Lagrådsremiss

Nya förenklingsregler och andra kompletteringar i lagen om tilläggsskatt

Regeringen överlämnar denna remiss till Lagrådet.

Stockholm den 13 augusti 2026

Elisabeth Svantesson

Johan Lindqvist
(Finansdepartementet)

Lagrådsremissens huvudsakliga innehåll

I denna lagrådsremiss lämnas förslag på ändringar och kompletteringar i lagen om tilläggsskatt. Det lämnas förslag om två nya förenklingsregler som ska gälla om ett moderföretag hör hemma i en stat som har blivit godkänd som en stat med ett parallellt system för minimibeskattning. Den ena ska gälla vid parallella system för minimibeskattning av inhemsk och utländsk inkomst. Den andra ska gälla vid parallella system för minimibeskattning av inhemsk inkomst. Därutöver lämnas förslag om regler om kvalificerade skatteincitament och kompletteringar av bestämmelserna om uppskjuten skattekostnad när koncernenheter i en stat börjar omfattas av tilläggsskattereglerna. Det lämnas också förslag om att förlänga tillämpningen av den tillfälliga förenklingsregeln och övergångsperioden beträffande förenklingsregeln för kompletteringsregeln.

Lagändringarna föreslås träda i kraft den 1 januari 2027 och tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026. Det införs en möjlighet för den rapporterande enheten att begära retroaktiv tillämpning av bestämmelserna.

Innehållsförteckning

1 Beslut 4

2 Förslag till lag om ändring i lagen (2023:875) om tilläggsskatt 5

3 Ärendet och dess beredning 18

4 Bakgrund....18

5 Det behöver införas ytterligare bestämmelser om tilläggsskatt för företag i stora koncerner....19

6 De tillfälliga förenklingsreglerna 21

6.1 Förlängning av tillämpningen av den tillfälliga förenklingsregeln....21

6.2 Förlängning av övergångsperioden i den tillfälliga förenklingsregeln för kompletteringsregeln för tilläggsskatt 22

7 Förenklingsregler när moderföretag hör hemma i en stat med ett godkänt parallellt system för minimibeskattning 24

7.1 Förenklingsregel avseende huvud- och kompletteringsregeln för tilläggsskatt (Side-by-Side Safe Harbour) 24

7.2 Förenklingsregel avseende kompletteringsregeln för tilläggsskatt (Ultimate Parent Entity Safe Harbour)....27

8 Kvalificerade skatteincitament (Substance-based Tax Incentive Safe Harbour)....29

8.1 Gällande rätt i fråga om skatteincitament i lagen om tilläggsskatt 29

8.2 Nya regler om substansbaserade skatteincitament 31

9 Skattetillgodohavanden....36

10 Uppskjuten skatt vid övergången till systemet....38

10.1 Förtydligande avseende vissa uppskjutna skattefordringar och uppskjutna skatteskulder som uppkommit före övergångsåret....38

10.2 Övergångsår 42

10.3 Uppskjuten skatt enligt vissa system för beskattning av kontrollerade utländska företag 44

11 Lagens tillämpningsområde vid delning av en koncern....45

12 Moderföretag som omfattas av system med avdragsgill utdelning 48

13 Ikraftträdande- och övergångsbestämmelser....49

14 Konsekvensanalys....51

14.1 Offentligfinansiella effekter 51

14.2 Effekter för företag....54

14.3 Effekter på investeringar och sysselsättning....57

14.4 Effekter för Skatteverket och de allmänna förvaltningsdomstolarna....58

14.5 Övriga effekter 58

15 Författningskommentar 59

Bilaga 1 Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti- Base Erosion Model Rules (Pillar Two), June 2024 76

Bilaga 2 Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules 220

Bilaga 3 Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package 235

Bilaga 4 Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Application of the Transitional UTPR Safe Harbour to MNE Groups with 52-53-Week Fiscal Years 323

Bilaga 5 Sammanfattning av promemorian Nya förenklingsregler och andra kompletteringar i lagen om tilläggsskatt 327

Bilaga 6 Promemorians lagförslag 328

Bilaga 7 Förteckning över remissinstanserna 340

1 Beslut

Regeringen har beslutat att inhämta Lagrådets yttrande över förslag till lag om ändring i lagen (2023:875) om tilläggsskatt.

2 Förslag till lag om ändring i lagen (2023:875) om tilläggsskatt

Härigenom föreskrivs i fråga om lagen (2023:875) om tilläggsskatt

dels att 1 kap. 10 §, 2 kap. 1, 29, 29 a och 30 §§, 4 kap. 1 och 25–27 §§, 7 kap. 67 och 68 §§ och 8 kap. 1, 2, 4, 9 och 14 §§ och rubriken närmast före 2 kap. 29 § ska ha följande lydelse,

dels att det ska införas sex nya paragrafer, 4 kap. 17 a–17 d §§ och 8 kap. 18 a och 18 b §§, och närmast före 4 kap. 17 a och 17 d §§ och 8 kap. 18 a § nya rubriker av följande lydelse.

Nuvarande lydelse	*Föreslagen lydelse*
1 kap.	
10 §	
Om en koncern som *omfattades* av lagens tillämpningsområde *året före det aktuella räkenskapsåret* delas i två eller flera *nya* koncerner, ska beloppsgränsen i 3 § anses vara uppnådd	Om en koncern som *omfattas* av lagens tillämpningsområde delas i två eller flera koncerner, ska beloppsgränsen i 3 § *för en koncern* anses vara uppnådd
– för det *räkenskapsår då* delningen *sker*: om summan av intäkterna i koncernredovisningen för *vardera ny koncern* för det räkenskapsåret uppgår till minst 750 miljoner euro, och	– för det *första räkenskapsåret som avslutas närmast efter* delningen: om summan av intäkterna i koncernredovisningen för *den koncernen* för det räkenskapsåret uppgår till minst 750 miljoner euro, och
– för det andra till fjärde räkenskapsåret efter delningen: om summan av intäkterna i koncernredovisningen för *vardera ny koncern* uppgår till minst 750 miljoner euro under minst två av *dessa* räkenskapsår.	– för det andra till fjärde räkenskapsåret *som avslutas närmast* efter delningen: om summan av intäkterna i koncernredovisningen för *den koncernen* uppgår till minst 750 miljoner euro under minst två av *de fyra* räkenskapsår *som avslutas närmast efter delningen*.
Första stycket gäller i fråga om varje arrangemang där koncernenheterna i en koncern delas *upp* i två eller flera *nya* koncerner och inte längre ingår i samma moderföretags koncernredovisning.	Första stycket gäller i fråga om varje arrangemang där koncernenheterna i en koncern delas i två eller flera koncerner och inte längre ingår i samma moderföretags koncernredovisning.

2 kap.

1 §[1]

I detta kapitel finns definitioner av vissa begrepp samt förklaringar till hur vissa termer och uttryck används i denna lag. Det finns definitioner av

[1] Senaste lydelse 2025:1461.

vissa begrepp och förklaringar till hur vissa termer och uttryck används i lagen också i andra kapitel.

Definitioner av följande begrepp samt förklaringar till hur vissa termer och uttryck används finns i nedan angivna paragrafer:

allmänt erkänd redovisningsstandard i 20 §
asymmetrisk vinst och förlust i utländsk valuta i 3 kap. 13 §
balansvärde i 5 kap. 5 §
beskattningsår i 24 §
bestämmande inflytande i 14 §
betydande snedvridning av konkurrensen i 3 kap. 7 §
bokfört nettovärde av materiella tillgångar i 23 §
delägarbeskattad enhet i 7 kap. 2 §
delägd moderenhet i 13 §
dotterföretag till ett samriskföretag i 7 kap. 44 §
effektiv skattesats i 3 kap. 37 §
enhet i 6 § första stycket
fast driftställe i 7 kap. 17 §
fastighetsinvesteringsföretag i 40 §
försäkringsinvesteringsenhet i 41 §
godkänd redovisningsstandard i 21 §
godkänt utdelningsskattessystem i 31 §
huvudenhet i 7 kap. 18 §
huvudregel för tilläggsskatt i 4 §
hybridenhet i 41 a §
hör hemma i 1 kap. 11–16 §§
icke kvalificerat imputationsbelopp i 28 §
icke marknadsmässigt överlåtbart skattetillgodohavande i 29 f §
ideell organisation i 34 §
internationell organisation i 33 §
investeringsenhet i 38 §
investeringsenhet för pensioner i 37 §
investeringsfond i 39 §
justerat resultat i 3 kap. 2 §
justerad skattekostnad i 3 kap. 23 §
kompletteringsregel för tilläggsskatt i 5 §
koncern i 7 §
koncernenhet i 8 §
koncernredovisning i 19 §
kvalificerat imputationsbelopp i 27 §

	kvalificerat skatteincitament i 4 kap. 17 c §
kvalificerat skattetillgodohavande i 29 §	kvalificerat skattetillgodohavande i 29 § *andra och tredje styckena*

lågbeskattad koncernenhet i 44 §
lågskattestat i 45 §
marknadsmässigt överlåtbart skattetillgodohavande i 29 a–29 e §§
medräknade skatter i 3 kap. 24–26 §§
mellanliggande moderenhet i 12 §
minimiskattesats i 25 §

minoritetsägd koncernenhet i 7 kap. 42 §
modellreglerna i 47 §
moderenhet i 10 §
moderföretag i 11 §
myndighetsenhet i 32 §
nettoskattekostnad i 3 kap. 8 §
offentligt organ i 6 § tredje stycket
omorganisering i 7 kap. 59 §
omvänd hybridenhet i 7 kap. 4 §
pensionsenhet i 35 §
pensionsfond i 36 §
portföljinnehav i 17 §
procentsats för tilläggsskatt i 3 kap. 38 § första stycket
rapporterande enhet i 43 §
redovisat resultat i 18 §
regel om nationell tilläggsskatt i 3 §
räkenskapsår i 22 §
samriskföretag i 7 kap. 43 §

skattetillgodohavande i 29 § första stycket

skattetransparent enhet i 7 kap. 3 §
stat i 46 §
statslös koncernenhet i 48 §
substansbelopp i 5 kap. 2 §
svensk koncernenhet i 9 §
system för beskattning av kontrollerade utländska företag i 26 §
system med avdragsgill utdelning i 7 kap. 66 §
särskild uppskjuten skattefordran i 4 kap. 13 §
tilläggsskatt i 2 §
tilläggsskattebelopp i 3 kap. 37–39 §§
tilläggsskatterapport i 42 §
undantagna utdelningar i 3 kap. 9 §
undantagen vinst och förlust avseende ägarintressen i 3 kap. 10 §
undantagna enheter i 1 kap. 5–8 §§
värdet beträffande tilläggsskatt i 23 a §
ägarenhet i 16 §
ägarintresse i 15 §
överskjutande vinst i 3 kap. 38 § andra stycket
övrigt skattetillgodohavande i 30 §.

Kvalificerat skattetillgodohavande	Skattetillgodohavande och kvalificerat skattetillgodohavande

29 §

Med skattetillgodohavande avses ett tillgodohavande som ger innehavaren rätt att minska skyldigheten att betala medräknade skatter i den stat som beviljar tillgodohavandet.

Med kvalificerat skattetillgodohavande avses

1. ett anspråk på återbetalning *(skattetillgodohavande)* som är utformat på ett sådant sätt att det ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla betalningen enligt lagstiftningen i den stat som beviljar detta, eller	1. ett *skattetillgodohavande med* anspråk på återbetalning som är utformat på ett sådant sätt att det ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla betalningen enligt lagstiftningen i den stat som beviljar detta, eller

2. om skattetillgodohavandet delvis återbetalas, den del av skattetillgodohavandet som ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla detta belopp.

Ett kvalificerat skattetillgodohavande ska inte omfatta något skattebelopp som kan avräknas eller återbetalas på grundval av ett imputationsbelopp enligt 27 eller 28 §.

29 a §[2]

Med marknadsmässigt överlåtbart skattetillgodohavande avses ett *tillgodohavande*	Med marknadsmässigt överlåtbart skattetillgodohavande avses ett *skattetillgodohavande*

1. som inte är ett kvalificerat skattetillgodohavande,

2. som ger innehavaren en rätt att minska sin kostnad avseende medräknade skatter i den stat som beviljar tillgodohavandet,	
3. som uppfyller kriteriet om överlåtbarhet i 29 b §, och	*2.* som uppfyller kriteriet om överlåtbarhet i 29 b §, och
4. vars överlåtbarhet uppfyller kriteriet om marknadsmässighet i 29 c §.	*3.* vars överlåtbarhet uppfyller kriteriet om marknadsmässighet i 29 c §.

30 §[3]

Med övrigt skattetillgodohavande avses ett *anspråk på återbetalning* som inte omfattas av 29, 29 a eller 29 f §.	Med övrigt skattetillgodohavande avses ett *skattetillgodohavande* som inte omfattas av 29 *§ andra stycket*, 29 a eller 29 f §.

4 kap.

1 §[4]

I detta kapitel finns bestämmelser om

– val som påverkar det justerade resultatet (2–12 k §§),

– val som påverkar den justerade skattekostnaden (13–*17* §§),	– val som påverkar den justerade skattekostnaden (13–*17 d* §§),

– tillkommande tilläggsskattebelopp när det sammanlagda justerade resultatet i en stat är en förlust (18–19 a §§),

[2] Senaste lydelse 2024:1248.
[3] Senaste lydelse 2024:1248.
[4] Senaste lydelse 2024:1248.

– justering av skattekostnad i efterhand (20–24 §§), och

– uppskjutna skattefordringar, uppskjutna skatteskulder och överförda tillgångar vid övergången till systemet (25–28 b §§).

Kvalificerat skatteincitament

17 a §

Vid tillämpning av 3 kap. 37 § får den rapporterande enheten välja att de sammanlagda justerade skattekostnaderna ska ökas med ett belopp som motsvarar skatteeffekten av ett kvalificerat skatteincitament. Ökningen får inte överstiga det högsta av följande belopp:

1. 5,5 procent av personalkostnaderna enligt 5 kap. 3 §, och

2. 5,5 procent av de redovisade kostnaderna för avskrivningar på tillgångar som avses i 5 kap. 4 § i den stat där koncernenheterna hör hemma.

Vid tillämpning av första stycket ska

– personalkostnader i 1 även omfatta sådana kostnader som anges i 5 kap. 3 § andra stycket 1, och

– redovisade kostnader för avskrivningar i 2 inte omfatta avskrivningar på sådana tillgångar som avses i 5 kap. 4 a §.

Den rapporterande enheten får, i stället för vad som anges i första stycket 1 och 2, välja att det belopp som skattekostnaden ska ökas med får uppgå till högst 1 procent av det redovisade värdet av sådana tillgångar som avses i 5 kap. 4 § och som finns i den stat där koncernenheterna hör hemma. Värdet av mark, övriga icke avskrivningsbara tillgångar och sådana tillgångar som avses i 5 kap. 4 a § ska inte ingå i det redovisade värdet. Ett sådant val gäller i fem år från och med det räkenskapsår som valet avser. Därefter fortsätter valet att gälla, om den rapporterande enheten inte *återkallar valet. Om valet återkallas kan ett nytt val göras först fem år efter det år som återkallelsen avser. Om valet återkallas ska tillgångar som har omfattats av valet undantas från beräkningen enligt första stycket 2.*

17 b §

Med kvalificerat skatteincitament avses ett allmänt tillgängligt skatteincitament till den del det är utgiftsbaserat eller produktionsbaserat. Ett skatteincitament är ett incitament som minskar skyldigheten att betala aktuella eller framtida medräknade skatter. Ett skatteincitament är utgiftsbaserat om det baseras på utgifter som en koncernenhet har haft när incitamentet beviljas och summan av skatteeffekten av incitamentet och övriga skatteincitament för samma utgift inte överstiger den utgift som incitamentet baseras på. Ett skatteincitament är produktionsbaserat om det baseras på volymen av materiella tillgångar, inklusive elektricitet, som har producerats i staten när incitamentet beviljas.

17 c §

Med skatteeffekt av ett kvalificerat skatteincitament avses något av följande:

1. den minskning av skyldigheten att betala medräknade skatter som uppkommer för ett beskattningsår på grund av ett utnyttjat skatteincitament i form av en skattereduktion,

2. den del av ett kostnadsavdrag för ett beskattningsår som överstiger 100 procent av utgiften multiplicerad med bolagsskattesatsen,

3. ett kostnadsavdrag för ett beskattningsår som annars inte skulle ha varit avdragsgillt enligt *lokala skatteregler multiplicerat med bolagsskattesatsen,*

4. en skattefri inkomst multiplicerad med bolagsskattesatsen, eller

5. en inkomst som beskattas med en lägre skattesats än den generellt tillämpliga bolagsskattesatsen multiplicerad med skillnaden mellan dessa skattesatser.

Kvalificerat respektive marknadsmässigt överlåtbart skattetillgodohavande

17 d §

Den rapporterande enheten får, i stället för vad som anges i 3 kap. 18–18 c §§, välja att behandla hela eller delar av ett kvalificerat skattetillgodohavande eller ett marknadsmässigt överlåtbart skattetillgodohavande som ett kvalificerat skatteincitament om skattetillgodohavandet uppfyller villkoren i 17 b §.

25 §

Vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för ett övergångsår enligt 26 § och för varje därpå följande räkenskapsår ska alla de uppskjutna skattefordringar och uppskjutna skatteskulder som återspeglas eller redovisas i alla koncernenheters räkenskaper i en stat beaktas för övergångsåret.	Vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för ett övergångsår enligt 26 § och för varje därpå följande räkenskapsår ska alla de uppskjutna skattefordringar och uppskjutna skatteskulder som återspeglas eller redovisas i alla koncernenheters räkenskaper i en stat beaktas för övergångsåret. *Detta gäller dock inte om de uppskjutna skattefordringarna och uppskjutna skatteskulderna avser skatt enligt ett sådant system för beskattning av kontrollerade utländska företag som avses i 2 kap. 26 §, och skatten för kontrollerade utländska företag enligt detta system beräknas gemensamt för samtliga sådana företag.*

Uppskjutna skattefordringar och uppskjutna skatteskulder ska räknas med utifrån den skattesats som är lägst av minimiskattesatsen och den tillämpliga nationella skattesatsen. En uppskjuten skattefordran som har redovisats till en skattesats som är lägre än minimiskattesatsen får dock räknas om enligt minimiskattesatsen om den skattskyldige kan visa att den uppskjutna skattefordran är hänförlig till en justerad förlust.

Effekter som uppstår när värdet på en uppskjuten skattefordran justeras eller när principer för att ta upp en sådan fordran i räkenskaperna ändras ska inte påverka värdet av den uppskjutna skattefordran.

26 §

Med *övergångsår* för en stat avses det första räkenskapsår då en *koncern* omfattas av *lagens tillämpningsområde i fråga om den staten*.

Med *övergångsår* för en stat avses det första räkenskapsår då en *koncernenhet* omfattas av *en lagstiftning som är likvärdig med och administreras på ett sätt som är förenligt med*

1. bestämmelserna i rådets direktiv 2022/2523, i den ursprungliga lydelsen, eller

2. när det gäller en stat utanför Europeiska unionen, modellreglerna.

27 §[5]

Uppskjutna skattefordringar och uppskjutna skatteskulder som avses i 25 § ska inte justeras enligt 3 kap. 34 eller 35 §.

Uppskjutna skattefordringar som härrör från sådana poster som enligt 3 kap. inte ska ingå vid beräkningen av det justerade resultatet ska dock undantas från den beräkning som avses i 25 § när sådana uppskjutna skattefordringar uppkommer i en transaktion som har ägt rum efter den 30 november 2021.

Följande uppskjutna skattefordringar och uppskjutna skatteskulder ska undantas från den beräkning som avses i 25 §:

1. uppskjutna skattefordringar som uppstått på grund av en sådan överenskommelse med myndigheterna i en stat som har ingåtts eller ändrats efter den 30 november 2021,

2. uppskjutna skattefordringar som har uppstått då en koncernenhet har gjort eller ändrat ett val efter den 30 november 2021, om valet retroaktivt ändrar behandlingen av en transaktion som har ingått i koncernenhetens beskattningsbara inkomst ett tidigare beskattningsår,

[5] Senaste lydelse 2024:1248.

Nuvarande lydelse	Föreslagen lydelse
	3. uppskjutna skattefordringar och uppskjutna skatteskulder som har uppstått till följd av att en koncernenhet har använt ett annat skattemässigt värde än det bokförda värdet vid övergången till systemet när bolagsskatt har införts i en stat efter den 30 november 2021 men före övergångsårets början, och
	4. en uppskjuten skattefordran till den del fordran beror på en förlust som har uppstått mer än fem räkenskapsår innan bolagsskatt har införts i en stat.

7 kap.

67 §

Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska minskas med belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om	Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska minskas*, dock lägst till noll,* med belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om

1. mottagaren beskattas för utdelningen med en skattesats som är lika med eller högre än minimiskattesatsen och inkomsten hänförs till ett beskattningsår som avslutas senast tolv månader efter utgången av räkenskapsåret, eller

2. det rimligen kan förväntas att det sammanlagda beloppet av medräknade skatter för moderföretaget och skatt som mottagaren betalar på utdelningen är lika med eller överstiger den utdelande enhetens inkomst multiplicerad med minimiskattesatsen.

Vid tillämpningen av bestämmelserna i första stycket ska mottagaren anses ha beskattats för utdelning som lämnats i förhållande till inköp från ett inköpskooperativ till den del utdelningen minskar en avdragsgill utgift eller kostnad.

68 §

Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska, utöver vad som anges i 67 §, minskas med det belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om mottagaren är	Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska, utöver vad som anges i 67 §, minskas*, dock lägst till noll,* med det belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som

	den justerade vinsten avser, om mottagaren är

1. en fysisk person som är medlem i ett inköpskooperativ, och utdelningen lämnas i förhållande till gjorda inköp,

2. en fysisk person som har skatterättslig hemvist och är skattskyldig i den stat där moderföretaget hör hemma och dennes ägarintressen ger rätt till högst fem procent av vinst och tillgångar i moderföretaget, eller

3. ett offentligt organ, en myndighetsenhet, en internationell organisation, en ideell organisation eller en pensionsfond som hör hemma i den stat där moderföretaget hör hemma.

8 kap.

1 §[6]

I detta kapitel finns bestämmelser om

– tidsgräns för den tillfälliga förenklingsregeln (2 §),

– villkor för den tillfälliga förenklingsregeln (3–7 a §§),

– särskilda enheter och koncerner (8–11 §§),

– verkan av konstlade arrangemang (11 a–11 g §§),

– undantag från tillämpningen av den tillfälliga förenklingsregeln (12 §),

– övergångsår (13 §),

– förenkling av kompletteringsregeln för tilläggsskatt (14 §),

– en förenklingsregel för koncernenheter utan väsentlig betydelse för koncernredovisningen (15–17 §§),

– en förenklingsregel för utländsk nationell tilläggsskatt (18 §), *och*	– en förenklingsregel för utländsk nationell tilläggsskatt (18 §),
	– förenklingsregler när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem (18 a och 18 b §§), och

– val (19 §).

2 §[7]

Bestämmelserna i 3–13 §§ gäller för koncernenheter i en stat för tid som

– motsvarar de räkenskapsår som gäller för enheternas moderföretag, och

– börjar närmast efter den 31 december 2023 men före den 1 januari *2027*.	– börjar närmast efter den 31 december 2023 men före den 1 januari *2028*.
Bestämmelserna gäller dock inte för räkenskapsår som avslutas efter den 30 juni *2028*.	Bestämmelserna gäller dock inte för räkenskapsår som avslutas efter den 30 juni *2029*.

4 §

Tilläggsskattebeloppet för koncernenheterna i en stat ska anses vara noll, om koncernenheterna tillsammans har en effektiv skattesats som är lika

[6] Senaste lydelse 2024:1248.

[7] Senaste lydelse 2024:1248.

med eller större än den procentsats som anges i tredje stycket. Den effektiva skattesatsen ska motsvara kvoten mellan koncernenheternas skattekostnad enligt andra stycket och deras vinst eller förlust före inkomstskatt enligt koncernens kvalificerade land-för-land-rapport.

Med skattekostnad avses i första stycket sådan skattekostnad som redovisas i koncernens kvalificerade finansiella rapport minskad med skatter som inte är medräknade skatter och medräknade skatter som hänför sig till en osäker skattesituation.	Med skattekostnad avses i första stycket sådan skattekostnad som redovisas i koncernens kvalificerade finansiella rapport minskad med skatter som inte är medräknade skatter och medräknade skatter som hänför sig till en osäker skattesituation. *Skattekostnaden ska även minskas med belopp som återförs i redovisningen och som avser uppskjutna skattefordringar enligt 4 kap. 27 § tredje stycket 1–3.*

Procentsatsen enligt första stycket ska vara
– 15 procent för räkenskapsår som börjar under 2024,
– 16 procent för räkenskapsår som börjar under 2025, och

– 17 procent för räkenskapsår som börjar under 2026.	– 17 procent för räkenskapsår som börjar under 2026 *och 2027*.

9 §

Vid tillämpningen av 3–7 §§ gäller följande för moderföretag som är delägarbeskattade enheter eller enheter som omfattas av ett system med avdragsgill utdelning. Vinsten före bolagsskatt ska minskas i den utsträckning som beloppet är hänförligt till en persons ägarintresse i den delägarbeskattade enheten eller utdelat till följd av en ägarandel som innehas av en sådan person.	Vid tillämpningen av 3–7 §§ gäller följande för moderföretag som är delägarbeskattade enheter eller enheter som omfattas av ett system med avdragsgill utdelning. Vinsten före bolagsskatt ska minskas*, dock lägst till noll,* i den utsträckning som beloppet är hänförligt till en persons ägarintresse i den delägarbeskattade enheten eller utdelat till följd av en ägarandel som innehas av en sådan person.

Med person avses i första stycket en sådan innehavare av ett ägarintresse som bestämmelserna i 7 kap. 12 och 13 §§ avser eller sådana mottagare som bestämmelserna i 67 och 68 §§ avser.

För delägarbeskattade enheter gäller första stycket bara om samtliga ägarintressen i moderföretaget innehas av någon som avses i 7 kap. 12 och 13 §§.

14 §[8]

Tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska anses vara noll för den stat där moderföretaget hör hemma om bolags-

[8] Senaste lydelse 2024:1248.

skattesatsen i den staten uppgår till minst 20 procent för varje räkenskapsår under övergångsperioden.

Med övergångsperioden avses de räkenskapsår som inte omfattar mer än tolv månader och som börjar den 31 december 2025 eller tidigare och slutar före den 31 december 2026.

Med övergångsperioden avses de räkenskapsår som inte omfattar mer än tolv månader och som börjar den 31 december 2025 eller tidigare och slutar före den 31 december 2026. *Med övergångsperioden avses också de räkenskapsår som enligt tillämplig redovisningsstandard är 52 eller 53 veckor och som börjar den 31 december 2025 eller tidigare och slutar före den 4 januari 2027.*

Förenklingsregler när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem

18 a §

Tilläggsskattebeloppet enligt huvud- och kompletteringsregeln för tilläggsskatt ska anses vara noll för koncernenheter om moderföretaget hör hemma i en stat med ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst som är godkänt av OECD/G20 Inclusive Framework on BEPS.

Det som sägs om koncernenheter i första stycket gäller också för samriskföretag och dotterföretag till samriskföretag som tillhör en koncern vars moderföretag uppfyller villkoret i första stycket. Det gäller dock bara för koncernens andel av tilläggsskattebeloppet.

18 b §

Tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska anses vara noll för den stat där moderföretaget hör hemma om den staten har ett parallellt system för minimibeskattning av inhemsk inkomst som är godkänt av OECD/G20 Inclusive Framework on BEPS.

1. Denna lag träder i kraft den 1 januari 2027.

2. Lagen tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2026.

3. Den rapporterande enheten får tillämpa samtliga eller vissa av bestämmelserna första gången för beskattningsår som börjar närmast efter den 31 december 2024 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2024. Bestämmelserna i 4 kap. 17 a–17 d §§ samt 8 kap. 18 a och 18 b §§ får dock tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2025 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2025.

3 Ärendet och dess beredning

Den 1 januari 2024 trädde lagen (2023:875) om tilläggsskatt i kraft. Genom lagen genomfördes rådets direktiv (EU) 2022/2523 av den 14 december 2022 om säkerställande av en global minimiskattenivå för multinationella koncerner och storskaliga nationella koncerner i unionen, kallat minimibeskattningsdirektivet, i svensk rätt. Syftet med minimibeskattningsdirektivet är att genomföra de modellregler om en global minimibeskattning (Global Anti-Base Erosion Model Rules, hädanefter kallade modellreglerna) som arbetats fram inom ramen för OECD/G20:s Inclusive Framework on Base Erosion and Profit Shifting (BEPS), det inkluderande ramverket, hädanefter kallat IF. Sedan modellreglerna antogs år 2021 har arbetet inom IF fortsatt och pågår fortfarande.

Administrativa riktlinjer har antagits av IF den 24 maj 2024, 13 januari 2025, 5 januari 2026 och 11 maj 2026. Riktlinjerna finns i *bilaga 1–4*. De administrativa riktlinjerna medför att lagen om tilläggsskatt behöver ändras och kompletteras i vissa delar. Inom Finansdepartementet har det därför tagits fram en promemoria, Nya förenklingsregler och andra kompletteringar i lagen om tilläggsskatt.

En sammanfattning av promemorian finns i *bilaga 5*. Promemorians lagförslag finns i *bilaga 6*.

Promemorian har remissbehandlats. En förteckning över remissinstanserna finns i *bilaga 7*. Remissvaren finns tillgängliga på regeringens webbplats (regeringen.se) och i Finansdepartementet (Fi2026/00780).

I denna lagrådsremiss behandlas promemorians lagförslag.

4 Bakgrund

Den 14 december 2022 antogs minimibeskattningsdirektivet. Syftet med direktivet är att genomföra modellreglerna om global minimibeskattning som antogs av IF, den 14 december 2021. I svensk rätt har reglerna implementerats genom lagen (2023:875) om tilläggsskatt som trädde i kraft den 1 januari 2024.

Syftet med modellreglerna är att säkerställa att stora multinationella koncerners vinster beskattas med en effektiv skattesats om minst 15 procent beräknat på ett underlag som utgår från koncernredovisningen. Modellreglerna utgör ett koordinerat system för beskattning av lågbeskattade vinster genom att tilläggsskatt tas ut på sådana vinster av koncernenheter som hör hemma i en annan stat. Reglerna ska genomföras i form av ett gemensamt tillvägagångssätt. Det innebär att de stater som enats om reglerna inte är förbundna att införa dem i nationell rätt, men om de gör det ska reglerna införas och administreras i enlighet med modellreglerna och tillhörande kommentar med förklaringar och exempel (Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules [Pillar Two], hädanefter kallad kommentaren till modellreglerna), som godkänts av IF.

Kommentaren ändras genom s.k. administrativa riktlinjer, som syftar till att klargöra tolkning och tillämpning av reglerna. Administrativa riktlinjer som antogs av IF den 24 maj 2024 och publicerades i juni 2024 har därefter, förutom på en punkt, införts i lagen om tilläggsskatt genom propositionen Ytterligare kompletteringar till bestämmelserna om tilläggsskatt för företag i stora koncerner (prop. 2025/26:22) till den del det har krävts en lagändring. Ytterligare administrativa riktlinjer har därefter antagits av IF den 13 januari 2025. Vidare har IF den 5 januari 2026 antagit administrativa riktlinjer i form av ett paket med fem förenklingsregler (sida-vid-sida-paketet), varav fyra omfattas av denna lagrådsremiss. Den femte förenklingsregeln kommer att behandlas i ett annat lagstiftningsärende. Den 11 maj 2026 antogs ytterligare administrativa riktlinjer, vilka behandlas i denna lagrådsremiss. Den 28 maj 2026 publicerades en ny konsoliderad version av kommentaren till modellreglerna, som inkluderar administrativa riktlinjer och förenklingsregler fram t.o.m. maj 2026.

Eftersom arbetet med modellreglerna om global minimibeskattning ännu inte är avslutat kommer det sannolikt att antas ytterligare administrativa riktlinjer framöver.

5 Det behöver införas ytterligare bestämmelser om tilläggsskatt för företag i stora koncerner

Regeringens bedömning

Lagen om tilläggsskatt behöver kompletteras med ytterligare bestämmelser med anledning av de administrativa riktlinjerna från juni 2024, januari 2025, januari och maj 2026 inom ramen för det inkluderande ramverket.

Den föreslagna utformningen av dessa ytterligare bestämmelser i denna lagrådsremiss bedöms vara förenlig med minimibeskattningsdirektivet och fördraget om Europeiska unionens funktionssätt.

Promemorians bedömning

Bedömningen i promemorian överensstämmer med regeringens.

Remissinstanserna

Juridiska fakultetsnämnden vid Stockholms universitet anför att minimibeskattningsdirektivet är statiskt, medan OECD:s arbete är dynamiskt, och det framstår som svårt att implementera sida-vid-sida-paketet (Side-by-Side Package) på ett direktivkonformt sätt, eftersom det är förtydliganden utan ändrade materiella regler. Det är tveksamt om det kan sägas utgöra ett ”kvalificerande internationellt avtal om safe harbour” enligt artikel 32 i direktivet. *FAR* och *Skatteverket* påtalar behovet av en tvistlösningsmekanism.

Skälen för regeringens bedömning

I minimibeskattningsdirektivet anges att genomförandet av modellreglerna inom unionen bör ligga så nära den globala överenskommelsen som möjligt (skäl 4 och 6 i direktivet). Detta ska säkerställa att de regler som medlemsstaterna genomför i enlighet med direktivet är kvalificerade i den mening som avses i modellreglerna och att det blir en konsekvent tillämpning av reglerna i medlemsstaterna. I direktivet anges vidare att modellreglerna, förklaringarna och exemplen i kommentaren till modellreglerna som godkänts av IF samt implementeringspaketet, inbegripet dess safe harbour-dokument, utgör en källa till illustration eller tolkning i den mån dessa källor är förenliga med direktivet och unionsrätten (skäl 24 i direktivet). Vidare har kommissionen vid Ekofin-rådets möte den 9 november 2023 uttalat att den anser att 2022 års dokument om safe harbour-regler och de administrativa riktlinjerna från februari och juli 2023 är förenliga med direktivet. Därefter har kommissionen den 30 september 2025 förklarat detsamma avseende de administrativa riktlinjerna från juni 2024 och januari 2025. I ett tillkännagivande den 12 januari 2026 erkänner kommissionen det avtal om safe harbour, dvs. de administrativa riktlinjerna, som IF antog i januari 2026 och bekräftar dess tillämpning inom ramen för direktivet, dvs. att riktlinjerna utgör ett sådant kvalificerat internationellt avtal om safe harbour som avses i artikel 32 i direktivet.

Av de administrativa riktlinjerna från december 2023 (punkt 4) framgår bl.a. följande. Utifrån artikel 8.3 i modellreglerna har IF kommit överens om att en stat som implementerar reglerna ska ”tillämpa modellreglerna i enlighet med antagna administrativa riktlinjer med förbehåll för de krav som följer av nationell rätt”. Uttrycket antagna administrativa riktlinjer definieras i artikel 10.1 i modellreglerna som riktlinjer som har utfärdats av IF om ”tolkningen eller administrationen av modellreglerna”. Administrativa riktlinjer förväntas spela en viktig roll när det gäller förutsebarheten genom att klargöra tolkningen av modellreglerna och genom att ge skattemyndigheter vägledning när det gäller hur reglerna ska tillämpas. Eftersom de administrativa riktlinjerna också kommer att återspegla IF:s gemensamma syn på hur modellreglerna ska tolkas och tillämpas kommer de att spela en viktig roll för att säkerställa en konsekvent tillämpning av modellreglerna och för att skapa en jämn spelplan för multinationella koncerner. Vidare framgår bl.a. att definitionen av ”antagna administrativa riktlinjer” enligt artikel 10.1 i modellreglerna förutser att IF kan anta riktlinjer både vad gäller tolkningen och tillämpningen av reglerna (punkt 5). Riktlinjerna kompletterar eller ersätter punkter i kommentaren eller förklarar hur ordalydelsen ska tillämpas på vissa förhållanden.

Arbetet med kommentarerna till OECD:s modellregler pågår och är ännu inte avslutat. De administrativa riktlinjer som antogs av IF den 24 maj 2024 och publicerades i juni 2024 infördes i de delar det krävdes lagändringar i allt väsentligt i lagen om tilläggsskatt den 1 januari 2026 med anledning av förslagen i propositionen Ytterligare kompletteringar till bestämmelserna om tilläggsskatt för företag i stora koncerner (prop. 2025/26:22), se dock avsnitt 10.3 om punkt 5 i kommentaren till artikel 9.1.1 i modellreglerna. Administrativa riktlinjer antogs vidare av IF den 13 januari 2025, 5 januari 2026 och 11 maj 2026. Av propositionen Tilläggsskatt för företag i stora koncerner framgår att vid tillämpningen av bestämmelserna i lagen om tilläggsskatt bör modellreglerna, kommentaren och de administrativa riktlinjerna utgöra en viktig källa för tolkning, i den mån dessa är förenliga med direktivet och unionsrätten (prop. 2023/24:32 s. 128 och 129). Även de kompletterande bestämmelser som föreslås i denna lagrådsremiss bör tolkas mot bakgrund av modellreglerna, kommentaren och de administrativa riktlinjerna. Det är därför viktigt att utforma förslagen så att de ligger så nära de administrativa riktlinjerna och kommentaren som möjligt. Lagen om tilläggsskatt behöver därför kompletteras vad avser riktlinjerna från juni 2024 i den del de inte redan införts. Vidare behöver lagen kompletteras utifrån de administrativa riktlinjerna från januari 2025, januari 2026 och maj 2026. Det krävs däremot inte ytterligare lagstiftning i den mån det som anges i administrativa riktlinjer ryms inom redan införda bestämmelser och det är fråga om förtydliganden och exempel.

Juridiska fakultetsnämnden vid Stockholms universitet anser att det är tveksamt om sida-vid-sida-paketet kan sägas utgöra ett ”kvalificerande internationellt avtal om safe harbour” enligt artikel 32 i direktivet och ifrågasätter, med hänsyn till den likvärdighetsbedömning som ska göras enligt artikel 52, att det är möjligt att avvika så pass mycket från modellreglerna som det görs i sida-vid-sida-paketet. Regeringen konstaterar att kommissionen i ett tillkännagivande den 12 januari 2026 erkänner det avtal om safe harbour, dvs. de administrativa riktlinjerna som IF antog i januari 2026, och bekräftar dess tillämpning inom ramen för direktivet. I direktivet finns safe harbour-regeln i artikel 32. Regeringen anser att det inte finns anledning att ifrågasätta kommissionens bedömning. Vad avser artikel 52 så framgår av den artikeln hur bedömningen av om nationella regler i en stat är likvärdiga med en huvudregel om tilläggsskatt ska göras (jfr 2 kap. 4 § lagen om tilläggsskatt och definitionen av Qualified IIR i artikel 10.1 i modellreglerna). Artikel 52 innebär inte en begränsning vad avser undantag som kan göras i en safe harbour i enlighet med artikel 32.

Skatteverket och *FAR* anför att det fortfarande saknas en ändamålsenlig mekanism för att lösa tvister. Regeringen konstaterar att arbetet med regler om tvistelösning inte är slutfört i IF och att sådana regler inte omfattas av detta lagstiftningsärende.

6 De tillfälliga förenklingsreglerna

6.1 Förlängning av tillämpningen av den tillfälliga förenklingsregeln

Regeringens förslag

Tillämpningen av den tillfälliga förenklingsregeln ska förlängas med ett år och ska omfatta räkenskapsår som börjar före den 1 januari 2028. Räkenskapsår som avslutas efter den 30 juni 2029 ska inte omfattas.

Procentsatsen enligt den tillfälliga förenklingsregeln för beräkning av effektiv skattesats ska vara 17 procent för räkenskapsår som börjar 2027.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

FAR, som yttrar sig särskilt i denna del, tillstyrker förslaget.

Skälen för regeringens förslag

Av 8 kap. 2 § lagen om tilläggsskatt framgår att den s.k. tillfälliga förenklingsregeln gäller för koncernenheter i en stat för tid som motsvarar de räkenskapsår som gäller för enheternas moderföretag och som börjar närmast efter den 31 december 2023, men före den 1 januari 2027. Vidare framgår att förenklingsregeln inte gäller för räkenskapsår som avslutas efter den 30 juni 2028.

Genom avsnitt 3 i de administrativa riktlinjerna från januari 2026, vilket finns infört i avsnitt 1 i annex A i kommentaren till modellreglerna, förlängs den tillfälliga förenklingsregeln med ett år. Den ska således även gälla räkenskapsår som börjar före den 1 januari 2028 och slutar senast den 30 juni 2029. Den procentsats som utgör minimiskattesats vid tillämpningen av det s.k. ETR-testet i 8 kap. 4 § ska vara 17 procent för räkenskapsår som börjar 2027. Det föreslås därför att bestämmelser med denna innebörd förs in i den tillfälliga förenklingsregeln.

Lagförslag

Förslaget medför ändringar i 8 kap. 2 och 4 §§ lagen om tilläggsskatt.

6.2 Förlängning av övergångsperioden i den tillfälliga förenklingsregeln för kompletteringsregeln för tilläggsskatt

Regeringens förslag

Den tillfälliga förenklingsregeln beträffande kompletteringsregeln för tilläggsskatt ska förlängas så att även räkenskapsår som enligt tillämplig redovisningsstandard är 52 eller 53 veckor är en sådan övergångsperiod som anges i bestämmelsen. Det ska gälla, om räkenskapsåret börjar den 31 december 2025 eller tidigare och slutar före den 4 januari 2027.

Promemorians förslag och bedömning

I promemorian lämnas inget förslag i den här delen. Där görs dock bedömningen att förslaget i promemorian kommer att behöva ändras om IF, till följd av att ett beskattningsår kan vara 52 eller 53 veckor i stället för 365 dagar, skulle komma att besluta att komplettera riktlinjerna för att även ett sådant räkenskapsår ska omfattas.

Remissinstanserna

Ingen remissinstans kommenterar frågan särskilt.

Skälen för regeringens förslag

Gällande rätt

Enligt 8 kap 14 § lagen om tilläggsskatt ska tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt anses vara noll för den stat där ett moderföretag hör hemma om bolagsskattesatsen i den staten uppgår till minst 20 procent för varje räkenskapsår under en övergångsperiod. Med övergångsperioden avses de räkenskapsår som inte omfattar mer än tolv månader och som börjar den 31 december 2025 eller tidigare och slutar före den 31 december 2026.

Räkenskapsår som är 52 eller 53 veckor ska omfattas av förenklingsregeln

IF antog den 11 maj 2026 administrativa riktlinjer avseende koncerners räkenskapsår som enligt tillämplig redovisningsstandard uppgår till 52–53 veckor. Riktlinjerna, som finns i avsnitt 4.1 i annex A i kommentaren till modellreglerna, innebär att övergångsperioden i den tillfälliga förenklingsregeln för kompletteringsregeln för tilläggsskatt ska vara de räkenskapsår som inte omfattar mer än tolv månader och som börjar den 31 december 2025 eller tidigare och slutar senast den 3 januari 2027.Regeringen föreslår därför att bestämmelsen i 8 kap. 14 § kompletteras så att även räkenskapsår som enligt tillämplig redovisningsstandard är 52 eller 53 veckor och som börjar den 31 december 2025 eller tidigare och slutar före den 4 januari 2027 är en sådan övergångsperiod som anges i bestämmelsen. Den föreslagna bestämmelsen föreslås ges en något annan utformning än i riktlinjen. I riktlinjen finns en begränsning till att räkenskapsåret inte får vara längre än tolv månader. Ett räkenskapsår som omfattar 53 veckor är emellertid något längre än tolv månader. Eftersom det är helt klart att även sådana räkenskapsår ska omfattas förs begränsningen till tolv månader inte in i lagen. Förslaget innebär att lagen ska omfatta ett räkenskapsår som börjar den 31 december 2025 eller tidigare och slutar före den 4 januari 2027.

Lagförslag

Förslaget medför ändring i 8 kap. 14 § lagen om tilläggsskatt.

7 Förenklingsregler när moderföretag hör hemma i en stat med ett godkänt parallellt system för minimibeskattning

7.1 Förenklingsregel avseende huvud- och kompletteringsregeln för tilläggsskatt (Side-by-Side Safe Harbour)

Regeringens förslag

Tilläggsskattebeloppet enligt huvud- och kompletteringsregeln för tilläggsskatt ska anses vara noll för koncernenheter om moderföretaget hör hemma i en stat som är godkänd av IF som en stat med ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst. En koncerns andel av ett tilläggsskattebelopp som avser samriskföretag och dotterföretag till samriskföretag ska också anses vara noll om företaget tillhör en koncern vars moderföretag uppfyller dessa villkor.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

FAR tillstyrker förslaget. *Juridiska fakultetsnämnden vid Uppsala universitet* anför att innebörden av den föreslagna bestämmelsen i 8 kap. 18 a §, till följd av hänvisningen till ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst som är godkänt av IF, kommer att påverkas av framtida beslut i IF och att det vore önskvärt att regeringen förklarar hur överlämnandet av beslutandemakt till IF avseende godkända utländska skattesystem, förhåller sig till riksdagens exklusiva normgivningskompetens inom skatteområdet enligt 8 kap. 2 § första stycket 2 regeringsformen. *Skatteverket* efterfrågar klargöranden avseende vid vilken tidpunkt samriskföretag och dotterföretag till samriskföretag ska tillhöra en koncern och hur den bedömningen ska göras samt anser att det behöver klargöras hur ägarförändringar under året ska behandlas. Skatteverket framhåller också frågan om hur en koncerns andel av tilläggsskattebeloppet för samriskföretag och dotterföretag till samriskföretag ska beräknas.

Skälen för regeringens förslag

Enligt avsnitt 5.1 i de administrativa riktlinjerna från januari 2026, vilket finns infört i avsnitt 5 i annex A i kommentaren till modellreglerna, får koncerner vars moderföretag hör hemma i en stat med ett godkänt system (Qualified Side-by-Side Regime) välja att tillämpa en förenklingsregel som undantar koncernen samt dess samriskföretag och dotterföretag till samriskföretag, från tillämpning av huvud- och kompletteringsregeln för tilläggsskatt (Side-by-Side Safe Harbour). Regeln påverkar inte möjligheten att ta ut nationell tilläggsskatt i en stat. Valet kan göras tidigast för beskattningsår som börjar den 1 januari 2026. Förenklingsregeln är utformad som ett val som görs av den rapporterande enheten för ett beskattningsår (8 kap. 19 § lagen om tilläggsskatt). Om valet görs ska tilläggsskatten enligt huvud- och kompletteringsregeln som avser koncernenheter i en stat med ett godkänt system sättas ned till noll. Detta gäller även samriskföretag och dotterföretag till samriskföretag.

Uttrycket Qualified Side-by-Side Regime är särskilt definierat och innebär att den aktuella staten ska ha vad som kallas ett godkänt nationellt skattesystem (eligible domestic tax system) och ett godkänt internationellt skattesystem (eligible worldwide tax system), dvs. skatteregler för beskattning av inhemsk och utländsk inkomst som uppfyller särskilt uppställda kriterier. Nämnda regler ska vara införda före den 1 januari 2026, eller vid ett senare datum enligt en särskilt fastställd procedur. Vidare ska den aktuella staten ge avräkning för utländsk nationell tilläggsskatt på samma sätt som vid avräkning av utländsk skatt.

Ett godkänt nationellt skattesystem ska ha en bolagsskattesats som är minst 20 procent efter att allmänt tillämpliga justeringar och lokala skatter beaktats. Vidare ska det finnas en kvalificerad nationell tilläggsskatt (Qualified Domestic Minimum Top Up Tax; QDMTT) eller en alternativ minimiskatt (corporate alternative minimum tax) med justeringar som inte motverkar syftet med minimibeskattning, med en nominell skattesats på minst 15 procent på en betydande del av multinationella koncerners inhemska verksamhet. Systemet ska vidare inte innebära risk för att multinationella koncerners effektiva skattesats understiger 15 procent.

De krav som uppställs i fråga om ett godkänt internationellt skattesystem innebär att systemet ska vara heltäckande. Det betyder att det ska gälla utländsk inkomst för bolag med hemvist i den aktuella staten och tas ut på en bred skattebas som omfattar aktiv och passiv inkomst – oavsett om inkomsten delas ut eller inte – hos såväl fast driftställe som dotterbolag. Eventuell skattefrihet ska vara begränsad och inte strida mot syftet med minimibeskattning. Det ska vidare finnas fungerande unilaterala mekanismer mot skattebaserodering och vinstförflyttning och inte finnas risk för att multinationella koncerners effektiva skattesats understiger 15 procent.

När IF godkänt att en stats skatteregler motsvarar definitionen av Qualified Side-by-Side Regime förs staten in i det register där det framgår vilka staters regler som är godkända av IF (annex B i kommentaren till modellreglerna). Den 5 januari 2026 uppdaterades annex B med ett nytt avsnitt för Qualified SbS Regimes i vilket USA och dess regler (Internal Revenue Code of 1986 (Pub. L. 99–514,100 Stat. 2085, enacted October 22, 1986) anges, tillsammans med informationen att godkännandet gäller för beskattningsår som börjar den 1 januari 2026 eller senare.

Tilläggsskattebeloppet enligt huvud- och kompletteringsregeln för tilläggsskatt ska vara noll för koncernenheter om moderföretaget hör hemma i stat som är godkänd av IF som en stat med ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst. En koncerns andel av ett tilläggsskattebelopp som avser samriskföretag och dotterföretag till samriskföretag ska också anses vara noll om företaget tillhör en koncern vars moderföretag uppfyller dessa villkor.

Juridiska fakultetsnämnden vid Uppsala universitet ifrågasätter om den föreslagna bestämmelsen i 8 kap. 18 a § lagen om tilläggsskatt är förenlig med 8 kap. 2 § regeringsformen till följd av hänvisningen till ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst som är godkänt av IF och som kommer att påverkas av framtida beslut i IF. Regeringen konstaterar att det redan i dag finns bestämmelser i lagen om tilläggsskatt som har dylika hänvisningar t.ex. 2 kap 5 a § och 8 kap. 18 §. Lagrådet har i sitt yttrande den 10 september 2024 avseende lagrådsremissen Kompletteringar till bestämmelserna om tilläggsskatt för företag i stora koncerner konstaterat, vad avser 2 kap. 5 a § lagen om tilläggsskatt, att för att säkerställa en korrekt och enhetlig bedömning av staters regelverk kommer IF kontinuerligt att göra en bedömning av om en stats regler uppfyller kraven och därmed kan anses vara kvalificerade. Resultatet av dessa granskningar kommer löpande att offentliggöras. Lagrådet anför vidare att avsikten med paragrafen är att den bedömning som IF gör ska vara bindande vid tillämpningen av lagen om tilläggsskatt och att det får godtas att det på detta sätt överlämnas till ett internationellt organ att avgöra huruvida ett nationellt regelverk är kvalificerat med följd att uttagen skatt ska betraktas som en tilläggsskatt. Vad avser 8 kap 18 § (då 8 kap. 19 §) lagen om tilläggsskatt hänvisade Lagrådet till sin bedömning av 2 kap. 5 a § samma lag. Regeringen konstaterar att Lagrådet funnit att det får godtas att det, på det sätt som görs i 2 kap. 5 a och 8 kap 18 §§ lagen om tilläggsskatt, överlämnas till ett internationellt organ att avgöra om ett nationellt regelverk uppfyller ställda krav och därmed kan anses vara kvalificerat. Regeringen anser därför att föreslagna regleringen i 8 kap. 18 a § lagen om tilläggsskatt får anses vara förenlig med 8 kap. 2 § regeringsformen.

Skatteverket efterfrågar förtydliganden avseende om prövningen av om samriskföretag och dotterföretag till ett samriskföretag tillhör en koncern ska göras vid en viss tidpunkt i fall av ägarförändringar och avseende hur tilläggsskattebelopp ska beräknas i sådana fall. Regeringen anser att detta är frågor som får avgöras i rättstillämpningen då det för närvarande saknas vägledning från IF vad avser dessa frågor.

