$$

where—

A is the top-up tax of the low-taxed constituent entity, as computed in accordance with section XXX [Computation of the top-up tax], and

B is the parent entity's allocable share in that top-up tax for the fiscal year.

(2) (a) A parent entity's allocable share in the top-up tax with respect to a low-taxed constituent entity means the proportion of the parent entity's ownership interest in the qualifying income of the low-taxed constituent entity, calculated as—

$$(A - B) / C$$

where—

A is the qualifying income of the low-taxed constituent entity for the fiscal year,

B is the amount of qualifying income attributable to ownership interests held by owners other than the parent entity as determined by paragraph (b), and

C is the qualifying income of the low-taxed constituent entity for the fiscal year.

[20] Article 9 of the Directive

(b) The amount of qualifying income attributable to ownership interests in a low-taxed constituent entity held by owners other than the parent entity shall be the amount that would have been treated as attributable to such owners under the principles of the acceptable financial accounting standard used in the ultimate parent entity's consolidated financial statements if the low-taxed constituent entity's net income were equal to its qualifying income, and

(i) the parent entity had prepared consolidated financial statements in accordance with that accounting standard (hereinafter referred to as the 'hypothetical consolidated financial statements'),

(ii) the parent entity owned a controlling interest in the low-taxed constituent entity such that all of the income and expenses of the low-taxed constituent entity were consolidated on a line-by-line basis with those of the parent entity in the hypothetical consolidated financial statements,

(iii) all of the low-taxed constituent entity's qualifying income were attributable to transactions with persons that are not members of an MNE group or large-scale domestic group, and

(iv) all ownership interests not directly or indirectly held by the parent entity were held by persons other than members of an MNE group or large-scale domestic group.

(3) In addition to the amount allocated to a parent entity in accordance with subsection (1), the IIR top-up tax due by a parent entity pursuant to—

(a) section XXX(2) [Ultimate parent entity in the State],

(b) section XXX(2) [Intermediate parent entity in the State],

(c) section XXX(2) [Intermediate parent entity located in the State and held by an excluded ultimate parent entity], and

(d) section XXX(2) [Partially-owned parent entity in the State],

shall include, for the fiscal year, in accordance with section XXX [Computation of the top-up tax] the full amount of top-up tax computed for that parent entity.

IIR offset mechanism[21]

This section operates to reduce the top-up tax that has been allocated to a parent entity where two parent entities in the same ownership chain are required to apply an IIR to the same top-up tax amount.

XXX. Where a parent entity located in the State holds an ownership interest in a low-taxed constituent entity indirectly through an intermediate parent entity or a partially-owned parent entity that is subject to a qualified IIR for the fiscal year, the top-up tax due pursuant to section XXX [Ultimate parent entity in the State], section XXX [Intermediate parent entity in the State], section XXX [Intermediate parent entity located in the State and held by an excluded ultimate parent entity] and section XXX [Partially-owned parent entity in the State] shall be reduced by an amount equal to the portion of the first-mentioned parent entity's allocable share of the top-up tax which is due by the intermediate parent entity or the partially-owned parent entity.

Effect of a qualified domestic top-up tax [22]

This section explains how a qualified domestic top-up tax applied by a jurisdiction interacts with the calculation of top-up for the purposes of the IIR and UTPR.

XXX. (1) Where a qualifying domestic top-up tax that is due in respect of the directly or indirectly held constituent entities of a parent entity for a fiscal year has been computed in accordance with—

(a) the ultimate parent entity's acceptable accounting standard, or

(b) with International Financial Reporting Standards,

then no top-up tax shall be computed in accordance with section XXX [Computation of the top-up tax] for that fiscal year in respect of those constituent entities.

[21] Article 10 of the Directive

[22] Article 11 of the Directive

(2) Where the amount of qualified domestic top-up tax in respect of a constituent entity for a fiscal year has not been paid within the four fiscal years following the fiscal year in which it was due, the amount of domestic top-up tax that was not paid, and cannot be collected anymore, shall be added to the territorial top-up tax in respect of the territory where the constituent entity is located computed in accordance with section XXX(3) [Computation of the top-up tax].

(3) Where a qualified domestic top-up tax is applied by a Member State or a third country territory, the financial accounting net income or loss of the constituent entities located in that Member State or third country territory may be determined in accordance with an acceptable financial accounting standard or an authorised financial accounting standard that is different than the financial accounting standard used in the consolidated financial statements, provided that such financial accounting net income or loss is adjusted to prevent any material competitive distortion.[23]

Application of a UTPR across the MNE group[24][25]

This section provides for the application of a UTPR top-up tax where a qualified IIR is not applied to the MNE group. The proposed approach taken in the below provision is to apply a UTPR top-up tax rather than a denial of deduction approach which is also provided for under the Directive.

XXX. (1) Subject to subsection (2), where during a fiscal year,

(a) the ultimate parent entity of an MNE group is located in a territory that does not apply a qualified IIR, or

(b) the ultimate parent entity of an MNE group is an excluded entity,

[23] Article 15(5) of the Directive
[24] Article 12 of the Directive
[25] The Directive gives Member States the option of adopting a top-up tax or a denial of deduction. The draft possible approach adopted here is the application of a top-up tax.

a constituent entity of that MNE group that is located in the State shall be subject to a top-up tax (referred to as the "UTPR top-up tax") calculated in accordance with section XXX [Computation and allocation of the UTPR top-up tax amount].

(2) Subsection (1) shall not apply to a constituent entity that is an investment entity.

Application of the UTPR in the territory of an ultimate parent entity[26]

This section provides for the application of a UTPR top-up tax where a qualified IIR is not applied to an ultimate parent entity located in a third country territory that is a low-tax territory. The proposed approach taken in the below provision is to apply a UTPR top-up tax rather than a denial of deduction approach which is also provided for under the Directive.

XXX. (1) Subject to subsection (1) and (2), where during a fiscal year, the ultimate parent entity of an MNE group is located in a third country territory that is a low-tax territory, a constituent entity of that MNE group that is located in the State shall be subject to a top-up tax (referred to as the "UTPR top-up tax") calculated in accordance with section XXX [Computation and allocation of the UTPR top-up tax amount].

(2) Subsection (1) shall not apply where the ultimate parent entity is subject to a qualified IIR in respect of itself and its low-taxed constituent entities located in that territory.

(3) Subsection (1) shall not apply to a constituent entity that is an investment entity.

Computation and allocation of the UTPR top-up tax amount[27]

This section provides the rules for how the UTPR top-up tax amount is allocated to Ireland. Comments are invited on how a further allocation to the constituent entities of the MNE group may be achieved.

[26] Article 13 of the Directive
[27] Article 14 of the Directive

XXX. [(1) A provision is required to allocate an amount of UTPR top-up tax to constituent entities. Comments are invited on how such a provision may operate.]

(2) The UTPR top-up tax amount of an MNE group allocated to the State for a fiscal year shall be calculated as follows—

$$A \times B$$

where—

A is the total UTPR top-up tax of the MNE group for a fiscal year as determined by subsection (3), and

B is the UTPR percentage in respect of the MNE group located in the State for a fiscal year as determined by subsection (6).

(3) The total UTPR top-up tax of a MNE group for a fiscal year shall be equal to the sum of the top-up tax computed for each low-taxed constituent entity of the MNE group for that fiscal year, in accordance with section XXX [Computation of the top-up tax], as adjusted by subsection (4) and (5).

(4) The top-up tax of a low-taxed constituent entity for a fiscal year shall be equal to zero for the purposes of subsection (3) where all of the ultimate parent entity's ownership interests in such a low-taxed constituent entity are held directly or indirectly by one or more parent entities, which are required to apply a qualified IIR in respect of that low-taxed constituent entity for that fiscal year.

(5) Where subsection (4) does not apply, the top-up tax of a low-taxed constituent entity for a fiscal year shall be reduced, for the purposes of subsection (3), by a parent entity's allocable share of the top-up tax of that low-taxed constituent entity that is brought into charge under a qualified IIR.

(6) Subject to subsection (8), the UTPR percentage in respect of a MNE group located in the State for a fiscal year shall be calculated as follows—

$$((A / B) \times 50\%) + ((C / D) \times 50\%)$$

where—

A is the total number of employees of all the constituent entities of the MNE group located in the State,

B is the total number of employees of all constituent entities of the MNE group located in territories that have a qualified UTPR in force for the fiscal year,

C is the sum of the net book values of tangible assets of all constituent entities of the MNE group located in the State, and

D is the sum of the net book value of tangible assets of all constituent entities of the MNE group located in territories that have a qualified UTPR in force for the fiscal year.

(7) For the purpose of subsection (6) —

(a) The number of employees of a constituent entity in a territory shall be the number of employees employed on a full-time equivalent basis located in that territory, including independent contractors provided that they participate in the ordinary operating activities of the constituent entity.

(b) The tangible assets of a constituent entity in a territory shall include the tangible assets of that constituent entity located in that territory but shall not include—

(i) cash or cash equivalent,

(ii) intangible assets, or

(iii) financial assets.

(c) A constituent entity that is a permanent establishment shall be allocated the employees whose payroll costs are included in the separate financial accounts of that permanent establishment as determined by section XXX(1) [Allocation of the qualifying income or loss between a main entity and a permanent establishment] adjusted in accordance with section XXX(2) [Allocation of the qualifying income or loss between a main entity and a permanent establishment].

(d) A constituent entity that is a permanent establishment shall be allocated the tangible assets included in the separate financial accounts of the permanent establishment as determined by section XXX(1) [Allocation of the qualifying income or loss between a main entity and a permanent establishment] adjusted

in accordance with section XXX(2) [Allocation of the qualifying income or loss between a main entity and a permanent establishment].

(e) The number of employees and the tangible assets allocated to the territory of a permanent establishment shall not be taken into account for the number of employees and the tangible assets, as the case may be, of the tax territory of the main entity.

(f) The number of employees and the net book value of tangible assets held by an investment entity shall be excluded from the calculation of the UTPR percentage in respect of a MNE group located in the State in subsection (6).

(g) The number of employees and the net book value of tangible assets of a flow-through entity shall be excluded from the calculation of the UTPR percentage in respect of a MNE group located in the State in subsection (6), unless they are allocated to permanent establishment, or, in the absence of a permanent establishment, to a constituent entity that is located in the territory where the flow-through entity was created.

(8) Where the UTPR top-up tax amount allocated to a territory under a qualified UTPR in a prior fiscal year has not resulted in the constituent entities of an MNE group located in that territory having an additional cash tax expense equal, in total, to the UTPR top-up tax amount for that prior fiscal year allocated to that territory, then—

(a) the UTPR percentage for that MNE group in respect of that territory shall be deemed to be zero for the fiscal year, and

(b) the number of employees and the net book value of tangible assets of the constituent entities of that MNE group which are located in that territory shall be excluded from the calculation of the UTPR percentage in respect of a MNE group located in the State in subsection (6).

(9) Subsection (8) shall not apply for a fiscal year if all territories with a qualified UTPR in force for the fiscal year have a UTPR percentage of zero for the MNE group for that fiscal year.

Chapter 3

Computation of the qualifying income or loss

Determination of the qualifying income or loss[28]

This section provides a definition of 'qualifying income or loss' and the rules attached to this important definition. This is the starting point in the calculation and is adjusted in the following sections of this Chapter.

XXX. (1) Subject to subsection (2), 'qualifying income or loss' in respect of a fiscal year, means the financial accounting net income or loss of a constituent entity for a fiscal year, as adjusted in accordance with section XXX [Adjustments to determine the qualifying income or loss], section XXX [International shipping income exclusion], section XXX [Allocation of the qualifying income or loss between a main entity and a permanent establishment] and section XXX [Allocation and computation of qualifying income or loss of a flow-through entity].

(2) Where it is not reasonably practicable to determine the financial accounting net income or loss, referred to in subsection (1), based on the acceptable financial accounting standard or authorised financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, the financial accounting net income or loss of the constituent entity for the fiscal year may be determined using another acceptable financial accounting standard or an authorised financial accounting standard where—

(a) the financial accounts of the constituent entity are maintained based on that accounting standard,

(b) the information contained in the financial accounts is reliable and there are appropriate mechanisms in place to ensure that the information is recorded accurately in accordance with that accounting standard[29] , and

[28] Article 15 of the Directive
[29] Article 3.1.3 para 15 of the Commentary to the Model Rules.

(c) permanent differences greater than €1,000,000 that arise from the application of a principle or financial accounting standard to items of income or expense, or transactions, which differ from the principle or financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, are adjusted to conform to the treatment required for that item under the financial accounting standard used in the preparation of the consolidated financial statements.

(3) Where the consolidated financial statements of an ultimate parent entity are prepared using financial accounting standards other than an acceptable financial accounting standard, the consolidated financial statements of the ultimate parent entity shall be adjusted to prevent any material competitive distortion for the purpose of determining qualifying income or loss.

(4) Where the application of a specific principle or procedure under a set of generally accepted accounting principles results in a material competitive distortion referred to in subsection (3) , the accounting treatment of any item or transaction subject to that principle or procedure shall be adjusted to conform to the treatment required for that item or transaction under International Financial Reporting Standards.

Adjustments to determine the qualifying income or loss[30]

This section details the adjustments to be made to the qualifying income or loss determined in the previous section. For this purpose, a number of definitions are necessary to provide clarity to the provisions. The OECD Administrative Guidance has provided additional clarity on the treatment of 'excluded dividends' and 'excluded equity gains and loss' – which have been included in subsections (12) to (17) below.

