

# EXPOSURE DRAFT



EXPOSURE DRAFT

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

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

Dated 2024

Dr Jim Chalmers **DRAFT ONLY—NOT FOR SIGNATURE**  
Treasurer

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## Chapter 1—Preliminary etc

### Part 1-1—Preliminary

#### 1-5 Name

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

#### 1-10 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

#### 1-15 Authority

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

### Part 1-2—Excluded Entities

#### 1-20 Excluded Entities

- (1) For the purposes of paragraph 16(2)(h) of the Act, the following Entities are prescribed:
- (a) an Excluded Exempt Income Entity;
  - (b) an Excluded Non-Profit Subsidiary.
- (2) An Entity is an *Excluded Exempt Income Entity* if:
- (a) at least 85% of the value of the Entity is owned (directly or through a chain of Excluded Entities) by one or more Excluded Entities mentioned in paragraphs 16(2)(a) to (f) of the Act (other than a Pension Services Entity); and

# EXPOSURE DRAFT

Chapter 1 Preliminary etc  
Part 1-2 Excluded Entities

## Section 1-20

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- (b) substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or Loss that is excluded from the computation of GloBE Income or Loss in accordance with section 3-30 or 3-45 of the Rules.
- (3) An Entity is an ***Excluded Non-Profit Subsidiary*** if:
  - (a) 100% of the value of the Entity is owned (directly or indirectly) by one or more Non-profit Organisations; and
  - (b) the sum of the revenue of all Group Entities of the MNE Group of which the Entity is a Constituent Entity (other than such revenue as is attributable to a member of the MNE Group that is a Non-profit Organisation, an Excluded Service Entity or an Excluded Exempt Income Entity):
    - (i) does not exceed the MNE Group's GloBE Threshold for the Fiscal Year; and
    - (ii) is less than 25% of the total revenue of the MNE Group.

---

## Chapter 2—Liability amounts

### Part 2-1—Application of the IIR

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

- (1) A Parent Entity of an Applicable MNE Group for a Fiscal Year has a ***Top-up Tax Amount*** for the Fiscal Year in respect of a Low-Taxed Constituent Entity for the Fiscal Year of the Applicable MNE Group if:
  - (a) the Parent Entity is located in Australia; and
  - (b) the Parent Entity holds an Ownership Interest in the Low-Taxed Constituent Entity at any time during the Fiscal Year; and
  - (c) the Low-Taxed Constituent Entity is not located in Australia.
- (2) The ***Top-up Tax Amount*** is equal to the Parent Entity's Allocable Share of the Top-up Tax of the Low-Taxed Constituent Entity for the Fiscal Year.
- (3) A Parent Entity of an Applicable MNE Group for a Fiscal Year has a ***Top-up Tax Amount*** for the Fiscal Year in respect of a Joint Venture, or a JV Subsidiary of a Joint Venture, for the Fiscal Year if:
  - (a) the Parent Entity is located in Australia; and
  - (b) the Parent Entity holds an Ownership Interest in the Joint Venture or JV Subsidiary at any time during the Fiscal Year; and
  - (c) the Joint Venture or JV Subsidiary is not located in Australia.
- (4) The ***Top-up Tax Amount*** is equal to the Parent Entity's Allocable Share of the Top-up Tax of the Joint Venture or JV Subsidiary for the Fiscal Year, computed in accordance with section 6-80.
- (5) Subsections (1), (2), (3) and (4) do not apply in any of the following circumstances:
  - (a) if the Parent Entity is an Intermediate Parent Entity of the Applicable MNE Group:
    - (i) the Ultimate Parent Entity of the Applicable MNE Group is required to apply a Qualified IIR for that Fiscal Year; or
    - (ii) another Intermediate Parent Entity of the Applicable MNE Group that holds (directly or indirectly) a Controlling Interest in the Intermediate Parent Entity is required to apply a Qualified IIR for that Fiscal Year;
  - (b) if the Parent Entity is a Partially-Owned Parent Entity of the Applicable MNE Group:
    - (i) the Partially-Owned Parent Entity is wholly owned (directly or indirectly) by another Partially-Owned Parent Entity of the Applicable MNE Group; and
    - (ii) the other Partially-Owned Parent Entity is required to apply a Qualified IIR for that Fiscal Year.

# EXPOSURE DRAFT

## Chapter 2 Liability amounts

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

#### Section 2-10

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

### 2-10 Meaning of *Allocable Share*

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

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

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

Note 2: See subsection 2-15(3) if the Low-Taxed Constituent Entity is a Flow-through Entity.

### 2-15 Meaning of *Inclusion Ratio*

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

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

divided by:

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

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

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

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

- (3) However, if the Low-Taxed Constituent Entity mentioned in subsection (1) is a Flow-through Entity, treat references in this section to GloBE Income as not

# EXPOSURE DRAFT

Liability amounts **Chapter 2**  
Allocation of Top-up Tax under the IIR **Part 2-2**

## Section 2-15

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including any income allocated, under paragraph 3-240(1)(a), to an owner that is not a Group Entity of the MNE Group.

# EXPOSURE DRAFT

Chapter 2 Liability amounts

Part 2-3 IIR Offset Mechanism

Section 2-20

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## Part 2-3—IIR Offset Mechanism

### 2-20 IIR offset mechanism

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

## Part 2-4—Domestic Top-up Tax

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

- (1) Subsection (2) applies if a Low-Taxed Constituent Entity for a Fiscal Year of an Applicable MNE Group for the Fiscal Year:
  - (a) is located in Australia for the Fiscal Year; or
  - (b) is created in Australia and is a Stateless Constituent Entity of the Applicable MNE Group under subsection 33(3) or 34(3) of the Act.
- (2) The Low-Taxed Constituent Entity has a *Domestic Top-up Tax Amount* for the Fiscal Year if it has Top-up Tax for the Fiscal Year.
- (3) Subsection (4) applies if:
  - (a) a Joint Venture for a Fiscal Year, or a JV Subsidiary of a Joint Venture, is located in Australia for a Fiscal Year; and
  - (b) the MNE Group mentioned in paragraph 17(1)(a) of the Act in relation to the Joint Venture is an Applicable MNE Group for the Fiscal Year.
- (4) The Joint Venture, or the JV Subsidiary, has a *Domestic Top-up Tax Amount* for the Fiscal Year if it has Top-up Tax for the Fiscal Year.
- (5) For the purposes of subsection (2) or (4), the amount of the *Domestic Top-up Tax Amount* is equal to the amount of the Top-up Tax mentioned in that subsection, computed in accordance with the principles set out in section 2-30.

Note: For the purposes of subsection (4), the Top-up Tax is worked out in accordance with section 6-80 as well as the principles in section 2-30.

### 2-30 Computing Top-up Tax for the purposes of subsection 2-25(5)—principles

- (1) This section sets out principles for the purposes of subsection 2-25(5).
- (2) Assume that the amount of Domestic Top-up Tax referred to in section 5-30, for the Fiscal Year mentioned in subsection 2-25(1) or (3), is zero.
- (3) Assume that the following provisions did not apply in relation to the allocation of an amount in respect of Covered Taxes to a Constituent Entity that is located in Australia:
  - (a) section 4-40 (Allocation of amounts from Constituent Entity to Permanent Establishment);
  - (b) section 4-50 (Allocation of amounts from Constituent Entity-owner of CFC to CFC);
  - (c) section 4-55 (Allocation of amounts from Constituent Entity-owner of Hybrid Entity to Hybrid Entity);
  - (d) section 4-60 (Amounts accrued in financial accounts of Constituent Entity-owner on distribution from Constituent Entity to Constituent Entity-owner—allocation to Constituent Entity).
- (4) Assume that section 4-65 (Allocation of amounts in respect of Passive Income) were omitted.

# EXPOSURE DRAFT

## Section 2-35

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- (5) If section 2-35 applies in relation to the Applicable MNE Group mentioned in subsection 2-25(1) or (3) for the Fiscal Year mentioned in that subsection:
- (a) assume that subsection 2-35(3) (Local financial accounting standard rule) applied despite subsection 3-10 (Financial Accounting Net Income or Loss); and
  - (b) assume that section 3-15 (Foreign currency translation) were omitted, and that section 2-40 applied instead.

### 2-35 Local financial accounting standard rule

- (1) This section applies in relation to the Applicable MNE Group mentioned in subsection 2-25(1) or (3) for the Fiscal Year mentioned in that subsection if:
- (a) all Constituent Entities of the Applicable MNE Group located in Australia have financial accounts for the Fiscal Year; and
  - (b) the financial accounts are prepared in accordance with the accounting standards (within the meaning of the *Corporations Act 2001*); and
  - (c) the financial accounts are:
    - (i) required under an Australian law to be kept or used; or
    - (ii) externally audited.

Note: If a Constituent Entity that is a Permanent Establishment does not have separate financial accounts for a Fiscal Year, it is taken to have the financial accounts of its Main Entity in some circumstances: see subsection (4).

- (2) However, this section does not apply in relation to the Applicable MNE Group if the accounting period used to prepare the financial accounts is different to the accounting period used to prepare the Consolidated Financial Statements of the Ultimate Parent Entity of the Applicable MNE Group.
- (3) For the purposes of subsection 2-30(5), compute an amount that is relevant to the computation of the Top-up Tax mentioned in subsection 2-25(5):
- (a) using amounts in the Constituent Entity's financial accounts; and
  - (b) in accordance with the accounting standards (within the meaning of the *Corporations Act 2001*).
- (4) For the purposes of this section, treat a Permanent Establishment as having the financial accounts of its Main Entity if:
- (a) the financial accounts contain the information needed to compute the Permanent Establishment's Top-up Tax Amount; and
  - (b) the Permanent Establishment does not have separate financial accounts.

### 2-40 Currency for computations

- (1) For the purposes of subsection 2-30(5), compute an amount that is relevant to the computation of the Top-up Tax mentioned in subsection 2-25(5) using the currency applicable under subsection (2) of this section.
- (2) For the purposes of subsection (1), the applicable currency is:
- (a) unless paragraph (b) applies—Australian currency; or



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- (b) if subsection (3) applies and an election under subsection (4) applies to the Applicable MNE Group and the Fiscal Year mentioned in subsection 2-25(1) or (3)—the currency specified in the election.
- (3) This subsection applies if there are one or more Constituent Entities of the Applicable MNE Group that are located in Australia (or are Stateless Constituent Entities under subsection 33(3) of the Act that are created in Australia) that do not use Australian currency as their functional currency.
- (4) If subsection (3) applies, a Filing Constituent Entity for the MNE Group may make an election that applies to:
  - (a) a specified Fiscal Year; and
  - (b) the following 4 Fiscal Years.
- (5) The election must specify either:
  - (a) Australian currency; or
  - (b) the reporting currency of the Consolidated Financial Statements of the Ultimate Parent Entity of the Applicable MNE Group.
- (6) An election under subsection (5) is a Five-Year Election.

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## Chapter 3 Computation of GloBE Income or Loss

### Part 3-1 Financial accounts

#### Section 3-5

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## Chapter 3—Computation of GloBE Income or Loss

### Part 3-1—Financial accounts

#### 3-5 Meaning of *GloBE Income or Loss*

The *GloBE Income or Loss* of a Constituent Entity of an MNE Group for a Fiscal Year is the Financial Accounting Net Income or Loss for the Constituent Entity for the Fiscal Year adjusted as provided in Parts 3-2 to 3-5.

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

- (1) The *Financial Accounting Net Income or Loss* for a Constituent Entity of an MNE Group for a Fiscal Year is the net income or loss for the Constituent Entity (before any consolidation adjustments eliminating intra-group transactions) in Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year.
- (2) For the purposes of subsection (1), take the Consolidated Financial Statements into account only to the extent that they can be reliably and consistently traced to the Constituent Entity.
- (3) To avoid doubt, the *Financial Accounting Net Income or Loss* for the Constituent Entity for the Fiscal Year includes income, expenses, gains and losses arising from transactions between the Constituent Entity and any other Constituent Entity of the MNE Group (other than any transactions to which an election under subsection 3-185(1) applies).
- (4) However, the *Financial Accounting Net Income or Loss* for the Constituent Entity for a Fiscal Year does not include any amount attributable to any purchase accounting adjustment that:
  - (a) is reflected in:
    - (i) the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year; or
    - (ii) the Constituent Entity's financial accounts for the Fiscal Year; and
  - (b) arises as a result of an Entity becoming a Constituent Entity of the MNE Group as a result of the acquisition of Ownership Interests in that Entity by an existing Constituent Entity.
- (5) Subsection (4) does not apply if:
  - (a) the acquisition occurs before 1 December 2021; and
  - (b) the MNE Group does not have sufficient records to compute the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year in the absence of the adjustment.
- (6) Subsection (7) applies if it is not reasonably practicable to compute the Financial Accounting Net Income or Loss for a Constituent Entity of an MNE Group for a Fiscal Year based on the accounting standard (the *UPE accounting standard*)

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## Section 3-15

used in the preparation of Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year.

- (7) Compute the **Financial Accounting Net Income or Loss** for the Constituent Entity for the Fiscal Year using another Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard if:
  - (a) the financial accounts of the Constituent Entity for the Fiscal Year are maintained based on the other accounting standard; and
  - (b) the information contained in those financial accounts is reliable; and
  - (c) adjustments are made to eliminate any permanent difference in excess of 1 million Euros that arises for the Fiscal Year because of the application of a particular principle or standard under the other accounting standard (instead of applying the UPE accounting standard) to items of income or expense or transactions; and
  - (d) it appears from the content of the GloBE Information Return for the MNE Group for the Fiscal Year that the Financial Accounting Net Income or Loss for the Constituent Entity for the Fiscal Year has been computed in accordance with this section.

### 3-15 Foreign currency translation

- (1) Subsection (2) applies for the purposes of computing an amount that is relevant to computing the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year, if the amount:
  - (a) is denominated in a currency other than the reporting currency of the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group (the **relevant reporting currency**); and
  - (b) is not converted to the relevant reporting currency in the course of preparing the Consolidated Financial Statements.
- (2) Convert the amount to the relevant reporting currency using the foreign currency translation principles of the financial accounting standard that would have been used to convert the amount to the relevant reporting currency if that conversion were undertaken in the course of preparing the Consolidated Financial Statements.
- (3) Subsection (4) applies for the purposes of determining if any materiality or other threshold in the Act that is denominated in the currency of the European Monetary Union is satisfied or exceeded by an amount in respect of a Group, Entity or jurisdiction for a particular Fiscal Year.
- (4) If the amount is denominated in another currency, convert the amount from that currency to the currency of the European Monetary Union using the average of the daily rates of exchange, in respect of the 2 currencies for the month of December included in the Fiscal Year immediately preceding the particular Fiscal Year, as quoted by:
  - (a) the European Central Bank;
  - (b) if the European Central Bank does not quote a daily rate of exchange in respect of the 2 currencies—the Reserve Bank of Australia; or

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- (c) if both the European Central Bank and the Reserve Bank of Australia do not quote a daily rate of exchange in respect of the 2 currencies—another source that is acceptable to the Minister.
- (5) Except as specifically otherwise provided, if an amount is relevant to a determination or computation that is required for the purposes of the Act in respect of an Constituent Entity of an MNE Group or in respect of the MNE Group for a Fiscal Year:
  - (a) the currency in which that amount is to be denominated is the reporting currency of the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group; and
  - (b) if that amount is not denominated in the reporting currency, convert it, for use in the determination or computation, to the reporting currency using:
    - (i) the average for the Fiscal Year of the daily rates of exchange quoted by the Reserve Bank of Australia; or
    - (ii) if there is no daily rate quoted by the Reserve Bank of Australia for a particular day—a daily rate of exchange acceptable to the Minister, in respect of the 2 currencies.

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

### Division 1—Article 3.2.1 adjustments

#### 3-20 Adjustments to GloBE Income or Loss—basic rule

For the purposes of section 3-5, in computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year in accordance with sections 3-25 to 3-90.

#### 3-25 Adjustment—Net Taxes Expense

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

- (a) Covered Taxes (including Covered Taxes on income that is excluded in computing the GloBE Income or Loss);
- (b) to the extent it is not included in paragraph (a), a deferred tax asset attributable to a loss for the Fiscal Year;
- (c) Qualified IIR;
- (d) Qualified Domestic Minimum Top-up tax;
- (e) Disqualified Refundable Imputation Tax;
- (f) Tax paid or accrued by an insurance company in respect of returns to policyholders to the extent that 3-190 applies in relation to those taxes.

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## 3-30 Adjustment—Excluded Dividends

- (1) In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year:
  - (a) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude any Excluded Dividends received or accrued by the Constituent Entity in the Fiscal Year; and
  - (b) if an election under subsection (2) for the MNE Group applies to the Constituent Entity and the Fiscal Year—for the purposes of this section and the definition of Excluded Dividends in subsection 3-40(1), treat a Portfolio Shareholding of the Constituent Entity as a Short-term Portfolio Shareholding of the Constituent Entity.
- (2) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group that applies to a specified Constituent Entity of the MNE Group.
- (3) An election under subsection (2) is a Five-Year Election.

## 3-40 Meaning of *Excluded Dividends*, *Short-term Portfolio Shareholding* and *Portfolio Shareholding*

- (1) **Excluded Dividends** means dividends or other distributions received or accrued in respect of an Ownership Interest, except for:
  - (a) a Short-term Portfolio Shareholding in respect of the distributions; and
  - (b) an Ownership Interest in an Investment Entity, or Insurance Investment Entity, to which an election under Part 7-6 applies.
- (2) If
  - (a) a Constituent Entity of an MNE Group receives or accrues dividends or other distributions as a result of a Portfolio Shareholding in an Entity, of the Constituent Entity; and
  - (b) the Portfolio Shareholding has been economically held by the Constituent Entity for less than one year at the date of the distribution;the Portfolio Shareholding is a **Short-term Portfolio Shareholding** in the Entity, of the Constituent Entity, in respect of the distributions.
- (3) **Portfolio Shareholding** in an Entity, of a Constituent Entity of an MNE Group, means Direct Ownership Interests in the Entity that:
  - (a) are held by any of the following:
    - (i) the Constituent Entity;
    - (ii) any other Constituent Entity of the MNE Group; and
  - (b) together carry rights to less than 10% of the profits, capital, reserves or voting rights of the Entity.

## 3-45 Adjustment—Excluded Equity Gain or Loss

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

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### 3-50 Meaning of *Excluded Equity Gain or Loss*

*Excluded Equity Gain or Loss* of a Constituent Entity for a Fiscal Year means the gain, profit or loss included in the Financial Accounting Net Income or Loss of the Constituent Entity for the Fiscal Year arising from any of the following:

- (a) gains and losses from changes in fair value of an Ownership Interest, except for a Portfolio Shareholding;
- (b) profit or loss in respect of an Ownership Interest included under the equity method of accounting;
- (c) gains and losses from disposition of an Ownership Interest, except for a disposition of an Ownership Interest that is a Portfolio Shareholding at the date of the disposition.

### 3-55 Adjustment—Included Revaluation Method Gain or Loss

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include any Included Revaluation Method Gain or Loss of the Constituent Entity for the Fiscal Year.

### 3-60 Meaning of *Included Revaluation Method Gain or Loss and Other Comprehensive Income*

- (1) *Included Revaluation Method Gain or Loss* for a Fiscal Year means the net gain or loss, increased or decreased by any associated Covered Taxes, for the Fiscal Year in respect of all property, plant and equipment that arises under an accounting method or practice that:
  - (a) periodically adjusts the carrying value of such property to its fair value; and
  - (b) records the changes in value in Other Comprehensive Income; and
  - (c) does not subsequently report the gains or losses recorded in Other Comprehensive Income through profit and loss.
- (2) *Other Comprehensive Income* means items of income and expense that are recognised, outside of the profit or loss account, in financial statements as required or permitted by the Authorised Financial Accounting Standard used in the Consolidated Financial Statements.

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

### 3-65 Adjustment—Gain or loss from disposition of assets and liabilities excluded under section 6-60

- (1) Subsection (2) applies if a Constituent Entity of an MNE Group disposes of assets and liabilities (other than in the course of a GloBE Reorganisation) in a Fiscal Year.
- (2) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include any gain or loss on the disposition.

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- (3) Subsection (4) applies if a Constituent Entity of an MNE Group acquires assets and liabilities (other than in the course of a GloBE Reorganisation) in a Fiscal Year.
- (4) In computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to reflect:
  - (a) if section 6-60 applies in relation to the assets and liabilities—the fair value of the assets and liabilities; and
  - (b) otherwise—the carrying value of the acquired assets and liabilities immediately after the acquisition, determined under the accounting standard used in preparing the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group.

### **3-70 Adjustment—Asymmetric Foreign Currency Gains or Losses**

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

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- (i) attributable to fluctuations in the exchange rate between the Accounting Functional Currency and another currency that is not the Tax Functional Currency; and
- (ii) included in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year; and
- (iii) not included in computing the Constituent Entity's income for tax purposes.

### **3-75 Meaning of *Tax Functional Currency* and *Accounting Functional Currency***

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

### **3-80 Adjustment—Policy Disallowed Expenses**

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

- (a) expenses accrued by the Constituent Entity for illegal payments, including bribes and kickbacks;
- (b) expenses accrued by the Constituent Entity for a fine or penalty that equals or exceeds 50,000 Euros (or an equivalent in the functional currency in which the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year was computed);
- (c) expenses accrued by the Constituent Entity for fines and penalties, the total of which equals or exceeds 50,000 Euros (or an equivalent in the functional currency in which the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year was computed).

### **3-85 Adjustment—Prior Period Errors and Changes in Accounting Principles**

If there has been a change in the opening equity of a Constituent Entity at the start of a Fiscal Year, in computing the Constituent Entity's GloBE Income or Loss for the Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include the amount of that change if the change is attributable to:

- (a) a correction of an error in the accounts for a previous Fiscal Year that affected the income or expenses includible in computing the Constituent Entity's GloBE Income or Loss for the previous Fiscal Year, except to the extent such error correction resulted in a material decrease to a liability for Covered Taxes subject to Part 4-6; or



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- (b) a change in accounting principle or policy that affects income or expenses includible in computing the GloBE Income or Loss for the Fiscal Year.