Mot bakgrund av ovanstående föreslås att det i lagen om tilläggsskatt införs en permanent förenklingsregel för huvud- och kompletteringsregeln för tilläggsskatt som gäller om ett moderföretag hör hemma i stat som är godkänd av IF som en stat med ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst (Qualified Side-by-Side Regime). Förenklingsregeln innebär att tilläggsskattebeloppet enligt huvud- och kompletteringsregeln ska sättas ned till noll.

Lagförslag

Förslaget medför ändring i 8 kap. 1 § och införandet av 8 kap. 18 a § lagen om tilläggsskatt.

7.2 Förenklingsregel avseende kompletteringsregeln för tilläggsskatt (Ultimate Parent Entity Safe Harbour)

Regeringens förslag

Tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska anses vara noll för enheter och koncernenheter i den stat där ett moderföretag hör hemma, om IF har godkänt den staten som en stat med ett parallellt system för minimibeskattning av inhemsk inkomst.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

Juridiska fakultetsnämnden vid Uppsala universitet anför att innebörden av den föreslagna 8 kap. 18 b § lagen om tilläggsskatt, till följd av hänvisningen till ett parallellt system för minimibeskattning av inhemsk inkomst som är godkänt av IF, kommer att påverkas av framtida beslut i IF och att det vore önskvärt att regeringen i det fortsatta lagstiftningsärendet närmare förklarar hur överlämnandet av beslutandemakt till IF avseende godkända utländska skattesystem, förhåller sig till riksdagens exklusiva normgivningskompetens inom skatteområdet enligt 8 kap. 2 § första stycket 2 regeringsformen. *Skatteverket* efterfrågar klargöranden avseende hur reglerna i 1 kap. om var koncernenheter och enheter hör hemma ska tillämpas på samriskföretag samt anser att det i fråga om samriskföretag och dotterföretag till samriskföretag bör klargöras att moderföretag i bestämmelsen är moderföretaget i den koncern som ett samriskföretag eller dotterföretag till ett samriskföretag tillhör. Skatteverket tar också upp frågan om hur en koncerns andel av tilläggsskattebeloppet för samriskföretag och dotterföretag till samriskföretag ska beräknas.

Skälen för regeringens förslag

Gällande rätt

I 8 kap. 14 § lagen om tilläggsskatt finns en tillfällig förenklingsregel för kompletteringsregeln för tilläggsskatt som innebär att tilläggsskattebeloppet enligt kompletteringsregeln för koncernenheterna i en stat ska anses vara noll om moderföretaget hör hemma i den staten och bolagsskattesatsen där är minst 20 procent. Bestämmelsen gäller för varje räkenskapsår under en övergångsperiod som utgörs av de räkenskapsår som inte löper längre än tolv månader, som börjar senast den 31 december 2025 och slutar före den 31 december 2026. Den tillfälliga regeln är därmed inte tillämplig för beskattningsår som börjar den 1 januari 2026 eller senare. I avsnitt 6.2 föreslås att bestämmelsen ska ändras så att den i vissa fall är tillämplig även på räkenskapsår som slutar före den 4 januari 2027.

En förenklingsregel för kompletteringsregeln för tilläggsskatt införs

Enligt avsnitt 5.2 i de administrativa riktlinjerna från januari 2026 får koncerner vars moderföretag hör hemma i en stat med ett godkänt s.k. UPE- system (Qualified UPE [Ultimate Parent Entity] System) välja att tillämpa en förenklingsregel som innebär att kompletteringsregeln för tilläggsskatt inte ska tillämpas vad avser koncernenheter i den stat där moderföretaget hör hemma (UPE Safe Harbour) för beskattningsår som börjar den 1 januari 2026 eller senare. Riktlinjerna finns införda i avsnitt 5 i annex A i kommentaren till modellreglerna.

En rapporterande enhet får välja att tillämpa förenklingsregeln under ett räkenskapsår. (8 kap. 19 § lagen om tilläggsskatt). Valet kan bara göras om moderföretaget hör hemma i en stat med godkänt UPE-system. Om valet görs ska tilläggsskatt enligt kompletteringsregeln för tilläggsskatt som avser koncernenheter i den stat där moderföretaget hör hemma sättas ned till noll. Även tilläggsskatt enligt kompletteringsregeln för tilläggsskatt som avser koncernens samriskföretag och dotterföretag till samriskföretag i den staten ska i sådant fall sättas ned till noll, vilket följer av att förenklingsregeln utformats så att nedsättning ska ske om koncernenheter i den staten kvalificerar sig enligt regeln (punkt 32, underpunkt 1 i avsnitt 5 i annex A i kommentaren till modellreglerna).

Uttrycket Qualified UPE Regime är särskilt definierat och innebär att det ska finnas ett godkänt nationellt skattesystem med samma innehåll som enligt kraven på Qualified Side-by-Side Regime. Endast system som har antagits och trätt i kraft senast den 1 januari 2026 kan godkännas.

När IF godkänt att en stats skatteregler motsvarar definitionen av Qualified UPE Regime anges staten i det register där det framgår vilka staters regler som är godkända av IF (annex B i kommentaren till modellreglerna). Det är ännu inte någon stats regler som är godkända av IF i detta avseende.

Förenklingsregeln påverkar inte tillämpningen av kompletteringsregeln när moderföretaget hör hemma i en stat vars regler inte godkänts av IF. Tilläggsskatt som avser lågbeskattade koncernenheter som inte hör hemma i en godkänd stat påverkas inte heller.

Tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska vara noll för den stat där ett moderföretag hör hemma om den staten är godkänd av IF som en stat med ett parallellt system för minimibeskattning av inhemsk inkomst.

Juridiska fakultetsnämnden vid Uppsala universitet ifrågasätter om den föreslagna bestämmelsen i 8 kap. 18 b § lagen om tilläggsskatt är förenlig med 8 kap. 2 § regeringsformen till följd av hänvisningen till ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst som är godkänt av IF och som kommer att påverkas av framtida beslut i IF. Regeringen konstaterar att Lagrådet funnit att det får godtas att det, på det sätt som görs i 2 kap. 5 a § och 8 kap. 18 § lagen om tilläggsskatt, överlämnas till ett internationellt organ att avgöra om ett nationellt regelverk uppfyller ställda krav och därmed kan anses vara kvalificerat. Regeringen anser därför att föreslagna regleringen i 8 kap. 18 b § lagen om tilläggsskatt får anses vara förenlig med 8 kap. 2 § regeringsformen, se avsnitt 7.1.

Skatteverket efterfrågar förklaringar avseende hur reglerna om var koncernenheter och enheter hör hemma i 1 kap. lagen om tilläggsskatt ska tillämpas på samriskföretag med hänsyn till att dessa är enheter men inte koncernenheter. Regeringen konstaterar att bestämmelserna i 1 kap. 11–13 §§ lagen om tilläggsskatt gäller för enheter genom hänvisningen i 1 kap. 11 § tredje stycket till dessa bestämmelser samt att även 1 kap. 16 § lagen om tilläggsskatt gäller för enheter.

Skatteverket efterfrågar även förtydliganden avseende om prövningen av om samriskföretag och dotterföretag till ett samriskföretag tillhör en koncern ska göras vid en viss tidpunkt i fall av ägarförändringar och avseende hur tilläggsskattebelopp ska beräknas i sådana fall. Regeringen anser att detta är frågor som får avgöras i rättstillämpningen då det för närvarande saknas vägledning från IF vad avser dessa frågor.

Regeringen föreslår att det i lagen om tilläggsskatt införs en permanent förenklingsregel för kompletteringsregeln för tilläggsskatt som gäller om moderföretaget hör hemma i stat som är godkänd av IF som en stat med ett parallellt system för minimibeskattning av inhemsk inkomst. Förenklingsregeln innebär att tilläggsskattebeloppet ska sättas ned till noll för en sådan stat.

Lagförslag

Förslaget medför ändring i 8 kap. 1 § och införandet av 8 kap. 18 b § lagen om tilläggsskatt.

8 Kvalificerade skatteincitament (Substance-based Tax Incentive Safe Harbour)

8.1 Gällande rätt i fråga om skatteincitament i lagen om tilläggsskatt

Skattereduktioner

I många stater finns olika typer av skattereduktioner. Hur dessa behandlas kan ha stor betydelse för utfallet beträffande skyldigheten att betala tilläggsskatt. I lagen om tilläggsskatt används begreppet skattetillgodohavande för att beskriva olika skattereduktioner beträffande medräknade skatter. I lagen definieras fyra olika typer av skattetillgodohavanden: kvalificerade skattetillgodohavanden, marknadsmässigt överlåtbara skattetillgodohavanden, icke marknadsmässigt överlåtbara skattetillgodohavanden och övriga skattetillgodohavanden. Översiktligt gäller följande.

Kvalificerade skattetillgodohavanden (qualified refundable tax credit) är skattetillgodohavanden som kan betalas ut kontant eller på något annat motsvarande sätt om skattekostnaden är mindre än det skattetillgodohavande som beviljats. För att det ska vara fråga om ett kvalificerat till godohavande måste återbetalningen göras inom fyra år. Ekonomiskt sett är sådana skattetillgodohavanden i stort sett likvärdiga med direkta bidrag som en stat betalar ut till företag. På grund av detta ska sådana skattetillgodohavanden inte behandlas som en sänkt skattekostnad utan som en intäkt eller som en minskning av värdet på en tillgång som har förvärvats för tillgodohavandet.

Ett marknadsmässigt överlåtbart skattetillgodohavande (marketable transferable tax credit) har ekonomiskt sett stora likheter med de kvalificerade skattetillgodohavandena. Sådana tillgodohavanden berättigar dock inte till utbetalning av mellanskillnaden om skattekostnaden inte är tillräckligt stor för att absorbera hela skattesänkningen. Däremot kan innehavaren sälja tillgodohavandet till en annan skattskyldig som i sin tur kan få den skattesänkning som den ursprunglige innehavaren inte kunde utnyttja. För att ett skattetillgodohavande ska klassificeras som ett marknadsmässigt överlåtbart skattetillgodohavande ska vissa kriterier om överlåtbarhet och marknadsmässighet vara uppfyllda. Även sådana skattetillgodohavanden ska behandlas som en intäkt eller som en minskning av värdet på en tillgång för den ursprunglige innehavaren av tillgodohavandet. Lagen innehåller också regler om vad som gäller i samband med överlåtelser och för en ny innehavare av tillgodohavandet. En koncernenhet som förvärvar ett marknadsmässigt överlåtbart skattetillgodohavande och utnyttjar det för att minska sin skatt ska ta upp en intäkt som uppgår till skillnaden mellan skatteminskningen och anskaffningsvärdet av den del av tillgodohavandet som utnyttjas.

Ett icke marknadsmässigt överlåtbart skattetillgodohavande är ett tillgodohavande som den ursprunglige innehavaren kan överlåta men inte på sådana villkor att kriteriet om marknadsmässighet är uppfyllt. Om ett skattetillgodohavande innehas av en koncernenhet som har förvärvat det – och det inte är ett marknadsmässigt överlåtbart skattetillgodohavande – är det ett icke marknadsmässigt överlåtbart skattetillgodohavande. Skattetillgodohavanden som varken är kvalificerade skattetillgodohavanden, marknadsmässigt överlåtbara skattetillgodohavanden eller icke marknadsmässigt överlåtbara skattetillgodohavanden klassificeras som övriga skattetillgodohavanden. Icke marknadsmässigt överlåtbara skattetillgodohavanden respektive övriga skattetillgodohavanden ska inte tas upp som intäkt. Förenklat beskrivet ska de i stället behandlas som en sänkt skattekostnad.

I avsnitt 9 föreslås förtydliganden avseende dessa definitioner.

Förhöjt kostnadsavdrag (s.k. superavdrag)

Reglerna om tilläggsskatt bygger till mycket stor del på företagens redovisning. Detta gäller exempelvis hur avskrivningar hanteras. Redovisningsmässigt kan avskrivningsunderlag inte överstiga 100 procent av anskaffningsutgiften. Det förekommer emellertid att stater ger företag stöd i form av möjligheten att skattemässigt skriva av tillgångar med mer än 100 procent, s.k. superavdrag. Översiktligt får detta följande konsekvenser i systemet med tilläggsskatt.

Om koncernenheterna har en skattemässig vinst även efter superavdraget blir den enda påverkan att den effektiva skattesatsen sjunker. Om denna blir lägre än 15 procent måste tilläggsskatt betalas vilket innebär att värdet av superavdraget minskar i betydelse. Om superavdraget leder till en skattemässig förlust som inte motsvaras av en redovisningsmässig förlust kommer reglerna om tillkommande tilläggsskatt respektive överskjutande skattebelopp (4 kap. 18–19 a §§ lagen om tilläggsskatt) att bli tillämpliga. Tillkommande tilläggsskatt ska tas ut direkt. En koncern kan dock välja att i stället tillämpa reglerna om överskjutande skattebelopp. Då minskar den justerade skattekostnaden under kommande år (vilket i sin tur sänker den effektiva skattesatsen det året).

Den effekt som superavdrag respektive skattetillgodohavanden har för koncerners tilläggsskatt kan minska genom att den överskjutande vinsten minskas med ett substansbelopp enligt 5 kap. 2–11 §§ lagen om tilläggsskatt.

8.2 Nya regler om substansbaserade skatteincitament

Regeringens förslag

Det ska införas regler om kvalificerade skatteincitament i lagen om tilläggsskatt. Reglerna ska gälla för skatteincitament som är utgiftsbaserade eller produktionsbaserade. En koncern ska få välja att höja den justerade skattekostnaden med skatteeffekten av incitamentet, vilket får till följd att tilläggsskattebeloppet blir lägre. Möjligheten att på detta sätt välja en förmånlig behandling av kvalificerade skatteincitament begränsas av ett takbelopp. Det ska även införas en möjlighet att välja att behandla hela eller delar av ett kvalificerat skattetillgodohavande eller ett marknadsmässigt överlåtbart skattetillgodohavande som ett kvalificerat skatteincitament om skattetillgodohavandet i övrigt uppfyller villkoren för sådana incitament.

Promemorians förslag

Förslaget i promemorian överensstämmer i sak med regeringens. Promemorians förslag har dock en något annan redaktionell utformning.

Remissinstanserna

Skatteverket, FAR och *Näringslivets Skattedelegation* (till vars yttrande, *Fastighetsägarna, Finansbolagens Förening, Svensk Försäkring, Svensk Sjöfart* och *Svenskt Näringsliv* ansluter sig), nedan *NSD m.fl.* lämnar vissa tekniska synpunkter på lagförslaget och önskar även vissa förtydliganden.

Skälen för regeringens förslag

Reglerna om skattetillgodohavanden finns införda i ett antal artiklar i modellreglerna samt i kommentaren till dessa artiklar. Avsnitt 4 i de administrativa riktlinjerna från januari 2026 behandlar nya regler beträffande substansbaserade skatteincitament. Där har en annan regleringsteknik valts. I stället för att föra in i nya eller befintliga artiklar i modellreglerna eller i kommentaren till vissa artiklar har de nya reglerna utformats som en förenklingsregel (safe harbour). Riktlinjerna finns införda i avsnitt 2.3 i annex A i kommentaren till modellreglerna.

Vissa substansbaserade skatteincitament ska få öka den justerade skattekostnaden

Innebörden av den nya förenklingsregeln om substansbaserade skatteincitament är att det blir möjligt för en koncern att behandla vissa substansbaserade skatteincitament som ett tillägg till den justerade skattekostnaden för koncernenheterna i en stat. De incitament som omfattas kallas kvalificerade skatteincitament. Behandlingen begränsas av en takregel som baseras på koncernens lönekostnader eller materiella tillgångar i den aktuella staten. Därigenom ska det säkerställas att incitamentet baseras på substans i den staten. När regeln tillämpas kan koncernen sätta ner tilläggsskattebeloppet för staten till noll i den utsträckning tilläggsskatten motsvaras av skatteeffekten (se nedan) av ett kvalificerat skatteincitament. De nya reglerna ska gälla för räkenskapsår som börjar den 1 januari 2026 eller senare.

Vad som räknas som kvalificerade skatteincitament

Av punkt 3–18 i avsnitt 2.3 i annex A i kommentaren framgår vad som räknas som kvalificerade skatteincitament. För att det ska vara fråga om ett kvalificerat skatteincitament ska incitamentet minska sådana skatter som räknas med vid beräkningen av den justerade skattekostnaden enligt lagen om tilläggsskatt. Beräkningen av incitamentet ska grundas antingen på utgifter som koncernen har haft (utgiftsbaserade incitament) eller på mängden materiella tillgångar som koncernen har producerat i staten (produktionsbaserade incitament). Inkomstbaserade skatteincitament, dvs. sådana incitament som gör att vissa intäkter beskattas lägre än andra, såsom exempelvis s.k. patentboxar, omfattas inte.

Ett utgiftsbaserat incitament ska vara utformat så att en viss andel av de aktuella utgifterna kan omfattas av incitamentet. Det kan ges i olika form, exempelvis som en skattereduktion eller som ett superavdrag (dvs. ett avdrag med mer än 100 procent av utgiften). Den form som incitamentet har spelar ingen roll. Det som är viktigt är i stället att incitamentet baseras direkt på de utgifter som avses. För att det ska klassificeras som ett kvalificerat skatteincitament ska det inte vara fråga om enbart förskjutningar i tiden av ett avdrag. Snabbare avskrivningsplaner än vad som är ekonomiskt motiverat tas nämligen om hand i systemet med tilläggsskatt genom redovisning av uppskjuten skatt. Det får inte heller vara fråga om sådana stöd där skatteeffekten är större än utgiften. Det innebär att exempelvis ett incitament i form av en skattereduktion inte får vara större än 100 procent av utgiften för att det ska klassificeras som ett kvalificerat skatteincitament. Vid bedömningen av om skatteeffekten är större än utgiften ska även skatteeffekten av andra skatteincitament avseende samma utgift räknas med. Med ”skatteincitament” avses här incitament som minskar sådana skatter som räknas med vid beräkningen av den justerade skattekostnaden enligt lagen om tilläggsskatt.

Ett produktionsbaserat incitament är ett incitament som baseras på producerad volym av materiella tillgångar. Incitamentet måste baseras på den producerade volymen och inte på värdet av de producerade tillgångarna. Även produktion av el och exempelvis utvinning ur gruvor omfattas av begreppet.

Utgiftsbaserade incitament får bara avse utgifter som koncernen har haft och inte sådana som kommer att uppstå någon gång i framtiden. En koncern anses ha haft en utgift vid betalningen eller när utgiften tas med i redovisningen och används vid beräkning av det redovisade resultatet. Det är inte nödvändigt att en förvärvad tillgång har börjat skrivas av eller ens får skrivas av. Produktionsbaserade incitament måste baseras på tillgångar som har producerats vid tiden för beslutet att ge ett skatteincitament.

För att ett incitament ska vara ett kvalificerat skatteincitament måste det vara allmänt tillgängligt för företagen. Det går därför inte att rikta incitamentet särskilt till sådana företag som omfattas av systemet med tilläggsskatt eller till vissa enskilda företag.

Det kan noteras att det finns ett krav på att produktionsbaserade incitament bara får omfatta tillgångar som har tillverkats i staten. Något liknande krav finns däremot inte när det gäller utgiftsbaserade incitament. Sådana incitament kan därför omfatta även utgifter som har uppkommit utomlands.

Behandlingen av kvalificerade skatteincitament

Behandlingen av kvalificerade skatteincitament framgår av punkt 19–29 i avsnitt 2.3 i annex A i kommentaren. Förenklingsregeln för kvalificerade skatteincitament innebär att de sammanlagda justerade skattekostnaderna höjs med ett belopp, vilket får till följd att tilläggsskattebeloppet blir lägre. Höjningen uppgår till det lägsta av skatteeffekten av de kvalificerade skatteincitamenten och ett takbelopp (se nedan).

De kvalificerade skatteincitamenten ingår alltså inte i beräkningen av det justerade resultatet. Detta är en skillnad gentemot kvalificerade skattetillgodohavanden och marknadsmässigt överlåtbara skattetillgodohavanden, vilka behandlas som en intäkt eller som en minskning av värdet på tillgångar. Det innebär att kvalificerade skatteincitament har en förmånligare behandling än vad som gäller för sådana skattetillgodohavanden. Av detta skäl har det införts en rätt för koncerner som har sådana skattetillgodohavanden att i stället använda reglerna för kvalificerade skatteincitament. Ett sådant val gäller i ett år och behöver inte avse alla skattetillgodohavanden som koncernen har. Det kan till och med avse bara en viss del av ett skattetillgodohavande. Rätten att välja förenklingsregeln gäller bara sådana skattetillgodohavanden som också uppfyller definitionen av ett kvalificerat skatteincitament, vilket exempelvis innebär att det måste vara utgiftsbaserat eller produktionsbaserat. Den del av ett skattetillgodohavande som inte omfattas av ett val och därmed inte omfattas av förenklingsregeln ska behandlas enligt de vanliga reglerna för skattetillgodohavanden.

För att tillämpa regeln är det nödvändigt att bestämma skatteeffekten av ett kvalificerat skatteincitament. För incitament som utgörs av skattereduktioner uppgår beloppet till själva skattesänkningen. För incitament som utgörs av förhöjda avdrag eller undantag från inkomstbeskattning beräknas beloppet något förenklat till bolagsskattesatsen multiplicerad med det förhöjda avdraget eller inkomsten. Om ett incitament innebär att koncernen får göra ett extra avdrag med exempelvis

50 procent (dvs. ett totalt avdrag med 150 procent) uppgår skatteeffekten till 50 procent av utgiften multiplicerad med bolagsskattesatsen. Värdet beräknas för det år som avdraget yrkas. Om superavdraget medför en skattemässig förlust som inte motsvaras av en redovisningsmässig förlust ska normalt sett tillkommande eller överskjutande skattebelopp beräknas (se avsnitt 8.1). Detta kommer dock inte att gälla till den del ett kvalificerat skatteincitament utnyttjas. Den del av ett kvalificerat skatteincitament som utnyttjas höjer nämligen de sammanlagda justerade skattekostnaderna för koncernenheterna i en stat, vilket kommer att reducera tillkommande eller överskjutande skattebelopp i motsvarande mån.

Skatteverket, FAR och *NSD m.fl.* anser att den föreslagna lagtexten beträffande skatteeffekten av skattereduktioner är felaktig. Enligt den föreslagna lagtexten (4 kap. 17 c § 1 lagen om tilläggsskatt) är skatteeffekten ”den minskning av medräknade skatter som har redovisats för ett räkenskapsår på grund av ett utnyttjat skatteincitament i form av en skattereduktion”. Remissinstanserna invänder mot att bestämmelsen knyts till redovisningen av skatteminskningen i stället för till den skatteminskning som rent faktiskt har erhållits för räkenskapsåret, oavsett hur denna har redovisats (punkt 4 och 5 i box 2.3 i kommentaren). Regeringen delar remissinstansernas uppfattning och föreslår att lagtexten justeras så att detta framgår.

Skatteverket framför också att bestämmelsen i 4 kap. 17 c § 2 lagen om tilläggsskatt om skatteeffekten av superavdrag inte bara ska omfatta det belopp som överstiger 100 procent av en utgift multiplicerad med bolagsskattesatsen utan även skatteeffekten av en kostnad som annars inte hade varit avdragsgill enligt nationell skattelagstiftning. Regeringen delar Skatteverkets uppfattning och föreslår att lagtexten justeras så att detta framgår.

Slutligen anför *Skatteverket* att det måste klargöras att skatteeffekten av skattefria eller lågbeskattade inkomster bara avser inkomster som är kopplade till sådana utgifter som ger upphov till ett utgiftsbaserat skatteincitament (income attributable to eligible expenditure, punkt 5 iii i box 2.3). Regeringen delar Skatteverkets uppfattning att det är så de föreslagna bestämmelserna i 4 kap. 17 c § 3 och 4 lagen om tilläggsskatt ska förstås. Förslaget omfattar skatteeffekter av kvalificerade skatteincitament vilka definieras i 4 kap. 17 b § lagen om tilläggsskatt. För att det ska bli aktuellt att beräkna skatteeffekten av en skattefri eller lågbeskattad inkomst måste det alltså vara fråga om ett kvalificerat skatteincitament där inkomsten måste vara kopplad till en utgift som ger upphov till ett kvalificerat skatteincitament och inte vilken skattefri eller lågbeskattad inkomst som helst.

Takbelopp

Den möjlighet att få en förmånlig behandling av kvalificerade skatteincitament som beskrivits ovan begränsas av ett takbelopp (punkt 30–33 i avsnitt 2.3 i annex A i kommentaren). Syftet med takbeloppet är att säkerställa att sådana incitament som har en förmånlig behandling motsvaras av substans i staten. Substansen definieras utifrån samma parametrar som används för att beräkna det s.k. substansbeloppet enligt 5 kap. lagen om tilläggsskatt.

Takbeloppet kan beräknas enligt två alternativa regler, huvudregeln och alternativregeln. Huvudregeln består i sin tur av två alternativa regler. Huvudregeln baseras på olika kostnadsposter medan alternativregeln baseras på balansräkningsposter.

Enligt huvudregeln är takbeloppet 5,5 procent av det högsta av personalkostnaderna i staten och kostnaderna för avskrivning på materiella tillgångar i staten. Som materiella tillgångar räknas också sådana tillgångar som enligt 5 kap. 4 § lagen om tilläggsskatt ska behandlas som materiella tillgångar (naturresurser, leasetagares nyttjanderättigheter och licenser). Personalkostnaderna får inkludera sådana kostnader som har lagts till balansvärdet på tillgångar trots att sådana kostnader inte får ingå vid beräkningen av substansbeloppet enligt 5 kap. 3 § andra stycket 1 lagen om tilläggsskatt. Avskrivning på sådana tillgångar som avses i 5 kap. 4 a § lagen om tilläggsskatt (dvs. materiella anläggningstillgångar som innehas för försäljning, leasing eller investering eller som omfattas av undantaget för sjöfartsverksamhet) ingår inte i underlaget.

Enligt alternativregeln är takbeloppet i stället 1 procent av det redovisade värdet på materiella tillgångar i den aktuella staten. Mark och andra tillgångar som inte får skrivas av samt sådana tillgångar som avses i 5 kap. 4 a § lagen om tilläggsskatt ingår inte i underlaget. Om koncernen väljer att tillämpa denna regel så gäller detta val i fem år. Om valet inte återkallas efter fem år fortsätter det att gälla. Om valet återkallas någon gång efter femårsperioden och koncernen i stället tillämpar huvudregeln får avskrivningar på sådana tillgångar som har ingått i beräkningen enligt alternativregeln inte ingå i de avskrivningar som ligger till grund för beräkningen av takbeloppet.

Skatteverket efterfrågar en förklaring till hur det femåriga valet förhåller sig till det ettåriga val som en koncern kan göra när det gäller att tillämpa reglerna om kvalificerade skatteincitament i stället för reglerna om kvalificerade skattetillgodohavanden eller marknadsmässigt överlåtbara skattetillgodohavanden. Alternativregeln reglerar endast hur takbeloppet ska beräknas år för år. Om en koncern väljer att tillämpa alternativregeln måste den tillämpas i fem år. Detta innebär dock inte att även regeln om att behandla kvalificerade skattetillgodohavanden och marknadsmässigt överlåtbara skattetillgodohavanden som kvalificerade skatteincitament måste användas i fem år. För den regeln gäller att en koncern årligen kan bestämma att behandla eller inte behandla sådana skattetillgodohavanden som kvalificerade skatteincitament.

Den lagtekniska utformningen

IF har utformat de nya reglerna om substansbaserade skatteincitament som en förenklingsregel. Denna förenklingsregel skiljer sig dock åt från vad som gäller för övriga förenklingsregler. Övriga förenklingsregler innebär att tilläggsskattebeloppet för samtliga eller vissa koncernenheter i en stat i sin helhet ska anses vara noll. Den nu aktuella förenklingsregeln innebär att tilläggsskatten inte sätts ner till noll i sin helhet utan bara till den del den motsvaras av ett kvalificerat skatteincitament. Detta gör att de nya reglerna systematiskt inte passar in tillsammans med övriga förenklingsregler i 8 kap. lagen om tilläggsskatt.

Innebörden av de nya reglerna är att det blir möjligt för en koncern att behandla allmänt tillgängliga, utgifts- eller produktionsbaserade skatteincitament som ett tillägg till den justerade skattekostnaden för koncernenheterna i en stat. Även kvalificerade skattetillgodohavanden och marknadsmässigt överlåtbara skattetillgodohavanden kan behandlas på samma sätt om de uppfyller kraven på att vara allmänt tillgängliga och utgifts- eller produktionsbaserade. Om skattekostnaden höjs så minskar tilläggsskatten, dvs. sätts ner till noll, i motsvarande mån. Den avsedda effekten uppnås därför om reglerna formuleras som en möjlighet att välja att höja skattekostnaden. Systematiskt passar sådana regler bättre in i 4 kap. lagen om tilläggsskatt än i 8 kap.

Lagförslag

Förslaget medför ändringar i 2 kap. 1 § och 4 kap. 1 § och införandet av 4 kap. 17 a–17 d §§ lagen om tilläggsskatt.

9 Skattetillgodohavanden

Regeringens förslag

Det ska införas en definition av skattetillgodohavanden som innebär att med skattetillgodohavande avses ett tillgodohavande som ger innehavaren rätt att minska kostnaden för medräknade skatter i den stat som beviljar tillgodohavandet. Detta medför även följdändringar i definitionen av marknadsmässigt överlåtbart skattetillgodohavande och övrigt skattetillgodohavande.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

FAR tillstyrker förslaget. *Näringslivets Skattedelegation* (till vars yttrande *Fastighetsägarna, Finansbolagens Förening, Svensk Försäkring, Svensk Sjöfart* och *Svensk Näringsliv* ansluter sig), nedan *NSD m.fl.* anför att innebörden av uttrycket ”rätt att minska kostnaden för medräknade skatter” i den föreslagna definitionen av skattetillgodohavande är oklar. Det behöver klargöras att innebörden är en minskad skyldighet att betala medräknade skatter i jurisdiktionen.

Skälen för regeringens förslag

Gällande rätt

I 2 kap. 29–30 §§ lagen om tilläggsskatt används uttrycket skattetillgodohavande för att beskriva olika skattereduktioner. I lagen definieras fyra olika typer av skattetillgodohavanden: kvalificerade skattetillgodohavanden, marknadsmässigt överlåtbara skattetillgodohavanden, icke marknadsmässigt överlåtbara skattetillgodohavanden och övriga skattetillgodohavanden. I 2 kap. 29 § första stycket lagen om tilläggsskatt finns en definition av kvalificerat skattetillgodohavande som något förenklat innebär att med kvalificerat skattetillgodohavande avses

> ett anspråk på återbetalning (skattetillgodohavande) som är utformat på ett sådant sätt att det ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla betalningen enligt lagstiftningen i den stat som beviljar detta,

Uttrycket kvalificerat skattetillgodohavande motsvaras i modellreglerna av Qualified Refundable Tax Credit. Enligt artikel 10.1 avses

> a refundable tax credit designed in a way such that it must be paid as cash or available as cash equivalents within four years from when a Constituent Entity satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit.

Detta motsvarar lydelsen i lagen om tilläggsskatt med undantag för att den grundläggande förutsättningen att det ska vara en skattereduktion (tax credit) inte har tagits in i den svenska definitionen. Av lydelsen i 2 kap. 29 § andra stycket lagen om tilläggsskatt kan man förledas att tro att det är anspråket på återbetalning som är skattetillgodohavandet eftersom skattereduktion inte nämns. Av såväl förarbeten (exempelvis prop. 2024/25:7 s. 91) som modellreglerna med kommentarer är det helt klart att det som avses är skattereduktioner och dessutom sådana skattereduktioner som avser medräknade skatter. Bristen i lagtexten synes därför bero på ett förbiseende. Eftersom förarbeten och modellreglerna är helt klara är det inte troligt att bristen i lagtexten skulle medföra några praktiska problem vid tillämpningen av lagen men lagtexten bör ändå enligt regeringen justeras så att den faktiska innebörden av regeln tydligt framgår.

Uttrycket skattetillgodohavande definieras

Det införs en definition av uttrycket skattetillgodohavande. Ett skattetillgodohavande är ett tillgodohavande som ger innehavaren rätt att minska kostnaden avseende medräknade skatter i den stat som beviljar tillgodohavandet. Denna definition av skattetillgodohavande används sedan i en ny utformning av definitionen av begreppen kvalificerade skattetillgodohavanden, marknadsmässigt överlåtbara skattetillgodohavanden och övriga skattetillgodohavanden. Begreppet skattetillgodohavande används redan i definitionen av icke marknadsmässigt överlåtbara skattetillgodohavanden så den definitionen behöver inte ändras. När det gäller vad *NSD m.fl.* anför om uttrycket ”rätt att minska kostnaden för medräknade skatter” i den föreslagna definitionen, instämmer regeringen i bedömningen att bestämmelsen är oklar. Det föreslås därför att förslaget justeras i enlighet med vad NSD m.fl. föreslår.

Lagförslag

Förslaget medför ändring i 2 kap. 1, 29, 29 a och 30 §§ lagen om tilläggsskatt.

10 Uppskjuten skatt vid övergången till systemet

10.1 Förtydligande avseende vissa uppskjutna skattefordringar och uppskjutna skatteskulder som uppkommit före övergångsåret

Regeringens förslag

Vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för ett övergångsår ska vissa uppskjutna skattefordringar och uppskjutna skatteskulder undantas.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

Skatteverket föreslår en delvis annan teknisk utformning för att närmare följa de administrativa riktlinjerna samt anför att bestämmelser avseende beskattningsåren 2024–2026 bör övervägas. Enligt *FAR* får det anses tveksamt om förslaget, som är betungande för de skattskyldiga, har stöd i modellreglerna eller EU-direktivet och bristande rättsligt stöd för en utvidgning av tillämpningsområdet genom administrativa riktlinjer kan få både konstitutionella och EU-rättsliga konsekvenser, till exempel genom att regeln förklaras ogiltig. FAR påtalar att lagtexten bygger på en exemplifiering hämtad från punkt 8.5 i riktlinjerna, medan regeln återfinns i punkt 8.3 och 8.4, vilken begränsar tillämpningsområdet genom att utesluta skattelättnader som inte är beroende av en myndighets skönsmässiga bedömning. Enligt FAR:s uppfattning innebär punkt 8.4 för svenskt vidkommande exempelvis att en uppskjuten skattefordran i form av ett underskottsavdrag som uppstår genom en omprövning i efterhand avseende direktavdrag för reparationer på byggnad inte ska omfattas av begränsningen. Innehållet i punkt 8.4 återspeglas dock inte i den föreslagna lagtexten och FAR föreslår därför att föreslagna 4 kap. 27 § tredje stycket lagen om tilläggsskatt arbetas om eller kompletteras för att i stället återspegla punkterna 8.3 och 8.4 i riktlinjerna

Skälen för regeringens förslag

Gällande rätt

Av bestämmelserna i 4 kap. 25–28 b §§ lagen om tilläggsskatt framgår hur uppskjutna skattefordringar, uppskjutna skatteskulder och överförda tillgångar ska hanteras vid övergången till systemet. Av 4 kap. 25 § lagen om tilläggsskatt (artikel 9.1.1 i modellreglerna) framgår att vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för det som enligt 26 § utgör ett övergångsår och för varje därpå följande räkenskapsår ska alla de uppskjutna skattefordringar och uppskjutna skatteskulder som återspeglas eller redovisas i alla koncernenheters räkenskaper i en stat beaktas för övergångsåret. I avsnitt 10.2 föreslås att bestämmelsen om övergångsår i 4 kap. 26 § lagen om tilläggsskatt ska ändras så att det framgår att med övergångsår för en stat avses det första räkenskapsår då en koncern omfattas av lagens tillämpningsområde vad avser den staten. Av 4 kap. 27 § andra stycket lagen om tilläggsskatt (artikel 9.1.2 i modellreglerna) framgår att fordringar avseende uppskjuten skatt som härrör från sådana poster som enligt 3 kap. samma lag inte ska ingå vid beräkningen av det justerade resultatet ska undantas från den beräkning som avses i 4 kap. 25 § lagen om tilläggsskatt när fordringarna uppkommer i en transaktion som har ägt rum efter den 30 november 2021. Motsvarande reglering till artikel 9.1 i modellreglerna finns i artikel 47 i minimibeskattningsdirektivet.

Uppskjutna skattefordringar och uppskjutna skatteskulder som inte ska tas med vid övergången till systemet

Artikel 9.1 i modellreglerna (4 kap. 25–28 b §§ lagen om tilläggsskatt) innehåller övergångsregler som ska förenkla övergången till systemet. Reglerna avser bl.a. behandlingen av uppskjutna skatter som gäller när en multinationell koncern börjar omfattas av modellreglernas tillämpningsområde och för varje därpå följande räkenskapsår.

I de administrativa riktlinjerna från den 13 januari 2025 klargörs hur övergångsreglerna i artikel 9.1 ska tolkas och tillämpas vid övergången till systemet. Av riktlinjerna framgår att vissa multinationella koncerner, efter den 30 november 2021, har ingått överenskommelser med myndigheterna i en stat som gett koncernenheterna som hör hemma i den staten olika skatteförmåner innan tilläggsskattereglerna (huvudregeln och kompletteringsregeln) eller regeln om nationell tilläggsskatt trädde i kraft i den staten. De multinationella koncerner som har erhållit dessa skatteförmåner har redovisat dem som uppskjutna skattefordringar och de kan ha som avsikt att beakta fordringarna vid tillämpningen av övergångsreglerna för uppskjutna skattefordringar och skatteskulder i artikel 9.1 (punkt 2 i riktlinjerna). Mot bakgrund av detta har IF antagit riktlinjerna för att ytterligare klargöra hur övergångsreglerna i artikel 9.1 ska tillämpas, speciellt när det gäller uppskjutna skattefordringar som har uppstått till följd av skatteförmåner som beviljas av en stat efter den 30 november 2021. Av riktlinjerna framgår att uppskjutna skattekostnader som härrör från återföring av uppskjutna skattefordringar som har uppstått innan tilläggskattereglerna träder i kraft men efter den 30 november 2021 och som härrör från överenskommelser med myndigheterna i en stat undantas vid övergången till systemet enligt övergångsreglerna i artikel 9.1. Detsamma gäller uppskjutna skattefordringar och uppskjutna skatteskulder som uppstår till följd av att koncernenheter får göra en skattemässig uppskrivning av tillgångars värde så att det skattemässiga värdet överstiger det redovisade värdet. när en stat har infört ett bolagsskattesystem. Det gäller även uppskjutna skattefordringar som uppstår på grund av att koncernenheter i en stat får göra eller ändra ett val med retroaktiv verkan (punkt 3 i riktlinjerna).

I punkt 8.5 a–c i kommentaren till artikel 9.1.2 specificeras vilka uppskjutna skattefordringar och uppskjutna skatteskulder (tax attributes) som inte får tas med i beräkningen enligt artikel 9.1.1. Det är följande:

a. Uppskjutna skattefordringar som har uppstått på grund av att en överenskommelse med myndigheter i en stat har ingåtts eller ändrats efter den 30 november 2021, när överenskommelsen ger den skattskyldige skatteförmåner i form av skattereduktioner eller andra skattelättnader som inte hade uppstått utan en sådan överenskommelse.
b. Uppskjutna skattefordringar som uppstått till följd av att en koncernenhet efter den 30 november 2021 gjort eller ändrat ett val och därigenom retroaktivt ändrar behandlingen av en transaktion som har ingått i beräkningen av koncernenhetens beskattningsbara inkomst ett tidigare beskattningsår och som har fastställts av skattemyndigheten eller som framgått av en inlämnad deklaration avseende bolagsskatt.
c. Uppskjutna skattefordringar eller uppskjutna skatteskulder som uppstått till följd av att koncerner har fått använda ett högre skattemässigt värde än det bokförda värdet på tillgångar vid övergången till systemet när en stat infört bolagsskatt efter den 30 november 2021, men före övergångsåret.

I riktlinjerna erinras om att avsikten med övergångsbestämmelserna i artikel 9.1 inte är att ge koncerner eller myndigheter verktyg för att genomföra transaktioner som tillskapar uppskjutna skattefordringar som, när de återförs, i praktiken helt eller delvis undantar en koncerns framtida lågbeskattade inkomster från tilläggsskatt. De skatteförmåner som uppstått i de tre ovannämnda fallen i punkt 8.5 a–8.5 c omfattas inte av beräkningen enligt artikel 9.1.1, utan de ska undantas enligt artikel 9.1.2 i modellreglerna (punkt 4 i kommentaren till artikel 9.1 i modellreglerna och punkt 8.5 i kommentaren till artikel 9.1.2 i modellreglerna).

Artikel 9.1.2 är tillämplig på alla uppskjutna skattefordringar som har uppstått i transaktioner efter den 30 november 2021. Artikeln blir därför tillämplig även på en uppskjuten skattefordran som uppstår till följd av en transaktion som äger rum efter övergångsåret, om fordran redovisas eller återspeglas i räkenskaperna för en koncernenhet för övergångsåret (punkt 8.2 i kommentaren till artikel 9.1.2 i modellreglerna).

En kostnad avseende uppskjuten skatt som hänför sig till återföringen av en uppskjuten skattefordran som beskrivs i de ovan angivna tre fallen i punkt 8.5 a–8.5 c ska inte tas med vid beräkningen av det uppskjutna skattejusteringsbeloppet enligt artikel 4.4 (3 kap. 30–34 d §§ lagen om tilläggsskatt) och inte heller räknas som skattekostnad enligt 8 kap. 4 § andra stycket lagen om tilläggsskatt vid tillämpning av den tillfälliga förenklingsregeln (punkt 8.6 i kommentaren till artikel 9.1.2 i modellreglerna).

Artikel 9.1.2 ska tillämpas så att en uppskjuten skattefordran hänförlig till en förlust som uppstod mer än fem räkenskapsår före ikraftträdandet av ett nytt bolagsskattesystem i en stat som tidigare inte hade något sådant system undantas från beräkningen enligt artikel 9.1.1. Uppskjutna skattefordringar som avser förluster som uppkommit mindre än fem år innan ett nytt bolagsskattesystem införts får i princip föras in i systemet. Artikel 9.1.2 ska emellertid tillämpas även på sådana uppskjutna skattefordringar på samma sätt som för en uppskjuten skattefordran som uppstår till följd av en förlust enligt ett befintligt bolagsskattesystem (punkt 8.7 i kommentaren till artikel 9.1.2 i modellreglerna).

Regeringen konstaterar att riktlinjerna har antagits av IF för att klargöra hur artikel 9.1 i modellreglerna, som har införts i bl.a. 4 kap. 25 och 27 §§ lagen om tilläggsskatt, ska tolkas vad avser behandlingen av vissa skatteförmåner vid övergången till systemet. Utgångspunkten är således att sådana skatteförmåner som identifierats av IF och som redogörs för i det ovanstående inte alls ska beaktas vid beräkningen av den effektiva skattesatsen för koncernenheterna i en stat för ett övergångsår och för varje därpå följande räkenskapsår när en koncern övergår till systemet med tilläggsskatt. För att lagen ska överensstämma med riktlinjerna behöver det därför enligt regeringen införas bestämmelser i 4 kap. 27 § lagen om tilläggsskatt om att sådana uppskjutna skattefordringar och uppskjutna skatteskulder som nämns i punkterna 8.5 a–8.5 c och 8.7 ska undantas vid fastställandet av den effektiva skattesatsen i enlighet med 25 §. Enligt riktlinjerna ska reglerna gälla redan fr.o.m. 2024, dvs. det första år som systemet med tilläggsskatt tillämpas på. Mot bakgrund av förbudet mot retroaktiv skattelagstiftning till den enskildes nackdel i 2 kap. 10 § regeringsformen är det inte möjligt att ändra vilka värden som får användas som ingående balans vid beskattningen för ett redan avslutat eller påbörjat beskattningsår när detta är till den skattskyldiges nackdel. Därför föreslår regeringen i avsnitt 13 att bestämmelserna ska träda i kraft den 1 januari 2027 och tillämpas på beskattningsår som börjar närmast efter den 31 december 2026 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2026. Det innebär att för räkenskapsår som börjar efter detta datum får sådana fordringar och skulder inte räknas med.

Av punkt 8.8 i kommentaren till artikel 9.1.2 i modellreglerna framgår att en del uppskjutna skattekostnader som hänför sig till återföringen av en uppskjuten skattefordran ska få beaktas vid beräkningen av dels det uppskjutna skattejusteringsbeloppet enligt artikel 4.4 (3 kap. 30–36 §§ lagen om tilläggsskatt), dels skattekostnaden enligt den tillfälliga förenklingsregeln (8 kap. 4 § andra stycket lagen om tilläggsskatt) vad avser:

1. återföring av en uppskjuten skattefordran som avses i punkt 8.5 a och 8.5 b i kommentaren till artikel 9.1.2 i modellreglerna för räkenskapsår som börjar under 2024 och 2025 och som slutar före den 1 juli 2027, och
2. återföring av en uppskjuten skattefordran som avses i punkt 8.5 c i kommentaren till artikel 9.1.2 i modellreglerna för räkenskapsår som börjar under 2025 och 2026 och som slutar före den 1 juli 2028.

Det högsta belopp som får beaktas i dessa fall är ett belopp som motsvarar 20 procent av summan av de uppskjutna skattefordringarna (punkt 8.9 i kommentaren till artikel 9.1.2 i modellreglerna). Dessa bestämmelser omfattar endast beskattningsåren 2024–2026. Mot bakgrund av att de ändringar som föreslås i 4 kap. 27 § lagen om tilläggsskatt inte ska gälla för beskattningsåren 2024–2026 behöver det enligt regeringen inte införas några bestämmelser i lagen om tilläggsskatt som motsvarar punkt 8.8–8.12 i kommentaren till artikel 9.1.2.

FAR anser att det får anses tveksamt om förslaget, som är betungande för de skattskyldiga, har stöd i modellreglerna eller EU-direktivet. Regeringen konstaterar att kommissionen den 30 september 2025 uttalat att den anser att de administrativa riktlinjerna från januari 2025 är förenliga med direktivet. Regeringen bedömer att det är möjligt att komplettera lagen om tilläggsskatt så länge som kompletterande bestämmelser inte står i strid med minimibeskattningsdirektivet. Vidare har FAR anfört att punkt 8.3 och 8.4, begränsar tillämpningsområdet för bestämmelserna genom att utesluta skattelättnader som inte är beroende av myndigheter (General Governments). Regeringen delar inte denna bedömning utan anser att punkt 8.5 b och 8.5 c inte är begränsade till överenskommelser med myndigheterna i en stat. Det ska således införas bestämmelser i lagen om tilläggsskatt i enlighet med förslagen i promemorian.

Skatteverket anser att det av de administrativa riktlinjerna framgår att 4 kap. 27 § tredje stycket 3 ska omfatta situationen när det föreligger en skillnad mellan det skattemässiga värdet av en tillgång och skuld. Regeringen instämmer i denna bedömning och bestämmelsen förtydligas med anledning av vad Skatteverket anför.

Skatteverket anser vidare att tidsbegränsade regler som motsvarar punkt 8.8–8.12 i kommentaren till artikel 9.1.2 bör införas i lagen om tilläggsskatt. Regeringen konstaterar att enligt dessa punkter får de multinationella koncerner som har ingått överenskommelser med myndigheterna i en stat endast ta upp 20 procent av summan av de uppskjutna skattefordringarna. De föreslagna bestämmelserna hindrar inte att en koncern tar upp en mindre del av sina skattefordringar under beskattningsåren 2024 till 2026. För senare beskattningsår får dock inte sådana skattefordringar tas upp över huvud taget.

Lagförslag

Förslaget medför ändringar i 4 kap. 27 § och 8 kap. 4 § lagen om tilläggsskatt.

10.2 Övergångsår

Regeringens förslag

När reglerna om uppskjutna skattefordringar, uppskjutna skatteskulder och överförda tillgångar vid övergången till systemet tillämpas ska övergångsåret för en stat vara det första räkenskapsår då en koncern omfattas av lagens tillämpningsområde i fråga om den staten.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

FAR, som yttrar sig särskilt i denna del, tillstyrker förslaget. *Skatteverket* anser att definitionen av övergångsår bör ges en annan lagteknisk utformning för att fungera i alla situationer.

Skälen för regeringens förslag

Gällande rätt

I 4 kap. 25–25 c och 27–28 b §§ lagen om tilläggsskatt finns bestämmelser om hur uppskjutna skattefordringar, uppskjutna skatteskulder och överförda tillgångar ska beaktas vid övergången till systemet. Enligt 4 kap. 26 § lagen om tilläggsskatt avses med övergångsår för en stat det första räkenskapsår då en koncernenhet omfattas av en lagstiftning som är likvärdig med och administreras på ett sätt som är förenligt med antingen bestämmelserna i rådets direktiv 2022/2523, i den ursprungliga lydelsen, eller när det gäller en stat utanför Europeiska unionen, modellreglerna.

Definitionen av övergångsår finns i artikel 47.1 i minimibeskattningsdirektivet och artikel 10.1.1 i modellreglerna.

Definitionen av övergångsår ska ändras

I artikel 47.1 i direktivet definieras uttrycket övergångsår för en stat som det första räkenskapsår under vilket en koncern omfattas av direktivets tillämpningsområde med avseende på den staten. I modellreglerna avses med övergångsår för en stat det första året en koncern omfattas av regler om global minimibeskattning i fråga om den staten (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). Av punkt 7 i kommentaren till artikel 9.1.1 framgår att övergångsåret bestäms stat för stat och att definitionen är utformad så att övergångsåret för en koncern för en viss stat kan inträda till följd av minimibeskattningsregler i en annan stat.

Den nuvarande utformningen av bestämmelsen i 4 kap. 26 § lagen om tilläggsskatt leder till oklarheter pga. hänvisningarna till en stats lagstiftning som är likvärdig med och administreras på ett sätt som är förenligt med direktivet, eller, när det gäller en stat utanför Europeiska unionen, modellreglerna. Att övergångsåret på detta sätt ska avgöras av om lagstiftning gäller i en stat innebär t.ex. att en koncern inte har ett övergångsår i fråga om en stat där koncernenheter hör hemma om den staten inte infört direktivet eller regler motsvarande modellreglerna. Det är inte så bestämmelsen är avsedd att fungera och dess utformning behöver därför justeras i linje med hur övergångsår definieras i direktivet och modellreglerna. Vad som är övergångsår ska enligt såväl modellreglerna som direktivet avgöras av vilket år som är det första räkenskapsår då en koncern omfattas av regler om minimibeskattning i fråga om en stat.

Några exempel kan illustrera. För en koncern som omfattas av lagens tillämpningsområde för räkenskapsåret 2024 är övergångsåret 2024 avseende alla stater där det finns koncernenheter som hör hemma. Om en multinationell koncern med ett svenskt moderföretag har koncernenheter i tio andra stater så är övergångsåret 2024 (dvs. det år lagen om tilläggsskatt trädde i kraft) för koncernenheterna i de tio staterna. För en koncern som omfattas av lagens tillämpningsområde för räkenskapsåret 2024 och som etablerar koncernenheter i en viss stat först 2026 är övergångsåret 2026 för den staten eftersom det är först det året som koncernen omfattas av lagens tillämpningsområde med avseende på den staten. Ett annat exempel är en koncern som omfattas av lagens tillämpningsområde först för räkenskapsåret 2026 till följd av att koncernen först då har en årlig intäkt på minst 750 miljoner euro på det sätt som anges i 1 kap. 3 § lagen om tilläggsskatt. Övergångsåret blir i detta fall tidigast räkenskapsåret 2026 och kommer även i denna situation att i det enskilda fallet avgöras stat för stat beroende av om det ett år finns koncernenheter som hör hemma i en viss stat eller inte.

För att definitionen av övergångsår i 4 kap. 26 § lagen om tilläggsskatt ska överensstämma med motsvarande definition i direktivet och modellreglerna föreslås därför att definitionen ändras så att med övergångsår för en stat avses det första räkenskapsår då en koncern omfattas av lagen om tilläggsskatt vad avser den staten.

Skatteverket anser att det är olämpligt att knyta övergångsåret till lagens tillämpningsområde och anför att definitionen av övergångsår bör utgå från det första räkenskapsår då en koncern omfattas av en huvud- eller kompletteringsregel för tilläggsskatt vad avser en stat. Regeringen anser att definitionen av övergångsår bör följa definitionen i direktivet och modellreglerna samt även fungera i fråga om nationell tilläggsskatt. Förslaget bör därför inte ändras på det sätt som Skatteverket föreslår.