XXX. (1) In this section —

[30] Article 16 of the Directive

'accrued pension expense' means the difference between the amount of pension liability expense or income[31] included in the financial accounting net income or loss in relation to a pension fund[32] and the amount contributed by the constituent entity to a pension fund for the fiscal year;

'additional tier one capital' means an instrument issued by a constituent entity pursuant to prudential regulatory requirements;

'arm's length principle' means the principle under which transactions between constituent entities must be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances;

'asymmetric foreign currency gain or loss' means a foreign currency gain or loss of an entity whose accounting and tax functional currencies are different and that is—

(a) included in the computation of the taxable income or loss of a constituent entity and attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity,
(b) included in the computation of the financial accounting net income or loss of a constituent entity and attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency,
(c) included in the computation of the financial accounting net income or loss of a constituent entity and attributable to fluctuations in the exchange rate between a third foreign currency and the accounting functional currency of the constituent entity, and
(d) attributable to fluctuations in the exchange rate between a third foreign currency and the tax functional currency of the constituent entity, irrespective of whether that third foreign currency gain or loss is included in the taxable income;

[31] Section 2.5. of the Administrative Guidance
[32] Section 2.5. of the Administrative Guidance

'excluded dividend' means, subject to subsection (14), a dividend or other distribution received or accrued in respect of an ownership interest, other than a dividend or other distribution received or accrued in respect of—

(a) an ownership interest,

  (i) held by a group in an entity that carried rights to less than 10% of the profits, capital or reserves, or voting rights of that entity at the date of the distribution or disposition (hereinafter referred to as a "portfolio shareholding"), and

  (ii) that is beneficially held by the constituent entity for less than one year at the date of the distribution, or

(b) an ownership interest in an investment entity that is subject to an election pursuant to section XXX [Election to apply a taxable distribution method],

but where a dividend or other distribution is received or accrued in respect of an ownership interest in respect of a financial instrument that has both equity and debt components under the acceptable financial accounting standard, only the amounts received or accrued in respect of the equity component of the ownership interest shall be treated as an excluded dividend[33];

'excluded equity gain or loss' means a net gain or loss, included in the financial accounting net income or loss of the constituent entity, arising from—

(a) changes in the fair value of an ownership interest, other than a portfolio shareholding,

(b) an ownership interest that is included under the equity method of accounting, or

(c) the disposal of an ownership interest, other than for the disposal of a portfolio shareholding;

'included revaluation method gain or loss' means a net gain or loss, increased or decreased by any associated covered taxes for the fiscal year, arising from the application of an accounting method or practice that, in respect of all property, plant or equipment—

[33] Section 2.3 of the Administrative Guidance

(a) periodically adjusts the carrying value of such property, plant or equipment to its fair value,

(b) records the changes in value referenced in paragraph (a) in other comprehensive income as gain or loss, and

(c) does not subsequently report the gain or loss accrued in other comprehensive income referenced in paragraph (b) through profit and loss in the calculation of financial accounting net income or loss;

‘intra-group financing arrangement’ means a financing arrangement whereby one or more constituent entities provide credit to one or more other constituent entities of the same group;

‘net taxes expense’ means, in respect of a constituent entity and a fiscal year, the net amount of—

(a) 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 qualifying income or loss computation,

(b) deferred tax assets attributable to a loss accrued for the fiscal year,

(c) qualified domestic top-up taxes accrued as an expense,

(d) taxes arising pursuant to the rules of the Directive or, as regards third country territories, the OECD Model Rules, accrued as an expense, and

(e) disqualified refundable imputation taxes accrued as an expense,

in the calculation the financial accounting net income or loss;

‘policy disallowed expense’ means, in respect of a fiscal year, an expense accrued by the constituent entity for —

(a) illegal payments, or

(b) fines and penalties that are equal to or greater than €50,000, or an equivalent amount in the functional currency in which the financial accounting net income or loss of the constituent entity is computed,

in the calculation of financial accounting net income or loss;

'prior period errors and changes in accounting principles' means a change in the opening equity of a constituent entity, in its accounts prepared for the purposes of preparing consolidated financial statements of its ultimate parent entity, at the beginning of a fiscal year that is attributable to—

(a) a correction of an error in the determination of the financial accounting net income or loss of the constituent entity in a previous fiscal year that affected the income or expenses that may be included in the computation of the qualifying income or loss of the constituent entity in that previous fiscal year, except to the extent that section XXX (1)(c) [Post filing adjustments and tax rate changes] applies to such error correction, or

(b) a change in accounting principles or policy that affected the income or expenses included in the computation of the qualifying income or loss of the constituent entity.

(2) To determine the qualifying income or loss of a constituent entity in respect of a fiscal year, the financial accounting net income or loss of that constituent entity shall be adjusted by the following—

(a) net taxes expenses,

(b) excluded dividends,

(c) excluded equity gains or losses,

(d) included revaluation method gains or losses,

(e) gains or losses from the disposal of assets and liabilities excluded pursuant to section XXX [Transfer of assets and liabilities],

(f) asymmetric foreign currency gains or losses,

(g) policy disallowed expenses,

(h) prior period errors and changes in accounting principles,

(i) accrued pension expenses, and

(j) the net amount of the additions and reductions to qualifying income for the fiscal year as set out in section XXX [Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests].[34]

[34] Section 2.9 of the Administrative Guidance

(3) (a) On the making of an election by a filing constituent entity, a constituent entity may, in the calculation of qualifying income or loss of the constituent entity in respect of a fiscal year, substitute the amount allowed as a deduction in the computation of its taxable income in the territory where it is located for the amount expensed in its financial accounts for a cost or expense of such constituent entity that was paid with stock-based compensation.

(b) Where a stock-option granted by a constituent entity expires without being exercised, the amount of stock-based compensation cost or expense that has been deducted from the financial accounting net income or loss of the constituent entity in the calculation of its qualifying income or loss for all previous fiscal year in respect of that stock-option shall be included in the fiscal year in which that option has expired.

(c) Where part of the amount of stock-based compensation cost or expense has been recorded in the financial accounts of the constituent entity in fiscal years prior to the fiscal year in which the election at paragraph (a) is made, an amount equal to the difference between the total amount of stock-based compensation cost or expense that has been deducted in the calculation of its qualifying income or loss in those previous fiscal years and the total amount of stock-based compensation cost or expense that would have been deducted in the calculation its qualifying income or loss in those previous fiscal years if the election had been made in such fiscal years, shall be included in the computation of the qualifying income or loss of the constituent entity for that fiscal year.

(d) The election referred to in paragraph (a) shall be made in accordance with section XXX [Elections], and shall apply to all constituent entities located in the same territory for the fiscal year in which the election is made and all subsequent fiscal years.

(e) Where the election referred to in paragraph (a) is withdrawn in respect of a fiscal year, the amount of unpaid stock-based compensation cost or expense deducted pursuant to the election that exceeds the financial accounting expense accrued shall be included in the computation of the qualifying income or loss of the constituent entity in respect of that fiscal year.

(4) (a) Any transaction between constituent entities located in different territories that is not—

(i) recorded in the same amount in the financial accounts of both constituent entities in the calculation of financial accounting net income or loss, or

(ii) consistent with the arm's length principle,

shall be adjusted in the calculation of qualifying income or loss of the constituent entities so as to be in the same amount and constituent with the arm's length principle.

(b) A loss from a sale or transfer of an asset between two constituent entities located in the same territory that is not recorded consistently with the arm's length principle shall be adjusted in the calculation of qualifying income or loss of the constituent entities based on the arm's length principle if that loss is included in the computation of the qualifying income or loss of a constituent entity for a fiscal year.

(5) (a) Qualified refundable tax credits shall be treated as income in the calculation of qualifying income or loss of a constituent entity for a fiscal year.

(b) Non-qualified refundable tax credits shall not be treated as income in the calculation of qualifying income or loss of a constituent entity for a fiscal year.

(6) (a) On the making of an election by the filing constituent entity, gains or losses in respect of assets and liabilities that are subject to fair value or impairment accounting in the consolidated financial statements for a fiscal year may be determined on the basis of the realisation principle in the calculation of qualifying income or loss of a constituent entity.

(b) Gains or losses which result from applying fair value or impairment accounting in respect of an asset or a liability shall be excluded from the computation of the qualifying income or loss of a constituent entity for a fiscal year under paragraph (a).

(c) The carrying value of an asset or a liability for the purpose of determining a gain or a loss under paragraph (a) shall be the carrying value on the later of—

(i) the time the asset was acquired, or the liability was incurred, or

(ii) the first day of the fiscal year in respect of which the election is made.

(d) The election referred to in paragraph (a) shall be made in accordance with section XXX [Elections], and shall apply to all constituent entities located in a territory to which the election is made unless the filing constituent entity chooses to limit the election to the tangible assets of the constituent entities or to investment entities.

(e) Where the election referred to in paragraph (a) is withdrawn in respect of a fiscal year, an amount equal to the difference between—

(i) the fair value of the asset or liability, and

(ii) the carrying value of the asset or liability on the first day of the fiscal year in respect of which the withdrawal is made,

shall be—

(I) included, if the fair value exceeds the carrying value, or

(II) deducted, if the carrying value exceeds the fair value,

in the calculation of qualifying income or loss of the constituent entity in respect of that fiscal year.

(7) (a) On the making of an election by the filing constituent entity, the qualifying income or loss of a constituent entity arising from the disposal of local tangible assets by that constituent entity to entities other than entities who are members of the same group in respect of a fiscal year, shall be adjusted in accordance with this subsection.

(b) The net gain arising from the disposal of local tangible assets in the fiscal year in which the election is made shall be offset against any net loss of a constituent entity located in that territory arising from the disposal of local tangible assets in the fiscal year in which the election is made and in the four fiscal years prior to that fiscal year, hereinafter referred to as 'the five-year period'.

(c) The net gain referred to in paragraph (b) shall be offset against the net loss referred to in paragraph (b), if any, that has arisen in the earliest fiscal year of the five-year period in priority to later fiscal years, with any remaining net gain being offset against the net loss, if any, in subsequent fiscal years of the five-year period.

(d) Where, after the application of paragraph (b), any amount of net gain which remains unrelieved shall be spread evenly over the five-year period for the purpose of the computation of the qualifying income or loss of each constituent entity located in that territory that has made a net gain from the disposal of local tangible assets in the fiscal year in which the election referred to in paragraph (a) is made.

(e) The amount of net gain referred to in paragraph (d) which is to be allocated to each constituent entity, shall be calculated as follows –

$$NG \times (NGCE / NGCES)$$

where—

NG is the amount of net gain referred to in paragraph (d)

NGCE is the amount of the net gain from the disposal of local tangible assets of the constituent entity for the fiscal year in respect of which the election is made, and

NGCES is the amount of the net gain from the disposal of local tangible assets of all constituent entities that have a net gain from the disposal of local tangible assets for the fiscal year in respect of which the election is made.

(f) Where no constituent entity in a territory has made a net gain from the disposal of local tangible assets in the fiscal year in which the election is made, the residual amount of net gain as referred to in paragraph (d) shall be allocated equally to each constituent entity in that territory and spread evenly over the five-year period for the computation of the qualifying income or loss of each of those constituent entities.

(g) Any adjustments made pursuant to this subsection for a fiscal year preceding the year in respect of which the election is made shall be subject to adjustments in accordance with section XXX [Additional top-up tax].

(8) Any expense related to an intra-group financing arrangement shall not be taken into consideration in the computation of qualifying income or loss of a constituent entity for a fiscal year where—

(a) the constituent entity is located in a low-tax territory or in a territory that would have been low-taxed if the expenses had not accrued to the constituent entity,

(b) it is reasonable to assume that, over the expected duration of the intra-group financing arrangement, the intra-group financing arrangement will increase the amount of expenses taken into account for the computation of the qualifying income of loss of that constituent entity, without resulting in a commensurate increase in the taxable income of the constituent entity providing the credit (in this section referred to as the 'counterparty'), and

(c) the counterparty is located in a territory that is not a low-tax territory or in a territory that would not have been low-taxed if the income related to the expense had not been accrued to the counterparty.

(9) (a) On the making of an election by a constituent filing entity, an ultimate parent entity may elect to apply its consolidated accounting treatment to eliminate income, expense, gains or losses from transactions between constituent entities that are—

(i) located in the same territory, and

(ii) included in a tax consolidation group,

for the purpose of computing the net qualifying income or loss of those constituent entities for a fiscal year.

(b) In the fiscal year in respect of which the election referred to in paragraph (a) is made or withdrawn, appropriate adjustments shall be made so that items of qualifying income or loss are not taken into consideration more than once or omitted as a result of such election or withdrawal.

(10) An insurance company shall—

(a) exclude from the computation of its qualifying income or loss, any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders, and

(b) include in the computation of its qualifying income or loss any returns to policyholders that are not reflected in its financial accounting net income or

loss to the extent that the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss.

(11) (a) Any amount that is recognised as a decrease in the equity of a constituent entity for a fiscal year and is the result of distributions made or due in respect of additional tier one capital shall be treated as an expense in the computation of its qualifying income or loss for that fiscal year.

(b) Any amount that is recognised as an increase in the equity of a constituent entity for a fiscal year and is the result of distribution received or due to be received in respect of an additional tier one capital held by the constituent entity shall be included in the computation of its qualifying income or loss for that fiscal year.

(12) (a) A financial instrument issued by one constituent entity and held by another constituent entity in the same MNE group or large-scale domestic group shall be classified as debt or equity consistently for both the issuer and holder of the financial instrument and accounted for accordingly in the computation of their qualifying income or loss.

(b) Where constituent entities in the same MNE group or large-scale domestic group have classified a financial instrument differently, the classification adopted by the issuer of the financial instrument shall be applied by the issuer and the holder of the financial instrument and accounted for accordingly in the computation of their qualifying oncome or loss[35]

(13) On the making of an election by a filing constituent entity, foreign exchange gains or losses included in a constituent entity's financial accounting net income or loss shall be treated as an excluded equity gain or loss to the extent that—

(a) such foreign exchange gains or losses are attributable to hedging instruments that hedge the currency risk in ownership interests other than portfolio shareholdings,

[35] Section 2.3 of the Administrative Guidance

(b) such foreign exchange gains or losses are recognised in other comprehensive income in the consolidated financial statements, and

(c) the hedging instrument is considered an effective hedge under the acceptable or authorised financial accounting standard used in the preparation of the consolidated financial statements.[36]

(14) On the making of an election by a filing constituent entity, a constituent entity may include in the computation of its qualifying income or loss for a fiscal year any dividend or other distribution received by the constituent entity with respect to a portfolio shareholding[37].

(15) (a) Where a movement in an insurance company's reserves economically matches an excluded dividend, net of any investment management fee, from a security held by the insurance company on behalf of a policyholder, the movement in the insurance reserves shall not be allowed as an expense in the computation of the constituent entity's qualifying income or loss.

(b) Where a movement in an insurance company's reserves is related to an excluded dividend or an excluded equity gain or loss from a security held by the insurance company on behalf of a policyholder, it shall not be allowed as a deduction in the computation of the constituent entity's qualifying income or loss[38].

(16) On the making of an election by a filing constituent entity, the amount of a debt release included in the financial accounting net income or loss of a constituent entity shall be excluded from the computation of the constituent entity's qualifying income or loss, where the debt release—

(a) is undertaken under statutorily provided insolvency or bankruptcy proceedings, that are supervised by a court or other judicial body in the relevant territory or where an independent insolvency administrator is appointed,

[36] Section 2.2 of the Administrative Guidance
[37] Section 3.5 of the Administrative Guidance
[38] Section 3.4 of the Administrative Guidance

(b) arises pursuant to an arrangement where one or more creditors is a person not connected with the debtor, and it is reasonable to assume that the debtor would be insolvent within 12 months but for the release of the debt under the arrangement, or

(c) subject to subsection (17) and where paragraph (a) or (b) do not apply, occurs when the debtor's liabilities are in excess of the fair market value of its assets determined immediately before the debt release[39].

(17) An amount of a debt release included in the financial accounting net income or loss of a constituent entity shall only be excluded from the computation of the constituent entity's qualifying income or loss in accordance with paragraph (c) of subsection (16) with respect to debts owed to a creditor that is a person that is not connected with the debtor and only to the extent of the lesser of—

(a) the excess of the debtor's liabilities over the fair market value of its assets determined immediately before the debt release, or

(b) the reduction in the debtor's attributes under the tax laws of the debtor's territory resulting from the debt release.[40]

International shipping income exclusion[41]

This section provides the necessary definitions and rules around the exclusion of international shipping income from the scope of this Part.

XXX. (1) In this section—

(a) 'international shipping income' means the net income obtained by a constituent entity from the following activities, hereinafter referred to as "international shipping activities", where the transportation is not carried out via inland waterways within the same territory—

[39] Section 2.4 of the Administrative Guidance
[40] Section 2.4 of the Administrative Guidance
[41] Article 16 of the Directive

(i) transportation of passengers or cargo by ship in international traffic, whether the ship is owned, leased or otherwise at the disposal of the constituent entity,

(ii) transportation of passengers or cargo by ship in international traffic under slot-chartering arrangements,

(iii) leasing of a ship to be used for the transportation of passengers or cargo in international traffic on charter fully equipped, crewed and supplied,

(iv) leasing of a ship used for the transportation of passengers of cargo in international traffic, on bareboat charter terms, to another constituent entity,

(v) participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ship in international traffic, and

(vi) sale of a ship used for the transportation of passengers or cargo in international traffic provided that the ship has been held for use by the constituent entity for a minimum of one year.