### 3-90 Adjustment—Accrued Pension Expense

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

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

where:

*Accrued expense or income* is:

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

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

## Division 2—Other Article 3.2 adjustments

### 3-95 Adjustment—Stock-based compensation expense

- (1) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group under this section that applies to a specified jurisdiction.
- (2) An election under subsection (1) is a Five-Year Election.
- (3) In computing the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year by applying the rules in subsection (4) if:
  - (a) an election under subsection (1) for the MNE Group applies to:
    - (i) the jurisdiction in which the Constituent Entity is located; and
    - (ii) the Fiscal Year; and
  - (b) an amount (the *stock-based deduction amount*) is allowed under the law of the jurisdiction as a deduction, in respect of any stock-based compensation expense, in computing the Constituent Entity's taxable income for a period that ends in the Fiscal Year.
- (4) The rules are as follows:
  - (a) include the stock-based deduction amount;
  - (b) exclude the stock-based compensation expense;
  - (c) if the stock-based compensation expense arises in connection with an option that expires without exercise in the Fiscal Year—include the total of the deductions allowed under the law of the jurisdiction, in respect of the stock-based compensation expense, for:

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- (i) periods that end before the start of the Fiscal Year; and
  - (ii) the period that ends in the Fiscal Year; and
- (d) if some of the stock-based compensation expense of a transaction has been recorded in the Constituent Entity's financial accounts for one or more previous Fiscal Years—include an amount equal to the amount (if any) by which:
  - (i) the cumulative amount of the stock-based compensation expense allowed as an expense in the computation of the Constituent Entity's GloBE Income or Loss in the previous Fiscal Years;  
exceeds:
  - (ii) the cumulative amount that would have been included under paragraph (a) in relation to the stock-based compensation expense if the election had applied to those Fiscal Years.
- (5) The rule in paragraph (4)(d) does not apply in relation to a stock-based compensation expense that arises in connection with an option that expires without exercise before the end of the Fiscal Year.
- (6) Subsection (7) applies if:
  - (a) the election mentioned in subsection (3) is revoked; and
  - (b) the stock-based compensation expense arises in connection with an option that has not been exercised, and that has not expired without exercise, before the end of the first Fiscal Year (the *subsequent year*) to which the election does not apply as a result of revocation.
- (7) In computing the GloBE Income or Loss of the Constituent Entity for the subsequent year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the subsequent year so as to include an amount equal to the amount (if any) by which:
  - (a) the cumulative amount included under paragraph (4)(a), in relation to the stock-based compensation expense, in respect of Fiscal Years prior to the subsequent year;  
exceeds:
  - (b) the cumulative amount of the stock-based compensation expense that would have been allowed as an expense in the computation of the Constituent Entity's GloBE Income or Loss if the election had not applied to the prior Fiscal Years.

### **3-100 Adjustment—Arm's Length Principle and tax/accounting permanent differences in respect of cross-border transactions**

- (1) In computing the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year in accordance with the following subsections.
- (2) Subsection (3) applies if:
  - (a) a transaction that is between Constituent Entities of the MNE Group that are located in different jurisdictions:

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

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### **3-105 Adjustment—Arm’s Length Principle and transactions between Constituent Entities located in the same jurisdiction**

- (1) In computing the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year, adjust the Constituent Entity’s Financial Accounting Net Income or Loss for the Fiscal Year in accordance with the following subsections.
- (2) Subsection (3) applies if:
  - (a) a loss arises from a sale or other transfer of an asset between 2 Constituent Entities of the MNE Group that are located in the same jurisdiction; and
  - (b) the loss is included in the computation of GloBE Income or Loss of the Constituent Entity that sold or transferred the asset; and
  - (c) any of the following conditions are satisfied:
    - (i) the amount in which the sale or other transfer is recorded in the financial accounts of both Constituent Entities is not the same;
    - (ii) that amount is not recorded in the financial accounts of each Constituent Entity consistent with the Arm’s Length Principle;
    - (iii) that amount is not recorded at all in the financial accounts of both Constituent Entities.
- (3) Adjust the amount in which the transaction is recorded in the financial accounts of each Constituent Entity so as to be consistent with the Arm’s Length Principle.

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

### **3-110 Meaning of Arm’s Length Principle**

The *Arm’s Length Principle* is the principle under which transactions between Constituent Entities of the same MNE Group must be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.

### **3-115 Adjustment—Refundable Tax Credits and Transferable Tax Credits**

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

- (a) include tax credits in that GloBE Income or Loss to the extent they are:
  - (i) Qualified Refundable Tax Credits; or
  - (ii) Marketable Transferable Tax Credits; and
- (b) exclude tax credits from that GloBE Income or Loss to the extent they are:
  - (i) Non-Qualified Refundable Tax Credits; or
  - (ii) Non-Marketable Transferable Tax Credits; or
  - (iii) Other Tax Credits.

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## 3-120 Meaning of *Qualified Refundable Tax Credit, Non-Qualified Refundable Tax Credit and Refundable Tax Credit*

- (1) A Refundable Tax Credit is a *Qualified Refundable Tax Credit* to the extent that it must be paid as cash or available as cash equivalents within 4 years from when a Constituent Entity first satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit.
- (2) However, the Refundable Tax Credit is *not* a *Qualified Refundable Tax Credit* to the extent that it includes an amount of Tax creditable or refundable under a Qualified Imputation Tax or a Disqualified Refundable Imputation Tax.
- (3) A *Non-Qualified Refundable Tax Credit* is a Refundable Tax Credit that is not a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit.
- (4) A tax credit is a *Refundable Tax Credit* if it is payable in cash or cash equivalents (including by way of discharge against a liability to a Tax which is not a Covered Tax):
  - (a) after it has been used to reduce or discharge any liability to Covered Taxes;  
or
  - (b) in the absence of any liability for Covered Taxes.

## 3-125 Meaning of *Marketable Transferable Tax Credit*

- (1) A *Marketable Transferable Tax Credit* means a tax credit that:
  - (a) can be used by the holder of the tax credit to reduce its liability for a Covered Tax in the jurisdiction that issued the tax credit; and
  - (b) meets:
    - (i) the requirement in subsection (2) or (3) (Legal Transferability Standard); and
    - (ii) the requirement in subsection (4) or (5) (Marketability Standard).

### *Legal Transferability Standard*

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

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### *Marketability Standard*

- (4) A tax credit meets the requirement in this subsection if:
- (a) the tax credit meets the requirement in subsection (2); and
  - (b) within 15 months of the end of the Fiscal Year in which the Originator first satisfies the eligibility criteria for the credit (the **Origination Year**), either:
    - (i) if the tax credit has been transferred to an unrelated party of the Originator—the price of the transferred tax credits equals or exceeds the price set out in subsection (6) (Marketable Price Floor); or
    - (ii) if the tax credit has not been transferred, or has been transferred to a related party—similar tax credits have been traded between unrelated parties at a price that equals or exceeds that price.
- (5) A tax credit meets the requirement in this subsection if:
- (a) the tax credit meets the requirement in subsection (3); and
  - (b) the purchaser acquired the credit from an unrelated party at a price that equals or exceeds the price set out in subsection (6) (Marketable Price Floor).

### *Marketable Price Floor*

- (6) For the purposes of subsections (4) and (5), the price set out in this subsection is 80% of the net present value (the **NPV**) of the amount of the tax credit.
- (7) For the purposes of subsection (6):
- (a) compute the NPV based on the yield to maturity on a debt instrument that:
    - (i) if the tax credit meets the requirement in subsection (2)—is issued in the Origination Year, by the government that issued the tax credit; and
    - (ii) if the tax credit meets the requirement in subsection (3)—is issued in the Fiscal Year in which the tax credit is transferred to the purchaser, by the government that issued the tax credit; and
    - (iii) has a maturity that is equal or similar to the period during which the tax credit can be used by the holder of the credit to reduce its liability for a Covered Tax (but not exceeding 5 years); and
  - (b) base the cash flow projection used in computing the NPV on the maximum amount that can be used each year under the legal design of the credit, having regard to any amount used in a previous year; and
  - (c) treat the amount of the tax credit as being the lower of:
    - (i) the face value of the tax credit; or
    - (ii) the remaining creditable amount in relation to the tax credit.

### *Related parties*

- (8) For the purposes of this section, 2 Entities are **related parties** of each other if:
- (a) one of the Entities owns, directly or indirectly:
    - (i) at least 50% of the beneficial interest in the other Entity; or
    - (ii) if the other Entity is a company—at least 50% of the aggregate vote and value of the other Entity's shares; or
  - (b) another Entity owns, directly or indirectly:

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- (i) at least 50% of the beneficial interest in each of the 2 Entities; or
- (ii) if the 2 Entities are companies—at least 50% of the aggregate vote and value of the shares in each of the 2 Entities; or
- (iii) if one of the 2 Entities is a company:
  - (A) at least 50% of the aggregate vote and value of the shares in the Entity that is a company; and
  - (B) at least 50% of the beneficial interest in the other Entity; or
- (c) based on all the relevant facts and circumstances:
  - (i) one of the Entities controls the other Entity; or
  - (ii) one or more other Entities or natural persons control both of the Entities.

### **3-130 Meaning of *Non-Marketable Transferable Tax Credit* and *Other Tax Credit***

- (1) A *Non-Marketable Transferable Tax Credit* is:
  - (a) a tax credit that:
    - (i) is held by the person to whom the tax credit was originally granted; and
    - (ii) is transferable; and
    - (iii) is not a Marketable Transferable Tax Credit; or
  - (b) a tax credit that:
    - (i) is held by a purchaser; and
    - (ii) is not a Marketable Transferable Tax Credit.
- (2) An *Other Tax Credit* is a tax credit that:
  - (a) is *not* refundable and is *not* transferable; and
  - (b) can only be used to offset a liability for Covered Tax of the person to whom the tax credit was originally granted.

### **3-135 Adjustment—Assets and liabilities that are subject to fair value or impairment accounting**

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

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- (2) An election under subsection (1) is a Five-year Election.
- (3) If an election under subsection (1) for the MNE Group applies to a Constituent Entity of the MNE Group for a Fiscal Year, in computing the GloBE Income or Loss of the Constituent Entity for the Fiscal Year:
  - (a) adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude gains or losses attributable to fair value or impairment accounting with respect to assets or liabilities to which the election applies; and
  - (b) for the purpose of determining a gain or loss in respect of an asset or liability to which the election applies, treat the carrying value of the asset or liability as being its carrying value at the later of:
    - (i) the beginning of the first Fiscal Year to which the election applies; or
    - (ii) the day on which the asset was acquired or the liability was incurred.
- (4) Subsection (5) applies if:
  - (a) an election under subsection (1) is revoked in a Fiscal Year; and
  - (b) a Constituent Entity to which the election applied holds an asset or liability to which the election applied at the beginning of the Fiscal Year.
- (5) In computing the GloBE Income or Loss of the Constituent Entity for the Fiscal Year, include the positive or negative amount computed by subtracting:
  - (a) the carrying value of the asset or liability as computed in accordance with paragraph (3)(b);from:
  - (b) the fair value of the asset or liability at the beginning of the Fiscal Year;

### **3-140 Adjustment—Aggregate Asset Gain—election**

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

### **3-145 Adjustment—Aggregate Asset Gain—effect**

- (1) This section applies if an election under subsection 3-140(2) for an MNE Group applies to a jurisdiction and to a Fiscal Year (the *application year*).

#### *Adjustments to Adjusted Covered Taxes*

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



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### *Adjustments to GloBE Income or Loss—application year*

- (3) In computing the GloBE Income or Loss for the application year of a Constituent Entity of the MNE Group located in the jurisdiction, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to:
  - (a) include any amounts allocated under section 3-150 to the Constituent Entity for the application year; and
  - (b) exclude any Net Asset Gain or Net Asset Loss of the Constituent Entity for the application year.

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

- (4) If an amount is allocated under section 3-150 to a Constituent Entity of an MNE Group located in a jurisdiction for a Fiscal Year in the election's Look-back Period (a **Look-back Year**) that is not the application year:
  - (a) recalculate in accordance with section 5-90 the Effective Tax Rate and Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the Look-back Year; and
  - (b) for the purposes of that recalculation, make the adjustments to the GloBE Income or Loss of Constituent Entities of the MNE Group for the Look-back Year set out in subsection (5).
- (5) For the purposes of paragraph (4)(b), in computing the GloBE Income or Loss of a Constituent Entity of the MNE Group located in the jurisdiction for the Look-back Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to include any amounts allocated under section 3-150 to the Constituent Entity for the Look-back Year.

### **3-150 Adjustment—Aggregate Asset Gain—allocation of amounts**

- (1) This section applies if an election under subsection 3-140(2) for an MNE Group applies to a jurisdiction and to a Fiscal Year (the **application year**).
- (2) For the purposes of section 3-145, the amount allocated to a Constituent Entity of the MNE Group located in the jurisdiction for a Fiscal Year in the election's Look-back Period (a **Look-back Year**) is the sum of the following:
  - (a) the Constituent Entity's set-off amount for that year (see subsection (3));
  - (b) the Constituent Entity's remainder amount for that year (see subsection (5)).

### *Set-off amounts*

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

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previous year), in accordance with subsection (4), to reduce the amount computed under paragraph (a) (but not below zero).

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

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

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

### *Remainder amounts*

- (5) If the result of paragraph (3)(c) is not zero, compute the remainder amount of a Constituent Entity of the MNE Group located in the jurisdiction for each Look-back Year in accordance with the following formula:

$$\frac{\text{Remainder}}{5} \times \text{Relevant fraction}$$

where:

**relevant fraction** means:

- (a) if one or more Constituent Entities of the MNE Group located for the Look-back Year in the jurisdiction have a Net Asset Gain for the application year—the amount computed in accordance with the formula in subsection (6); or
- (b) otherwise—the amount computed in accordance with the formula in subsection (7).

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

- (6) For the purposes of paragraph (a) of the definition of relevant fraction in subsection (5), the formula is as follows:

$$\frac{\text{CE's gain}}{\text{Total gain}}$$

where:

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

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

- (7) For the purposes of paragraph (b) of the definition of relevant fraction in subsection (5), the formula is as follows:

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Number of CEs

where:

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

### 3-155 Meaning of *Aggregate Asset Gain, Net Asset Gain, etc*

- (1) If the result of the disposition of Local Tangible Assets by all Constituent Entities of an MNE Group located in a jurisdiction, excluding any gain or loss on a transfer of assets between Group Members, is a net gain in a Fiscal Year, then the MNE Group has an *Aggregate Asset Gain* for the jurisdiction for the Fiscal Year of the amount of that net gain.
- (2) If the result of the disposition of Local Tangible Assets by a Constituent Entity of the MNE Group located in a jurisdiction, excluding any gain or loss on a transfer of assets between Group Members, is:
  - (a) a net gain in a Fiscal Year—then the Constituent Entity has a *Net Asset Gain* for the Fiscal Year of that amount; and
  - (b) a net loss in a Fiscal Year—then the Constituent Entity has a *Net Asset Loss* for the Fiscal Year of that amount, expressed as a positive amount.
- (3) *Local Tangible Asset*, in relation to a Constituent Entity located in a jurisdiction, means immovable property located in the jurisdiction.

### 3-160 Meaning of *Look-back Period and Loss Year*

- (1) The *Look-back Period*, of an election under subsection 3-140(2) for an MNE Group, means the Fiscal Year to which the election applies (the *application year*) and the 4 Fiscal Years immediately preceding it.
- (2) A *Loss Year*, in relation to an election under subsection 3-140(2) for an MNE Group, means a Fiscal Year in the Look-back Period of the election if both of the following apply in relation to the Fiscal Year:
  - (a) a Constituent Entity of the MNE Group located in the jurisdiction to which the election applies has an adjusted net asset loss for the Fiscal Year greater than zero (see subsection (3));
  - (b) the sum of adjusted net asset losses for the Fiscal Year of all Constituent Entities of the MNE Group located in that jurisdiction exceeds the sum of the Net Asset Gains for the Fiscal Year of all those Constituent Entities.
- (3) For the purposes of subsection (2), the adjusted net asset loss for a Fiscal Year of a Constituent Entity of the MNE Group located in the jurisdiction is:
  - (a) the Net Asset Loss of the Constituent Entity for the Fiscal Year; reduced by:
  - (b) so much of that Net Asset Loss as has already been applied under paragraph 3-150(3)(c) in respect of an election that applies to a Fiscal Year that is before the application year.

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### 3-165 Adjustment—Intragroup Financing Arrangements

- (1) In computing a Low-Tax Entity's GloBE Income or Loss for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude any expense attributable to an Intragroup Financing Arrangement that can reasonably be anticipated, over the expected duration of the arrangement, to:
  - (a) increase the amount of expenses taken into account in calculating the GloBE Income or Loss of the Low-Tax Entity for any Fiscal Year; and
  - (b) not result in a corresponding increase in the taxable income of a High-Tax Counterparty.
- (2) For the purposes of the subsection (1), in determining whether a Constituent Entity is a Low-Tax Entity, disregard that subsection.

### 3-170 Meaning of *Intragroup Financing Arrangement*

An *Intragroup Financing Arrangement* is an arrangement entered into between 2 or more Constituent Entities of an MNE Group under which a Constituent Entity of the MNE Group that is a High-Tax Counterparty directly or indirectly provides credit to, or otherwise makes an investment in, a Constituent Entity of the MNE Group that is a Low-Tax Entity.

### 3-175 Meaning of *Low-Tax Entity* and *High-Tax Counterparty*

- (1) A Constituent Entity of an MNE Group is a *Low-Tax Entity* for a Fiscal Year if:
  - (a) the Constituent Entity is located in a jurisdiction for the Fiscal Year; and
  - (b) the jurisdiction:
    - (i) is a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year; or
    - (ii) would be a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year if the Effective Tax Rate of the MNE Group for the jurisdiction for the Fiscal Year were determined without regard to any income or expense accrued by the Constituent Entity in respect of an Intragroup Financing Arrangement.
- (2) A Constituent Entity of an MNE Group is a *High-Tax Counterparty* for a Fiscal Year if:
  - (a) the Constituent Entity is located in a jurisdiction for the Fiscal Year; and
  - (b) the jurisdiction:
    - (i) is not a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year; or
    - (ii) would not be a Low-Tax Jurisdiction in respect of the MNE Group for the Fiscal Year if the Effective Tax Rate of the MNE Group for the jurisdiction for the Fiscal Year were determined without regard to any income or expense accrued by the Constituent Entity in respect of an Intragroup Financing Arrangement.

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## 3-180 Meaning of *Low-Tax Jurisdiction*

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

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

## 3-185 Adjustment—Election to apply consolidated accounting treatment

- (1) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group under this subsection that applies to Constituent Entities of the MNE Group (each of which is a *consolidated local entity*):
  - (a) that are located in a specified jurisdiction; and
  - (b) that are included in a tax consolidation group (see subsection (4)).
- (2) An election under subsection (1) is a Five-Year Election.
- (3) If an election is made under subsection (1), the following paragraphs apply in computing the amount of the GloBE Income or Loss of a consolidated local entity to which the election applies:
  - (a) in computing that amount for a Fiscal Year to which the election applies, adjust the consolidated local entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to exclude income, expenses, gains and losses arising from transactions between consolidated local entities located in the same jurisdiction, to the extent that this reflects the consolidated accounting treatment of the Ultimate Parent Entity;
  - (b) in computing that amount for the first Fiscal Year to which the election applies, adjust the consolidated local entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising as a result of making the election;
  - (c) where the election is revoked in a Fiscal Year—in computing that amount for the Fiscal Year, adjust the consolidated local entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising as a result of the revocation.
- (4) For the purposes of subsection (1), Constituent Entities of an MNE Group located in a jurisdiction are included in a tax consolidation group if, under the law of that jurisdiction, the income, expenses, gains or losses of those Constituent Entities may be shared for tax purposes because of a connection between the Constituent Entities based on ownership or common control.

## 3-190 Adjustment—Insurance company amounts charged to policyholders for taxes paid in respect of returns to policy holders

In computing the GloBE Income or Loss for a Fiscal Year of a Constituent Entity of an MNE Group that is an insurance company, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to:

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

### **3-195 Adjustment—Distributions paid or payable in respect of Additional Tier One Capital**

- (1) In computing the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year, adjust the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year so as to:
  - (a) treat an amount recognised as a decrease to the equity of the Constituent Entity attributable to a distribution paid or payable in respect of Additional Tier One Capital issued by the Constituent Entity as an expense; and
  - (b) treat an amount recognised as an increase to the equity of the Constituent Entity attributable to a distribution received or receivable in respect of Additional Tier One Capital held by the Constituent Entity as income.
- (2) *Additional Tier One Capital* means an instrument issued by a Constituent Entity of an MNE Group pursuant to prudential regulatory requirements applicable to the banking or insurance sector that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.

### **3-200 Adjustments as necessary for Chapters 6 and 7**

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

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

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## Part 3-3—International Shipping Income exclusion

### 3-205 Adjustment—certain shipping income

In computing a Constituent Entity's GloBE Income or Loss for a Fiscal Year, exclude the following amounts:

- (a) the Constituent Entity's International Shipping Income for the Fiscal Year;
- (b) the Constituent Entity's Qualified Ancillary International Shipping Income for the Fiscal Year.

### 3-210 Meaning of *International Shipping Income*, etc.

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

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

where:

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**direct costs** is the total costs incurred by the Constituent Entity for the Fiscal Year that are directly attributable to the Constituent Entity's performance of International Shipping Activities.

**indirect costs** is the total costs incurred by the Constituent Entity for the Fiscal Year that are indirectly attributable to the Constituent Entity's performance of International Shipping Activities.

**shipping revenue** is the Constituent Entity's International Shipping Income Revenue for the Fiscal Year.

**total revenue** is the Constituent Entity's total revenue for the Fiscal Year from all sources.

### 3-215 Meaning of *Qualified Ancillary International Shipping Income* etc.

- (1) The **Qualified Ancillary International Shipping Income** of a Constituent Entity of an MNE Group located in a jurisdiction for a Fiscal Year is:
- (a) if paragraph (b) does not apply—the Constituent Entity's Ancillary International Shipping Income for the Fiscal Year (**CE's AISI**); or
  - (b) if the aggregate of the amounts of Ancillary International Shipping Income of each Constituent Entity of the MNE Group that is located in the jurisdiction (**Aggregate AISI**) is 50% or less of the aggregate of the amounts of International Shipping Income of those Constituent Entities (**Aggregate ISI**)—the amount computed in accordance with the following formula:

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

where:

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

**Cap** means Aggregate ISI multiplied by 50%.

- (2) The **Ancillary International Shipping Income** of a Constituent Entity of an MNE Group for a Fiscal Year is:
- (a) the Constituent Entity's Ancillary International Shipping Income Revenue for the Fiscal Year;
- reduced by:
- (b) the Constituent Entity's Ancillary International Shipping Income Costs for the Fiscal Year.
- (3) The **Ancillary International Shipping Income Revenue** of a Constituent Entity of an MNE Group for a Fiscal Year means the revenue obtained by the Constituent Entity for the Fiscal Year from the following activities, to the extent they are performed primarily in connection with transporting passengers or cargo by ships in international traffic (each an **Ancillary International Shipping Activity**):



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- (a) leasing a ship on a bareboat charter basis to another shipping enterprise that is not a Constituent Entity of the MNE Group, if the charter does not exceed three years;
  - (b) selling tickets issued by other shipping enterprises for the domestic leg of an international voyage;
  - (c) leasing and short-term storage of a container (including levying detention charges for the late return of a container);
  - (d) providing services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel;
  - (e) investment income where the investment that generates the income is made as an integral part of the carrying on the business of operating the ships in international traffic.
- (4) The ***Ancillary International Shipping Income Costs***, of a Constituent Entity for a Fiscal Year, means the amount computed in accordance with the following formula:

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

where:

***direct costs*** is the total costs incurred by the Constituent Entity for the Fiscal Year that are directly attributable to the Constituent Entity's performance of Ancillary International Shipping Activities.