Lagförslag

Förslaget medför ändring i 4 kap. 26 § lagen om tilläggsskatt.

10.3 Uppskjuten skatt enligt vissa system för beskattning av kontrollerade utländska företag

Regeringens förslag

Vid fastställande av den effektiva skattesatsen för koncernenheter i en stat vid övergången till systemet ska uppskjutna skattefordringar och uppskjutna skatteskulder i vissa fall inte beaktas om de avser skatt enligt ett system för beskattning av kontrollerade utländska företag. Detta ska gälla om skatten beräknas gemensamt för sådana företag i ett sådant system.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

FAR, som yttrar sig särskilt i denna del, tillstyrker förslaget.

Skälen för regeringens förslag

Gällande rätt

Av 4 kap. 25 § lagen om tilläggsskatt (artikel 9.1.1 i modellreglerna och artikel 47.2 i minimibeskattningsdirektivet) framgår att vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för ett övergångsår enligt 4 kap. 26 § samma lag och för varje därpå följande räkenskapsår ska alla de uppskjutna skattefordringar och uppskjutna skatteskulder som återspeglas eller redovisas i alla koncernenheters räkenskaper i en stat beaktas för övergångsåret. I avsnitt 10.2 föreslås att bestämmelsen om övergångsår i 4 kap. 26 § lagen om tilläggsskatt ska ändras så att det framgår att med övergångsår för en stat avses det första räkenskapsår då en koncern omfattas av lagens tillämpningsområde vad avser den staten.

Uppskjuten skatt ska inte beaktas om den har uppkommit enligt vissa system för beskattning av kontrollerade utländska företag

I punkt 5 i kommentaren till artikel 9.1.1 i modellreglerna, vilken motsvaras av 4 kap. 25 § lagen om tilläggsskatt, klargörs vad som gäller i fråga om uppskjuten skatt hänförlig till s.k. blended CFC tax regime. Punkt 5 hänger samman med bestämmelserna i 3 kap. 27 m–27 o §§ lagen om tilläggsskatt om hur det uppskjutna skattejusteringsbeloppet ska påverka fördelningen av medräknad skatt som tas ut enligt ett system för beskattning av kontrollerade utländska företag. Dessa bestämmelser motsvaras av punkt 71.4–71.17 i kommentaren till artikel 4.4.1 i modellreglerna. Av 3 kap. 27 m § lagen om tilläggsskatt framgår att 4 kap. 27 n–27 o §§ samma lag inte gäller uppskjuten skatt hänförlig till skatt enligt ett system för beskattning av kontrollerade utländska företag som beräknar skatten för samtliga företag samlat (s.k. blended CFC tax regime). Fördelning av sådan skatt sker enbart i fråga om aktuell skatt. Bestämmelserna om sådan fördelning finns i 3 kap. 27 d–27 i §§ lagen om tilläggsskatt, vilka motsvaras av punkt 58.1–58.7 i kommentaren till artikel 4.3.2. Uppskjuten skatt beräknas alltså inte vad avser skatt hänförlig till blended CFC tax regime. Sådan uppskjuten skatt ska därför inte heller beaktas vid tillämpning av artikel 9.1.1. Regeringen föreslår därför att 4 kap. 25 § lagen om tilläggsskatt tillförs ett förtydligande med denna innebörd.

Lagförslag

Förslaget medför ändring i 4 kap. 25 § lagen om tilläggsskatt.

11 Lagens tillämpningsområde vid delning av en koncern

Regeringens förslag

Bestämmelsen om när beloppsgränsen för lagens tillämpningsområde har uppnåtts efter att en koncern har delats ska ändras på följande sätt för att stämma överens med direktivet och modellreglerna. Om en koncern som omfattas av lagens tillämpningsområde delas i två eller flera koncerner, ska beloppsgränsen för lagens tillämpningsområde avseende en koncerns årliga intäkt anses vara uppnådd

– för det första räkenskapsåret som avslutas närmast efter delningen: om summan av intäkterna i koncernredovisningen för den koncernen för det räkenskapsåret uppgår till minst 750 miljoner euro, och

– för det andra till fjärde räkenskapsåret som avslutas närmast efter delningen: om summan av intäkterna i koncernredovisningen för den koncernen uppgår till minst 750 miljoner euro under minst två av de fyra räkenskapsår som avslutas närmast efter delningen.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

FAR, som yttrar sig särskilt i denna del, tillstyrker förslaget men föreslår en justering av lagtexten.

Skälen för regeringens förslag

Gällande rätt

Av 1 kap. 3 § lagen om tilläggsskatt framgår, något förenklat, att lagen ska tillämpas när en svensk koncernenhet ingår i en koncern som har en årlig intäkt på minst 750 miljoner euro. I 1 kap. 10 § lagen om tilläggsskatt finns särskilda bestämmelser om hur prövningen av denna beloppsgräns ska göras när en koncern som uppfyller kriterierna för att omfattas av lagens tillämpningsområde delas.

Paragrafens första stycke lyder:

> Om en koncern som omfattades av lagens tillämpningsområde året före det aktuella räkenskapsåret delas i två eller flera nya koncerner, ska beloppsgränsen i 3 § anses vara uppnådd
> – för det räkenskapsår då delningen sker: om summan av intäkterna i koncernredovisningen för vardera ny koncern för det räkenskapsåret uppgår till minst 750 miljoner euro, och
> – för det andra till fjärde räkenskapsåret efter delningen: om summan av intäkterna i koncernredovisningen för vardera ny koncern uppgår till minst 750 miljoner euro under minst två av dessa räkenskapsår.

I modellreglerna finns bestämmelsen i artikel 6.1.1 c. Denna punkt lyder:

> Where a single MNE Group within the scope of the GloBE Rules demerges into two or more Groups (each a demerged Group), the consolidated revenue threshold is deemed to be met by a demerged Group:
> i. with respect to the first tested Fiscal Year ending after the demerger, if the demerged Group has annual revenues of EUR 750 million or more in that year;
> ii. with respect to the second to fourth tested Fiscal Years ending after the demerger, if the demerged Group has annual revenues of EUR 750 million or more in at least two of the Fiscal Years following the year of the demerger.

I minimibeskattningsdirektivet återfinns denna bestämmelse i artikel 33.4. Med undantag för att lydelsen i minimibeskattningsdirektivet även inkluderar stora nationella koncerner överensstämmer den i allt väsentligt med artikel 6.1.1 c i modellreglerna. En skillnad i uttryckssätt återfinns i slutet av punkt ii i den artikeln. I modellreglerna lyder slutet av denna punkt: ”…or more in at least two of *the Fiscal Years following the year of the demerger*” medan motsvarande text i minimibeskattningsdirektivet lyder: ”…or more in at least two of *those fiscal years*” (kursiveringar här).

Beloppsgränsen vid delning av en koncern

Ordalydelsen i 1 kap. 10 § lagen om tilläggsskatt skiljer sig från modellreglerna och direktivet i några avseenden. För det första ska paragrafen enligt ingressen tillämpas om den koncern som delas omfattades av lagens tillämpningsområde året före delningsåret. Enligt modellreglerna och direktivet gäller i stället att regeln ska tillämpas om den koncern som delas omfattas av lagens tillämpningsområde under delningsåret. För det andra skulle uttrycket ”summan av intäkterna i koncernredovisningen för vardera ny koncern” i strecksatserna kunna tolkas som att det ska göras en sammanlagd bedömning av de nya koncernerna. Av såväl ordalydelsen i modellreglerna som av punkt 33 i kommentaren till artikel 6.1.1 c i modellreglerna framgår emellertid klart att reglerna i artikeln gäller separat för varje koncern, både en koncern som uppkommer och det som finns kvar av koncernen som delats. Varje sådan koncern är det som i punkt 33 kallas a demerged group och omfattas av bestämmelsen i 1 kap. 10 § lagen om tilläggsskatt. För det tredje är avslutningen på den andra strecksatsen i paragrafen olyckligt formulerad. Strecksatsen behandlar den prövning som ska göras det andra till fjärde året efter delningen. I både den svenska lagen och minimibeskattningsdirektivet anges att beloppsgränsen på 750 miljoner euro ska uppnås under minst två av dessa räkenskapsår. En bokstavstolkning av bestämmelsen innebär att prövningen bara ska avse de år som behandlas i strecksatsen, dvs. det andra till fjärde året efter delningen. Med en sådan tolkning går regeln emellertid inte att tillämpa det andra året efter delningen eftersom det då inte finns två år att bedöma. Enligt motsvarande text i modellreglerna och punkt 36 i kommentaren framgår emellertid helt klart att prövningen enligt andra strecksatsen i bestämmelsen även ska innefatta delningsåret. Att regeln ska tolkas på detta sätt framgår också i författningskommentaren till paragrafen (prop. 2023/24:32 s. 514 och 515).

För att lagen om tilläggsskatt ska stämma överens med direktivet och modellreglerna föreslår regeringen därför att 1 kap. 10 § lagen om tilläggsskatt ändras så att bestämmelsen tillämpas på sådana koncerner som omfattas av lagens tillämpningsområde under delningsåret. Vidare föreslår regeringen att det vid bedömningen av om beloppsgränsen är uppnådd för en koncern efter delningen endast ska tas hänsyn till den aktuella koncernens intäkter. När bestämmelsen tillämpas på de koncerner som finns efter delningen kommer prövningen av om beloppsgränsen i bestämmelsen är uppnådd alltså att göras för varje koncern för sig, utan att intäkterna i den eller de andra koncernerna räknas med.

FAR anför att det bör övervägas om inte paragrafen blir tydligare genom att ”en koncern” och ”den koncernen” i lagförslaget ersätts med ”var och en av de nya koncernerna”. Regeringen anser dock att den av FAR föreslagna ändringen skulle innebära att felaktigheten om en sammanlagd bedömning av de nya koncernerna i nuvarande lydelse skulle komma att kvarstå.

Slutligen föreslås att det klargörs att den prövning avseende två räkenskapsår som ska göras det andra till fjärde räkenskapsåret som avslutas närmast efter delningen även ska inkludera delningsåret (det första räkenskapsåret som avslutas närmast efter delningen).

Lagförslag

Förslaget medför ändring i 1 kap. 10 § lagen om tilläggsskatt.

12 Moderföretag som omfattas av system med avdragsgill utdelning

Regeringens förslag

Den justerade vinsten för ett moderföretag som omfattas av ett system med avdragsgill utdelning ska minskas lägst till noll. Motsvarande ska gälla vid tillämpningen av den tillfälliga förenklingsregeln.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

FAR, som yttrar sig särskilt i denna del, tillstyrker förslaget.

Skälen för regeringens förslag

I 7 kap. 67 och 68 §§ lagen om tilläggsskatt finns särskilda bestämmelser om minskning av justerad vinst för moderföretag som omfattas av ett system med avdragsgill utdelning. För den tillfälliga förenklingsregeln i 8 kap. 3–7 §§ lagen om tilläggsskatt finns en motsvarande bestämmelse i 8 kap. 9 §. Motsvarande reglering finns i artikel 39 i minimibeskattningsdirektivet, vilken motsvaras av artikel 7.2.1 och 7.2.4 i modellreglerna. Lydelsen i dessa artiklar skiljer sig emellertid från bestämmelserna i lagen om tilläggsskatt såtillvida att minskningen enligt dessa artiklar ska ske lägst till noll. För att lagen om tilläggsskatt ska stämma överens med direktivet föreslås därför att bestämmelserna i 7 kap. 67 och 68 §§ och 8 kap. 9 § lagen om tilläggsskatt kompletteras med en sådan begränsning.

Lagförslag

Förslaget medför ändring i 7 kap. 67 och 68 §§ och 8 kap. 9 § lagen om tilläggsskatt.

13 Ikraftträdande- och övergångsbestämmelser

Regeringens förslag

Lagändringarna ska träda i kraft den 1 januari 2027. Bestämmelserna ska tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2026.

Den rapporterande enheten ska få tillämpa samtliga eller vissa av bestämmelserna första gången för beskattningsår som börjar närmast efter den 31 december 2024 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2024. Bestämmelserna i 4 kap. 17 a–17 d §§ samt 8 kap. 18 a och 18 b §§ lagen om tilläggsskatt ska dock få tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2025 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2025.

Promemorians förslag

Förslaget i promemorian överensstämmer med regeringens.

Remissinstanserna

Sveriges advokatsamfund anför att de centrala delarna av förslaget inte torde strida mot 2 kap. 10 § regeringsformen, eftersom de får betraktas som gynnande och frivilliga för de skattskyldiga. På grund av de förslag som är betungande bör ändå övervägas om intresset av att lagen om tilläggsskatt kan tillämpas på samma sätt och samtidigt under en övergångsperiod väger över jämfört med skattskyldigas intresse av förutsägbarhet.

Skälen för regeringens förslag

Det är angeläget att lagändringarna träder i kraft så snart som möjligt för att säkerställa att den svenska lagen stämmer överens med minimibeskattningsdirektivet och modellreglerna. Lagändringarna ska därför träda i kraft den 1 januari 2027. Bestämmelserna ska tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2026.

Vidare föreslås att den rapporterande enheten får tillämpa samtliga eller vissa av bestämmelserna första gången för beskattningsår som börjar närmast efter den 31 december 2024 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2024.

Regeringen konstaterar att möjligheten att införa retroaktiv lagstiftning bör tillämpas mycket restriktivt (prop. 2024/25:7 s. 238–241). I de tidigare lagstiftningsärenden då antagna administrativa riktlinjer har införts (prop. 2024/25:7 och prop. 2025/26:22) finns möjlighet för den rapporterande enheten att välja att tillämpa bestämmelser retroaktivt. Motiveringen till att bestämmelserna skulle kunna tillämpas retroaktivt av de skattskyldiga var att det är av stor vikt att de svenska reglerna om tilläggsskatt kan tillämpas på samma sätt och samtidigt som de regler som övriga medlemsstater har infört i sina nationella rättsordningar vid genomförandet av minimibeskattningsdirektivet. Detsamma gäller regler som stater utanför EU har infört med anledning av modellreglerna.

De bestämmelser som föreslås i denna lagrådsremiss kommer att träda i kraft den 1 januari 2027. De föreslagna lagändringarna baseras på administrativa riktlinjer som beslutats under år 2024–2026. De administrativa riktlinjerna kan därför ha kommit att beaktas i andra staters lagstiftning redan från ett tidigare datum eftersom många stater inte har något problem med att införa lagstiftning retroaktivt eller genom en direkt hänvisning till modellreglerna och kommentaren. Det är därmed angeläget att även de svenska reglerna kan tillämpas så tidigt som möjligt i anslutning till det att riktlinjerna har antagits. Vidare anpassar sig många koncerner efter de administrativa riktlinjerna från det att de publiceras. För att inte stå i strid med retroaktivitetsförbudet föreslås att bestämmelsernas retroaktiva verkan görs frivillig för företagen. Det innebär att företagen vad avser beskattningsår som motsvarar kalenderåren 2025 och 2026 kan välja att tillämpa lagen om tilläggsskatt antingen i dess lydelse från och med det ursprungliga ikraftträdandet eller i dess lydelse från och med den 1 januari 2027. Det intresse som retroaktivitetsförbudet i 2 kap 10 § regeringsformen är avsett att skydda bör därmed anses tillgodosett. Företagen bör kunna välja att bara tillämpa en eller några enstaka av de lagändringar som föreslås retroaktivt för beskattningsår som påbörjas efter den 31 december 2024. Det bör inte ställas upp några särskilda krav avseende rapportering av vilka val som görs i detta hänseende. För svenska handelsbolag gäller vad som sägs ovan för räkenskapsåren 2025 och 2026. Det bedöms ändamålsenligt att det ska vara den rapporterande enheten, dvs. den enhet som lämnar tilläggsskatterapport, som får begära en retroaktiv tillämpning. En sådan begäran bör ske genom att den rapporterande enheten tillämpar en eller flera av de nu föreslagna reglerna vid beräkningarna enligt lagen om tilläggsskatt som sedermera redovisas i tilläggsskatterapporten, med verkan från beskattningsår 2025.

Vad *Sveriges advokatsamfund* anför om skattskyldigas intresse av förutsebarhet är enligt regeringens bedömning inte ett bärande skäl för att de förslag som lämnas endast ska få tillämpas på beskattningsår eller, i fråga om svenska handelsbolag, räkenskapsår som börjar den 1 januari 2027 eller senare. Även när det gäller betungande bestämmelser kan de skattskyldiga ha ett intresse av att tillämpa bestämmelserna retroaktivt om de t.ex. har anpassat sig efter de administrativa riktlinjerna från det att de antogs av IF.

Möjligheten för den rapporterande enheten att välja retroaktiv tillämpning föreslås vara mer begränsad i tre fall. Det gäller de bestämmelser som föreslås i avsnitt 7 och 8. I avsnitt 7 föreslås förenklingsregler dels för huvud- och kompletteringsregeln när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem, dels för kompletteringsregeln när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem. I avsnitt 8 föreslås bestämmelser om kvalificerade skatteincitament och om att kvalificerade respektive marknadsmässigt överlåtbara skattetillgodohavanden får behandlas som kvalificerade skatteincitament. Dessa bestämmelser får dock tidigast tillämpas för beskattningsår som börjar efter den 31 december 2025 eller senare eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2025. Detta överensstämmer med hur reglerna har formulerats i de administrativa riktlinjerna.

14 Konsekvensanalys

I detta avsnitt redogörs för förslagens effekter i den omfattning som bedöms stå i proportion till det aktuella lagstiftningsärendet och med utgångspunkt i tillämpliga delar av 7 § förordningen (2024:183) om konsekvensutredningar. *Regelrådet* bedömer att konsekvensutredningen uppfyller kraven i förordningen (2024:183) om konsekvensutredningar.

14.1 Offentligfinansiella effekter

I propositionen Tilläggsskatt för företag i stora koncerner (prop. 2023/24:32) finns en analys av konsekvenserna av förslaget om införande av lagen om tilläggsskatt. Lagen om tilläggsskatt genomför modellreglerna och minimibeskattningsdirektivet i svensk lagstiftning. Modellreglerna är ett omfattade och komplext regelverk och resultatet av ett mångårigt internationellt samarbete. Lagen om tilläggsskatt trädde i kraft den 1 januari 2024. Det finns i dag ingen ny information om svenska multinationella koncerner och deras tilläggskatterapporter som kan användas för att fördjupa konsekvensanalysen. Det har däremot kommit nya land-för-land-rapporter. Underlaget som ligger till grund för konsekvensanalysen i denna lagrådsremiss och de kvantitativa delarna av analysen bygger i stor utsträckning på de land-för-land-rapporter som lämnats av svenska multinationella koncerner under åren 2022–2023. Land-för-land-rapporteringen är relativt ny och kvaliteten på statistiken varierar. Det komplexa regelverket tillsammans med den osäkerhet som finns i det statistiska underlaget och vad gäller den internationella implementeringen av minimibeskattningsdirektivet eller modellreglerna gör att bedömningarna i konsekvensanalysen är osäkra och ska tolkas med försiktighet. Detta gäller särskilt de kvantitativa delarna.

I minimibeskattningsdirektivet anges att genomförandet av modellreglerna inom unionen bör ligga så nära den globala överenskommelsen som möjligt. Det är således centralt att även de administrativa riktlinjerna införs i lagen om tilläggsskatt. Utgångspunkten i lagstiftningsarbetet har varit att de nya bestämmelserna ska utformas så att de ligger så nära de administrativa riktlinjerna som möjligt. Några alternativa lösningar har inte övervägts eftersom det inte ansetts vara relevant. *Regelrådet* konstaterar att en beskrivning av konsekvenser om ingen åtgärd vidtas saknas. Regeringen bedömer att detta ryms inom beskrivningen av alternativa förslag.

I denna lagrådsremiss finns förslag och bedömningar om en rad nya och ändrade bestämmelser i lagen om tilläggsskatt. Förslagen föranleds av administrativa riktlinjer som antagits av IF den 24 maj 2024 och den 13 januari 2025. Vidare har IF den 5 januari 2026 antagit ett paket med fem förenklingsregler, varav fyra omfattas av denna lagrådsremiss. De administrativa riktlinjerna från januari 2025 preciserar reglerna om övergången till systemet enligt artikel 9.1 i modellreglerna. Vidare förlängs den tillfälliga förenklingsregeln med ett år och nya förenklingsregler föreslås för de fall när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem som godkänts av IF. Det föreslås även att det ska införas regler om kvalificerade skatteincitament i lagen om tilläggsskatt. Med sådana skatteincitament får skattekostnaden höjas med ett visst belopp, vilket får till följd att tilläggsskattebeloppet blir lägre jämfört med nu gällande regler. Möjligheten att få en förmånlig behandling av kvalificerade skatteincitament begränsas emellertid av ett takbelopp.

De administrativa riktlinjerna från januari 2025 är i huvudsak preciseringar av reglerna om övergången till systemet och bedöms därför inte ge upphov till någon offentligfinansiell effekt enligt Finansdepartementets beräkningskonventioner vid ändrade skatte- och avgiftsregler. Ur ett konsekvensanalysperspektiv bör förslagen kopplade till de administrativa riktlinjerna i stället tolkas och utvärderas tillsammans med de befintliga bestämmelserna i lagen om tilläggsskatt. Dessa förslag ändrar inte i sak de bedömningar och slutsatser som gjordes i prop. 2023/24:32. *Regelrådet* anser att det är oklart hur de förslag som lämnas i promemorian kan utvärderas och när. Regeringen bedömer att en sådan precisering inte är möjlig eftersom arbetet med regelverket om global minimibeskattning ännu inte är avslutat.

När det gäller förlängningen av den tillfälliga förenklingsregeln uppstår inte heller någon offentligfinansiell effekt då det bara bedöms vara administrativa kostnader som påverkas. Effekten på administrativa kostnader på grund av förlängningen av den tillfälliga förenklingsregeln beskrivs i avsnitt 14.2.

I detta avsnitt uppdateras först relevanta bedömningar och slutsatser från propositionen Tilläggsskatt för företag i stora koncerner (prop. 2023/24:32) till följd av nya överenskommelser och aktuell information om vilka stater som har implementerat reglerna om minimibeskattning. Bedömningen i propositionen var att Sverige kommer att få intäkter från tilläggsskatt från stater utanför EU och G20 som inte implementerar reglerna om minimibeskattning eller inför nationell tilläggsskatt. Med hjälp av aktuell information om vilka stater som inte har kvalificerade regler och uppgifter från land-för-land-rapporteringar för 2022 och 2023 bedöms tilläggsskatten från moderföretag som hör hemma i Sverige och med koncernenheter i stater som inte har implementerat reglerna om minimibeskattning eller nationell tilläggsskatt uppgå till ca 350 miljoner kronor per år. Det innebär att intäkterna från tilläggsskatten i Sverige fortsatt bedöms vara i samma storleksordning som i prop. 2023/24:32.

Mot bakgrund av de senaste årens utveckling i arbetet med modellreglerna och de ändringar som görs nu bedöms att vissa G20 stater inte kommer implementera minimibeskattningsreglerna. Enligt den nya överenskommelsen från 5 januari 2026 ska tilläggsskattebeloppet enligt huvud- och kompletteringsregeln för tilläggsskatt anses vara noll för koncernenheter om moderföretaget hör hemma i stat som är godkänd av OECD/G20 Inclusive Framework on BEPS som en stat med ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst. Den 5 januari 2026 uppdaterades annex B med ett nytt avsnitt för Qualified SbS Regimes i vilket USA och dess regler anges, tillsammans med informationen att godkännandet gäller för beskattningsår som börjar den 1 januari 2026 eller senare. Enligt den första bedömningen i propositionen Tilläggsskatt för företag i stora koncerner skulle inte Sverige få några skatteintäkter från tilläggsskatt från amerikanska koncernenheter. Bedömningen är att den nya förenklingsregeln när moderföretag hör hemma i en stat med ett godkänt parallellt minimibeskattningssystem inte ger upphov till någon offentligfinansiell effekt eftersom det antas handla om stater som Sverige annars inte skulle kunna tillämpa kompletteringsregeln på. Det ska även införas regler om kvalificerade skatteincitament i lagen om tilläggsskatt. Dessa regler innebär att skattekostnaden får höjas med ett belopp vid kvalificerade skatteincitament, vilket möjliggör ett lägre tilläggsskattebelopp än om dessa regler inte används. Möjligheten att få en förmånlig behandling av kvalificerade skatteincitament begränsas av ett takbelopp. Denna del av förslaget bedöms inte leda till någon ändrad intäkt av svensk nationell tilläggsskatt eftersom Sverige inte har sådana incitament som kan omfattas av de föreslagna reglerna om kvalificerade skatteincitament. Däremot kan förslaget om nya regler för kvalificerade skatteincitament påverka den tilläggsskatt som Sverige tar ut från moderföretag som hör hemma i Sverige och med koncernenheter i stater som inte har en godkänd regel om nationell tilläggsskatt. Det finns bara ett fåtal stater som inte har en godkänd regel om nationell tilläggsskatt och där det enligt land-för-land-rapporteringar för 2022 och 2023 finns lågbeskattade vinster för koncernenheter med svenska moderföretag. Det kan inte uteslutas att den låga beskattningen av enskilda koncernenheters vinster i vissa stater helt eller delvis beror på ett kvalificerat skatteincitament. I den utsträckning som den låga beskattningen beror på ett kvalificerat skatteincitament så minskar den tilläggsskatt som Sverige hade haft möjlighet att ta ut från det svenska moderföretaget om reglerna om kvalificerade skatteincitament inte införs. Det bedöms inte vara möjligt att i detalj uppskatta hur mycket av tilläggsskatten avseende koncernenheter i en enskild stat som beror på ett sådant skatteincitament eftersom det kräver detaljerad information om utländska koncernenheters utnyttjanden av skatteincitament. En samlad bedömning är dock att den låga beskattningen av vissa utländska koncernenheter till största del beror på andra skatteregler än kvalificerade skatteincitament. Den offentligfinansiella effekten av förslaget om nya regler för kvalificerade skatteincitament bedöms därför vara försumbar.

Sammantaget bedöms förslagen i lagrådsremissen inte påverka de offentliga finanserna nämnvärt. Det kan inte uteslutas att reglerna kan ha viss effekt på de svenska skatteintäkterna på sikt, men osäkerheten kring effekterna i kombination med att dessa bedöms vara små, särskilt i förhållande till de samlade bolagsskatteintäkterna, leder till slutsatsen att förslagen har en försumbar offentligfinansiell effekt.

14.2 Effekter för företag

Förslagen i lagrådsremissen påverkar de företag som omfattas av lagen om tilläggsskatt. Det bedöms att mellan 150 och 160 koncerner med ett svenskt moderföretag och omkring 70 koncerner med utländskt moderföretag i Sverige omfattas av lagen om tilläggsskatt. Dessa koncerner består av ca 20 000 koncernenheter (företag) varav 7 000 finns i Sverige och 13 000 i utlandet. Lagen bedöms också omfatta 2 000–8 000 koncernenheter i Sverige i koncerner med ett utländskt moderföretag. *Regelrådet* finner avsaknaden av en beskrivning av särskilda hänsyn till små och medelstora företag bristfällig. Regeringen anser att effekterna av förslaget avseende företagens storlek är väl beskrivna och står i proportion till förslagets omfattning. Avsaknaden av beskrivning av särskild hänsyn till små och medelstora företag bygger på att små och medelstora företag inte bedöms påverkas av reglerna. Regeringen konstaterar också att en beskrivning av särskild hänsyn till små och medelstora företag inte omfattas av förordningen (2024:183) om konsekvensutredningar.

De koncerner som omfattas av lagen tilläggsskatt har delats in i branscher med hjälp av redovisningen av svensk näringsgrensindelning (SNI) i FRIDA. Utifrån en branschindelning som bestäms av moderföretagets SNI-rapportering är området *Verksamhet inom juridik, ekonomi, vetenskap och teknik* vanligast förekommande (ca 40 procent av koncernerna) medan ca 20 procent bedriver *Handel; reparation av motorfordon och motorcyklar*. Branschtillhörigheten bör tolkas med försiktighet eftersom den inte nödvändigtvis ger en rättvisande bild av i vilken bransch koncernen huvudsakligen verkar i. Att så många koncernenheter redovisar SNI-avdelningen *Verksamhet inom juridik, ekonomi, vetenskap och teknik* kan bero på att de enskilda koncernenheterna bedriver en övergripande verksamhet och tillhandahåller tjänster till flera enheter inom koncernen. En branschindelning som bestäms efter enheten med störst omsättning ger dock en annan bild. Cirka 30 procent av de koncerner som bedöms omfattas av regelverket rapporterar att de bedriver *Handel; reparation av motorfordon och motorcyklar* medan drygt 25 procent av koncernerna faller inom tillverkning. Andelen som faller inom verksamhet inom juridik, ekonomi, vetenskap och teknik sjunker till 10 procent. Omkring 10 procent är verksam inom *Information och Kommunikation*.

Vilka av koncernerna och företagen som kommer att påverkas av respektive förslag är dock svårt, och i vissa fall omöjligt, att avgöra. De administrativa riktlinjerna från januari 2025 är i huvudsak ett förtydligande av vad som gäller vid tillämpningen av artikel 9.1 i modellreglerna och bedöms därför inte påverka företagen nämnvärt. När det gäller förlängning av den tillfälliga förenklingsregeln bedöms förslaget påverka de administrativa kostnaderna för företagen, vilka beskrivs närmare nedan. *Regelrådet* saknar en beskrivning av påverkan på företagens intäkter. Regeringen bedömer att förslaget inte påverkar företagens intäkter.

Information om de nya bestämmelserna bör tillhandahållas inom ramen för övrig information om modellreglerna och lagen om tilläggsskatt. Skatteverket förutsätts uppdatera sina informationsmaterial och vidta lämpliga informationsinsatser.

Administrativa kostnader

De administrativa kostnaderna för koncerner till följd av lagen om tilläggsskatt beräknas bli betydande, särskilt för koncerner med aktivitet i många stater och med många koncernenheter. Detta kan påverka konkurrensen mellan företag och missgynna stora koncerner. Förslaget om att förlänga den tillfälliga förenklingsregeln innebär möjlighet för koncerner att inte tillämpa lagen om tilläggsskatt fullt ut såvitt avser koncernenheter som hör hemma i lågriskjurisdiktioner. Förslaget är att en koncern inte behöver göra en fullständig beräkning av eventuell tilläggsskatt om den kan visa att den enligt en förenklad beräkning inte är lågbeskattad i en stat, bl.a. med hjälp av uppgifter i land-för-land-rapporteringen. Syftet är att tillhandahålla ett förenklat förfarande för bedömningen av om tilläggsskatt ska betalas och ge de koncerner som omfattas av reglerna tid att anpassa sin interna hantering till de nya reglerna. För att uppnå syftet baseras beräkningarna bl.a. på information i land-för-land-rapporten, som redan är tillgänglig för de berörda koncernerna.

Av de koncerner som bedöms omfattas av direktivets regelverk förväntas ca 30–45 av 150–160 inte behöva samla in ytterligare information och göra fullständiga beräkningar enligt regelverket för enheter i någon stat som de bedriver verksamhet i. Resterande koncerner bedöms behöva samla in och rapportera information för enheter i vissa stater. Eftersom de inte behöver göra fullständiga beräkningar i stater där de inte är lågbeskattade då den tillfälliga förenklingsregeln förlängs minskar dock rapporteringen betydligt. Förlängningen av den tillfälliga förenklingsregeln bedöms således minska företagens administrativa kostnader betydligt jämfört med vad som annars hade varit fallet. I prop. 2023/24:32 bedömdes den tillfälliga förenklingsregeln minska de administrativa kostnaderna med 87 procent per år så länge regelverket var på plats. Denna bedömning kvarstår. Förslaget att förlänga förenklingsregeln innebär alltså att företagens administrativa kostnader bedöms minska till ca 15–130 miljoner kronor per år så länge regelverket är i kraft.

Den nya förenklingsregeln om kvalificerade skatteincitament innebär vissa ytterligare beräkningar för de multinationella koncerner som vill använda reglerna för kvalificerade skatteincitament eftersom hanteringen av dessa görs separat. Sådana beräkningar bedöms dock bygga på uppgifter som tas fram vid beräkningen av tilläggsskatt enligt de vanliga reglerna och bör därför inte innebära någon nämnvärd ytterligare påverkan på företagens administrativa kostnad. De övriga förslagen bedöms ha marginell påverkan på företagens administrativa kostnader.

Effekter för företagen och konkurrensförhållanden mellan olika stater

Även om många företag kan planera sin verksamhet så att skattekostnaden hålls nere är det i praktiken kostsamt att dra nytta av skillnader i effektiva skattesatser. Av det skälet är främst stora multinationella koncerner som har tillräckligt stora incitament och möjligheter att agera utifrån skillnader i effektiva skattesatser. Reglerna om minimibeskattning gör att möjligheterna för de stora multinationella koncernerna att minska sina skattekostnader begränsas, vilket gör att konkurrenssituationen mellan stora och mindre koncerner förbättras. Reglerna utformades på ett sådant sätt att om en koncern har verksamhet i någon stat som inför reglerna om minimibeskattning så behöver koncernen i princip betala lika mycket tilläggsskatt oavsett omfattning eller form av aktiviteter i de staterna. Med de nya förenklingsreglerna behandlas en koncern annorlunda när moderföretag hör hemma i en stat med ett godkänt parallellt minimibeskattningssystem, s.k. side-by-side system. IF har i januari 2026 godkänt USA:s regler i detta avseende. Det är för närvarande oklart vilka andra stater som kan komma att godkännas. Koncerner vars moderföretag hör hemma i Sverige riskerar att hamna i en konkurrensmässigt sämre situation jämfört med koncerner med moderföretag i stater med s.k. side-by-side system. Koncerner vars moderföretag hör hemma i Sverige skulle kunna få högre skattekostnader och administrativa kostnader när de har verksamhet i en stat som inte har infört reglerna om minimibeskattning. Koncerner med moderföretag som hör hemma i en stat med ett godkänt parallellt minibeskattningssystem kan däremot fortsätta att använda mer förmånliga strukturer för att minska sina totala skattekostnader, behålla större flexibilitet i sina globala investeringar och därmed ha en konkurrensmässigt bättre position jämfört med koncerner med moderföretag som hör hemma i Sverige eller stater som har infört reglerna om minimibeskattning.

De nya reglerna om kvalificerade skatteincitament i de administrativa riktlinjerna från januari 2026 medför att sådana skatteincitament i andra stater blir mer förmånligt behandlade i reglerna om minimibeskattning och ökar trycket att införa liknande kvalificerade incitament i de stater som inte har det. Nya incitament förväntas införas i ett globalt perspektiv och stater med befintliga incitament kan förväntas göra dessa mer generösa. Ett av de starkaste skälen till att införa minimiskatteregler var att minska staternas möjlighet att konkurrera om investeringar genom olika skattemässiga incitament. Med den nya behandlingen kommer emellertid möjligheter att konkurrera genom skattemässiga incitament att öka.

Sverige har för närvarande inga incitament som kan omfattas av de föreslagna reglerna om kvalificerade skatteincitament. Ur svenskt perspektiv påverkar förslaget om nya regler för kvalificerade skatteincitament i lagen om tilläggsskatt främst konkurrensen mellan olika multinationella koncerner vars moderföretag hör hemma i Sverige och som har koncernenheter i olika stater. Förslaget medför en konkurrensfördel för de koncerner som använder kvalificerade skatteincitament i stater utan en godkänd regel för nationell tilläggsskatt. Eftersom den offentligfinansiella effekten av förslaget i denna del bedöms vara försumbar bedöms detta inte påverka konkurrensen mer än marginellt. Förslaget innebär att Sverige kan införa incitament som skulle omfattas av de föreslagna reglerna om kvalificerade skatteincitament för att förbättra Sveriges internationella konkurrenskraft i en situation där andra stater har incitament som utgör kvalificerade skatteincitament enligt de administrativa riktlinjerna från januari 2026.

Sammantaget bedöms de administrativa riktlinjerna från januari 2026 innebära en större möjlighet för stater att attrahera investeringar genom olika former av skattekonkurrerande åtgärder som får genomslag i reglerna om minimibeskattning. Förslagen om regler om kvalificerade skatteincitament och förenklingsregler för s.k. side-by-side system i lagen om tilläggsskatt bedöms innebära konkurrensfördelar för multinationella koncerner med koncernenheter i stater utan godkända system för tilläggsskatt. Förslagen innebär att den tilläggsskatt som multinationella koncerner tidigare hade behövt betala i Sverige som följd av en låg effektiv skatt i andra stater under vissa omständigheter blir lägre. Sådana fall kan uppstå om den låga effektiva skattesatsen beror på sådana incitament som omfattas av de föreslagna reglerna om kvalificerade skatteincitament eller genom att de har ett moderföretag som hör hemma i ett godkänt parallellt minibeskattningssystem som tillåter lägre effektiva skattesatser under vissa omständigheter.

14.3 Effekter på investeringar och sysselsättning

De justeringar som görs med anledning av administrativa riktlinjerna från januari 2025, som i huvudsak är ett förtydligande av vad som gäller vid tillämpningen artikel 9.1 i modellreglerna, påverkar inte investeringarna eller sysselsättningen. Däremot kan de nya förenklingsregler som föreslås när moderföretag hör hemma i en stat med ett godkänt parallellt minibeskattningssystem minska investeringarna i Sverige jämfört med dessa stater. Skillnaderna mellan det godkända systemet och minimibeskattningsreglerna kommer att innebära att nettoavkastningen på investeringar för europeiska koncerner i till exempel USA, allt annat lika, blir lägre än nettoavkastningen på investeringar som görs av koncerner vars moderföretag hör hemma i dessa stater för samma typ av investering. Ur ett ekonomiskt perspektiv finns det en risk att detta leder till färre investeringar i Sverige och EU, samt att moderföretaget på sikt kan flyttas till dessa stater.

Det finns även en risk att de nya reglerna för kvalificerade skatteincitament som antogs av IF i januari 2026 minskar investeringarna i Sverige. Eftersom Sverige inte har sådana incitament som kan omfattas av de föreslagna reglerna om kvalificerade skatteincitament innebär de nya reglerna att bolagsskatten blir relativt lägre i stater med incitament som utgör kvalificerade skatteincitament.

Förslaget om nya regler för kvalificerade skatteincitament i lagen om tilläggsskatt påverkar i första hand multinationella koncerner vars moderföretag hör hemma i Sverige och som har koncernenheter i stater utan en godkänd regel om nationell tilläggsskatt men som har sådana incitament som omfattas av de föreslagna reglerna om kvalificerade skatteincitament. Sådana moderföretag kan i viss utsträckning räkna med lägre tilläggsskatt på vinster från berörda koncernenheter utomlands och kan därför på marginalen välja att rikta investeringar dit i stället för till Sverige. Denna effekt bedöms dock i sig vara liten. Förslaget möjliggör däremot för Sverige att i framtiden införa ett kvalificerat skatteincitament för att locka till sig investeringar från multinationella koncerner. Till den del företagen förväntar sig en sådan utveckling kan förslaget i sig samtidigt bidra att hålla investeringar inom landet. Sammantaget bedöms effekten på investeringar av förslaget vara marginell.

Samtidigt bedöms de förändringar som på ett internationellt plan medförs av de nya reglerna för kvalificerade skatteincitament som antogs av IF i januari 2026 på ett mer betydande sätt kan antas rikta internationella investeringar till andra stater under rådande förhållanden. Dessa förändringar är dock en effekt av den internationella överenskommelsen och inte av förslagen om ändringar i lagen om tilläggsskatt.

Det finns relativt få studier som analyserar sambandet mellan bolagsskatteförändringar och sysselsättningen. Eftersom bolagsskattehöjningar antas minska investeringarna, borde de även ha negativ påverkan på sysselsättningen. De nya reglerna för kvalificerade skatteincitament kan däremot motverka denna effekt. Sammantaget bedöms effekten på sysselsättningen vara svårbedömd.

14.4 Effekter för Skatteverket och de allmänna förvaltningsdomstolarna

Förslagen bedöms endast medföra marginella förändringar för Skatteverket och de allmänna förvaltningsdomstolarna då det endast är fråga om ett begränsat antal nya bestämmelser som kompletterar de befintliga bestämmelserna i lagen om tilläggsskatt. Eventuella kostnader för Skatteverket och de allmänna förvaltningsdomstolarna till följd av förslagen ryms inom befintliga ekonomiska ramar.

14.5 Övriga effekter

Förslagen bedöms inte få några effekter för enskilda, den ekonomiska jämställdheten, den ekonomiska fördelningen eller miljön.

15 Författningskommentar

Förslaget till lag om ändring i lagen (2023:875) om tilläggsskatt

1 kap.

10 § Om en koncern som *omfattas* av lagens tillämpningsområde delas i två eller flera koncerner, ska beloppsgränsen i 3 § *för en koncern* anses vara uppnådd

– för det *första räkenskapsåret som avslutas närmast efter* delningen: om summan av intäkterna i koncernredovisningen för *den koncernen* för det räkenskapsåret uppgår till minst 750 miljoner euro, och

– för det andra till fjärde räkenskapsåret *som avslutas närmast* efter delningen: om summan av intäkterna i koncernredovisningen för *den koncernen* uppgår till minst 750 miljoner euro under minst två av *de fyra* räkenskapsår *som avslutas närmast efter delningen*.

Första stycket gäller i fråga om varje arrangemang där koncernenheterna i en koncern delas i två eller flera koncerner och inte längre ingår i samma moderföretags koncernredovisning.

Paragrafen motsvarar artikel 33.1 b och 33.4 i rådets direktiv (EU) 2022/2523 av den 14 december 2022 om säkerställande av en global minimiskattenivå för multinationella koncerner och storskaliga nationella koncerner i unionen, kallat minimibeskattningsdirektivet, och 6.1.1 c, och 6.1.3 i modellreglerna.

Paragrafen behandlar sådana förändringar i en koncern som innebär delning av en koncern.

Ändringarna i *första styckets* inledande avsnitt innebär dels att det framgår att paragrafen tillämpas på sådana koncerner som omfattas av lagens tillämpningsområde under delningsåret, dels att den prövning som ska göras enligt paragrafen görs för varje koncern för sig.

Första strecksatsen i första stycket ändras i två avseenden. För det första vad gäller delningsåret genom att formuleringen ”för det räkenskapsår då delningen sker” ersätts med ”för det första räkenskapsåret som avslutas närmast efter delningen”. Detta innebär dock ingen ändring i sak. För det andra ändras bestämmelsen så att det framgår att det efter en delning endast ska tas hänsyn till den aktuella koncernens intäkter vid bedömningen av om beloppsgränsen i 1 kap. 3 § är uppnådd för en koncern. När bestämmelsen tillämpas på de koncerner som finns efter delningen kommer prövningen av om beloppsgränsen i bestämmelsen är uppnådd alltså att göras för varje koncern för sig, utan att intäkterna i den eller de andra koncernerna räknas med. Det är alltså fråga om separata prövningar av de olika koncernerna.

I den *andra strecksatsen* görs motsvarande ändringar som i första strecksatsen avseende referensen till ett räkenskapsår som avslutas närmast efter delningen och till att prövningen avser varje koncern för sig. I slutet av strecksatsen ändras uttrycket ”minst två av dessa räkenskapsår” till ”minst två av de fyra räkenskapsår som avslutas närmast efter delningen” för att förtydliga att de räkenskapsår som beloppsgränsen på 750 miljoner euro i intäkter ska uppnås även inkluderar delningsåret.

Övervägandena finns i avsnitt 11.

2 kap.

1 § I detta kapitel finns definitioner av vissa begrepp samt förklaringar till hur vissa termer och uttryck används i denna lag. Det finns definitioner av vissa begrepp och förklaringar till hur vissa termer och uttryck används i lagen också i andra kapitel.

Definitioner av följande begrepp samt förklaringar till hur vissa termer och uttryck används finns i nedan angivna paragrafer:

allmänt erkänd redovisningsstandard i 20 §
asymmetrisk vinst och förlust i utländsk valuta i 3 kap. 13 §
balansvärde i 5 kap. 5 §
beskattningsår i 24 §
bestämmande inflytande i 14 §
betydande snedvridning av konkurrensen i 3 kap. 7 §
bokfört nettovärde av materiella tillgångar i 23 §
delägarbeskattad enhet i 7 kap. 2 §
delägd moderenhet i 13 §
dotterföretag till ett samriskföretag i 7 kap. 44 §
effektiv skattesats i 3 kap. 37 §
enhet i 6 § första stycket
fast driftställe i 7 kap. 17 §
fastighetsinvesteringsföretag i 40 §
försäkringsinvesteringsenhet i 41 §
godkänd redovisningsstandard i 21 §
godkänt utdelningsskattessystem i 31 §
huvudenhet i 7 kap. 18 §
huvudregel för tilläggsskatt i 4 §
hybridenhet i 41 a §
hör hemma i 1 kap. 11–16 §§
icke kvalificerat imputationsbelopp i 28 §
icke marknadsmässigt överlåtbart skattetillgodohavande i 29 f §
ideell organisation i 34 §
internationell organisation i 33 §
investeringsenhet i 38 §
investeringsenhet för pensioner i 37 §
investeringsfond i 39 §
justerat resultat i 3 kap. 2 §
justerad skattekostnad i 3 kap. 23 §
kompletteringsregel för tilläggsskatt i 5 §
koncern i 7 §
koncernenhet i 8 §
koncernredovisning i 19 §
kvalificerat imputationsbelopp i 27 §
kvalificerat skatteincitament i 4 kap. 17 c §
kvalificerat skattetillgodohavande i 29 § *andra och tredje styckena*
lågbeskattad koncernenhet i 44 §
lågskattestat i 45 §
marknadsmässigt överlåtbart skattetillgodohavande i 29 a–29 e §§
medräknade skatter i 3 kap. 24–26 §§
mellanliggande moderenhet i 12 §
minimiskattesats i 25 §
minoritetsägd koncernenhet i 7 kap. 42 §
modellreglerna i 47 §
moderenhet i 10 §
moderföretag i 11 §
myndighetsenhet i 32 §
nettoskattekostnad i 3 kap. 8 §

offentligt organ i 6 § tredje stycket
omorganisering i 7 kap. 59 §
omvänd hybridenhet i 7 kap. 4 §
pensionsenhet i 35 §
pensionsfond i 36 §
portföljinnehav i 17 §
procentsats för tilläggsskatt i 3 kap. 38 § första stycket
rapporterande enhet i 43 §
redovisat resultat i 18 §
regel om nationell tilläggsskatt i 3 §
räkenskapsår i 22 §
samriskföretag i 7 kap. 43 §
skattetillgodohavande i 29 § första stycket
skattetransparent enhet i 7 kap. 3 §
stat i 46 §
statslös koncernenhet i 48 §
substansbelopp i 5 kap. 2 §
svensk koncernenhet i 9 §
system för beskattning av kontrollerade utländska företag i 26 §
system med avdragsgill utdelning i 7 kap. 66 §
särskild uppskjuten skattefordran i 4 kap. 13 §
tilläggsskatt i 2 §
tilläggsskattebelopp i 3 kap. 37–39 §§
tilläggsskatterapport i 42 §
undantagna utdelningar i 3 kap. 9 §
undantagen vinst och förlust avseende ägarintressen i 3 kap. 10 §
undantagna enheter i 1 kap. 5–8 §§
värdet beträffande tilläggsskatt i 23 a §
ägarenhet i 16 §
ägarintresse i 15 §
överskjutande vinst i 3 kap. 38 § andra stycket
övrigt skattetillgodohavande i 30 §.

I paragrafen finns en lista över begrepp, termer och uttryck som definieras och förklaras i lagen. Listan kompletteras med de nya definitionerna av kvalificerat skatteincitament och skattetillgodohavande.

Övervägandena finns i avsnitt 8.2 och 9.

Skattetillgodohavande och kvalificerat skattetillgodohavande

29 § *Med skattetillgodohavande avses ett tillgodohavande som ger innehavaren rätt att minska skyldigheten att betala medräknade skatter i den stat som beviljar tillgodohavandet.*

Med kvalificerat skattetillgodohavande avses

1. ett *skattetillgodohavande med* anspråk på återbetalning som är utformat på ett sådant sätt att det ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla betalningen enligt lagstiftningen i den stat som beviljar detta, eller

2. om skattetillgodohavandet delvis återbetalas, den del av skattetillgodohavandet som ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla detta belopp.

Ett kvalificerat skattetillgodohavande ska inte omfatta något skattebelopp som kan avräknas eller återbetalas på grundval av ett imputationsbelopp enligt 27 eller 28 §.

Första stycket i paragrafen saknar direkt motsvarighet i direktivet och modellreglerna, medan andra och tredje styckena motsvarar artikel 3.38 i direktivet och artikel 10.1.1 (qualified refundable tax credit) i modellreglerna. I paragrafen definieras vad som avses med kvalificerat skattetillgodohavande.

Genom ändringen flyttas bestämmelserna i nuvarande första och andra styckena till *andra* och *tredje styckena*. I andra stycket definieras uttrycket ”kvalificerat skattetillgodohavande”. I definitionen förtydligas att det ska vara fråga om ett skattetillgodohavande.

I det nya *första stycket* införs en definition av uttrycket skattetillgodohavande. Definitionen är hämtad från nuvarande 29 a § 2 med en något annorlunda redaktionell utformning. Innebörden av bestämmelsen är att med skattetillgodohavande avses ett tillgodohavande som ger innehavaren rätt att minska skyldigheten att betala medräknade skatter i den stat som beviljar tillgodohavandet. Det spelar ingen roll hur den minskade skyldigheten återspeglas i företagets redovisning. Kravet att ett skattetillgodohavande ska innebära en skattereduktion har inte tidigare framgått i definitionen av olika skattetillgodohavanden men behövs för att definitionen ska vara fullständig och överensstämma med vad som gäller enligt modellreglerna och minimibeskattningsdirektivet.

Övervägandena finns i avsnitt 9.

29 a § Med marknadsmässigt överlåtbart skattetillgodohavande avses ett *skattetillgodohavande*

1. som inte är ett kvalificerat skattetillgodohavande,
2. som uppfyller kriteriet om överlåtbarhet i 29 b §, och
3. vars överlåtbarhet uppfyller kriteriet om marknadsmässighet i 29 c §.

Paragrafen saknar motsvarighet i direktivet men motsvarar punkt 112.1 i kommentaren till artikel 3.2.4 i modellreglerna.

I paragrafen definieras uttrycket marknadsmässigt överlåtbart skattetillgodohavande. I det inledande avsnittet förtydligas genom att ordet tillgodohavande byts ut mot skattetillgodohavande. Det medför i sin tur att nuvarande punkt 2 tas bort. Det som står i den punkten finns i stället i den nya definitionen av skattetillgodohavanden i 29 § första stycket. Till följd av att punkt 2 utgår numreras även nuvarande efterföljande punkter.

Övervägandena finns i avsnitt 9.

30 § Med övrigt skattetillgodohavande avses ett *skattetillgodohavande* som inte omfattas av 29 *§ andra stycket*, 29 a eller 29 f §.

Paragrafen saknar motsvarar i direktivet, modellreglerna och kommentaren men framgår av punkt 41 i de administrativa riktlinjerna från juli 2023.

I paragrafen definieras uttrycket övrigt skattetillgodohavande. Enligt den nya lydelsen definieras uttrycket som ett skattetillgodohavande som inte omfattas av 29 § andra stycket, 29 a eller 29 f § dvs. ett skattetillgodohavande som inte är ett kvalificerat skattetillgodohavande, ett marknadsmässigt överlåtbart skattetillgodohavande eller ett icke marknadsmässigt överlåtbart skattetillgodohavande.

Övervägandena finns i avsnitt 9.

4 kap.

1 § I detta kapitel finns bestämmelser om
– val som påverkar det justerade resultatet (2–12 k §§),
– val som påverkar den justerade skattekostnaden (13–*17 d* §§),
– tillkommande tilläggsskattebelopp när det sammanlagda justerade resultatet i en stat är en förlust (18–19 a §§),
– justering av skattekostnad i efterhand (20–24 §§), och
– uppskjutna skattefordringar, uppskjutna skatteskulder och överförda tillgångar vid övergången till systemet (25–28 b §§).