(b) 'qualified ancillary international shipping income' means the net income obtained by a constituent entity from the following activities, hereinafter referred to as "qualified ancillary international shipping activities", provided that such activities are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic:

(i) leasing of a ship, on a bareboat charter basis, to another shipping enterprise that is not a constituent entity, provided that the duration of the charter does not exceed three years,

(ii) sale of tickets issued by other shipping enterprises for the domestic leg of an international voyage,

(iii) leasing and short-term storage of containers,

(iv) detention charges for the late return of containers,

(v) provision of services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel, and

(vi) investment income, where the investment that generates the income is made as an integral part of carrying on the business of operating the ships in international traffic.

(c) ‘bareboat charter terms’ has the same meaning as it has in section 697A.

(2) Where the strategic or commercial management of all ships concerned is effectively carried on from within the territory where the constituent entity is located then the international shipping income and the qualified ancillary international shipping income of that constituent entity shall be excluded from the computation of its qualifying income or loss.

(3) Where the computation of a constituent entity’s international shipping income and qualified ancillary international shipping income results in a loss, such loss shall be excluded from the computation of the constituent entity’s qualifying income or loss.

(4) The aggregated total qualified ancillary international shipping income of all constituent entities located in a territory shall not exceed 50 per cent of those constituent entities international shipping income.

(5) (a) The costs incurred by a constituent entity that are directly attributable to its international shipping activities and qualified ancillary international shipping activities shall be allocated to such activities for the purpose of computing the international shipping income and the qualified ancillary international shipping income of the constituent entity.

(b) The costs incurred by a constituent entity that indirectly result from its international shipping activities and qualified ancillary international shipping activities shall be deducted from the constituent entity’s revenues from such activities to compute its international shipping income and qualified ancillary international shipping income of the constituent entity on the basis of its revenues from such activities in proportion to its total revenues.

(6) All direct and indirect costs attributed to a constituent entity's international shipping income and qualified ancillary international shipping income in accordance with subsection (5) shall be excluded from the computation of its qualifying income or loss.

Allocation of the qualifying income or loss between a main entity and a permanent establishment[42]

This section contains provisions which seek to allocate the qualifying income or loss, as determined in earlier sections, between a main entity and a permanent establishment. The section specifies the approach to be taken where a permanent establishment does not maintain separate financial statements.

XXX. (1) (a) Subject to subsection (2), where a constituent entity is a permanent establishment to which paragraph (a), (b) or (c) of the definition of permanent establishment in section XXX [Interpretation] applies, the financial accounting net income or loss of that permanent establishment shall be the net income or loss reflected in the separate financial accounts of that permanent establishment.

(b) Where a constituent entity is a permanent establishment that does not have separate financial accounts, its financial accounting net income or loss shall be the amount that would have been reflected in its separate financial accounts if they had been prepared on a standalone basis and in accordance with the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity.

(2) (a) Where a constituent entity is a permanent establishment to which paragraph (a) or (b) of the definition of permanent establishment in section XXX [Interpretation] applies, its financial accounting net income or loss shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with the applicable tax treaty or domestic law

[42] Article 18 of the Directive

of the territory where it is located, regardless of the amount of income subject to tax and the amount of tax deductible expenses in that territory.

(b) Where a constituent entity is a permanent establishment to which paragraph (c) of the definition of permanent establishment in section XXX [Interpretation] applies, its financial accounting net income or loss shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with Article 7 of the OECD Model Tax Convention on Income and Capital.

(c) Where a constituent entity is a permanent establishment to which paragraph (d) of the definition of permanent establishment in section XXX [Interpretation] applies, its financial accounting net income or loss shall be computed based on—

(i) the amounts and items of income that are exempt from tax in the territory where the main entity is located and attributable to the operations conducted outside of that territory, and

(ii) the amounts and items of expense that are not deducted for tax purposes in the territory where the main entity is located that are attributable to those operations.

(3) Subject to subsection (4), the financial accounting net income or loss of a permanent establishment shall not be taken into account in determining the qualifying income or loss of the main entity.

(4) (a) A qualifying loss of a permanent establishment shall be treated as an expense of the main entity for the purposes of calculating its qualifying income or loss to the extent that the loss of the permanent establishment is treated as an expense in the computation of domestic taxable income of the main entity in the territory it is located and is not set off against an item of the domestic taxable income of the main entity that is subject to tax under the laws of both the territory of the main entity and the territory of the permanent establishment.

(b) Qualifying income that is earned by a permanent establishment, after a qualifying loss of the permanent establishment was treated as an expense of the main entity for the purposes of calculating the main entity's qualifying income or loss in accordance with paragraph (a), shall be treated as qualifying income of the main entity up to the amount of the qualifying loss that was previously treated as an expense of the main entity.

Allocation of the qualifying income or loss of a flow-through entity[43]

This section contains provisions regarding the allocation of the qualifying income or loss, as determined in earlier sections, of a flow-through entity, including separate provisions relating to permanent establishments, ultimate parent entities and tax transparent entities.

XXX. (1) The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the amount allocable to its owners that are not members of an MNE group or large-scale domestic group and that hold their ownership interest in that flow-through entity directly or indirectly through one or more tax transparent entities, unless—

(a) the flow through entity is an ultimate parent entity, or

(b) the flow-through entity is held, directly or indirectly through one or more tax transparent entities by an ultimate parent entity that is a flow through entity.

(2) The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the financial accounting net income or loss that is allocated to another constituent entity.

(3) Where a flow-through entity wholly or partially carries out business through a permanent establishment, its financial accounting net income or loss which remains after the application of subsection (1) shall be allocated to that permanent establishment in accordance with section XXX [Allocation of the qualifying income or loss between a main entity and a permanent establishment].

[43] Article 19 of the Directive

(4) Subject to subsection (5), where a tax transparent entity is not an ultimate parent entity, the financial accounting net income or loss of the flow-through entity which remains after the application of subsections (1) and (3) shall be allocated to its constituent entity-owners in proportion to their ownership interests that carries rights to profits[44] in the flow-through entity.

(5) Where a flow-through entity is a tax transparent entity that is an ultimate parent entity or a reverse hybrid entity, any financial accounting net income or loss of the flow-through entity which remains after the application of subsections (1) and (3) shall be allocated to the ultimate parent entity or the reverse hybrid entity.

(6) Subsections (3), (4), and (5) shall be applied separately with respect to each ownership interest in the flow-through entity.

[44] Chapter 10 para 84 of the Commentary on the GloBE Model Rules

Chapter 4

Computation of adjusted covered taxes

Covered taxes[45]

This section defines the term ‘covered taxes’. The section contains details of the amounts which are covered taxes and the amounts which are specifically excluded from covered taxes.

XXX. (1) The covered taxes of a constituent entity shall include—

(a) taxes recorded in the financial accounts of a constituent entity with respect to its income or profits, or its share of the income or profits of a constituent entity in which it owns an ownership interest,

(b) taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an eligible distribution tax system,

(c) taxes imposed in lieu of a generally applicable corporate income tax, and

(d) taxes levied by reference to retained earnings and corporate equity, including taxes on multiple components based on income and equity.

(2) The covered taxes of a constituent entity shall not include—

(a) the top-up tax accrued by a parent entity under a qualified IIR,

(b) the top-up tax accrued by a constituent entity under a qualified domestic top-up tax,

(c) taxes attributable to an adjustment made by a constituent entity as a result of the application of a qualified UTPR,

(d) disqualified refundable imputation tax, and

(e) taxes paid by an insurance company in respect of returns to policyholders.

(3) Covered taxes in respect of any net gain or loss arising from the disposal of local tangible assets in the fiscal year in which the election in section XXX(7)(a)

[45] Article 20 of the Directive

[Adjustments to determine the qualifying income or loss] is made shall be excluded from the computation of the covered taxes.

Adjusted covered taxes[46]

The sum of the current tax expense accrued in the financial accounting net income or loss with respect to covered taxes (defined in the previous section) for the fiscal year is subject to the adjustments contained in this section to arrive at adjusted covered taxes. The OECD Administrative Guidance provides clarity on the treatment of Excess Negative Tax Carry-forward. Provisions relating to Excess Negative Tax Carry-forward are provided for in subsections (8) to (10).

XXX. (1) The adjusted covered taxes of a constituent entity for a fiscal year shall be determined by adjusting the sum of the current tax expense accrued in the financial accounting net income or loss with respect to covered taxes for the fiscal year by—

(a) the net amount of the additions and reductions to covered taxes for the fiscal year as set out in subsection (2) and (3),

(b) the total deferred tax adjustment amount as set out in section XXX [Total deferred tax adjustment amount],

(c) any increase or decrease in covered taxes recorded in equity or other comprehensive income relating to amounts included in the computation of qualifying income or loss that will be subject to tax under local tax rules, and

(d) the net amount of the additions and reductions to covered taxes for the fiscal year as set out in section XXX [Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests].[47]

(2) The additions to the covered taxes of a constituent entity for the fiscal year shall include—

(a) any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts of the constituent entity,

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[46] Article 21 of the Directive

[47] Section 2.9 of the Administrative Guidance

(b) any amount of qualifying loss deferred tax asset that has been used by the constituent entity pursuant to section XXX (2) [Qualifying loss election],

(c) any amount of covered taxes relating to an uncertain tax position of the constituent entity previously excluded under paragraph (d) of subsection (3) that is paid in the fiscal year, and

(d) any amount of credit or refund in respect of a qualified refundable tax credit tax was accrued as a reduction to the current tax expense in the financial accounts of the constituent entity.

(3) The reductions to the covered taxes of a constituent entity for the fiscal year shall include—

(a) the amount of current tax expense with respect to income excluded from the computation of qualifying income or loss of the constituent entity under Chapter 3,

(b) any amount of credit or refund in respect of a refundable tax credit, other than a qualified refundable tax credit, that was not recorded as a reduction to the current tax expense in the financial accounts of the constituent entity,

(c) any amount of covered taxes refunded or credited to a constituent entity, other than a qualified refundable tax credit, that was not treated as an adjustment to current tax expense in the financial accounts of the constituent entity,

(d) the amount of current tax expense of the constituent entity which relates to an uncertain tax position, and

(e) any amount of current tax expense of the constituent entity that is not expected to be paid within three years after the end of the fiscal year.

(4) Where an amount of covered tax is described in more than one of subsection (1), (2) or (3), the current tax expense shall only be adjusted once in the calculation of adjusted covered taxes of a constituent entity for a fiscal year.

(5) Subsection (6) applies where, for a fiscal year—

(a) there is no net qualifying income in a territory, and

(b) the amount of adjusted covered taxes for that territory is

(i) less than zero, and

(ii) less than an amount equal to the net qualifying loss multiplied by the minimum tax rate (hereinafter referred to as the "expected adjusted covered taxes").

(6) Subject to subsection (9), an amount calculated as the difference between—

(a) the amount of adjusted covered taxes of a territory for a fiscal year, and

(b) the amount of expected adjusted covered taxes of a territory for a fiscal year,

shall be treated as an additional top-up tax for the fiscal year.

(7) The amount of additional top-up tax referred to in subsection (6) shall be allocated to each constituent entity in the territory in accordance with section XXX [Additional top-up tax].

(8) For the purposes of subsection (9), excess negative tax expense means—

(a) an amount equal to the amount computed under subsection (6) in respect of a territory for a fiscal year in which a MNE Group or large-scale domestic group has-

(i) no qualifying income, or

(ii) a qualifying loss,

for that territory, or

(b) an amount equal to the negative adjusted covered taxes in respect of a territory for a fiscal year in which a MNE Group or large-scale domestic group has qualifying income for that territory.

(9) On the making of an election[48] by a filing constituent entity, or where the top-up tax percentage for a territory for a fiscal year as calculated in section XXX(2) [Computation of the top-up tax] exceeds the minimum tax rate, an MNE Group or large-scale domestic group shall exclude the excess negative tax expense from its adjusted covered taxes for a territory in respect of the fiscal year and establish an excess negative tax expense carry-forward.

[48] Section 2.7 of the Administrative Guidance

(10) In each fiscal year, following a fiscal year in respect of which subsection (9) applied to the computation of adjusted cover taxes for a territory, where a MNE group or large-scale domestic group has qualifying income and adjusted covered taxes for that territory, the MNE group or large-scale domestic group shall—

(a) reduce the adjusted covered taxes for the territory by the balance of the excess negative tax expense carry-forward but the amount of adjusted covered taxes after such reduction shall not be less than zero, and

(b) reduce the balance of the excess negative tax expense carry-forward by the same amount as the amount referred to in paragraph (a).

Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests [49]

This provision deals with two pieces of OECD administrative guidance. Firstly, it provides for an election to include the gains, profits, and losses from equity investments in the computation of qualifying Income or loss and to take into account the corresponding current and deferred tax expenses or benefits. Secondly, it provides for the treatment of certain tax benefits to ensure the neutrality of certain structures where non-refundable tax credits are an essential element of the investment return.

XXX. (1) In this section—

'qualified flow-through tax benefit' means any amount of

(a) tax credits, other than qualified refundable tax credits, and

(b) tax-deductible losses multiplied by the statutory tax rate applicable to the owner of a qualified ownership interest,

that flows through a qualified ownership interest in a tax transparent entity to the extent it reduces the owner's investment in the qualified ownership interest pursuant to subsection (6);

[49] Section 2.9 of the Administrative Guidance

'qualified ownership interest' means an ownership interest in a tax transparent entity where the assets, liabilities, income, expenses, and cash flows of the tax transparent entity are not consolidated on a line-by-line basis in the consolidated financial statements of the MNE group and the total return with respect to that ownership interest, excluding tax credits other than qualified refundable tax credits, is, at the time the investment is entered into, expected to be less than the total amount invested by the owner of the ownership interest such that a portion of the investment will be returned in the form of tax credits other than qualified refundable tax credits.

(2) On the making of an election by a filing constituent entity, a constituent entity which holds an ownership interest other than a qualified ownership interest shall—

(a) include in its qualifying income or loss the accounting gain, profit, or loss, adjusted as required by the section XXX [Adjustments to determine the qualifying income or loss] other than subsection 2(c) of that section, with respect to any—

(i) fair value gains and losses and impairments on that ownership interest, where the owner is taxable on a mark-to-market basis or on the impairment on the ownership interest, and the tax consequences of the mark-to-market movements or impairments on ownership interest are reflected in income tax expense,

(ii) fair value gains and losses and impairments on that ownership interest, where the owner is taxable on a realisation basis and its income tax expense includes deferred tax expense on the mark-to-market movement or impairments on the ownership interest,

(iii) profit and loss attributable to that ownership interest, where the interest is in a tax transparent entity and the owner accounts for the interest using the equity method, and

(iv) dispositions of that ownership interest which give rise to gains or losses that are included in the owner's domestic taxable income, excluding any gain fully offset, and the proportionate share of any gain partially offset, by any deduction or other similar relief on that gain,

and

(b) notwithstanding section XXX(3)(a) [Adjusted covered taxes] and section XXX(5)(a) [Total deferred tax adjustment amount], include all current and deferred tax expense in respect of the amounts referred to in paragraph (a) in the computation of its adjusted covered taxes, subject to the provisions of this Part.