***indirect costs*** is the total costs incurred by the Constituent Entity for the Fiscal Year that are indirectly attributable to the Constituent Entity's performance of Ancillary International Shipping Activities.

***shipping revenue*** is the Constituent Entity's Ancillary International Shipping Income Revenue for the Fiscal Year.

***total revenue*** is the Constituent Entity's total revenue for the Fiscal Year from all sources.

### 3-220 Strategic or commercial management of ships

For the purposes of subsection 3-210(2) and paragraph 3-215(3)(a), treat a reference to a ship as a reference to a ship to which all of the following apply:

- (a) during a Fiscal Year, the Constituent Entity mentioned in section 3-205 obtains revenue from activities involving the ship;
- (b) the Constituent Entity is located in a jurisdiction during the Fiscal Year;
- (c) the Constituent Entity demonstrates to whom that, throughout the Fiscal Year, the strategic or commercial management of the ship is effectively carried on from within the jurisdiction.

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Chapter 3 Computation of GloBE Income or Loss

Part 3-4 Allocation of Income or Loss between a Main Entity and a Permanent Establishment

Section 3-225

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## Part 3-4—Allocation of Income or Loss between a Main Entity and a Permanent Establishment

### 3-225 Meaning of *Financial Accounting Net Income or Loss*—Permanent Establishment

- (1) If a Constituent Entity is a Permanent Establishment because of paragraph 15(2)(a), (b) or (c) of the Act, the *Financial Accounting Net Income or Loss* for a Fiscal Year of the Constituent Entity is:
  - (a) the net income or loss reflected in the separate financial accounts of the Permanent Establishment, if those financial accounts are prepared in accordance with an Acceptable Financial Accounting Standard, or in accordance with an Authorised Financial Accounting Standard and subject to adjustments to prevent any Material Competitive Distortions; or
  - (b) if the Permanent Establishment does not have separate financial accounts described in paragraph (a)—the amount that would be the net income or loss of that Permanent Establishment reflected in separate financial accounts prepared on a standalone basis in accordance with the accounting standard used in the preparation of the Consolidated Financial Accounts of the Ultimate Parent Entity.
- (2) If a Constituent Entity is a Permanent Establishment because of paragraph 15(2)(d) of the Act, the *Financial Accounting Net Income or Loss* for a Fiscal Year of the Constituent Entity is the net income or loss of that Permanent Establishment computed on the assumptions that:
  - (a) the only income of the Permanent Establishment is its income that:
    - (i) is exempted from Tax in the jurisdiction where the Main Entity in respect of the Permanent Establishment is located; and
    - (ii) is attributable to operations conducted or activities carried on outside the jurisdiction in which the Main Entity is located; and
  - (b) the only expenses of the Permanent Establishment are its expenses that:
    - (i) are attributable to the operations or activities described in paragraph (a)(ii); and
    - (ii) are not deducted for tax purposes in the jurisdiction in which the Main Entity is located.

### 3-230 Adjustment of Permanent Establishment's *Financial Accounting Net Income or Loss*

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

- (a) if the Permanent Establishment is a Permanent Establishment because of paragraph 15(2)(a) of the Act—the Tax Treaty applicable to the Permanent Establishment; or

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- (b) if the Permanent Establishment is a Permanent Establishment because of paragraph 15(2)(b) of the Act—the law of the jurisdiction in which the Permanent Establishment is located; or
- (c) if the Permanent Establishment is a Permanent Establishment because of paragraph 15(2)(c) of the Act—Article 7 of the OECD Model Tax Convention.

## **3-235 Computing GloBE Income or Loss of the Main Entity in respect of a Permanent Establishment**

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

## **Part 3-5—Allocation of Income or Loss from a Flow-through Entity**

### **3-240 Constituent Entity that is a Flow-through Entity—Financial Accounting Net Income or Loss**

- (1) If a Constituent Entity of a Group is a Flow-through Entity, deal with its Financial Accounting Net Income or Loss as follows:
  - (a) first, reduce the amount of that Financial Accounting Net Income or Loss by the amount allocable to its owners that:
    - (i) are not Group Entities of the Group; and

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## Chapter 3 Computation of GloBE Income or Loss

### Part 3-5 Allocation of Income or Loss from a Flow-through Entity

#### Section 3-240

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- (ii) hold a Direct Ownership Interest in the Flow-through Entity, or hold an Indirect Ownership Interest in the Flow-through Entity through a Tax Transparent Structure;
  - (b) next, if there is a Permanent Establishment through which the business of the Flow-through Entity is wholly or partly carried out, allocate the remaining Financial Accounting Net Income or Loss to the Permanent Establishment to the extent set out in Part 3-4;
  - (c) next, if the Flow-through Entity is a Tax Transparent Entity that is not the Ultimate Parent Entity of the Group, allocate the remaining Financial Accounting Net Income or Loss to the Flow-through Entity's Constituent Entity-owners in accordance with their Ownership Interests Percentages;
  - (d) next, if the Flow-through Entity is a Tax Transparent Entity that is the Ultimate Parent Entity of the Group, or a Reverse Hybrid Entity, allocate the remaining Financial Accounting Net Income or Loss to the Flow-through Entity.
- (2) Despite paragraph (1)(a), do not make the reduction in that paragraph if the Flow-through Entity is:
- (a) the Ultimate Parent Entity of the Group; or
  - (b) owned by the Ultimate Parent Entity of the Group (directly or through a Tax Transparent Structure).

Note: The treatment of these Entities is addressed in Part 7-1.

- (3) To avoid doubt, if an amount of the Financial Accounting Net Income or Loss of the Flow-through Entity is allocated to another Constituent Entity under subsection (1), the Financial Accounting Net Income or Loss of the Flow-through Entity is reduced by that amount.
- (4) Subsection (1) applies separately with respect to each Ownership Interest in the Flow-through Entity.

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## Chapter 4—Computation of Adjusted Covered Taxes

### Part 4-1—Adjusted Covered Taxes

#### 4-5 Meaning of *Adjusted Covered Taxes*

The *Adjusted Covered Taxes* for a Fiscal Year of a Constituent Entity of an MNE Group is the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year, adjusted by:

- (a) adding its Additions to Covered Taxes for the Fiscal Year (see section 4-15) and subtracting its Reductions to Covered Taxes for the Fiscal Year (see section 4-20); and
- (b) adding the Total Deferred Tax Adjustment Amount for the Constituent Entity for the Fiscal Year (see Part 4-4); and
- (c) adding any increase in Covered Taxes, and subtracting any decrease in Covered Taxes, that:
  - (i) are recorded in equity or Other Comprehensive Income of the Constituent Entity for the Fiscal Year; and
  - (ii) relate to amounts included in the computation of GloBE Income or Loss of the Constituent Entity for the Fiscal Year that will be subject to tax under the law of any jurisdiction.

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

The *Accrued Current Tax Expense* for a Fiscal Year of a Constituent Entity of an MNE Group is the amount (if any) of the Constituent Entity's current tax expense accrued, in respect of Covered Taxes, in the Constituent Entity's Financial Accounting Net Income or Loss for the Fiscal Year.

#### 4-15 Meaning of *Additions to Covered Taxes*

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

- (a) the amount (if any) of Covered Taxes of the Constituent Entity for the Fiscal Year accrued as an expense in the profit before taxation in the Constituent Entity's financial accounts for the Fiscal Year;
- (b) if:
  - (i) there is a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction in which the Constituent Entity is located; and
  - (ii) that GloBE Loss Deferred Tax Asset was *not* established because of the operation of section 4-115; and
  - (iii) an amount of that GloBE Loss Deferred Tax Asset is used under paragraph 4-105(2)(b);the Constituent Entity's share of that amount;
- (c) if:
  - (i) the Constituent Entity is the Ultimate Parent Entity of the MNE Group; and

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## Chapter 4 Computation of Adjusted Covered Taxes

### Part 4-1 Adjusted Covered Taxes

#### Section 4-20

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- (ii) there is a GloBE Loss Deferred Tax Asset under subsection for the jurisdiction in which the Constituent Entity is located; and
- (iii) that GloBE Loss Deferred Tax Asset was established because of the operation of section 4-115;
- (iv) an amount of that GloBE Loss Deferred Tax Asset is used under paragraph 4-105(2)(b);  
that amount;
- (d) the amount (if any) of Covered Taxes of the Constituent Entity for the Fiscal Year that is paid in the Fiscal Year, to the extent that the amount:
  - (i) relates to an uncertain tax position; and
  - (ii) was treated as a Reduction to Covered Taxes of the Constituent Entity for a previous Fiscal Year under paragraph 4-20(d);
- (e) the amount (if any) of credit or refund, in respect of a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit, that is recorded as a reduction, in respect of Covered Taxes, to its Accrued Current Tax Expense for the Fiscal Year.

#### 4-20 Meaning of *Reductions to Covered Taxes*

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

- (a) if income is excluded from the computation of the Constituent Entity's GloBE Income or Loss under Chapter 3—the sum of:
  - (i) the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year that relates to the income; and
  - (ii) the amount (if any) of Additions to Covered Taxes for the Fiscal Year of the Constituent Entity that relates to the income;
- (b) the amount (if any) of credit or refund, in respect of a Non-Qualified Refundable Tax Credit, that:
  - (i) is credited or refunded to the Constituent Entity in respect of Covered Taxes in the Fiscal Year; and
  - (ii) is not recorded as a reduction to the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year;
- (c) the amount (if any) of Covered Taxes refunded or credited to the Constituent Entity (other than a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit) that is not treated as an adjustment to the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year;
- (d) the amount (if any) of the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year that relates to an uncertain tax position;
- (e) the amount (if any) of the Constituent Entity's Accrued Current Tax Expense for the Fiscal Year that is not expected to be paid within 3 years after the last day of the Fiscal Year.

#### 4-25 No double counting of Covered Taxes

For the purposes of this Chapter, do not take account of an amount of Covered Taxes more than once.

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

- (1) Subsection (2) applies if:
  - (a) an MNE Group has no Net GloBE Income (see section 5-25) for a jurisdiction for a Fiscal Year; and
  - (b) the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction is less than zero; and
  - (c) that sum falls short of the Expected Adjusted Covered Taxes Amount (ie, the Net GloBE Loss of the MNE Group for the Fiscal Year for the jurisdiction multiplied by the Minimum Rate).
- (2) In computing the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the Fiscal Year, increase the amount of Additional Current Top-up Tax of the MNE Group for the Fiscal Year for the jurisdiction under section 5-95 by the shortfall mentioned in paragraph (1)(c).

## Part 4-2—Definition of Covered Taxes

### 4-35 Meaning of *Covered Taxes*

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

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## Chapter 4 Computation of Adjusted Covered Taxes

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

#### Section 4-40

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

### **4-40 Allocation of amounts from Constituent Entity to Permanent Establishment**

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

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

### **4-45 Allocation of amounts from Tax Transparent Entity to a Constituent Entity-owner of the Tax Transparent Entity**

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

- (a) accrued in the financial accounts of the Tax Transparent Entity for the Fiscal Year; and
- (b) so included in respect of the GloBE Income or Loss allocated to the Constituent Entity-owner under section 3-240(1)(c).

### **4-50 Allocation of amounts from Constituent Entity-owner of Constituent Entity that is CFC to the Constituent Entity**

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

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

### **4-55 Allocation of amounts from Constituent Entity-owner of a Constituent Entity that is a Hybrid Entity to the Hybrid Entity**

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

- (a) the Constituent Entity-owner holds a Direct Ownership Interest in the Hybrid Entity; and
- (b) the amount is:



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- (i) accrued in the financial accounts of the Constituent Entity-owner for the Fiscal Year; and
- (ii) so included in respect of income of the Hybrid Entity.

## **4-60 Amounts accrued in financial accounts of Constituent Entity-owner on distribution from Constituent Entity to Constituent Entity-owner—allocation to Constituent Entity**

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

- (a) accrued in the financial accounts of the Constituent Entity-owner for the Fiscal Year; and
- (b) so included in respect of distributions from the Constituent Entity to the Constituent Entity-owner during the Fiscal Year.

## **4-65 Allocation of amounts in respect of Passive Income—inclusion in Constituent Entity’s Adjusted Covered Taxes**

- (1) If an amount in respect of Covered Taxes for a Fiscal Year is allocated to a Constituent Entity of an MNE Group under section 4-50 or 4-55 in respect of Passive Income, the lesser of the following amounts is included in the Constituent Entity’s Adjusted Covered Taxes for the Fiscal Year:
  - (a) the amount in respect of Covered Taxes allocated in respect of the Passive Income;
  - (b) the amount that is:
    - (i) the Top-up Tax Percentage for the Fiscal Year of the MNE Group for the jurisdiction in which the Constituent Entity is located (computed disregarding the amount in respect of Covered Taxes allocated to the Constituent Entity under section 4-50 or 4-55 in respect of Passive Income);multiplied by:
    - (ii) the Constituent Entity’s Passive Income for the Fiscal Year, to the extent that is includible under any Controlled Foreign Company Tax Regime or fiscal transparency rule.
- (2) If, because of subsection (1), the amount in respect of Covered Taxes for the Fiscal Year allocated to the Constituent Entity falls short of what it would be disregarding subsection (1), do not allocate the shortfall to the Constituent Entity under sections 4-50 or 4-55.

## **4-70 Allocation of amounts from Permanent Establishment to Main Entity**

- If:
- (a) an amount is treated as GloBE Income of the Main Entity in respect of a Permanent Establishment under paragraph 3-235(2)(b); and
  - (b) Covered Taxes arise in the jurisdiction in which the Permanent Establishment is located, and are associated with the income amount mentioned in that paragraph;

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## Chapter 4 Computation of Adjusted Covered Taxes

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

### Part 4-4—Mechanism to address temporary differences

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

#### 4-75 Meaning of *Total Deferred Tax Adjustment Amount*

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

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- (a) recast the deferred tax asset at the Minimum Rate in the Fiscal Year for which the deferred tax asset is recorded; and
- (b) reduce the *Total Deferred Tax Adjustment Amount* by the amount by which the deferred tax asset is increased because of that recasting.

## 4-80 Effect of Recaptured Deferred Tax Liability

If there is Recaptured Deferred Tax Liability for a Constituent Entity for a Fiscal Year:

- (a) for the purposes of section 4-20, treat the amount of the Recaptured Deferred Tax Liability as increasing the Reduction to Covered Taxes of the Constituent Entity for the fifth preceding Fiscal Year; and
- (b) recalculate the Effective Tax Rate and Jurisdictional Top-up Tax of the fifth preceding Fiscal Year in accordance with section 5-90.

## 4-85 Meaning of Recaptured Deferred Tax Liability

The *Recaptured Deferred Tax Liability* for a Constituent Entity for a Fiscal Year is the amount of a deferred tax liability, to the extent that the deferred tax liability:

- (a) was included in the Total Deferred Tax Adjustment Amount for the Constituent Entity for the fifth preceding Fiscal Year; and
- (b) has not reversed by the end of the last day of the Fiscal Year; and
- (c) does not relate to a Recapture Exception Accrual (see section 4-90).

## 4-90 Meaning of Recapture Exception Accrual

A *Recapture Exception Accrual* means a tax expense accrued in the financial accounts of a Constituent Entity attributable to changes in associated deferred tax liabilities, in respect of any of the following:

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

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Chapter 4 Computation of Adjusted Covered Taxes  
Part 4-5 The GloBE Loss Election

Section 4-95

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## 4-95 Meaning of *Disallowed Accrual* and *Unclaimed Accrual*

- (1) A ***Disallowed Accrual***, of a Constituent Entity of a Group for a Fiscal Year, means a movement in deferred tax expense accrued in the financial accounts of the Constituent Entity for the Fiscal Year that relates to:
  - (a) an uncertain tax position; or
  - (b) distributions from any Constituent Entity of the Group (whether or not the Constituent Entity mentioned previously in this subsection).
- (2) An ***Unclaimed Accrual***, of a Constituent Entity of an MNE Group for a Fiscal Year, means an increase in a deferred tax liability recorded in the financial accounts of the Constituent Entity for the Fiscal Year (the ***current year***) if:
  - (a) it is not expected to be paid by the end of the fifth following Fiscal Year; and
  - (b) an election under subsection (3) applies to the Constituent Entity for the current year.
- (3) A Filing Constituent Entity of an MNE Group may make an election under this subsection that applies to a specified Constituent Entity.
- (4) An election under subsection (3) is an Annual Election.

## Part 4-5—The GloBE Loss Election

Note: The GloBE Loss Deferred Tax Asset, to the extent that it is used, forms part of Additions to Covered Taxes under paragraph 4-15(b).

### 4-100 GloBE Loss Election

- (1) A ***GloBE Loss Election*** is:
  - (a) an election under subsection (2) for an MNE Group; or
  - (b) an election under subsection 4-115(1) for a Flow-through Entity that is a Ultimate Parent Entity of an MNE Group.
- (2) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group that applies to a specified jurisdiction if:
  - (a) the jurisdiction does not have an Eligible Distribution Tax System; and
  - (b) the election is filed with the first GloBE Information Return of the MNE Group for the first Fiscal Year in which the MNE Group has a Constituent Entity located in the jurisdiction.
- (3) Unless the GloBE Loss Election is revoked, it applies to:
  - (a) the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records the election is filed by the Filing Constituent Entity; and
  - (b) each subsequent Fiscal Year.
- (4) A Filing Constituent Entity for the MNE Group may revoke a GloBE Loss Election for an MNE Group.

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- (5) If the Filing Constituent Entity revokes a GloBE Loss Election for an MNE Group, the election does not apply to:
- (a) the Fiscal Year for which the GloBE Information Return for the Applicable MNE Group that records the revocation is filed by the Filing Constituent Entity; and
  - (b) each subsequent Fiscal Year.

## 4-105 Effect of GloBE Loss Election

- (1) If a GloBE Loss Election for an MNE Group applies to a jurisdiction and a Fiscal Year:
- (a) Part 4-4 does not apply to a Constituent Entity of the MNE Group that is located in the jurisdiction in the Fiscal Year; and
  - (b) if there is a Net GloBE Loss of the MNE Group for the jurisdiction for the Fiscal Year and a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction has *not* been established:
    - (i) a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction is established; and
    - (ii) the amount of that GloBE Loss Deferred Tax Asset is the Net GloBE Loss multiplied by the Minimum Rate; and
  - (c) if there is a Net GloBE Loss of the MNE Group for the jurisdiction for the Fiscal Year and a GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction has been established:
    - (i) the GloBE Loss Deferred Tax Asset is increased; and
    - (ii) the amount of that increase is the Net GloBE Loss multiplied by the Minimum Rate.
- (2) If there is Net GloBE Income of the MNE Group for the jurisdiction for a Fiscal Year after the Fiscal Year in which the GloBE Loss Deferred Tax Asset is established, use an amount of the GloBE Loss Deferred Tax Asset, for the purposes of paragraph 4-15(b), equal to the lower of the following:
- (a) the Net GloBE Income multiplied by the Minimum Rate;
  - (b) the amount of the GloBE Loss Deferred Tax Asset that has not been previously used under this section.

## 4-110 Effect of revoking GloBE Loss Election

If a GloBE Loss Election for an MNE Group that applies to a jurisdiction is revoked:

- (a) the GloBE Loss Deferred Tax Asset of the MNE Group for the jurisdiction is reduced to zero on the first day of the first Fiscal Year to which the GloBE Loss Election is no longer applicable; and
- (b) Parts 4-4 and 9-1 apply in respect of a subsequent Fiscal Year to a Constituent Entity of the MNE Group that is located in the jurisdiction in the Fiscal Year.

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## Section 4-115

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### 4-115 GloBE Loss Election—Ultimate Parent Entity that is Flow-through Entity

- (1) A Flow-through Entity that is a Ultimate Parent Entity of an MNE Group may make an election for itself if:
  - (a) the jurisdiction in which it is located does not have an Eligible Distribution Tax System; and
  - (b) the GloBE Loss Election is filed with the first GloBE Information Return of the MNE Group.
- (2) A GloBE Loss Election under subsection (1) applies to a Fiscal Year if:
  - (a) the GloBE Loss Election was made before the end of that Fiscal Year; and
  - (b) the GloBE Loss Election was not revoked before the end of that Fiscal Year.
- (3) The Ultimate Parent Entity may revoke the GloBE Loss Election.
- (4) If a GloBE Loss Election under subsection (1) for an Ultimate Parent Entity applies to a Fiscal Year, sections 4-105 and 4-110 apply in relation to the GloBE Loss Election.

## Part 4-6—Post-filing Adjustments and Tax Rate Changes

### 4-120 Effect of adjustment to the liability for Covered Taxes

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

Note: The treatment of adjustments under this section will not result in refunds of tax payable under section 4, 7 or 10 of the Act for the prior Fiscal Year.