I paragrafen anges vilka bestämmelser som kapitlet innehåller. Ändringen i andra strecksatsen är redaktionell och innebär att de nya bestämmelser som införs i kapitlet läggs till.

<u>*Kvalificerat skatteincitament*</u>

17 a § *Vid tillämpning av 3 kap. 37 § får den rapporterande enheten välja att de sammanlagda justerade skattekostnaderna ska ökas med ett belopp som motsvarar skatteeffekten av ett kvalificerat skatteincitament. Ökningen får inte överstiga det högsta av följande belopp:*
1. 5,5 procent av personalkostnaderna enligt 5 kap. 3 §, och
2. 5,5 procent av de redovisade kostnaderna för avskrivningar på tillgångar som avses i 5 kap. 4 § i den stat där koncernenheterna hör hemma.
Vid tillämpning av första stycket ska
– personalkostnader i 1 även omfatta sådana kostnader som anges i 5 kap. 3 § andra stycket 1, och
– redovisade kostnader för avskrivningar i 2 inte omfatta avskrivningar på sådana tillgångar som avses i 5 kap. 4 a §.
Den rapporterande enheten får, i stället för vad som anges i första stycket 1 och 2, välja att det belopp som skattekostnaden ska ökas med får uppgå till högst 1 procent av det redovisade värdet av sådana tillgångar som avses i 5 kap. 4 § och som finns i den stat där koncernenheterna hör hemma. Värdet av mark, övriga icke avskrivningsbara tillgångar och sådana tillgångar som avses i 5 kap. 4 a § ska inte ingå i det redovisade värdet. Ett sådant val gäller i fem år från och med det räkenskapsår som valet avser. Därefter fortsätter valet att gälla, om den rapporterande enheten inte återkallar valet. Om valet återkallas kan ett nytt val göras först fem år efter det år som återkallelsen avser. Om valet återkallas ska tillgångar som har omfattats av valet undantas från beräkningen enligt första stycket 2.

Paragrafen, som är ny, har sin grund i avsnitt 4 i de administrativa riktlinjerna från januari 2026 som finns införda i avsnitt 2.3 i annex A i kommentaren till modellreglerna.

I paragrafen regleras behandlingen av kvalificerade skatteincitament.

Av *första stycket* framgår att den rapporterande enheten kan välja att öka de sammanlagda justerade skattekostnaderna med ett belopp som motsvarar skatteeffekten av ett kvalificerat skatteincitament. Valmöjligheten gäller vid tillämpningen av 3 kap. 37 § vilket innebär att valet görs vid beräkningen av den sammanlagda skattekostnaden för samtliga koncernenheter i staten. Kvalificerat skatteincitament definieras i 17 b § och skatteeffekt av ett kvalificerat skatteincitament definieras i 17 c §.

Ökningen av de sammanlagda justerade skattekostnaderna begränsas av ett takbelopp som kan beräknas enligt två alternativa regler, en huvudregel och en alternativregel. Huvudregeln finns i första stycket och alternativregeln finns i tredje stycket. Utgångspunkten för båda reglerna är att beräkningen baseras på samma parametrar som används för beräkning av substansbeloppet i 5 kap.

Vid beräkning av takbeloppet enligt huvudregeln i första stycket får ökningen av de sammanlagda justerade skattekostnaderna inte överstiga det högsta av antingen 5,5 procent av personalkostnader enligt 5 kap. 3 § (*punkt 1*), eller 5,5 procent av kostnader för avskrivningar på tillgångar som avses i 5 kap. 4 § i den stat där koncernenheterna hör hemma (*punkt 2*). Även avskrivningar på sådana tillgångar som ska behandlas som materiella tillgångar enligt 5 kap. 4 § tredje stycket (naturresurser, leasetagares nyttjanderättigheter och licenser) får ingå vid beräkning enligt punkt 2. Med avskrivning avses även redovisad minskning av värdet på exempelvis gruvor på grund av utvinning.

I *andra stycket* finns två bestämmelser som kompletterar regeln i första stycket. Enligt *första strecksatsen* ska personalkostnaderna i punkt 1 även omfatta sådana kostnader som läggs till balansvärdet för materiella anläggningstillgångar trots att sådana kostnader inte får ingå vid beräkning av substansbeloppet enligt 5 kap. 3 § andra stycket 1. Enligt *andra strecksatsen* omfattar de redovisade kostnaderna för avskrivningar i punkt 2 inte avskrivningar på sådana tillgångar som avses i 5 kap. 4 a §, dvs. materiella anläggningstillgångar som innehas för försäljning, leasing eller investering eller som omfattas av undantaget för sjöfartsverksamhet. Enligt 5 kap. 4 a § ska sådana tillgångar inte ingå i beräkningen enligt 5 kap. 4 §, men för att undvika missförstånd införs ett uttryckligt undantag för avskrivningar på sådana tillgångar även i den här paragrafen.

I *tredje stycket* finns den alternativa regeln för beräkning av takbeloppet. Enligt denna får den rapporterande enheten – i stället för vad som följer av första stycket 1 och 2 – välja ett belopp som motsvarar 1 procent av det redovisade värdet av sådana tillgångar som avses i 5 kap. 4 § i den stat där koncernenheterna hör hemma. Vissa tillgångar får dock inte ingå i underlaget. Det gäller mark, övriga icke avskrivningsbara tillgångar och sådana tillgångar som avses i 5 kap. 4 a § (dvs. materiella anläggningstillgångar som innehas för försäljning, leasing eller investering eller som omfattas av undantaget för sjöfartsverksamhet).

Om den rapporterande enheten väljer att tillämpa alternativregeln i tredje stycket så gäller detta val i fem år från och med det räkenskapsår som valet avser. Efter femårsperioden fortsätter valet att gälla om det inte återkallas. Om valet återkallas kan ett nytt val att tillämpa alternativregeln göras först fem år efter det år som återkallelsen avser. Om valet återkallas och koncernen i stället tillämpar punkt 2 i första stycket (avskrivningar på materiella tillgångar) får avskrivningar på sådana tillgångar som har omfattats av valet inte ingå i de avskrivningar som ligger till grund för beräkningen av takbeloppet. Det innebär att avskrivningar på sådana tillgångar som har ingått i beräkningen enligt alternativregeln i tredje stycket de år denna regel har tillämpats inte får räknas med.

Övervägandena finns i avsnitt 8.2.

17 b § *Med <u>kvalificerat skatteincitament</u> avses ett allmänt tillgängligt skatteincitament till den del det är utgiftsbaserat eller produktionsbaserat. Ett skatteincitament är ett incitament som minskar skyldigheten att betala aktuella eller framtida medräknade skatter. Ett skatteincitament är utgiftsbaserat om det* *baseras på utgifter som en koncernenhet har haft när incitamentet beviljas och summan av skatteeffekten av incitamentet och övriga skatteincitament för samma utgift inte överstiger den utgift som incitamentet baseras på. Ett skatteincitament är produktionsbaserat om det baseras på volymen av materiella tillgångar, inklusive elektricitet, som har producerats i staten när incitamentet beviljas.*

Paragrafen, som är ny, har sin grund i avsnitt 4 i de administrativa riktlinjerna från januari 2026 som finns införda i avsnitt 2.3 i annex A i kommentaren till modellreglerna.

I paragrafen definieras begreppet ”kvalificerat skatteincitament”.

Med ett kvalificerat skatteincitament avses ett allmänt tillgängligt skatteincitament till den del det är utgiftsbaserat eller produktionsbaserat. Med skatteincitament avses ett incitament som minskar skyldigheten att betala sådana aktuella eller framtida skatter som enligt 3 kap. 24–26 §§ räknas med vid beräkningen av den justerade skattekostnaden. Definitionen av skatteincitament är likartad den som gäller för skattetillgodohavanden i förslaget till 2 kap. 29 § första stycket. Den huvudsakliga skillnaden ligger i att definitionen i 2 kap. 29 § använder uttrycket ”tillgodohavande” medan denna paragraf använder uttrycket ”incitament”. Begreppet ”skatteincitament” är ett bredare begrepp än begreppet ”skattetillgodohavande”. Ett skattetillgodohavande kan bara ges i form av en skattereduktion medan ett skatteincitament även omfattar andra åtgärder som sänker skattekostnaden såsom exempelvis skattemässiga avdrag som överstiger 100 procent av en utgift. Att ett incitament är allmänt tillgängligt innebär att incitamentet inte får riktas till enskilda företag eller till särskilda kategorier av företag, exempelvis sådana företag som omfattas av systemet med tilläggsskatt.

Vidare måste incitamentet vara antingen utgiftsbaserat eller produktionsbaserat. Med utgiftsbaserat menas att det baseras på utgifter som en koncernenhet har haft när incitamentet beviljas. Det får alltså inte baseras på utgifter som kommer att uppstå någon gång i framtiden. En koncern anses ha haft en utgift när den tas med i redovisningen och används vid beräkning av det redovisade resultatet eller vid betalningen. Det är inte nödvändigt att en förvärvad tillgång har börjat skrivas av eller ens får skrivas av. Incitament kan även betraktas som utgiftsbaserade om de grundas på avskrivningar under räkenskapsåret avseende tillgångar som har förvärvats ett tidigare räkenskapsår eller om det grundas på utgifter som har uppstått ett tidigare räkenskapsår (utom sådana utgifter som uppkom innan incitamentet trädde i kraft). Utgiftsbaserade incitament kan ges på olika sätt, exempelvis i form av en skattereduktion, ett avdrag med mer än 100 procent av en utgift (superavdrag) eller genom att en inkomst är skattefri eller beskattas med än lägre skattesats än den allmänt tillämpliga. Stöd i form av skattefria eller lågbeskattade inkomster måste dock ha en direkt koppling till utgifter för att klassificeras som ett utgiftsbaserat incitament. Slutligen får incitamentet inte vara så stort att summan av skatteeffekten av incitamentet (se 17 c §) och övriga skatteincitament för samma utgift överstiger den utgift som incitamentet baseras på. Eftersom uttrycket skatteincitament betyder ett incitament som minskar medräknade skatter kommer incitament som sänker andra skatter, exempelvis arbetsgivaravgifter, inte att ingå i den sammanlagda beräkningen.

Med ett produktionsbaserat skatteincitament menas ett skatteincitament som baseras på volymen av materiella tillgångar som har producerats i staten där incitamentet beviljas. Sådana incitament ges generellt i form av skattereduktioner. I detta sammanhang räknas elektricitet som en materiell tillgång. Även exempelvis utvinning ur gruvor och raffinering av olja omfattas. Det är den producerade volymen som ska grunda incitamentet, inte värdet av produktionen.

Övervägandena finns i avsnitt 8.2.

17 c § *Med* *<u>skatteeffekt av ett kvalificerat skatteincitament</u>* *avses något av följande:*

1. den minskning av skyldigheten att betala medräknade skatter som uppkommer för ett beskattningsår på grund av ett utnyttjat skatteincitament i form av en skattereduktion,

2. den del av ett kostnadsavdrag för ett beskattningsår som överstiger 100 procent av utgiften multiplicerad med bolagsskattesatsen,

3. ett kostnadsavdrag för ett beskattningsår som annars inte skulle ha varit avdragsgillt enligt lokala skatteregler multiplicerat med bolagsskattesatsen,

4. en skattefri inkomst multiplicerad med bolagsskattesatsen, eller

5. en inkomst som beskattas med en lägre skattesats än den generellt tillämpliga bolagsskattesatsen multiplicerad med skillnaden mellan dessa skattesatser.

Paragrafen, som är ny, har sin grund i avsnitt 4 i de administrativa riktlinjerna från januari 2026 som finns införda i avsnitt 2.3 i annex A i kommentaren till modellreglerna.

I paragrafen definieras uttrycket ”skatteeffekt av ett kvalificerat skatteincitament”. Detta behövs för att bestämma hur stor del av ett kvalificerat skatteincitament som får användas enligt 17 a § första stycket. Beräkningen av skatteeffekten beror på vilken form som incitamentet har.

Första punkten avser incitament som ges i form av en skattereduktion. För sådana incitament uppgår skatteeffekten till den minskning av skyldigheten att betala medräknade skatter som har uppkommit för ett beskattningsår på grund av ett utnyttjat skatteincitament.

Andra punkten avser incitament i form av kostnadsavdrag som överstiger utgiften (superavdrag). För sådana incitament är skatteeffekten den del av ett kostnadsavdrag för ett beskattningsår som överstiger 100 procent av utgiften multiplicerad med bolagsskattesatsen. Om ett incitament innebär att koncernen får göra ett extra avdrag med exempelvis 50 procent (dvs. ett totalt avdrag med 150 procent) uppgår skatteeffekten till 50 procent av utgiften multiplicerad med bolagsskattesatsen.

Tredje punkten avser incitament som ges i form av avdragsrätt för en kostnad som annars inte skulle ha varit avdragsgill enligt lokala skatteregler. För sådana incitament uppgår skatteeffekten till avdraget multiplicerat med bolagsskattesatsen.

Fjärde punkten avser incitament i form av en skattefri inkomst. För sådana incitament uppgår skatteeffekten till inkomsten multiplicerad med bolagsskattesatsen.

Femte punkten avser stöd som innebär att en inkomst beskattas med en lägre skattesats än den generellt tillämpliga bolagsskattesatsen. För sådana stöd uppgår skatteeffekten till inkomsten multiplicerad med skillnaden mellan den lägre skattesatsen och den generellt tillämpliga skattesatsen.

För både skattefria och lågbeskattade inkomster (punkt 4 och 5) gäller att det inte kan vara fråga om vilka skattefria eller lågbeskattade inkomster som helst. Inkomsten måste vara kopplad till sådana utgifter som ger upphov till ett utgiftsbaserat skatteincitament enligt 17 b §.

Övervägandena finns i avsnitt 8.2

Kvalificerat respektive marknadsmässigt överlåtbart skattetillgodohavande

17 d § *Den rapporterande enheten får, i stället för vad som anges i 3 kap. 18–18 c §§, välja att behandla hela eller delar av ett kvalificerat skattetillgodohavande eller ett marknadsmässigt överlåtbart skattetillgodohavande som ett kvalificerat skatteincitament om skattetillgodohavandet uppfyller villkoren i 17 b §.*

Paragrafen, som är ny, har sin grund i avsnitt 4 i de administrativa riktlinjerna från januari 2026 som finns införda i avsnitt 2.3 i annex A i kommentaren till modellreglerna.

I paragrafen finns en möjlighet för den rapporterande enheten att välja att behandla hela eller delar av ett kvalificerat skattetillgodohavande eller ett marknadsmässigt överlåtbart skattetillgodohavande som ett kvalificerat skatteincitament. Kvalificerade skattetillgodohavanden definieras i 2 kap. 29 § och marknadsmässigt överlåtbara skattetillgodohavanden definieras i 2 kap. 29 a §. Valmöjligheten gäller dock bara om skattetillgodohavandet uppfyller villkoren i 17 b §, dvs. det ska vara allmänt tillgängligt och utgifts- eller produktionsbaserat. Valet behöver inte avse alla skattetillgodohavanden som koncernen har och valet kan avse bara en viss del av ett skattetillgodohavande. Valet gäller i ett år. När valet utnyttjas gäller 4 kap. 17 a–17 c §§, i stället för de vanliga reglerna i 3 kap. 18–18 c §§. Den del av ett skattetillgodohavande som inte omfattas av ett val ska behandlas enligt de vanliga reglerna för skattetillgodohavanden.

Övervägandena finns i avsnitt 8.2.

25 § Vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för ett övergångsår enligt 26 § och för varje därpå följande räkenskapsår ska alla de uppskjutna skattefordringar och uppskjutna skatteskulder som återspeglas eller redovisas i alla koncernenheters räkenskaper i en stat beaktas för övergångsåret. *Detta gäller dock inte om de uppskjutna skattefordringarna och uppskjutna skatteskulderna avser skatt enligt ett sådant system för beskattning av kontrollerade utländska företag som avses i 2 kap. 26 §, och skatten för kontrollerade utländska företag enligt detta system beräknas gemensamt för samtliga sådana företag.*

Uppskjutna skattefordringar och uppskjutna skatteskulder ska räknas med utifrån den skattesats som är lägst av minimiskattesatsen och den tillämpliga nationella skattesatsen. En uppskjuten skattefordran som har redovisats till en skattesats som är lägre än minimiskattesatsen får dock räknas enligt minimiskattesatsen om den skattskyldige kan visa att den uppskjutna skattefordran är hänförlig till en justerad förlust.

Effekter som uppstår när värdet på en uppskjuten skattefordran justeras eller när principer för att ta upp en sådan fordran i räkenskaperna ändras ska inte påverka värdet av den uppskjutna skattefordran.

Paragrafen motsvarar artikel 47.2 i direktivet och artikel 9.1.1 i modellreglerna.

I paragrafen behandlas uppskjutna skattefordringar och uppskjutna skatteskulder som förs in i systemet.

Ändringen i *första stycket* innebär att det klargörs att uppskjutna skattefordringarna och uppskjutna skatteskulder som avser skatt enligt ett sådant system för beskattning av kontrollerade utländska företag som avses i 2 kap. 26 § som beräknar skatten för kontrollerade utländska företag gemensamt för samtliga sådana företag inte får föras in i systemet under ett övergångsår. Vad som avses med övergångsår framgår av 26 §.

Övervägandena finns i avsnitt 10.3.

26 § Med *övergångsår* för en stat avses det första räkenskapsår då en *koncern* omfattas av *lagens tillämpningsområde i fråga om den staten*.

Paragrafen motsvarar artikel 47.1 i direktivet och artikel 10.1.1 (transition year) i modellreglerna.

I paragrafen definieras uttrycket övergångsår för en stat, vilket är centralt för tillämpningen av bestämmelserna om uppskjutna skattefordringar, uppskjutna skatteskulder och överförda tillgångar vid övergången till systemet. Ändringen i paragrafen innebär att med övergångsår för en stat ska avses det första räkenskapsår då en koncern omfattas av lagens tillämpningsområde med avseende på den staten. Om exempelvis koncern A, vilken omfattas av lagens tillämpningsområde redan från 2024, under 2026 avyttrar koncernenhet C i stat C till koncern B, vilken inte omfattas av lagens tillämpningsområde vad avser stat C, så blir 2026 koncern B:s övergångsår för stat C. Om däremot koncern B redan vid förvärvet av C omfattades av lagens tillämpningsområde vad avser stat C så får koncern B inte ett nytt övergångsår för stat C till följd av förvärvet.

Övervägandena finns i avsnitt 10.2.

27 § Uppskjutna skattefordringar och uppskjutna skatteskulder som avses i 25 § ska inte justeras enligt 3 kap. 34 eller 35 §.

Uppskjutna skattefordringar som härrör från sådana poster som enligt 3 kap. inte ska ingå vid beräkningen av det justerade resultatet ska dock undantas från den beräkning som avses i 25 § när sådana uppskjutna skattefordringar uppkommer i en transaktion som har ägt rum efter den 30 november 2021.

Följande uppskjutna skattefordringar och uppskjutna skatteskulder ska undantas från den beräkning som avses i 25 §:

1. uppskjutna skattefordringar som uppstått på grund av en sådan överenskommelse med myndigheterna i en stat som har ingåtts eller ändrats efter den 30 november 2021,

2. uppskjutna skattefordringar som har uppstått då en koncernenhet har gjort eller ändrat ett val efter den 30 november 2021, om valet retroaktivt ändrar behandlingen av en transaktion som har ingått i koncernenhetens beskattningsbara inkomst ett tidigare beskattningsår,

3. uppskjutna skattefordringar och uppskjutna skatteskulder som har uppstått till följd av att en koncernenhet har använt ett annat skattemässigt värde än det bokförda värdet vid övergången till systemet när bolagsskatt har införts i en stat efter den 30 november 2021 men före övergångsårets början, och

4. en uppskjuten skattefordran till den del fordran beror på en förlust som har uppstått mer än fem räkenskapsår innan bolagsskatt har införts i en stat.

Paragrafen motsvarar artikel 47.3 i direktivet och artikel 9.1.2 i modellreglerna.

Paragrafen innehåller en begränsning avseende de uppskjutna skattefordringar och uppskjutna skatteskulder som kan föras in i systemet.

I *tredje stycket*, som är nytt, anges vissa särskilt utpekade uppskjutna skattefordringar och uppskjutna skatteskulder som ska undantas från beräkningen av den effektiva skattesatsen för övergångsåret och varje därpå följande räkenskapsår i enlighet med 25 §. Ändringen föreslås träda i kraft den 1 januari 2027 och tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026 (se punkt 2 i ikraftträdande- och övergångsbestämmelserna). Det innebär att för räkenskapsår som avslutas efter detta datum får sådana fordringar och skulder inte räknas med.

Av *första punkten* framgår att uppskjutna skattefordringar som uppstått på grund av en överenskommelse med myndigheterna i en stat som ingåtts eller ändrats efter den 30 november 2021 inte får beaktas vid beräkningen enligt 25 §. Uppskjutna skattefordringar som inte uppstått på grund av en sådan överenskommelse får beaktas vid beräkningen enligt 25 §.

Av *andra punkten* framgår att uppskjutna skattefordringar som uppstått då en koncernenhet gjort eller ändrat ett val efter den 30 november 2021 som retroaktivt ändrat behandlingen av en transaktion som har ingått i koncernenhetens beskattningsbara inkomst ett tidigare beskattningsår inte får beaktas. Det val som avses i punkten är inte ett sådant val som följer av reglerna om minimibeskattning. Med en koncernenhets beskattningsbara inkomst avses t.ex. att koncernenhetens inkomst har fastställts av skattemyndigheten i en stat eller att inkomsten framgått av en lämnad deklaration.

Av *tredje punkten* framgår att uppskjutna skattefordringar och uppskjutna skatteskulder som uppstått till följd av att en koncernenhet använt ett annat skattemässigt värde än det bokförda värdet vid övergången till systemet när ett bolagsskattesystem har införts i en stat efter den 30 november 2021 men före övergångsårets början inte får beaktas vid beräkningen enligt 25 §. Eftersom bestämmelsen avser både uppskjutna skattefordringar och uppskjutna skatteskulder ska bestämmelsen tillämpas oavsett om det skattemässiga värdet är högre eller lägre än det bokförda värdet. Detta följer av uttrycket ”ett annat skattemässigt värde”.

Av *fjärde punkten* framgår att en uppskjuten skattefordran till den del fordran beror på en förlust som har uppstått mer än fem räkenskapsår innan bolagsskatt har införts i en stat inte får beaktas. Av punkt 8.7 i kommentaren till artikel 9.1.2 i modellreglerna, vilken motsvarar andra stycket i paragrafen, följer att den allmänna regeln i den artikeln gäller för uppskjutna skattefordringar som avser förluster som uppkommit mindre än fem år innan bolagsskatt införts på samma sätt som för en förlust enligt befintlig bolagsskatt. Det gäller till den del förlusten härrör från en post som enligt 3 kap. inte ska ingå vid beräkningen av det justerade resultatet och som därmed ska undantas från den beräkning som avses i 25 § när sådana uppskjutna skattefordringar uppkommer i en transaktion som har ägt rum efter den 30 november 2021. Detta kan exempelvis gälla mutor. I Sverige är mutor olagliga. Om ett dotterföretag till ett svenskt företag betalar mutor ska därför kostnaden för detta inte räknas med i det justerade resultatet (3 kap. 14 § 1). Om dotterföretaget finns i en stat som inför bolagsskatt från och med exempelvis 2027 ska en fordran för uppskjuten skatt som avser en förlust som uppkom under räkenskapsåren 2022–2026 undantas till den del förlusten beror på mutan.

Övervägandena finns i avsnitt 10.1.

7 kap.

67 § Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska minskas*, dock lägst till noll,* med belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om

1. mottagaren beskattas för utdelningen med en skattesats som är lika med eller högre än minimiskattesatsen och inkomsten hänförs till ett beskattningsår som avslutas senast tolv månader efter utgången av räkenskapsåret, eller
2. det rimligen kan förväntas att det sammanlagda beloppet av medräknade skatter för moderföretaget och skatt som mottagaren betalar på utdelningen är lika med eller överstiger den utdelande enhetens inkomst multiplicerad med minimiskattesatsen.

Vid tillämpningen av bestämmelserna i första stycket ska mottagaren anses ha beskattats för utdelning som lämnats i förhållande till inköp från ett inköpskooperativ till den del utdelningen minskar en avdragsgill utgift eller kostnad.

Paragrafen motsvarar artikel 39.2 och 39.6 i direktivet och artikel 7.2.1 och 7.2.4 i modellreglerna.

Paragrafen föreskriver särskilda regler för moderföretag som omfattas av system med avdragsgill utdelning. Dessa enheters effektiva skattesats skulle kunna bli noll eller åtminstone mycket låg enligt de allmänna reglerna i 3 kap. och resultera i tilläggsskatt, trots att en skattekostnad på inkomsten belastar delägarna. Skattekostnader på moderföretagets inkomst som belastar delägare som inte är koncernenheter ska därför beaktas, om de medför en beskattning av inkomsten som överstiger minimiskattesatsen.

Ändringen i *första stycket* innebär att paragrafen anpassas för att överensstämma med motsvarande bestämmelser i minimibeskattningsdirektivet och modellreglerna genom att det anges att justeringar ska göras så att den justerade vinsten blir lägst noll.

Övervägandena finns i avsnitt 12.

68 § Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska, utöver vad som anges i 67 §, minskas*, dock lägst till noll,* med det belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om mottagaren är

1. en fysisk person som är medlem i ett inköpskooperativ, och utdelningen lämnas i förhållande till gjorda inköp,
2. en fysisk person som har skatterättslig hemvist och är skattskyldig i den stat där moderföretaget hör hemma och dennes ägarintressen ger rätt till högst fem procent av vinst och tillgångar i moderföretaget, eller
3. ett offentligt organ, en myndighetsenhet, en internationell organisation, en ideell organisation eller en pensionsfond som hör hemma i den stat där moderföretaget hör hemma.

Paragrafen motsvarar artikel 39.3 i direktivet och artikel 7.2.1 i modellreglerna.

I de fall som anges i paragrafen ska moderföretagets justerade vinst, utöver de situationer som anges i 67 §, minskas med belopp som kan hänföras till mottagare som uppfyller kriterierna i paragrafen. I paragrafen uppställs inget krav på beskattning av utdelningen hos mottagaren.

Ändringen i paragrafen innebär att paragrafen anpassas för att överensstämma med motsvarande bestämmelser i minimibeskattningsdirektivet och modellreglerna genom att det anges att justeringar ska göras så att den justerade vinsten blir lägst noll.

Övervägandena finns i avsnitt 12.

8 kap.

1 § I detta kapitel finns bestämmelser om

– tidsgräns för den tillfälliga förenklingsregeln (2 §),
– villkor för den tillfälliga förenklingsregeln (3–7 a §§),
– särskilda enheter och koncerner (8–11 §§),
– verkan av konstlade arrangemang (11 a–11 g §§),
– undantag från tillämpningen av den tillfälliga förenklingsregeln (12 §),
– övergångsår (13 §),
– förenkling av kompletteringsregeln för tilläggsskatt (14 §),
– en förenklingsregel för koncernenheter utan väsentlig betydelse för koncernredovisningen (15–17 §§),
– en förenklingsregel för utländsk nationell tilläggsskatt (18 §),
– *förenklingsregler när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem (18 a och 18 b §§), och*
– val (19 §).

I paragrafen anges vilka bestämmelser som kapitlet innehåller.

Ändringen är redaktionell och innebär att de nya bestämmelser som införs i kapitlet läggs till.

2 § Bestämmelserna i 3–13 §§ gäller för koncernenheter i en stat för tid som

– motsvarar de räkenskapsår som gäller för enheternas moderföretag, och
– börjar närmast efter den 31 december 2023 men före den 1 januari *2028*.

Bestämmelserna gäller dock inte för räkenskapsår som avslutas efter den 30 juni *2029*.

Paragrafen har sin grund i punkt 24 i avsnitt 1 i annex A i kommentaren till modellreglerna och i avsnitt 3 i de administrativa riktlinjerna från januari 2026.

Paragrafen innehåller bestämmelsen om vilken tidsperiod som den tillfälliga förenklingsregeln är tillämplig. Ändringen innebär att tidsbegränsningen förlängs ett år.

Övervägandena finns i avsnitt 6.1.

4 § Tilläggsskattebeloppet för koncernenheterna i en stat ska anses vara noll, om koncernenheterna tillsammans har en effektiv skattesats som är lika med eller större än den procentsats som anges i tredje stycket. Den effektiva skattesatsen ska motsvara kvoten mellan koncernenheternas skattekostnad enligt andra stycket och deras vinst eller förlust före inkomstskatt enligt koncernens kvalificerade land-för-land-rapport.

Med skattekostnad avses i första stycket sådan skattekostnad som redovisas i koncernens kvalificerade finansiella rapport minskad med skatter som inte är medräknade skatter och medräknade skatter som hänför sig till en osäker skattesituation. *Skattekostnaden ska även minskas med belopp som återförs i redovisningen och som avser uppskjutna skattefordringar enligt 4 kap. 27 § tredje stycket 1–3.*

Procentsatsen enligt första stycket ska vara
– 15 procent för räkenskapsår som börjar under 2024,
– 16 procent för räkenskapsår som börjar under 2025, och
– 17 procent för räkenskapsår som börjar under 2026 *och 2027*.

Paragrafen har sin grund i artikel 32 i direktivet, avsnitt 1 i annex A i kommentaren till modellreglerna, punkt 8.6 i kommentaren till artikel 9.1.2 i modellreglerna (de administrativa riktlinjerna från januari 2025), punkt 20 i avsnitt 1 i annex A i kommentaren till modellreglerna (punkt 5 i avsnitt 3 i de administrativa riktlinjerna från januari 2026).

I paragrafen regleras det andra testet som omfattas av den tillfälliga förenklingsregeln, ETR-testet (Effective Tax Rate).

Ändringen i *andra stycket* innebär att skattekostnaden ska minskas med belopp som återförs i redovisningen och som avser uppskjutna skattefordringar enligt 4 kap. 27 § tredje stycket 1–3.

Ändringen i *tredje stycket* innebär att procentsatsen 17 procent som gäller för räkenskapsår som börjar under 2026 också ska gälla för räkenskapsår som börjar under 2027.

Övervägandena finns i avsnitt 6.1 och 10.1.

9 § Vid tillämpningen av 3–7 §§ gäller följande för moderföretag som är delägarbeskattade enheter eller enheter som omfattas av ett system med avdragsgill utdelning. Vinsten före bolagsskatt ska minskas*, dock lägst till noll,* i den utsträckning som beloppet är hänförligt till en persons ägarintresse i den delägarbeskattade enheten eller utdelat till följd av en ägarandel som innehas av en sådan person.

Med person avses i första stycket en sådan innehavare av ett ägarintresse som bestämmelserna i 7 kap. 12 och 13 §§ avser eller sådana mottagare som bestämmelserna i 67 och 68 §§ avser.

För delägarbeskattade enheter gäller första stycket bara om samtliga ägarintressen i moderföretaget innehas av någon som avses i 7 kap. 12 och 13 §§.

Paragrafen har sin grund i artikel 32 i direktivet och avsnitt 1 annex A i kommentaren till modellreglerna.

I denna paragraf regleras tillämpning av den tillfälliga förenklingsregeln för delägarbeskattade enheter och moderföretag som omfattas av bestämmelser om avdragsgill utdelning.

Ändringen i *första stycket* innebär att den minskning av vinsten före bolagsskatt som ska ske enligt paragrafen, ska göras lägst till noll.

Övervägandena finns i avsnitt 12.

14 § Tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska anses vara noll för den stat där moderföretaget hör hemma om bolagsskattesatsen i den staten uppgår till minst 20 procent för varje räkenskapsår under övergångsperioden.

Med övergångsperioden avses de räkenskapsår som inte omfattar mer än tolv månader och som börjar den 31 december 2025 eller tidigare och slutar före den 31 december 2026. *Med övergångsperioden avses också de räkenskapsår som enligt tillämplig redovisningsstandard är 52 eller 53 veckor och som börjar den 31 december 2025 eller tidigare och slutar före den 4 januari 2027.*

Paragrafen har sin grund i punkt 1–7 i avsnitt 4 i annex A i kommentaren till modellreglerna.

I denna paragraf regleras tillämpning av den tillfälliga förenklingsregeln för kompletteringsregeln för tilläggsskatt.

Ändringen i andra stycket innebär att bestämmelsen tillförs en ny mening med som kompletterar definitionen av uttrycket övergångsperioden som används i bestämmelsens första stycke. Med övergångsperioden avses också de räkenskapsår som enligt tillämplig redovisningsstandard är 52 eller 53 veckor och som börjar den 31 december 2025 eller tidigare och slutar före den 4 januari 2027.

Övervägandena finns i avsnitt 6.2.

Förenklingsregler när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem

18 a § *Tilläggsskattebeloppet enligt huvud- och kompletteringsregeln för tilläggsskatt ska anses vara noll för koncernenheter om moderföretaget hör hemma i en stat med ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst som är godkänt av OECD/G20 Inclusive Framework on BEPS.*

Det som sägs om koncernenheter i första stycket gäller också för samriskföretag och dotterföretag till samriskföretag som tillhör en koncern vars moderföretag uppfyller villkoret i första stycket. Det gäller dock bara för koncernens andel av tilläggsskattebeloppet.

Paragrafen, som är ny, har sin grund i avsnitt 5.1 i de administrativa riktlinjerna från januari 2026 som finns införda i avsnitt 5 i annex A i kommentaren. Paragrafen innebär att koncerner vars moderföretag hör hemma i en stat med ett godkänt s.k. Side-by-Side-system (Qualified Side-by-Side Regime) får välja att tillämpa en förenklingsregel som undantar koncernen samt dess samriskföretag och dotterföretag till samriskföretag, från tillämpning av huvud- och kompletteringsregeln för tilläggsskatt (Side-by-Side Safe Harbour). Den nedsättning som följer av paragrafen ska ske om den rapporterande enheten gör ett val enligt 19 §.

I *första stycket* anges att tilläggsskattebeloppet enligt huvud- och kompletteringsregeln för tilläggsskatt ska anses vara noll för koncernenheter om moderföretaget hör hemma i stat som är godkänd av OECD/G20 Inclusive Framework on BEPS som en stat med ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst.

I *andra stycket* anges att det som sägs om koncernenheter i första stycket också gäller för samriskföretag och dotterföretag till samriskföretag om företaget tillhör en koncern vars moderföretag uppfyller villkoret i första stycket. Det gäller dock bara för koncernens andel av tilläggsskattebeloppet. Ett samriskföretag och ett dotterföretag till ett samriskföretag ingår inte i en koncern. I stället används uttrycket ”tillhör en koncern” i paragrafen.

Övervägandena finns i avsnitt 7.1.

18 b § *Tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska anses vara noll för den stat där moderföretaget hör hemma om den staten har ett parallellt system för minimibeskattning av inhemsk inkomst som är godkänt av OECD/G20 Inclusive Framework on BEPS.*

Paragrafen, som är ny, har sin grund i avsnitt 5.2 i de administrativa riktlinjerna från januari 2026 som finns införda i avsnitt 5 i annex A i kommentaren. Paragrafen innebär att koncerner vars moderföretag hör hemma i en stat med ett godkänt system (Qualified UPE [Ultimate Parent Entity] System) får välja att tillämpa en förenklingsregel som undantar koncernen samt dess samriskföretag och dotterföretag till samriskföretag, från tillämpning av kompletteringsregeln för tilläggsskatt vad avser den stat där moderföretaget hör hemma (UPE Safe Harbour). Den nedsättning som följer av paragrafen ska ske om den rapporterande enheten gör ett val enligt 19 §.

I paragrafen anges att tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska anses vara noll för den stat där ett moderföretag hör hemma om den staten har ett parallellt system för minimibeskattning av inhemsk inkomst om är godkänt av OECD/G20 Inclusive Framework on BEPS. Nedsättningen till noll ska även omfatta tilläggsskatt enligt kompletteringsregeln som avser samriskföretag och dotterföretag till samriskföretag som tillhör en koncern vars moderföretag uppfyller villkoren och som hör hemma i den staten. Det gäller dock bara för den koncernens andel av tilläggsskattebeloppet för samriskföretaget och dotterföretaget till samriskföretaget. Ett samriskföretag och ett dotterföretag till ett samriskföretag ingår inte i en koncern. I stället används uttrycket ”tillhör en koncern” i paragrafen.

Övervägandena finns i avsnitt 7.2.

Ikraftträdande- och övergångsbestämmelser

1. Denna lag träder i kraft den 1 januari 2027.

2. Lagen tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2026.

3. Den rapporterande enheten får tillämpa samtliga eller vissa av bestämmelserna första gången för beskattningsår som börjar närmast efter den 31 december 2024 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2024. Bestämmelserna i 4 kap. 17 a–17 d §§ samt 8 kap. 18 a och 18 b §§ får dock tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2025 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2025.

Av *första punkten* framgår att lagen träder i kraft den 1 januari 2027.

Enligt *andra punkten* ska lagen tillämpas första gången för beskattningsår som börjar efter den 31 december 2026 eller i fråga om svenska handelsbolag räkenskapsår, som börjar närmast efter den 31 december 2026.

Det följer av första meningen i den *tredje punkten* att den rapporterande enheten får välja att tillämpa samtliga eller vissa av bestämmelserna första gången för beskattningsår som börjar närmast efter den 31 december 2024 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2024. I 2 kap. 43 § finns en definition av rapporterande enhet. Med en rapporterande enhet avses en enhet som lämnar tilläggsskatterapport. Det ställs inte upp några särskilda krav avseende rapportering av vilka val som görs i detta hänseende. I andra meningen i den tredje punkten anges att vissa bestämmelser får tillämpas tidigast för beskattningsår som börjar närmast efter den 31 december 2025 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2025. Det gäller de förenklingsregler som föreslås för huvud- och kompletteringsregeln när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem, och för kompletteringsregeln när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem som föreslås i avsnitt 6. Det gäller också de i avsnitt 7 föreslagna bestämmelserna om kvalificerade skatteincitament och om att kvalificerade respektive marknadsmässigt överlåtbara skattetillgodohavanden får behandlas som kvalificerade skatteincitament.

Övervägandena finns i avsnitt 13.

OECD/G20 Base Erosion and Profit Shifting Project

Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024

Inclusive Framework on BEPS

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This document was approved by the OECD/G20 Inclusive Framework on BEPS on 24 May 2024 and prepared for publication by the OECD Secretariat.

Please cite as:

OECD (2024), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, http://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-june-2024.pdf.

Table of contents

Executive Summary 4

Background 4
June 2024 Administrative Guidance 5

1. DTL recapture 6

1.1. Introduction 6
1.2. Issues to be considered 6
1.3. Guidance 15
1.4. Examples 25

2. Divergences between GloBE and accounting carrying values 30

2.1. Divergences between GloBE and accounting carrying values 30

3. Allocation of Cross-border Current Taxes 50

3.1. Principles for allocating cross-border, current taxes under a cross-crediting corporate tax system 50
3.2. Clarification of Article 3.4.5 72

4. Allocation of Cross-border Deferred Taxes 91

4.1. Extension of the Substitute Loss Carry-forward DTA Introduction 91
4.2. Principles for allocating deferred taxes from one Constituent Entity to another Constituent Entity 94

5. Allocation of profits and taxes in structures including Flow-through Entities 111

5.1. Introduction 111
5.2. Application of Article 3.5.1(b) and Article 10.2.1 definitions 112
5.3. Application of Article 3.5.3 120
5.4. Allocation of cross-border taxes under Article 4.3 in structures including Flow-through Entities 124
5.5. Hybrid Entities 129
5.6. Taxes paid by a Constituent Entity-owner with respect to a Reverse Hybrid Entity's income 134

6. Treatment of Securitisation Vehicles 139

6.1. Securitisation Vehicles 139

Executive Summary

Background

1. In October 2021 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) agreed a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation of the economy. As part of the October Statement, Inclusive Framework members agreed to a co-ordinated system of Global anti-Base Erosion (GloBE) rules that are designed to ensure large multinational enterprises pay a minimum level of tax on the income arising in each jurisdiction where they operate. In the October Statement, it was agreed that the GloBE Rules would have the status of a common approach. Under this common approach, jurisdictions are not required to adopt the GloBE rules, but, if they choose to do so, they will implement and administer the rules in a way that is consistent with the agreed outcomes. The common approach also means that Inclusive Framework members accept the application of the GloBE rules applied by other members, including agreement as to rule order and the application of any agreed safe harbours.

2. The GloBE Model Rules were approved and released by the Inclusive Framework on 20 December 2021 *Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS* (OECD, 2021[1]). The GloBE Model Rules consist of an interlocking and coordinated system of rules which are designed to be implemented into the domestic law of each jurisdiction and operate together to ensure large MNE Groups are subject to a minimum effective tax rate of 15% on any excess profits arising in each jurisdiction where they operate. Consistent with the intention of the Inclusive Framework, the GloBE Rules (including the IIR and UTPR) are designed so that the imposition of top-up tax in accordance with those rules will be compatible with the provisions of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the “UN Model Double Tax Convention”) (UN, 2021[2]) and the *Model Tax Convention on Income and on Capital: Condensed Version 2017*, (the “OECD Model Tax Convention”) (OECD, 2017[3]).

3. The Commentary to the GloBE Model Rules was first approved and released by the Inclusive Framework on 14 March 2022 *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS* (OECD, 2022[4]) The Commentary clarifies the interpretation and operation of the provisions in the GloBE Model Rules and includes some examples illustrating how the rules apply to specific fact patterns. The Commentary is intended to promote a consistent and common interpretation of the GloBE Model Rules in order to provide certainty for MNE Groups and to facilitate coordinated outcomes among implementing jurisdictions. Although the Commentary is detailed and comprehensive, it does not provide guidance on every aspect of the GloBE Model Rules.

4. The Model GloBE Rules envision that the Inclusive Framework may issue guidance on both the interpretation and the operation of the rules. The Inclusive Framework has provided interpretive guidance to ensure consistent and common interpretation of the GloBE Rules, provide certainty for MNE Groups and facilitate coordinated and transparent outcomes under the rules. Once agreed, the Administrative Guidance is incorporated into the Commentary as it supplements or replaces paragraphs in the Commentary or explains how to apply the language of the rules to particular fact patterns. The text of the Commentary has been updated in 2024 to incorporate the various pieces of Administrative Guidance that were approved by the Inclusive Framework before the end of December 2023 *Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS* (OECD, 2024[5]).

June 2024 Administrative Guidance

5. This document sets out the fourth set of Administrative Guidance released by the Inclusive Framework. This package includes guidance on application of the recapture rule applicable to deferred tax liabilities (DTL), including how to aggregate DTL categories and methodologies for determining whether a DTL reversed within five years. This guidance also clarifies how to determine deferred tax assets and liabilities for GloBE purposes when the rules result in divergences between GloBE and accounting carrying value of assets and liabilities. This package also includes further guidance on cross-border allocation of current and deferred taxes, allocation of profits and taxes in certain structures involving Flow-through Entities, and the treatment of securitisation vehicles. This Administrative Guidance will be incorporated into the Commentary.

1. DTL recapture

1.1. Introduction

1. Article 4.4.4 stipulates that the accrual of a Deferred Tax Liability (DTL) that is claimed in the Adjusted Covered Taxes for the relevant Fiscal Year shall be subject to recapture if it does not reverse within the subsequent five Fiscal Years (the DTL recapture rule). The policy objective of the rule is to protect the integrity of the GloBE Rules from situations where the Adjusted Covered Taxes of a Constituent Entity are increased based on accrual of DTLs that have a long-term or even indefinite reversal horizon. The DTL recapture rule does not apply to DTLs that qualify as Recapture Exception Accruals (REAs) pursuant to Article 4.4.5. Nor does it apply to an Unclaimed Accrual under Article 4.4.7.

2. In practice, DTL recapture means that the Adjusted Covered Taxes and the ETR for the Fiscal Year in which the DTL was accrued and claimed are re-computed without such DTL. If the re-computed ETR is below the Minimum Rate, an Additional Top-up Tax is computed for that Fiscal Year. In the Fiscal Year that a recaptured DTL reverses, Article 4.4.2(b) excludes the reversal of the Recaptured DTL from the computation of the Adjusted Covered Taxes in the Fiscal Year, which effectively increases the Adjusted Covered Taxes by the amount of the recaptured DTL.

3. Paragraph 89 of the Commentary to Article 4.4.4 provides that the DTL recapture rule applies to ‘categories’ of deferred tax liabilities. Compliance with the DTL recapture rule requires each Constituent Entity to (i) identify categories of DTLs that are in scope of the DTL recapture rule and (ii) determine the year in which, and the extent to which, each identified DTL accrual reverses. The main objective of this guidance is to provide clarifications on how to practically manage the DTL recapture rule in a way that is in line with the policy objective of the rule itself, as well as minimizing administrative and compliance burdens for tax administrations and MNE Groups, including by giving due regard to the MNE Group’s existing accounting processes for DTLs.

4. This note provides guidance on the criteria for determining the scope of a DTL category and methodologies for determining whether the DTL accruals in the category have reversed within five Fiscal Years. The guidance also prescribes methodologies of determining whether DTLs reversals are attributable to recaptured DTLs or pre-GloBE DTLs (i.e. DTLs that arose before the Transition Year).

5. This note also provides a simplification through an extended application of the Unclaimed Accrual election rule in Article 4.4.7. Specifically, the guidance provides that a Constituent Entity may make an Unclaimed Accrual Five-Year election for a DTL category that it does not expect to prove reversed within five Fiscal Years. The result will be that the Constituent Entity will not claim those DTL accruals in determining its Adjusted Covered Taxes and therefore will not need to determine when the DTLs reverse.

1.2. Issues to be considered

6. In general, a deferred tax asset or liability is the tax effect computed by reference to the difference between the accounting carrying value and the tax carrying value of an asset or liability, provided that such difference has a timing nature (i.e. it reverses at some point in the future). In some cases, financial

accounting standards apply or permit deferred tax accounting based on accounting-tax timing differences of income and expenses or on another basis. This guidance is drafted based on the balance sheet model that is most commonly used by MNE Groups. However, the principles of this guidance are applicable to other models of deferred tax accounting.

7. Although accounting standards focus on the different carrying values of assets and liabilities, MNE Groups do not typically measure DTLs and DTAs for each asset or liability. The tax carrying values of the Constituent Entity's assets and liabilities are not always organized and tracked in accounts that align with each of the General Ledger accounts (GL accounts) of the chart of accounts used for Consolidated Financial Statements. For example, the Constituent Entity may have a tax account used to prepare its tax balance sheet for a broader group of assets than is included in a single GL account. The reporting package process requires that the deferred tax measurement is performed in a way that harmonizes the tax balance sheet accounts with the chart of accounts used for Consolidated Financial Statements, however this harmonization generally occurs at higher levels of aggregation than the GL accounts (i.e. at Balance Sheet account or sub-Balance Sheet account level). For example, the tax accounts may correspond to a combination of two or more GL accounts. However, the tax accounts will not span two of the accounts that are separately reported in the balance sheet of the Consolidated Financial Statements. Where the aggregations between GL accounts and tax accounts align is generally the level at which the deferred tax assets and liabilities are measured for the purposes of the reporting package. The comparison of carrying values is reflected in the reporting package or in the workpapers used in preparation of the reporting package. The Constituent Entity may not have a GL account to record the results of each of these comparisons. The Consolidated Financial Statements aggregate all DTAs and DTLs determined for the Constituent Entities and report only the net balance as a deferred tax asset or deferred tax liability.

8. Each Constituent Entity computes its Adjusted Covered Taxes and GloBE Income or Loss based on the financial accounts used for the preparation of the Consolidated Financial Statements, where available. The GloBE Rules start with the financial accounts used to prepare Consolidated Financial Statements to mitigate compliance costs and to benefit from the independent review of an external auditor as noted in paragraph 7 of the Commentary to Article 3.1.2. Consequently, GloBE compliance processes are expected to be linked to and to rely on the accounting processes already established by the MNE Groups for the purposes of the preparation of the Consolidated Financial Statements, i.e. the reporting package process. Thus, to minimize compliance costs, this guidance provides MNE Groups the ability, in certain cases, to align DTL categories to the GL accounts or BS accounts that are referenced in computing DTLs for financial accounting purposes.

9. In some instances, however, the GloBE Rules deviate from financial accounting requirements. Tracking DTLs to determine the time frame in which they reverse is not required for accounting purposes but is necessary under the GloBE Rules. This naturally means that MNE Groups will need to develop processes and mechanisms in addition to their existing accounting processes to determine whether DTLs reverse within five years.

10. The purpose of the DTL recapture rule is to ensure that the ETR is not overstated by giving credit for DTLs that will not actually reverse within five years. The GloBE Rules concerning the inclusion of DTL accruals in the Adjusted Covered Taxes distinguish between DTLs that fully reverse within five Fiscal Years (Short-term DTLs) and DTLs that do not fully reverse within five Fiscal Years (Long-term DTLs). Reporting packages that aggregate Short-term and Long-term DTLs present a challenge in complying with the purpose of the DTL recapture rule. In these circumstances, a reliable methodology for determining the extent to which different DTLs have reversed is necessary where a DTL category includes an aggregation of Short-term and Long-term DTLs. Otherwise, the Short-term and Long-term DTLs would need to be separated.

11. GL accounts are the primary tool to track and manage the financial information of a business. GL accounts are organized according to the structure defined in the chart of accounts, which is the list of all

the accounts a business uses to record its financial transactions. Businesses tailor the chart of accounts and GL accounts based on a combination of factors, such as industry-specific standards or regulations, reporting requirements, organizational structure, their size and complexity and tax compliance. The ending balance of each GL account includes any opening amounts and all the transactions registered in that account during the relevant financial year. The ending balances of all the GL accounts constitute the trial balance for the relevant financial year and is the starting point for the preparation of the financial statements.

12. There may be cases in which a single GL account reflects multiple assets and some of the assets have different timing rules for tax purposes. For example, a Constituent Entity may account for two assets that have a ten-year depreciation period for accounting purposes using the same GL account. However, one has a five-year depreciation period for tax purposes and the other is immediately deductible for tax purposes. In such cases, the Constituent Entity is not required to separate the assets in the GL account into separate sub-GL accounts solely for purposes of the DTL recapture rule.

13. As explained above, for reporting package purposes many MNE Groups track DTLs in relation to an aggregation of assets or liabilities in GL accounts that are encompassed by the same Balance Sheet account. The MNE generally measure the DTLs based on an aggregation of all GL accounts under the Balance Sheet account (a BS account) or different subsets of GL accounts under the BS account (a sub-BS account). It is very rare that DTL measurement for reporting package is based on single GL accounts. However, MNE Groups do not aggregate GL accounts from different BS accounts for purposes of measuring DTLs. DTLs measured and tracked by reference to an aggregate of GL accounts are referred to as Aggregate DTL Categories in this guidance.

14. There are three risks that arise from aggregation of DTLs related to assets and liabilities in different GL accounts. The first risk is that some of the GL accounts in the Aggregate DTL Category may have a DTA balance on a stand-alone basis such that the DTL for category is essentially a net of DTLs over the DTAs in the category. Consequently, the amount of the DTL offset by the DTA would not be subject to the recapture rule. The second risk is the risk that the DTL category will include a mix of DTLs that fully reverse within five Fiscal Years (Short-Term DTLs) and DTLs that do not fully reverse within five Fiscal Years (Long-term DTLs) and that such a mix could undermine the effective recapture of Long-term DTLs. The third risk is that a DTL arising from a related party transaction can be engineered to remain outstanding indefinitely.

15. One way to mitigate these risks and ensure that the recapture rule applies to DTLs that do not reverse within five years is to disaggregate the DTLs into more narrow categories. Indeed, if each DTA and DTL were tracked separately, none of the risks would arise. However, separate tracking of all DTAs and DTLs is not practical for MNE Groups. Nor is it necessary in all cases. Instead, aggregation can be limited to DTLs that have similar reversal timelines. Aggregation of Short-term DTLs does not present an integrity risk because all of the DTLs reverse within a five-year period. Exclusion of Long-term DTLs from Aggregate DTL Categories that include Short-term DTLs will ensure that reversals of Short-term DTLs do not cause an appearance that the Long-term DTLs are reversing in full within five years. Further, exclusion of DTAs from categories that include Long-term DTLs will ensure that those DTLs do not avoid recapture due to netting within the category. Finally, requiring separate tracking of DTLs associated with related party transactions ensures that those DTLs will be recaptured to the extent they are not reversed within five years.