(3) The election referred to in subsection (2) shall apply to all ownership interests, other than a portfolio shareholding, owned by constituent entities located in the territory with respect to which the election is made.

(4) Subsection (5) shall apply to the qualified flow-through tax benefits that flow through a qualified ownership interest to a constituent entity to which an election under subsection (2) applies.

(5) Where this subsection applies, qualified flow-through tax benefits shall be added to the adjusted covered taxes of a constituent entity that is the direct owner of a qualified ownership interest, or an indirect owner of such an interest held via tax transparent entities that are not constituent entities of the MNE Group, to the extent the qualified flow-through tax benefit was treated as reducing tax expense accrued in the financial accounting net income or loss of the constituent entity.

(6) A constituents entity's investment in a qualified ownership interest shall be treated as being reduced by receipts with respect to the qualified ownership interest in respect of—

(a) the amount of tax credits that have flowed through to the constituent entity,

(b) the amount of any tax-deductible losses that have flowed through to the constituent entity multiplied by the statutory tax rate applicable to the constituent entity,

(c) the amount of any distributions to the constituent entity, including returns of capital, or

(d) the amount of proceeds from a sale of all or part of the qualified ownership interest,

but no amount shall be treated as reducing the investment to the extent it would reduce the investment below zero.

(7) (a) Subject to paragraph (b), any amount referred to in subsection (6)(a), (b), (c), or (d) that flows through, or are received in respect of, a qualified ownership interest, after the constituent entity's investment has been reduced to zero pursuant to that subsection, shall be subtracted in the calculation of that constituent entity's adjusted covered taxes.

(b) An amount referred to in subsection (6)(c) or (d) or a qualified refundable tax credit, shall be subtracted in the calculation of a constituent entity's adjusted covered taxes only to the extent of the amount of any qualified flow-through tax benefits that flowed through the qualified ownership interest and that were treated as an addition in the calculation of that a constituent entity's adjusted covered taxes.

Total deferred tax adjustment amount[50]

This section contains provisions relating to the treatment of deferred tax amounts for the purpose of this Part, introducing necessary definitions to assist interpretation. The OECD Administrative Guidance provides clarification with regards to certain loss-making parent entities of controlled foreign companies which has been included at subsections (6) and (7) below.

XXX. (1) In this section—

'disallowed accrual' means—

(a) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to an uncertain tax position, and

(b) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to distributions from a constituent entity;

[50] Article 22 of the Directive

'recapture exception accrual' means an amount of tax expense accrued in the financial accounts of a constituent entity that is attributable to changes in associated deferred tax liabilities in respect of—

(a) cost recovery allowances on tangible assets,

(b) the cost of a licence or similar arrangement from a government for the use of immovable property or exploitation of natural resources which entails significant investment in tangible assets,

(c) research and development expenses,

(d) de-commissioning and environmental remediation expenses,

(e) fair value accounting on unrealised net gains,

(f) foreign currency exchange net gains,

(g) insurance reserves and insurance policy deferred acquisition costs,

(h) gains from the sale of tangible property located in the same territory as the constituent entity that are reinvested in tangible property in the same territory, or

(i) additional amounts accrued as a result of accounting principle changes with respect to item listed under subparagraphs (a) to (h);

'unclaimed accrual' means any increase in a deferred tax liability recorded in the financial accounts of a constituent entity for a fiscal year that is not expected to be paid within the time period referenced in subsection (7), and for which the filing constituent entity elects not to include in total deferred tax adjustment amount for that fiscal year.

(2) Subject to subsections (3) to (10), where the tax rate applied for the purposes of computing the deferred tax expense in the financial accounts of a constituent entity for a fiscal year is—

(a) equal to or less than the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year pursuant to section XXX(1)(b) [Adjusted covered taxes] shall be the deferred tax expense accrued in its financial accounts for a fiscal year with respect to covered taxes, or

(b) greater than the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year pursuant to section XXX(1)(b) [Adjusted covered taxes] shall be the deferred tax expense accrued in its financial accounts for a fiscal year with respect to covered taxes recalculated at the minimum tax rate.

(3) The total deferred tax adjustment amount of a constituent entity for a fiscal year shall be increased by—

(a) any amount of disallowed accrual or unclaimed accrual paid during the fiscal year, and

(b) any amount of recaptured deferred tax liability determined in a preceding fiscal year, which has been paid during the fiscal year.

(4) Where, for a fiscal year, a loss deferred tax asset is not recorded in the financial accounts of a constituent entity because the recognition criteria are not met, the total deferred tax adjustment amount shall be reduced by the amount that would have reduced the total deferred tax adjustment amount if a loss deferred tax asset for the fiscal year had been accrued.

(5) Subject to subsection (6), the total deferred tax adjustment amount of a constituent entity for a fiscal year shall not include—

(a) the amount of deferred tax expense with respect to items excluded from the computation of qualifying income or loss of the constituent entity under Chapter 3,

(b) the amount of deferred tax expense with respect to disallowed accruals and unclaimed accruals,

(c) the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset,

(d) the amount of deferred tax expense arising from a re-measurement with respect to a change in the applicable domestic tax rate, and

(e) the amount of deferred tax expense with respect to the generation and use of tax credits.

(6) Paragraph (e) of subsection (5) shall not apply to an amount of deferred tax expense where all of the following conditions are met—

(a) the tax laws of a territory requires that foreign source income offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income,

(b) the constituent entity has a domestic tax loss in that territory that is fully or partially offset by foreign source income, and

(c) the tax laws in that territory allows foreign tax credits to be used to offset a tax liability in a subsequent year in relation to income that is included in the computation of the constituent entity's qualifying income or loss[51].

(7) (a) Where all of the conditions set out in subsection (6) are met, the deferred tax expense attributable to the substitute loss carry-forward deferred tax asset shall be included in the constituent entity's total deferred tax adjustment amount in the fiscal year that it arises and in the fiscal years it reverses, but only to the extent the foreign tax credit that gave rise to the substitute loss carry-forward deferred tax asset is used to offset tax liability on income included in the constituent entity's qualifying income or loss.

(b) Subject to paragraph (c), for the purposes of paragraph (a), the amount of substitute loss carry-forward deferred tax asset is equal to the lesser of—

(i) the amount of the foreign tax credit in respect of the foreign source income inclusion that, under the tax law of the territory, is allowed to be carried forward from the taxable period in which the constituent entity had a tax loss, before taking into account any foreign source income, to a subsequent fiscal year, and

(ii) the amount of the constituent entity's tax loss for the taxable period, before taking into account any foreign source income, multiplied by the applicable domestic tax rate.

[51] Section 2.8 of the Administrative Guidance

(c) Subsection (5)(a) and section XXX(2) [Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition] shall apply to the substitute loss carry-forward deferred tax asset.

(8) Where a deferred tax asset which is attributable to a qualifying loss of a constituent entity has been recorded for a fiscal year at a rate lower than the minimum tax rate, it may be recalculated at the minimum tax rate in the same fiscal year and the total deferred tax adjustment amount shall be reduced accordingly.

(9) Subject to subsection (10), a deferred tax liability that is not reversed or has not been paid within 5 years of the end of the fiscal year in which it arose shall be recaptured to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity, and for this purpose—

(a) the recaptured deferred tax liability for the current fiscal year is the amount of the increase in the category of deferred tax liability that was included in the total deferred tax adjustment amount in the fifth preceding fiscal year that has not reversed by the end of the last day of the current fiscal year, and

(b) the amount of the recaptured deferred tax liability determined for the current fiscal year shall be treated as a reduction to the covered taxes in the fifth preceding fiscal year and the effective tax rate and top-up tax of that fiscal year shall be recomputed in accordance with section XXX(1) [Additional Top-up tax].

(10) Where a deferred tax liability is a recapture exception accrual, it shall not be recaptured in accordance with subsection (9).

Qualifying loss election[52]

This section provides for an election to be made by a filing constituent entity such that an amount of net qualifying loss shall be recognised as a qualifying loss deferred tax asset as opposed to using the principles of deferred taxation in section XXX[Total deferred tax adjustment amount]. The election applies on a territory by territory basis.

[52] Article 23 of the Directive

XXX. (1) (a) Section XXX [Total deferred tax adjustment amount] shall not apply where a filing constituent entity makes a qualifying loss election for a territory.

(b) Where a qualifying loss election is made for a territory, a qualifying loss deferred tax asset shall be determined for the territory each fiscal year in which there is a net qualifying loss in that territory.

(c) For the purposes of paragraph (b), the qualifying loss deferred tax asset for a territory in respect of a fiscal year shall be calculated as—

$$NQL \times MTR$$

where—

NQL is the net qualifying loss for a fiscal year for the territory, and

MTR is the minimum tax rate.

(d) A qualifying loss election shall not be made for a territory with an eligible distribution tax system as defined in section XXX [Eligible distribution tax systems].

(2) An amount of qualifying loss deferred tax asset for a territory in respect of a fiscal year determined pursuant to subsection (1), shall be used in any subsequent fiscal year in which there is a net qualifying income for the territory, calculated as the lesser of—

(a)

$$NQI \times MTR$$

where—

NQI is the net qualifying income for the fiscal year for the territory, and

MTR is the minimum tax rate,

or

(b) the amount of the qualifying loss deferred tax asset .

(3) The qualifying loss deferred tax asset for a territory in respect of a fiscal year shall be reduced by the amount that is used for a subsequent fiscal year and any balance remaining shall be carried forward to subsequent fiscal years.

(4) Where a qualifying loss election is withdrawn, any remaining qualifying loss deferred tax asset for a territory shall be reduced to zero as of the first day of the first fiscal year in which the qualifying loss election is no longer applicable.

(5) The qualifying loss election shall be filed with the first top-up tax information return of the MNE group or large-scale domestic group that includes the territory for which the election is made.

(6) Where a flow-through entity which is the ultimate parent entity of an MNE group or large-scale domestic group makes a qualifying loss election under this section, the qualifying loss deferred tax asset shall be calculated by reference to the qualifying loss of the flow-through entity after reduction pursuant to section XXX(3) [Ultimate parent entity that is a flow-through entity].

Specific allocation of covered taxes incurred by certain types of constituent entities[53]

This section provides rules regarding the allocation of covered taxes by certain constituent entities such as permanent establishments and hybrids.

XXX. (1) In this section—

'passive income' means the following items of income included in qualifying income to the extent a constituent entity-owner has been subject to tax under a controlled foreign company tax regime or as a result of an ownership interest in a hybrid entity—

(a) a dividend or distribution,

(b) interest or interest equivalent as defined in section 835AY,

(c) rent,

(d) royalty,

(e) annuity, or

(f) net gains from assets of a type that produces income described in subparagraphs (a) to (e).

[53] Article 24 of the Directive

(2) A permanent establishment shall be allocated the amount of any covered taxes that are included in the financial accounts of a constituent entity and that relate to the qualifying income or loss of the permanent establishment.

(3) A constituent entity-owner shall be allocated the amount of any covered taxes that are included in the financial accounts of a tax transparent entity and that relate to qualifying income or loss allocated to a constituent entity-owner in accordance with section XXX(4) [Allocation of the qualifying income or loss of a flow-through entity].

(4) Subject to subsection (7), a constituent entity shall be allocated the amount of any covered taxes included in the financial accounts of its direct or indirect constituent entity-owners under a controlled foreign company tax regime, on the direct or indirect constituent entity-owners' share of the constituent entity's income.

(5) Subject to subsection (7), a constituent entity that is a hybrid entity shall be allocated the amount of any covered taxes included in the financial accounts of its constituent entity-owner which relates to qualifying income of the hybrid entity.

(6) A constituent entity that has made a distribution during the fiscal year shall be allocated the amount of any covered taxes accrued in the financial accounts of its direct constituent entity-owners on such distribution.

(7) (a) A constituent entity that was allocated covered taxes pursuant to subsections (4) and (5) in respect of passive income shall include such covered taxes in its adjusted covered taxes in an amount equal to the lesser of—

(i) the covered taxes allocated in respect of such passive income,

or

(ii) $$TUTP \times PI$$

where—

TUTP is the top-up tax percentage for the territory, and

PI is the amount of the constituent entity's passive income that is included under a controlled foreign company tax regime or as income of the

constituent entity-owner as a result of an ownership interest in a hybrid entity.

(b) For the purpose of paragraph (a), the top-up tax percentage for the territory shall be determined without regard to covered taxes incurred by the constituent entity-owner with respect to such passive income as referred to in paragraph (a).

(c) Any covered taxes of the constituent entity-owner incurred with respect to such passive income as referred to in paragraph (a) that remains after the application of this subsection shall not be allocated under subsections (4) or (5).

(8) Where the qualifying income of a permanent establishment is treated as qualifying income of the main entity in accordance with section XXX(4) [Allocation of the qualifying income or loss between a main entity and a permanent establishment], any covered taxes arising in the territory where the permanent establishment is located and associated with such income, shall be treated as covered taxes of the main entity for an amount not exceeding —

$$QIPE \times HTR$$

where—

QIPE is the amount of qualifying income of the permanent establishment which is treated as qualifying income of the main entity in accordance with section XXX (4) [Allocation of the qualifying income or loss between a main entity and a permanent establishment], and

HTR is the highest tax rate on ordinary income in the territory where the main entity is located.

Rules required for blended CFC regime[54]

This provision relates to the allocation of CFC taxes, where the CFC regime is one in which the tax charged under the CFC tax regime is computed on a blend of income, losses and / or creditable taxes of multiple controlled foreign companies.

[54] Section 2.10 of the Administrative Guidance

XXX. (1) In this section—

'allocable blended CFC tax' means the amount of tax charge incurred by a constituent entity-owner under a blended CFC tax regime;

'applicable rate' means the rate at which foreign taxes on controlled foreign company income generally fully offset the controlled foreign company tax through the tax credit mechanism applicable to the controlled foreign company tax regime;

'attributable income of the entity' means the constituent entity-owner's proportionate share of the income of the constituent entity in the territory in which the constituent entity is located as determined under the blended CFC tax regime;

'blended CFC tax regime' means a controlled foreign company tax regime that aggregates income, losses, and creditable taxes of all the controlled foreign companies of a constituent entity-owner for the purposes of calculating the constituent entity-owner's tax liability under the regime and that has an applicable rate of less than 15%, but does not include a regime that takes into account a group's domestic income except that it may allow losses incurred by the constituent entity-owner to reduce the controlled foreign company income inclusion;

'territorial ETR' means the effective tax rate for a territory as computed under section XXX [Determination of the effective tax rate] without regard to any covered taxes under a controlled foreign company tax regime, but including income tax expense attributable to a qualified domestic top-up tax of a territory where the blended CFC tax regime allows a foreign tax credit for the qualified domestic top-up tax on the same terms as any other creditable covered tax.

(2) For fiscal years that begin on or before 31 December 2025 but not including a fiscal Year that ends after 30 June 2027, for the purposes of section XXX (4) [Specific allocation of covered taxes incurred by certain types of constituent entities], allocable

blended CFC tax shall be allocated from a constituent entity-owner to a constituent entity in accordance with the following formula–

$$\frac{\text{blended CFC allocation key x allocable blended CFC tax}}{\text{sum of all blended CFC allocation keys}}$$

where –
allocable blended CFC tax is as defined in subsection (1), and
blended CFC allocation key is calculated as follows:
attributable income of the entity x (applicable rate – territorial ETR)

(3) Where the territorial ETR equals or exceeds the applicable rate or the minimum tax rate, the blended CFC allocation key for the constituent entity shall be deemed to be zero.