- (2) If there is an increase, or an immaterial decrease covered by an election under subsection (5) for the MNE Group, in the sum of the Adjusted Covered Taxes for the prior year of each Constituent Entity of the MNE Group located in the same jurisdiction as the relevant Constituent Entity, treat the adjustment as an adjustment to the relevant Constituent Entity's Adjusted Covered Taxes for the current year.
- (3) If there is a decrease (other than an immaterial decrease covered by an election under subsection (5) for the MNE Group) in the sum of the Adjusted Covered Taxes for the prior year of each Constituent Entity of the MNE Group located in the same jurisdiction as the relevant Constituent Entity:
  - (a) recalculate in accordance with section 5-90:
    - (i) the Effective Tax Rate of the MNE Group for the jurisdiction for the prior year; and
    - (ii) the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the prior year; and
  - (b) for the purposes of that recalculation:

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- (i) treat the relevant Constituent Entity's Adjusted Covered Taxes for the prior year as reduced by the amount of the decrease; and
  - (ii) treat the relevant Constituent Entity's GloBE Income and Loss for the prior year, and for all Fiscal Years ending after the end of the prior year but before the start of the current year, as being adjusted as necessary and appropriate.
- (4) For the purposes of the subsections (2) and (3), an immaterial decrease referred to in those sections is an aggregate decrease in that liability of less than EUR 1 million in the sum of the Adjusted Covered Taxes for the prior year of each Constituent Entity of the MNE Group located in the same jurisdiction as the relevant constituent entity.
- (5) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group that covers an immaterial decrease in Adjusted Covered Taxes.
- (6) An election under subsection (5) is an Annual Election.
- (7) Subsection (8) applies if, in a Fiscal Year (the *current year*):
- (a) a Constituent Entity of an MNE Group is entitled to a tax credit; and
  - (b) the amount of the tax credit is equivalent to an adjustment to the liability for Covered Taxes of the Constituent Entity for a prior Fiscal Year.
- (8) For the purposes of this section, treat the tax credit as an adjustment to the liability for Covered Taxes, recorded in the financial accounts, of the Constituent Entity for the prior Fiscal Year.

### 4-125 Effect of revoking GloBE Loss Election

- (1) If:
- (a) there is an amount of deferred tax expense, recorded in the financial accounts, of a Constituent Entity, for a Fiscal Year resulting from a reduction to the applicable domestic tax rate; and
  - (b) the reduction results in the application of a rate that is less than the Minimum Rate;
- treat the amount as an adjustment to the Constituent Entity's Adjusted Covered Taxes for a prior Fiscal Year.
- (2) If:
- (a) there is an amount of deferred tax expense, recorded in the financial accounts, of a Constituent Entity, for a Fiscal Year resulting from an increase to the applicable domestic tax rate; and
  - (b) that deferred tax expense has been paid; and
  - (c) before the increase, the amount was recorded at a rate less than the Minimum Rate;
- treat the amount as an adjustment mentioned in section 4-120 for a prior Fiscal Year. However, this adjustment is limited to an amount that is equal to an increase of deferred tax expense up to such deferred tax expense recast at the Minimum Rate.
- (3) If:

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- (a) the amount of current tax expense recorded in the financial accounts of a Constituent Entity of an MNE Group for a Fiscal Year (the *prior year*) is included in the Constituent Entity's Adjusted Covered Taxes for the prior year; and
  - (b) that amount is not fully paid by the end of the third Fiscal Year after the prior year; and
  - (c) the amount that remains unpaid exceeds 1 million Euros;
- then:
- (d) recalculate in accordance with section 5-90:
    - (i) the Effective Tax Rate of the MNE Group for the jurisdiction in which the Constituent Entity is located, for the prior year; and
    - (ii) the Jurisdictional Top-up Tax of the MNE Group for that jurisdiction for the prior year; and
  - (e) for the purposes of that recalculation, exclude the amount that remains unpaid from the Constituent Entity's Adjusted Covered Taxes for the prior year.



## Chapter 5—Computation of Effective Tax Rate

### Part 5-1—Determination of Effective Tax Rate

#### 5-5 Meaning of *Effective Tax Rate*

The *Effective Tax Rate* of an MNE Group for a jurisdiction for a Fiscal Year is equal to:

- (a) the sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction;

divided by:

- (b) the Net GloBE Income of the MNE Group for the jurisdiction for the Fiscal Year;

expressed as a percentage.

Note 1: Certain Constituent Entities are excluded for the purposes of this section: see section 5-15.

Note 2: The *Effective Tax Rate* of an MNE Group for a jurisdiction may be modified by the following provisions:

- (a) section 5-45 (Stateless entities);  
(b) section 5-105 (Minority owned entities);  
(c) section 6-80 (Joint ventures);  
(d) Parts 7-4 and 7-6 (Investment entities).

Note 3: The sum of the Adjusted Covered Taxes for the Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction may be modified by subsection 7-50(2).

#### 5-10 Meaning of *Net GloBE Income* and *Net GloBE Loss*

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

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

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

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

Note: Certain Constituent Entities are excluded for the purposes of this section: see section 5-15.

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### **5-15 Certain Constituent Entities excluded**

For the purposes of sections 5-5 and 5-10, treat a reference to a Constituent Entity of an MNE Group as not including a Constituent Entity if it is any of the following:

- (a) an Investment Entity;
- (b) an Insurance Investment Entity;
- (c) a member of a Minority-Owned Subgroup;
- (d) a Minority-Owned Constituent Entity that is not a member of a Minority-Owned Subgroup.

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## Part 5-2—Top-up Tax

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

The *Top-up Tax Percentage* of an MNE Group for a jurisdiction for a Fiscal Year is the amount computed in accordance with the following formula (but not less than zero):

Minimum Rate – ETR

where:

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

### 5-25 Meaning of *Excess Profit*

The *Excess Profit* of an MNE Group for a jurisdiction for a Fiscal Year is the amount computed in accordance with the following formula (but not less than zero):

Net GloBE Income – Substance-based Income Exclusion amount

where:

*Net GloBE Income* is the Net GloBE Income of the MNE Group for the jurisdiction for the Fiscal Year.

*Substance-based Income Exclusion Amount* is the Substance-based Income Exclusion Amount of the MNE Group for the jurisdiction for the Fiscal Year.

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

The *Jurisdictional Top-up Tax* of an MNE Group for a jurisdiction for a Fiscal Year is the amount computed in accordance with the following formula (but not less than zero):

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

where:

*Additional Current Top-up Tax* is the amount determined or treated as Additional Current Top-up Tax under subsection 4-30(2) or paragraph 5-90(3)(b) of the MNE Group for the jurisdiction for the Fiscal Year.

*Domestic Top-up Tax* is the sum of the amounts payable by each Constituent Entity of the MNE Group under a Qualified Domestic Minimum Top-up Tax of the jurisdiction for the Fiscal Year.

*Excess Profit* is the Excess Profit of the MNE Group for the jurisdiction for the Fiscal Year.

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## Chapter 5 Computation of Effective Tax Rate

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**Top-up Tax Percentage** is the Top-up Tax Percentage of the MNE Group for the jurisdiction for the Fiscal Year.

Note: The **Jurisdictional Top-up Tax** of an MNE Group for a jurisdiction may be modified by the following provisions:

- (a) Part 5-5 (De minimis exclusion);
- (b) Part 8-2 (Safe harbours).

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

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

for those purposes, treat the paid amount as an amount payable by the Constituent Entity under a Qualified Domestic Minimum Top-up Tax of the jurisdiction for that Fiscal Year.

#### 5-40 Top-up Tax of a Constituent Entity

Except as provided in section 5-95, the **Top-up Tax** of a Constituent Entity of an MNE Group, located in a jurisdiction, for a Fiscal Year is the amount computed in accordance with the following formula:

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

where:

**Aggregate GloBE Income of all CEs** is the sum of the GloBE Income of all Constituent Entities of the MNE Group that have GloBE Income for the Fiscal Year included in the computation of Net GloBE Income in accordance with section 5-10 for the jurisdiction for the Fiscal Year.

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

**Jurisdictional Top-up Tax** is the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the Fiscal Year.

Note: The **Top-up Tax** of a Constituent Entity of an MNE Group may be modified by the following provisions:

- (a) section 5-100 (De minimis);
- (b) section 5-105 (Minority Owned CEs);
- (c) Part 7-4 (Investment Entities).

### 5-45 Treatment of Stateless Constituent Entities

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

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## Part 5-3—Substance-based Income Exclusion

### 5-50 Substance-based Income Exclusion Amount

- (1) The **Substance-based Income Exclusion Amount** of an MNE Group for a jurisdiction for a Fiscal Year is the sum of the following:
  - (a) the sum of the Payroll Carve-out Amounts for each Constituent Entity of the MNE Group located in the jurisdiction that is not an Investment Entity or Insurance Investment Entity, for the Fiscal Year;
  - (b) the sum of the Tangible Asset Carve-out Amounts for each Constituent Entity of the MNE Group located in the jurisdiction that is not an Investment Entity or Insurance Investment Entity, for the Fiscal Year.

#### *Election not to apply the Substance-based Income Exclusion*

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

### 5-55 Payroll Carve-out Amount

- (1) The **Payroll Carve-out Amount** for a Constituent Entity of an MNE Group located in a jurisdiction, for a Fiscal Year, is computed as follows:
  - (a) first, compute the total amount of Eligible Payroll Costs incurred in the Fiscal Year of Eligible Employees of the Constituent Entity;
  - (b) next, exclude from that total amount the Eligible Payroll Costs, to the extent they are:
    - (i) capitalised and included in the carrying value of Eligible Tangible Assets for the Fiscal Year of a Constituent Entity of the MNE Group;or

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- (ii) included in the Constituent Entity's International Shipping Income Costs or Ancillary International Shipping Income Costs for the Fiscal Year, and excluded from the computation of the Constituent Entity's GloBE Income or Loss for the Fiscal Year under section 3-205;
  - (c) next, multiply the result of paragraph (b) by 5%.
- Note: If the Constituent Entity is the Main Entity of a Permanent Establishment, various amounts attributable to the Permanent Establishment are to be excluded from this computation: see paragraph 5-80(2)(c).
- (2) However, for the purposes of paragraph (1)(a), if, in the Fiscal Year:
    - (a) an Eligible Employee performs activities for the MNE Group both in the jurisdiction and outside the jurisdiction; and
    - (b) the proportion of the Eligible Employee's time spent performing those activities in the jurisdiction is 50% or less;reduce the Eligible Payroll Costs incurred in the Fiscal Year of the Eligible Employee by that proportion.
  - (3) For the purposes of paragraph (1)(a), if a Filing Constituent Entity for an MNE Group chooses, under subsection (4), to exclude certain Eligible Payroll Costs for certain Eligible Employees from the computation mentioned in that paragraph, exclude those Eligible Payroll Costs in computing the total amount mentioned in that paragraph.
  - (4) For the purposes of subsection (3), a Filing Constituent Entity for an MNE Group may choose to exclude specified Eligible Payroll Costs for specified Eligible Employees from the computation mentioned paragraph (1)(a) by making an election in the Globe Information Return for the Fiscal Year.

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

- (1) *Eligible Payroll Costs* means:
  - (a) employee compensation expenditures, including salaries, wages and other expenditures that provide a direct and separate personal benefit to the employee (such as health insurance and pension contributions); and
  - (b) payroll and employment taxes; and
  - (c) employer social security contributions.
- (2) *Eligible Employee* of a Constituent Entity of an MNE Group means an individual who is:
  - (a) an employee (including a part-time employee) of the Constituent Entity; or
  - (b) an independent contractor participating in the ordinary operating activities of the MNE Group under the direction and control of one or more Constituent Entities of the MNE Group.

## 5-65 Tangible Asset Carve-out Amount

- (1) The *Tangible Asset Carve-out Amount* for a Constituent Entity of an MNE Group located in a jurisdiction, for a Fiscal Year, is computed as follows:
  - (a) first, compute the total amount of the carrying values for the Fiscal Year of each Eligible Tangible Asset of the Constituent Entity;

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- (b) next, exclude from the result of paragraph (a) amounts to the extent they are the carrying value of property (including land or buildings) that is held for sale, lease or investment;
- (c) next, multiply the result of paragraph (b) by 5%.

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

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

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

where *Aggregate AISI* and *Cap* have the same meanings as in paragraph 3-215(1)(b).

- (4) For the purposes of paragraph (1)(a), if a Filing Constituent Entity for an MNE Group chooses, under subsection (5), to exclude to a certain extent the carrying values of certain Eligible Tangible Assets from the computation of the total amount mentioned in that paragraph, exclude those carrying values to that extent in computing that total amount.



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- (5) For the purposes of subsection (4), a Filing Constituent Entity for an MNE Group may choose to exclude to a specified extent the carrying values of specified Eligible Tangible Assets from the computation of the total amount mentioned paragraph (1)(a) by making an election in the Globe Information Return for the Fiscal Year.

## 5-70 Operating Leases

- (1) This section applies if:
- (a) in a Fiscal Year, the Constituent Entity holds property for lease; and
  - (b) the property is located in the jurisdiction mentioned in subsection 5-65(1); and
  - (c) the lease is accounted for as an operating lease in the Constituent Entity's financial statements for the Fiscal Year.
- (2) Despite paragraph 5-65(1)(b):
- (a) do not exclude from the result of paragraph 5-65(1)(a) the carrying value of the property held for lease; and
  - (b) if the property is *not* a short-term rental asset under subsection (3) for the Fiscal Year—exclude from that result the right-of-use amount for the lease computed in accordance with subsection (4).
- (3) For the purposes of paragraph (2)(b), a property is a short-term rental asset under this subsection for a Fiscal Year if:
- (a) the property was leased regularly during the Fiscal Year to different lessees; and
  - (b) the average length of the periods for which it was leased does not exceed 30 days.
- (4) For the purposes of paragraph (2)(b), the right-of-use amount for the lease is the amount of:
- (a) if the lessee under the lease is a Constituent Entity of the MNE Group—the carrying value of the lessee's right-of-use asset in relation to the lease, as recorded for the purposes of the lessee's financial accounts; or
  - (b) otherwise—the undiscounted value of any outstanding payments under the lease (see subsection (5));
- computed based on the average of that amount at the beginning of the Fiscal Year and that amount at the end of the Fiscal Year.
- (5) For the purposes of paragraph (4)(b), in determining the value of those outstanding payments:
- (a) apply the accounting standard used in determining the Financial Accounting Net Income or Loss of the Constituent Entity; and
  - (b) include the value of any outstanding payments that would be due under any extension to the lease that would fall to be accounted for in accordance with that standard.

## 5-75 Meaning of *Eligible Tangible Asset*

- (1) *Eligible Tangible Asset* of a Constituent Entity means any of the following:

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- (a) property (including plant and equipment) located in the jurisdiction that are owned by the Constituent Entity;
  - (b) natural resources located in the jurisdiction that are owned by the Constituent Entity;
  - (c) the Constituent Entity's right of use, as a lessee, of tangible assets located in the jurisdiction;
  - (d) a licence or similar arrangement from a government for the use by the Constituent Entity of immovable property in the jurisdiction, or exploitation of natural resources in the jurisdiction, that entails significant investment in tangible assets.
- (2) If the Constituent Entity holds part of a property mentioned in paragraph (1)(a) for lease and retains the other part of the property for its own use:
- (a) for the purposes of this Part, treat the parts of the property as separate Eligible Tangible Assets; and
  - (b) allocate the carrying value of the property between those parts on a just and reasonable basis.
- (3) However, an asset is not an Eligible Tangible Asset at any time during a Fiscal Year if it is used in the generation of a Constituent Entity's International Shipping Income for the Fiscal Year.

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

- (1) This section applies, in relation to a Fiscal Year, if a Constituent Entity of an MNE Group is a Permanent Establishment.
- (2) For the purposes of sections 5-50, 5-55 and 5-65:
- (a) treat the Eligible Payroll Costs incurred in the Fiscal Year of Eligible Employees of the Permanent Establishment as being those that are or would be included in the separate financial accounts used to compute the Permanent Establishment's Financial Accounting Net Income or Loss for the Fiscal Year mentioned in section 3-225, as adjusted under section 3-230; and
  - (b) treat the Eligible Tangible Assets of the Permanent Establishment as being those whose carrying values are or would be included in those financial accounts for the Fiscal Year; and
  - (c) exclude those Eligible Payroll Costs and Eligible Tangible Assets from the Eligible Payroll Costs and Eligible Tangible Assets of the Main Entity of the Permanent Establishment for the Fiscal Year.
- (3) However, for the purposes of paragraphs (2)(a) and (b):
- (a) treat Eligible Employees who are not located in the jurisdiction where the Permanent Establishment is located as *not* being Eligible Employees;
  - (b) treat Eligible Tangible Assets that are not located in that jurisdiction as *not* being Eligible Tangible Assets of the Permanent Establishment.
- (4) Subsection (5) applies if:

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- (a) a Flow-through Entity wholly or partly carries out its business through the Permanent Establishment; and
  - (b) the Permanent Establishment's Financial Accounting Net Income or Loss for the Fiscal Year has been reduced by an amount under paragraph 3-240(1)(a) or section 7-15.
- (5) For the purposes of sections 5-50, 5-55 and 5-65:
- (a) reduce the Eligible Payroll Costs incurred in the Fiscal Year of Eligible Employees of the Permanent Establishment by the proportion the amount mentioned in paragraph (4)(b) bears to the Permanent Establishment's Financial Accounting Net Income or Loss for the Fiscal Year, before the reduction mentioned in that paragraph; and
  - (b) reduce the carrying value for the Fiscal Year of the Eligible Tangible Assets of the Permanent Establishment by the same proportion.

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

- (1) For the purposes of sections 5-50, 5-55 and 5-65, if, in relation to a Fiscal Year, a Constituent Entity of an MNE Group is a Flow-through Entity, deal with the Eligible Payroll Costs incurred in the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets by applying subsections (2) to (5) of this section in sequence.
- (2) If:
- (a) the Flow-through Entity is the Main Entity of a Permanent Establishment; and
  - (b) paragraph 5-80(2)(c) applies for the Fiscal Year;
- use the Flow-through Entity's Eligible Payroll Costs and carrying value of Eligible Tangible Assets as reduced because of that paragraph.
- (3) If:
- (a) the Flow-through Entity is a Tax Transparent Entity that is not the Ultimate Parent Entity of the MNE Group; and
  - (b) a percentage of the Financial Accounting Net Income or Loss of the Flow-through Entity for the Fiscal Year has been allocated to a Constituent Entity-owner of the Flow-through Entity under paragraph 3-240(1)(c);
- allocate to the Constituent Entity-owner the same percentage of the Flow-through Entity's remaining Eligible Payroll Costs incurred in the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets.
- (4) If:
- (a) the Flow-through Entity is the Ultimate Parent Entity of the MNE Group; and
  - (b) the Flow-through Entity's GloBE Income for the Fiscal Year has been reduced by an amount under subsection 7-5(2);
- reduce the remaining Eligible Payroll Costs incurred in the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets by the proportion the amount mentioned in paragraph (b) bears

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to the Flow-through Entity's GloBE Income for the Fiscal Year, before the reduction mentioned in that paragraph.

- (5) If the Flow-through Entity is not the Ultimate Parent Entity of the MNE Group, disregard the Flow-through Entity's remaining Eligible Payroll Costs incurred in the Fiscal Year of its Eligible Employees and the carrying value for the Fiscal Year of its Eligible Tangible Assets.
- (6) For the purposes of subsections (3) and (4):
  - (a) treat Eligible Employees who are not located in the jurisdiction where the Constituent Entity-owner or Ultimate Parent Entity is located as *not* being Eligible Employees;
  - (b) treat Eligible Tangible Assets that are not located in that jurisdiction as *not* being Eligible Tangible Assets of the Flow-through Entity.

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## Part 5-4—Additional Current Top-up Tax

### 5-90 Additional Current Top-up Tax—ETR Adjustment Provisions

- (1) This section applies if, in a Fiscal Year (the *current Fiscal Year*), the Effective Tax Rate and Jurisdictional Top-up Tax of an MNE Group for a jurisdiction for a prior Fiscal Year are required or permitted to be recalculated under an ETR Adjustment Provision.
- (2) Recalculate the Effective Tax Rate and Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the prior Fiscal Year in accordance with Parts 5-1 to 5-3, after taking into account the adjustments to Adjusted Covered Taxes and GloBE Income or Loss of Constituent Entities of the MNE Group for the jurisdiction for the prior Fiscal Year required by the relevant ETR Adjustment Provision.
- (3) If, disregarding this subsection, the recalculation results in an increase in the Jurisdictional Top-up Tax of the MNE Group for the jurisdiction for the prior Fiscal Year:
  - (a) despite that recalculation, do not include the increase in the Jurisdictional Top-up Tax for the jurisdiction for the prior Fiscal Year; and
  - (b) instead, treat the amount of that increase as *Additional Current Top-up Tax* of the MNE Group for the jurisdiction for the current Fiscal Year.
- (4) For the purposes of working out a Parent Entity's Inclusion Ratio under section 2-15, if the Net GloBE Income of the MNE Group for the jurisdiction for the current Fiscal Year is zero, treat the GloBE Income for the current Fiscal Year of each Constituent Entity of the MNE Group located in the jurisdiction as being:
  - (a) the Top-up Tax of the Constituent Entity for the jurisdiction for the Fiscal Year;  
divided by:
  - (b) the Minimum Rate.
- (5) For the purposes of Chapter 2, if as a result of subsection (3) or (4), there is an increase to the Top-up Tax of a Constituent Entity of the MNE Group for a jurisdiction for a Fiscal Year, treat the Constituent Entity as a Low-Taxed Constituent Entity for the Fiscal Year.

### 5-95 Additional Current Top-up Tax—Adjusted Covered Taxes less than expected amount

- (1) This section applies if, in a Fiscal Year (the *current Fiscal Year*), there is Additional Current Top-up Tax of an MNE Group for a jurisdiction for a Fiscal Year because of the operation of section 4-30.
- (2) For the purposes of section 2-15 (Inclusion Ratio), treat the GloBE Income for the current Fiscal Year of a Constituent Entity of the MNE Group located in the jurisdiction as being:
  - (a) the Additional Current Top-up Tax mentioned in subsection (1) allocated to the Constituent Entity in accordance with subsection (3);

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divided by:

(b) the Minimum Rate.

(3) For the purposes of paragraph (2)(a), the Additional Current Top-up Tax is allocated as follows:

(a) allocate such an amount only to Constituent Entities that have an amount of Adjusted Covered Taxes for the current Fiscal Year that is:

(i) less than zero; and

(ii) less than the GloBE Income or Loss of the Constituent Entity for the current Fiscal Year multiplied by the Minimum Rate;

(b) allocate such an amount to those Constituent Entities pro-rata based upon the following amount for each of those Constituent Entities:

$$\left( \text{GloBE Income or Loss} \times \text{Minimum Rate} \right) - \text{Adjusted Covered Taxes}$$

where:

**Adjusted Covered Taxes** means the Adjusted Covered Taxes of the Constituent Entity for the current Fiscal Year.

**GloBE Income or Loss** means the GloBE Income or Loss of the Constituent Entity for the current Fiscal Year.

(4) For the purposes of Chapter 2, if a Constituent Entity is allocated an amount of Additional Current Top-up Tax for a Fiscal Year under subsection (3), treat the Constituent Entity as a Low-Taxed Constituent Entity for the Fiscal Year.