16. Another way of mitigating the risks is in the methodology used to determine whether DTLs in the category have reversed within five years (the recapture methodology). Tracking the DTLs in a category item-by-item will ensure that Long-term DTLs are appropriately recaptured, but as noted above this is only practical in limited circumstances. Therefore, the recapture methodologies make assumptions as to which DTLs in the Aggregate DTL category have reversed when a reversal occurs. For example, a recapture methodology may assume that reversals or net reversals for a given year relate to the oldest outstanding

DTLs in the category, i.e. a FIFO recapture methodology. The FIFO approach effectively assumes that the DTLs outstanding at year end relate to the most recently accrued DTLs, whether Long-term or Short-term DTLs. Alternatively, a recapture methodology could include an assumption that reversals relate to the most recently accrued DTLs in the category, i.e. a LIFO recapture methodology. The LIFO approach effectively assumes that the DTLs outstanding at year end relate to Long-term DTLs and not Short-term DTLs. Depending on the DTLs in the category, either of these recapture methodologies may appropriately recapture the DTLs in the Aggregate DTL category to the extent that they have not reversed within five years. On the other hand, because they are based on assumptions about the outstanding DTLs at year end, both may result in recapture of Short-term DTLs in some circumstances.

1.2.1. Principles for aggregating DTLs under GloBE Rules

17. For purposes of the DTL recapture rule, a Constituent Entity may track DTLs on an Aggregate DTL Category basis, rather than an item-by-item tracking or based on a single GL account. An Aggregate DTL Category means a category of DTLs determined in relation to two or more GL accounts that, consistent with the chart of accounts used for the purposes of Article 3.1.2 or 3.1.3, fall under the same balance sheet account or sub-balance sheet account. An Aggregate DTL Category is not required to include all of the GL accounts that fall under the same balance sheet account. A Constituent Entity may have more than one Aggregate DTL Category that falls under the same balance sheet account.

18. An Aggregate DTL Category may include Short-term DTLs and Long-term DTLs. A Short-term DTL is an individual DTL that fully reverses within five Fiscal Years or a DTL that is determined in relation to a GL account and that fully reverses within five Fiscal Years. A Long-term DTL is an individual DTL that does not fully reverse within five Fiscal Years or a DTL that is determined in relation to a GL account and that does not fully reverse within five Fiscal Years.

19. Where a Constituent Entity cannot demonstrate that an Aggregate DTL Category satisfies the aggregate tracking requirements or the conditions for the simplification for Short-term DTLs (as set out in below paragraphs), the Constituent Entity cannot claim the accrual of that DTL in the computation of its Adjusted Covered Taxes. Where a Constituent Entity fulfils the aggregate tracking requirements but cannot demonstrate that the Aggregate DTL Category satisfies the FIFO requirements (as defined in below paragraphs), the Constituent Entity must apply LIFO recapture methodology.

Exclusion of certain types of GL accounts and separate tracking

20. Considering the risks of Aggregate DTL Categories, the Inclusive Framework has determined that DTLs related to certain assets and liabilities may be aggregated up to the GL account and cannot be aggregated with other GL accounts. DTLs related to the following assets or liabilities that might be claimed in the computation of Adjusted Covered Taxes may be aggregated for purposes of the DTL recapture rule only up to the GL account level:

- Non-amortizable intangible assets, including goodwill;
- Amortizable intangible assets with an accounting life of more than five years; and
- Related party receivables and payables.

Exclusion of GL accounts that generate DTAs

21. The inclusion of a GL account that on a standalone basis generates a DTA in an Aggregate DTL Category would have the distortive effect of diminishing the DTLs subject to recapture because the DTA accrual would have the same effect as a DTL reversal and therefore it would appear that part of the DTL has reversed when it has not. An Aggregate DTL Category cannot include any GL account that on a standalone basis would always generate only DTA. A Constituent Entity will need to be able to demonstrate

that the accounting and tax timing differences in respect of the assets and liabilities in the GL accounts encompassed by the Aggregate DTL Category can only generate a DTL.

Exclusion of swinging accounts and separate tracking

22. A swinging account is a GL account for which variances in the accounting and tax timing rules result in a net DTA or a net DTL at different points over the life of the encompassed assets or liabilities. Including a swinging account in an Aggregate DTL Category can create the same distortion as including a GL account with a DTA nature in the Aggregate DTL Category. Moreover, an aggregation of swinging accounts causes the same issue to arise because when a GL account swings to a DTA balance the Aggregate DTL Category will appear to have a reversal of a DTL. Considering the risks of Aggregate DTL Categories, the Inclusive Framework has determined that swinging accounts cannot be aggregated with other GL accounts. DTLs related to swinging accounts that are claimed in the computation of Adjusted Covered Taxes must be tracked separately for purposes of the DTL recapture rule at the level of a single GL account.

Exclusion of DTL related to items excluded from GloBE Income or Loss

23. Movements in DTLs that are related to items that do not factor into the computation of the GloBE Income or Loss are excluded from the computation of the Total Deferred Tax Adjustment Amount. Only DTLs which are claimed in the Total Deferred Tax Adjustment Amount are subject to the DTL Recapture rule. A DTL related to excluded items shall not be included in a GL account or Aggregate DTL Category.

24. For example, a DTL related to items which are accounted in Other Comprehensive Income should be excluded from the scope of the DTL recapture rule, unless Article 4.1.1(c) applies. If items accounted in Other Comprehensive Income are recycled through profit and loss, DTLs related to those items are included accordingly in the computation of the Total Deferred Tax Adjustment Amount and those DTLs are subject to the DTL recapture rule.

Exclusion of Recapture Exception Accruals

25. The DTL recapture rule does not apply to a DTL that meets the definition of a Recapture Exception Accrual in Article 4.4.5. However, if a Constituent Entity has a GL account or Aggregate DTL Category that includes one or more DTLs that is a Recapture Exception Accrual, the DTL recapture rule will apply with respect to the GL account or the entire Aggregate DTL Category.

1.2.2. Mechanisms to recapture Long-term DTLs in an Aggregate DTL Category

General principles

26. The DTL recapture rule is intended to recapture the benefit of including a DTL accrual in the ETR computation if that DTL does not reverse within five Fiscal Years. Determining when a particular DTL reverses presents some challenges because Constituent Entities typically do not create a separate DTL for each transaction and then reverse that DTL when the relevant carrying value and tax basis come back into line. Instead, Constituent Entities typically compare the difference between the year-end carrying value and tax basis of assets and liabilities reflected in a GL account or a group of GL accounts to determine the DTL in respect of those assets or liabilities. The deferred tax expense attributable to a DTL reported in the income statement is based on the net movement in the balance of the DTL from the end of the previous year. For DTL recapture purposes, where DTL tracking is performed on an aggregate basis, the net increase in the balance of the GL account or Aggregate DTL Category is treated as a DTL accrual and the net decrease is treated as a DTL reversal.

27. The DTL balance related to a GL account or to an Aggregate DTL Category may remain constant even where assets and liabilities are recorded and reversed for accounting and tax purposes if other assets and liabilities are also recorded in the relevant GL account(s). To illustrate, assume CE1 acquires an asset on the last day of Year 1 and the cost of acquiring the asset is fully deductible for tax purposes in the year of the acquisition (Year 1) and amortized over two years starting from when it is first used for accounting purposes (Year 2). If CE1 acquires the asset for 100 and has a 15% tax rate, it will record a DTL of 15 at the end of Year 1. The DTL related to the asset at the end of Year 2 will be 7.5. However, if another similar asset is purchased for 100 in Year 2 and starts to be amortized in Year 2, the net balance of the DTL in Year 2 will remain at 15.

28. In the example, it appears that part of the DTL from Year 1 reversed in Year 2 and the DTL reflected in the ending balance was a new accrual. However, MNE Groups may not commonly make accounting entries that reflect whether the DTLs at any given point in time are in relation to pre-existing or newly acquired assets or liabilities. Their financial accounts only indicate whether, in the aggregate, there is an accrual of a DTL (i.e. a net increase in the DTL balance) or reversal of part or all of the DTL (i.e. a net decrease in the DTL balance).

29. Because MNE Groups generally do not trace the balance of a DTL to particular assets or liabilities reflected in the corresponding GL account or Aggregate DTL category, a methodology with certain assumptions is needed to determine whether a reversal (i.e. a decrease in the ending balance) relates to amounts that accrued in the preceding five Fiscal Years or to amounts that were previously subject to recapture under Article 4.4.4. One approach would be to assume that reversals relate to the oldest accruals. This would be a first-in, first-out or FIFO methodology. Another approach would be to assume that reversals relate to the most recent accruals. This would be a last-in, first-out or LIFO methodology.

30. These different methodologies produce different outcomes in terms of the amount of DTLs recaptured and the Fiscal Years in which the recapture occurs. They will further result in the corresponding recapture reversal (pursuant to Article 4.4.2(b)) occurring in different Fiscal Years. However, it is not possible to determine in absolute terms whether a particular methodology is more or less favourable for the taxpayer (in terms of amount overall subject to recapture) in all cases, because it depends on the actual trend of DTL increases and decreases in the year-end balances of a given GL account or Aggregate DTL category.

31. Nevertheless, in the case of Aggregate DTL Categories, the FIFO methodology could shield an un-reversed DTL accrual from recapture in some circumstances. The risk arises where the Aggregate DTL Category contains GL accounts that have both Short-term DTLs and Long-term DTLs. In such cases, the accruals and reversals in the Short-term DTLs can make it appear on a FIFO basis that all of the DTLs have reversed within five years when in fact, the Long-term DTLs remain outstanding for more than five years.

32. The LIFO methodology is a more conservative approach because it mitigates the risk that the Long-term DTLs encompassed by an Aggregate DTL Category would not be recaptured after five years or that the relevant recapture would be postponed indefinitely.

33. A Constituent Entity may use the FIFO methodology to determine DTL reversals in the following cases:

a. The DTL is determined in relation to a single GL account;

b. The DTL is determined in relation to an Aggregate DTL Category that consists solely of DTLs determined in relation to GL accounts with a similar reversal trend; or

c. The DTLs are aggregated within an Aggregate DTL Category without a similar reversal trend but where MNE can demonstrate that the FIFO methodology nevertheless results in appropriate recapture of DTLs to the extent their reversal trend extends beyond 5 years.

For any Aggregate DTL Category for which the Constituent Entity does not choose to use the FIFO methodology or for which it cannot demonstrate that the conditions above are satisfied, the LIFO methodology must be used.

34. DTLs related to an Aggregate DTL Category are considered to have a similar reversal trend if such DTLs fully reverse within a two-year period of each other. For example, if all of the DTLs related to GL accounts in an Aggregate DTL Category will fully reverse within 9 to 11 years from the Fiscal Year in which they arise, those DTLs have a similar reversal trend.

35. A Constituent Entity may be able to demonstrate that the FIFO method appropriately recaptures Long-term DTLs based on facts and circumstances related to the nature of the transactions and the relevant tax rules. For example, a Constituent Entity may be able to demonstrate that the DTLs in respect of an Aggregate DTL Category reverse ratably over a 10-year period beginning in the Fiscal Year after the accrual and that the FIFO method recaptures half of the DTL accruals related to that Aggregate DTL Category.

36. The functioning of both the FIFO and LIFO methodology of determining DTL reversals and recapture is based on the determination of the Unjustified Balance in the current Fiscal Year (i.e. the fifth subsequent Fiscal Year after the tested Fiscal Year). The Tested Fiscal Year is the one in which the DTL accrual occurs and is claimed in the Adjusted Covered Taxes (to be subject to DTL recapture rule). The Testing Period is the five-year period which follows the Tested Fiscal Year. The Unjustified Balance represents the total amount of the DTL that has not been reversed before the end of Testing Period (i.e. the total amount of recaptured DTL) and is determined as the excess (if any) of the Outstanding Balance of the DTL over the Maximum Justifiable Amount for that category. The Outstanding Balance is the DTL balance as of the end of the Testing Period computed starting from the Transition Year. The Maximum Justifiable Amount is determined in two different ways depending on whether the FIFO or LIFO methodology applies. If the Maximum Justifiable Amount is equal to or greater than the Outstanding Balance of the Aggregate DTL Category or GL account, there is no DTL recapture for the tested Fiscal Year. If the Maximum Justifiable amount is lower than the Outstanding balance of the Aggregate DTL Category or GL account, the difference is an Unjustified Balance. The Unjustified Balance is compared with the previous year Unjustified Balance amount (if any), in order to determine whether there is an increase or a decrease for the relevant tested Fiscal Year. If the Unjustified Balance increases in the current Fiscal Year, the amount of the increase represents the DTL accrual which shall be recaptured (i.e. excluded from the computation of the Adjusted Covered Taxes of the tested Fiscal Year in the ETR re-computation under Article 5.4). If the Unjustified Balance decreases in the current Fiscal Year, the amount of the decrease must be treated either as a reversal of a recaptured DTL, or reversal of an Unclaimed Accrual, or reversal of pre-Transition Year DTL.

FIFO Methodology

37. Under the FIFO methodology, the Maximum Justifiable amount corresponds to the sum of the net increases in the outstanding DTL balance for each Fiscal Year in the five-year testing period in which there was a net increase in the outstanding DTL balance. In this way, a net decrease in the DTL balance with a Fiscal Year (representing, on net, a reversal) is considered to reduce the net increase in DTL balance in the earliest Fiscal Year in chronological order.

LIFO Methodology

38. Under the LIFO methodology, the Maximum Justifiable amount is determined as the greater of zero or the net amount of the DTL accruals and reversals that occurred during the five-year testing period.

In this way, the reversals occurring during the Testing Period are first allocated to the DTL accruals of the Testing Period.

1.2.3. Simplification for Short-term DTLs

39. A Constituent Entity that has an Aggregate DTL Category that is comprised exclusively of Short-term DTLs may benefit from the simplification described in the following paragraphs. If a Constituent Entity's existing Aggregate DTL Category contains Short-term DTLs and Long-term DTLs, it is allowed to separate the GL accounts with Short-term DTLs from the GL accounts with Long-term DTLs and apply this simplification to the individual GL accounts or an Aggregate DTL Category that includes two or more of such GL accounts. For example, a Constituent Entity may have an Aggregate DTL Category comprised of some GL accounts for inventory that will be reflected in the balance sheet for less than five years and some GL accounts for inventory, such as replacement parts for manufactured products, that remains on the balance sheet for a long period of time. If the Constituent Entity can separate that Aggregate DTL Category and separately determine the DTLs related to the replacement parts and the remainder of the inventory, the Constituent Entity can apply the simplification described below with respect to the remainder of the inventory.

40. The Constituent Entity may be able to demonstrate on the basis of objective facts, that all DTLs related to the assets or liabilities in a GL account or all DTLs included in an Aggregate DTL Category reverse within five fiscal years of the accrual year. In such cases, the Constituent Entity is not obligated to put in place a tracking system and recapture methodology to demonstrate that such DTLs have a short-term reversal. These objective facts shall take into account (i) the difference between the tax base and the accounting carrying value, applicable to the relevant DTLs, and, where relevant (ii) the economic features of the underlying assets and liabilities. Short-term DTLs can benefit from this compliance simplification where the Constituent Entity is able to demonstrate the short-term reversal based on objective facts. For this purpose, the Constituent Entity shall maintain proper evidence to support the conclusion that the DTLs have a short-term reversal period.

41. The guidance below provides examples illustrating the objective facts in relation to certain circumstances that may be relevant for the purposes of demonstrating that DTLs are Short-term DTLs.

42. If a Constituent Entity's existing practice of measuring DTLs has an Aggregate DTL Category that has only Short-term DTLs and DTAs, the Constituent Entity is allowed to include the DTAs in the Aggregate DTL Category and to benefit from the Short-term DTL simplification.

43. Where the Constituent Entity is no longer able to benefit from the Short-term DTL simplification for a given GL account or an Aggregate DTL Category starting from a given Fiscal Year, the Constituent Entity will start applying the DTL recapture rule starting from that Fiscal Year. For example, this could happen as a consequence of a change in the tax rules that causes DTLs to become Long-term DTLs. In order to apply the DTL recapture rule, the Constituent Entity shall determine whether the Aggregate DTL Category meets the aggregate tracking requirements and determine the applicable recapture methodology (FIFO or LIFO). The outstanding DTL for the relevant GL account or an Aggregate DTL Category (that meets the aggregate tracking requirements) as of the beginning of the Fiscal Year in which the simplification is no longer available shall be treated in the same manner as if they were pre-Transition Year DTLs (as set out below in the guidance).

1.2.4. Reversal of DTLs that accrued before the Transition Year

44. The DTL recapture rule applies to DTLs that are included in the computation of Adjusted Covered Taxes starting from the Transition Year. DTLs imported into the GloBE system pursuant to Article 9.1.1 are not subject to the DTL recapture rule (as stated in paragraph 6.3 of the Commentary to Article 9.1.1).

45. Accordingly, the reversal of pre-Transition Year DTLs should be excluded from the application of the DTL recapture rule in a way that is consistent with the Constituent Entity's DTL recapture methodology.

46. For example, where the Constituent Entity uses the FIFO methodology to determine recaptured DTLs, DTL reversals shall be first allocated to pre-Transition Year DTLs and as such shall be excluded from the computation of the Outstanding Balance. Once the amount of those pre-Transition Year DTLs is exhausted, the subsequent reversals will be included in the computation of the Outstanding Balance and factored into the relevant DTL recapture methodology. Where the Constituent Entity uses LIFO as its DTL recapture methodology, the reversals for the Fiscal Year shall be first allocated to the Outstanding Balance to the extent thereof and then to pre-Transition Year DTL.

1.2.5. Changes in the scope of an Aggregate DTL Category

47. It is expected that Constituent Entities will not want to frequently change their DTL categories because of the administrative burdens. However, a Constituent Entity may want or need to change the scope of an Aggregate DTL category in situations in which the chart of account or the reporting package set-up changes, for example, in connection with the combination of two MNE Groups or upgrades to the MNE Group's financial reporting and information systems. A Constituent Entity may want or need to change the scope of an Aggregate DTL Category for other reasons as well.

To properly manage the transition, the Constituent Entity must determine the amount of its DTL recapture attributes for each Aggregate DTL Category and allocate those amounts among the new DTL categories on a reasonable basis such that after the transition there will not be double counting or double non-counting. For this purpose, the DTL recapture attributes are (i) the amount of the Unjustified Balance, (ii) the Outstanding Balance of the Aggregate DTL Category, (iii) any amount of pre-Transition Year DTLs not yet reversed, and (iv) DTL accruals during the five-year period preceding the change.

1.2.6. Clarification on the Recapture Exception Accrual under Article 4.4.5(a)

48. A lessor of a tangible asset may use lease accounting to recover the cost of the leased property for accounting purposes. Under lease accounting, the lessor may reflect the cost of the tangible asset that is subject to the lease as a receivable in the financial accounts, rather than as a tangible asset. For tax purposes, however, the lessor may recover the cost of the leased property through depreciation, often accelerated depreciation. In such cases, the timing of the cost recovery for the leased asset will be different for accounting and tax purposes and will often give rise to a deferred tax liability. That deferred tax liability is with respect to cost recovery allowances on the leased property and is within the scope of Article 4.4.5(a) if the leased property is a tangible asset.

1.2.7. Unclaimed Accrual Election

49. Article 4.4.7 provides an Annual Election which allows a Constituent Entity to exclude the DTL accrual in a given Fiscal Year if it is not expected to reverse, in its entirety, by the end of the fifth subsequent Fiscal Year. If the Unclaimed Accrual election is made, the reversal of the unclaimed DTL shall also be excluded from the computation of the Adjusted Covered Taxes (pursuant to Article 4.4.2(a)). The DTL recapture rule only applies to the DTL accrual that is included in the computation of the Adjusted Covered Taxes for the relevant Fiscal Year. If a DTL accrual is not included in the Adjusted Covered Taxes, it is not subject to the DTL recapture rule.

50. The Unclaimed Accrual election is allowed in respect of DTLs that are not expected to reverse entirely within five Fiscal Years. The Unclaimed Accrual election must be made with respect to a DTL consistently with the tracking approach used by the Constituent Entity for that DTL. If DTL are tracked individually, the Unclaimed Accrual election must be made on each DTL on an item-by-item basis, if tracking is based on a GL account, the election must be made for all the DTLs encompassed in the GL

account, if tracking is based on Aggregate DTL Category, the election must be made for all the DTLs encompassed in the Aggregate DTL Category. It follows that the election cannot be made with respect to a subset of DTLs within a GL account or within an Aggregate DTL Category or a portion of the DTL accrued as an individual DTL.

51. A Constituent Entity may make an Unclaimed Accrual Annual Election with respect to DTLs that it expects will reverse in more than five years after accrual. A Constituent Entity may make an Unclaimed Accrual Five-Year Election with respect to a DTL for a GL account or an Aggregate DTL Category irrespective of any expectations about the reversal time period of the DTLs individually or the GL account or Aggregate DTL Category as a whole.

52. If an Unclaimed Accrual Five-Year Election is made in the Transition Year for a given DTL category (i.e. the DTL related to a GL account or an Aggregate DTL Category), all relevant DTL accruals and reversals of the DTL category shall be excluded from the Adjusted Covered Taxes until the election is revoked. The Constituent Entity must determine the amount in the Aggregate DTL Category or GL account that relate to the pre-Transition Year DTLs because reversals of pre-Transition Year DTLs should be included in the computation of Adjusted Covered Taxes. For this purpose, the first reversals in the Aggregate DTL Category or GL account shall be treated reversals of pre-Transition Year DTLs.

53. In cases where a Constituent Entity makes an Annual Election for an Unclaimed Accrual in some Fiscal Years but not in others or revokes a Five-Year Election for an Unclaimed Accrual, the Constituent Entity must apply the appropriate DTL tracking methodology to determine whether DTL reversals in subsequent Fiscal Years relate to claimed or unclaimed DTLs.

54. In cases where a Constituent Entity begins applying the DTL recapture rules to a GL account or an Aggregate DTL Category for which an Unclaimed Accrual election applied to all preceding Fiscal Years beginning with the Transition Year, reversals of the amount of DTL accrual that was not claimed in the previous Fiscal Years shall be ignored in the computation of Adjusted Covered Taxes. In determining which DTL reversals relate to Unclaimed Accruals in an Aggregate DTL Category or GL account, the Constituent Entity shall apply its methodology for determining which DTL reversals related to pre-Transition Year DTLs and treat the Unclaimed Accruals as arising chronologically after the pre-Transition Year DTLs and before any DTLs that are subject to the DTL recapture rule. For example, if the Constituent Entity uses the FIFO method as the recapture methodology for the Aggregate DTL Category, the DTL reversals will be treated as reversals of Unclaimed Accruals only after all of the pre-Transition Year DTLs have been reversed.

1.2.8. QDMTT Considerations

55. A QDMTT generally must provide for Aggregate DTL Categories consistent with the principles and exclusions set out in the Commentary to Article 4.4.4 of the GloBE Rules. Application of those principles and exclusions to the DTLs that are tracked under a local accounting standard may result in categories that do not align with the Aggregate DTL Categories that would be used under the accounting standard required under Article 3.1.2 or Article 3.1.3. Accordingly, the Constituent Entity may have different Aggregate DTL Categories where a QDMTT (whether or not it meets the requirements of a QDMTT Safe Harbour) permits or requires QDMTT computations based on local financial accounting standards.

56. A QDMTT must provide for an Unclaimed Accrual election consistently with the principles set out in the Commentary to Article 4.4.7 of the GloBE Rules (including the Unclaimed Accrual Five-Year Election).

1.3. Guidance

57. Paragraph 89 of the Commentary to Article 4.4.4 is replaced with the following paragraph:

89. Article 4.4.4 establishes a recapture rule (the DTL recapture rule) for categories of deferred tax liabilities (DTL), other than Recapture Exception Accruals defined in Article 4.4.5, that are included in the Total Deferred Tax Adjustment Amount in a Fiscal Year and do not reverse by the end of the fifth subsequent Fiscal Year. Pursuant to the DTL recapture rule, the amount of the recaptured deferred tax liability has to be excluded from the Adjusted Covered Taxes in the Fiscal Year in which it was originally included in the Total Deferred Tax Adjustment Amount component of Adjusted Covered Taxes and the Effective Tax Rate for that Fiscal Year must be re-computed under Article 5.4. A corollary of the DTL recapture rule is in Article 4.4.2(b). Article 4.4.2(b) excludes the reversal of a Recaptured DTL from the computation of the Total Deferred Tax Adjustment amount in the Fiscal Year in which the reversal occurs. Article 4.4.4 and Article 4.4.2(b) ensure that deferred tax liabilities which reverse after five Fiscal Years are not taken into account for GloBE purposes in the year of accrual, but in the year of the reversal. The term “payment” in Article 4.4.4 and Article 4.4.2(b) refers to the accounting reversal of the DTL or of the recaptured DTL.

58. Paragraph 90 of the Commentary to Article 4.4.4 is revised to read as follows:

Principles for tracking DTLs under GloBE Rules

90. DTL recapture applies at the Constituent Entity level. For purposes of the DTL recapture rule, a Constituent Entity may track its DTLs according to three possible approaches:

a. on an item-by-item basis, where DTLs related to each single asset or liability are tracked individually,

b. on a General Ledger account (GL account) basis, where DTLs related to all the assets or liabilities encompassed in a GL account are grouped and tracked as a single DTL category, or

c. on an Aggregate DTL Category basis (as defined in paragraph 90.6).

The tracking approaches under (a) and (b) can be used for each DTL that is in scope of the DTL recapture rule. However, DTLs may be tracked based on approach (c) only where the Aggregate DTL Category is consistent with the principles and exclusions set out in paragraphs 90.6 through 90.11 (the aggregate tracking requirements). The Constituent Entity is allowed to set-up a tracking system which may combine different tracking approaches for different DTLs in scope of the recapture rule. For example, it may use the Aggregate DTL Category approach for the DTLs related to certain Balance Sheet accounts (BS accounts) (provided the requirements set out below are met), the GL account tracking approach for the DTLs related to certain GL accounts, and the item-by-item tracking for the DTLs encompassed in a GL account. A Constituent Entity cannot aggregate only some DTLs in a GL account and track the remainder on an item-by-item basis.

59. The following paragraphs are inserted after paragraph 90 of the Commentary to Article 4.4.4:

90.1. The DTL recapture guidance set out below is based on the balance sheet model that is most commonly used by MNE Groups. In cases where other models of deferred tax accounting are used, principles equivalent to the ones set out in this guidance must be applied. The Inclusive Framework will consider whether further guidance is needed to assist in applying the principles of this guidance to other deferred tax accounting models.

90.2. The principles and exceptions as well as the recapture methodologies set out below are expected to produce outcomes that are consistent with the objective of the DTL recapture rule and simultaneously address the risks of applying the DTL recapture rule to Aggregate DTL Categories. The Inclusive Framework will evaluate the outcomes under the guidance set out below, giving consideration to the amount potentially subject to recapture as well as the actual recaptured amount, and in 2028 assess the need for any changes to the guidance.

Exclusion of DTL related to items excluded from GloBE Income or Loss

90.3. Movements in DTLs that are related to items that do not factor into the computation of the GloBE Income or Loss are excluded from the computation of the Total Deferred Tax Adjustment Amount. Only DTLs which are claimed in the Total Deferred Tax Adjustment Amount are subject to the DTL Recapture rule. A DTL related to excluded items shall not be included in a GL account or Aggregate DTL Category.

90.4. For example, a DTL related to items which are accounted in Other Comprehensive Income should be excluded from the scope of the DTL recapture rule, unless Article 4.1.1(c) applies. If items accounted in Other Comprehensive Income are recycled through profit and loss, DTLs related to those items are included accordingly in the computation of the Total Deferred Tax Adjustment Amount and those DTLs are subject to the DTL recapture rule.

Recapture Exception Accruals

90.5. The DTL recapture rule does not apply to a DTL that meets the definition of a Recapture Exception Accrual in Article 4.4.5. However, if a Constituent Entity has a GL account or Aggregate DTL Category that includes one or more DTLs that is a Recapture Exception Accrual, the DTL recapture rule will apply with respect to the GL account or the entire Aggregate DTL Category.

Principles for aggregating DTLs under GloBE Rules

90.6. For purposes of the DTL recapture rule, a Constituent Entity may track DTLs on an Aggregate DTL Category basis, rather than an item-by-item tracking or based on a single GL account. An Aggregate DTL Category means a category of DTLs determined in relation to two or more GL accounts that, consistent with the chart of accounts used for the purposes of Article 3.1.2 or 3.1.3, fall under the same balance sheet account or sub-balance sheet account. An Aggregate DTL Category is not required to include all of the GL accounts that fall under the same balance sheet account. A Constituent Entity may have more than one Aggregate DTL Category that falls under the same balance sheet account.

90.7. An Aggregate DTL Category may include Short-term DTLs and Long-term DTLs. A Short-term DTL is an individual DTL that fully reverses within five Fiscal Years or a DTL that is determined in relation to a GL account and that fully reverses within five Fiscal Years. A Long-term DTL is an individual DTL that does not fully reverse within five Fiscal Years or a DTL that is determined in relation to a GL account and that does not fully reverse within five Fiscal Years.

90.8. Where a Constituent Entity cannot demonstrate that an Aggregate DTL Category satisfies the aggregate tracking requirements (set out in paragraphs 90.6 through 90.11) or the conditions for the simplification for Short-term DTLs, the Constituent Entity cannot claim the accrual of that DTL in the computation of its Adjusted Covered Taxes. Where a Constituent Entity fulfils the aggregate tracking requirements but cannot demonstrate that the Aggregate DTL category satisfies the requirements described in paragraphs 90.19 or 90.21 (the FIFO requirements), the Constituent Entity must apply LIFO recapture methodology.

Exclusions from Aggregate DTL Categories

Exclusion of certain types of GL accounts and separate tracking

90.9. Considering the risks of Aggregate DTL Categories, the Inclusive Framework has determined that DTLs related to certain assets and liabilities may be aggregated up to the GL account and cannot be aggregated with other GL accounts. DTLs related to the following assets or liabilities that might be claimed in the computation of Adjusted Covered Taxes may be aggregated for purposes of the DTL recapture rule only up to the GL account level:

a) Non-amortizable intangible assets, including goodwill;
b) Amortizable intangible assets with an accounting life of more than five years; and
c) Related party receivables and payables.

Exclusion of GL accounts that generate DTAs

90.10. The inclusion of a GL account that on a standalone basis generates a DTA in an Aggregate DTL Category would have the distortive effect of diminishing the DTLs subject to recapture because the DTA accrual would have the same effect as a DTL reversal and therefore it would appear that part of the DTL has reversed when it has not. An Aggregate DTL Category cannot include any GL account that on a standalone basis would always generate only DTA (except as provided in the simplification for Short-term DTLs, set out in paragraphs 90.25 through 90.29 below). A Constituent Entity will need to be able to demonstrate that the accounting and tax timing differences in respect of the assets and liabilities in the GL accounts encompassed by the Aggregate DTL Category can only generate a DTL.

Exclusion of swinging accounts and separate tracking

90.11. A swinging account is a GL account for which variances in the accounting and tax timing rules result in a net DTA or a net DTL at different points over the life of the encompassed assets or liabilities. Including a swinging account in an Aggregate DTL Category can create the same distortion as including a GL account with a DTA nature in the Aggregate DTL Category. Moreover, an aggregation of swinging accounts causes the same issue to arise because when a GL account swings to a DTA balance the Aggregate DTL Category will appear to have a reversal of a DTL. Considering the risks of Aggregate DTL Categories, the Inclusive Framework has determined that swinging accounts cannot be aggregated with other GL accounts. DTLs related to swinging accounts that are claimed in the computation of Adjusted Covered Taxes must be tracked separately for purposes of the DTL recapture rule at the level of a single GL account.

Mechanisms to recapture Long-term DTLs

General principles

90.12. The DTL recapture rule is intended to recapture the benefit of including a DTL accrual in the ETR computation if that DTL does not reverse within five Fiscal Years. Determining when a particular DTL reverses presents some challenges because Constituent Entities typically do not create a separate DTL for each transaction and then reverse that DTL when the relevant carrying value and tax basis come back into line. Instead, Constituent Entities typically compare the difference between the year-end carrying value and tax basis of assets and liabilities reflected in a GL account or a group of GL accounts to determine the DTL in respect of those assets or liabilities. The deferred tax expense attributable to a DTL reported in the income statement is based on the net movement in the balance of the DTL from the end of the previous year. For DTL recapture purposes, where DTL tracking is performed on an aggregate basis, the net increase of the balance of the Aggregate DTL Category or GL account is treated as a DTL accrual and the net decrease is treated as a DTL reversal.

90.13. The DTL balance related to a GL account or to an Aggregate DTL Category may remain constant even where assets and liabilities are recorded and reversed for accounting and tax purposes if other assets and liabilities are also recorded in the relevant GL account(s). To illustrate, assume CE1 acquires an asset on the last day of Year 1 and the cost of acquiring the asset is fully deductible for tax purposes in the year of the acquisition (Year 1) and amortized over two years starting from when it is first used for accounting purposes (Year 2). If CE1 acquires the asset for 100 and has a 15% tax rate, it will record a DTL of 15 at the end of Year 1. The DTL related to the asset at the end of Year 2 will be 7.5. However, if another similar asset is purchased for 100 in Year 2 and starts to be amortized in Year 2, the net balance of the DTL in Year 2 will remain at 15.

90.14. In the example, it appears that part of the DTL from Year 1 reversed in Year 2 and the DTL reflected in the ending balance was a new accrual. However, MNE Groups may not commonly make accounting entries that reflect whether the DTLs at any given point in time are in relation to pre-existing or newly acquired assets or liabilities. Their financial accounts only indicate whether, in the aggregate, there is an accrual of a DTL (i.e. a net increase in the DTL balance) or reversal of part or all of the DTL (i.e. a net decrease in the DTL balance).

90.15. Because MNE Groups generally do not trace the balance of a DTL to particular assets or liabilities reflected in the corresponding Aggregate DTL Category or GL account, a methodology with certain assumptions is needed to determine whether a reversal (i.e. a decrease in the ending balance) relates to amounts that accrued in the preceding five Fiscal Years or to amounts that were previously subject to recapture under Article 4.4.4. One approach would be to assume that reversals relate to the oldest accruals. This would be a first-in, first-out or FIFO methodology. Another approach would be to assume that reversals relate to the most recent accruals. This would be a last-in, first-out or LIFO methodology.

90.16. These different methodologies produce different outcomes in terms of the amount of DTLs recaptured and the Fiscal Years in which the recapture occurs. They will further result in the corresponding recapture reversal (pursuant to Article 4.4.2(b)) occurring in different Fiscal Years. However, it is not possible to determine in absolute terms whether a particular methodology is more or less favourable for the taxpayer (in terms of amount overall subject to recapture) in all cases, because it depends on the actual trend of DTL increases and decreases in the year-end balances of a given Aggregate DTL Category or GL account.

90.17. Nevertheless, in the case of Aggregate DTL Categories, the FIFO methodology could shield an un-reversed DTL accrual from recapture in some circumstances. The risk arises where the Aggregate DTL Category contains GL accounts that have both Short-term DTLs and Long-term DTLs. In such cases, the accruals and reversals in the Short-term DTLs can make it appear on a FIFO basis that all of the DTLs have reversed within five years when in fact, the Long-term DTLs remain outstanding for more than five years.

90.18. The LIFO methodology is a more conservative approach because it mitigates the risk that the Long-term DTLs encompassed by an Aggregate DTL Category would not be recaptured after five years or that the relevant recapture would be postponed indefinitely.

90.19. A Constituent Entity may use the FIFO methodology to determine reversals in the following cases:

a) The DTL is determined in relation to a single GL account;
b) The DTL is determined in relation to an Aggregate DTL Category that consists solely of DTLs determined in relation to GL accounts with a similar reversal trend (see paragraph 90.20); or

c) The DTLs are aggregated within an Aggregate DTL Category without a similar reversal trend but where MNE can demonstrate that the FIFO methodology nevertheless results in appropriate recapture of DTLs to the extent their reversal trend extends beyond 5 years (see paragraph 90.21).

For any Aggregate DTL Category for which the Constituent Entity does not choose to use the FIFO methodology or for which it cannot demonstrate that the conditions above are satisfied, the LIFO methodology must be used.

90.20. DTLs related to an Aggregate DTL Category are considered to have a similar reversal trend (for the purposes of paragraph 90.19(b) above) if such DTLs fully reverse within a two-year period of each other. For example, if all of the DTLs related to GL accounts in an Aggregate DTL Category will fully reverse between 9 and 11 years from the Fiscal Year in which they arise, those DTLs have a similar reversal trend.

90.21. A Constituent Entity may be able to demonstrate that the FIFO method appropriately recaptures Long-term DTLs based on facts and circumstances (for the purposes of paragraph 90.19(c) above) related to the nature of the transactions and the relevant tax rules. For example, a Constituent Entity may be able to demonstrate that the DTLs in respect of an Aggregate DTL Category reverse ratably over a 10-year period beginning in the Fiscal Year after the accrual and that the FIFO method recaptures half of the DTL accruals related to that Aggregate DTL Category.

90.22. The functioning of both the FIFO and LIFO methodology of determining DTL reversals and recapture is based on the determination of the Unjustified Balance in the current Fiscal Year (i.e. the fifth subsequent Fiscal Year after the tested Fiscal Year). The Tested Fiscal Year is the one in which the DTL accrual occurs and is claimed in the Adjusted Covered Taxes (to be subject to DTL recapture rule). The Testing Period is the five-year period which follows the Tested Fiscal Year. The Unjustified Balance represents the total amount of the DTL that has not been reversed before the end of Testing Period (i.e. the total amount of recaptured DTL) and is determined as the excess (if any) of the Outstanding Balance of the DTL over the Maximum Justifiable Amount for that category. The Outstanding Balance is the DTL balance as of the end of the Testing Period computed starting from the Transition Year. The Maximum Justifiable Amount is determined in two different ways depending on whether the FIFO or LIFO methodology applies. See paragraphs 90.23 and 90.24 below. If the Maximum Justifiable Amount is equal to or greater than the Outstanding Balance of the Aggregate DTL Category or GL account, there is no DTL recapture for the tested Fiscal Year. If the Maximum Justifiable amount is lower than the Outstanding balance of the Aggregate DTL Category or GL account, the difference is an Unjustified Balance. The Unjustified Balance is compared with the previous year Unjustified Balance amount (if any), in order to determine whether there is an increase or a decrease for the relevant tested Fiscal Year. If the Unjustified Balance increases in the current Fiscal Year, the amount of the increase represents the DTL accrual which shall be recaptured (i.e. excluded from the computation of the Adjusted Covered Taxes of the tested Fiscal Year in the ETR re-computation under Article 5.4). If the Unjustified Balance decreases in the current Fiscal Year, the amount of the decrease must be treated either as a reversal of a recaptured DTL, or reversal of an Unclaimed Accrual, or reversal of pre-Transition Year DTL.

FIFO Methodology

90.23. Under the FIFO methodology, the Maximum Justifiable amount corresponds to the sum of the net increases in the outstanding DTL balance for each Fiscal Year in the five-year testing period in which there was a net increase in the outstanding DTL balance. In this way, a net decrease in the DTL balance with a Fiscal Year (representing, on net, a reversal) is considered to reduce the net increase in DTL balance in the earliest Fiscal Year in chronological order.

LIFO Methodology

90.24. Under the LIFO methodology, the Maximum Justifiable amount is determined as the greater of zero or the net amount of the DTL accruals and reversals that occurred during the five-year testing period. In this way, the reversals occurring during the Testing Period are first allocated to the DTL accruals of the Testing Period.

Simplification for Short-term DTLs

Aggregation of Short-term DTLs

90.25. A Constituent Entity that has an Aggregate DTL Category that is comprised exclusively of Short-term DTLs may benefit from the simplification described in the following paragraphs. If a Constituent Entity's existing Aggregate DTL Category contains Short-term DTLs and Long-term DTLs, it is allowed to separate the GL accounts with Short-term DTLs from the GL accounts with Long-term DTLs and apply this simplification to the individual GL accounts or an Aggregate DTL Category that includes two or more of such GL accounts. For example, a Constituent Entity may have an Aggregate DTL Category comprised of some GL accounts for inventory that will be reflected in the balance sheet for less than five years and some GL accounts for inventory, such as replacement parts for manufactured products, that remains on the balance sheet for a long period of time. If the Constituent Entity can separate that Aggregate DTL Category and separately determine the DTLs related to the replacement parts and the remainder of the inventory, the Constituent Entity can apply the simplification described below with respect to the remainder of the inventory.

90.26. The Constituent Entity may be able to demonstrate on the basis of objective facts, that all DTLs related to the assets or liabilities in a GL account or all DTLs included in an Aggregate DTL Category reverse within five fiscal years of the accrual year. In such cases, the Constituent Entity is not obligated to put in place a tracking system and recapture methodology to demonstrate that such DTLs have a short-term reversal. These objective facts shall take into account (i) the difference between the tax base and the accounting carrying value, applicable to the relevant DTLs, and, where relevant (ii) the economic features of the underlying assets and liabilities. Short-term DTLs can benefit from this compliance simplification where the Constituent Entity is able to demonstrate the short-term reversal based on objective facts. For this purpose, the Constituent Entity shall maintain proper evidence to support the conclusion that the DTLs have a short-term reversal period.

90.27. The following examples illustrate the objective facts that may be relevant for purposes of demonstrating that specific DTLs are Short-term DTLs.

a) For DTLs related to amortizable assets that are not Recapture Exception Accruals under Article 4.4.5, it may be possible to objectively determine that the reversal occurs within five years where, for example, a purchased intangible asset (e.g. customer list) is amortized using the straight-line method for accounting purposes in ten years, while the tax amortization period (also based on the straight-line method) is set at five years, it is possible to objectively determine that the reversal will occur within five years of the accrual.

b) For DTLs related to certain receivables, the tax timing rule may follow the cash basis principle (i.e. the revenue is included in the taxable income in the year of actual receipt) while for accounting purposes, revenue recognition follows the accrual basis principle (e.g. when the payment is due under the contract). In such case, where the Constituent Entity is able to demonstrate that the receivables related to such DTLs are collected, written-off (or monetized in other ways, e.g. via subsequent sale, where relevant for tax purposes) within five years of when the payment is due, it can benefit from the Short-term DTL simplification. For this purpose, the Constituent Entity may take into account the terms of payment as reflected in the underlying contracts, historical observation of account collections, its policies and practices concerning expensing bad debts, and any other circumstance which can be objectively observed and documented.

c) For DTLs related to a tax rule that allows deferral of gain from the sale of property for up to a maximum of five years, it is possible to objectively determine that the reversal of such DTLs occur within five-years.

d) DTLs related to certain deferred costs that are not Recapture Exception Accruals under Article 4.4.5 might arise because the accounting rule requires the expenses to be spread over the relevant economic life of the asset, or contract, or service to which it refers (e.g. license for the utilization of software), while for tax purposes the cost is fully deducted in the year of the actual payment. In such cases, where the Constituent Entity is able to demonstrate that the economic life over which the deferred costs are spread for accounting purposes, is not longer than five years, it will be able to benefit from the DTL Short-term simplification.

e) DTLs might arise in relation to long-term contracts where the accounting revenue recognition criteria follows the percentage of completion method while for tax purposes revenue are taxable only at the completion of the contract (irrespective of when payments on the contract are received). In such cases, where the Constituent Entity can demonstrate that the duration of each construction contract is shorter than five years, it can benefit from the Short-term DTL simplification.

f) DTLs might arise in relation to inventory of fungible goods where the accounting valuation criteria are different from the one used for tax purposes. For example, where the Constituent Entity uses the FIFO inventory method for both tax and accounting purposes but uses a valuation technique for inventory that consistently results in a lower value for tax purposes than for accounting purposes and is able to demonstrate that the inventory is sold over a period that is shorter than five fiscal year, it will be able to benefit from the Short-term DTLs simplification. DTLs related to long-term inventories (for example, aged wine or spirits) are expected not to be able to benefit from the Short-term DTL simplification.

90.28. If a Constituent Entity's existing practice of measuring DTLs has an Aggregate DTL Category that has only Short-term DTLs and DTAs, the Constituent Entity is allowed to include the DTAs in the Aggregate DTL Category and to benefit from the Short-term DTL simplification.

90.29. Where the Constituent Entity is no longer able to benefit from the Short-term DTL simplification for a given GL account or an Aggregate DTL Category starting from a given Fiscal Year, the Constituent Entity will start applying the DTL recapture rule starting from that Fiscal Year. For example, this could happen as a consequence of a change in the tax rules that causes DTLs to become Long-term DTLs. In order to apply the DTL recapture rule, the Constituent Entity shall determine whether the Aggregate DTL Category meets the aggregate tracking requirements and determine the applicable recapture methodology (FIFO or LIFO). The outstanding DTL for the relevant GL account or an Aggregate DTL Category (that meets the aggregate tracking requirements) as of the beginning of the Fiscal Year in which the simplification is no longer available shall be treated in the same manner as if they were pre-Transition Year DTLs (as provided in paragraph 90.30 and 90.31 below).

Reversal of DTLs that accrued before the Transition Year

90.30. The DTL recapture rule applies to DTLs that are included in the computation of Adjusted Covered Taxes starting from the Transition Year. DTLs imported into the GloBE system pursuant to Article 9.1.1 are not subject to the DTL recapture rule (as stated in paragraph 6.3 of the Commentary to Article 9.1.1).

90.31. Accordingly, the reversal of pre-Transition Year DTLs should be excluded from the application of the DTL recapture rule in a way that is consistent with the Constituent Entity's DTL recapture methodology. For example, where the Constituent Entity uses the FIFO methodology to determine recaptured DTLs, DTL reversals shall be first allocated to pre-Transition Year DTLs and as such shall be excluded from the computation of the Outstanding Balance. Once the amount of those pre-Transition Year DTLs is exhausted, the subsequent reversals will be included in the computation of the Outstanding Balance and factored into the relevant DTL recapture methodology. Where the Constituent Entity uses LIFO as its DTL recapture methodology, the reversals for the Fiscal Year shall be first allocated to the Outstanding Balance to the extent thereof and then to pre-Transition Year DTL.

Changes in the scope of an Aggregate DTL Category

90.32. It is expected that Constituent Entities will not want to frequently change their GL account or Aggregate DTL Categories because of the administrative burdens. However, a Constituent Entity may want or need to change the scope of a GL account or Aggregate DTL Category in situations in which the chart of account or the reporting package set-up changes, for example, in connection with the combination of two MNE Groups or upgrades to the MNE Group's financial reporting and information systems. A Constituent Entity may want or need to change the scope of a GL account or Aggregate DTL Category for other reasons as well.

90.33. To properly manage the transition, the Constituent Entity must determine the amount of its DTL recapture attributes for each GL account or Aggregate DTL Category and allocate those amounts among the new GL accounts or Aggregate DTL Categories on a reasonable basis such that after the transition there will not be double counting or double non-counting. For this purpose, the DTL recapture attributes are (i) the amount of the Unjustified Balance, (ii) the Outstanding Balance of the GL account or Aggregate DTL Category, (iii) any amount of pre-Transition Year DTLs not yet reversed, and (iv) DTL accruals during the five-year period preceding the change.

Clarification on the scope of the Recapture Exception Accrual under Article 4.4.5(a)

60. The following paragraph is inserted after paragraph 95 of the Commentary to Article 4.4.5:

95.1 A lessor of a tangible asset may use lease accounting to recover the cost of the leased property for accounting purposes. Under lease accounting, the lessor may reflect the cost of the tangible asset that is subject to the lease as a receivable in the financial accounts, rather than as a tangible asset. For tax purposes, however, the lessor may recover the cost of the leased property through depreciation, often accelerated depreciation. In such cases, the timing of the cost recovery for the leased asset will be different for accounting and tax purposes and will often give rise to a deferred tax liability. That deferred tax liability is with respect to cost recovery allowances on the leased property and is within the scope of Article 4.4.5(a) if the leased property is a tangible asset.

Unclaimed Accrual Election

61. The following paragraphs are inserted after paragraph 112 of the Commentary to Article 4.4.7:

112.1 Article 4.4.7 provides an Annual Election which allows a Constituent Entity to exclude the DTL accrual in a given Fiscal Year if it is not expected to reverse, in its entirety, by the end of the fifth subsequent Fiscal Year. If the Unclaimed Accrual election is made, the reversal of the unclaimed DTL shall also be excluded from the computation of the Adjusted Covered Taxes (pursuant to Article 4.4.2(a)). The DTL recapture rule only applies to the DTL accrual that is included in the computation of the Adjusted Covered Taxes for the relevant Fiscal Year. If a DTL accrual is not included in the Adjusted Covered Taxes, it is not subject to the DTL recapture rule.

112.2 The Unclaimed Accrual election is allowed in respect of DTLs that are not expected to reverse entirely within five Fiscal Years. The Unclaimed Accrual election must be made with respect to a DTL consistently with the tracking approach used by the Constituent Entity for that DTL. If DTL are tracked individually, the Unclaimed Accrual election must be made on each DTL on an item-by-item basis, if tracking is based on a GL account, the election must be made for all the DTLs encompassed in the GL account, if tracking is based on Aggregate DTL Category, the election must be made for all the DTLs encompassed in the Aggregate DTL Category. It follows that the election cannot be made with respect to a subset of DTLs within a GL account or within an Aggregate DTL Category or a portion of the DTL accrued as an individual DTL.

112.3 A Constituent Entity may make an Unclaimed Accrual Annual Election with respect to DTLs that it expects will reverse in more than five years after accrual. A Constituent Entity may make an Unclaimed Accrual Five-Year Election with respect to a DTL for a GL account or an Aggregate DTL Category irrespective of any expectations about the reversal time period of the DTLs individually or the GL account or Aggregate DTL Category as a whole.

112.4. If an Unclaimed Accrual Five-Year Election is made in the Transition Year for a given DTL category (i.e. the DTL related to a GL account or an Aggregate DTL Category), all relevant DTL accruals and reversals of the DTL category shall be excluded from the Adjusted Covered Taxes until the election is revoked. The Constituent Entity must determine the amount in the Aggregate DTL Category or GL account that relate to the pre-Transition Year DTLs because reversals of pre-Transition Year DTLs should be included in the computation of Adjusted Covered Taxes. For this purpose, the first reversals in the Aggregate DTL Category or GL account shall be treated reversals of pre-Transition Year DTLs.

112.5. In cases where a Constituent Entity makes an Annual Election for an Unclaimed Accrual in some Fiscal Years but not in others or revokes a Five-Year Election for an Unclaimed Accrual, the Constituent Entity must apply the appropriate DTL tracking methodology to determine whether DTL reversals in subsequent Fiscal Years relate to claimed or unclaimed DTLs.

112.6. In cases where a Constituent Entity begins applying the DTL recapture rules to a GL account or an Aggregate DTL Category for which an Unclaimed Accrual election applied to all preceding Fiscal Years beginning with the Transition Year, reversals of the amount of DTL accrual that was not claimed in the previous Fiscal Years shall be ignored in the computation of Adjusted Covered Taxes. In determining which DTL reversals relate to Unclaimed Accruals in an Aggregate DTL Category or GL account, the Constituent Entity shall apply its methodology for determining which DTL reversals related to pre-Transition Year DTLs and treat the Unclaimed Accruals as arising chronologically after the pre-Transition Year DTLs and before any DTLs that are subject to the DTL recapture rule. For example, if the Constituent Entity uses the FIFO method as the recapture methodology for the Aggregate DTL Category, the DTL reversals will be treated as reversals of Unclaimed Accruals only after all of the pre-Transition Year DTLs have been reversed.

QDMTT Considerations

62. The following paragraphs are inserted after paragraph 118.53 of the Commentary to the definition of Qualified Domestic Minimum Top-up Tax:

118.53.1 A QDMTT generally must provide for Aggregate DTL Categories consistent with the principles and exclusions set out in the Commentary to Article 4.4.4 of the GloBE Rules. Application of those principles and exclusions to the DTLs that are tracked under a local accounting standard may result in categories that do not align with the Aggregate DTL Categories that would be used under the accounting standard required under Article 3.1.2 or Article 3.1.3. Accordingly, the Constituent Entity may have different Aggregate DTL Categories where a QDMTT (whether or not it meets the requirements of a QDMTT Safe Harbour) permits or requires QDMTT computations based on local financial accounting standards.