Post-filing adjustments and tax rate changes[55]

This section deals with the impact of adjustments to amounts of covered taxes incurred with respect to a territory for a previous fiscal year after the top-up tax information return for the period has been filed. The section deals with scenarios where the amount of covered taxes is adjusted or the effective tax rate changes.

XXX. (1) (a) Subject to paragraph (b), where a constituent entity records an adjustment to its covered taxes for a previous fiscal year in its financial accounts, such adjustment shall be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made, unless the adjustment relates to a fiscal year in which there is a decrease in covered taxes for the territory.

(b) Subject to paragraph (d), where a constituent entity records a decrease in covered taxes for a previous fiscal year in its financial accounts that were included in the constituent entity's adjusted covered taxes for a previous fiscal year, the effective tax rate and top-up tax for that fiscal year shall be

[55] Article 25 of the Directive

recomputed in accordance with section XXX(1) [Additional top-up tax] by reducing adjusted covered taxes by the amount of the decrease in covered taxes.

(c) Where there is an adjustment to covered taxes in accordance with paragraph (b), the qualifying income for that fiscal year and any previous fiscal years shall be adjusted accordingly.

(d) On the making of an election by the filing constituent entity, where there is an aggregate decrease of less than €1,000,000 in the adjusted covered taxes determined for a territory for the fiscal year in accordance with paragraph (b), the decrease in covered taxes may be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made.

(2) Where in a fiscal year the applicable domestic tax rate is reduced below the minimum tax rate, and such reduction results in a deferred tax expense in the financial accounts of a constituent entity for a fiscal year, the amount of the resulting deferred tax expense shall be treated as an adjustment to the constituent entity's liability for covered taxes, that are taken into consideration pursuant to section XXX [Adjusted covered taxes], for a previous fiscal year.

(3) (a) Where a deferred tax expense was recorded in the financial accounts of a constituent entity at a rate lower than the minimum tax rate, and the applicable tax rate is increased in a subsequent fiscal year, the amount of deferred tax expense that results from such increase shall be treated, upon payment of the related tax, as an adjustment to a constituent entity's liability for covered taxes claimed for the previous fiscal year in which the deferred tax expense was recorded in accordance with subsection (1)[56].

(b) The adjustment under paragraph (a) shall not exceed an amount equal to the deferred tax expense recalculated at the minimum tax rate.

(4) Where more than €1,000,000 of the amount accrued by a constituent entity as current tax expense, and included in adjusted covered taxes for a fiscal year, is not

[56] Article 4.6.3 paragraph 130 and 131 of the Commentary on the GloBE Model Rules

paid within 3 years after the end of that fiscal year, the effective tax rate and top-up tax for the fiscal year in which the unpaid amount was included as a covered tax shall be recalculated in accordance with section XXX [Additional top-up tax], by excluding such unpaid amount from the adjusted covered taxes.

Chapter 5

Computation of the effective tax rate and the top-up tax

Determination of the effective tax rate[57]

This section provides the rules for the calculation of the effective tax rate ("ETR") of an MNE group or large-scale domestic group. This calculation is pivotal to the operation of the Pillar Two rules as it determines if the group is subject to a minimum level of taxation or if the territory's ETR is below the minimum tax rate, and thus making it a low-taxed territory.

XXX. (1) The effective tax rate of an MNE group or large-scale domestic group shall be computed for—

(a) each fiscal year, and

(b) each territory,

provided that there is net qualifying income in the territory, as calculated pursuant to subsection (2).

(2) For the purpose of this Part, the effective tax rate of an MNE group or large-scale domestic group for a territory for a fiscal year, shall be calculated as follows—

ACT / NQI

where—

ACT is the aggregate adjusted covered taxes of all the constituent entities located in the territory determined in accordance with Chapter 4, and

NQI is the positive amount, if any, of the net qualifying income of all the constituent entities located in the territory determined in accordance with subsection 3.

(3) The net qualifying income or loss of the constituent entities located in a territory for a fiscal year shall be calculated as follows—

AQI-AQL

[57] Article 26 of the Directive

where—

AQI is the sum, if any, of the qualifying income of all constituent entities located in the territory for a fiscal year determined in accordance with Chapter 3, and

AQL is the sum of the qualifying losses of all constituent entities located in the territory for a fiscal year determined in accordance with Chapter 3.

(4) For the purposes of subsections (2) and (3), the adjusted covered taxes and net qualifying income or loss of constituent entities, that are investment entities, are excluded from the calculation of the effective tax rate and the calculation of the net qualifying income.

(5) The effective tax rate of each stateless constituent entity shall be computed, for each fiscal year, separately from the effective tax rate of all other constituent entities.

Computation of the top-up tax[58]

This section contains provisions relating to the calculation of the top-up tax in respect of constituent entities located in a low-tax territory, and the calculation methods used to allocate that top-up tax to constituent entities.

XXX. (1) Where the effective tax rate of a territory in which constituent entities are located is below the minimum tax rate for a fiscal year, the MNE group or large-scale domestic group shall compute a top-up tax in accordance with this section separately for each of its constituent entities that has qualifying income included in the computation of net qualifying income of that territory for the fiscal year.

(2) The top-up tax percentage for a territory for a fiscal year, shall be the positive percentage point difference, if any, calculated as follows—

$$MTR - ETR$$

where—

MTR is the minimum tax rate, and

[58] Article 27 of the Directive

ETR is the effective tax rate of the territory for the fiscal year computed in accordance with section XXX [Determination of the effective tax rate].

(3) The territorial top-up tax for a fiscal year shall be the positive amount, if any, calculated as follows—

$$(TUP \times EP) + ATUP - D$$

where—

TUP is the top-up tax percentage for the territory for a fiscal year determined in accordance with subsection (2),

EP is the excess profit determined for the territory for a fiscal year in accordance with subsection (4),

ATUP is the additional top-up tax for the territory for a fiscal year determined in accordance with section XXX [Additional top-up tax], and

D is the amount of tax for the territory for the fiscal year as determined in accordance with a qualified domestic top-up tax.

(4) The excess profit for the territory for the fiscal year referred to in subsection (3), is the positive amount, if any, calculated as follows—

$$NQI - SBIE$$

where—

NQI is the positive amount, if any, of the net qualifying income of all the constituent entities in the territory determined in accordance with section XXX(3) [Determination of the effective tax rate], and

SBIE is the substance-based income exclusion amount for the territory for the fiscal year determined in accordance with section XXX [substance-based income exclusion].

(5) The top-up tax of a constituent entity for a fiscal year shall be calculated as follows—

$$JTUT \times (QI / AQI)$$

where—

JTUT is the territorial top-up tax for a fiscal year as determined by subsection (3),

QI is the qualifying income of the constituent entity for a territory for a fiscal year, determined in accordance with Chapter 3, and

AQI is the sum, if any, of the qualifying income of all the constituent entities for a fiscal year located in the territory determined in accordance with Chapter 3.

(6) Where—

(a) the territorial top-up tax for a fiscal year results from a recalculation to which section XXX(1) [Additional top-up tax] applies, and

(b) there is no net qualifying income in respect of the territory for the fiscal year,

the top-up tax shall be allocated to each constituent entity using the calculation provided for in subsection (5), based on the qualifying income of the constituent entities in the fiscal year, for which the recalculations pursuant to section XXX(1) [Additional top-up tax] are performed.

(7) The top-up tax of each stateless constituent entity shall be computed, for each fiscal year, separately from the top-up tax of all other constituent entities.

Substance-based income exclusion[59]

This section provides for a reduction of net qualifying income subject to top-up tax based on a measure of employee related expenses and percentage of tangible assets.

XXX. (1) In this section—

'eligible employees' means—

(a) full-time or part-time employees of a constituent entity, and

(b) independent contractors participating in the ordinary operating activities of the MNE group or large-scale domestic group under the direction and control of the MNE group or large-scale domestic group;

'eligible payroll costs' means employee compensation expenditures, including—

(a) salaries,

[59] Article 28 of the Directive

(b) wages, and

(c) other expenditures that provide a direct and separate personal benefit to the employee, including—

(i) health insurance,

(ii) pension contributions,

(iii) payroll and employment taxes, and

(iv) employer social security contributions;

'eligible tangible assets' means—

(a) property, plant and equipment located in the territory,

(b) natural resources located in the territory,

(c) a lessee's right of use of tangible assets located in the territory, or

(d) a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets.

(2) (a) Subject to paragraph (b), for the purposes of computing the top-up tax for a territory for a fiscal year, the net qualifying income for a territory shall be reduced by an amount equal to the sum of—

(i) the payroll carve-out computed in accordance with subsection (3), and

(ii) the tangible asset carve-out computed in accordance with subsection (4),

(in this Part referred to as the 'substance-based income exclusion amount') for each constituent entity located in the territory.

(b) Paragraph (a) shall not apply where a filing constituent entity elects in accordance with section XXX(2) [Elections], not to apply the substance-based income exclusion for the fiscal year.

(3) (a) The payroll carve-out, referred to in subsection (2), of a constituent entity shall be equal to 5% of its eligible payroll costs for a fiscal year, which relate to eligible employees, who perform activities for the MNE group or large-scale domestic group in the territory in which the constituent entity is located.

(b) For the purposes of paragraph (a), no account shall be taken of eligible payroll costs—

(i) capitalised and included in the carrying value of eligible tangible assets, or

(ii) attributable to income that is excluded in accordance with section XXX [International shipping income exclusion].

(4) (a) The tangible asset carve-out, referred to in subsection (2), of a constituent entity shall be equal to 5% of the carrying value of its eligible tangible assets for a fiscal year located in the territory in which the constituent entity is located.

(b) For the purposes of paragraph (a), no account shall be taken of—

(i) the carrying value of property, including land and buildings, that is held for sale, for lease or for investment, or

(ii) the carrying value of tangible assets used to derive income that is excluded in accordance with section XXX[International Shipping income exclusion].

(5) For the purpose of subsection (4), the carrying value of eligible tangible assets shall be the average of—

(i) the carrying value of eligible tangible assets at the beginning of the fiscal year, and

(ii) the carrying value of eligible tangible assets at the end of the fiscal year,

reduced by any accumulated depreciation, amortisation and depletion and increased by any amount attributable to the capitalisation of payroll expenses, as recorded for the purposes of preparing the consolidated financial statements of the ultimate parent entity.

(6) (a) For the purpose of subsections (3) and (4), the eligible payroll costs and eligible tangible assets, as the case may be, of a constituent entity which is a permanent establishment, shall be those that are included in its separate financial accounts in accordance with sections XXX (1) and (2) [Allocation of the qualifying income or loss between a main entity and a permanent establishment], provided that

the eligible payroll costs and eligible tangible assets, as the case may be, are located in the same territory as the permanent establishment.

(b) The eligible payroll costs and eligible tangible assets of a permanent establishment shall not be taken into account in the calculation of eligible payroll costs and eligible tangible assets of the main entity.

(c) Where the income of a permanent establishment was wholly or partially excluded pursuant to section XXX[Allocation of the qualifying income or loss of a flow-through entity] or section XXX [Ultimate parent entity that is a flow-through entity] as the case may be, the eligible payroll costs and eligible tangible assets of such permanent establishment shall be excluded in the same proportion from the computation of the substance-based income exclusion amount for a territory for a fiscal year under this section for the MNE group or large-scale domestic group.

(7) (a) For the purpose of subsections (3) and (4), eligible payroll costs of eligible employees paid by a flow-through entity, and eligible tangible assets owned by a flow-through entity, that are not allocated under subsection (6), shall be allocated to—

(i) the constituent entity-owners of the flow-through entity, in proportion to the amount allocated to them pursuant to section XXX(4) [Allocation of the qualifying income or loss of a flow-through entity], provided that the eligible employees and eligible tangible assets, as the case may be, are located in the territory of the constituent entity-owners, and

(ii) the flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the computation of the qualifying income of the flow-through entity pursuant to section XXX(1) and (2) [Ultimate parent entity that is a flow-through entity], provided that the eligible employees and eligible tangible assets, as the case may be, are located in the territory of the flow-through entity.

(b) All eligible payroll costs and eligible tangible assets of a flow-through entity that are not allocated for a fiscal year under subsection 6 or paragraph (a) shall be

excluded from the computation of the substance-based income exclusion amount of the MNE group or large-scale domestic group.

(8) The substance-based income exclusion amount of each stateless constituent entity shall be computed for each fiscal year separately from the substance-based income exclusion amount of all other constituent entities.

(9) The substance-based income exclusion amount computed under this section shall not include the payroll carve-out and the tangible asset carve-out, as the case may be, of constituent entities that are investment entities in that territory.

Additional top-up tax[60]

Certain sections of the legislation allow for the recalculation of an amount of covered taxes and qualifying income which may affect the ETR of a territory and the top-up tax of a constituent entity. This section contains the provisions for the recalculation of the ETR which may result in an additional top-up tax.

XXX. (1) (a) Where, pursuant to—

(i) section XXX(3) [Effect of a qualified domestic top-up tax]

(ii) section XXX(7) [Adjustments to determine the qualifying income or loss],

(iii) section XXX(8) [Total deferred tax adjustment amount],

(iv) section XXX(1) and (4) [Post-filing adjustments and tax rate changes], and

(v) section XXX(5) [Eligible distribution tax systems],

an adjustment to covered taxes or qualifying income or loss results in the recalculation of the effective tax rate and top-up tax of the MNE group or large-scale domestic group for a territory for a prior fiscal year, the effective tax rate and top-up tax shall be recalculated in accordance with section XXX [Determination of the effective tax rate], section XXX [Computation of the top-up tax] and section XXX [Substance-based income exclusion].

[60] Article 29 of the Directive

(b) Any amount of incremental top-up tax arising from the recalculation referenced in paragraph (a), shall be treated as an additional top-up tax for the purpose of section XXX(3) [Computation of the top-up tax] for the fiscal year in which the relevant adjustment is made.

(2) Where, for a fiscal year and a territory—

(a) there is an additional top-up tax, and

(b) no net qualifying income,

the qualifying income of a constituent entity located in that territory for the purposes of section XXX(2) [Allocation of the top-up tax under the IIR] , shall be an amount calculated as—

TUTA / MTR

where—

TUTA is the top-up tax allocated to the constituent entity pursuant to section XXX(5) and (6) [Computation of the top-up tax], and

MTR is the minimum tax rate.

(3) (a) Where, pursuant to section XXX(5) and (6) [Adjusted covered taxes], an additional top-up tax is due for a territory, the qualifying income of a constituent entity located in that territory for the purposes of section XXX(2) [Allocation of the top-up tax under the IIR], shall be an amount calculated as—

TUTCE / MTR

where—

TUTCE is the additional top-up tax allocated to the constituent entity, and

MTR is the minimum tax rate.

(b) For the purposes of paragraph (a), the allocation of the additional top-up tax to a constituent entity shall be made pro-rata, to each constituent entity located in the territory, based on the following formula—

(QIQL x MTR) - ACT

where—

QIQL is the qualifying income or loss of the constituent entity for the fiscal year,

MTR is the minimum tax rate, and

ACT is the adjusted covered taxes loss of the constituent entity for the fiscal year.