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## Part 5-5—De minimis exclusion

### 5-100 De minimis exclusion

- (1) The Top-up Tax of a Constituent Entity of an MNE Group located in a jurisdiction is taken to be zero for a Fiscal Year if:
  - (a) the Average GloBE Revenue of the MNE Group for the jurisdiction for the Fiscal Year (see paragraph (2)(a)) is less than 10 million Euros; and
  - (b) the Average GloBE Income or Loss of the MNE Group for the jurisdiction for the Fiscal Year (see paragraph (2)(b)) is a loss or is less than 1 million Euros; and
  - (c) a Filing Constituent Entity of the MNE Group makes an election under subsection (5) that applies to the jurisdiction and the Fiscal Year; and
  - (d) the Constituent Entity is not a Stateless Constituent Entity or an Investment Entity.

*Average GloBE Revenue etc.*

- (2) For the purposes of these Rules:
  - (a) the **Average GloBE Revenue** of an MNE Group for a jurisdiction for a Fiscal Year is the average of the GloBE Revenue of the MNE Group (see subsection (4)) for the jurisdiction for the Fiscal Year and the 2 preceding Fiscal Years; and
  - (b) the **Average GloBE Income or Loss** of an MNE Group for a jurisdiction for a Fiscal Year is the average of the GloBE Income or Loss of the MNE Group (see subsection (4)) for the jurisdiction for the Fiscal Year and the 2 preceding Fiscal Years.
- (3) However, if, in a preceding Fiscal Year mentioned in subsection (2), there were no Constituent Entities of the MNE Group located in the jurisdiction with GloBE Revenue or GloBE Losses, exclude that Fiscal Year from the calculation of the Average GloBE Revenue and the Average GloBE Income or Loss of the MNE Group for the jurisdiction for the Fiscal Year.
- (4) For the purposes of subsections (2) and (3):
  - (a) the **GloBE Revenue** of an MNE Group for a jurisdiction for a Fiscal Year is the sum of the revenue for the Fiscal Year of all Constituent Entities of the MNE Group located in the jurisdiction, taking into account the adjustments calculated in accordance with Chapter 3; and
  - (b) the **GloBE Income or Loss** of an MNE Group for a jurisdiction for a Fiscal Year is the Net GloBE Income or the Net GloBE Loss for the Fiscal Year of the MNE Group for the jurisdiction; and
  - (c) in making computations under paragraphs (a) and (b), disregard the revenue and GloBE Income or Loss of a Constituent Entity that is:
    - (i) a Stateless Constituent Entity; or
    - (ii) an Investment Entity or Insurance Investment Entity.

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**Chapter 5** Computation of Effective Tax Rate

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### *Elections*

- (5) For the purposes of paragraph (1)(c), a Filing Constituent Entity for the MNE Group may make an election under this subsection that applies to a specified jurisdiction.
- (6) An election under subsection (5) is an Annual Election.



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Computation of Effective Tax Rate **Chapter 5**  
Minority-owned Constituent Entities **Part 5-6**

Section 5-105

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## Part 5-6—Minority-owned Constituent Entities

### 5-105 Minority-Owned Constituent Entities

#### *Minority-Owned Subgroups*

- (1) Subsection (2) applies if 2 or more Constituent Entities of an MNE Group are Minority-Owned Constituent Entities that comprise a Minority-Owned Subgroup.
- (2) Treat those Constituent Entities as if they comprised a separate MNE Group, for the following purposes:
  - (a) computing the Effective Tax Rate and Top-up Tax of the members of the Minority-Owned Subgroup for a jurisdiction under chapters 3 to 7 and Part 8-2;
  - (b) computing the MNE Group's Effective Tax Rate under section 5-5 and Net GloBE Income under section 5-10.

#### *Other Minority-Owned Constituent Entities*

- (3) Subsections (4) and (5) apply if a Constituent Entity of an MNE Group is a Minority-Owned Constituent Entity that:
  - (a) is not a Constituent Entity mentioned in subsection (1); and
  - (b) is not an Investment Entity.
- (4) For the purposes of computing the Effective Tax Rate and Top-up Tax of the Constituent Entity, in accordance with Chapters 3 to 7, and Part 8-2, treat the Constituent Entity as the only Constituent Entity of the MNE Group located in the jurisdiction in which it is located.
- (5) For the purposes of computing the Effective Tax Rate and Net GloBE Income of the MNE Group, disregard the Constituent Entity.

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Chapter 6 Corporate restructurings and holding structures

Part 6-1 Application of Consolidated Revenue Threshold to Group Mergers and Demergers

Section 6-5

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## Chapter 6—Corporate restructurings and holding structures

### Part 6-1—Application of Consolidated Revenue Threshold to Group Mergers and Demergers

#### 6-5 Applicable MNE Groups—mergers

- (1) This section specifies conditions for the purposes of paragraph 12(1)(b) of the Act.
- (2) An MNE Group (the *merged Group*) meets the conditions specified in this section for a Fiscal Year (the *test year*) if:
  - (a) during the test year or the previous 4 Fiscal Years (the *test period*):
    - (i) two or more Groups (the *pre-merger Groups*) merged (see section 6-10 of these Rules) to form the merged Group; or
    - (ii) an Entity that is not part of a Group (the *acquirer*) acquired or merged (see section 6-10) with one or more other Entities or Groups (the *targets*) to form the merged Group; and
  - (b) the merged Group would be an Applicable MNE Group for the test year under paragraph 12(1)(a) of the Act, applying the assumptions in subsections (3) and (4) of this section.
- (3) For the purposes of paragraph (2)(b), if subparagraph (2)(a)(i) applies, include in the annual revenue of the merged Group for a Fiscal Year in the test period (whether or not the merged Group existed in the Fiscal Year) an amount shown as annual revenue in the Consolidated Financial Statements of the Ultimate Parent Entity of the pre-merger Groups for an accounting period ending within the Fiscal Year.
- (4) For the purposes of paragraph (2)(b), if subparagraph (2)(a)(ii) applies, include the following amounts in the annual revenue of the merged Group for a Fiscal Year in the test period (whether or not the merged Group existed in the Fiscal Year):
  - (a) an amount shown as annual revenue in the financial accounts of the acquirer for an accounting period ending within the Fiscal Year;
  - (b) in the case of a target that is part of a Group for the Fiscal Year—an amount shown as annual revenue in the Consolidated Financial Statements of the Ultimate Parent Entity of the target for an accounting period ending within the Fiscal Year;
  - (c) in the case of a target that is not part of a Group for the Fiscal Year—an amount shown as annual revenue in the financial accounts of the target for an accounting period ending within the Fiscal Year.

#### 6-10 Applicable MNE Groups—meaning of *merger*

For the purposes of section 6-5, a *merger* means any arrangement under which:

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- (a) all of the Group Entities of two or more separate Groups are brought under common control such that they are Group Entities of one Group; or
- (b) all (or substantially all) of the Group Entities of a Group, or two or more separate Groups, are brought under common control with one or more Entities such that they are Group Entities of one Group; or
- (c) an Entity that is not a member of any Group is brought under common control with another Entity or Group such that they are Group Entities of one Group.

## 6-15 Applicable MNE Groups—demergers

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

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**Division 1** Transfers of Ownership Interests

Section 6-20

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

### Division 1—Transfers of Ownership Interests

#### 6-20 Application of this Division

- (1) This Division applies if an Entity (the *target*):
  - (a) becomes a Constituent Entity of an MNE Group (the *acquiring MNE Group*); or
  - (b) ceases to be a Constituent Entity of an MNE Group (the *disposing MNE Group*);as a result of a transfer of Ownership Interests in the target in a Fiscal Year (the *acquisition year*).

Note: This Division does not apply if the transfer is treated and taxed as an asset sale by a relevant jurisdiction: see section 6-55.
- (2) To avoid doubt, subsection (1) covers the following scenarios:
  - (a) the target ceases to be a Constituent Entity of the disposing MNE Group and becomes a Constituent Entity of the acquiring MNE Group;
  - (b) the target becomes a Constituent Entity of the acquiring MNE Group because the acquiring MNE Group is a new Group and the target becomes the Ultimate Parent Entity of the acquiring MNE Group (whether or not paragraph (a) also applies).

#### 6-25 Target's assets etc. included in MNE Group's Consolidated Financial Statements

- (1) For the purposes of these Rules, if any portion of the target's assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the Consolidated Financial Statements of the Ultimate Parent Entity of the disposing MNE Group or the acquiring MNE Group in the acquisition year:
  - (a) treat the target as a Constituent Entity of that MNE Group for the acquisition year; and
  - (b) the rules set out in sections 6-30 to 6-50 apply.
- (2) To avoid doubt, if both paragraphs 6-20(1)(a) and (b) apply in the acquisition year, the target may be treated as a Constituent Entity of both MNE Groups for the acquisition year under subsection (1).

#### 6-30 Target's Financial Accounting Net Income or Loss and Adjusted Covered Taxes

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

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

### **6-35 Historical carrying value of target’s assets and liabilities**

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

### **6-40 Target’s Eligible Payroll Costs and Tangible Asset Carve-out Amount**

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

### **6-45 Deferred tax assets and deferred tax liabilities**

- (1) If:
  - (a) the target ceases to be a Constituent Entity of the disposing MNE Group; and
  - (b) the target becomes a Constituent Entity of the acquiring MNE Group; and
  - (c) a deferred tax asset or deferred tax liability is transferred between those MNE Groups as a result of the circumstances mentioned in paragraphs (a) and (b);

in applying these Rules in relation to the acquiring MNE Group, take the deferred tax asset or deferred tax liability into account in the same manner and to the same extent as if the acquiring MNE Group controlled the target when the deferred tax asset or deferred tax liability arose.

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- (2) To avoid doubt, subsection (1) does not apply in relation to a GloBE Loss Deferred Tax Asset.
- (3) Subsections (4) and (5) apply if:
  - (a) the target ceases to be a Constituent Entity of the disposing MNE Group; and
  - (b) the target becomes a Constituent Entity of the acquiring MNE Group; and
  - (c) a deferred tax liability of the target has previously been included in the target's Total Deferred Tax Adjustment Amount.
- (4) In applying sections 4-80, 4-85 and 4-90 in relation to the disposing MNE Group, treat the deferred tax liability as reversed at the end of the last day of the acquisition year.
- (5) In applying section 4-80 in relation to the acquiring MNE Group:
  - (a) treat the deferred tax liability as arising in the acquisition year; and
  - (b) treat any subsequent increase to the Reductions to Covered Taxes of the target under section 4-80 that results from paragraph (a) as having effect for the Fiscal Year in which the amount is recaptured.

### **6-50 Target's Top-up Tax if Parent Entity in 2 or more MNE Groups**

If, in the acquisition year, the target is:

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

in computing the Top-up Tax of the target for the acquisition year, apply the provisions of these Rules separately in relation to each of the MNE Groups.

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Transfer of assets and liabilities **Division 2**

Section 6-55

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## Division 2—Transfer of assets and liabilities

### 6-55 Acquisition or disposal taxed as asset sale

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

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Chapter 6 Corporate restructurings and holding structures

Part 6-3 Transfer of Assets and Liabilities

Section 6-60

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## Part 6-3—Transfer of Assets and Liabilities

### 6-60 Acquisitions and disposals of assets and liabilities

- (1) If a Constituent Entity of an MNE Group (the *disposing Constituent Entity*) disposes of an asset or liability, in computing the GloBE Income or Loss of the disposing Constituent Entity for the Fiscal Year in which the disposal occurs, include the gain or loss on the disposal.
- (2) If a Constituent Entity of an MNE Group (the *acquiring Constituent Entity*) acquires an asset or liability, in determining the GloBE Income or Loss of the acquiring Constituent Entity for a Fiscal Year ending after the acquisition, use the acquiring Constituent Entity's carrying value of the asset or liability determined under the accounting standard used in preparing Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group.

### 6-65 GloBE Reorganisations

- (1) This section applies if the disposal or acquisition of the asset or liability is part of a GloBE Reorganisation.
- (2) Despite section 6-60:
  - (a) in computing the GloBE Income or Loss of the disposing Constituent Entity for the Fiscal Year in which the disposal occurs, exclude the gain or loss on the disposal; and
  - (b) in computing the GloBE Income or Loss of the acquiring Constituent Entity for a Fiscal Year ending after the acquisition, use the disposing Constituent Entity's carrying value of the asset or liability immediately before the disposal.
- (3) Subsection (4) applies if the disposal or acquisition of the asset or liability is part of a GloBE Reorganisation in relation to which the disposing Constituent Entity has a Non-qualifying Gain or Loss.
- (4) Despite subsections (1) and (2), and section 6-60:
  - (a) in computing the GloBE Income or Loss of the disposing Constituent Entity for the Fiscal Year in which the disposal occurs, include the gain or loss on the disposal to the extent of the Non-qualifying Gain or Loss; and
  - (b) in computing the GloBE Income or Loss of the acquiring Constituent Entity for a Fiscal Year ending after the acquisition, use the disposing Entity's carrying value of the asset or liability immediately before the disposal adjusted consistently with local tax rules to account for the Non-qualifying Gain or Loss.

### 6-70 Meaning of *GloBE Reorganisation* and *Non-qualifying Gain or Loss*

- (1) This section applies if:
  - (a) a Constituent Entity of an MNE Group (the *disposing Constituent Entity*) disposes of an asset or liability; or



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- (b) a Constituent Entity of an MNE Group (the *acquiring Constituent Entity*) acquires an asset or liability.
- (2) For the purposes of section 6-65, a *GloBE Reorganisation* is a transformation, or transfer of assets and liabilities (such as a merger, demerger, liquidation or other similar transaction), to which all of the following apply:
- (a) if no consideration is provided for the transformation or transfer—the issuance of an equity interest as consideration for the transformation or transfer would have no economic significance because the transaction does not result in a change in the beneficial ownership of any Entity;
  - (b) if consideration is provided for the transformation or transfer—the consideration is, in whole or in significant part:
    - (i) if the transformation or transfer is a liquidation—the cancellation of equity interests of the Entity that is the subject of the liquidation;
    - (ii) otherwise—equity interests issued by the acquiring Constituent Entity or by a person connected with the acquiring Constituent Entity;
  - (c) the disposing Constituent Entity’s gain or loss on the transformation or transfer is not subject to Tax, in whole or in part;
  - (d) the tax laws of the jurisdiction in which the acquiring Constituent Entity is located require the acquiring Constituent Entity to compute taxable income arising from the transaction using the disposing Constituent Entity’s tax basis in the assets transferred between the Constituent Entities as part of the transaction, adjusted for the amount covered by subsection (4).
- (3) To avoid doubt, the following are transformations or transfers for the purposes of subsection (2):
- (a) a transformation that is a change in the form of a business in which the disposing Constituent Entity or the acquiring Constituent Entity is involved, such as a change from a partnership to a corporation;
  - (b) a contribution of assets to the capital of an existing Entity, where the Entity does not issue new or additional Ownership Interests in exchange for the contributed property because the transaction does not result in a change in the relative ownership of the Entity and the issuance of additional Ownership Interests would be meaningless.
- (4) For the purposes of paragraph (2)(d), the amount covered by this subsection is the lesser of the following:
- (a) the portion of the gain or loss of the disposing Constituent Entity arising in connection with the GloBE Reorganisation that is subject to Tax in the jurisdiction in which the disposing Constituent Entity is located;
  - (b) the financial accounting gain or loss arising in connection with the GloBE Reorganisation.

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

## 6-75 Fair value adjustments

- (1) Subsection (2) applies if, because of an event (the *triggering event*), a Constituent Entity of an MNE Group (the *adjusting Constituent Entity*) is

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required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes in the jurisdiction in which it is located.

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

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Corporate restructurings and holding structures **Chapter 6**  
Joint Ventures **Part 6-4**

Section 6-80

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## Part 6-4—Joint Ventures

### 6-80 Joint Ventures

In applying these Rules in relation to a Joint Venture and its JV Subsidiaries in respect of a Fiscal Year, for the purposes of applying Chapters 3 to 7 and Part 8-2 in computing the Top-up Tax of the Joint Venture and its JV Subsidiaries:

- (a) treat the Joint Venture and its JV Subsidiaries as if they were Constituent Entities of a separate MNE Group; and
- (b) treat the Joint Venture as if it were the Ultimate Parent Entity of that Group.

Note: Subsections 2-5(4) and 2-25(4) provide that there are Top-up Tax Amounts and Domestic Top-up Tax Amounts for a Fiscal Year in respect of a Joint Venture and each of its JV Subsidiaries if they have Top-up Tax for the Fiscal Year.

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Chapter 6 Corporate restructurings and holding structures

Part 6-5 Multi-Parented MNE Groups

Section 6-85

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## Part 6-5—Multi-Parented MNE Groups

### 6-85 Multi-Parented MNE Groups

- (1) This section is made for the purposes of section 19 of the Act.
- (2) In applying the Act and these Rules in relation to two or more Groups (the *separate Groups*) that comprise a Multi-Parented MNE Group in respect of a Fiscal Year:
  - (a) treat the Constituent Entities of each separate Group as Constituent Entities of a single MNE Group (the *combined MNE Group*); and
  - (b) treat an Entity (other than an Excluded Entity) as a Constituent Entity of the combined MNE Group if:
    - (i) it is consolidated on a line-by-line basis with the combined MNE Group; or
    - (ii) Constituent Entities in the combined MNE Group hold a Controlling Interest in it; and
  - (c) treat the Consolidated Financial Statements referred to in subsection 6-90(3) or (4) (as the case may be) as the Consolidated Financial Statements of each of the Ultimate Parent Entities of the combined MNE Group;
  - (d) treat:
    - (i) the Ultimate Parent Entities of the separate Groups as the Ultimate Parent Entities of the combined MNE Group; and
    - (ii) references in the Act and these Rules to an Ultimate Parent Entity as being a reference to each of those Ultimate Parent Entities, for the purposes of applying the Act and these Rules in relation to the combined MNE Group; and
  - (e) for the purposes of computing, under section 2-5, the Top-up Tax Amounts of a Parent Entity of the combined MNE Group (including an Ultimate Parent Entity of the combined MNE Group) for a Fiscal Year, compute in accordance with Parts 2-1 to 2-3 its Allocable Share of the Top-up Tax of a Constituent Entity of the combined MNE Group that is a Low-Taxed Constituent Entity.

### 6-90 Meaning of *Multi-Parented MNE Group* etc.

- (1) Two or more Groups comprise a *Multi-Parented MNE Group* if:
  - (a) the Ultimate Parent Entities of those Groups enter into an arrangement that is a Stapled Structure or a Dual-listed Arrangement; and
  - (b) at least one Constituent Entity of any of those Groups is located in a different jurisdiction to another Constituent Entity of any of those Groups.
- (2) For the purposes of paragraph (1)(b), disregard subsection 16(1) of the Act.

Note: The effect of this subsection is that, for the purposes of paragraph (1)(b), an Excluded Entity in a Group is treated as a Constituent Entity of the Group.

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- (3) **Stapled Structure** means an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, under which all of the following apply:
- (a) 50% or more of the Ownership Interests in the Ultimate Parent Entities of the separate Groups are (by reason of form of ownership, restrictions on transfer, or other terms or conditions) combined with each other;
  - (b) those combined Ownership Interests cannot be transferred or traded independently;
  - (c) if the combined Ownership Interests are listed—they are quoted at a single price;
  - (d) one of the Ultimate Parent Entities prepares Consolidated Financial Statements:
    - (i) in which the assets, liabilities, income, expenses and cash flows of all the Entities that comprise the Groups are presented together as those of a single economic unit; and
    - (ii) that are required by a regulatory regime to be externally audited.
- (4) **Dual-listed Arrangement** means an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, under which all of the following apply:
- (a) the Ultimate Parent Entities agree to combine their business by contract alone;
  - (b) pursuant to contractual arrangements, the Ultimate Parent Entities will make distributions (with respect to dividends and in liquidation) to their owners based on a fixed ratio;
  - (c) the Ultimate Parent Entities' activities are managed as a single economic entity under contractual arrangements while retaining their separate legal identities;
  - (d) the Ownership Interests in each of the Ultimate Parent Entities are quoted, traded or transferred independently in different capital markets;
  - (e) the Ultimate Parent Entities prepare Consolidated Financial Statements:
    - (i) in which the assets, liabilities, income, expenses and cash flows of all the Entities that comprise Constituent Entities of the Groups are presented together as those of a single economic unit; and
    - (ii) that are required by a regulatory regime to be externally audited.

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

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## Chapter 7—Tax Neutrality and Distribution Regimes

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

#### 7-5 Flow-through Entity that is UPE—reduce GloBE Income and Covered Taxes

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

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equals or exceeds the full amount of the attributable income multiplied by the Minimum Rate.

- (4) If an Ultimate Parent Entity's GloBE Income for a Fiscal Year is reduced under subsection (2), reduce its Covered Taxes for the Fiscal Year as follows:
- (a) first, compute the amount by which:
    - (i) the Ultimate Parent Entity's GloBE Income for the Fiscal Year after the reduction;falls short of:
    - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
  - (b) next, compute the fraction that is:
    - (i) that shortfall;divided by:
    - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
  - (c) next, multiply the Ultimate Parent Entity's Covered Taxes for the Fiscal Year by that fraction.

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

### 7-10 Flow-through Entity that is UPE—reduce GloBE Loss

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

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

- (1) This section applies if:
- (a) the Ultimate Parent Entity of an MNE Group is a Flow-through Entity; and
  - (b) either:
    - (i) the Ultimate Parent Entity wholly or partly carries out its business through a Permanent Establishment; or
    - (ii) if the Ultimate Parent Entity's Ownership Interest in a Tax Transparent Entity is:
      - (A) a Direct Ownership Interest in the Tax Transparent Entity; or
      - (B) an Indirect Ownership Interest in the Tax Transparent Entity held through a Tax Transparent Structure;the Tax Transparent Entity wholly or partly carries out its business through a Permanent Establishment.