118.53.2 A QDMTT must provide for an Unclaimed Accrual election consistently with the principles set out in the Commentary to Article 4.4.7 of the GloBE Rules (including the Unclaimed Accrual Five-Year Election).

1.4. Examples

63. The following examples will be included in the GloBE Model Rules Examples.

Example 4.4.4-1 – DTL tracking approach definition

1. A Co is a Constituent Entity located in Country A. A Co prepares its reporting package accounts using IFRS and recognises deferred tax liabilities in relation to trade receivables. IFRS recognition criteria for revenues from transactions with customers are different from the corporate tax rules applicable in Country A and the tax basis of trade receivables is different from the corresponding IFRS carrying value. The trade receivables Balance Sheet account in the relevant chart of accounts is composed of a number of General Ledger accounts (e.g. receivables from the sale of product 1, product 2, service A, service B, etc.), and each General Ledger account contains a certain number of sub-accounts (e.g. individual accounts related to each customer), as represented in the below table.

		Tax basis	*IFRS*	Timing difference	DTL (15%)
BS account	**Trade receivables**	**1,000**	**1,700**	**700**	**105**
GL account 1	from sale of product 1	**200**	**400**	**200**	**30**
	- customer X	*-*	*100*	*100*	*15*
	- customer Y	*100*	*200*	*100*	*15*
	- customer Z	*100*	*100*	*-*	*-*
GL account 2	from sale of product 2	**100**	**300**	**200**	**30**
	- customer W	*100*	*300*	*200*	*30*
GL account 3	from sale of service A	**400**	**400**	**-**	**-**
	- customer X	*400*	*400*	*-*	*-*
GL account 4	from sale of service B	**300**	**600**	**300**	**45**
	- customer Y	*300*	*600*	*300*	*45*

2. If A Co measures and tracks DTLs based on each of the four GL accounts and determines whether or not there is a DTL accrual or reversal in each GL account at the end of the Fiscal Year, it may apply the DTL recapture rule on the basis of the GL account tracking.

3. If A Co measures and tracks DTLs based on the Trade Receivables Balance Sheet account, which contains the four GL accounts, it may apply the DTL recapture rule to that Aggregate DTL Category.

Example 4.4.4-2 – FIFO methodology

1. A Co has an Aggregate DTL Category in relation to trade receivables that is consistent with the chart of accounts used for the Consolidated Financial Statements. A Co is able to determine and prove that each GL account included in the Aggregate DTL Category has a similar reversal trend and therefore is eligible to apply the FIFO methodology.

2. The table below shows for each Fiscal Year the net DTL increases (i.e. accrual) and net DTL decreases (i.e. reversal) determined for the Aggregate DTL Category.

		Net DTL movement per Fiscal Year															
DTL category	**Trade receivables**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**
GL account 1	on product 1	10	10	10	10	10	10	10	10	10	10	10	(110)				
GL account 2	on product 2		100								(100)						
GL account 3	on service A			100	100				-100				(100)				
GL account 4	on service B		10	20	10	-	10	10	20	-	10	10	(100)				
GL account 5	on service C						100	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)
Net DTL movement		10	120	130	120	10	120	10	(80)	-	(90)	10	(320)	(10)	(10)	(10)	(10)

3. The table below shows the application of the FIFO methodology to the above identified DTL accruals and reversals for the Aggregate DTL Category.

DTL category - FIFO methodology	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**
Net DTL movement	**10**	**120**	**130**	**120**	**10**	**120**	**10**	**(80)**	**-**	**(90)**	**10**	**(320)**	**(10)**	**(10)**	**(10)**	**(10)**
(A) Outstanding balance	10	130	260	380	390	510	520	440	440	350	360	40	30	20	10	-
(B) Maximum justifiable amount						500	390	260	140	130	20	10	10	10	10	-
(A-B) Unjustified Balance						10	130	180	300	220	340	30	20	10	-	-
Unjustified balance (yearly movement)						**10**	**120**	**50**	**120**	**(80)**	**120**	**(310)**	**(10)**	**(10)**	**(10)**	**-**

4. The DTL recapture test determines a DTL Recaptured amount of 10, to be excluded from the Adjusted Covered Taxes in Year 1 (the Tested Fiscal Year) for the purposes of computing Year 6 Additional Current Top-up Tax. For the Tested Fiscal Year (Year 1), the Maximum Justifiable amount is equal to 500, while the Outstanding Balance (equal to the sum of all the net DTL accruals over the Testing Period) is equal to 510. The excess of the Outstanding Balance over the Maximum Justifiable amount represents the Unjustified Balance for the current Year (i.e. Year 6). Because the Unjustified Balance for the previous Fiscal Year is zero, an increase in the Unjustified Balance is determined for the current year. A DTL Recapture is also determined for Year 7, 8, 9 and 11. An adjustment pursuant to Article 4.4.2(b) shall be made for Year 10, 12, 13, 14 and 15 for an amount corresponding to the yearly decrease in the Unjustified Balance. Example 4.4.4-3 – LIFO methodology.

Example 4.4.4-3 – LIFO methodology

1. A Co has an Aggregate DTL Category in relation to trade receivables that is consistent with the chart of accounts used for the Consolidated Financial Statements. A Co is not able to determine and prove that each GL account included in the Aggregate DTL Category has a similar reversal trend. Based on that, A Co decides to apply the LIFO methodology to the Aggregate DTL Category.

2. The table below shows for each Fiscal Year the relevant net DTL increases (i.e. accrual) and net DTL decreases (i.e. reversal) corresponding to the Aggregate DTL Category.

		Net DTL movement per Fiscal Year															
DTL category	**Trade receivables**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**
GL account 1	on product 1	10	10	10	10	10	10	10	10	10	10	10	(110)				
GL account 2	on product 2		100				(100)										
GL account 3	on service A				200				(200)								
GL account 4	on service B		100	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)				
GL account 5	on service C						50	(10)	10	(10)	(10)	(10)	20	(10)	(10)	(10)	(10)
Net DTL movement		10	210	-	200	-	(50)	(10)	(190)	(10)	(10)	(10)	(100)	(10)	(10)	(10)	(10)

3. The table below shows the application of the LIFO methodology to the above identified DTL accruals and reversals for the Aggregate DTL Category.

LIFO methodology - Aggregate DTL category																
Fiscal Year	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**
Net DTL movement	**10**	**210**	**-**	**200**	**-**	**(50)**	**(10)**	**(190)**	**(10)**	**(10)**	**(10)**	**(100)**	**(10)**	**(10)**	**(10)**	**(10)**
(A) Outstanding balance	**10**	**220**	**220**	**420**	**420**	**370**	**360**	**170**	**160**	**150**	**140**	**40**	**30**	**20**	**10**	**-**
(B) Maximum justifiable amount						**360**	**140**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
(A-B) Unjustified Balance						**10**	**220**	**170**	**160**	**150**	**140**	**40**	**30**	**20**	**10**	**-**
Unjustified balance (yearly movement)						**10**	**210**	**(50)**	**(10)**	**(10)**	**(10)**	**(100)**	**(10)**	**(10)**	**(10)**	**(10)**

4. The DTL recapture test determines a DTL Recaptured amount of 10, to be excluded from the Adjusted Covered Taxes in Year 1 (the Tested Fiscal Year) for the purposes of computing Year 6 Additional Current Top-up Tax. For the Tested Fiscal Year (Year 1), the Maximum Justifiable amount is equal to 360, while the Outstanding Balance (equal to the sum of all the net DTL accruals and reversals computed starting from the Transition Year till the end of the Testing Period) is equal to 370. The excess of the Outstanding Balance over the Maximum Justifiable amount represents the Unjustified Balance for the current Year (i.e. Year 6). Considered that the Unjustified Balance for the previous Fiscal Year is zero, an increase in the Unjustified Balance is determined for the current year. A DTL Recapture of 210 is also determined for Year 7. An adjustment pursuant to Article 4.4.2(b) is required for Year 8 throughout Year 16, for an amount corresponding to the yearly decrease in the Unjustified Balance for that Year.

Example 4.4.4-4 – Pre-Transition Year DTL allocated under FIFO methodology

1. The fact patterns are the same as Example 4.4.4 – 2, except that A Co has pre-Transition Year DTLs for the Aggregate DTL Category equal to 150. For the purposes of the DTL recapture rule, the reversals of pre-Transition Year DTL shall not be computed in the Outstanding Balance otherwise they would be treated as reversals of DTLs that accrued starting from the Transition Year. This principle is reflected in the table below by excluding the reversals attributable to pre-Transition Year DTLs from the "net DTL movement" of the aggregate DTL category as relevant for the determination of the Outstanding Balance, for the DTL recapture mechanism.

2. A Co uses a FIFO recapture methodology for the Aggregate DTL Category. The reversal of pre-Transition Year DTLs must be determined in accordance with the FIFO approach. Under the FIFO approach, the first net DTL decreases in the Aggregate DTL Category are treated as reversals of pre-Transition Year DTLs and as such excluded from the computation of the net DTL movement of the relevant Fiscal Year.

3. The below table shows that the first net DTL decreases occur in Year 7, Year 8 and Year 10. Such net decreases are treated as reversals of pre-Transition Year DTLs and as such are excluded from the computation of the net DTL movement of such Fiscal Years. The 150 of pre-Transition Year DTLs are

Aggregate DTL category - FIFO methodology		**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**
Net DTL movement		**10**	**100**	**130**	**70**	**-**	**120**	**(20)**	**(80)**	**-**	**(90)**	**10**	**(360)**	**(10)**	**(10)**	**(10)**	**(10)**
Pre-Transition Year DTL	**150**																
Reversals allocated to pre-Transition Year DTL (FIFO)		**-**	**-**	**-**	**-**	**-**	**-**	**(20)**	**(80)**	**-**	**(50)**	**-**	**-**	**-**	**-**	**-**	**-**
Net DTL movement (after allocation to Pre-Transition Year DTL)		**10**	**100**	**130**	**70**	**-**	**120**	**-**	**-**	**-**	**(40)**	**10**	**(360)**	**(10)**	**(10)**	**(10)**	**(10)**
(A) Outstanding balance		10	110	240	310	310	430	430	430	430	390	400	40	30	20	10	-
(B) Maximum justifiable amount							420	320	190	120	120	10	10	10	10	10	-
(A-B) Unjustified Balance							10	110	240	310	270	390	30	20	10	-	-
Unjustified balance (yearly movement)							**10**	**100**	**130**	**70**	**(40)**	**120**	**(360)**	**(10)**	**(10)**	**(10)**	**-**

treated as reversing in Year 7, for an amount equal to 20, in Year 8, for an amount equal to 80 and in Year 10, for the residual amount of 50. Accordingly, the net DTL movement for Year 7 and 8 is re-determined to zero, while the net DTL movement for Year 10 is re-determined from -90 to -40.

Example 4.4.4-5 – Pre-Transition Year DTLs allocated under LIFO methodology

1. The fact patterns are the same as Example 4.4.4 - 3 above, except that A Co has pre-Transition Year DTLs for the Aggregate DTL Category equal to 150. For the purposes of the DTL recapture rule, the reversals of pre-Transition Year DTL shall not be computed in the Outstanding Balance otherwise they would be treated as reversals of DTLs that accrued starting from the Transition Year. This principle is reflected in the table below by excluding the reversals attributable to pre-Transition Year DTLs from the "net DTL movement" of the aggregate DTL category as relevant for the determination of the Outstanding Balance, for the DTL recapture mechanism.

2. A Co uses LIFO as recapture methodology for the relevant DTL category. The reversal of pre-Transition Year DTLs must be determined in accordance with the LIFO approach. Under the LIFO approach, the net DTL decreases in the Aggregate DTL Category are first allocated to DTLs accrued starting from the Transition Year and as such computed in the Outstanding Balance. Once the Outstanding Balance is negative (i.e. the overall reversals exceed the overall accruals), the net DTL decreases that causes the Outstanding balance to become negative are treated as reversals of pre-Transition Year DTLs. In the Fiscal Year in which the Outstanding Balance is negative and there is a net decrease in the net DTL movement, the net DTL decrease is treated as reversal of pre-Transition Year DTLs, but only to the extent that such decreases reduces the Outstanding Balance below zero.

3. The below table shows that the Outstanding Balance is negative in Year 12 till Year 16. In Year 12, there is a net DTL decrease of 140 which causes the Outstanding Balance turning to negative to an amount of -110. The amount of 110, out of 140, represents the reversals which are overall in excess in respect to the overall accruals (computed in the Outstanding Balance, i.e. starting from the Transition Year) and as such shall be treated as reversals of pre-Transition Year DTLs. In Year 13, the Outstanding Balance is still negative and the net decreases is equal to -10. This net DTL decrease shall be treated as reversal of pre-Transition Year DTLs. Same thing occurs for Year 14, Year 15 and Year 16 where the relevant net DTL decreases is treated as reversal of pre-Transition Year DTL.

4. Based on the above, the net DTL movement is re-determined without taking into account the net decreases which are allocated to pre-Transition Year DTLs. In particular, for Year 12 to 16, the net DTL movement is re-determined to zero.

Aggregated DTL category - LIFO methodology																	
Fiscal Year		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Net DTL movement		10	190	-	150	(10)	(50)	(40)	(190)	(10)	(10)	(10)	(140)	(10)	(10)	(10)	(10)
Pre-Transition Year DTLs	150																
Outstanding Balance		10	200	200	350	340	290	250	60	50	40	30	(110)	(120)	(130)	(140)	(150)
Reversals allocated to pre-Transition Year DTLs (LIFO)													(110)	(10)	(10)	(10)	(10)
Net DTL movement after allocation to pre-Transition Year DTLs		10	190	-	150	(10)	(50)	(40)	(190)	(10)	(10)	(10)	(30)	-	-	-	-
(A) Outstanding balance (after allocation of pre-Transition Year DTLs)		10	200	200	350	340	290	250	60	50	40	30	-	-	-	-	-
(B) Maximum justifiable amount							280	50	-	-	-	-	-	-	-	-	-
(A-B) Unjustified Balance							10	200	60	50	40	30	-	-	-	-	-
Unjustified balance (yearly movement)							10	190	(140)	(10)	(10)	(10)	(30)	-	-	-	-

Example 4.4.7-1 – Unclaimed Accrual Five-Year election

1. A Co has DTLs on related party receivables that corresponds to a sub-BS account according to the chart of accounts used for Consolidated Financial Statements. This sub-BS account is comprised of a number of GL accounts. As such, it is considered an Aggregate DTL Category. A Co does not have the ability to track DTLs for related party receivables at the GL account level. A Co decides to make the

Unclaimed Accrual election for the Aggregate DTL Category in the Transition Year. Under this election, each net DTL accrual and related reversal as determined in relation to the entire sub-BS account is excluded from the computation of the Adjusted Covered Taxes.

2. The pre-Transition Year DTLs determined as of the beginning of the Transition Year for the related party receivables is equal to 100. The first net decreases in the DTL category shall be treated as reversal of pre-Transition Year DTL and shall be accordingly included in the computation of the Adjusted Covered Taxes. Once the pre-Transition Year DTLs are fully reversed, the subsequent reversals shall be treated as reversal of the unclaimed DTL accruals and as such shall be excluded from the computation of the Adjusted Covered Taxes.

Example 4.4.7-2 – Annual Unclaimed Accrual election

1. A Co has a DTL category related to service contracts (corresponding to an Aggregate DTL Category, i.e. an aggregation of GL accounts) that vary in length from 5 to 10 years and as such is not expected to entirely reverse entirely within five years.

2. A Co decides to make an election under Article 4.4.7 in Year 1 and does not include the DTL accrual of 100 in its computation of Adjusted Covered Taxes for Year 1. A Co recognises another DTL accrual in Year 2 for such DTL category, but it is claimed in the computation of the Adjusted Covered Taxes for Year 2 (i.e. no election under Article 4.4.7). Although A Co did not claim the Year 1 accrual in its Adjusted Covered Taxes computation, it will have to determine when that accrual reverses so that it can claim the taxes in its Adjusted Covered Taxes upon reversal of the deferred tax liability based on the DTL recapture methodology used by A Co for the relevant DTL category. In particular, for the purposes of the correct functioning of the Unclaimed Accrual election and of the DTL recapture methodology used for the relevant DTL category, A Co will have to exclude the unclaimed DTL accrual in Year 1 for the purposes of the computation of the Outstanding Balance. On the other hand, the reversal shall be included in the determination of the Outstanding Balance in order to determine the timing of the relevant reversals and corresponding adjustment pursuant to Article 4.4.2(a).

Example 4.4.7-3 – pre-Transition Year DTLs under an Unclaimed Accrual Five-Year Election

1. A Co makes an Unclaimed Accrual Five-Year Election in the Transition Year in respect to an Aggregate DTL Category. For the purposes of the DTL recapture rule, A Co has determined the pre-Transition Year DTLs for such DTL category. The reversals of pre-Transition Year DTLs must be taken into account in the computation of the Adjusted Covered Taxes and as such shall not be treated as reversal of unclaimed accruals. The reversal of pre-Transition Year DTLs are determined in accordance with a FIFO approach. In other words, the first net DTL decreases shall be treated as reversal of pre-Transition Year DTLs.

2. The Table below shows that the first net DTL decreases occur in Year 7, Year 8, Year 10 and so forth. Under the FIFO approach the net DTL movements to be excluded for the purposes of the Unclaimed Accrual election shall not take into account the net DTL decrease of 20 in Year 7, of 80 in Year 8 and of 50 in Year 10.

Aggregated DTL category		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Net DTL movement		10	100	130	70	-	120	(20)	(80)	-	(90)	10	(360)	(10)	(10)	(10)	(10)
Pre-Transition Year DTL	150																
Reversals allocated to pre-Transition Year DTL (FIFO)		-	-	-	-	-	-	(20)	(80)	-	(50)	-	-	-	-	-	-
Net DTL movement (after allocation to Pre-Transition Year DTL) to be excluded from Adjusted Covered Taxes under the Unclaimed Accrual election		10	100	130	70	-	120	-	-	-	(40)	10	(360)	(10)	(10)	(10)	(10)

2. Divergences between GloBE and accounting carrying values

2.1. Divergences between GloBE and accounting carrying values

2.1.1. Introduction

1. This note provides guidance on how MNE Groups should determine Adjusted Covered Taxes of Constituent Entities in cases where the accounting and GloBE carrying values and the deferred tax assets/liabilities determined therefrom diverge.

2. It also provides guidance in relation to the GloBE treatment of an intragroup transaction accounted for at cost by the acquiring Constituent Entity, as foreshadowed in Chapter 2.1 of the Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), released on 2 February 2023 (the February 2023 AG).

3. Divergences between the carrying value of assets and liabilities and the underlying deferred tax positions for GloBE and accounting purposes may occur pursuant to a number of other provisions under the GloBE Rules. Where there is a divergence between the GloBE and accounting carrying value of the assets and liabilities of a Constituent Entity it is important that the relevant elements of the Total Deferred Tax Adjustment Amount of the Constituent Entity be determined and subsequently adjusted on the basis of the carrying value relevant to the application of the GloBE Rules. The Inclusive Framework will further consider potential simplification measures to mitigate the compliance burdens associated with divergences between GloBE and accounting carrying values.

2.1.2. Issues to be considered

Divergences between GloBE and accounting carrying values

4. The GloBE Rules generally rely on the amounts reflected in the financial accounts of a Constituent Entity used in the preparation of Consolidated Financial Statements of the Ultimate Parent Entity as the starting point for determining the GloBE Income or Loss (under Article 3.1.2 or Article 3.1.3) and Adjusted Covered Taxes (Article 4.1) of each Constituent Entity. As discussed in the Commentary to Article 4.4.1, “the starting point for the Total Deferred Tax Adjustment Amount is the amount of deferred tax expense accrued in the financial accounts of a Constituent Entity". Further, paragraph 71.1 of the Commentary to Article 4.4.1 notes that “references to the deferred tax expense accrued in the financial accounts of a Constituent Entity must be interpreted as the deferred tax expense accrued in the Financial Accounting Net Income or Loss for that Constituent Entity in line with Article 4.1.1 and the principles of Article 3.1.2”. The exception to this is in circumstances where the income and expense attributable to a Constituent Entity are reflected only in the Consolidated Financial Accounts, as such Article 3.1.2 and Article 4.4 allows for income and expenses, and deferred tax expenses in relation to those items, to be included in the calculation of the GloBE Income or Loss and Total Deferred Tax Adjustment Amount for that Constituent

Entity, where they are directly traced to the Constituent Entity (see paragraph 71.1 of the Commentary to Article 4.4.1).

5. However, there are cases where the GloBE Rules require a Constituent Entity to determine its GloBE Income or Loss and Adjusted Covered Taxes by reference to a carrying value that may be different from the carrying value reflected in the financial accounts otherwise used for GloBE purposes. The following Articles are affected:

- Article 3.2.1(i), which adjusts a Constituent Entity's Financial Accounting Net Income or Loss for accrued pension expense;
- Article 3.2.2, which provides an election to substitute the amount of stock-based compensation allowed as a deduction in the computation of a Constituent Entity's taxable income for the amount of stock-based compensation expense reported in the financial accounts;
- Article 3.2.3, which requires MNE Groups to apply the Arm's Length Principle to certain intra-group transactions in order to protect the integrity of jurisdictional blending;
- Article 3.2.5, which provides an election to determine gains and losses using the realisation principle in lieu of fair value accounting;
- Article 6.2.1(c), which provides that a target in the acquisition year and each succeeding year shall determine its GloBE Income or Loss and Adjusted Covered Taxes using its historical carrying value of the assets and liabilities;
- Article 6.2.2, which provides that certain acquisitions or disposals of a Controlling Interest in a Constituent Entity shall be treated as an acquisition or disposal of the assets and liabilities;
- Article 6.3.1, in circumstances where Article 3.2.3 applies in respect of asset transfers not recorded at arm's length and requires a transaction between Constituent Entities located in different jurisdictions that is not recorded in the same amount in the financial accounts of both Constituent Entities or that is not consistent with the Arm's Length Principle to be adjusted so as to be in the same amount and consistent with the Arm's Length Principle;
- Article 6.3.2, which requires an acquiring Constituent Entity in a GloBE Reorganisation to determine its GloBE Income or Loss after the acquisition using the disposing Entity's carrying values of the acquired assets and liabilities upon disposition;
- Article 6.3.3, which requires an acquiring Constituent Entity in a GloBE Reorganisation wherein a disposing Constituent Entity recognises Non-qualifying Gain or Loss to determine its GloBE Income or Loss after the acquisition using the disposing Entity's carrying value of the acquired assets and liabilities upon disposition adjusted consistent with local tax rules to account for the Non-qualifying Gain or Loss; and
- Article 6.3.4, when an MNE Group makes an election to align the outcomes under the GloBE Rules with those that apply under local tax law and the Constituent Entity recognises gain or loss and adjusts the carrying value of its assets and liabilities for purposes of the GloBE Rules.

6. Article 4.4.1(a) excludes from a Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year any amount of deferred tax expense with respect to items excluded from the computation of GloBE Income or Loss under Chapter 3. Article 3.2.11 requires adjustments to a Constituent Entity's Financial Accounting Net Income or Loss where necessary to reflect the requirements of Chapters 6 and 7.

7. If the GloBE Income or Loss of a Constituent Entity is calculated based on an asset or liability's carrying value that differs from that used to determine the deferred tax expense accrued in the financial accounts of a Constituent Entity, then any deferred tax expense or benefit accrued in connection with a deferred tax asset or deferred tax liability related to the asset or liability is no longer appropriate for computing the Total Deferred Tax Adjustment Amount under Article 4.4 to determine the Adjusted Covered Taxes of the Constituent Entity. This is because the timing differences in respect of the asset or liability

under the GloBE Rules will not correspond to the timing differences reflected in the financial accounting deferred tax assets and liabilities.

8. To ensure the correct determination of the Total Deferred Tax Adjustment Amount under the GloBE Rules, any deferred tax asset or liability must be computed based on the GloBE carrying value and then adjusted in accordance with the relevant accounting standard and the deferred tax expense or benefit in respect of such deferred tax asset or liability and its subsequent adjustments must be used to compute the Total Deferred Tax Adjustment Amount for purposes of determining the Adjusted Covered Taxes of the Constituent Entity. In circumstances where the GloBE carrying value of an asset or liability is adjusted to be aligned with the tax carrying value (tax basis) of the asset or liability, the result will be that the related deferred tax expense recorded for accounting purposes will be disregarded for GloBE purposes. This includes for the purposes of Article 4.4.4 and is intended to apply broadly to the GloBE Rules, not just to the Articles outlined in paragraph 5 above. This guidance contains certain instances that reference the excluding or disregarding of deferred tax assets or deferred tax liabilities in the financial accounts of a Constituent Entity. This is predicated on the assumption that many jurisdictions have a tax carrying value (tax basis) that will equal the GloBE carrying value of certain assets and liabilities. However, this will not necessarily be the case in all jurisdictions and all circumstances. In all cases, deferred tax assets or liabilities must be computed based on the GloBE carrying value and then adjusted in accordance with the relevant financial accounting standard.

9. It may be the case that the GloBE carrying value of an asset or liability does not match the local tax carrying value (tax basis under the income tax laws of the relevant jurisdiction). Where this is the case, even if there was no deferred tax asset or liability recorded (for instance, because the accounting carrying value and tax basis were equal), Article 4.4. must take into account any deferred tax asset or liability calculated in accordance with the relevant accounting standard, but based on the GloBE carrying value, rather than the carrying value used to determine the deferred tax expense accrued in the Constituent Entity's financial accounts (i.e. the Constituent Entity's financial accounts used in preparing Consolidated Financial Statements of the Ultimate Parent Entity). However, where the initial recognition exception applies under the relevant accounting standard and would continue to be applicable in the context of the required adjustments for GloBE purposes, the deferred tax asset or liability would not be included in calculating the Total Deferred Tax Adjustment amount even though the GloBE carrying value differs from the tax basis.

10. Similarly, in circumstances where items of income, gain, expense or loss with respect to a specific asset or liability are excluded from the GloBE calculations, such as amortization of an asset arising as a result of purchase accounting, any deferred tax asset or deferred tax liability in the financial accounts related to that specific asset or liability must be disregarded for the purposes of calculating a Constituent Entity's Total Deferred Tax Adjustment Amount.

Clarifications in relation to the effect of divergences between GloBE and accounting carrying values and the Transition Rules.

11. Given the impact of the Articles in Chapter 6 listed above and Article 3.2.3, which may result in a divergence between the GloBE carrying value and the accounting carrying value, it is essential to clarify how to determine the GloBE carrying value, and associated deferred tax assets and liabilities, in the case of pre-GloBE transactions.

12. Chapters 1 through 8 of the GloBE Rules have been generally drafted based on the assumption that the relevant items arise in a Fiscal Year in which the Constituent Entity is subject to the GloBE Rules, with Chapter 9 providing the specific rules on how the GloBE Rules apply to transactions and tax attributes that took place or arose before the GloBE Rules came into effect. Specifically, Article 9.1.1 outlines the deferred tax accounting attributes of a Constituent Entity relevant to the GloBE Rules in its Transition Year, subject to the modifications specified in Article 9.1.2 and 9.1.3. These attributes must be utilised in

calculating a Constituent Entity's Covered Taxes and the Effective Tax Rate (ETR) in a jurisdiction during the Transition Year and subsequent years. This transition rule avoids requiring complex calculations as if the Constituent Entity had been subject to GloBE Rules in prior years.

13. The exception to Article 9.1.1 is Article 6.2.1(c). Paragraph 51 of the Commentary to Article 6.2.1(c) makes the position clear in relation to direct and indirect disposals of Ownership Interests resulting in an Entity either becoming or ceasing to be a Constituent Entity. That Commentary specifies that "push-down" accounting adjustments (i.e. purchase price accounting adjustments) are excluded for the purposes of determining the carrying value of an asset or a liability for GloBE purposes, even where the transaction occurs prior to the GloBE Rules coming into effect. Where the financial accounting standard used by the UPE in preparing its Consolidated Financial Statements permits the UPE to "push down" adjustments to the carrying value of assets and liabilities that were attributable to a purchase of a business to the separate accounts of the acquired Constituent Entity, the Constituent Entity can only use the carrying value reflected in its separate accounts if the acquisition occurred prior to 1 December 2021 and the MNE Group does not have sufficient records to determine its Financial Accounting Net Income or Loss with reasonable accuracy based on the unadjusted carrying values of the acquired assets and liabilities. No such concession applies to direct and indirect disposals of Ownership Interests resulting in an Entity either becoming or ceasing to be a Constituent Entity on or after 1 December 2021.

14. The purpose of the prohibition on using GloBE carrying values that include purchase price accounting adjustments in such circumstances is tied to the GloBE principle that purchase price accounting adjustments should not affect the Financial Accounting Net Income or Loss and Adjusted Covered Taxes calculations of a Constituent Entity. Given this, the Inclusive Framework considered it necessary to have comprehensive application in circumstances where MNE Groups have sufficient records to undertake the necessary adjustments. It follows that in circumstances where Article 6.2.1(c) applies to an asset or liability of a Constituent Entity, the GloBE carrying value is the relevant value for the purposes of determining the amount of any resulting deferred tax assets or deferred tax liabilities for the purposes of Article 9.1.1.

15. However, given the potential complexity for MNE Groups and Tax Administrations to apply Article 3.2.3, Article 6.2.2, and Article 6.3.1 through Article 6.3.4 in the case of a pre-GloBE transaction, these Articles should only apply to Constituent Entities in the Transition Year and subsequent Fiscal Years. To apply such articles to prior Fiscal Years would undermine the policy purpose of Article 9.1.1. The meaning of Transition Year in such circumstances also takes into account the modification of that term where an MNE Group is subject to the Transitional CbCR Safe Harbour in a jurisdiction. As such, where the Transitional CbCR Safe Harbour has been applied, the Articles mentioned above can only have effect in the first Fiscal Year in which the relevant Tested jurisdiction no longer qualifies for or applies the Transitional CbCR Safe Harbour.

16. It should also be noted that divergences may occur between the amounts of deferred tax assets and deferred tax liabilities relevant for GloBE purposes and those amounts reflected in the financial accounts as a result of Article 9.1.3. The relevant treatment of these situations has been covered in the Administrative Guidance "Asset carrying value and deferred taxes under 9.1.3 [AG22.04.T2]" released in February 2023 and reflected in the Commentary to Article 9.1.3. As such, this guidance does not apply to assets acquired in transactions within the scope of Article 9.1.3. However, to the extent that Article 9.1.3 applies to an asset that has been subject to Article 6.2.1(c), the relevant carrying value for purposes of determining deferred tax assets and deferred tax liabilities is the GloBE carrying value established by Article 6.2.1(c).

17. The Commentary to Article 9.1.3 (paragraph 10.8) has been amended to clarify that where the acquiring Constituent Entity is subject to the GloBE Rules, the initial recognition of the GloBE deferred tax asset due to taxes paid by the disposing entity on the transfer shall not reduce the Adjusted Covered Taxes of the acquiring Constituent Entity. It has also been amended to clarify that a deferred tax asset should be recognised for GloBE purposes based on the rules of Article 9.1.3 even in circumstances where no such

deferred tax asset would arise, or would arise in a different amount, under the relevant accounting standard.

18. As a result of these clarifications, a deferred tax asset for GloBE purposes will arise regardless of whether a deferred tax asset is recognised in the financial accounts. However, because the limitation on the amount of the deferred tax asset determined under Article 9.1.3 looks to the local tax basis in the asset, the Inclusive Framework will consider providing further guidance in relation to the limitation on the amount of the deferred tax asset determined under Article 9.1.3 in situations where the jurisdiction of the acquiring Constituent Entity is located in a jurisdiction that does not have a corporate income tax system. The Inclusive Framework will also consider providing further guidance in relation to the application of the principles of Article 4.3 in the context of transfers subject to Article 9.1.3.

Intragroup transactions accounted for at cost

19. Article 6.3.1 aims at aligning the GloBE carrying values of the acquiring Constituent Entity and the amount realized on disposition that is taken into account in determining gain or loss for the disposing Constituent Entity, where the latter generally reflects the fair market value of the asset and liabilities at the time of disposition. It is premised on the assumption that intra-group transactions (transactions between Constituent Entities) are accounted for at fair value on a separate entity basis and then adjusted to eliminate intra-group income in the preparation of the Consolidated Financial Statements. However, some MNE Groups account for intra-group transactions at cost, meaning the disposing Constituent Entity does not recognise income, gain or loss on the transaction and the acquiring Constituent Entity records an asset in its financial accounts at the disposing Constituent Entity's cost.

20. The computation of a Constituent Entity's GloBE Income or Loss begins with its Financial Accounting Net Income or Loss. Article 3.2.3 generally requires MNE Groups to apply the Arm's Length Principle to cross-border, intra-group transactions in order to protect the integrity of jurisdictional blending. Article 3.2.3 also applies to transactions between Joint Ventures (which are deemed to be Constituent Entities for purposes of Chapters 3 through 7) and Constituent Entities. Without Article 3.2.3, MNE Groups could shift income from one jurisdiction to another by simply recording transactions in the financial accounts of Constituent Entities at prices that do not reflect fair value. Thus, for an MNE Group that records intra-group transactions at cost, the arm's length price is relevant for purposes of determining the GloBE income or loss of the disposing Constituent Entity, due to the application of Article 3.2.3. The February 2023 AG confirmed this application of the GloBE Rules in such situations to the disposing Constituent Entity.

21. Article 3.2.3 also applies to the acquiring Constituent Entity. Under the GloBE Rules the acquiring Constituent Entity must compute its GloBE Income or Loss on the basis that the asset (or liability) was acquired for its arm's length price. Therefore, any deferred tax asset or liability in relation to the acquired asset (or liability) must be computed for the purposes of determining Adjusted Covered Taxes under Article 4.4 based on the acquired asset's (or liability's) carrying value for GloBE purposes. The arm's length price should be the same for the disposing Constituent Entity and the acquiring Constituent Entity, and if the acquiring Constituent Entity's tax basis is also the same amount, there will not be a deferred tax asset or liability on the initial acquisition.

22. Determination of deferred tax assets based on GloBE carrying values does not displace the application of the relevant accounting standard. As such, to the extent the relevant accounting standard does not allow the recognition of the deferred tax asset or liability on certain transfers (e.g. if the Initial Recognition Exemption in IAS 12 would continue to be applicable in light of the required GloBE adjustments), no deferred tax expense will be taken into account for GloBE purposes, except in cases where the GloBE Rules specifically create a GloBE deferred tax asset (e.g. under Article 9.1.3). Further, the acquiring Constituent Entity must determine its Financial Accounting Net Income or Loss by applying the accounting treatment applicable under the relevant accounting standard to the acquired asset or liability based on the GloBE carrying value.

23. For example, a Constituent Entity (Entity A) in Jurisdiction A transfers an asset to another Constituent Entity (Entity B) in Jurisdiction B (corporate tax rate of 20%). The carrying value of the asset for Entity A is 50 and the fair market value of the asset is 150. The transfer is recorded at cost (50) for accounting purposes in accordance with the financial accounting standard used by Entity A for purposes of Article 3.1.2. Entity A reports no gain on the transaction and Entity B records a deferred tax asset in its accounts of 20 (the difference between the accounting carrying value of 50 and the tax basis of 150 multiplied by the tax rate) in accordance with Entity A's financial accounting standard. Ordinarily this deferred tax asset would be recast to 15 for GloBE purposes in accordance with Article 4.4.1. However, Entity A is required to include 100 of gain from the sale in its GloBE Income due to the application of Article 3.2.3. Because the transaction is subject to Article 3.2.3, Entity B will have a GloBE carrying value for the asset of 150 based on the asset's fair market value. As such, Entity B would not record any deferred tax asset for GloBE purposes upon acquisition. After recognition, the asset would be amortised under the relevant accounting standard based on its GloBE carrying value for the Fiscal Year and subsequent Fiscal Years. Thus, if the asset is amortised for accounting purposes on a straight-line basis over 10 years, the annual amortisation expense for GloBE purposes will be equal to 15 (150/10). However, if the asset is amortised for tax purposes over a different period, e.g. five years, a deferred tax liability shall be determined for GloBE purposes based on the timing differences that arise after the acquisition and the corresponding deferred tax expense shall be included in the computation of Entity B's Adjusted Covered Taxes (subject to recasting at the Minimum Rate because the corporate tax rate in Jurisdiction B is above 15%). Further, the deferred tax liability determined for GloBE purposes is subject to recapture for the purposes of Article 4.4.4, unless the deferred tax liability meets the definition of a Recapture Exception Accrual in Article 4.4.5.

24. However, for assets and liabilities subject to impairment testing under the relevant financial accounting standard, the GloBE carrying value will not undergo independent impairment testing if it differs from the accounting carrying value. This approach is designed to prevent MNE Groups from having to conduct separate impairment testing based on the GloBE carrying value. Impairment of the asset or liabilities' GloBE carrying value (and the related effects on the Constituent Entity's Adjusted Covered Taxes and GloBE Income or Loss) will only occur if the accounting value (attributable to the same asset or liability) is subject to an impairment in accordance with the relevant financial accounting standard. In such cases, the GloBE carrying value will be reduced to match the accounting carrying value, with the corresponding consequences included in the Constituent Entity's GloBE Income or Loss and Total Deferred Tax Adjustment Amount. Where the accounting carrying value of an asset or liability post-impairment still exceeds its GloBE carrying value, the GloBE carrying value will remain unchanged and there should be no effect on the Constituent Entity's GloBE Income or Loss or Adjusted Covered Taxes as a result of the accounting impairment.

Interaction between divergences in GloBE and accounting carrying values and the Substance-based Income Exclusion

25. Article 5.3 sets out that the Net GloBE Income for the jurisdiction shall be reduced by the Substance-based Income Exclusion (SBIE) for the jurisdiction to determine the Excess Profit for purposes of computing the Top-up Tax under Article 5.2. The SBIE amount for a jurisdiction is the sum of the payroll carve-out and the tangible asset carve-out for each Constituent Entity, except for Constituent Entities that are Investment Entities, in that jurisdiction.

26. In determining the amount of the SBIE under Article 5.3.5 the MNE Group must ascertain the sum of the payroll carve-out and the tangible asset carve-out. The Commentary to Article 5.3.5 at paragraph 49 states the following:

> "…to determine the carrying value for purposes of the carve-out in conformity with the carrying value of the asset as recorded for purposes of preparing the Consolidated Financial Statements

(i.e. after taking into account purchase accounting adjustments and elimination adjustments attributable to inter-company sales)".

27. As such and in line with the current application of Article 5.3.5, the relevant carrying value of an asset for SBIE calculation purposes shall be based on the average of the carrying value (net of accumulated depreciation, amortisation, or depletion and including any amount attributable to capitalisation of payroll expense) at the beginning and ending of the Reporting Fiscal Year as recorded for the purposes of preparing the Consolidated Financial Statements of the Ultimate Parent Entity. Any adjustment to the carrying value of an asset for GloBE purposes under this Administrative Guidance is for the purposes of determining the GloBE Income or Loss and Covered Taxes of a Constituent Entity and therefore does not affect the carrying value for SBIE purposes.

2.1.3. Guidance

28. The following text in bold will be inserted in paragraph 86 of the Commentary to Article 3.2.1(i):

> 86. The adjustment for Accrued Pension Expense required by Article 3.2.1(i) depends upon whether the Constituent Entity's Financial Accounting Net Income or Loss includes an accrued pension expense or pension income with respect to a Pension Fund. In the case of an accrued pension expense, the adjustment is equal to the difference between (a) the amount contributed to a Pension Fund and (b) the amount accrued as an expense with respect to that Pension Fund in the computation of Financial Accounting Net Income or Loss during the Fiscal Year. The adjustment to Financial Accounting Net Income or Loss for this difference will be a positive amount (increasing income) if the amount accrued as an expense in the financial accounts exceeds the contributions for the year. It will be a negative amount (reducing income) in Fiscal Years in which the contributions exceed the expense accrued in the financial accounts. In the case of accrued pension income, the adjustment would be calculated as the sum of the pension income and the amount of pension contributions, if any, during the Fiscal Year. In this case, the adjustment will be a negative amount. This adjustment will also apply when the Pension Fund is in surplus as well as when it is in deficit or liability position. The formula to determine the adjustment (positive or negative) to Financial Accounting **Net** Income or Loss for the Accrued Pension Expense is as follows:
>
> GloBE Adjustment = (Accrued Income or Expense for fiscal year + contribution for fiscal year) x (-1)
>
> Where
>
> - Accrued income is expressed as a positive amount
> - Accrued expense is expressed as a negative amount
> - Contribution is expressed as a positive amount
>
> In cases where the Pension Fund is in surplus and the surplus (net income) is distributed to a Constituent Entity, that surplus will be included in the computation of the Constituent Entity's GloBE Income or Loss in the Fiscal Year of the distribution. **For the purposes of calculating the Constituent Entity's Adjusted Covered Taxes, the deferred tax asset or deferred tax liability in the financial accounts of the Constituent Entity used in the preparation of the Consolidated Financial Statements should be excluded under Article 4.1.3(a). However, where a deferred tax expense or benefit relating to pension surplus, it should be included in the computation of the Constituent Entity's computation of Adjusted Covered Taxes.**

29. The following text in bold will be inserted in paragraph 89 and a new paragraph 89.1 inserted after paragraph 89 of the Commentary to Article 3.2.2:

89. This disparity between the amount of expense allowed in the computation of financial accounting income and the local tax base would often depress the GloBE ETR, in some cases below the Minimum Rate. The election under Article 3.2.2 brings the GloBE Income or Loss more into line with the local tax rules in those jurisdictions that allow a deduction based on the value of the stock at the exercise date. **Where the election is made, any amount of stock-based compensation determined for accounting purposes that would be expensed through the income statement, either as an immediate expense or as amortization or depreciation in respect of an asset, must be excluded from the computation of GloBE Income or Loss, and any deferred tax expense or benefit computed for the purposes of determining the Constituent Entity's Adjusted Covered Taxes must be calculated by reference to the stock-based compensation amount included in the Constituent Entity's GloBE Income or Loss.** If the election is not made, the Constituent Entity simply computes its GloBE Income or Loss taking into account the amount of stock-based compensation allowed in the computation of its Financial Accounting Net Income or Loss **and any deferred tax expense in relation to its stock-based compensation amount, adjusted as required by Article 4.4, is included in Adjusted Covered Taxes**.

89.1 Where the election under Article 3.2.2 applies and an amount of stock-based compensation expense that was deducted for tax purposes but capitalized to another asset, such as a building, for accounting purposes, such amount shall be excluded from the GloBE carrying value of the asset for purposes of determining GloBE Income or Loss. Deferred tax assets and liabilities determined in respect of that other asset must be determined based on the GloBE carrying value of the asset.

30. The following text in bold will be inserted in paragraph 96 of the Commentary to Article 3.2.3:

96. Article 3.2.3 requires transactions between Group Entities to be priced consistently with the Arm's Length Principle and recorded at the same price for GloBE purposes for all Constituent Entities that are parties to the transaction. **Article 3.2.3 only applies to transactions undertaken by a Constituent Entity in a Transition Year and subsequent Fiscal Years. See paragraph 10 through 10.11 of the Commentary to Article 9.1.3 for rules applicable to carrying values and deferred taxes recorded prior to the Transition Year.**

31. The following paragraphs will be inserted after paragraph 104 of the Commentary to Article 3.2.3:

104.1 As noted in the Commentary to Article 6.3.1, Article 3.2.3 applies to transactions between Constituent Entities of an MNE Group. Where Article 3.2.3 applies the disposing Constituent Entity would determine its GloBE Income or Loss based on the Arm's Length Principle. Similarly, in accordance with paragraph 73.2 of the Commentary to Article 6.3.1, the acquiring Constituent Entity will take a GloBE carrying value that reflects this arm's length price (rather than the carrying value in the financial statements of the Constituent Entity or the MNE Group). This GloBE carrying value is used in determining its GloBE Income or Loss and, in accordance with the Commentary to Article 4.4, its Adjusted Covered Taxes in the Fiscal Year that the transaction occurs and future Fiscal Years.

104.2 For example, a Constituent Entity (Entity A) in Jurisdiction A transfers an asset to another Constituent Entity (Entity B) in Jurisdiction B (corporate tax rate of 20%). The carrying value of the asset for Entity A is 50 and the fair market value of the asset is 150. The transfer is recorded at cost (50) for accounting purposes in accordance with the financial accounting standard used by Entity A for purposes of Article 3.1.2. Entity A reports no gain on the transaction and Entity B records a deferred tax asset in its accounts of 20 (the difference between the accounting carrying value of 50 and the tax basis of 150 multiplied by the tax rate) in accordance with Entity A's financial accounting standard. Ordinarily this deferred tax asset would be recast to 15 for GloBE purposes in accordance with Article 4.4.1. However, Entity A is required to include 100 of gain from the sale in its GloBE Income due to the application of Article 3.2.3. Because the transaction is subject to Article 3.2.3, Entity B will have a GloBE carrying value for the asset of 150 based on the asset's fair market value. As such, Entity B would not record any deferred tax asset for GloBE purposes upon acquisition. After recognition, the asset would be amortised under the relevant accounting standard based on its GloBE carrying value for the Fiscal Year and subsequent Fiscal Years. Thus, if the asset is amortised for accounting purposes on a straight-line basis over 10 years, the annual amortisation expense for GloBE purposes will be equal to 15 (150/10). However, if the asset is amortised for tax purposes over a different period, e.g. five years, a deferred tax liability shall be determined for GloBE purposes based on the timing differences that arise after the acquisition and the corresponding deferred tax expense shall be included in the computation of Entity B's Adjusted Covered Taxes (subject to recasting at the Minimum Rate because the corporate tax rate in Jurisdiction B is above 15%). Further, the deferred tax liability determined for GloBE purposes is subject to recapture for the purposes of Article 4.4.4, unless the deferred tax liability meets the definition of a Recapture Exception Accrual in Article 4.4.5.

104.3 To further illustrate, assume the same facts as the example above, except that the tax basis of the transferred asset determined in accordance with the tax laws applicable to Jurisdiction B is $160. Given the difference between the GloBE carrying value ($150) and the tax basis ($160), Entity B will accrue a deferred tax asset of $1.50 for GloBE purposes. This recognition of the deferred tax asset will result in a reduction of Entity B's Adjusted Covered Taxes by $1.50 in the Fiscal Year of the acquisition. After recognition, the asset would be amortised under the relevant accounting standard based on its GloBE carrying value for the Fiscal Year and subsequent Fiscal Years and the deferred tax asset would reverse over the accounting amortisation period.

32. The following paragraph will be inserted after paragraph 118 of the Commentary to Article 3.2.5:

118.1 In accordance with the Commentary to Article 4.4, where an election to use the realisation method is made under Article 3.2.5, any deferred tax expense for the purposes of determining the Constituent Entity's Adjusted Covered Taxes must be determined by reference to the GloBE carrying value of the relevant assets at the commencement of the Fiscal Year in which the election is made. For assets acquired after the first day of Fiscal Year in which election is made, Adjusted Covered Taxes must be determined by reference to the carrying value of the asset (determined in accordance with the GloBE Rules, including the election to use the realisation method). For example, in the case of an equity security acquired after the election date that is subject to fair value accounting but subject to tax on a realisation basis, any movement in the accounting deferred tax expense in relation to the asset should be disregarded as it relates to gains or losses attributable to amounts that are excluded from the computation of GloBE Income or Loss under the election. In contrast, any deferred tax asset or liability related to an equity security owned by the Constituent Entity at the beginning of the Fiscal Year in which the election was made will reverse when and to the extent that the carrying value of the asset or liability subject to the realisation method election is included in the computation of the Constituent Entity's GloBE Income or Loss. Where assets and liabilities covered by the election are also subject to tax on a mark-to-market basis, any deferred tax asset or deferred tax liability should be determined by reference to the GloBE carrying value (either the GloBE carrying value of the relevant assets at the commencement of the Fiscal Year in which the election is made or when the asset was acquired).

33. The following paragraph will be inserted after paragraph 145 of the Commentary to Article 3.2.11:

145.1 Where Article 3.2.11 applies and requires an adjustment to the carrying value of an asset or liability for GloBE purposes, any deferred tax expense included in a Constituent Entity's Adjusted Covered Taxes (i.e., the Total Deferred Tax Adjustment Amount) must be computed on the basis of the GloBE carrying value of the asset or liability, unless the GloBE Rules specifically permit or require the deferred tax assets or liabilities to be determined on another basis. That is, where a

Constituent Entity's Financial Accounting Net Income or Loss is adjusted to reflect the requirements of the relevant provisions of Chapters 6 and 7, its Adjusted Covered Taxes, including its Total Deferred Tax Adjustment Amount must be calculated reflecting equivalent adjustments to the carrying value of the assets or liabilities.

34. The following bold text will be added to paragraph 68 of the Commentary to Article 4.4:

68. While Article 4.4 uses existing deferred tax accounts maintained by MNE Groups to the greatest extent possible to simplify compliance, certain adjustments are required to protect the integrity of the GloBE Rules. These adjustments include using the lower of the Minimum Rate or the applicable tax rate to calculate deferred tax assets and liabilities in order to prevent deferred tax amounts from sheltering unrelated GloBE Income. The rules also require the recapture of certain amounts claimed as deferred tax liabilities that are not paid within five years. Exceptions **to the recapture requirement** are provided for the most common and material book to tax differences when they relate to substance in a jurisdiction or are not prone to taxpayer manipulation. These amounts do not require monitoring for recapture.

35. The following paragraphs will be inserted after paragraph 68 of the Commentary to Article 4.4:

68.1. The GloBE Rules generally rely on the amounts reflected in the financial accounts of a Constituent Entity used in the preparation of Consolidated Financial Statements of the UPE as the starting point for determining the GloBE Income or Loss (under Article 3.1.2 or Article 3.1.3) and Adjusted Covered Taxes (under Article 4.1 through Article 4.4) of each Constituent Entity. As noted in paragraph 70 below, for the purposes of determining the Total Deferred Tax Adjustment Amount for a Constituent Entity, the starting point is the amount of deferred tax expense accrued in the financial accounts of a Constituent Entity used in the preparation of the UPE's Consolidated Financial Statements.

68.2. Deferred tax expense is typically computed based on differences between the financial accounting and tax carrying values of assets and liabilities. However, there are cases where the GloBE Rules require the Constituent Entity to determine its GloBE Income or Loss by reference to a carrying value of assets or liabilities that may be different from the carrying value reflected in those financial accounts. These carrying value divergences may arise under various circumstances, including the following circumstances:

(a) Article 3.2.1(i), which adjusts a Constituent Entity's Financial Accounting Net Income or Loss for accrued pension expense;

(b) Article 3.2.2, which provides an election to substitute the amount of stock-based compensation allowed as a deduction in the computation of a Constituent Entity's taxable income for the amount of stock-based compensation expense reported in the financial accounts;

(c) Article 3.2.3, which requires MNE Groups to apply the Arm's Length Principle to certain intra-group transactions in order to protect the integrity of jurisdictional blending;

(d) Article 3.2.5, which provides an election to determine gains and losses using the realisation principle in lieu of fair value accounting;

(e) Article 6.2.1(c), which provides that a target in the acquisition year and each succeeding year shall determine its GloBE Income or Loss and Adjusted Covered Taxes using its historical carrying value of the assets and liabilities;

(f) Article 6.3.1,

(i) when Article 6.2.2 applies, which provides that certain acquisitions or disposals of a Controlling Interest in a Constituent Entity shall be treated as an acquisition or disposal of the assets and liabilities; or

(ii) when Article 3.2.3 applies in respect of asset transfers not recorded at arm's length, whereby any transaction between Constituent Entities located in different jurisdictions (and between Joint Ventures and Constituent Entities located in the same jurisdiction) that is not recorded in the same amount in the financial accounts of both Constituent Entities or that is not consistent with the Arm's Length Principle must be adjusted so as to be in the same amount and consistent with the Arm's Length Principle;

(g) Article 6.3.2, which requires an acquiring Constituent Entity in a GloBE Reorganisation to determine its GloBE Income or Loss after the acquisition using the disposing Entity's carrying values of the acquired assets and liabilities;

(h) Article 6.3.3, which requires an acquiring Constituent Entity in a GloBE Reorganisation wherein a disposing Constituent Entity recognises Non-qualifying Gain or Loss to determine its GloBE Income or Loss after the acquisition using the disposing Entity's carrying value of the acquired assets and liabilities adjusted consistent with local tax rules to account for the Non-qualifying Gain or Loss; and

(i) Article 6.3.4, when an MNE Group makes the election to align the outcomes under GloBE with those that apply under local tax law and the Constituent Entity recognises a gain or loss and adjusts the carrying value of its assets and liabilities for purposes of the GloBE Rules.