(c) For the purposes of paragraph (a), the additional top-up tax for a territory for a fiscal year shall only be allocated to constituent entities that record an amount of adjusted covered tax that—

(i) is less than zero, and

(ii) less than the qualifying income or loss of such constituent entities multiplied by the minimum tax rate.

(4) Where a constituent entity is allocated additional top-up tax in accordance with this section, section XXX(5) or (6) [Computation of the top-up tax], such constituent entity shall be treated as a low-taxed constituent entity for the purposes of Chapter 2.

De minimis exclusion[61]

This section provides for a territorial exclusion from the top-up tax due where the average qualifying revenue and average qualifying income or loss of all constituent entities in an MNE group are below specified thresholds.

XXX. (1) Notwithstanding anything in this Chapter, at the election of the filing constituent entity, the top-up tax due for the constituent entities of an MNE group or large-scale domestic group located in a territory, other than stateless constituent entities or investment entities, shall be equal to zero for a fiscal year, if for that fiscal year—

(a) the average qualifying revenue of all constituent entities of an MNE group or large-scale domestic group located in that territory is less than €10,000,000, and

(b) the average qualifying income or loss of all constituent entities of an MNE group or large-scale domestic group in that territory is a loss or is less than €1,000,000.

[61] Article 30 of the Directive

(2) (a) For the purpose of paragraph (a), the average qualifying revenue, or the average qualifying income or loss, as the case may be, shall be the average of the qualifying revenue, or the qualifying income or loss, of the constituent entities of an MNE group or large-scale domestic group located in the territory, for the fiscal year and the two preceding fiscal years.

(b) If there are no constituent entities of an MNE group or large-scale domestic group with qualifying revenue, or qualifying income or loss, as the case may be, located in the territory in the first or second preceding fiscal years, such fiscal years shall be excluded from the calculation of the average qualifying revenue, or average qualifying income or loss, as the case may be, of that territory.

(3) Subject to subsection (5), for the purposes of this section, the qualifying revenue of the constituent entities of an MNE group or large-scale domestic group located in a territory for a fiscal year shall be the sum of all the revenues of the constituent entities of an MNE group or large-scale domestic group located in that territory in arriving at the financial accounting net income or loss of the constituent entities for the fiscal year reduced, or increased, by any adjustment carried out pursuant to Chapter 3 to the extent such adjustments affect the amount of revenue taken into account in the calculation of qualifying income or loss of the constituent entities.

(4) Subject to subsection (5), for the purposes of this section, the qualifying income or loss of the constituent entities of an MNE group or large-scale domestic group located in a territory for a fiscal year shall be the net qualifying income or loss of that territory as computed pursuant to section XXX(3) [Determination of the effective tax rate].

(5) The qualifying revenue and qualifying income or loss of stateless constituent entities or investment entities shall be excluded from the computations of the average qualifying revenue and average qualifying income or loss of the constituent entities of an MNE group or large-scale domestic group for the purposes of subsection (1).

Minority owned constituent entities[62]

This section provides specific rules for calculating the ETR and top-up tax of minority-owned constituent entities, being a constituent entity where the ultimate parent entity has direct or indirect ownership of 30% or less of the total ownership interests of that constituent entity.

XXX. (1) In this section—

'minority-owned constituent entity' means a constituent entity in which the ultimate parent entity has a direct or indirect ownership interest of 30% or less of the total ownership interests of the constituent entity;

'minority-owned parent entity' means a minority-owned constituent entity that holds, directly or indirectly, the controlling interests in another minority-owned constituent entity, except where the controlling interests in the former entity are held, directly or indirectly, by another minority-owned constituent entity;

'minority-owned subgroup' means a minority-owned parent entity, and its minority-owned subsidiaries;

'minority-owned subsidiary' means a minority-owned constituent entity whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.

(2) (a) The computation of the effective tax rate and the top-up tax for a territory in accordance with Chapters 3 to 7, with respect to members of a minority-owned subgroup, shall apply as if each minority-owned subgroup was a separate MNE group or large-scale domestic group.

(b) The adjusted covered taxes and qualifying income or loss of members of a minority-owned subgroup shall be excluded from—

[62] Article 31 of the Directive

(i) the determination of the residual amount of the effective tax rate for the territory of the MNE group or large-scale domestic group, computed in accordance with section XXX(1) [Determination of the effective tax rate], and

(ii) the net qualifying income or loss for the territory of the MNE group or large-scale domestic group computed in accordance with section XXX(3) [Determination of the effective tax rate].

(3) (a) The effective tax rate and top-up tax of a minority-owned constituent entity, that is not a member of a minority-owned subgroup, shall be computed on an entity basis in accordance with Chapter 3 to 7.

(b) The adjusted covered taxes and qualifying income or loss of the minority-owned constituent entity referred to in paragraph (a), shall be excluded from—

(i) the determination of the residual amount of the effective tax rate of the MNE group or large-scale domestic group for the territory, computed in accordance with section XXX(1) [Determination of the effective tax rate], and

(ii) the net qualifying income or loss of the MNE group or large-scale domestic group for the territory computed in accordance with section XXX(3) [Determination of the effective tax rate].

(c) This subsection shall not apply to a minority-owned constituent entity that is an investment entity.

Safe harbours[63]

[This provision will provide for internationally agreed safe harbours from the application of top-up tax. Provisions in respect of same may form part of a future feedback statement.]

[63] Article 32 of the Directive

Chapter 6

Corporate restructuring and holding structures

Application of consolidated revenue threshold to group mergers and demergers[64]

This section details the treatment of the consolidated revenue threshold in relation to mergers and demergers, while also providing the necessary definitions for the operation of this chapter.

XXX. (1) In this Chapter—

'merger' means any arrangement where—

(a) the controlling interest in the entities of all or substantially all of two or more separate groups are brought under the ownership of a single entity or group to form a single group, or

(b) the controlling interest in an entity that is not a member of any group is brought under the ownership of another entity or group to form a single group;

'demerger' means any arrangement where the entities of a group are separated into two or more groups that are no longer consolidated by the same ultimate parent entity in its consolidated financial statements.

(2) Where two or more groups merge to form a single group (hereinafter referred to as a 'merged group') in any of the four consecutive fiscal years immediately preceding a fiscal year, the consolidated revenue threshold, referred to in Chapter 1, shall be deemed to be met by the merged group for any fiscal year prior to the merger if the sum of the revenue included in each of their consolidated financial statements for that fiscal year is equal to or greater than the consolidated revenue threshold.

(3) Where an entity that is not a member of a group (hereinafter referred to as the 'new member entity') merges with an entity or a group (hereinafter referred to as the

[64] Article 33 of the Directive

'acquiring entity') in a fiscal year, and either the new member entity or the acquiring entity did not have consolidated financial statements in any of the last four consecutive fiscal years immediately preceding that fiscal year, the consolidated revenue threshold shall be deemed to be met for that fiscal year if the sum of the revenue included in each of their financial statements or consolidated financial statements for that fiscal year is equal to or greater than the consolidated revenue threshold.

(4) Where an MNE group or large-scale domestic group to which this Part applies demerges into two or more groups (each hereinafter referred to as a 'demerged group'), the consolidated revenue threshold shall be deemed to be met by a demerged group where—

(a) with respect to the first fiscal year ending after the demerger, the demerged group has revenue recorded in the group's consolidated financial statements equal to or greater than the consolidated revenue threshold in that fiscal year, and

(b) with respect to the second to fourth fiscal years ending after the demerger, the demerged group has revenue recorded in the group's consolidated financial statements equal to or greater than the consolidated revenue threshold in at least two of the fiscal years following the year of the demerger.

Constituent entities joining and leaving an MNE group or a large-scale domestic group[65]

This section provides the legislative provisions for the treatment of constituent entities that join or leave a group, and provides clarification on how certain provisions in other chapters and sections interact with these changes.

XXX. (1) Where during a fiscal year (hereinafter referred to as a the 'acquisition year'), an entity (hereinafter referred to as a 'target entity')-

[65] Article 34 of the Directive

(a) becomes or ceases to be a constituent entity of an MNE group or of a large-scale domestic group as a result of a transfer of direct or indirect ownership interests in the target entity, or

(b) becomes the ultimate parent entity of a new group,

the target entity shall be treated as a member of an MNE group or large-scale domestic group for the purposes of this Part provided that a portion of its assets, liabilities, income, expenses and cash flows are included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year.

(2) For the purposes of this Part, in an acquisition year—

(a) an MNE group or large-scale domestic group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target entity that are included in the consolidated financial statements of the ultimate parent entity;

(b) the qualifying income or loss and adjusted covered taxes of the target entity shall be based on the historical carrying value of its assets and liabilities and in each subsequent fiscal year;

(c) the computation of the eligible payroll costs of the target entity pursuant to section XXX [Substance-based income exclusion] shall take into account only the costs that are reflected in the consolidated financial statements of the ultimate parent entity;

(d) the computation of the carrying value of the eligible tangible assets of the target entity pursuant to section XXX [Substance based income exclusion] shall be adjusted, where applicable, in proportion to the period of time in which the target entity was a member of the MNE group or large-scale domestic group during the acquisition year.

(3) Subject to subsection (4), the deferred tax assets and deferred tax liabilities of a target entity that are transferred between MNE groups or large-scale domestic groups shall be taken into account by the acquiring MNE group or large-scale domestic group in the same manner and to the same extent as if the acquiring MNE

group or large-scale domestic group held a controlling interest in the target entity when such assets and liabilities arose.

(4) Subsection 3 shall not apply to a qualifying loss deferred tax asset as referred to in section [XXX] [Qualifying loss election].

(5) (a) For the purposes of section XXX(9) [Total deferred tax adjustment amount], where a deferred tax liability of a target entity has previously been included in its total deferred tax adjustment amount, it shall be treated as reversed by the disposing MNE group or large-scale domestic group and shall be treated as arising from the acquiring MNE group or large-scale domestic group in the acquisition year.

(b) Where paragraph (a) applies, any subsequent reduction of covered taxes pursuant to section XXX(9) [Total deferred tax adjustment amount] shall have effect in the year in which the amount is recaptured.

(6) Where in an acquisition year a target entity is—

(a) a parent entity, and

(b) a member of two or more MNE groups or large-scale domestic groups,

during the acquisition year, it shall apply separately the provisions of this Part to its allocable shares of the top-up tax of low-taxed constituent entities determined for each MNE group or large-scale domestic group.

(7) Notwithstanding subsections (1) to (6), where the territory in which the target entity is located, or in the case of a tax transparent entity the territory in which the assets are located—

(a) treats the acquisition or disposal of the controlling interest in the target entity in the same, or in a similar, manner as an acquisition or disposal of assets and liabilities; and

(b) imposes a covered tax on the seller based on the difference between the tax basis, and

(i) the consideration paid in exchange for the controlling interest, or

(ii) the fair value of the assets and liabilities,

then the acquisition or disposal of a controlling interest in a target entity shall be treated as an acquisition or disposal of assets and liabilities.

Transfer of assets and liabilities[66]

This section deals with the recognition or non-recognition of gains or losses arising on the disposition of assets and liabilities and for determining the carrying values of assets and liabilities following an acquisition.

XXX. (1) In this section—

'reorganisation' means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction where—

(a) (i) the consideration for the transfer is, in whole or in significant part, equity interests issued by the constituent entity acquiring the assets and liabilities (hereinafter referred to as the "acquiring constituent entity") or by a person connected with the acquiring constituent entity,

(ii) in the case of a liquidation, the consideration for the transfer is the cancellation of the holding of the equity interests of the entity being liquidated, or

(iii) no consideration is provided and the issuance of an equity interest would have no economic significance,

(b) the disposing constituent entity's gain or loss on those assets and liabilities is not subject to tax, in whole or in part, and

(c) the tax laws of the territory in which the acquiring constituent entity is located require the acquiring constituent entity to compute taxable income after the disposal or acquisition using the value of the assets for tax purposes of the disposing constituent entity under the tax laws of the territory in which the disposing constituent entity is located at the date of the transfer, adjusted for any non-qualifying gain or loss on the disposal or acquisition;

[66] Article 35 of the Directive

‘non-qualifying gain or loss’ means the lesser of—

(a) the gain or loss of the disposing constituent entity arising in connection with a reorganisation that is subject to tax in the disposing constituent entity’s location, and

(b) the gain or loss arising in connection with the reorganisation recorded in the disposing constituent financial accounting net income or loss.

(2) Subject to subsections (4) and (5), a disposing constituent entity shall include the gain or loss arising from the disposal of its assets and liabilities in the computation of its qualifying income or loss for a fiscal year.

(3) Subject to subsections (4) and (5), an acquiring constituent entity shall determine its qualifying income or loss on the basis of its carrying value of the acquired assets and liabilities determined under the financial accounting standard used in preparing consolidated financial statements of its ultimate parent entity.

(4) Subject to subsection (5), on the happening of a reorganisation—

(a) the disposing constituent entity shall exclude any gain or loss arising on the disposal of its assets or liabilities from the computation of its qualifying income or loss, and

(b) the acquiring constituent entity shall determine its qualifying income or loss on the basis of the carrying value of the acquired assets and liabilities of the disposing constituent entity upon disposal.

(5) On the happening of a reorganisation that results in a non-qualifying gain or loss for the disposing constituent entity—

(a) the disposing constituent entity shall include the gain or loss on the disposal of its assets and liabilities in the computation of its qualifying income or loss to the extent of the non-qualifying gain or loss, and

(b) the acquiring constituent entity shall determine its qualifying income or loss after the acquisition of its assets and liabilities using the disposing constituent entity’s carrying value of the acquired assets and liabilities upon disposal, as

adjusted consistently with the tax law in the territory where the acquiring constituent entity is located to account for the non-qualifying gain or loss.

(6) On the making of an election by a filing constituent entity, where a constituent entity is required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes under the tax law in the territory where it is located (hereinafter referred to as the 'tax adjustment") then such constituent entity may—

(a) subject to subsection (7), include in the computation of its qualifying income or loss for a fiscal year an amount of gain or loss in respect of each of its assets and liabilities, which shall be:

(i) equal to the difference between the carrying value for financial accounting purposes of the asset or liability immediately before the date of the event that triggered the tax adjustment (hereinafter referred to as the "triggering event") and the fair value of the asset or liability immediately after the triggering event as determined under the tax law in the territory where it is located, and

(ii) decreased, or increased as the case may be, by the non-qualifying gain or loss, if any, arising in connection with the triggering event,

and

(b) use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to compute qualifying income or loss in the fiscal years ending after the triggering event.

(7) Where an election is made in accordance with subsection (6), a constituent entity may—

(a) include the net total of the amounts determined in paragraph (a) of subsection (6) in the constituent entity's qualifying income or loss in the fiscal year in which the triggering event occurs, or

(b) include an amount equal to the net total of the amounts determined in paragraph (a) of subsection (6) divided by five in the fiscal year in which the triggering event occurs and in each of the immediate four subsequent fiscal

years, but where the constituent entity leaves the MNE group or large-scale domestic group in a fiscal year within that period, the remaining amount shall be included in that fiscal year.

Joint ventures[67]

This section contains provisions relating to joint ventures.