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- (2) Subsection (3) applies if:
  - (a) an amount (the *attributable income*) of the Ultimate Parent Entity's GloBE Income for a Fiscal Year:
    - (i) is attributable to an Ownership Interest in the Ultimate Parent Entity; and
    - (ii) is referable to the Permanent Establishment's GloBE Income for the Fiscal Year; and
  - (b) the condition in paragraph 7-5(2)(a), (b) or (c) is satisfied in relation to the Ownership Interest.
- (3) Subsections 7-5(2), (3) and (4) apply to the Permanent Establishment in the same way that they apply to an Ultimate Parent Entity.
- (4) Subsection (5) applies if:
  - (a) an amount (the *attributable loss*) of the Ultimate Parent Entity's GloBE Loss for a Fiscal Year:
    - (i) is attributable to an Ownership Interest in the Ultimate Parent Entity; and
    - (ii) is referable to the Permanent Establishment's GloBE Loss for the Fiscal Year; and
  - (b) the condition in paragraph 7-5(2)(a), (b) or (c) is satisfied in relation to the Ownership Interest.
- (5) Subsection 7-10(2) applies to the Permanent Establishment in the same way that it applies to an Ultimate Parent Entity.

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

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

- (1) This section applies if:
  - (a) the Ultimate Parent Entity of an MNE Group is subject to a Deductible Dividend Regime; and
  - (b) the Ultimate Parent Entity distributes an amount (the *dividend amount*) as a Deductible Dividend within 12 months after the end of a Fiscal Year.
- (2) Reduce the Ultimate Parent Entity's GloBE Income for the Fiscal Year by the dividend amount (but not below zero) if any of the following conditions are satisfied:
  - (a) the dividend is subject to Tax in the hands of the recipient of the dividend for a taxable period that ends within 12 months after the end of the Ultimate Parent Entity's Fiscal Year and the condition in subsection (3) is met;
  - (b) the recipient of the dividend is an individual that:
    - (i) is a tax resident in the jurisdiction in which the Ultimate Parent Entity is located; and



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- (ii) holds Ownership Interests in the Ultimate Parent Entity that, in the aggregate, are a right to 5% or less of the profits and assets of the Ultimate Parent Entity;
- (c) the recipient of the dividend is:
  - (i) a Governmental Entity, an International Organisation, a Non-profit Organisation, or a Pension Fund (other than a Pension Fund that is a Pension Services Entity); and
  - (ii) is resident in the jurisdiction in which the Ultimate Parent Entity is located.
- (3) For the purposes of paragraph (2)(a), the condition in this subsection is met if:
  - (a) the recipient of the dividend is subject to Tax on the dividend amount at a nominal rate that equals or exceeds the Minimum Rate; or
  - (b) it can be reasonably expected that the sum of:
    - (i) the Covered Taxes for Fiscal Year paid by the Ultimate Parent Entity on the dividend amount; and
    - (ii) the Taxes of the recipient of the dividend on the dividend amount; equals or exceeds the dividend amount multiplied by the Minimum Rate; or
  - (c) the recipient of the dividend is an individual and the dividend is a patronage dividend from a supply Cooperative.
- (4) For the purposes of paragraph (3)(a) and (b), an amount of a patronage dividend from a supply Cooperative is taken to be subject to Tax to the extent it reduces an expense or cost that is deductible in computing the taxable income of the recipient of the patronage dividend.
- (5) If an Ultimate Parent Entity's GloBE Income for a Fiscal Year is reduced under subsection (2), reduce its Covered Taxes (other than the Taxes for which the dividend deduction was allowed) for the Fiscal Year as follows:
  - (a) first, compute the amount by which:
    - (i) the Ultimate Parent Entity's GloBE Income for the Fiscal Year after the reduction;falls short of:
    - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
  - (b) next, compute the fraction that is:
    - (i) that shortfall;divided by:
    - (ii) the Ultimate Parent Entity's GloBE Income for the Fiscal Year before the reduction;
  - (c) next, multiply the Ultimate Parent Entity's Covered Taxes for the Fiscal Year by that fraction.

The result of paragraph (c) is the amount of the reduction under this subsection of the Ultimate Parent Entity's Covered Taxes for the Fiscal Year.
- (6) If an Ultimate Parent Entity's Covered Taxes for the Fiscal Year are reduced under subsection (5) by an amount, reduce its GloBE Income for the Fiscal Year

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by that amount in addition to the reduction of that GloBE Income under subsection (2).

#### **7-25 Ultimate Parent Entity subject to Deductible Dividend Regime—reduce GloBE Income and Covered Taxes**

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

#### **7-30 Meaning of *Deductible Dividend Regime***

- (1) *Deductible Dividend Regime* means a tax regime designed to yield a single level of taxation on the owners of an Entity through a deduction from the income of the Entity for distributions of profits to the owners.
- (2) For the purposes of subsection (1), treat patronage dividends of a Cooperative as distributions to owners.
- (3) A Deductible Dividend Regime is taken to include a tax regime applicable to Cooperatives that exempts them from taxation.

#### **7-35 Meaning of *Deductible Dividend***

A distribution by a Constituent Entity of an MNE Group that is subject to a Deductible Dividend Regime is a *Deductible Dividend* if either of the following apply:

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- (a) it is a distribution of profits to the holder of an Ownership Interest in the Constituent Entity that is deductible from the taxable income of the Constituent Entity under the laws of the jurisdiction in which it is located;
- (b) if the Constituent Entity is a Cooperative—it is a patronage dividend to a member of the Cooperative.

## Part 7-3 Eligible Distribution Tax Systems

Note: Taxes on distributed profits, deemed profit distributions and non-business expenses imposed under an Eligible Distribution Tax System are Covered Taxes (see paragraph 4-35(1)(b)).

### 7-40 Deemed distribution tax election

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

### 7-45 Meaning of *Eligible Distribution Tax System*

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

- (a) imposes an income tax on a corporation that is generally payable only when the corporation distributes profits to shareholders, is deemed to distribute profits to shareholders, or incurs certain non-business expenses; and
- (b) imposes tax at a rate equal to or in excess of the Minimum Rate; and
- (c) was in force on or before 1 July 2021.

### 7-50 Effect of election—amount in respect of Deemed Distribution Tax added to Adjusted Covered Taxes

- (1) This section applies if an election under subsection 7-40(1) applies to:
  - (a) a jurisdiction that has an Eligible Distribution Tax System; and
  - (b) Constituent Entities of an MNE Group that are located in the jurisdiction; and
  - (c) a Fiscal Year.
- (2) Increase the Adjusted Covered Taxes of the Constituent Entities for the Fiscal Year by the amount covered by subsection (3) for the jurisdiction for the MNE Group.
- (3) The amount covered by this subsection for the jurisdiction for the MNE Group is the lesser of the following:
  - (a) the amount by which the sum of Adjusted Covered Taxes mentioned in paragraph 5-5(a) would need to be increased to raise the Effective Tax Rate

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of the MNE Group for the jurisdiction for the Fiscal Year to the Minimum Rate;

- (b) the amount of Tax that would have been due under the Eligible Distribution Tax System if the Constituent Entities of the MNE Group located in the jurisdiction had distributed all of their income that was subject to the Eligible Distribution Tax System during the Fiscal Year.
- (4) At the end of the Fiscal Year:
- (a) a **Deemed Distribution Tax Recapture Account** is established for the Fiscal Year for the jurisdiction for the MNE Group; and
  - (b) the balance of the Deemed Distribution Tax Recapture Account is the amount covered by subsection (3) for the jurisdiction for the MNE Group.

#### 7-55 Deemed Distribution Tax Recapture Account

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

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## 7-60 Recapture Account Loss Carry-forward

- (1) Subsection (2) applies if:
  - (a) there is a Net GloBE Loss for a Fiscal Year of an MNE Group for a jurisdiction; and
  - (b) at the end of a Fiscal Year, the amount mentioned in paragraph 7-55(4)(b) (Net GloBE Loss for current year multiplied by Minimum Rate) in respect of that Net GloBE Loss has not been applied fully under subsection 7-55(4).
- (2) At the end of the Fiscal Year:
  - (a) a **Recapture Account Loss Carry-forward** is established for the Fiscal Year for the jurisdiction for the MNE Group; and
  - (b) the balance of the Recapture Account Loss Carry-forward is the amount mentioned in paragraph 7-55(4)(b), to the extent that it has not been so applied.
- (3) Reduce a Recapture Account Loss Carry-forward for a Fiscal Year for a jurisdiction for an MNE Group to the extent that it is applied under 7-55(4)(c).

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

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

- (a) for the purposes of section 4-20, treat the amount of the balance as increasing the Reduction to Covered Taxes of the Constituent Entities of the MNE Group that are located in the jurisdiction for the original year; and
- (b) recalculate the Effective Tax Rate and Jurisdictional Top-up Tax for the original year of the MNE Group for the jurisdiction in accordance with section 5-90.

## 7-70 Distribution taxes excluded in Adjusted Covered Taxes

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

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

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

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- (2) If the balance of a Deemed Distribution Tax Recapture Account for an earlier Fiscal Year for that jurisdiction for the MNE Group is above zero at the end of the departure year:
- (a) for the purposes of section 4-20, treat the amount of the balance as increasing the Reduction to Covered Taxes of the Constituent Entities of the MNE Group that are located in the jurisdiction for the earlier Fiscal Year; and
  - (b) recalculate the Effective Tax Rate and Jurisdictional Top-up Tax for the earlier Fiscal Year of the MNE Group for the jurisdiction in accordance with section 5-90; and
  - (c) despite paragraph 5-90(3)(b), treat as ***Additional Current Top-up Tax*** of the MNE Group for the jurisdiction for the departure year the amount that is:
    - (i) any increase in Jurisdictional Top-up Tax for the earlier Fiscal Year as a result of paragraph (b);multiplied by:
    - (ii) the Disposition Recapture Ratio mentioned in subsection (3) for the Constituent Entity.
- (3) The ***Disposition Recapture Ratio*** for the Constituent Entity is computed in according with the following formula:

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

where:

***GloBE Income of the CE*** is the sum of the GloBE Income of the Constituent Entity for each Fiscal Year corresponding to the Deemed Distribution Tax Recapture Accounts for the jurisdiction.

***Net Income of the jurisdiction*** is the sum of the Net GloBE Income of the MNE Group for the jurisdiction for each Fiscal Year corresponding to the Deemed Distribution Tax Recapture Accounts for the jurisdiction.

## Part 7-4 Effective Tax Rate Computation for Investment Entities

### 7-80 Application of this Part

- (1) This Part applies in relation to a Constituent Entity of an MNE Group that is an Investment Entity.
- (2) Despite subsection (1), this Part does not apply in relation to an Investment Entity for a Fiscal Year if it is a Tax Transparent Entity for the Fiscal Year.
- (3) Despite subsection (1), this Part does not apply in relation to an Investment Entity to the extent that the Investment Entity's GloBE Income is attributable to interests that are subject to an election under Part 7-5 or 7-6.

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

## **7-85 Allocable Share of the Top-up Tax of an Investment Entity**

- (1) For the purposes of section 2-10, subsection (2) applies, in computing a Parent Entity's Allocable Share of the Top-up Tax of a Low-taxed Constituent Entity for a Fiscal Year, if the Low-taxed Constituent Entity is an Investment Entity.
- (2) Treat the Parent Entity's Inclusion Ratio for the Investment Entity for the Fiscal Year as being:
- (a) the Parent Entity's Allocable Share of the Investment Entity's GloBE Income for the Fiscal Year (see subsection 7-100(2));
- divided by:
- (b) the MNE Group's Allocable Share of the Investment Entity's GloBE Income for the Fiscal Year (see subsection 7-100(1)).

## **7-90 Top-up Tax of Investment Entities**

- (1) For the purposes of section 2-10, subsection (2) applies in computing a Parent Entity's Allocable Share of the Top-up Tax of a Low-taxed Constituent Entity for a Fiscal Year, if the Low-taxed Constituent Entity is an Investment Entity.
- (2) Compute the Top-up Tax of the Constituent Entity for the Fiscal Year in accordance with section 5-40, taking account of section 7-95.
- (3) However, in doing so:
- (a) assume that the only Constituent Entities of the MNE Group located in the jurisdiction are the Constituent Entities of the MNE Group that are located in the jurisdiction and are Investment Entities; and
  - (b) in working out the GloBE Income of those Investment Entities, disregard that GloBE Income to the extent that the Investment Entities' GloBE Income is attributable to interests that are subject to an election under Part 7-5 or 7-6.

## **7-95 Computation of Effective Tax Rate in relation to Investment Entities— modifications**

### *Top-up Tax Percentage and Excess Profit*

- (1) For the purposes of subsection 7-90(2):
- (a) treat the Top-up Tax Percentage mentioned in subsection 5-30 of the MNE Group for the jurisdiction for the Fiscal Year as being the amount computed under section 5-20, taking account of subsection (2); and
  - (b) treat the Excess Profit mentioned in subsection 5-30 of the MNE Group for the jurisdiction for the Fiscal Year as being the following amount:
    - (i) the sum of the MNE Group's Allocable Share of the Investment Entity's GloBE Income for the Fiscal Year, for each Investment Entity of the MNE Group located in the jurisdiction;reduced by:

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- (ii) the Substance-based Income Exclusion Amount for the MNE Group for the jurisdiction for the Fiscal Year, computed in accordance with section 7-105 and making the assumption stated in paragraph 7-90(3)(a).

#### *Effective Tax Rate*

- (2) For the purposes of paragraph (1)(a), treat the Effective Tax Rate of the MNE Group for the jurisdiction for the Fiscal Year as being:
  - (a) the sum of the Adjusted Covered Taxes for the Fiscal Year of each Investment Entity of the MNE Group located in the jurisdiction (computed in accordance with subsection (3));divided by:
  - (b) the sum of the MNE Group's Allocable Share of the Investment Entity's GloBE Income for the Fiscal Year, for each Investment Entity of the MNE Group located in the jurisdiction.

#### *Adjusted Covered Taxes*

- (3) For the purposes of paragraph (2)(a), treat the Adjusted Covered Taxes of an Investment Entity for the Fiscal Year as being the sum of:
  - (a) the Adjusted Covered Taxes for the Fiscal Year of the Investment Entity, to the extent that they are attributable to the MNE Group's Allocable Share of the Investment Entity's GloBE Income for the Fiscal Year; and
  - (b) any Covered Taxes for the Fiscal Year allocated to the Investment Entity under Part 4-3.
- (4) However, the Adjusted Covered Taxes of an Investment Entity for the Fiscal Year under subsection (3) do not include any Covered Taxes for the Fiscal Year accrued by the Investment Entity, to the extent that they are attributable to income that is not part of the MNE Group's Allocable Share of the Investment Entity's GloBE Income for the Fiscal Year.

#### **7-100 Meaning of MNE Group's Allocable Share of the Investment Entity's GloBE Income and Parent Entity's Allocable Share of the Investment Entity's GloBE Income**

- (1) The **MNE Group's Allocable Share of the Investment Entity's GloBE Income** for an Investment Entity of the MNE Group for a Fiscal Year is computed as follows:
  - (a) first, compute the Investment Entity's GloBE Income or Loss for the Fiscal Year, having regard to subsection (3);
  - (b) next, compute the Inclusion Ratio of the Ultimate Parent Entity of the MNE Group for the Investment Entity for the Fiscal Year, having regard to subsection (3) and making the assumption stated in paragraph 7-90(3)(a);
  - (c) next, multiply the result of paragraph (a) by the result of paragraph (b).
- (2) The **Parent Entity's Allocable Share of the Investment Entity's GloBE Income** for an Investment Entity of the MNE Group for a Fiscal Year is computed as follows:



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- (a) first, compute the Investment Entity's GloBE Income or Loss for the Fiscal Year, having regard to subsection (3);
  - (b) next, compute the Inclusion Ratio of the Parent Entity for the Investment Entity for the Fiscal Year, having regard to subsection (3) and making the assumption stated in paragraph 7-90(3)(a);
  - (c) next, multiply the result of paragraph (a) by the result of paragraph (b).
- (3) For the purposes of this section, in computing the Investment Entity's GloBE Income or Loss, disregard that GloBE Income or Loss to the extent that the Investment Entity's GloBE Income is attributable to interests that are subject to an election under Part 7-5 or 7-6.

### **7-105 Substance-based Income Exclusion Amounts in relation to Investment Entities**

For the purposes of subparagraph 7-95(1)(b)(ii), compute the Substance-based Income Exclusion Amount of the MNE Group for the jurisdiction for the Fiscal Year in accordance with Part 5-3, taking account of the following:

- (a) disregard the words "that is not an Investment Entity" in paragraph 5-50(1)(b);
- (b) take into account only Eligible Tangible Assets and Eligible Payroll Costs of Eligible Employees of the Investment Entities, reduced in proportion to the MNE Group's Allocable Share of the Investment Entity's GloBE Income to the Investment Entity's total GloBE Income.

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Part 7-5 Investment Entity Tax Transparency Election

Section 7-110

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## Part 7-5—Investment Entity Tax Transparency Election

### 7-110 Application of this Part

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

### 7-115 Investment Entity Tax Transparency Election

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

### 7-120 Effect of election—Investment Entity treated as Tax Transparent Entity

- (1) This section applies if an election under subsection 7-115(1) applies to:
  - (a) an Investment Entity that is a Constituent Entity of an MNE Group; and
  - (b) a Fiscal Year.
- (2) For the purposes of these Rules, treat the Investment Entity as a Tax Transparent Entity for the Fiscal Year if, for the Fiscal Year:
  - (a) the Constituent Entity-owner of the Investment Entity is subject to tax, in the jurisdiction in which its Constituent Entity-owner is located, under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity; and
  - (b) the tax rate applicable to the Constituent Entity-owner with respect to income arising from those annual changes equals or exceeds the Minimum Rate.
- (3) Subsection (4) applies if:
  - (a) a Constituent Entity owns an Indirect Ownership Interest in an Investment Entity (the *first Investment Entity*) through a Direct Ownership Interest in another Investment Entity (the *other Investment Entity*); and
  - (b) the Constituent Entity is subject to a mark-to-market or similar regime in the jurisdiction in which it is located based on the annual changes in the fair value of its Direct Ownership Interest in the other Investment Entity.
- (4) For the purposes of the subsection (2), treat the Constituent Entity as being subject to tax under a mark-to-market or similar regime in the jurisdiction in which it is located based on the annual changes in the fair value of its Indirect Ownership Interest in the first Investment Entity.

### 7-125 Effect of revocation of election—Investment Entity treated as Tax Transparent Entity

- (1) Subsection (2) applies if:
  - (a) an election under subsection 7-115(1) is revoked; and

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- (b) a gain or loss arises from the disposition of an asset or liability held by the Investment Entity; and
  - (c) the gain or loss arises in a Fiscal Year to which the election does not apply because of the revocation.
- (2) For the purposes of these Rules, compute the gain or loss based on the fair value of the asset or liability on the first day of the first Fiscal Year to which the election does not apply because of the revocation.

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## Part 7-6—Taxable Distribution Method Election

### 7-130 Application of this Part

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

### 7-135 Taxable Distribution Method Election

- (1) A Filing Constituent Entity for an MNE Group may make an election for the MNE Group that applies to:
  - (a) a specified Constituent Entity of the MNE Group that is an Investment Entity; and
  - (b) one or more specified Constituent Entity-owners of the Investment Entity that are not Investment Entities.
- (2) An election under subsection (2) is a Five-Year Election.

### 7-140 Effect of election—distributions and deemed distributions received by Constituent Entity-owner included in computing its GloBE Income, etc.

- (1) This section applies if an election under subsection 7-135(1) applies to:
  - (a) an Investment Entity that is a Constituent Entity of an MNE Group; and
  - (b) a Constituent Entity-owner of the Investment Entity; and
  - (c) a Fiscal Year (the *reporting year*).
- (2) In computing the Constituent Entity-owner's GloBE Income for the reporting year, include distributions and deemed distributions on which it is subject to Tax for the reporting year to the extent that they are attributable to the GloBE Income of the Investment Entity.
- (3) In computing the Constituent Entity-owner's:
  - (a) GloBE Income for the reporting year; and
  - (b) Adjusted Covered Taxes for the reporting year;include an amount equal to so much of the Investment Entity's Covered Taxes for the reporting year as is allowed, under local tax law, as a credit against the Constituent Entity-owner's Tax liability for the reporting year arising in connection with a distribution from the Investment Entity.
- (4) In computing the MNE Group's Effective Tax Rate under Chapter 5 and Part 7-4 for the Fiscal Year for the jurisdiction in which the Investment Entity is located, exclude:
  - (a) the Investment Entity's GloBE Income or Loss for the Fiscal Year; and
  - (b) the Investment Entity's Adjusted Covered Taxes for the Fiscal Year, to the extent that they are attributable to such income (except as provided in subsection (3)).

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## **7-145 Effect of election—where positive balance of Undistributed Net GloBE Income Account after 3 Fiscal Years, increase Top-up Tax for tested year**

- (1) This section applies if:
  - (a) an election under subsection 7-135(1) applies to:
    - (i) an Investment Entity that is a Constituent Entity of an MNE Group; and
    - (ii) a Constituent Entity-owner of the Investment Entity; and
    - (iii) a Fiscal Year (the *tested year*); and
  - (b) there is an Undistributed Net GloBE Income Account for the Investment Entity for the tested year with a balance above zero at the end of the third subsequent Fiscal Year (the *reporting year*).
- (2) In computing the Investment Entity's GloBE Income or Loss for the reporting year, include the Constituent Entity-owner's proportionate share of the Undistributed Net GloBE Income Account for the Investment Entity for the tested year (the *Constituent Entity-owner's undistributed share*).
- (3) For purposes of Chapter 2:
  - (a) treat the Investment Entity as a Low-Tax Constituent Entity of the MNE Group for the reporting year; and
  - (b) treat the Top-up Tax of the Investment Entity for the reporting year as being the amount equal to:
    - (i) the Constituent Entity-owner's undistributed share; multiplied by:
    - (ii) the Minimum Rate.

## **7-150 Meaning of Undistributed Net GloBE Income Account**

- (1) This section applies if:
  - (a) an election under subsection 7-135(1) applies to:
    - (i) an Investment Entity that is a Constituent Entity of an MNE Group; and
    - (ii) a Fiscal Year (the *tested year*); and
  - (b) the Investment Entity has GloBE Income for the tested year.
- (2) At the end of the tested year, an *Undistributed Net GloBE Income Account* is established for the Investment Entity for the tested year.
- (3) At the end of the tested year, the balance of the Undistributed Net GloBE Income Account is the Investment Entity's GloBE Income for the tested year, reduced (but not below zero) by applying the following against that balance:
  - (a) the Investment Entity's Covered Taxes (if any) for the tested year;
  - (b) distributions and deemed distributions in the tested year to shareholders other than Constituent Entities that are Investment Entities.
- (4) For the purposes of subsection (5), this subsection covers a Fiscal Year if the Fiscal Year is the first, second or third Fiscal Year after the tested year.