68.3. Where the GloBE Income or Loss of the Constituent Entity is calculated based on different carrying values of assets or liabilities, it is not appropriate for the purposes of Article 4.4 to rely on any deferred tax expense or benefit accrued in the financial accounts in connection with deferred tax assets and liabilities determined by reference to the accounting carrying value of assets or liabilities. This is because the timing differences in respect of the asset or liability under the GloBE Rules will not correspond to the timing differences reflected in the financial accounting deferred tax assets and liabilities. In such cases, MNE Groups must determine the deferred tax assets and liabilities for GloBE purposes based on the GloBE carrying value (rather than the carrying amount in the financial accounts) and the tax carrying value (tax basis), unless otherwise specified under the GloBE Rules, and the deferred tax expense or benefit in respect of such deferred tax asset or liability and its subsequent adjustments must be used to compute the Total Deferred Tax Adjustment Amount for purposes of determining the Adjusted Covered Taxes of the Constituent Entity. The recognition and measurement of any deferred tax asset or deferred tax liability and adjustments based on the GloBE carrying value shall apply for all GloBE purposes, and therefore the deferred tax expense or benefit of a Constituent Entity for GloBE purposes must be recalculated based on the GloBE carrying value of the relevant assets and liabilities in accordance with the Acceptable Financial Accounting Standard (or Authorised Financial Accounting Standard, if applicable), unless otherwise specified under the GloBE Rules. For example, the amount of a deferred tax liability determined by reference to the GloBE carrying value of an asset or liability is still subject to recasting under Article 4.4.1. As such, movements in the deferred tax asset or liability calculated based on the accounting carrying value are ignored for purposes of the GloBE Rules when deferred tax assets and liabilities are calculated based on the GloBE carrying value, including any amortisation or depreciation of the relevant asset or liability with the relevant financial accounting standard for GloBE purposes in future Fiscal Years.

68.4. Determination of deferred tax assets based on GloBE carrying values does not displace the application of the financial accounting standard used under Article 3.1.2 or Article 3.1.3. As such, to the extent that the relevant financial accounting standard does not allow the recognition of the deferred tax asset or liability on such transfers (e.g. if the Initial Recognition Exemption in IAS 12 would continue to be applicable in light of the required GloBE adjustments), no deferred tax expense should be taken into account for GloBE purposes, except in cases where the GloBE Rules specifically create a GloBE deferred tax asset (e.g. under Article 9.1.3). Similarly, the conditions in Article 4.4.1 continue to apply to a deferred tax asset or deferred tax liability based on the GloBE carrying value. For example, to the extent the deferred tax expense arising from a deferred tax asset or deferred tax liability based on the accounting carrying value was in respect of items excluded from the computation of a Constituent Entity's GloBE Income or Loss, the deferred tax asset or deferred tax liability based on GloBE carrying value should similarly be excluded from the Constituent Entity's Total Deferred Tax Adjustment Amount.

68.5. However, for assets and liabilities subject to impairment testing under the relevant financial accounting standard, the GloBE carrying value will not undergo independent impairment testing if it differs from the accounting carrying value. This approach is designed to prevent MNE Groups from having to conduct separate impairment testing based on the GloBE carrying value. Impairment of the asset or liabilities' GloBE carrying value (and the related effects on the Constituent Entity's Adjusted Covered Taxes and GloBE Income or Loss) will only occur if the accounting value (attributable to the same asset or liability) is subject to an impairment in accordance with the relevant financial accounting standard and the post-impairment accounting carrying value is lower than the GloBE carrying value. In such cases, the GloBE carrying value will be reduced to match the accounting carrying value, with the corresponding consequences included in the Constituent Entity's GloBE Income or Loss and Total Deferred Tax Adjustment Amount. However, any inclusion of an amount in GloBE Income and Loss and Total Deferred Tax Adjustment Amount remains subject to the general application of the GloBE Rules. For instance, such amounts should not pertain to items excluded from the computation of GloBE Income or Loss under Chapter 3. Where the accounting carrying value is impaired in accordance with the relevant financial accounting standard and the post-impairment carrying value is higher than the asset or liabilities GloBE carrying value, the GloBE carrying value will remain unaffected by the impairment and there should be no effect on the Constituent Entity's GloBE Income or Loss, or its Adjusted Covered Taxes.

68.6. There are also instances in the GloBE Rules where an amount contained in financial accounts used to compute the Financial Accounting Net Income or Loss of a Constituent Entity is substituted from another amount. Typically, these substituted amounts are aligned with the income tax amounts in the jurisdiction the Constituent Entity is located. For example, where an election is made in accordance with Article 3.2.2. a Constituent Entity may substitute the amount allowed as a deduction in the computation of its taxable income in its location for the amount expensed in its financial accounts for a cost or expense of such Constituent Entity that was paid with or accrued with respect to stock-based compensation. In situations where the amount in the financial accounts is no longer the basis for computation of a Constituent Entity's GloBE Income or Loss, any deferred tax asset or deferred tax liability in the financial accounts in relation to the amount should be disregarded for the purposes of Article 4.4.1 and any deferred tax asset or deferred tax liability in relation should be calculated by reference to the amount included in the Constituent Entity's GloBE Income or Loss.

36. The following paragraph will be inserted after paragraph 90 of the Commentary to Article 4.4.4:

90.1 To the extent that a deferred tax liability arises in circumstances where there is a divergence between the carrying value of an asset or liability for financial accounting and GloBE purposes, the amount of the deferred tax liability calculated by reference to the GloBE carrying value is subject to recapture for the purposes of Article 4.4.4, unless the deferred tax liability meets the definition of a Recapture Exception Accrual in Article 4.4.5 or is subject to an Unclaimed Accrual election under Article 4.4.7. Whether an accrued deferred tax liability reverses within five years is determined based on the GloBE carrying value of the asset or liability to which the deferred tax liability relates. In the Fiscal Year to which the divergence between the carrying value of an asset or liability for financial accounting and GloBE purposes originally occurs and subsequent Fiscal Years, the deferred tax liability (if any) for GloBE purposes must be calculated on the basis of the GloBE carrying value.

37. The following text in bold will be inserted in paragraph 49 of the Commentary to Article 5.3.5:

49. Article 5.3.5 sets out the rules for determining the carrying value of Eligible Tangible Assets for purposes of the tangible asset carve-out. The Article requires the MNE Group to determine the carrying value for purposes of the carve-out in conformity with the carrying value of the asset as recorded for purposes of preparing the Consolidated Financial Statements (i.e. after taking into account purchase accounting adjustments and elimination adjustments attributable to inter-company sales). **While there may be situations where the carrying value for the purposes of calculating the GloBE Income or Loss of a Constituent Entity is different to that recorded in the financial accounts of the Constituent Entity (e.g. due to the application of Article 6.3.4), the carrying value used in the preparation of the Consolidated Financial Statements shall be used for purposes of the tangible asset carve-out (not the GloBE carrying value).** The carrying value of each asset for purposes of the carve-out is the average of the beginning and end of year carrying values. Thus, if an asset is acquired or disposed during the Fiscal Year, its carrying value at the beginning or end of the Fiscal Year will be zero. Because the zero carrying value is included in the computation of the average, the carve-out for assets acquired or disposed during the year will be based on half of the carrying value of asset at the end or beginning of the year. The consequence of taking into account purchase accounting adjustments in respect of Eligible Tangible Assets and ignoring inter-company sales adjustments is that the tangible asset carve-out is based on the cost of acquiring the assets from unrelated persons and reflects the MNE Group's actual investment in the relevant assets. Failure to include purchase accounting adjustments would understate the actual investment and including inter-company sales could overstate or understate the actual investment.

38. The following text will be inserted after paragraph 17 of the Commentary to Chapter 6:

17.1. Given this, using the example provided in paragraphs 13 through 16 above, the carrying value of A Co's assets will be retained at their historical carrying value of USD 100 for GloBE purposes in accordance Article 6.2.1(c) upon MNE Group B's acquisition of A Co. Any deferred tax liability recognised on acquisition attributable to a business combination should be disregarded for GloBE purposes on the basis that the deferred tax liability arises as a result of purchase accounting adjustments and therefore must be disregarded for GloBE purposes. Further, on disposal of the assets, A Co will include USD 200 in its GloBE Income or Loss (equal to the sale price of USD 300 *less* the GloBE carrying value of USD 100). Any reversal of the deferred tax liability recognised in the accounts on acquisition is also excluded from A Co's Total Deferred Tax Adjustment Amount.

39. The following text will be inserted after paragraph 46 of the Commentary to Article 6.2:

46.1. With the exception of Article 6.2.1(c), the rules described in Article 6.2.1 and Article 6.2.2 apply to direct or indirect disposition or acquisition of a Controlling Interest that occurs during a Transition Year and subsequent Fiscal Years. As described in paragraph 51, Article 6.2.1(c) applies to pre-Transition Year transactions as well as transactions occurring in the Transition Year and subsequent Fiscal Years. Article 6.2.2 applies during the Transition Year and subsequent Fiscal Years. In these circumstances, the definition of the Transition Year also considers any modifications to that term when an MNE Group is subject to the Transitional CbCR Safe Harbour in a specific jurisdiction.

40. The following paragraphs will be inserted after paragraph 51 of the Commentary to Article 6.2.1:

51.1. In accordance with the Commentary to Article 4.4, the computation of a Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year in relation to assets and liabilities to which Article 6.2.1 applies must be calculated based on the carrying value of those assets or liabilities for GloBE purposes (corresponding to the historical carrying value, as of the year of the acquisition, and adjusted for depreciation, amortisation as well additions, capitalised expenditure and disposals of the assets and liabilities of the acquired Constituent Entity for each subsequent Fiscal Year) and accounted for in subsequent Fiscal Years in accordance with the relevant accounting standard.

51.2. Where the relevant transaction has occurred prior to a Transition Year for the acquiring Constituent Entity and is subject to Article 6.2.1(c), the relevant deferred tax assets and deferred tax liabilities for the purposes of Article 9.1.1 must be based on the GloBE carrying value instead of the carrying value amounts used to determine the deferred tax expense accrued in the financial accounts. A deferred tax asset or deferred tax liability may be taken into account for the purposes of Article 9.1.1 even in cases where none is recorded for financial accounting purposes (for instance, where carrying value amount in the financial accounts of the Constituent Entity is equal to the tax basis, but where the GloBE carrying value after applying Article 6.2.1(c) differs). The meaning of Transition Year in such circumstances also takes into account the modification of that term where an MNE Group is subject to the Transitional CbCR Safe Harbour in a jurisdiction.

41. The following paragraph will be inserted after paragraph 70 of the Commentary to Article 6.3:

70.1. Article 6.3.1 through Article 6.3.4 apply to the acquisition or disposition of assets and liabilities that occur during a Transition Year and subsequent Fiscal Years. For acquisitions or dispositions of assets and liabilities that occur prior to a Transition Year and deferred tax assets and deferred tax liabilities related to such assets and liabilities, see Articles 9.1.1 through 9.1.3. For the purposes of the application of the abovementioned Articles, the definition of the Transition Year also considers any modifications to that term when an MNE Group is subject to the Transitional CbCR Safe Harbour in a specific jurisdiction.

42. The following text in bold will be inserted in paragraphs 71 and 72 of the Commentary to Article 6.3.1:

71. Article 6.3.1 relates to an acquisition or disposition of assets and liabilities that is not part of a GloBE Reorganisation. The Article follows the accounting treatment for both the disposing Entity and the acquiring Entity. Financial accounting rules generally recognise a seller's gain or loss on the disposition of assets and liabilities and require the acquirer to use the acquisition price, which is generally the fair value of the assets, to measure the assets and liabilities upon its acquisition. As such, for GloBE purposes, the disposing Entity must include gain or loss from the disposition of assets and liabilities in its computation of GloBE Income or Loss and the acquiring Entity must use the adjusted carrying value as determined under the financial accounting standard used in preparing the Consolidated Financial Statements of the UPE. **As discussed in paragraph 18 of the Commentary to Chapter 6, any adjustments in the financial accounts due to an acquisition of assets and liabilities that is treated as a business combination under the relevant accounting standard but not a GloBE Reorganisation should be taken into account under Article 6.3.1 in determining the GloBE Income or Loss and Adjusted Covered Taxes of a Constituent Entity. An acquisition of a combination of assets and liabilities without the acquisition of the legal entity that transferred the assets may be treated as a business combination under the relevant accounting standard. Where such transactions are treated as business combinations under the relevant accounting standard, Adjusted Covered Taxes of a Constituent Entity shall be determined in accordance with the requirements of the income tax accounting standard (e.g. IAS 12) that prescribes income tax accounting for business combinations. This ensures that business combinations are accounted for consistently for both GloBE Income or Loss and Adjusted Covered Taxes.**

72. In a transfer to which Article 6.2.2 applies, the carrying value of the acquired assets and liabilities for GloBE purposes is based on their fair value to the extent a gain or loss on those assets and liabilities was included in the GloBE Income or Loss computation of the ~~selling~~ **disposing**

Constituent Entity of an MNE Group. The fair value must be used in the computation of the acquiring **Constituent** Entity's computation of GloBE Income or Loss in the acquisition year and subsequent Fiscal Years irrespective of whether the fair value adjustments are reflected in the Entity's financial accounts or the MNE Group's consolidated financial accounts. **In accordance with the Commentary to Article 4.4, the computation of the acquiring Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year and subsequent Fiscal Years in relation to assets and/or liabilities to which Article 6.2.2 applies must similarly be calculated based on their carrying value for GloBE purposes (fair value to the extent a gain or loss on those assets and liabilities was included in the GloBE Income or Loss computation of the disposing Constituent Entity).**

43. The following text in strikethrough will be removed from and the following text in bold will be inserted in paragraph 73.1 of the Commentary to Article 6.3.1 and the following inserted after paragraph 73.1 of the Commentary to Article 6.3.1:

73.1. In a transaction between Constituent Entities of an MNE Group that is described in Article 6.3.1, the GloBE Income or Loss of the disposing Constituent Entity is determined in accordance with Article 3.2.3. The Arm's Length Principle under Article 3.2.3 applies irrespective of whether the MNE Group accounts for transactions between Constituent Entities at the disposing Constituent Entity's carrying value**,** rather than based on fair value **at the time of the transfer**. ~~The Inclusive Framework will develop further guidance, including possible simplifications, for an acquiring Constituent Entity to avoid any possible double taxation attributable to the MNE Group's accounting for intra-group transactions.~~

73.2. Further, where Article 6.3.1 applies, the acquiring Constituent Entity will take a carrying value for GloBE purposes based on the Arm's Length Principle as determined under the preceding paragraph for purposes of determining the acquiring Constituent Entity's GloBE Income or Loss in respect of the transferred asset or liability in the Fiscal Year of acquisition and subsequent Fiscal Years. This is regardless of whether the MNE Group, for financial accounting purposes, determines its deferred tax assets or liabilities by comparing the tax basis of the relevant asset or liability to the disposing Constituent Entity's carrying value or to its fair value at the time of the transfer. In accordance with the Commentary to Article 4.4, the computation of a Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year and subsequent Fiscal Years in relation to assets and liabilities to which the adjustment made by Article 3.2.3 applies must similarly be calculated based on their carrying value for GloBE purposes.

44. The following text in bold will be inserted in paragraph 75 of the Commentary to Article 6.3.2:

75. Article 6.3.2(a) provides that the disposing Constituent Entity will not recognise the gain or loss from the transfer of the assets and liabilities for GloBE purposes. Pursuant to Article 6.3.2(b) future profit or loss of the acquiring Constituent Entity will be determined on the basis of the historical carrying amounts of the acquired assets and liabilities. **The computation of the acquiring Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year and subsequent Fiscal Years in relation to assets and/or liabilities to which Article 6.3.2 applies must similarly be calculated based on their carrying value for GloBE purposes (historical carrying value). The GloBE carrying value of the assets and liabilities at the end of the Fiscal Year and subsequent Fiscal Years is determined by applying the relevant accounting standard to the GloBE carrying value initially determined under Article 6.3.2. This would exclude any deferred tax asset or deferred tax liability from the GloBE calculations on acquisition to the extent the GloBE and tax carrying values of the asset or liability are aligned.** The Constituent Entity must maintain accounting records to support the computation of GloBE Income or Loss **and Total Deferred Tax Adjustment Amount** by reference to the historical carrying amounts of the acquired assets and liabilities.

45. The following text in bold will be inserted in paragraph 77 of the Commentary to Article 6.3.3:

77. In the context of such GloBE Reorganisations, Article 6.3.3 provides that the disposing Constituent Entity will include a gain or loss to the extent of the Non-Qualifying Gain or Loss. This means that the computation of GloBE Income or Loss will include the lesser of the amount of gain or loss reflected in the financial accounts or the amount of the taxable gain or loss arising from the GloBE Reorganisation. Further, the acquiring Constituent Entity will increase or decrease the carrying amounts of the acquired assets and liabilities to account for the Non-qualifying Gain or Loss. The changes in carrying value for GloBE purposes must be allocated among assets and liabilities in a manner consistent with the increases and decreases of those assets under the tax law applicable to the acquiring Constituent Entity. For example, if the Constituent Entity is required by local tax rules to allocate the basis increases due to the tax gain, first to depreciable assets up to the amount of built-in gain on such assets, and then to inventory and other current assets, the Constituent Entity must do the same for GloBE purposes. However, the increase or decrease in carrying value of assets and liabilities for GloBE purposes cannot exceed the Non-qualifying Gain or Loss. **The computation of a Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year and subsequent Fiscal Years in relation to assets and/or liabilities to which Article 6.3.3 applies must similarly be calculated based on their carrying value for GloBE purposes. The GloBE carrying value of the assets and liabilities at the end of the Fiscal Year and subsequent Fiscal Years is determined by applying the relevant accounting standard to the GloBE carrying value initially determined under Article 6.3.3. This would exclude any deferred tax asset or deferred tax liability from the GloBE calculations on acquisition to the extent the GloBE and tax carrying values of the asset or liability are aligned.**

46. The following text in bold will be inserted in paragraph 81 of the Commentary to Article 6.3.4:

81. Pursuant to paragraph (b), the Constituent Entity will use the fair value of the assets and liabilities to compute its GloBE Income or Loss in the Fiscal Years ending after the triggering event. The fair value to be used is the fair value of the assets determined pursuant to the financial accounting standard used in the Consolidated Financial Statements. **The computation of a Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year and subsequent Fiscal Years in relation to assets and/or liabilities to which Article 6.3.4 applies must similarly be calculated based on their carrying value for GloBE purposes. The GloBE carrying value of the assets and liabilities at the end of the Fiscal Year and subsequent Fiscal Years is determined by applying the relevant accounting standard to the GloBE carrying value initially determined under Article 6.3.4.**

81.1. In the Fiscal Year that the election is made, any deferred tax assets and deferred tax liabilities of the Constituent Entity that existed prior to the triggering event must be fully reversed and included in Constituent Entity's Total Deferred Tax Adjustment Amount. Accrual of deferred tax amounts for accounting purposes as a result of the tax basis of the Constituent Entity's assets and liabilities being reset to fair value for tax purposes must be excluded from the Constituent Entity's Total Deferred Tax Adjustment Amount because the computation of a Constituent Entity's Total Deferred Tax Adjustment Amount for the Fiscal Year and subsequent Fiscal Years in relation to assets and/or liabilities to which Article 6.3.4 applies should be recalculated based on their carrying value for GloBE purposes as noted in paragraph 81.

47. The following text in strikethrough will be removed from paragraph 6 of the Commentary to Article 9.1.1 and the following text in bold will be inserted in paragraph 6, and additional paragraphs inserted after paragraph 6 of the Commentary to Article 9.1.1:

6. Article 9.1.1 provides the basis to use these attributes in determination of Covered Taxes pursuant to Article 4.4. Therefore, when a pre-existing deferred tax attribute is used for financial

reporting purposes in a Fiscal Year in which the GloBE Rules apply, such attribute is available for use in the application of Article 4.4, subject to the limitations of Article 9.1. For example, if a Constituent Entity incurred a tax loss of 100 in a year before the GloBE **Rules** applied, a deferred tax expense of 15 ~~(i.e. deferred tax benefit)~~ will be included in the Total Deferred Tax Adjustment Amount under Article 4.4 when the associated tax loss is used in a Fiscal Year in which the GloBE applies. ~~The GloBE Implementation Framework will consider providing Agreed Administrative Guidance related to the measurement and treatment of items of deferred tax expense (i.e. deferred tax assets and deferred tax liabilities) in the Transition Year and subsequent years.~~

6.0.1. Article 9.1.3 and Article 6.2.1(c) apply to assets and liabilities that were acquired after 30 November 2021 and prior to the Transition Year. In such cases, the pre-existing deferred tax assets or liabilities based on the historic carrying value of the relevant assets or liabilities will be relevant for the purposes of Article 9.1.1, rather than any deferred tax assets or liabilities determined based on the acquiring Entity's accounting carrying value of the assets or liabilities. The carrying value for determining the amount of any deferred tax assets or liabilities for the purposes of Article 9.1.1 may be modified by Article 9.1.3.

6.0.2. For example, ABC Group sold all the shares of C Co to DEF Group for EUR 200 on 1 January 2021. C Co owns a single asset, which had a carrying value of EUR 100 at the time of sale, as recorded for ABC Group's Consolidated Financial Statements. C Co is subject to a corporate tax rate of 15%, and the tax basis of the asset is also EUR 100. According to the accounting standard applicable to DEF Group's Consolidated Financial Statements, the acquisition of C Co's shares constitutes a business combination. The entire purchase price is attributed to the fair value of the asset. In C Co's financial statements, in accordance with relevant financial accounting standard that permits push down accounting, the asset is recognised with an accounting carrying value of EUR 200 and is subject to amortisation over a 10-year period for tax and accounting purposes. Given the tax basis of the asset is 100, for simplicity this example assumes that C Co has a deferred tax liability of EUR 15 recorded in its accounts related to the asset. Article 6.2.1(c) applies to this transaction, leading to a GloBE carrying value for the asset of EUR 100. Because the GloBE carrying value and the tax carrying value are equal, A Co has no deferred tax expense in relation to the asset for GloBE purposes. C Co becomes subject to the GloBE Rules on 1 January 2024. At the start of the Transition Year, C Co's accounting carrying value of the asset is EUR 140 due to amortisation, while the tax basis is EUR 70. Consequently, C Co has a deferred tax liability of EUR 10.5 recorded in its financial accounts in relation to the asset. However, for the purposes of Article 9.1.1, since the GloBE carrying value of the asset is EUR 70 (because of the effect of Article 6.2.1(c), no deferred tax asset or liability is considered for GloBE purposes. C Co will continue to apply the relevant accounting standard to the GloBE carrying value when determining the amortisation expense included in its GloBE Income or Loss. Additionally, any deferred tax expense related to the asset will be considered for determining C Co's Adjusted Covered Taxes for the Transition Year and future Fiscal Years.

6.0.3. To further illustrate, assume the same facts as the example above, except that upon acquisition, the local tax laws stipulate that the tax basis of the asset is stepped up to EUR 200. As the carrying value of the asset in the financial accounts of C Co determined in accordance with an Acceptable Financial Accounting Standard that permits push down accounting is EUR 200 and the asset's tax basis is also EUR 200, no deferred tax expense is recorded in C Co's financial accounts. However, as the GloBE carrying value of the asset is EUR 100 due to the application of Article 6.2.1(c), C Co will include a deferred tax asset of EUR 15 for GloBE purposes based on the difference between the tax basis (EUR 200) and the GloBE carrying value (EUR 100). C Co becomes subject to the GloBE Rules on 1 January 2024. At the start of the Transition Year, C Co's accounting carrying value and tax basis of the asset is EUR 140. Consequently, C Co continues to have no deferred tax expense recorded in its financial accounts in relation to the asset. However, for the purposes of Article 9.1.1, since the GloBE carrying value of the asset is EUR 70, a deferred tax asset of EUR 10.5 will be recognised for GloBE purposes under Article 9.1.1 and will be used in the computation of Adjusted Covered Taxes in the Transition Year and future Fiscal Years. C Co will continue to apply the relevant accounting standard to the GloBE carrying value when determining the amortisation expense included in its GloBE Income or Loss. Additionally, the deferred tax asset for GloBE purposes related to the asset will be considered for determining C Co's Adjusted Covered Taxes for the Transition Year and future Fiscal Years.

48. The following text in bold will be inserted in paragraph 10.1 of the Commentary to Article 9.1.3:

10.1. Article 9.1.3 provides a limitation on intra-group asset transfers before applicability of the GloBE Rules. Article 9.1.3 applies when an asset (other than inventory) is transferred between Entities after 30 November 2021 and before commencement of the Transition Year of an MNE Group if such Entities would have been Constituent Entities of that MNE Group had the GloBE Rules been in effect with respect to that MNE Group immediately before the transfer. When Article 9.1.3 applies, the acquiring Entity must treat the asset for purposes of the GloBE Rules as acquired for an amount equal to the carrying value in the hands of the disposing Entity upon disposition. That carrying value of the asset can easily be determined because the gain **(or loss)** on the intra-group transfer must be eliminated in the Consolidated Financial Statements. Thereafter, the acquiring Entity's carrying value of the asset may be increased by capitalised expenditures or decreased by amortization or depreciation in accordance with the accounting standard used in the UPE's Consolidated Financial Statements. The carrying value used for GloBE purposes beginning in the Transition Year is the carrying value upon disposition of the transferred asset on the day of transfer adjusted for capital expenditures, amortization or depreciation after the transaction and before the beginning of the Transition Year. Any increased depreciation or amortization, if any, attributable to recording the asset at fair value in the financial accounts of the acquiring Entity must be excluded from the computation of its GloBE Income or Loss. Similarly, gain or loss from a subsequent sale of the asset shall be determined for GloBE purposes based on its carrying value determined under Article 9.1.3. The rule in Article 9.1.3, however, does not apply to inventory because of the routine nature of intragroup inventory sales and the typically brief period that it is held before sale outside the MNE Group. **Further, where an acquiring Constituent Entity uses its own accounting carrying value of an asset or liability as provided under paragraph 10.9 below, no deferred tax asset is created under Article 9.1.3.**

49. The following text in bold will be inserted in paragraph 10.7 of the Commentary to Article 9.1.3:

10.7. The purpose of Article 9.1.3 is to limit the ability to step-up the carrying value in the MNE Group's assets for GloBE purposes in an intragroup transaction without including the corresponding gain in the computation of GloBE Income or Loss. Some MNE Groups account for intra-group transactions by treating the acquiring Entity as having acquired the asset at the transferring Entity's carrying value upon disposition and create a deferred tax asset based on the difference between the tax basis of the asset and the acquiring Entity's carrying value and the tax rate in the acquiring Entity's jurisdiction. If the MNE Group were allowed to take into account a deferred tax asset created in connection with the intragroup sale, it would, in combination with the financial accounting carrying value upon disposition, affect the applicability of the GloBE Rules in much the same way as allowing the step-up in carrying value of the asset for GloBE purposes. The step-up in carrying value would essentially eliminate an amount of income equal to the step-up from the acquiring Constituent Entity's GloBE Income or Loss computation usually either at the time of a subsequent sale by the acquiring Constituent Entity's or over the asset's depreciation or amortization period. The carrying value upon disposition preserves that income in the GloBE income or Loss computation, but the corresponding deferred tax asset amount would be included in the Covered Taxes and, in effect, would shield that same amount of income from Top-up Tax. This result would be inconsistent with the policy and purpose of Article 9.1.3. Accordingly, when

Article 9.1.3 applies, the deferred tax assets or liabilities with respect to the transferred assets, if any, that are recognised at the beginning of the Transition Year are those that existed in the financial accounts of the MNE Group prior to the transaction that triggered application of Article 9.1.3, adjusted as appropriate for subsequent capitalised expenditures, amortization, and depreciation and further adjusted to the Minimum Rate if necessary pursuant to Article 9.1.1. **The creation of a deferred tax asset under this paragraph shall not reduce the Adjusted Covered Taxes of the acquiring Constituent Entity.** Any deferred tax asset or liability arising in the MNE Group's financial accounts as a result of the transaction is ignored under the GloBE Rules, except as provided in paragraph 10.8.

50. The text in bold will be substituted for the text in paragraphs 10.8 and the existing text of paragraph 10.8 will be moved to paragraphs 10.8.1 through 10.8.3 with the language in bold added:

10.8. **As noted above in paragraph 10.1, the main purpose of Article 9.1.3 is to prevent MNE Group's transferring assets in the run-up to the Transition Year without paying tax on the full amount of the disposing Entity's built-in gain and then avoiding tax under the GloBE Rules or a QDMTT on that gain because the asset takes a carrying value equal to its fair value or the accounting standard provides a deferred tax asset that produces the same or similar effect. However, where the MNE Group has paid tax on the built-in gain on the transfer, there is less risk that the transaction was conducted for tax avoidance reasons. The Inclusive Framework has agreed that it is appropriate to allow a deferred tax asset solely for GloBE purposes to the extent that the MNE Group can demonstrate that tax was paid in respect of gain on the intra-group transfer.**

10.8.1. Accordingly, in a transfer to which Article 9.1.3 applies, the acquiring Entity may take into account a deferred tax asset to the extent of tax paid in respect of the transfer and to the extent of any deferred tax asset that would have been taken into account under Article 9.1.1 but was reversed or was not created by the disposing Entity (Other Tax Effects) because gain from the disposition was included in the taxable income of the disposing Entity. If there is a group taxation regime applicable to the disposing Entity, this paragraph shall be applied by reference to the taxes paid by the group and Other Tax Effects on the group under the group taxation regime. This paragraph may also be applied in respect of any Covered Taxes that are attributable to the transaction and that would have been allocated to the disposing Entity under the principles of Article 4.3. The MNE Group has the burden of proving:

a. the amount of tax paid in respect of the transaction;

b. the amount of any Other Tax Effects; and

c. the amount of any Covered Taxes that are attributable to the transfer and that would have been allocated to the disposing Entity under Article 4.3.

10.8.2. **The deferred tax asset for GloBE purposes will arise regardless of whether a deferred tax asset would be recognised by the acquiring Constituent Entity under the relevant accounting standard. The amount of the deferred tax asset for GloBE purposes shall be determined without reference to a deferred tax asset that would otherwise have been recognised by the acquiring Constituent Entity in the absence of Article 9.1.3. However,** a deferred tax asset created under this rule shall not exceed the Minimum Rate multiplied by the difference in the local tax basis in the asset and the GloBE carrying value of the asset determined under Article 9.1.3.

10.8.3. The deferred tax asset for GloBE purposes shall be taken into account in determining the acquiring Constituent Entity's Adjusted Covered Taxes instead of any deferred tax asset that was created in respect of the acquired asset under the relevant accounting standard. The creation of a deferred tax asset under this paragraph shall not reduce the Adjusted Covered Taxes of an acquiring Constituent Entity **where the acquiring Constituent Entity is subject to the GloBE Rules**. This deferred tax asset is adjusted annually in proportion to any decrease in the carrying value of the asset for the year, for example due to depreciation, amortization, or impairment. See Examples 9.1.3-1 through 9.1.3-6.

3. Allocation of Cross-border Current Taxes

3.1. Principles for allocating cross-border, current taxes under a cross-crediting corporate tax system

3.1.1. Introduction

1. The GloBE Rules operate by allocating Covered Taxes to the GloBE Income with respect to which they were accrued. Under Article 4.3.2(a), Covered Taxes included in the accounts of a Main Entity which are with respect to GloBE Income or Loss of a Permanent Establishment are to be allocated to that Permanent Establishment. Taxable branch regimes generally mitigate double taxation by giving a credit for taxes paid to the PE's jurisdiction. Thus, the Covered Taxes allocated under Article 4.3.2(a) will often be the residual tax due after tax credits.

2. Corporate tax systems vary in how they treat foreign source income. Some such systems allow for 'cross-crediting' of foreign taxes. In these cases, taxes paid with respect to one source of income arising in one jurisdiction give rise to foreign tax credits which can be used against another source of income arising in another jurisdiction. For example, taxes paid with respect to one Permanent Establishment may give rise to tax credits for the Main Entity which can be used against the income included from a different Permanent Establishment. Cross-crediting tax regimes generally have a limitation to prevent foreign tax credits from being used to offset domestic taxes on domestic source income.

3. Where the corporate tax system applicable to the Main Entity allows for the cross-crediting of taxes, a methodology is required to determine whether (and how much) of the Main Entity's Covered Tax has been accrued with respect to the GloBE Income of each Permanent Establishment. Paragraph 52 of the Commentary to Article 4.3.2 sets out a mechanism for determining the allocation of Covered Taxes to a Permanent Establishment under a cross-crediting system. The process seeks to take into account both the taxes accrued by the relevant Permanent Establishment as well as 'an appropriate amount' of excess creditable taxes accrued with respect to other income which can be cross-credited under the domestic tax regime. It states:

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

4. Cross-crediting domestic tax systems may also create separate 'categories' or 'baskets' of income. In such cases, cross-crediting may be allowed within a particular category or basket of income but not between different categories or baskets of income. For example, a jurisdiction could create a separate category for passive income such that cross-crediting is allowed between different foreign sources of passive income but cross-crediting is not allowed between passive income and non-passive income. The Commentary to the GloBE Rules does not set out in detail how to allocate taxes between different categories or baskets of income.

5. It is important that a consistent mechanism is used to allocate such taxes to prevent cases in which double taxation or double non-taxation could arise.

6. Similar issues arise with respect to CFC Taxes (Article 4.3.2(c)) as well as taxes on Hybrid Entities or Reverse Hybrid Entities (Article 4.3.2(d)). The Administrative Guidance of February 2023 also contained a temporary rule with respect to the allocation of Blended CFC Taxes. This document sets out a methodology for allocating cross-border, current taxes, other than taxes arising under a Blended CFC Tax Regime which are covered by the Administrative Guidance of February 2023. This allocation mechanism is directly relevant to the application of Article 4.3.2(a), (c), (d) and (e).

3.1.2. Issues to be considered

7. Stakeholders have asked whether further guidance could be provided regarding how to allocate taxes from a Main Entity to the various Permanent Establishments under a cross-crediting system including cross-crediting systems which only allow cross-crediting between specific categories or 'baskets' of income. Similarly, stakeholders have asked whether further guidance could be provided to allocate taxes under a CFC Tax or taxes on Hybrid Entities or Reverse Hybrid Entities.

3.1.3. Guidance

8. The GloBE Rules allocate Covered Taxes of a Main Entity to a Permanent Establishment to the extent that those Covered Taxes have been accrued with respect to the GloBE Income of the Permanent Establishment. Where the Main Entity's domestic tax system blends together the income of multiple Permanent Establishments, a mechanism is required for determining the extent to which the relevant taxes are to be allocated to one Permanent Establishment or another Permanent Establishment. Where the tax system also blends such income with foreign source income of the Main Entity, the mechanism must also determine the extent to which the taxes are accrued with respect to the GloBE Income of Permanent Establishments and thus are allocable to Permanent Establishments at all, as opposed to remaining with the Main Entity.

9. The general purpose of the allocation mechanism is to match Covered Taxes to the GloBE Income with respect to which they were accrued. In particular, this allocation mechanism applies in the case of current cross-credited taxes that must be allocated between a Main Entity and its Permanent Establishments or a Parent Entity and its CFCs, Hybrid Entities or Reverse Hybrid Entities when the income of such CFC, Hybrid Entity or Reverse Hybrid Entity is included in the taxable income of the Parent Entity. In some cases, the current cross-credited taxes may need to be further allocated between a CFC and its Permanent Establishments, Hybrid Entities or Reverse Hybrid Entities. It is designed to provide a common and simplified methodology for allocating cross-credited taxes to Constituent Entities. The mechanism seeks to allocate the current tax expense determined after taking into account foreign tax credits allowed. The allocation mechanism of cross-border deferred taxes is outlined in the Administrative Guidance on cross-border deferred tax allocations. Under a system that only allows credit for taxes accrued by the specific PE, the tentative tax determined based on the income can be simply reduced by the credit allowed and allocated to the PE. Where foreign taxes are cross-credited under the domestic tax system, a mechanism is necessary to allocate Covered Taxes between the Main Entity and its PEs. To the extent that foreign taxes are cross-credited under the domestic tax system only within a particular category or categories of income, the mechanism is to be applied separately to each such category of income.

10. The allocation mechanism is a four-step process for allocating current taxes which have been accrued under a tax system which ‘blends’ together income from multiple sources and allows the cross-crediting of tax credits within the relevant category of income. The primary purpose of this allocation mechanism is to allocate taxes from one Constituent Entity to another under Article 4.3.2. However, it will also determine any amount of current Covered Taxes accrued with respect to the income of a non-Constituent Entity, which would generally be excluded entirely from the Adjusted Covered Taxes of the Main Entity/Parent Entity under Article 4.1.3(a). The four-step allocation mechanism is intended to be sufficiently flexible so as to accommodate differing treatments of foreign source income under various corporate tax systems.

11. Under the first step of the allocation mechanism, the phrase ‘foreign source income’ refers to income of domestic entities to the extent the Main Entity/Parent Entity jurisdiction considers the income to be from foreign sources for purposes of determining the extent to which a foreign tax credit is allowed. In addition to income of the Permanent Establishments of the Main Entity, this may include income of a CFC, Hybrid Entity or Reverse Hybrid Entity that is included in the taxable income of the Main Entity under the domestic tax system, as well as other income received by the Main Entity from foreign sources, such as certain dividends, royalties, and interests.

12. Foreign source income is the net amount which is included in the taxable income of the Main Entity/Parent Entity. As a net concept, it is necessary to determine what expenses are taken into account. Where the domestic tax regime requires the Main Entity/Parent Entity to include the Permanent Establishment's net income into its taxable income, this will implicitly allocate expenses and therefore the included amount is the foreign source income. In other cases, it will be necessary to allocate expenses of the Main Entity/Parent Entity to the Permanent Establishment, foreign Hybrid Entity or foreign Reverse Hybrid Entity in order to determine the foreign source income of that Permanent Establishment or Entity. In these cases, only the expenses which are taken into account in determining the GloBE Income or Loss of the Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity are taken into account. For example, consider a Parent Entity with two foreign Hybrid Entities (A Co and B Co) which are subject to a cross-crediting regime. The Parent Entity has 1000 of interest expense of which 400 is allocated to a basket of income which includes the two Hybrid Entities and under the domestic law of the Parent Entity jurisdiction which determines the Parent Entity's foreign tax credit limitation. Of this 400 in interest expense, 100 is recognised as an expense of A Co for the purpose of calculating A Co's GloBE Income or Loss. The other 300 is not recognised as an expense in calculating the GloBE Income or Loss of A Co or B Co. For the purposes of step one of the cross-crediting regime, A Co's foreign source income takes into account 100 of this interest expense (that is, A Co's foreign source income is reduced by 100). There is no adjustment for the remaining interest expense.

13. In some cases, expenses are only allocated to a 'basket' of income. Allocating such expenses to individual Permanent Establishments and Entities would involve significant compliance costs. These expenses are only allocated in determining the foreign source income under the first step to the extent that the relevant expenditure is taken into account as an expense in calculating the GloBE Income or Loss of the relevant Permanent Establishment or Entity. However, such expenses do reduce the Allocable Covered Taxes under Step Two even if they are not taken into account under Step One. This is set out in further detail below.

14. Foreign source income is adjusted where the domestic tax system includes an offsetting deduction which is calculated directly by reference to that income. For example, if the Main Entity/Parent Entity must include an amount in its taxable income but is also entitled to a deduction equal to 40% of the amount included, only the net amount (that is, 60% of the total amount) will be considered to have been included in the Main Entity/Parent Entity's taxable income.

15. One of the simplest cases of a cross-crediting tax regime is where the relevant domestic tax regime in the Main Entity jurisdiction applies cross-crediting only to the income of foreign Permanent Establishments and the foreign source income derived directly by the Main Entity itself (and not through a Permanent Establishment).

16. In such a case, the first step is to determine the amount of each Permanent Establishment's income which has been included in the taxable income of the Main Entity. It is also necessary to determine the amount of foreign source income of the Main Entity itself.

17. The second step is to calculate the total 'Allocable Covered Taxes'. This step seeks to calculate the total Covered Taxes which are to be allocated between the various Permanent Establishments and the Main Entity's foreign source income. Allocable Covered Taxes are determined by the formula:

$$
\begin{aligned}
&Allocable\ Covered\ Taxes \\
&= Total\ current\ tax\ expense\ accrued\ by\ the\ Main\ Entity\ with\ respect\ to\ the\ applicable\ tax\ regime \\
&- domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income \\
&- Blended\ CFC\ Taxes
\end{aligned}
$$

18. This formula determines the positive amount (if any) of the total tax accrued in current tax expense of the Main Entity under the applicable tax regime which is attributable to foreign source income arising both directly (that is, as income of the Main Entity itself) and from its Permanent Establishments. This is achieved by subtracting from the total current tax accrued the amount which would have been accrued in the absence of any foreign source income and foreign tax attributes as well as any amounts of Blended CFC Taxes which have been allocated under paragraphs 58.1 to 58.7 of the Commentary to Article 4.3.2(c). If the current tax expense is zero or negative, then there is nothing to allocate to the PE under the allocation mechanism. The total current tax expense with respect to the applicable tax regime does not take into account current tax expenses which relate to an uncertain tax position or which is not expected to be paid within three years of the last day of the relevant taxable period.

19. Similarly, by pooling together the current tax accrued with respect to foreign source income, the allocation mechanism effectively allows for losses arising from one Permanent Establishment to offset the profits of another. The allocation mechanism does not require calculating the hypothetical amount which would have been accrued by each Permanent Establishment independently of all of the others. The domestic tax liability calculated without regard to any foreign source income cannot be a negative amount. If there would be no domestic tax liability in the absence of foreign source income, all of the current tax accrued will be attributable to foreign source income. Allocable Covered Taxes cannot exceed the total current tax accrued. The total current tax expense accrued by the Main Entity/Parent Entity with respect to the applicable tax regime refers to the amount of the current tax expense that is paid or accrued for the taxable year of the Main Entity with respect to the corporate income tax within which the cross-crediting mechanism applies. This does not include current tax expense accrued by the Main Entity/Parent Entity with respect to foreign taxes (regardless of whether or not a foreign tax credit is available). Such source taxes are not imposed under the applicable tax regime and they are separately allocated.

20. Adjustments are required for Qualified Refundable Tax Credits, Marketable Transferable Tax Credits and Qualified Flow-Through Tax Benefits (where the Equity Investment Inclusion Election has been made) to the extent that they are not accounted for consistently with their required GloBE treatment. For the purposes of the cross-crediting allocation mechanism, these are treated as an increase in the domestic source income of the Main Entity/Parent Entity and require adjustments to both the total current tax expense and the hypothetical domestic tax liability calculated without regard to any foreign source income. For example, a Main Entity has domestic source income of 1000 and foreign source income of 1000 under the Main Entity domestic tax regime. The Main Entity jurisdiction has a 20% tax rate. The Main Entity also receives 100 in Qualified Refundable Tax Credits under the Main Entity's domestic tax regime. Accordingly, it has a domestic tax liability of 300 for the year ((2000 x 20%) - 100). For the purposes of applying the cross-crediting allocation mechanism, the Main Entity is treated as having domestic source income of 1100 (1000 + 100). Its total current tax expense is 400 (300 + 100) and its domestic tax liability without regard to any foreign source income is 220 (1100 x 20%).

21. In some cases, the Main Entity/Parent Entity jurisdiction may apply progressive tax rates such that a different tax rate applies depending upon the amount of income earned. If all income is subject to one tax rate where a certain threshold of total income is met, the domestic tax liability without regard to any foreign source income must be calculated by applying the tax rate which in fact applied to the Main Entity/Parent Entity. This amount is not calculated using the rate which would have been applied if the Main Entity/Parent Entity did not have foreign source income. If the progressive tax regime applies different tax rates to different 'bands' of income such that one rate is applied to income up to a particular threshold and another rate is applicable beyond that threshold, then the domestic tax liability without regard to any foreign source income must be calculated having allocated a proportionate share of each progressive tax rate band between the various sources of taxable income. For example, a Main Entity Jurisdiction has progressive tax rates such that the first 200 of income is subject to tax at a 10% rate and all subsequent income is subject to tax at a 20% rate. A Main Entity has 100 of domestic source income, 100 of taxable income from PE1 and 200 of taxable income from PE2. As the domestic source income has given rise to 25% of the total taxable income (100/400), it is allocated 25% of each threshold. Accordingly, the Main Entity is treated as having 50 of income subject to tax at 10% rate (200 x 25%) and 50 of income subject to tax at a 20% rate (200 x 25%). As a result, the domestic tax liability calculated without regard to any foreign source income is 15 ((50 x 10%) + (50 x 20%)).

22. The third step is to calculate the Cross-Crediting Allocation Key for each Permanent Establishment as well as for the Main Entity itself. The Cross-Crediting Allocation Key is designed to provide a common and simplified methodology to allocate taxes from a Main Entity to Constituent Entities. The Cross-Crediting Allocation Key is the positive number, if any, resulting from the following formula:

$$
\begin{aligned}
&Cross-Crediting\ Allocation\ Key\ for\ a\ PE\\
&\qquad = (taxable\ income\ of\ the\ PE\ \times applicable\ tax\ rate)\\
&\qquad - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ PE's\ income
\end{aligned}
$$

$$
\begin{aligned}
&Cross-Crediting\ Allocation\ Key\ for\ the\ Main\ Entity\ /\ Parent\ Entity\\
&\qquad = (Main\ Entity\ taxable\ income\ arising\ directly\ from\ foreign\ source\ income\\
&\qquad \times applicable\ tax\ rate)\\
&\qquad - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ foreign\ source\ income
\end{aligned}
$$

23. The taxable income of the Permanent Establishment is the amount determined in the first step. The applicable tax rate is the tax rate in the Main Entity jurisdiction which is applicable to the taxable income of the Permanent Establishment under the tax regime applicable in the Main Entity jurisdiction. Where multiple taxes are placed on the Main Entity with respect to the income of the Permanent Establishment, the cross-crediting allocation mechanism must be applied separately to each tax. The applicable tax rate does not aggregate tax rates from different tax bases. The creditable foreign taxes accrued with respect to the Permanent Establishment means foreign taxes paid or accrued, including tax paid or accrued under a Qualified Domestic Minimum Top-up Tax, with respect to the Permanent Establishment's income, but only if the tax meets the definition of a creditable tax under the tax laws of the Main Entity's jurisdiction. This can include creditable foreign taxes which are imposed by a jurisdiction other than the PE Jurisdiction. For example, a withholding tax paid to a third jurisdiction with respect to income derived by the PE. Similarly, creditable foreign taxes accrued with respect to the foreign source income would generally include taxes paid in the source jurisdiction with respect to foreign source income which is accrued by the Main Entity directly (such as royalty withholding tax). The Cross-Crediting Allocation Key for a Permanent Establishment cannot be negative. If the result of the above formula is negative, the Cross-Crediting Allocation Key for the Permanent Establishment is zero.

24. A Cross-Crediting Allocation Key is also required for the Main Entity itself. This is to capture the fact that current taxes have been accrued with respect to foreign source income which has been earned by the Main Entity directly (that is, not through a Permanent Establishment). The Main Entity's relevant taxable income is that which it derives directly from foreign source income and not through a Permanent Establishment or foreign subsidiary (for example, royalty income). The current tax accrued with respect to this income would include creditable taxes paid or accrued in current tax expense by the Main Entity on this income (for example, royalty withholding tax imposed on the Main Entity but collected and remitted by the payor).

25. In some cases, the Main Entity may have multiple types of foreign source income which are effectively subject to different tax rates. This could occur because of a partial exemption or a deduction which is linked to the amount of the inclusion in taxable income from that type of income). It could also occur because different types of income are subject to tax at different rates (despite tax credits being available for cross-crediting between types of income with different tax rates). In such cases, a single Cross-Crediting Allocation Key must be determined for the Main Entity. Where different effective tax rates are applied through the use of an exemption or a related deduction, the applicable Cross-Crediting Allocation Key for the Main Entity is given by the formula above. Where there are multiple applicable tax rates which apply to different types of income, it is necessary to determine the Main Entity's pre-foreign tax credit liability arising directly from foreign source income. The Main Entity's pre-foreign tax credit liability arising directly from foreign source income is the sum of each type of foreign source income multiplied by the tax rate applicable to that type of income. In such cases, the creditable foreign taxes accrued with respect to the foreign source income includes creditable foreign taxes on each such type of income.

26. For example, consider a jurisdiction (Jurisdiction X) which allows for cross-crediting between different types of foreign source income and applies a tax rate of 10% to Type A income and 20% to Type B income. A Main Entity located in Jurisdiction X has 100 of Type A income which has been subject to 5 of creditable withholding tax and 100 of Type B income which has been subject to 15 of creditable withholding tax. The Cross-Crediting Allocation Key of the Main Entity in Jurisdiction X is 10 ((100 x 10%) + (100 x 20%) – (5 + 15)).

27. By comparison, Jurisdiction Y has a 20% tax rate and a cross-crediting regime which applies to Type A and Type B foreign source income. However, Jurisdiction Y provides a Main Entity with a deduction equal to 50% of the amount of Type A Income. Jurisdiction Y does not reduce the available foreign tax credits from Type A Income as a result of this deduction. As above, the Main Entity has 100 of Type A income (subject to 5 in creditable withholding tax all of which remains creditable despite the related deduction) and 100 of type B income (subject to 15 of creditable withholding tax). As a result of the directly related deduction, the Main Entity has 150 of foreign source income (50 + 100) which is subject to a tax rate of 20%. The Cross-Crediting Allocation Key of the Main Entity in Jurisdiction Y is also 10 (((50 + 100) x 20%) – (5 + 15)).

28. Where the Main Entity/Parent Entity is subject to a progressive tax rate regime as described in paragraph 21, the applicable tax rate for each Permanent Establishment or Entity will be the rate identified in that paragraph. If all income is subject to one tax rate where a certain threshold of total income is met, the applicable tax rate is the rate which was in fact applied to the Main Entity/Parent Entity in determining its taxable income. If the progressive tax regime applies different tax rates to different 'bands' of income such that one rate is applied to income up to a particular threshold and another rate is applicable beyond that threshold, then the domestic tax liability without regard to any foreign source income must be calculated having allocated a proportionate share of each progressive tax rate band between the various sources of taxable income.

29. The fourth step is to determine the allocation to each Permanent Establishment as well as the Main Entity. This is given by the following formula:

$$Allocation\ to\ the\ PE\ (or\ Main\ Entity)$$
$$= Allocable\ Covered\ Taxes$$
$$\times \left(\frac{Cross - Crediting\ Allocation\ Key\ for\ the\ Permanent\ Establishment\ (or\ Main\ Entity)}{The\ sum\ of\ all\ Cross - Crediting\ Allocation\ Keys}\right).$$

30. This final step takes the total amount of Allocable Covered Taxes and apportions it between the various Permanent Establishments and the Main Entity in accordance with the Cross-Crediting Allocation Key. These taxes are allocated to the respective Permanent Establishments under Article 4.3.2(a). Taxes which are allocable to the Main Entity will not be reallocated under Article 4.3.2 but they must be taken into account as part of the Cross-Crediting Allocation Key mechanism in order to accurately allocate taxes to the Permanent Establishments.

Domestic source income of foreign Permanent Establishments, CFCs, Hybrid Entities and Reverse Hybrid Entities

31. There may be cases where a Main Entity/Parent Entity is imposing tax on a foreign Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity which is earning income from the Main Entity/Parent Entity jurisdiction. Where this occurs outside the context of a cross-crediting regime, the general principles outlined in paragraphs 46 to 51 of the Administrative Guidance to Article 4.3.2 applies. Where the relevant income is subject to a cross-crediting regime and is treated as foreign source income for the purposes of an applicable foreign tax credit limitation, the income will be treated as foreign source income under the cross-crediting allocation mechanism. Finally, where the income is not treated as foreign source income of the Main Entity/Parent Entity for the purposes of applying the foreign tax credit limitation but is nevertheless included in the GloBE Income of the Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity, that income will be treated as foreign source income for the purposes of the cross-crediting allocation mechanism and all taxes paid with respect to that income are allocated under the cross-crediting allocation mechanism. The amount is treated as forming part of the taxable income of the relevant Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity for the purposes of applying Step 1 of the cross-crediting allocation mechanism.