XXX. (1) In this section —

'joint venture' means an entity whose ownership interests are at least 50% held directly or indirectly by its ultimate parent entity and whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity but shall not include—

(a) an ultimate parent entity of an MNE group or of a large-scale domestic group to which this Part or a qualified IIR applies,

(b) an excluded entity,

(c) an entity whose ownership interests held by the MNE group or large-scale domestic group are held directly through an excluded entity and which—

(i) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors,

(ii) carries out activities that are ancillary to those carried out by the excluded entity, or

(iii) has substantially all of its income excluded from the computation of qualifying income or loss in accordance with section XXX(2)(b) and (c) [Adjustments to determine the qualifying income or loss],

(d) an entity that is held by an MNE group or large-scale domestic group composed exclusively of excluded entities, or

(e) a joint venture affiliate.

'joint venture affiliate' means—

[67] Article 36 of the Directive

(a) an entity whose assets, liabilities, income, expenses and cash flows are consolidated by a joint venture under an acceptable financial accounting standard or would have been consolidated had the joint venture been required to consolidate such assets, liabilities, income, expenses and cash flows under an acceptable financial accounting standard, or

(b) a permanent establishment whose main entity is a joint venture or an entity referred to in paragraph (a) and such permanent establishment shall be treated as a separate joint venture affiliate;

'joint venture group' means a joint venture and its joint venture affiliates;

(2) Section XXX [Ultimate parent entity in the State] to section XXX [IIR offset mechanism] shall apply to a parent entity that holds a direct or indirect ownership interest in a joint venture or a joint venture affiliate with respect to its allocable share of the top-up tax of that joint venture or joint venture affiliate for a fiscal year.

(3) Chapters 3 to 5 of this Part shall apply to the computation of the top-up tax of a joint venture group for a fiscal year as if the joint venture and its joint venture affiliates were constituent entities of a separate MNE group or large-scale domestic group and the joint venture was the ultimate parent entity of that group.

(4) The top-up tax of a joint venture group for a fiscal year shall be reduced by each parent entity's allocable share of the top-up tax under subsection (2) of each member of the joint venture group that is brought into charge under subsection (3), and any remaining amount of top-up tax shall be added to the total UTPR top-up tax amount pursuant to section XXX(3) [Computation and allocation of the UTPR top-up tax amount].

Multi-parented MNE groups[68]

This provision contains rules relating to multi-parents MNE groups such as stapled structures and dual-listed arrangements.

XXX. (1) In this section —

'multi-parented MNE group or large-scale domestic group' means two or more groups where the ultimate parent entities enter into an arrangement that is a stapled structure or a dual-listed arrangement that includes at least one entity or permanent establishment of either group subject to the arrangement which is located in a different territory with respect to the location of the other entities of the two groups.

'stapled structure' means an arrangement entered into by two or more ultimate parent entities of separate groups under which—

(a) 50 per cent or more of the ownership interests in the ultimate parent entities of separate groups are—

(i) if they are listed, quoted at a single price, and

(ii) by reason of form of ownership, restrictions on transfer, or other terms or conditions, combined with each other, and cannot be transferred or traded independently, and

(b) one of the ultimate parent entities prepares consolidated financial statements—

(i) in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups concerned are presented together as those of a single economic unit, and

(ii) that are required by a regulatory regime to be audited by an external independent auditor;

'dual-listed arrangement' means an arrangement entered into by two or more ultimate parent entities of separate groups under which—

(a) the ultimate parent entities agree to combine their business by contract alone,

[68] Article 37 of the Directive

(b) pursuant to contractual arrangements the ultimate parent entities will make distributions, with respect to dividends and in liquidation, to their shareholders based on a fixed ratio,

(c) the ultimate parent entities' activities are managed as a single economic unit under contractual arrangements while retaining their separate legal identities,

(d) the ownership interests of the ultimate parent entities that comprise the agreement are quoted, traded or transferred independently in different capital markets, and

(e) the ultimate parent entities prepare consolidated financial statements—

 (i) in which the assets, liabilities, income, expenses and cash flows of entities in all of the groups are presented together as those of a single economic unit, and

 (ii) that are required by a regulatory regime to be audited by an external independent auditor;

'consolidated financial statements of the multi-parented MNE group or large-scale domestic group' means the combined consolidated financial statements referred to in the definitions of a stapled structure or a dual-listed arrangement, prepared under an acceptable financial accounting standard, which is deemed to be the accounting standard of the ultimate parent entity.

(2) Where entities and constituent entities of two or more groups form part of a multi-parented MNE group or large-scale domestic group, the entities and constituent entities of each group shall be treated as members of one multi-parented MNE group or large-scale domestic group.

(3) For the purposes of subsection (2) an entity, other than an excluded entity referred to in section XXX(2) [Scope of this Part], shall be treated as a constituent entity if it is consolidated on a line-by-line basis in the consolidated financial statements of the multi-parented MNE group or large-scale domestic group or if its controlling interests are held by entities in the multi-parented MNE group or large-scale domestic group.

(4) The ultimate parent entities of the separate groups that compose the multi-parented MNE group or large-scale domestic group shall be the ultimate parent entities of the multi parented MNE group or large-scale domestic group and any references to an ultimate parent entity shall apply, as required, as if they are references to multiple ultimate parent entities.

(5) Sections XXX [Ultimate parent entity in the State] to XXX [IIR offset mechanism] shall apply to the parent entities and ultimate parent entities of the multi-parented MNE group or large-scale domestic group with respect to their allocable share of the top-up tax of the low-taxed constituent entities.

(6) Sections XXX [Effect of a qualified domestic top-up tax] to XXX [Computation and allocation of the UTPR top-up tax amount] shall apply to constituent entities of a multi-parented MNE group or large-scale domestic group, taking into account the top-up tax of each constituent entity that is a member of the multi-parented MNE group or large-scale domestic group.

(7) The ultimate parent entities of the multi-parented MNE group or large-scale domestic group shall be required to file the top-up tax information return in respect of the information concerning each of the groups that compose the multi-parented MNE group or large-scale domestic group in accordance with section XXX[Filing obligations], but may appoint a single designated filing entity within the meaning of section XXX[Filing obligations].

Chapter 7

Tax neutrality and distribution regimes

Ultimate parent entity that is a flow-through entity [69]

This section contains rules which allow for a reduction in the qualifying income of an ultimate parent entity that is a flow-through entity where the entity holding the ownership interests are subject to tax on that income.

XXX. (1) The qualifying income of a flow-through entity that is an ultimate parent entity shall be reduced, for a fiscal year, by the amount of qualifying income that is attributable to the holder of an ownership interest (hereinafter referred to as an "ownership holder") in the flow-through entity where—

(a) the ownership holder is subject to tax on such income, for a taxable period that ends within 12 months after the end of that fiscal year, at a nominal rate of tax that equals or exceeds the minimum tax rate, or

(b) it can be reasonably expected that the sum of the adjusted covered taxes of the ultimate parent entity and taxes paid by the ownership holder on such income within 12 months after the end of the fiscal year equals or exceeds an amount equal to that income multiplied by the minimum tax rate.

(2) The qualifying income of a flow-through entity that is an ultimate parent entity shall be reduced, for a fiscal year, by the amount of qualifying income that is allocated to the ownership holder in the flow-through entity provided that the ownership holder is—

(a) an individual that—

(i) is tax resident in the territory where the ultimate parent entity is located, and

(ii) holds ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity,

or

[69] Article 38 of the Directive

(b) a governmental entity, an international organisation, a non-profit organisation or a pension fund that —

(i) is tax resident in the territory where the ultimate parent entity is located, and

(ii) holds ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity.

(3) (a) Subject to paragraph (b), the qualifying loss of a flow-through entity that is an ultimate parent entity shall be reduced, for a fiscal year, by the amount of qualifying loss that is attributable to the ownership holder in the flow-through entity.

(b) Paragraph (a) shall not apply to the extent the ownership holder is not permitted to use the qualifying loss for the computation of its taxable income under the laws of the relevant territory.

(4) The covered taxes of a flow-through entity that is an ultimate parent entity shall be reduced in the same proportion as the amount of qualifying income of that flow-through entity is reduced in accordance with subsections (1) and (2).

(5) Subsections (1) to (4) shall apply to a permanent establishment through which—

(a) a flow-through entity that is an ultimate parent entity wholly or partly carries out its business, or

(b) the business of a tax transparent entity is wholly or partly carried out, where the ultimate parent entity's ownership interest in that tax transparent entity is held directly or through one or more tax transparent entities.

Ultimate parent entity subject to a deductible dividend regime[70]

This section contains rules which, in certain circumstances, allow for a reduction in the qualifying income of an ultimate parent entity by the amount that is distributed as a deductible dividend within 12 months after the end of the fiscal year.

[70] Article 39 of the Directive

XXX. (1) In this section —

'cooperative' means an entity that collectively markets or acquires goods or services on behalf of its members and that is subject to a tax regime in the territory where it is located that ensures tax neutrality in respect of goods or services that are sold or acquired by its members through the cooperative;

'deductible dividend regime' means a tax regime that applies a single level of taxation on the income of the owners of an entity by deducting or excluding from the income of the entity the profits distributed to the owners or by exempting a cooperative from taxation;

'deductible dividend' means, with respect to a constituent entity that is subject to a deductible dividend regime—

(a) a distribution of profits to the holder of an ownership interest in the constituent entity that is deductible from the taxable income of the constituent entity under the laws of the territory in which it is located, or

(b) a patronage dividend to a member of a cooperative;

'patronage dividend' means a distribution by a cooperative to its members;[71]

'supply cooperative' means a cooperative that purchases goods or services and resells them to its members and whose profits are distributed to its members.[72]

(2) Subject to subsection (3), an ultimate parent entity of an MNE group or of a large-scale domestic group that is subject to a deductible dividend regime shall reduce its qualifying income for the fiscal year by the amount that is distributed as deductible dividend within 12 months after the end of the fiscal year, but such a reduction shall not exceed the amount of qualifying income for the fiscal year.

[71] Article 7.2.1 of the Commentary on the GloBE Model Rules

[72] Article 7.2.1 of the Commentary on the GloBE Model Rules

(3) Subsection (2) shall apply where—

(a) the recipient of the dividend referenced in subsection (2) is subject to tax in respect of that dividend for a taxable period that ends within 12 months after the end of the fiscal year at a nominal rate of tax that equals or exceeds the minimum tax rate,

(b) it can be reasonably expected that the aggregate amount of adjusted covered taxes and taxes of the ultimate parent entity paid by the recipient on such dividend equals or exceeds that income multiplied by the minimum tax rate, or

(c) the recipient of the dividend referenced in subsection (2) is—

(i) a natural person, and the dividend received is a patronage dividend from a supply cooperative,

(ii) a natural person that is tax resident in the same territory where the ultimate parent entity is located and that holds ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity, or

(iii) a governmental entity, an international organisation, a non-profit organisation or a pension fund other than a pension services entity, that is tax resident in the territory where the ultimate parent entity is located.

(4) The covered taxes of an ultimate parent entity, other than the taxes for which a dividend deduction was allowed under a deductible dividend regime, shall be reduced in the same proportion as the amount of qualifying income of the ultimate parent entity is reduced in accordance with subsections (2) and (3).

(5) Where the ultimate parent entity holds an ownership interest in another constituent entity that is subject to a deductible dividend regime, directly or through a chain of such constituent entities, subsections (2), (3) and (4) shall apply to any other constituent entity located in the territory of the ultimate parent entity that is subject to the deductible dividend regime, to the extent that its qualifying income is further distributed by the ultimate parent entity to recipients that meet the requirements set out in subsection (3).

(6) For the purposes of subsection (2), the recipient of a patronage dividend distributed by a supply cooperative shall be treated as subject to tax in respect of that dividend insofar as such dividend reduces a deductible expense or cost in the computation of the recipient's taxable income or loss.

Eligible Distribution Tax Systems[73]

This section contains provisions relating to the treatment of an entity's income which is subject to tax under an eligible distribution tax system.

XXX. (1) On the making of an election by a filing constituent entity, a constituent entity that is subject to an eligible distribution tax system may include the amount of deemed distribution tax, determined in accordance with subsection (2), in the adjusted covered taxes of that constituent entity for the fiscal year.

(2) The amount of the deemed distribution tax referred to in subsection (1) shall be the lesser of—

(a) the amount of adjusted covered taxes necessary to increase the effective tax rate, as computed in accordance with section XXX [Computation of the top-up tax], for the territory of the constituent entity referred to in subsection (1) for the fiscal year to the minimum tax rate, or

(b) the amount of tax that would have been due if the constituent entities located in that territory had distributed all of their income that is subject to the eligible distribution tax system during the fiscal year.

(3) (a) Where an election is made under subsection (1), a deemed distribution tax recapture account shall be established for each fiscal year in which such an election applies.

(b) The amount of deemed distribution tax determined in accordance with subsection (2) for the territory shall be added to the deemed distribution tax recapture account for the fiscal year in which it was established.

[73] Article 40 of the Directive

(c) At the end of each subsequent fiscal year, the outstanding balances in the deemed distribution tax recapture accounts established for prior fiscal years shall be reduced in chronological order by the taxes paid by the constituent entities during the fiscal year in relation to actual or deemed distributions, but such reduction shall not exceed the amount of the outstanding balances.

(d) Any residual amount in the deemed distribution tax recapture accounts remaining after the application of paragraph (c) shall be reduced in chronological order by an amount equal to the net qualifying loss of a territory for the fiscal year multiplied by the minimum tax rate but such reduction shall not exceed the residual amount.

(4) Any residual amount of net qualifying loss multiplied by the minimum tax rate after the application of subsection (3)(d), for the territory, shall be carried forward to the following fiscal years and shall reduce in chronological order any residual amount in the deemed distribution tax recapture accounts remaining after the application of subsection (3) but such reduction shall not exceed the residual amount.

(5) The outstanding balance, if any, of the deemed distribution tax recapture account, on the last day of the fourth fiscal year after the fiscal year for which such account was established shall be treated as a reduction to the adjusted covered taxes previously determined for such fiscal year in respect of which the deemed distribution tax recapture account was established and the effective tax rate and top-up tax for that fiscal year shall be recomputed in accordance with section XXX(1) [Additional top-up tax].

(6) Taxes that are paid during the fiscal year in relation to actual or deemed distributions shall not be included in adjusted covered taxes to the extent they reduce a deemed distribution tax recapture account in accordance with subsection (3) and (4).

(7) (a) Where a constituent entity, that is subject to an election under subsection (1)—

(i) leaves the MNE Group or large-scale domestic group, or

(ii) substantially all of its assets are transferred to a person that is not a constituent entity of the same MNE group or large-scale domestic group located in the same territory,

any outstanding balance of the deemed distribution tax recapture accounts in previous fiscal years in which such account was established shall be treated as a reduction to the adjusted covered taxes for each of those fiscal years in accordance with section XXX(1) [Additional top-up tax].

(b) Any additional top up tax amount that would be due pursuant to paragraph (a) shall be multiplied by the following ratio to determine the additional top up due for the territory:

$$A/B$$

where—

A is the qualifying income of the constituent entity determined in accordance with Chapter 3 for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the territory, and

B is the net qualifying income of the territory determined in accordance with section XXX (3)[Determination of the effective tax rate] for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the territory.

Determination of the effective tax rate and top-up tax of an investment entity.[74]

This section provides the rules for the determination of the ETR and top-up tax of an investment entity.