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

### 7-155 Deemed distributions

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

### 7-160 Effect of revoking election

- (1) This section applies if:
  - (a) an election under subsection 7-135(1) applies to:

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

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## Chapter 8—Administration (Safe Harbours)

### Part 8-2—Safe Harbours

#### Division 1—Transitional CbCR Safe Harbour

##### Subdivision A—Transitional CbCR Safe Harbour

##### 8-5 Transitional CbCR Safe Harbour—general rule

- (1) An MNE Group's Jurisdictional Top-up Tax for a jurisdiction for a Fiscal Year is taken to be zero if:
  - (a) a Filing Constituent Entity of the MNE Group has made an election under subsection (2) that applies to the jurisdiction and the Fiscal Year; and
  - (b) the MNE Group meets any of the following tests for the jurisdiction for the Fiscal Year:
    - (i) the De minimis test;
    - (ii) the Simplified ETR test;
    - (iii) the Routine profits test.
- (2) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group that applies to:
  - (a) a specified Fiscal Year; and
  - (b) a specified jurisdiction
- (3) An election under subsection (2) is an Annual Election.

##### Subdivision B—De minimis test

##### 8-10 Meeting the *De minimis test*

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

- (a) the MNE Group's Total Revenue for the jurisdiction for the Fiscal Year is less than 10 million Euros; and
- (b) the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year is less than 1 million Euros.

##### 8-15 Meaning of *Total Revenue* of MNE Group

An MNE Group's *Total Revenue*, for a jurisdiction for a Fiscal Year, means the MNE Group's total revenues in the jurisdiction as reported on its Qualified CbC Report for the Fiscal Year.

Note: The Total Revenue of a Constituent Entity of an MNE Group is defined in section 8-135.



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## 8-20 Meaning of *Profit (Loss) before Income Tax*

An MNE Group's *Profit (Loss) before Income Tax*, for a jurisdiction for a Fiscal Year, means the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year, as reported on its Qualified CbC Report for the Fiscal Year.

## 8-25 Meaning of *Qualified CbC Report*

*Qualified CbC Report* means a Country-by-Country Report prepared and filed using Qualified Financial Statements.

## Subdivision C—Simplified ETR test

### 8-30 Meeting the *Simplified ETR test*

An MNE Group meets the *Simplified ETR test* for a jurisdiction for a Fiscal Year if the MNE Group's Simplified ETR for the jurisdiction for the Fiscal Year is equal to or greater than the Transition Rate for the Fiscal Year.

### 8-35 Meaning of *Simplified ETR*

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

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

divided by:

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

### 8-40 Meaning of *Simplified Covered Taxes*

- (1) An MNE Group's *Simplified Covered Taxes* for a jurisdiction for a Fiscal Year is its income tax expense for the jurisdiction for the Fiscal Year that would be reported on its Qualified Financial Statements for the Fiscal Year, if the assumptions in subsections (2) and (3) were made.
- (2) For the purposes of subsection (1), assume that the following were disregarded:
  - (a) taxes that are not Covered Taxes;
  - (b) uncertain tax positions.
- (3) For the purposes of subsection (1), assume that:
  - (a) sections 4-40, 4-50 and 4-55 applied in relation to the MNE Group's income tax expense for the jurisdiction for the Fiscal Year; and
  - (b) a reference in those sections to Covered Taxes were a reference to that income tax expense.

### 8-45 Meaning of *Transition Rate*

The *Transition Rate* for a Fiscal Year means:

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

### Subdivision D—Routine profits test

#### 8-50 Meeting the *Routine profits test*

- (1) An MNE Group meets the *Routine profits test* for a jurisdiction for a Fiscal Year if the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year is equal to or less than the MNE Group's Substance-based Income Exclusion Amount for the jurisdiction for the Fiscal Year.
- (2) For the purposes of subsection (1), in computing the Substance-based Income Exclusion Amount mentioned in that subsection, treat a Constituent Entity of the MNE Group as being located in the jurisdiction for the Fiscal Year if, and only if, the Constituent Entity is a CbCR Resident of the jurisdiction for the Fiscal Year.
- (3) To avoid doubt, for the purposes of subsection (1), in computing the Substance-based Income Exclusion Amount mentioned in that subsection, apply the rules in Part 9-2 (Transitional relief for Substance-based Income Exclusion).

#### 8-55 Meaning of *CbCR Resident*

A Constituent Entity of an MNE Group is a *CbCR Resident* of a jurisdiction for a Fiscal Year if it is recorded as a resident of the jurisdiction in the Country-by-Country Report of the MNE Group for the Fiscal Year.

### Subdivision E—Qualified Financial Statements

#### 8-60 Meaning of *Qualified Financial Statements*

- (1) An MNE Group's *Qualified Financial Statements* means:
  - (a) the accounts used to prepare the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group; or
  - (b) separate financial statements of a Constituent Entity of the MNE Group, if:
    - (i) they are prepared in accordance with an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard; and
    - (ii) the information contained in them is maintained based on that accounting standard and is reliable.
- (2) Subsection (3) applies if the MNE Group allocated and incorporated PPA adjustments into:
  - (a) where paragraph (1)(a) applies—the financial accounts of the Constituent Entity that are used in the preparation of the Consolidated Financial Statements mentioned in that paragraph; or
  - (b) where paragraph (1)(b) applies—the separate financial statements mentioned in that paragraph.

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- (3) Despite subsection (1), those financial accounts or separate financial statements are not *Qualified Financial Statements*, unless the conditions in subsections (4) and (5) are met.

*Consistent reporting condition*

- (4) The condition in this subsection is met unless:
- (a) the MNE Group has submitted a Qualified CbC Report for a Fiscal Year beginning after 31 December 2022; and
  - (b) the Qualified CbC Report was based on the Constituent Entity's reporting package or separate financial statements without the PPA adjustments; and
  - (c) the Constituent Entity was required by law or regulation to change its reporting package or separate financial statements to include PPA adjustments.

*Goodwill impairment adjustment*

- (5) The condition in this subsection is met if any reduction to the Constituent Entity's income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 is added back to the MNE Group's Profit (Loss) before Income Tax, for the jurisdiction for the Fiscal Year:
- (a) for purposes of applying the Routine Profits Test; and
  - (b) for purposes of applying the Simplified ETR Test, but only if the financial accounts do not also have a reversal of deferred tax liability or recognition or increase of a deferred tax asset in respect of the impairment of goodwill.

## **Subdivision F—Special rules for particular circumstances**

### **8-65 Transitional CbCR Safe Harbour—Special Rule for Joint Ventures**

- (1) This section applies if there is a separate MNE Group mentioned in section 6-80 (Joint Venture and its JV Subsidiaries).
- (2) To avoid doubt, section 8-5 applies to the separate MNE Group mentioned in the same way it applies in relation to an MNE Group that is not such a separate MNE Group.
- (3) However, for the purposes of section 8-5, in computing:
- (a) the Profit (Loss) before Income Tax of the separate Group; and
  - (b) the Total Revenue of the separate Group;
- treat a reference in Subdivision B to Qualified CbC Report as being a reference to Qualified Financial Statements.

### **8-70 Transitional CbCR Safe Harbour—Special Rule for UPE that is Flow-through Entity**

- (1) This section applies if the Ultimate Parent Entity of an MNE Group is a Flow-through Entity located in a jurisdiction.

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- (2) Subsection (3) applies in relation to a Fiscal Year if there are Ownership Interests in the Ultimate Parent Entity that are *not* held by a holder described in paragraph 7-5(2)(a), (b) or (c).
- (3) Section 8-5 does not apply in relation to the MNE Group for the jurisdiction for the Fiscal Year.
- (4) Subsection (5) applies if subsection (3) does not apply.
- (5) For the purposes of section 8-5, in computing the MNE Group's Profit (Loss) before Income Tax (and any associated taxes) for the jurisdiction for the Fiscal Year, disregard amounts to the extent that they are attributable to or distributed as a result of an Ownership Interest in the Ultimate Parent Entity held by a holder described in paragraph 7-5(2)(a), (b) or (c).

### **8-75 Transitional CbCR Safe Harbour—Special rule for Deductible Dividend Regimes**

- (1) Subsection (2) applies if:
  - (a) the Ultimate Parent Entity of an MNE Group is subject to a Deductible Dividend Regime; and
  - (b) where the Ultimate Parent Entity is a Flow-through Entity—subsection 8-65(3) does not prevent section 8-5 from applying in relation to the MNE Group for the jurisdiction in which the Ultimate Parent Entity is located for a Fiscal Year.
- (2) For the purposes of section 8-5, in working out the MNE Group's Profit (Loss) before Income Tax (and any associated taxes) for the jurisdiction in which the Ultimate Parent Entity is located for the Fiscal Year, disregard amounts to the extent that they are attributable to or distributed as a result of an Ownership Interest in the Ultimate Parent Entity held by a recipient described in paragraph 7-20(2)(a), (b) or (c).

### **8-80 Transitional CbCR Safe Harbour—Special rules for Investment Entities and their Constituent Entity-owners**

- (1) This section applies if a Constituent Entity of an MNE Group that is located in a jurisdiction (the *Investment Entity Jurisdiction*) is an Investment Entity.
- (2) For the purpose of this section, treat an Insurance Investment Entity as if it were an Investment Entity.
- (3) For the purposes of section 8-5, in computing the MNE Group's Profit (Loss) before Income Tax (and any associated taxes) for the Investment Entity Jurisdiction for a Fiscal Year, disregard amounts to the extent that they are attributable to the Investment Entity.
- (4) Subsection (3) does not affect the computation of the Investment Entity's Top-up Tax Amount for the Fiscal Year.
- (5) Subsection (6) applies if:

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- (a) all Constituent Entities of the MNE Group that hold Direct Ownership Interests in the Investment Entity are located in the Investment Entity Jurisdiction; and
- (b) there is *not* an election under subsection 7-115(1) or 7-135(1) that applies to:
  - (i) the Investment Entity; and
  - (ii) the Fiscal Year; and
  - (iii) in the case of an election under subsection 7-115(1) or 7-135(1)—the Constituent Entities mentioned in paragraph (a).
- (6) Subsections (3) and (4) do not apply.
- (7) For the purposes of this section, treat a Constituent Entity of an MNE Group as being located in the jurisdiction where it is resident for the purposes of the MNE Group's Qualified CbC Report.

### **8-85 Meaning of *Transition Period***

The *Transition Period* covers a Fiscal Year that:

- (a) starts on or before 31 December 2026; and
- (b) ends on or before 30 June 2028.

### **8-90 Transitional CbCR Safe Harbour—Special Rule for Net Unrealised Fair Value Loss**

- (1) For the purposes of section 8-5, in working out the MNE Group's Profit (Loss) before Income Tax for the jurisdiction for the Fiscal Year, disregard the MNE Group's Net Unrealised Fair Value Loss for the jurisdiction for the Fiscal Year if that Net Unrealised Fair Value Loss exceeds 50 million Euros.
- (2) An MNE Group's *Net Unrealised Fair Value Loss* for a jurisdiction for a Fiscal Year means the sum of all losses, as reduced by any gains, which arise from changes in fair value of Ownership Interests (except for Portfolio Shareholdings) held by any Constituent Entity of the MNE Group.

### **8-95 Transitional CbCR Safe Harbour—Exclusions**

Section 8-5 does not apply in relation to an MNE Group for a jurisdiction for a Fiscal Year if any of the following conditions are satisfied:

- (a) the jurisdiction is a jurisdiction in which a Stateless Constituent Entity is taken to be located under section 5-45;
- (b) the MNE Group is a combined MNE Group referred to in paragraph 6-85(2)(a) (Multi-Parented MNE Groups) and there is no a single Qualified CbC Report that includes the information of the all the separate Groups referred to in that paragraph;
- (c) an election by a Filing Constituent Entity for the MNE Group under section 7-40 (Eligible Distribution Tax Systems), for the jurisdiction, applies to the Fiscal Year; and
- (d) all of the following conditions are satisfied:

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- (i) in a previous Fiscal Year, one or more Constituent Entities of the MNE Group were located in the jurisdiction;
- (ii) section 8-5 did not apply in relation to the MNE Group for the jurisdiction for the previous Fiscal Year;
- (iii) the MNE Group was an Applicable MNE Group for the previous Fiscal Year.

## Division 2—Simplified Calculations Safe Harbour

### Subdivision A—Simplified Calculations Safe Harbour

#### 8-100 Simplified Calculations Safe Harbour—general rule

- (1) Subsection (2) applies if an election under subsection (3) applies to a Fiscal Year and a jurisdiction.
  - (2) The MNE Group's Top-up Tax Percentage for the jurisdiction for the Fiscal Year is taken to be zero if the MNE Group meets any of the following tests for the jurisdiction for the Fiscal Year:
    - (a) the SC De minimis test;
    - (b) the SC ETR test;
    - (c) the SC Routine profits test.
- Note: If that Top-up Tax Percentage is taken to be zero under subsection (3), the MNE Group's Jurisdictional Top-up Tax for the jurisdiction for the Fiscal Year may still be above zero due to any relevant Additional Current Top-up Tax under Part 5-4.
- (3) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group that applies to a specified jurisdiction.
  - (4) An election under subsection (3) is an Annual Election.

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

#### 8-105 Meeting the *SC De minimis test*

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

- (a) the MNE Group's Average GloBE Revenue for the jurisdiction for the Fiscal Year, computed in accordance with this Division, is less than 10 million Euros; and
- (b) the MNE Group's Average GloBE Income or Loss for the jurisdiction for the Fiscal Year, computed in accordance with this Division, is less than 1 million Euros.

#### 8-110 Meeting the *SC ETR test*

An MNE Group meets the *SC ETR test* for a jurisdiction for a Fiscal Year if the MNE Group's Effective Tax Rate for the jurisdiction for the Fiscal Year,

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computed in accordance with this Division, is equal to or greater than the Minimum Rate.

## 8-115 Meeting the *SC Routine profits test*

An MNE Group meets the *SC Routine profits test* for a jurisdiction for a Fiscal Year if the MNE Group's Net GloBE Income for the jurisdiction for the Fiscal Year, computed in accordance with this Division, is equal to or less than the MNE Group's Substance-based Income Exclusion Amount for the jurisdiction for the Fiscal Year.

## Subdivision C—NMCE simplified calculations

### 8-120 NMCE simplified calculations

- (1) This section applies:
  - (a) if an election under subsection 8-125(2) applies in relation to a Fiscal Year and a Constituent Entity of an MNE Group; and
  - (b) the Constituent Entity is an NMCE for the Fiscal Year.
- (2) This section applies for the purpose of working out whether the MNE Group meets the tests mentioned in subsection 8-100(2) for the Fiscal Year.

#### *Simplified income calculation*

- (3) Treat the NMCE's Total Revenue for a Fiscal Year as its GloBE Income or Loss for the Fiscal Year in the following computations:
  - (a) in computing the MNE Group's Average GloBE Income or Loss for a Fiscal Year as mentioned in paragraph 8-105(b) (SC De minimis test);
  - (b) in computing the MNE Group's Net GloBE Income for the jurisdiction for a Fiscal Year as mentioned in section 8-115 (SC Routine profits test).

#### *Simplified revenue calculation*

- (4) Treat the NMCE's Total Revenue for a Fiscal Year as its revenue for the Fiscal Year in the following computations:
  - (a) in computing the MNE Group's GloBE Revenue for a Fiscal Year mentioned in paragraph 5-100(4)(a);
  - (b) as a result of paragraph (a), in computing the MNE Group's Average GloBE Revenue for a Fiscal Year as mentioned in paragraph 8-105(a) (SC De minimis test).

#### *Simplified tax calculation*

- (5) Treat the NMCE's Income Tax Accrued (Current Year) for a Fiscal Year as its Adjusted Covered Taxes for the Fiscal Year in computing the MNE Group's Effective Tax Rate for the jurisdiction for a Fiscal Year as mentioned in section 8-110 (SC ETR test).

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Chapter 8 Administration (Safe Harbours)

Part 8-2 Safe Harbours

Division 2 Simplified Calculations Safe Harbour

Section 8-125

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## 8-125 NMCE simplified calculations election

- (1) Subsection (2) applies if an election under subsection 8-100(3) applies in relation to a Fiscal Year and a jurisdiction.
- (2) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group that applies to a specified Constituent Entity of the MNE Group that is an NMCE for the Fiscal Year.
- (3) An election under subsection (2) is an Annual Election.

## 8-130 Meaning of *Non-material Constituent Entity* (or *NMCE*)

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

- (a) where it is an Entity:
  - (i) the Entity is not consolidated on a line-by-line basis in the Consolidated Financial Statements of the Ultimate Parent Entity of the MNE Group for the Fiscal Year solely on size or materiality grounds; and
  - (ii) those Consolidated Financial Statements are described in paragraphs (a) or (c) of the definition of Consolidated Financial Statements in section 27 of the Act; and
  - (iii) those Consolidated Financial Statements are externally audited; and
  - (iv) if the Entity's Total Revenue for the Fiscal Year exceeds 50 million Euros—its financial accounts that are used to complete the Country-by-Country Report are prepared in accordance with an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard; and
- (b) where it is an Permanent Establishment—the Main Entity in respect of the Permanent Establishment is an NMCE for the Fiscal Year under paragraph (a) of this section.

## 8-135 Meaning of *Total Revenue and Income Tax Accrued (Current Year)* of *Constituent Entity*

- (1) The *Total Revenue* of a Constituent Entity of an MNE Group for a Fiscal Year means the Constituent Entity's total revenue for the Fiscal Year as determined in accordance with the MNE Group's Relevant CbC Regulations.

Note: The Total Revenue of an MNE Group is defined in section 8-15.

- (2) The *Income Tax Accrued (Current Year)* of a Constituent Entity of an MNE Group for a Fiscal Year means the Constituent Entity's income tax accrued (current year) for the Fiscal Year as determined in accordance with the MNE Group's Relevant CbC Regulations.

## 8-140 Meaning of *Relevant CbC Regulations and Country-by-Country Reporting regulations*

- (1) *Relevant CbC Regulations* of an MNE Group means:



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Administration (Safe Harbours) **Chapter 8**

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QDMTT Safe Harbour **Division 3**

Section 8-145

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- (a) if the jurisdiction in which the Ultimate Parent Entity of the MNE Group is located (the *UPE jurisdiction*) does not have Country-by-Country Reporting regulations and the MNE Group is not required to file a Country-by-Country Report in any jurisdiction—the following documents:
- (i) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the OECD and last amended on 7 January 2022;
  - (ii) *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13* (2022) of the OECD; or
- (b) if paragraph (a) does not apply and the MNE Group is not required to file a Country-by-Country Report in the UPE Jurisdiction—the Country-by-Country Reporting regulations of the surrogate parent entity jurisdiction (determined in accordance with the documents mentioned in subparagraphs (a)(i) and (ii)); or
- (c) otherwise—the Country-by-Country Reporting regulations of the UPE jurisdiction.
- (2) **Country-by-Country Reporting regulations** means any of the following:
- (a) Subdivision 815-E of the *Income Tax Assessment Act 1997* (Reporting obligations for country by country reporting entities);
  - (b) a law of a non-Australian jurisdiction corresponding to that Subdivision.

## Division 3—QDMTT Safe Harbour

### 8-145 QDMTT Safe Harbour—general rule

- (1) An MNE Group's Jurisdictional Top-up Tax for a jurisdiction for a Fiscal Year is taken to be zero if:
- (a) the jurisdiction applies a Qualified Domestic Minimum Top-up Tax for the Fiscal Year; and
  - (b) the jurisdiction is specified in a determination under subsection (2); and
  - (c) a Filing Constituent Entity of the MNE Group has made an election under subsection (3) that applies to the jurisdiction and the Fiscal Year.
- (2) The Minister may, by legislative instrument, make a determination specifying a jurisdiction if the Minister is satisfied that the jurisdiction's Qualified Domestic Minimum Top-up Tax has QDMTT Safe Harbour status for the Fiscal Year.
- (3) A Filing Constituent Entity of an MNE Group may make an election for the MNE Group that applies to a specified jurisdiction.
- (4) An election under subsection (3) is an Annual Election.

Note: A Filing Constituent Entity of an MNE Group may not make an election under subsection (3) in certain circumstances: see sections 8-150 and 8-155.

### 8-150 QDMTT Safe Harbour—disputed amounts

- (1) This section applies if all or part of an amount payable by a Constituent Entity of an MNE Group under a Qualified Domestic Minimum Top-up Tax of a

# EXPOSURE DRAFT

**Chapter 8** Administration (Safe Harbours)

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jurisdiction for a Fiscal Year is a disputed amount mentioned in subsection 5-35(1).

- (2) Despite subsection 8-145(3), a Filing Constituent Entity of the MNE Group may not make an election under that subsection for the MNE Group that applies to the Fiscal Year and the jurisdiction.

### **8-155 QDMTT Safe Harbour—Switch-off Rule**

- (1) This section applies if:
  - (a) a jurisdiction has a Qualified Domestic Minimum Top-up Tax for a Fiscal Year; and
  - (b) the jurisdiction is specified in a determination under subsection 8-145(2); and
  - (c) a determination under subsection (2) specifies the jurisdiction and a restriction of the jurisdiction's Qualified Domestic Minimum Top-up Tax; and
  - (d) the restriction applies to an MNE Group for the Fiscal Year.
- (2) The Minister may, by legislative instrument, make a determination specifying:
  - (a) a jurisdiction; and
  - (b) a restriction of the jurisdiction's Qualified Domestic Minimum Top-up Tax.
- (3) Despite subsection 8-145(3), a Filing Constituent Entity of the MNE Group may not make an election for the MNE Group that applies to the Fiscal Year and the jurisdiction.

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## Chapter 9—Transition rules

### Part 9-1—Tax attributes upon transition

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

- (1) This section applies for the purposes of computing the Total Deferred Tax Adjustment Amount, for a Constituent Entity of an MNE Group, for a Fiscal Year (the *current year*) that is:
  - (a) the MNE Group's Transition Year for a jurisdiction; or
  - (b) a subsequent Fiscal Year, if the Constituent Entity has not ceased to be a Constituent Entity of the MNE Group in the subsequent Fiscal Year or a prior Fiscal Year.
- (2) In computing the Constituent Entity's Total Deferred Tax Adjustment Amount for the current year:
  - (a) take account of each deferred tax asset and deferred tax liability that is reflected or disclosed in the Constituent Entity's financial accounts at the beginning of the Transition Year; and
  - (b) take account of the deferred tax asset or deferred tax liability in the amount set out in section 9-10.
- (3) Subsection (2) does not apply in relation to a deferred tax asset that arises:
  - (a) as a result of a transaction or event that occurs in the period that:
    - (i) starts on 1 December 2021; and
    - (ii) ends immediately before the start of the Transition Year; and
  - (b) in respect of an amount that, assuming the Constituent Entity computed its GloBE Income or Loss for the Fiscal Year in which the transaction or event occurred, would not have been taken into account in that computation.

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

- (1) For the purposes of subsection 9-5(2), take account of a deferred tax asset or deferred tax liability in the following amount:
  - (a) if paragraph (b) does not apply—the lesser of the following:
    - (i) the amount of the deferred tax asset or deferred tax liability reflected in the financial accounts;
    - (ii) that amount recast at the Minimum Rate;
  - (b) in the case of a deferred tax asset that is attributable to a loss that, assuming the Constituent Entity computed its GloBE Income or Loss for the Fiscal Year in which the loss arose, would have been taken into account in that computation—the amount of the deferred tax asset reflected in the financial accounts recast at the Minimum Rate.
- (2) For the purposes of subsection (1), disregard the impact of any valuation adjustment or accounting recognition adjustment with respect to the amount of a deferred tax asset.

# EXPOSURE DRAFT

## Chapter 9 Transition rules

### Part 9-1 Tax attributes upon transition

#### Section 9-15

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

- (1) This section applies if:
  - (a) an Entity (the *transferor*) transfers an asset to another Entity (the *transferee*); and
  - (b) the transfer occurred in the period that:
    - (i) starts on 1 December 2021; and
    - (ii) ends immediately before the transferor's Transition Year; and
  - (c) the asset was not inventory manufactured, nor of a class or description sold, in the course of carrying on a trade by the transferor or the transferee; and
  - (d) immediately before the transfer, the transferor and the transferee would have been Constituent Entities of the same MNE Group, assuming that these Rules had been in force immediately before the transfer.
- (2) For the purposes of applying these Rules, treat the carrying value of the asset at the beginning of the Transition Year as being equal to the transferor's carrying value of the asset immediately before the transfer, adjusted for:
  - (a) subsequent capitalised expenditure incurred in respect of the asset:
    - (i) after the transfer; and
    - (ii) before start of the the Transition Year; and
  - (b) amortisation and depreciation of the asset that would have been recognised before the Transition Year, assuming that any increase in the carrying value resulting from the transfer had not occurred.

#### 9-20 Meaning of *Transition Year*

*Transition Year*, for a jurisdiction, means the first Fiscal Year that the MNE Group comes within the scope of the GloBE Rules in respect of that jurisdiction.

# EXPOSURE DRAFT

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

### 9-25 Application of this Part

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

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

### 9-30 Transitional relief for Payroll Carve-out Amount

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

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

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

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

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

# EXPOSURE DRAFT

Chapter 9 Transition rules

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

Section 9-35

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

## Chapter 10—Definitions

### Part 10-1—Defined terms

#### 10-5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Annual Election (see section 27 of the Act);
- (b) Constituent Entity (see subsection 27 of the Act);
- (c) Entity (see section 27 of the Act);
- (d) Fiscal Year (see section 27 of the Act);
- (e) Five Year Election (see section 27 of the Act);
- (f) Main Entity (see 27 of the Act);
- (g) MNE Group (see section 27 of the Act);
- (h) Ownership Interest (see section 27 of the Act);
- (i) Permanent Establishment (see section 27 of the Act);
- (j) Tax Treaty (see section 27 of the Act).

In this instrument:

**Accounting Functional Currency:** see subsection 3-75(2).

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

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

**Additional Current Top-up Tax** of an MNE Group for a jurisdiction for a Fiscal Year: see subsection 4-30(2), paragraph 5-90(3)(b) and paragraph 7-75(2)(c).

**Additional Tier One Capital:** see subsection 3-195(2).

**Additions to Covered Taxes:** see section 4-15.

**Adjusted Covered Taxes:** see section 4-5.

**Aggregate Asset Gain:** see section 3-155.

**Allocable Share** of the Top-up Tax of a Low-Taxed Constituent Entity for a Fiscal Year: see section 2-10.

**Ancillary International Shipping Activity:** see subsection 3-215(3).

**Ancillary International Shipping Income:** see subsection 3-215(2).

**Ancillary International Shipping Income Costs:** see subsection 3-215(4).

**Ancillary International Shipping Income Revenue:** see subsection 3-215(3).

**Arm's Length Principle:** see section 3-110.

**Average GloBE Income or Loss** of an MNE Group for a jurisdiction for a Fiscal Year: see paragraph 5-100(2)(b).

# EXPOSURE DRAFT

## Section 10-5

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**Average GloBE Revenue** of an MNE Group in a jurisdiction for a Fiscal Year: see paragraph 5-100(2)(a).

**CbCR Resident**: see section 8-55.

**Constituent Entity-owner**: If a Constituent Entity of an MNE Group holds an Ownership Interest in another Constituent Entity of the MNE Group, the Constituent Entity is a **Constituent Entity-owner** of the other Constituent Entity.

**Controlled Foreign Company Tax Regime** means a set of tax rules (other than an IIR or any Tax equivalent to an IIR) under which an Entity located in a jurisdiction (the **owner**) that holds an Ownership Interest in another Entity located in another jurisdiction (the **CFC**) is subject to current taxation on its share of part or all of the income earned by the CFC, irrespective of whether that income is distributed currently to the owner.

**Cooperative** means an Entity that:

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

**Country-by-Country Reporting regulations**: see subsection 8-140(2).

**Covered Taxes**: see section 4-35.

**Deductible Dividend**: see section 7-35.

**Deductible Dividend Regime**: see section 7-30.

**Deemed Distribution Tax Recapture Account**: see subsection 7-50(4).

**De minimis test**: see section 8-10.

**Disallowed Accrual**: see subsection 4-95(1).

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

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

- (a) refundable to the beneficial owner of a dividend distributed by the Constituent Entity in respect of the dividend or creditable by the beneficial owner against a tax liability other than a tax liability in respect of such dividend; or
- (b) refundable to the distributing corporation upon distribution of a dividend.

**Domestic Top-up Tax Amount**: see section 2-25.

**Dual-listed Arrangement**: see subsection 6-90(4).

**Effective Tax Rate**, of an MNE Group for a jurisdiction for a Fiscal Year: see section 5-5.



**Eligible Distribution Tax System:** see section 7-45.

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

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

**Eligible Tangible Assets:** see section 5-75.

**ETR Adjustment Provision** means section 3-145, 4-80, 4-120, 4-125 or 7-75.

**Excess Profit** of an MNE Group for a jurisdiction for a Fiscal Year: see section 5-25.

**Excluded Dividends:** see subsection 3-40(1).

**Excluded Equity Gain or Loss:** see section 3-50.

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

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

**Financial Accounting Net Income or Loss:** see sections 3-10 and 3-225.

**Flow-through Entity:** see sections 10-10 and 10-30.

**GloBE Income:** if the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year is a positive amount, the Constituent Entity's **GloBE Income** for the Fiscal Year is that amount.

**GloBE Income or Loss:** see section 3-5.

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

**GloBE Loss:** if the GloBE Income or Loss of a Constituent Entity of an MNE Group for a Fiscal Year is a negative amount, the Constituent Entity's **GloBE Loss** for the Fiscal Year is the absolute value of that amount.

**GloBE Loss Deferred Tax Asset** means a GloBE Loss Deferred Tax Asset established under subsection 4-105(1).

**GloBE Loss Election:** see subsection 4-100(1).

**GloBE Reorganisation:** see subsection 6-70(2).

**Group Entity**, of a Group, mean an Entity that is a Constituent Entity of the Group.

**High-Tax Counterparty:** see section 3-175.

**Hybrid Entity:** see section 10-35.

**IIR:** means any law of a jurisdiction that may reasonably be considered to have been enacted with the intention of implementing, in whole or in part, Articles 2.1 to 2.3 of the GloBE Rules.

**Included Revaluation Method Gain or Loss:** see subsection 3-60(1).

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

# EXPOSURE DRAFT

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***Income Tax Accrued (Current Year)***: see subsection 8-135(2).

***Insurance Investment Entity*** means an Entity that:

- (a) is established in relation to liabilities under an insurance or annuity contract; and
- (b) would be an Investment Fund or a Real Estate Investment Vehicle if it were not established in relation to such liabilities; and
- (c) is wholly-owned by an Entity that is subject to regulation in its location as an insurance company.

***Intermediate Parent Entity*** means a Constituent Entity of an MNE Group (other than a Ultimate Parent Entity, Partially-Owned Parent Entity, Permanent Establishment, Investment Entity or Insurance Investment Entity) that holds an Ownership Interest in another Constituent Entity of the MNE Group.

***International Shipping Activity***: see subsection 3-210(2).

***International Shipping Income***: see subsection 3-210(1).

***International Shipping Income Costs***: see subsection 3-210(3).

***International Shipping Income Revenue***: see subsection 3-210(2).

***Intragroup Financing Arrangement***: see section 3-170.

***Investment Entity*** means:

- (a) an Investment Fund or a Real Estate Investment Vehicle; or
- (b) an Entity that is at least 95% owned directly by an Entity described in paragraph (a) or through a chain of such Entities and that operates exclusively or almost exclusively to hold assets or invest funds for the benefit of such Investment Entities; or
- (c) an Entity, where:
  - (i) at least 85% of the value of the Entity is owned by an Entity referred to in paragraph (a); and
  - (ii) substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or Loss that is excluded from the computation of GloBE Income or Loss under section 3-30 or 3-45.

***Jurisdictional Top-up Tax*** of an MNE Group for a jurisdiction for a Fiscal Year: see section 5-30.

***Local Tangible Asset***: see section 3-155.

***Look-back Period***: see section 3-160.

***Loss Year***: see section 3-160.

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

- (a) a Constituent Entity of the MNE Group that is located in a Low-Tax Jurisdiction;

(b) a Stateless Constituent Entity that has GloBE Income and an Effective Tax Rate for the Fiscal Year that is lower than the Minimum Rate.

Note: See also subsections 5-90(5) and 5-95(4).

**Low-Tax Entity:** see section 3-175.

**Low-Tax Jurisdiction:** see section 3-180.

**Marketable Transferable Tax Credit:** see subsection 3-125(1).

**Minority-Owned Constituent Entity:** a Constituent Entity of an MNE Group is a **Minority-Owned Constituent Entity** if the Ultimate Parent Entity of the MNE Group has an Ownership Interest Percentage in the Constituent Entity of 30% or less.

**Minority-Owned Parent Entity:** a Minority-Owned Constituent Entity is a Minority-Owned Parent Entity if:

- (a) it holds a Controlling Interest in another Minority-Owned Constituent Entity; and
- (b) a Controlling Interest in it is not held by another Minority-Owned Constituent Entity.

**Minority-Owned Subgroup** means a Minority-Owned Parent Entity and its Minority-Owned Subsidiaries.

**Minority-Owned Subsidiary** means a Minority-Owned Constituent Entity a Controlling Interest in which is held by a Minority-Owned Parent Entity.

**MNE Group's Allocable Share of the Investment Entity's GloBE Income:** see subsection 7-100(1).

**Multi-Parented MNE Group:** see subsection 6-90(1).

**Net Asset Gain:** see section 3-155.

**Net Asset Loss:** see section 3-155.

**Net GloBE Income**, of an MNE Group for a jurisdiction for a Fiscal Year: see section 5-10.

**Net GloBE Loss**, of an MNE Group for a jurisdiction for a Fiscal Year: see section 5-10.

**Non-Marketable Transferable Tax Credit:** see subsection 3-130(1).

**Non-material Constituent Entity** (or **NMCE**): see section 8-130.

**Non-qualifying Gain or Loss:** see subsection 6-70(4).

**Non-Qualified Refundable Tax Credit:** see subsection 3-120(3).

**OECD Model Tax Convention** means the Model Tax Convention on Income and on Capital published (from time to time) by the Council of the Organisation for Economic Cooperation and Development.

# EXPOSURE DRAFT

## Section 10-5

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**Other Comprehensive Income:** see subsection 3-60(2).

**Other Tax Credit:** see subsection 3-130(2).

**Parent Entity** means:

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

**Parent Entity's Allocable Share of the Investment Entity's GloBE Income:** see subsection 7-100(2).

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

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

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

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

but only to the extent a Constituent Entity-owner is subject to Tax on such income under a Controlled Foreign Company Tax Regime or as a result of an Ownership Interest in a Hybrid Entity.

**Payroll Carve-out Amount:** see subsection 5-55(1).

**Profit (Loss) before Income Tax:** see section 8-20.

**Portfolio Shareholding:** see subsection 3-40(3).

**Qualified Ancillary International Shipping Income:** see subsection 3-215(1).

**Qualified CbC Report:** see section 8-25.

**Qualified Domestic Minimum Top-up Tax**, for a Fiscal Year, means a Tax that is:

- (a) imposed under a law of a jurisdiction; and
- (b) specified in a determination made the Minister for the purposes of this paragraph.

**Qualified Financial Statements:** see section 8-60.

**Qualified IIR** means a set of rules equivalent to Article 2.1 to Article 2.3 of the GloBE Rules (including any provisions of the GloBE Rules associated with those Articles) if:

- (a) the rules are included in the domestic law of a jurisdiction and are implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Rules and the Commentary; and
- (b) the jurisdiction does not provide any benefits that are related to the rules.

**Qualified Imputation Tax** means a Covered Tax accrued or paid by a Constituent Entity of a Group that is refundable or creditable to the beneficial owner of a dividend distributed by the Constituent Entity (or, in the case of a Covered Tax accrued or paid by a Permanent Establishment, a dividend distributed by the Main Entity) to the extent that the refund is payable, or the credit is provided:

- (a) by a jurisdiction other than the jurisdiction which imposed the Covered Taxes under a foreign tax credit regime;
- (b) to a beneficial owner of the dividend that is subject to tax at a nominal rate that equals or exceeds the Minimum Rate on the dividend on a current basis under the domestic law of the jurisdiction which imposed the Covered Taxes on the Constituent Entity;
- (c) to an individual beneficial owner of the dividend who is tax resident in the jurisdiction which imposed the Covered Taxes on the Constituent Entity and who is subject to tax on the dividends as 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 a Group Entity of the Group, or a resident life insurance company to the extent that the dividends are received in connection with a pension fund business and subject to tax in a similar manner as a dividend received by Pension Fund.

For purposes of paragraph (d):

- (e) a Non-Profit Organisation or Pension Fund is resident in a jurisdiction if it is created and managed in that jurisdiction; and
- (f) an Investment Entity is resident in a jurisdiction if it is created and regulated in the jurisdiction; and
- (g) a life insurance company is resident in the jurisdiction in which it is located.

**Qualified Refundable Tax Credit:** see subsections 3-120(1) and (2).

**Recapture Account Loss Carry-forward:** see subsection 7-60(2).

**Recaptured Deferred Tax Liability:** see section 4-85.

**Recapture Exception Accrual:** see section 4-90.

**Reductions to Covered Taxes:** see section 4-20.

**Refundable Tax Credit:** see subsection 3-120(4).

**Relevant CbC Regulations:** see subsection 8-140(1).

**Reverse Hybrid Entity:** see section 10-20.

# EXPOSURE DRAFT

Chapter 10 Definitions  
Part 10-1 Defined terms

## Section 10-5

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- Routine profits test***: see section 8-50.
- SC De minimis test***: see section 8-105.
- SC ETR test***: see section 8-110.
- SC Routine profits test***: see section 8-115.
- Short-term Portfolio Shareholding***: see subsection 3-40(2).
- Simplified Covered Taxes***: see section 8-40.
- Simplified ETR***: see section 8-35.
- Simplified ETR test***: see section 8-30.
- Stapled Structure***: see subsection 6-90(3).
- Substance-based Income Exclusion Amount***: see section 5-50.
- Tangible Asset Carve-out Amount***: see subsection 5-65(1).
- Tax** means a compulsory unrequited payment to general government.
- Tax Functional Currency***: see subsection 3-75(1).
- Tax Transparent Entity***: see section 10-15.
- Tax Transparent Structure***: see sections 10-25 and 10-30.
- Top-up Tax*** of a Constituent Entity of an MNE Group for a Fiscal Year: see section 5-40.
- Top-up Tax Amount***: see section 2-5.
- Top-up Tax Percentage*** of an MNE Group for a jurisdiction for a Fiscal Year: see section 5-20.
- Total Deferred Tax Adjustment Amount***: see section 4-75.
- Total Revenue***: see sections 8-15 and 8-135.
- Transition Period***: see section 8-85.
- Transition Rate***: see section 8-45.
- Transition Year***: see section 9-20.
- Undistributed Net GloBE Income Account***: see section 7-150.
- Unclaimed Accrual***: see subsection 4-95(2).

# EXPOSURE DRAFT

## **Part 10-2—Definitions of Flow-through Entity, Tax Transparent Entity, Reverse Hybrid Entity, and Hybrid Entity**

### **10-10 Meaning of *Flow-through Entity***

An Entity is a *Flow-through Entity* to the extent it is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it was created unless it is tax resident and subject to a Covered Tax on its income or profit in another jurisdiction.

Note: A Constituent Entity may be treated as a Flow-through Entity in accordance with section 10-30.

### **10-15 Meaning of *Tax Transparent Entity***

A Flow-Through Entity is a *Tax Transparent Entity* with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located.

Note: A Constituent Entity may be treated as a Tax Transparent Entity in accordance with section 10-30.

### **10-20 Meaning of *Reverse Hybrid Entity***

A Flow-Through Entity is a *Reverse Hybrid Entity* with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which the owner is located.

### **10-25 Fiscal transparency and meaning of *Tax Transparent Structure***

- (1) For the purposes of this Part, treat an Entity as fiscally transparent under the laws of a jurisdiction, if that jurisdiction treats the income, expenditure, profit or loss of that Entity as if it were derived or incurred by the direct owner of that Entity in proportion to its interest in that Entity.
- (2) An Ownership Interest in an Entity or a Permanent Establishment that is a Constituent Entity is held through a *Tax Transparent Structure* if that Ownership Interest is an Indirect Ownership Interest held through a chain of Tax Transparent Entities.

### **10-30 Treat certain Constituent Entity as Flow-Through Entity and Tax Transparent Entity**

- (1) Subsection (2) applies if a Constituent Entity:
  - (a) is not a tax resident of any jurisdiction; and
  - (b) is not subject to a Covered Tax or a Qualified Domestic Minimum Top-up Tax based on its place of management, place of creation, or similar criteria.

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## Chapter 10 Definitions

### Part 10-2 Definitions of Flow-through Entity, Tax Transparent Entity, Reverse Hybrid Entity, and Hybrid Entity

#### Section 10-35

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- (2) For the purposes of this law, treat the Constituent Entity as a Flow-Through Entity and a Tax Transparent Entity in respect of its income, expenditure, profit or loss to the extent that:
- (a) its owners are located in a jurisdiction that treats the Entity as fiscally transparent; and
  - (b) it does not have a place of business in the jurisdiction where it was created; and
  - (c) the income, expenditure, profit or loss is not attributable to a Permanent Establishment in respect of which it is the Main Entity.

#### **10-35 Meaning of *Hybrid Entity***

An Entity that is treated as a separate taxable person for income tax purposes in the jurisdiction where it is located is a ***Hybrid Entity*** with respect to its income, expenditure, profit or loss, to the extent that it is fiscally transparent in the jurisdiction in which its owner is located.



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## Part 10-3—Location of dual-located entities

### 10-40 Dual-located entities

- (1) Subsections (2) and (3) specify, for the purposes of section 35 of the Act, the jurisdiction a Constituent Entity of an MNE Group is located in for a Fiscal Year if, disregarding that section, it would be located more than one jurisdiction under section 32 of the Act.
- (2) If:
  - (a) the jurisdictions are party to a Tax Treaty; and
  - (b) the Constituent Entity is deemed to be resident in only one of the jurisdictions for purposes of the Tax Treaty;the Constituent Entity is taken to be located in that jurisdiction for the Fiscal Year.
- (3) If subsection (2) does not apply to the Constituent Entity, the Entity is taken to be located in the following jurisdiction for the Fiscal Year:
  - (a) if the Constituent Entity has, for the Fiscal Year, a greater amount of Covered Taxes (determined without reference to any taxes paid under a Controlled Foreign Company Tax Regime) paid or due to be paid in one of the jurisdictions than in the other jurisdictions—that jurisdiction;
  - (b) if paragraph (a) does not apply, and the MNE Group has a greater Substance-based Income Exclusion Amount for the Fiscal Year (computed under Part 5-3 on the assumption that the Constituent Entity were the only Constituent Entity of the MNE Group located in the jurisdiction) in one of the jurisdictions than in the other jurisdictions—that jurisdiction;
  - (c) if neither paragraph (a) nor (b) applies, and the Constituent Entity is the Ultimate Parent Entity of the MNE Group—the jurisdiction in which it was created.
- (4) For the purposes of paragraph (b) of the definition of *Stateless Constituent Entity* in section 27 of the Act, if:
  - (a) section 35 of the Act applies to a Constituent Entity of an MNE Group for a Fiscal Year; but
  - (b) subsections (2) and (3) of this section do not apply to the Constituent Entity;the Constituent Entity is a *Stateless Constituent Entity* of the MNE Group for the Fiscal Year.

### 10-45 Dual-located Parent Entity located in non-IIR jurisdiction

- (1) This section applies if:
  - (a) disregarding section 35 of the Act, a Parent Entity of an MNE Group is located in more than one jurisdiction (each of which is a *relevant jurisdiction*) for a Fiscal Year under section 32 of the Act; and

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## Chapter 10 Definitions

### Part 10-3 Location of dual-located entities

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- (b) under subsection 10-40(2) or (3) of these Rules, the Parent Entity is taken to be located in one of those jurisdictions (the *location jurisdiction*) for the Fiscal Year; and
  - (c) the Parent Entity is not required, under the laws of the location jurisdiction, to apply a Qualified IIR for the Fiscal Year.
- (2) If:
- (a) Australia is a relevant jurisdiction and is not the location jurisdiction; and
  - (b) if Australia and the location jurisdiction are party to a Tax Treaty:
    - (i) the Constituent Entity is treated as a resident of the location jurisdiction for purposes of the Tax Treaty; and
    - (ii) the location jurisdiction does not apply a Qualified IIR; and
  - (c) Australia is not restricted from taxing the Constituent Entity under the Tax Treaty for income tax purposes;
- treat the Constituent Entity as being located in Australia for the purposes of paragraph 2-5(1)(a).