XXX. (1) Where a constituent entity of an MNE group or large-scale domestic group—

(a) is an investment entity,

(b) is not a tax transparent entity, and

[74] Article 41 of the Directive

(c) has not made an election in accordance with section XXX [Election to treat an investment entity as a tax transparent entity] and section XXX [Election to apply a taxable distribution method], the effective tax rate of such investment entity shall be computed separately from the effective tax rate of the territory in which it is located.

(2) (a) The effective tax rate of the investment entity, as referred to in subsection (1), shall be equal to the investment entity's adjusted covered taxes, as determined in accordance with subsection (3), divided by an amount equal to the allocable share of the MNE group or large-scale domestic group in the qualifying income or loss of that investment entity, as determined in accordance with subsection (5).

(b) Where more than one investment entity is located in a territory, their effective tax rate shall be computed by combining their adjusted covered taxes as well as the allocable share of the MNE group or large-scale domestic group in their qualifying income or loss.

(3) The adjusted covered taxes of an investment entity as referred to in subsection (1) shall be the sum of the adjusted covered taxes that are attributable to the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity and the covered taxes allocated to the investment entity in accordance with section XXX [Specific allocation of covered taxes incurred by certain types of constituent entities], but shall not include any covered taxes accrued by the investment entity attributable to income that is not part of the MNE group or large-scale domestic group's allocable share of the investment entity's income.

(4) (a) The top-up tax of an investment entity shall be an amount determined by the formula—

$$A \times (B-C)$$

where—

A is the top-up tax percentage of the investment entity, being a positive amount equal to the difference between the minimum tax rate and effective tax rate of such investment entity,

B is the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity, and

C is the substance-based income exclusion computed for the investment entity as determined in accordance with paragraph (c).

(b) Where more than one investment entity is located in a territory, their top-up tax shall be computed by combining their substance-based income exclusion amounts as well as the allocable share of the MNE group or large-scale domestic group in their qualifying income or loss.

(c) (i) The substance-based income exclusion of an investment entity shall be determined in accordance with subsections (1) to (7) of section XXX [Substance-based income exclusion].

(ii) For the purposes of subparagraph (i), the eligible payroll costs of eligible employees and eligible tangible assets taken into account for such investment entity shall be reduced in proportion to the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity divided by the total qualifying income of such investment entity.

(5) For the purposes of this section, the allocable share of the MNE group or large-scale domestic group in the qualifying income or loss of an investment entity shall be determined in accordance with section XXX [Allocation of the top-up tax under the IIR] taking into account only interests that are not subject to an election in accordance with section XXX [Election to treat an investment entity as a tax transparent entity] and section XXX [Election to apply a taxable distribution method].

Election to treat an investment entity as a tax transparent entity[75]

This section provides for an election by a constituent entity such that an investment entity may be treated as a tax transparent entity. Under the election, the income and covered taxes of the Investment Entity flow through to the constituent entity-owner.

XXX. (1) On the making of an election by a filing constituent entity, a constituent entity that is an investment entity or an insurance investment entity may be treated as a tax transparent entity for the purposes of this Part if—

(a) the constituent entity-owner is subject to tax in the territory in which it is located under a fair market value or a similar regime based on the annual changes in the fair value of its ownership interest in such entity, and

(b) the tax rate applicable to the constituent entity-owner on such income equals or exceeds the minimum tax rate.

(2) For the purposes of subsection (1), a constituent entity that indirectly owns an ownership interest in an investment entity or in an insurance investment entity through a direct ownership interest in another investment entity or an insurance investment entity shall be considered to be subject to tax under a fair market value or similar regime with respect to its indirect ownership interest in the first mentioned entity or insurance investment entity if it is subject to a fair market value or similar regime with respect to its direct ownership interest in the second mentioned investment entity or insurance investment entity.

(3) Where the election made pursuant to subsection (1) is withdrawn, any gain or loss from the disposal of an asset or a liability held by the investment entity or an insurance investment entity shall be determined on the basis of the fair market value of the asset or liability on the first day of the fiscal year the withdrawal is made.

[75] Article 42 of the Directive

Election to apply a taxable distribution method[76]

This section provides for an election by a constituent entity such that a constituent entity-owner may include distributions received from the entity in the computation of its qualifying income or loss.

XXX. (1) On the making of an election by a filing constituent entity, a constituent entity-owner of an investment entity may apply a taxable distribution method with respect to its ownership interest in the investment entity where—

(a) the constituent entity-owner is not an investment entity, and

(a) the constituent entity-owner can be reasonably expected to be subject to tax on distributions from the investment entity at a tax rate that equals or exceeds the minimum tax rate.

(2) Where a constituent entity-owner of an investment entity applies a taxable distribution method—

(a) distributions and deemed distributions of the qualifying income of an investment entity shall be included in the qualifying income of the constituent entity-owner that received the distribution, provided that it is not an investment entity;

(b) the amount of covered taxes incurred by the investment entity that is creditable against the tax liability of the constituent entity-owner arising from the distribution of the investment entity shall be included in the qualifying income and adjusted covered taxes of the constituent entity-owner that received the distribution;

(c) the share of the constituent-entity owner in the undistributed net qualifying income of the investment entity arising in the third year preceding the fiscal year (hereinafter referred to as the "tested year") shall be treated as qualifying income of that investment entity for the fiscal year and the amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as

[76] Article 43 of the Directive

top up tax of a low-taxed constituent entity for the fiscal year for the purposes of Chapter 2; and

(d) the qualifying income or loss of an investment entity and the adjusted covered taxes attributable to such income for the fiscal year shall be excluded from the computation of the effective tax rate in accordance with Chapter 5 and in accordance with subsection (1) to (4) of section XXX [Determination of the effective tax rate and top-up tax of an investment entity], except for the amount of covered taxes referred to in paragraph (b).

(3) For the purposes of subsection (2)(c), the undistributed net qualifying income of an investment entity for the tested year shall be the amount of qualifying income of that investment entity for a tested year reduced by the amount, if any, of—

(a) the covered taxes of the investment entity,

(b) distributions and deemed distributions to shareholders that are not investment entities during the period starting with the first day of the third year preceding the fiscal year and ending with the last day of the current fiscal year in which the ownership interest was held (hereinafter referred to as the “testing period”),

(c) qualifying losses arising during the testing period, and

(d) any residual amount of qualifying losses that has not already reduced the undistributed net qualifying income of that investment entity for a previous tested year,

but such reduction shall not exceed the amount of qualifying income and the qualifying income shall not be reduced by—

(i) distributions or deemed distributions that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in the application of paragraph (b), or

(ii) the amount of qualifying losses that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in the application of paragraph (c).

(4) For the purposes of subsection (3), a deemed distribution shall arise when a direct or indirect ownership interest in the investment entity is transferred to an entity that is not a member of the MNE group or large-scale domestic group and is equal to the share of undistributed net qualifying income attributable to such ownership interest on the date of such transfer, determined without regard to the deemed distribution.

(5) (a) Where an election made pursuant to subsection (2) is revoked, the share of the constituent entity-owner in the undistributed net qualifying income of the investment entity for the tested year at the end of the fiscal year preceding the fiscal year the revocation is made shall be treated as qualifying income of the investment entity for the fiscal year.

(b) The amount equal to the qualifying income referred to in paragraph (a) multiplied by the minimum tax rate shall be treated as top-up tax of a low-taxed constituent entity for the fiscal year for the purposes of Chapter 2.

(6) For the purposes of this section, a reference to an investment entity includes an insurance investment entity[77].

[77] Section 3.1 of the Administrative Guidance

Chapter 8

Administrative provisions

[Placeholder in relation to 'Chapter VIII – Administrative Provisions' of the Directive.

This would include sections such as "section XXX [Elections]" and "section XXX [Filing obligations]" referred to in this document.

Comments are invited on possible administrative provisions. Further details regarding the possible approaches to certain aspects of administration are contained in Section 4 of this Feedback Statement.]

Chapter 9

Transition Rules

Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition[78]

This section provides rules relating to how deferred tax assets, deferred tax liability and transferred assets are dealt with upon transition.

XXX. (1) For the purpose of this section, a transition year, for a territory, means the first fiscal year in which an MNE group or large-scale domestic group falls within the scope of this Part, in respect of that territory.

(2) (a) When determining the effective tax rate for a territory in accordance with section XXX [Determination of the effective tax rate]—

(i) in a transition year, and

(ii) for each subsequent fiscal year,

the MNE group or a large-scale domestic group shall take into account all the deferred tax assets and deferred tax liabilities, included in the financial accounts of all the constituent entities in a territory for the transition year.

(b) For the purpose of paragraph (a), deferred tax assets and deferred tax liabilities shall be taken into account at the lower of—

(i) the minimum tax rate, or

(ii) the applicable domestic tax rate.

(c) Notwithstanding paragraph (b), where—

(i) a deferred tax asset is attributable to a qualifying loss, and

(ii) the deferred tax asset has been recorded at a tax rate lower than the minimum tax rate,

that deferred tax asset shall be taken into account at the minimum tax rate for the purposes of paragraph (a).

[78] Article 47 of the Directive

(d) For the purpose of paragraph (a), any valuation adjustment or accounting recognition adjustment, with respect to a deferred tax asset, shall be disregarded.

(3) For the purposes of subsection (2)(a), deferred tax assets—

(a) arising from items excluded from the computation of qualifying income or loss in accordance with Chapter 3, and

(b) generated in a transaction that takes place after 30 November 2021,

shall not be taken into account when determining the effective rate for a territory.

(4) Where—

(a) after 30 November 2021, and

(b) before the commencement of a transition year,

assets, other than inventory, are transferred between constituent entities, the acquirer's basis in the acquired assets for the purposes of this Part shall be equal to the transferring entity's carrying value of the transferred assets at the time immediately before disposal, with deferred tax assets and deferred tax liabilities determined accordingly.

Transitional relief for the substance-based income exclusion[79]

This section provides rules relating to how the transitional relief for the substance-based income exclusion will apply.

[79] Article 48 of the Directive

XXX. (1) For the purpose of applying section XXX(3) [Substance-based income exclusion], the value of 5% shall be replaced, for each fiscal year beginning as from 31 December of the following calendar years, with the values set out in the following table—

2023	10%
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%

(2) For the purpose of applying section XXX(4) [Substance-based income exclusion], the value of 5%, shall be replaced, for each fiscal year beginning as from 31 December of the following calendar years, with the values set out in the following table—

2023	8%
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%

Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups[80]

This section contains provisions which exclude certain MNE groups and large-scale domestic groups from the application of the IIR and UTPR during the initial phase of international activity.

XXX. (1) The top-up tax due by—

(a) an ultimate parent entity, located in the State, in accordance with section XXX(2)[Ultimate parent entity in the State], or

(b) an intermediate parent entity located in the State in accordance with section XXX(2)[Intermediate parent entity located in the State and held by an excluded ultimate parent entity], when the ultimate parent entity is an excluded entity,

shall, notwithstanding the requirements laid down in Chapter 5, be reduced to zero where—

(i) the ultimate parent entity or the intermediate parent entity are a member of an MNE Group, in the first 5 years of the initial phase of the international activity of the MNE group,

(ii) the ultimate parent entity or the intermediate parent entity are a member of a large-scale domestic group, in the first 5 years, starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of this Part for the first time.

(2) Where the ultimate parent entity of an MNE group is located in a third country territory, the top-up tax due by a constituent entity in accordance with section XXX(2)[Computation and allocation of the UTPR top-up tax amount], shall be reduced to zero in the first 5 years of the initial phase of the international activity of that MNE group.

(3) (a) An MNE group shall be considered to be in the initial phase of its international activity if—

[80] Article 49 of the Directive

(i) it has constituent entities in no more than 6 territories, and

(ii) the sum of the net book value of the tangible assets of all the constituent entities of the MNE group located in all territories other than the reference territory, does not exceed €50,000,000.

(b) For the purpose of paragraph (a)(ii) —

(i) reference territory means the territory in which the constituent entities of the MNE group have the highest total value of tangible assets in the fiscal year in which the MNE group originally falls within the scope of this Part, and

(ii) the total value of the tangible assets in a territory is the sum of the net book values of all tangible assets of all the constituent entities of the MNE group that are located in that territory.

(4) (a) Subject to paragraph (b), (c) and (d), the period of 5 years referred to in subsections (1)(i) and (2), shall start from the beginning of the fiscal year in which the MNE group first comes within the scope of this Part.

(b) For MNE groups that are within the scope of this Part when it enters into force, the 5-year period referred to in paragraph (1)(i) shall start on 31 December 2023.

(c) For MNE groups that are within the scope of this Part when it enters into force, the 5-year period referred to in paragraph (2) shall start on 31 December 2024.

(d) For large-scale domestic groups that are in scope of this Part when it enters into force, the 5-year period referred to in paragraph (1)(ii) shall start on 31 December 2023.

(5) The designated filing entity referred to in section XXX[Filing obligations], shall inform the tax administration of the Member State in which it is located, the start date of the initial phase of its international activity of the MNE group.

Delayed application of the IIR and UTPR by Member States[81]

This section contains provisions to deal with the scenario where other Member States elect for a delayed application of the IIR and UTPR pursuant to Article 50 of the Directive.

XXX.(1) Where the ultimate parent entity of an MNE group is located in a Member State that has made an election pursuant to paragraph 1 of Article 50 of the Directive, the constituent entities of the group located in the State shall be subject to the UTPR top-up tax amount allocated to the State for the fiscal years beginning on or after 31 December 2023 in accordance with section XXX [Computation and allocation of the UTPR top-up tax amount].

(2) (a) The ultimate parent entity referred to in subsection (1) shall nominate a designated filing entity in a Member State other than the Member State in which the ultimate parent entity is located or, if the MNE group has no constituent entity in another Member State, in a territory that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the ultimate parent entity is located.

(b) The designated filing entity referred to in paragraph (a) shall file a top-up tax information return in accordance with the requirements set out in section XXX (Filing Obligations) and the constituent entities located in the Member State that has made an election pursuant to paragraph 1 of Article 50 of the Directive shall provide the designated filing entity with information necessary to comply with section XXX (Filing Obligations) and shall be exempted from the filing obligation referred to in section XXX (Filing obligations).

(3) The UTPR percentage determined for a Member State that has made an election pursuant to paragraph 1 of Article 50 of the Directive shall be deemed to be zero for the fiscal year.

[81] Article 50 of the Directive

Transitional relief for filing obligations[82]

This section contains a provision regarding the filing deadline for the transition year.

XXX. (1) Notwithstanding section XXX [Filing obligations], the top-up tax information return, and the notifications referred to in section XXX[Filing obligations], shall be filed with the Revenue Commissioners, no later than 18 months after the last day of the fiscal year that is the transition year.

[82] Article 51 of the Directive

Chapter 10

Application

Scope of application[83]

This section sets out when this Part will commence to apply.

XXX. (1) Subject to subsection (2), this Part shall apply to fiscal years commencing on or after 31 December 2023.

(2) Except for MNE groups to which section XXX(1) [Delayed application of the IIR and UTPR by Member States] applies, sections XXX [Application of a UTPR across the MNE group], XXX [Application of the UTPR in the territory of an ultimate parent entity] and XXX [Computation and allocation of the UTPR top-up tax amount] shall only apply to fiscal years commencing on or after 31 December 2024.

Order of application

This section sets out the order of application of this Part in relation to the Tax Acts and Capital Gains Tax.

XXX. (1) This Part shall apply after all provisions of the Tax Acts and the Capital Gains Tax Acts.

[83] Article 56 of the Directive

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