32. For example, consider a Main Entity (located in Jurisdiction A) that has a Permanent Establishment (located in Jurisdiction B). The Permanent Establishment earns income from transactions with an unrelated entity (X Co) in Jurisdiction A that is included in the Permanent Establishment's GloBE Income or Loss. Jurisdiction A imposes tax on the Permanent Establishment's income from transactions with X Co and the income from X Co is not treated as foreign source income for the purposes of calculating the foreign tax credit limitation applicable to Main Entity. In such cases, the PE's income from transactions with X Co is treated as foreign source income of the Permanent Establishment and the Jurisdiction A taxes paid with respect to that income are allocated under the cross-crediting allocation mechanism.

33. Where the Main Entity/Parent Entity jurisdiction has multiple baskets within which its cross-crediting tax regime applies, the domestic source income will be allocated to the basket to which foreign taxes on that income are allocated. If the domestic tax regime of the Main Entity/Parent Entity does not provide foreign tax credits on domestic source income, the domestic source income will be allocated to the same basket to which foreign taxes are (or would be) allocated if the income had been foreign source income of the same type under the Main Entity/Parent Entity jurisdiction's law. For example, a Parent Entity jurisdiction allows for cross-crediting within two separate baskets – active source income (Basket A) and passive foreign source income (Basket B). A foreign Hybrid Entity earns passive income from a third party in the Parent Entity Jurisdiction on which no foreign tax credit is allowable under the Parent Entity's domestic tax regime. This income is treated as domestic source income for the purposes of the foreign tax credit limitation. In this case, the rule would determine that the passive income from the third party in the Parent Entity Jurisdiction was treated as foreign source income allocated to Basket B. This is because if that type of income (passive income) had been earned from foreign sources, any creditable taxes paid with respect to it would have been allocated to Basket B.

Cross-crediting between permanent establishments and taxable distributions

34. If the Main Entity's domestic tax system allows for cross-crediting between Permanent Establishments and distributions from foreign subsidiaries, the allocation mechanism is required to allocate the relevant taxes between the Permanent Establishments and the subsidiary Constituent Entities. The GloBE Rules allow for the allocation of such taxes to the respective Permanent Establishments and subsidiary Constituent Entities under Article 4.3.2(a) and Article 4.3.2(e) respectively. In such cases, the Constituent Entity paying the tax is both the Main Entity with respect to the Permanent Establishments and a Parent Entity with respect to the subsidiaries which made the distributions ('Main Entity/Parent Entity').

35. In such cases, the above formula is modified to take into account the ability to cross-credit between Permanent Establishments and taxable distributions as follows:

36. The first step also requires calculating the Main Entity/Parent Entity's inclusion in taxable income as a result of the distribution from the relevant distributing Entity. If the Main Entity/Parent Entity's domestic tax system includes in the taxable income of the Main Entity/Parent Entity a 'gross-up' for any taxes paid by the distributing Entity, that amount is also included in this step. For example, a distributing Entity earns 100 of income, pays 10 of local tax and makes a distribution of 90 to its Parent Entity. If the Parent Entity jurisdiction grants an indirect tax credit for the foreign taxes paid with respect to that distribution (10) but adds the amount of these indirect foreign tax credits to the taxable income of the Parent Entity such that the total inclusion in taxable income is 100, the addition 10 is included in taxable income as a 'gross-up' amount. The total foreign source income is 100.

37. The second step requires calculating Allocable Covered Taxes taking into account both the taxable income of all Permanent Establishments as well as any distributions from distributing Entities. The domestic tax liability calculated without regard to any foreign source income requires excluding the income from both foreign Permanent Establishments and distributions from foreign subsidiaries as well as the tax liability arising from any foreign source income of the Main Entity/Parent Entity. The formula is applied as follows:

$$
\begin{aligned}
&\mathit{Allocable\ Covered\ Taxes} \\
&\qquad = \mathit{Total\ current\ tax\ expense\ accrued\ by\ the}\ \boldsymbol{Main\ Entity} \\
&\qquad / \boldsymbol{Parent\ Entity}\ \mathit{with\ respect\ to\ the\ applicable\ tax\ regime} \\
&\qquad - \mathit{domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income} \\
&\qquad - \mathit{Blended\ CFC\ Taxes}
\end{aligned}
$$

38. The third step requires determining the Cross-Crediting Allocation Key for the distributing Entities. The Cross-Crediting Allocation Keys for each Permanent Establishment and the Main Entity remain unchanged. The Cross-Crediting Allocation Key for each distributing Entity is given by the positive amount, if any, from the following formula:

$$\begin{aligned}&Cross - Crediting\ Allocation\ Key\ for\ a\ distributing\ Entity\\&\quad = (taxable\ income\ arising\ from\ the\ distribution \times applicable\ tax\ rate)\\&\quad - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ distribution\end{aligned}$$

39. As per the first step, the taxable income arising from the distribution includes any ‘gross-up’ for taxes paid in the distributing Entity jurisdiction and is adjusted for any deductions permissible under the Main Entity/Parent Entity’s domestic tax system in respect of such distribution. The applicable tax rate is that which is applied to the relevant income in the hands of the Main Entity/Parent Entity. The creditable foreign taxes accrued with respect to the distribution includes all relevant foreign taxes for which a foreign tax credit is granted notwithstanding any foreign tax credit limitation. Depending on the foreign tax credit rules applicable in the Main Entity jurisdiction, this would include taxes which give rise to a direct foreign tax credit (for example, a withholding tax) or an indirect foreign tax credit (for example, a regime which grants the Main Entity a foreign tax credit equal to its proportionate share of the corporate income taxes paid by the distributing entity). It will also include Qualified Domestic Minimum Top-up Taxes if the Main Entity jurisdiction gives a foreign tax credit for such taxes. The Cross-Crediting Allocation Key for such entities also cannot be negative. If the outcome of the formula is negative, the Cross-Crediting Allocation Key for the relevant distributing Entity will be zero.

40. The fourth step is largely unchanged. Each Permanent Establishment and distributing Entity, as well as the Main Entity itself, receives an allocation of the Allocable Covered Taxes in proportion to its Cross-Crediting Allocation Key.

$$\begin{aligned}&Allocation\ to\ the\ PE\ or\ Entity\\&\quad = Allocable\ Covered\ Taxes\\&\quad \times \left(\frac{Cross - Crediting\ Allocation\ Key\ for\ the\ PE\ or\ Entity}{The\ sum\ of\ all\ Cross - Crediting\ Allocation\ Keys}\right).\end{aligned}$$

Cross-crediting within separate categories or baskets of income

41. If the Main Entity/Parent Entity jurisdiction’s domestic tax system contains separate categories or ‘baskets’ of foreign source income within which cross-crediting is allowed, the formula must be modified to calculate a separate amount of Allocable Covered Taxes for each such category or basket. The above formula for Allocable Covered Taxes assumes a single basket of income. Where the tax system contains multiple baskets, the Allocable Covered Taxes for each basket are calculated using the following formula:

$$\begin{aligned}&Allocable\ Covered\ Taxes\ for\ \boldsymbol{Basket\ A}\\&= Total\ current\ tax\ expense\ accrued\ by\ the\ Main\ Entity\ with\ respect\ to\ the\ applicable\ tax\ regime\\&- domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income\\&- Blended\ CFC\ Taxes - \boldsymbol{domestic\ tax\ liability\ attributable\ to\ remaining\ Baskets}\end{aligned}$$

42. In determining the domestic tax liability attributable to each basket it may be necessary to allocate certain relevant tax attributes between the income in different baskets. This must be done using a reasonable allocation method which takes into account the design of the relevant domestic tax system and making reasonable assumptions where necessary. The sum of the domestic tax liability without regard to any foreign source income and the domestic tax liability attributable to each basket must be equal to the total tax paid by the Main Entity/Parent Entity. For these purposes, an allocation must be positive or zero. The methodology cannot result in a negative allocation to any basket or to the domestic tax liability calculated without regard to any foreign source income.

43. The remaining steps are then applied within the relevant category or basket of income. The income and current taxes accrued by a PE or Entity with respect to foreign source income in one basket is irrelevant to the application of the cross-crediting allocation mechanism to foreign source income in another basket. The allocation to each PE or Entity with respect to its income within the basket is given by the following formula.

$$Allocation\ to\ the\ PE\ or\ Entity$$
$$= Allocable\ Covered\ Taxes\ for\ the\ Basket\ \mathrm{X}\ \left(\frac{Cross - Crediting\ Allocation\ Key\ for\ the\ PE\ or\ Entity\ for\ the\ Basket}{The\ sum\ of\ all\ Cross - Crediting\ Allocation\ Keys\ \boldsymbol{in\ the\ Basket}}\right)$$

44. If a Permanent Establishment or Entity has income in multiple baskets, the total allocation to that Constituent Entity will be the sum of the allocations under each basket of income.

45. The above example contains Covered Taxes which are to be allocated to a Permanent Establishment under Article 4.3.2(a) as well as allocations to a distributing Constituent Entity under Article 4.3.2(e). These principles are also applicable to determine the allocation of other Covered Taxes which are subject to an allocation under Article 4.3.2.

Current Taxes accrued with respect to non-GloBE Income

46. The four-step process described above is a mechanism for allocating current taxes accrued by a Main Entity/Parent Entity under its domestic corporate income tax system on the income of its respective Permanent Establishments and distributing Entities. This allocation mechanism does not presume an allocation towards the GloBE Income of Constituent Entities. In cases where the Main Entity/Parent Entity has accrued current tax expense with respect to profits which are excluded from GloBE Income, the relevant tax expense will be excluded from Adjusted Covered Taxes of the Permanent Establishment or distributing Constituent Entity. Whether or not the current tax expense accrued by the Main Entity/Parent Entity were accrued with respect to GloBE Income is determined by reference to the relevant tax regime applicable in the Main Entity/Parent Entity and making reasonable assumptions as necessary.

47. For example, a Parent Entity could pay tax with respect to a distribution which is an Excluded Dividend under the GloBE Rules from a non-Constituent Entity. The allocation formula would determine the amount of current tax expense accrued with respect to that Excluded Dividend. These taxes would have been accrued with respect to an amount excluded from GloBE Income or Loss under Chapter 3. The taxes were not accrued with respect to GloBE Income and are therefore excluded from the Adjusted Covered Taxes of the Parent Entity by Article 4.1.3(a).

48. Furthermore, to the extent that the cross-crediting allocation mechanism allocates tax to non-GloBE Entities (i.e. Entities that are not Constituent Entities, Joint Ventures or JV Subsidiaries), that amount of tax must be allocated to such non-GloBE Entities to ensure that such tax is properly excluded from the Adjusted Covered Taxes of the Constituent Entities, Joint Ventures or JV Subsidiaries of the MNE Group for GloBE purposes where the distribution is not included in the GloBE Income or Loss of the Main Entity/Parent Entity. Tax allocable to non-Constituent Entities will not be excluded from the Adjusted Covered Taxes of the Main Entity/Parent Entity if the distribution is included in the Main Entity/Parent Entity's GloBE Income or Loss (for example, if the Main Entity/Parent Entity has a Short-term Portfolio Shareholding in the distributing Entity).

Revisions to the Commentary

49. The text in strikethrough will be deleted from and the text in bold added to paragraph 52 of the Commentary to Article 4.3.2:

> 52. Determining the amount of Tax paid on a PE income inclusion is more complicated when cross-crediting is allowed because Taxes paid by one PE are allowed to reduce the tax liability arising in respect of other PE income inclusions. Cross-crediting means that the Tax paid with respect to an income inclusion from a low-taxed PE may not equal the pre-credit tax liability on the inclusion less the tax credit allowed for Taxes paid by that PE. **Where cross-crediting is allowed, an allocation mechanism is required to determine the extent to which the current taxes accrued by the Main Entity have been accrued with respect to its Permanent Establishments as opposed to other sources of income (for example, foreign source income earned directly by the Main Entity itself). The following four-step process is designed to allocate the taxes of the Main Entity by reference to the design of the Main Entity's tax regime. This methodology is only used to allocate the taxes imposed on the Main Entity under the corporate income tax which applies the cross-crediting tax regime. The methodology is not used to allocate other taxes imposed with respect to the income included in the cross-credited tax regime (for example, it does not allocate current tax expense with respect to a withholding tax for which a foreign tax credit is granted under the cross-credited tax regime). The first step calculates the foreign source income of each PE. The second step calculates the total Allocable Covered Taxes which have been accrued with respect to foreign source income and are available for allocation. The third step assigns a 'Cross-Crediting Allocation Key' to each PE as well as the Main Entity itself). The fourth step allocates the Allocable Covered Taxes between the PEs and the Main Entity. The allocations to the PEs are made under Article 4.3.2(a). The methodology is set out in the paragraphs below. The Inclusive Framework will consider further guidance with respect to the impact of post-filing adjustments on the cross-crediting allocation mechanism.** ~~Where cross-crediting is allowed, the Taxes paid in respect of an inclusion should be determined by subtracting the credit allowed for Taxes paid by the particular PE, and then further subtracting an appropriate amount of excess creditable Taxes paid by other PEs from the pre-credit tax liability of the PE. The appropriate amount of excess creditable taxes should be determined by allocating the total amount of excess creditable taxes among PE inclusions based on the relative residual tax liability due to each PE inclusion taking into account only creditable taxes paid by that PE (i.e. the liability after the credit for taxes paid by the PE but before excess credits are allocated). Allocating the excess creditable taxes based on relative residual tax liability determined based solely on the PE's creditable taxes will ensure that the amount of the Main Entity's Covered Taxes allocated to PEs does not exceed the amount of Taxes actually arising on the related income inclusions. Deferred~~

~~tax liabilities with respect to PE income are allocated in the same manner. The rules with respect to the recognition of deferred tax liabilities are set forth in Article 4.4.~~

50. The following paragraphs will be added after paragraphs 52 of the Commentary to Article 4.3.2:

52.1. Where cross-crediting is allowed between different sources of foreign source income, including different Permanent Establishments and/or distributions from Entities, the current tax accrued by the Main Entity/Parent Entity must be allocated to the Permanent Establishments and/or distributing Constituent Entities by applying the principles contained in the following four-step calculation. Where cross-crediting is allowed between all foreign source income, there will only be a single 'pool' or 'basket' of income to which the allocation mechanism will apply. Where cross-crediting is only allowed within a particular 'pool' or 'basket' of income, this calculation is to be applied separately to each such pool or basket of income. Where multiple taxes with different tax bases are placed on the Main Entity with respect to the foreign source income (for instance, separately applied under a federal and an applicable subnational tax with a different tax base), this cross-crediting allocation mechanism must be applied separately to allocate the amount of Allocable Covered Taxes that relates to each such tax. In the case of multiple taxes with identical tax bases that apply to the same Entities (for example, a surtax), those taxes may be aggregated in determining the amount of Allocable Covered Taxes such that the mechanism can be applied once on an aggregated basis with respect to those taxes, rather than separately for each tax.

52.2. First, the relevant inclusion in the Main Entity/Parent Entity's taxable income arising from each Permanent Establishment and distributing Entity must be determined. The foreign source income earned directly by the Main Entity/Parent Entity which is included in its taxable income must also be calculated. Foreign source income means income of domestic entities to the extent the Main Entity/Parent Entity jurisdiction considers the income to be from foreign sources for purposes of determining the extent to which a foreign tax credit is allowed. It includes, for example, the income of foreign Permanent Establishments, CFCs, Hybrid Entities or Reverse Hybrid Entities which is included in the taxable income of the Main Entity/Parent Entity under its domestic tax system along with certain dividends, royalties and interest payments received by the Main Entity/Parent Entity from foreign sources.

52.3. Foreign source income is a net amount. It takes into account both income and expenses which are used in determining the total inclusion of foreign source income in the taxable income of the Main Entity. Where the applicable tax regime includes a net amount of the Permanent Establishment or Entity's income in the Main Entity/Parent Entity's taxable income, this net amount will be the foreign source income. However, where the domestic tax regime applicable in the Main Entity/Parent Entity requires an allocation of expenses of the Main Entity to foreign source income only for the purposes of applying the foreign tax credit limitation (and not for determining the inclusion in the Main Entity's taxable income), these expenses are not allocated to each PE or Entity for the purposes of the first step.

52.4. Where only an 'after-tax' amount is included in the Main Entity/Parent Entity's taxable income (for example, the amount of an actual or deemed distribution) but a 'gross-up' is required for taxes paid by the distributing Entity, the taxable income of the Main Entity/Parent Entity will also include the 'gross-up' amount. For example, a distributing Entity earns 100, pays 10 of local tax and makes a distribution of 90 to its Parent Entity. If the Parent Entity jurisdiction grants an indirect tax credit for the foreign taxes paid with respect to that distribution (10) but adds the amount of these indirect foreign tax credits to the taxable income of the Parent Entity such that the total inclusion in taxable income is 100, the addition 10 is included in taxable income as a 'gross-up' amount. The amount of foreign source income must also be adjusted for any deduction or exclusion calculated directly reference to the amount of the relevant inclusion in taxable income. For example, if the Main Entity/Parent Entity must include an amount in its taxable income but is also entitled to a deduction equal to 40% of the amount included, only the net amount (that is, 60% of the total amount) will be considered to have been included in the Main Entity/Parent Entity's taxable income.

52.5 Under some domestic tax regimes, the Main Entity may have multiple types of foreign source income which are subject to the same cross-crediting regime but are subject to different tax rates or for which there is a different linked deduction or exclusion from taxable income as described in paragraph 52.4. In such cases, there is still only a single amount of foreign source income for the Main Entity for the purposes of Step 1.

52.6 Where a foreign Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity earns income which is (a) treated as domestic source income of the Main Entity/Parent Entity under the Main Entity/Parent Entity's domestic tax regime and (b) included in the GloBE Income of the Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity, that income is treated as foreign source income for the purposes of the cross-crediting allocation mechanism. For example, consider a Main Entity (located in Jurisdiction A) which has a Permanent Establishment (located in Jurisdiction B) which earns income from an unrelated entity (X Co) in Jurisdiction A which is included in the GloBE Income or Loss of the Permanent Establishment. Jurisdiction A imposes tax on the Permanent Establishment's profits from X Co and the income from X Co is not treated as foreign source income for the purposes of calculating the foreign tax credit limitation applicable to Main Entity. In such cases, the PE's income from X Co is treated as foreign source income of the Permanent Establishment and the taxes paid with respect to that income are allocated under the cross-crediting allocation mechanism.

52.7 If the domestic tax regime of the Main Entity/Parent Entity has several baskets in which cross-crediting may occur, the domestic source income earned by the Permanent Establishment, CFC, foreign Hybrid Entity or Reverse Hybrid Entity that is treated as foreign source income under paragraph 52.6 should be allocated to the same basket to which the foreign taxes paid by the Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity are (or would be) allocated under the domestic tax regime of the Main Entity/Parent Entity. If the domestic tax regime of the Main Entity/Parent Entity does not provide foreign tax credits on domestic source income, the domestic source income will be allocated to the same basket to which foreign taxes would be allocated if the income had been foreign source income of the same type under the Main Entity/Parent Entity jurisdiction's law.

52.8 Where a payment is made from the Main Entity/Parent Entity to the Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity which is disregarded for the purposes of applying the Main Entity/Parent Entity's domestic tax regime that income will be treated as foreign source income of the Permanent Establishment, CFC or foreign Hybrid if it is included in the GloBE Income or Loss of the recipient Constituent Entity. For example, consider a Parent Entity with a foreign Hybrid Entity (X Co, in Jurisdiction X) under a cross-crediting tax regime. Under the Parent Entity's domestic tax regime, all payments between Parent Entity and X Co are disregarded in determining foreign source income within a basket. Parent Entity makes a 500 payment and a 100 payment to X Co. X Co includes the 500 payment in its GloBE Income or Loss but not the 100 payment. X Co has no other income or expense for the year. For the purposes of the cross-crediting allocation mechanism, X Co's foreign source income is 500.

52.9 A similar issue arises where a payment is made from a Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity to the Main Entity/Parent Entity which is disregarded for the purposes of calculating the foreign tax credit limitation applicable to the Main Entity/Parent Entity. In such cases, the payment will only be treated as reducing the foreign source income of the Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity to the extent that it is taken into account as an expense in calculating the GloBE Income or Loss of the Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity.

52.10 There can also be a payment which is made from one Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity of a Main Entity/Parent Entity to another Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity of the same Main Entity/Parent Entity. In such cases, the payment will only be treated as income of the recipient of the payment for the purposes of this cross-crediting allocation mechanism if the payment is both taken into account as income in calculating the GloBE Income or Loss of the Recipient and as an expense in calculation the GloBE Income or Loss of the payor.

52.11 In some cases, the Main Entity/Parent Entity jurisdiction's tax regime will not determine a net amount of foreign source income for each Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity. Instead, it may include all the income and expense of that PE, CFC, Hybrid Entity or Reverse Hybrid Entity in determining the taxable income of the Main Entity/Parent Entity and only allocate a portion of the total expenses of the Main Entity/Parent Entity to a basket of foreign source income for the purposes of applying its foreign tax credit limitation. In such cases, where the domestic tax regime only allocates domestic expenses to foreign source income for the purposes of calculating the foreign tax credit limitation, those expenses will be included in determining the foreign source income of the Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity for the purposes of the first step but only to the extent that those expenses are included in determining the GloBE Income or Loss of the Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity. To the extent there are expenses allocated to the basket of foreign source income which are not included in the determination of GloBE Income or Loss of any Permanent Establishment, CFC, foreign Hybrid Entity or foreign Reverse Hybrid Entity, those expenses remain in the Main Entity/Parent Entity.

52.12 For example, consider a Parent Entity with two foreign Hybrid Entities (A Co and B Co) which are subject to a cross-crediting regime. The Parent Entity jurisdiction's tax regime does not determine a net income amount of foreign source income from the Hybrid Entities which is included in the taxable income of the Parent Entity. Instead, the Parent Entity jurisdiction's domestic tax regime includes all of the income and expenses of the Hybrid Entities and allocates expenses to a basket of foreign source income solely for the purposes of applying the foreign tax credit limitation. The Parent Entity has 1000 of deductible interest payments of which 400 is allocated to a basket of income which includes the two Hybrid Entities for the purposes of determining the Parent Entity's foreign tax credit limitation. Of this 400 of deductible interest, 100 is recognised as an expense of A Co for the purpose of calculating A Co's GloBE Income or Loss. The other 300 is not recognised as an expense in calculating the GloBE Income or Loss of A Co or B Co. For the purposes of step one of the cross-crediting regime, A Co's foreign source income takes into account 100 of this interest expense (that is, A Co's foreign source income is reduced by 100). There is no adjustment for the remaining 900 of interest expense.

52.13. Second, the Allocable Covered Taxes are determined using the formula:

$$\begin{aligned}
&\mathit{Allocable\ Covered\ Taxes} \\
&\qquad = \mathit{Total\ current\ tax\ expense\ accrued\ by\ the\ Main\ Entity} \\
&\qquad / \mathit{Parent\ Entity\ with\ respect\ to\ the\ applicable\ tax\ regime} \\
&\qquad - \mathit{domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income} \\
&\qquad - \mathit{Blended\ CFC\ Taxes}
\end{aligned}$$

This formula operates to exclude taxes which have been accrued with respect to the domestic source income of the Main Entity/Parent Entity as well as taxes imposed under a Blended CFC Tax Regime which have been allocated in accordance with paragraphs 58.1 to 58.7 of the Commentary to Article 4.3.2(c).

52.14 Total current tax expense accrued by the Main Entity/Parent Entity with respect to the applicable tax regime is the current tax expense for the relevant period with respect to the corporate income tax within which the cross-crediting mechanism applies. This does not include current tax expense accrued by the Main Entity/Parent Entity with respect to foreign taxes (regardless of whether or not a foreign tax credit is available). Such source taxes are not imposed under the applicable tax regime and they are separately allocated.

52.15 The total current tax expense with respect to the applicable tax regime does not take into account current tax expenses which relate to an uncertain tax position, or which are not expected to be paid within three years of the last day of the relevant taxable period.

52.16 The total current tax expense takes into account the GloBE treatment of any applicable tax credits. For example, non-refundable tax credits which reduce the total tax payable by the Main Entity/Parent Entity under the applicable tax regime would reduce the amount of total current tax expense. Adjustments are required for Qualified Refundable Tax Credits, Marketable Transferable Tax Credits and Qualified Flow-Through Tax Benefits (where the Equity Investment Inclusion Election has been made) to the extent that they are not accounted for consistently with their required GloBE treatment. For the purposes of the cross-crediting allocation mechanism, these are treated as an increase in the domestic source income of the Main Entity/Parent Entity and result in a corresponding adjustment to both the total current tax expense and the domestic tax liability calculated without regard to any foreign source income.

52.17 For example, a Main Entity has domestic source income of 1000 and foreign source income of 1000 under the Main Entity domestic tax regime. The Main Entity jurisdiction has a 20% tax rate. The Main Entity also receives 100 in Qualified Refundable Tax Credits under the Main Entity's domestic tax regime. Accordingly, it has a domestic tax liability of 300 for the year ((2000 x 20%) - 100). For the purposes of applying the cross-crediting allocation mechanism, the Main Entity is treated as having domestic source income of 1100 (1000 + 100). Its total current tax expense is 400 (300 + 100) and its domestic tax liability without regard to any foreign source income is 220 (1100 x 20%).

52.18. The domestic tax liability without regard to any foreign source income requires a hypothetical calculation of the domestic tax liability in the absence of income and other tax attributes arising from foreign sources, as determined under the domestic tax rules. Foreign source income for these purposes are the amounts determined under Step One except as adjusted by paragraph 52.20.

52.19 Where an amount is treated as foreign source income under paragraphs 52.6 to 52.12, there is a corresponding adjustment to the calculated domestic tax liability of the Main Entity or Parent Entity. Where the Main Entity or Parent Entity directly earns both foreign source income (for example, royalty income) and domestic source income, the adjustment will be made in proportion to each type of directly earned income. For example, consider a Main Entity/Parent Entity in Jurisdiction A which has taxable income of 1000 of which 750 has arisen from domestic source income and 250 is directly earned foreign source royalty income of the Main Entity/Parent Entity. The Main Entity/Parent Entity also has indirect foreign source income from a PE of 500. The Main Entity/Parent Entity has also made a disregarded payment of 400 to a Hybrid Entity (B Co) in Jurisdiction B, which B Co has included in its taxable income and GloBE Income. For the purposes of applying Step 2, the Main Entity/Parent Entity's 'domestic tax liability without regard to any foreign source income' is calculated as follows. First, the corresponding adjustment for the 400 in disregarded payments which has been treated as foreign source income under paragraph [52.8] must be allocated proportionately between the directly earned domestic source income and the directly earned foreign source income of the Main Entity/Parent Entity. Accordingly, 300 is allocated to domestic sources (400 x (750 / (750 + 250))). The indirect foreign source income from the PE is not relevant to the allocation. As a result, the corresponding adjustment reduces Main Entity/Parent Entity's domestic source income for the purposes of Step 2 by 300. Accordingly, the Main Entity/Parent Entity's 'domestic tax liability without regard to any foreign source income' is 90 ((750 – 300) x 20%).

52.20 Where the domestic tax regime allocates domestic expenses to foreign source income for the purposes of calculating a foreign tax credit limitation, those expenses are excluded when calculating the hypothetical domestic tax liability. As a result, the allocation of domestic expenses to foreign source income under a Main Entity/Parent Entity's tax regime increases the hypothetical domestic tax liability and therefore reduces the amount of Allocable Covered Taxes under the formula.

52.21 For example, a Parent Entity in Jurisdiction X has a foreign Hybrid (Y Co) located in Jurisdiction Y. Y Co has 600 of gross revenue and 400 of domestic expenses producing domestic taxable income of 200. Jurisdiction X includes this 200 in Parent Entity’s taxable income. However, in addition, Jurisdiction X allocates 50 of Parent Entity’s expenses to a basket of income including Y Co’s income for the purposes of applying its foreign tax credit limitation. As a result, Parent Entity includes in its taxable income 200 of foreign source income as a result of Y Co but Parent Entity’s foreign source income for the purposes of applying the foreign tax credit limitation is 150. No taxes are paid in Jurisdiction Y. Parent Entity also has domestic source income of 800, producing a total taxable income of 1000 in Jurisdiction X. Jurisdiction X applies a 20% rate and therefore imposes 200 in taxes. In the above example, Y Co has 200 of foreign source income for the purposes of Step One of the cross-crediting allocation mechanism. However, for the purposes of Step Two of the cross-crediting allocation mechanism, Y Co has foreign source income of 150. Accordingly, Parent Entity’s domestic tax liability without regard to any foreign source income is 170 (850 x 20%), The Allocable Covered Taxes are 30 (200 – 170).

52.22 The hypothetical domestic tax liability cannot be a negative amount. If the hypothetical domestic tax liability would be negative, or is zero, Allocable Covered Taxes will be all of the current tax accrued by the Main Entity. Allocable Covered Taxes must also either be positive or zero. If the hypothetical domestic tax liability exceeds the total current tax accrued in the Main Entity, Allocable Covered Taxes will be zero. The domestic tax liability without regard to any foreign source income is determined under the applicable tax regime and is unaffected by Article 4.3.4.

52.23 If the domestic regime applies a progressive tax rate regime such that one tax rate is applicable to all income (and not just the income above the relevant threshold), then the domestic tax liability without reference to foreign source income is determined by applying the rate which was applied to the Main Entity/Parent Entity in determining its tax liability (and not the rate which would have applied in the absence of the foreign source income). Where the Main Entity/Parent Entity jurisdiction applies progressive tax rates such that one tax rate is applicable to income up to a certain threshold followed by a different tax rate applicable to income above that threshold, the domestic tax liability without regard to any foreign source income must be calculated having allocated a proportionate share of each progressive tax rate band between the various sources of taxable income. For example, a Main Entity Jurisdiction has progressive tax rates such that the first 200 of income is subject to tax at a 10% rate and all subsequent income is subject to tax at a 20% rate. A Main Entity has 100 of domestic source income, 100 of taxable income from PE1 and 300 of taxable income from PE2 and PE3 has a taxable loss of 100. Accordingly, it has total taxable income of 400 (100 + 100 + 300 – 100). As the domestic source income has given rise to 25% (100/400) of the total taxable income, it is allocated 25% of each threshold. Accordingly, the Main Entity is treated as having 50 (200 x 25%) of income subject to tax at 10% rate and 50 (200 x 25%) of income subject to tax at a 20% rate. As a result, the domestic tax liability calculated without regard to any foreign source income is 15 ((50 x 10%) + (50 x 20%)).

52.24. The third step is to calculate the ‘Cross-Crediting Allocation Key’ for each Permanent Establishment and distributing Entity as well as for the Main Entity/Parent Entity itself. These Cross-Crediting Allocation Keys are given by the following formula:

$$\begin{aligned} &Cross-Crediting\ Allocation\ Key\ for\ a\ PE \\ &\quad = (Main\ Entity\ taxable\ income\ arising\ from\ the\ PE \times applicable\ tax\ rate) \\ &\quad - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ PE's\ income \end{aligned}$$

$$Cross - Crediting\ Allocation\ Key\ for\ a\ distributing\ Entity = (Parent\ Entity\ taxable\ income\ arising\ from\ distribution \times applicable\ tax\ rate) - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ distribution$$

$$Cross - Crediting\ Allocation\ Key\ for\ the\ Main\ Entity\ /\ ParentEntity = (Main\ Entity\ taxable\ income\ arising\ directly\ from\ foreign\ source\ income \times applicable\ tax\ rate) - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ foreign\ source\ income$$

52.25. The Main Entity/Parent Entity taxable income arising from the PE or distribution is the amount given in the first step. The applicable tax rate is the tax rate applicable to the relevant cross-crediting pool of taxable income by the jurisdiction of the Main Entity/Parent Entity. If the Main Entity has different types of foreign source income which are subject to different applicable tax rates and still fall within a single cross-crediting regime, it is necessary to determine the Main Entity's pre-foreign tax credit (FTC) liability arising directly from foreign source income. This is the sum of each type of foreign source income multiplied by the tax rate applicable to that type of income in the Main Entity jurisdiction. Where the Main Entity/Parent Entity is subject to a progressive tax rate regime such that a different tax rate is applicable to different portions of its taxable income, each source of income will be treated as having been subject to tax at each progressive tax rate in proportion to its share of the total taxable income as described in paragraph 52.23. The Cross-Crediting Allocation Key is then given by the following formula:

$$Cross - Crediting\ Allocation\ Key\ for\ the\ Main\ Entity\ /\ Parent\ Entity = Main\ Entity\ Parent\ Entity\ Pre\ FTC\ tax\ liability\ arising\ from\ foreign\ source\ income - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ foreign\ source\ income$$

52.26 The tax paid to the Permanent Establishment jurisdiction is the tax paid or accrued in current tax expense of the Permanent Establishment for which the Main Entity receives a foreign tax credit under the Main Entity Jurisdiction's domestic tax regime. Depending on the foreign tax credit rules applicable in the Main Entity jurisdiction, this would include taxes which give rise to a direct foreign tax credit (for example, a withholding tax) or an indirect foreign tax credit (for example, a regime which grants the Main Entity a foreign tax credit equal to its proportionate share of the corporate income taxes paid by the distributing entity). It will also include Qualified Domestic Minimum Top-up Taxes if the Main Entity jurisdiction gives a foreign tax credit for such taxes. With respect to the allocation key for the Main Entity, current tax expense accrued with respect to the foreign source income includes taxes paid by the Main Entity/Parent Entity for which a foreign tax credit is available (for example, royalty withholding tax for which the Main Entity was liable, but which was collected and remitted by the payor in another jurisdiction). The Cross-Crediting Allocation Key for a PE or Entity cannot be a negative amount. It must be positive or zero. If the Cross-Crediting Allocation Key for a PE or Entity would be negative it will be zero for the purposes of applying the cross-crediting allocation mechanism.

52.27 The fourth step allocates the Allocable Covered Taxes (as determined under Step 2) in proportion to the Cross-Crediting Allocation Key for each PE or Entity (as determined under Step 3). This is done in accordance with the following formula:

$$\begin{aligned}&\mathit{Allocation\ to\ each\ PE\ or\ Entity}\\&\quad= \mathit{Allocable\ Covered\ Taxes}\\&\quad\times \left(\frac{\mathit{Cross - Crediting\ Allocation\ Key\ for\ the\ PE\ or\ Entity}}{\mathit{The\ sum\ of\ all\ Cross - Crediting\ Allocation\ Keys}}\right).\end{aligned}$$

The sum of all Cross-Crediting Allocation Keys includes the Cross-Crediting Allocation Keys of all Permanent Establishments and distributing Entities as well as the allocation key of the Main Entity/Parent Entity itself. This formula determines the allocation to each such Entity.

52.28 For the purposes of allocating Covered Taxes under Article 4.3.2, the relevant allocations are those with respect to each Permanent Establishment and distributing Constituent Entity. However, the MNE Group's allocation of Covered Taxes ought to be consistent with the hypothetical allocations. For example, to the extent that tax has been paid with respect to a distribution from a non-Constituent Entity which is not included in the Parent Entity's GloBE Income, that amount is not included in the Adjusted Covered Taxes of the Main Entity/Parent Entity. To the extent that the cross-crediting allocation mechanism allocates tax to non-GloBE Entities (i.e. Entities that are not Constituent Entities, Joint Ventures or JV Subsidiaries) in which it has a direct or indirect Ownership Interest, that amount of tax must be allocated to such non-GloBE Entities to ensure that such tax is properly excluded from the Adjusted Covered Taxes of the Constituent Entities, Joint Ventures or JV Subsidiaries of the MNE Group for GloBE purposes where the distribution is not included in the GloBE Income or Loss of the Main Entity/Parent Entity. Tax allocable to non-Constituent Entities will not be excluded from the Adjusted Covered Taxes of the Main Entity/Parent Entity if the distribution is included in the Main Entity/Parent Entity's GloBE Income or Loss (for example, if the Main Entity/Parent Entity has a Short-term Portfolio Shareholding in the distributing Entity).

52.29. The above formula is used to allocate Covered Taxes accrued in current tax expense by a Main Entity/Parent Entity under its domestic tax system to its Permanent Establishments and distributing Constituent Entity subsidiaries. Where the above formula allocates Covered Taxes to a Permanent Establishment or distributing Constituent Entity which have been incurred with respect to an amount excluded from GloBE Income or Loss, the Permanent Establishment or distributing Constituent Entity must then exclude those Covered Taxes under Article 4.1.3(a) in order to determine its Adjusted Covered Taxes. This principle applies to any other applicable adjustment under Article 4.1.3.

52.30. Where the domestic tax system of the Main Entity/Parent Entity allows only for cross-crediting within particular categories or 'baskets' of income, the above formula must be modified to determine the allocation within each basket of income. The Allocable Covered Taxes for each basket are calculated using the following formula:

$$\begin{aligned}&\mathit{Allocable\ Covered\ Taxes\ for\ Basket\ A}\\&\quad= (\mathit{total\ current\ tax\ expense\ accrued\ in\ the\ Main\ Entity}\\&\quad/\ \mathit{Parent\ Entity\ jurisdiction}\\&\quad- \mathit{domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income}\\&\quad- \mathit{domestic\ tax\ liability\ attributable\ to\ remaining\ Baskets})\end{aligned}$$

52.31. In determining the domestic tax liability attributable to each basket it may be necessary to allocate tax attributes (for example, a loss or a tax credit) between the income in different baskets. This must be done using a reasonable allocation method which takes into account the design of the relevant domestic tax system and making reasonable assumptions where necessary. The same allocation method must be applied consistently by the MNE Group in calculating its liabilities under any IIR, UTPR or qualified domestic minimum top-up tax. The sum of the domestic tax liability without regard to any foreign source income and the domestic tax liability attributable to each basket must be equal to the total current tax expense accrued by the Main Entity/Parent Entity. An allocation must be positive or zero. The methodology cannot result in a negative allocation to any basket.

52.32. The remaining steps in the formula are then also calculated separately for each category or basket of income. The Cross-Crediting Allocation Key for each PE or Entity for each basket is calculated separately from that PE's or Entity's allocations with respect to other baskets. Accordingly, the formula to determine the allocation to a given Permanent Establishment or distributing Constituent Entity is as follows:

$$
\begin{aligned}
&Allocation\ to\ each\ PE\ or\ Entity \\
&\quad = Allocable\ Covered\ Taxes\ for\ the\ Basket \\
&\quad \times \left(\frac{Cross - Crediting\ Allocation\ Key\ for\ the\ Entity\ for\ the\ Basket}{The\ sum\ of\ all\ Cross - Crediting\ Allocation\ Keys\ in\ the\ Basket}\right).
\end{aligned}
$$

The sum of all Cross-Crediting Allocation Keys in the Basket (that is, the denominator in this formula) includes the Cross-Crediting Allocation Keys of the Main Entity/Parent Entity itself, all Permanent Establishments and all other distributing Entities (including non-Constituent Entities).

52.33. A Permanent Establishment or distributing Entity may have an allocation with respect to multiple baskets. In such cases, the total allocation to that Permanent Establishment or Entity will be the sum of its allocation with respect to each basket.

52.34. The Inclusive Framework will further consider the impact of post-filing adjustments with respect to the application of the cross-crediting allocation mechanism and its interaction with Article 4.6.1.

51. Paragraphs 53 and 54 of the Commentary to Article 4.3.2 are revised to read as follows:

53. **The above principles are to be applied with respect to other circumstances in which a domestic tax regime allows for the cross-crediting of foreign taxes on income from different sources. The purpose of the formula is to provide a common mechanism for allocating taxes which arise as a result of a domestic tax calculation which combines attributes from multiple different jurisdictions. The mechanism must take into account the design of the domestic tax system and make reasonable assumptions.** ~~In the case of a Flow-through Entity Article 4.3.2(a) allocates, in accordance with the allocation of GloBE Income or Loss pursuant to Article 3.5.1(a), the underlying taxes to the PE. If for instance the Constituent Entity-owner of a Flow-through Entity (such as a partner of Tax Transparent Entity that is a partnership which is itself also a Constituent Entity) is required to pay the tax with respect to the income attributable to the PE due to the activities undertaken through a Tax Transparent Entity that tax is allocated pursuant to Article 4.3.2 (a) from the Partner to that PE.~~ **The principles outlined in paragraphs 52 to 52.33 are also applicable to other Covered Taxes which are to be allocated under Article 4.3.2, such as CFC Taxes under Article 4.3.2(c), taxes in respect of the income of Hybrid Entities or Reverse Hybrid Entities under Article 4.3.2(d), and taxes on distributions from a Constituent Entity under Article 4.3.2(e). For example, a Hybrid Entity may be treated as equivalent to a foreign Permanent Establishment under an applicable domestic tax regime and included in a cross-crediting 'pool' or 'basket' of foreign source income. In such cases, the principles outlined in paragraphs 52 to 52.33 are applied to allocate Covered Taxes to that Hybrid Entity as part of the relevant 'pool' or 'basket' of cross-credited foreign source income. Where a cross-border allocation of Covered Tax would be made to a CFC (under Article 4.3.2(c)), Hybrid Entity (under Article 4.3.2(d)) or Reverse Hybrid Entity (under Article 4.3.2(d)) under this methodology, the limitation in Article 4.3.3 with respect to Passive Income will limit the cross-border allocation (where applicable). Where the limitation in Article 4.3.3 applies, any tax amount will remain with the Constituent Entity-owner and will not be reallocated to another Entity under the formula.**

54. **There may be occasions where multiple Constituent Entities under the GloBE Rules are recognised as only a single entity for the purposes of applying the Main Entity/Parent Entity's tax regime. For example, a Parent Entity jurisdiction's CFC Tax Regime may only recognise a single CFC where the CFC has a Permanent Establishment or the CFC owns another Entity which is disregarded (treated as part of the CFC) for the purposes of the Main Entity/Parent Entity's tax regime. The GloBE Rules require a mechanism of allocating CFC taxes of the Parent Entity between the CFC and the CFC's Permanent Establishment. In such cases, foreign source income of the single entity recognised under the Main Entity/Parent Entity's tax regime must be allocated between the Constituent Entities which form a part of that single recognised entity (which may be separate tested units under the applicable Main Entity/Parent Entity tax regime). This allocation must be done by reference to the applicable Main Entity/Parent Entity tax regime. For instance, where the Main Entity/Parent Entity's tax return requires separate disclosure of the attributable foreign source income from Constituent Entity as a separate taxable unit (for example, a tested unit or qualified business unit), this must be used for allocating the foreign source income between the Constituent Entities. The creditable foreign taxes with respect to each such Constituent Entity must be separately determined and cannot be allocated proportionately to the foreign source income itself. Creditable foreign taxes must have been paid with respect to**

the relevant foreign source income. ~~Recognizing that there is significant variation in how countries impose tax on PEs (including variation in the treatment of losses and foreign tax credits), as discussed in the first paragraphs of the Commentary to this Article, the GloBE Implementation Framework includes the development of a common methodology to determine the amount of Covered Taxes allocated from a Constituent Entity to a PE in connection with specific country regimes.~~

3.2. Clarification of Article 3.4.5

3.2.1. Introduction and issue presented

52. The methodology for allocation of Main Entity tax on PE income set out above references the domestic tax rules to determine the extent to which current tax expense is accrued with respect to the PE income. A similar issue arises with respect to determining the extent to which the loss of a PE is taken into account of the Main Entity when there are other PEs with income.

53. Article 3.4.5 allows a Main Entity to take into account a PE loss in computing its GloBE Income or Loss to the extent that such loss is treated as an expense in the computation of the Main Entity's domestic taxable income. In determining the extent to which the loss of a PE is treated as an expense of the Main Entity, the domestic rules for measuring PE income for which a tax credit is allowed must be taken into account including whether the loss is first set off against the income of another PE.

3.2.2. Guidance

54. The language in bold will be added to paragraph 200 of the Commentary to Article 3.4.5:

> 200. A GloBE Loss of a PE shall be treated as an expense of the Main Entity for purposes of computing its GloBE Income or Loss, to the extent that the loss of the PE is treated as an expense in the computation of the domestic taxable income or loss of such Main Entity. This provision applies irrespective of whether the tax base of the Main Entity takes into account the net loss of the PE or each of its items of income and expense. Thus, if the Main Entity takes into account only 80% of a PE loss in computing its domestic taxable income, then the same percentage of the PE's GloBE Loss is treated as an expense in the computation of the Main Entity's GloBE Income or Loss and the remaining 20% is treated as a loss in computing the PE's GloBE Income or Loss. However, if a PE loss produces a time-limited loss carryforward for the Main Entity it is treated as an expense in the computation of the Main Entity's domestic taxable loss irrespective of whether such carry-forward expires before it is used in full. **In determining the extent that a PE loss is treated as an expense in the computation of domestic taxable income, proper regard shall be given to the rules of the Main Entity jurisdiction for determining the PE Income, including foreign tax credit rules. For example, if the rules of a Main Entity's jurisdiction offset PE losses against PE income in determining the amount of foreign source income against which a foreign tax credit is allowed, then the PE loss should be first allocated to the other PE Income and only the excess above the other PE income should be considered an expense in the computation of GloBE Income or Loss of the Main Entity. In a case where two or more PEs have a loss and those losses are offset by income of one or more other PEs, the amount of the loss taken into account by the Main Entity under Article 3.4.5 shall be apportioned between the loss PEs in proportion to their separate losses as determined under the applicable regime. For example, if PE1 has income of 100 and PE2 and PE3 each have losses of 150, the Main Entity will take into account a net loss of 200. That loss shall be considered to have taken into account 100 of loss from PE2 and 100 of loss from PE3 under Article 3.4.5.**

3.2.3. Examples

Example 4.3.2-3

1. An MNE Group with a UPE in Jurisdiction X is subject to a worldwide tax system applied by Jurisdiction X. Under this tax system, Jurisdiction X imposes tax on both domestic and foreign source income, including dividends received from foreign corporations, and allows a tax credit for taxes paid on foreign source income. Jurisdiction X has a cross-crediting foreign tax credit regime pursuant to which taxes paid in all foreign jurisdictions on all categories of foreign source income are creditable against the UPE's tax liability arising from foreign source income. Under the Jurisdiction X's domestic tax regime, the foreign tax credit allowed for any given Fiscal Year cannot exceed the tax liability arising from the income inclusion of foreign sources and the foreign tax credit limitation.

2. The UPE has PEs in jurisdictions A (PE1), B (PE2), and C (PE3) and owns a subsidiary (A Co) in jurisdiction A. The UPE owns 100% of A Co and all of A Co's after-tax profits are distributed to the UPE annually. For the Fiscal Year, UPE earns domestic source income of 400, PE1 generates income of 100, PE2 generates income of 250, PE3 has a loss of 50, and A Co generates income of 200. All of the PE income is active income. The UPE also derives a royalty income of 100 from a payment from a non-Constituent Entity (B Co) (which is in addition to its 400 of domestic income) and dividend income of 200 from a non-Constituent Entity C Co in jurisdiction B. Jurisdiction X also has a foreign tax credit limitation equal to its domestic tax liability multiplied by the proportion of foreign source income to total income. The dividend income from C Co is included in the UPE's taxable income under the cross-crediting regime but is not within the UPE's GloBE Income or Loss.

3. Tax rates in jurisdictions and Tax accrued with respect to the income of the UPE, each PE and the distributing Entity and royalty are as follows:

Jurisdiction	Entity	Income	Corporate income tax rate	Corporate income tax	Withholding tax rate	Withholding tax
Jurisdiction X	UPE	400	20%	80		
Jurisdiction A	PE1	100	5%	5		
	A Co	200	5%	10	5%	9.5
Jurisdiction B	PE2	250	10%	25		
	UPE's income from B Co payment*	100			20%	20
	C Co**	200	10%	20	0%	0
Jurisdiction C	PE3	-50	25%	0		

*Note that both the payment UPE receives from B Co and the dividend received from C Co are included in the taxable income of the UPE in addition to UPE's 400 of domestic source income.

**Note that the figures with respect to C Co in this table reflect UPE's proportionate share of the income and taxes of C Co. That is, they are 20% of the total income and taxes of C Co.

4. Under the cross-crediting tax system in jurisdiction X:

   a. Taxable income of the UPE is 1200 = 400+100+200+250+100-50+200.
   b. Pre-credit tax liability payable in Jurisdiction X is 240 = 1200×20%.
   c. Tax accrued in foreign jurisdictions is 89.5 = 5+10+25+9.5+20+20.
   d. Foreign tax credit limitation is 160 = 240×800/1200.
   e. Allowed foreign tax credit is 89.5 which is the lower of c and d.
   f. Tax payable in jurisdiction X is 150.5 = 240-89.5.

5. The Allocable Covered Taxes is determined as follows:

$$
\begin{aligned}
&\mathit{Allocable\ Covered\ Taxes}\\
&= \mathit{Total\ current\ tax\ expense\ accrued\ by\ the\ Main\ Entity\ with\ respect\ to\ the\ applicable\ tax\ regime}\\
&- \mathit{domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income}\\
&- \mathit{Blended\ CFC\ Taxes}
\end{aligned}
$$

= (150.5 – (400 × 20%)) = 70.5.

6. The Cross-Crediting Allocation Keys for the PEs, distributing Entity and the Main Entity/Parent Entity are determined using the relevant formulae below:

$$
\begin{aligned}
\mathit{Cross-Crediting\ Allocation\ Key\ for\ a\ PE}
&= (\mathit{Main\ Entity\ taxable\ income\ arising\ from\ the\ PE} \times \mathit{applicable\ tax\ rate})\\
&- \mathit{creditable\ foreign\ taxes\ accrued\ to\ the\ PE's\ income}
\end{aligned}
$$

$$
\begin{aligned}
\mathit{Cross-Crediting\ Allocation\ Key\ for\ a\ distributing\ Entity}
&= (\mathit{Parent\ Entity\ taxable\ income\ arising\ from\ distribution}\\
&\times \mathit{applicable\ tax\ rate})\\
&- \mathit{creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ distribution}
\end{aligned}
$$

$$
\begin{aligned}
\mathit{Cross-Crediting\ Allocation\ Key\ for\ the\ Main\ Entity\ or\ Parent\ Entity}
&= (\mathit{Main\ Entity\ taxable\ income\ arising\ directly\ from\ foreign\ source\ income}\\
&\times \mathit{applicable\ tax\ rate})\\
&- \mathit{creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ foreign\ source\ income}
\end{aligned}
$$

Entity	Main Entity taxable income arising from the foreign source income	Applicable tax rate	Tax accrued with respect to the foreign source income	Cross-Crediting Allocation Key
	[1]	[2]	[3]	[4] = ([1] × [2]) - [3]
PE1	100	20%	5	15
PE2	250	20%	25	25
PE3	-50	20%	0	0
A Co	200	20%	19.5	20.5
C Co	200	20%	20	20
Main Entity	100	20%	20	0
In total				80.5

7. The Allocable Covered Taxes of 70.5 is allocated to the PEs, the distributing Entities and Main Entity as follows:

$$
\begin{aligned}
&\mathit{Allocation\ to\ each\ PE\ or\ Entity}\\
&= \mathit{Allocable\ Covered\ Taxes}\ x \left(\frac{\mathit{Cross-Crediting\ Allocation\ Key\ for\ the\ PE\ or\ Entity}}{\mathit{The\ sum\ of\ all\ Cross-Crediting\ Allocation\ Keys}}\right)
\end{aligned}
$$

Entity	Cross-Crediting Allocation key for the Entity	The sum of all Cross-Crediting Allocation Keys	Allocable Covered Taxes	Allocation to the Entity
	[1]	[2]	[3]	[4] = ([1] / [2]) × [3]
PE1	15	80.5	70.5	13.14
PE2	25			21.89

PE3	0			0
A Co	20.5			17.95
C Co	20			17.52
Main Entity	0			0
In total				70.5

8. The final result is that the Main Entity has accrued 150.5 in Covered Taxes, of which 13.14 is allocated to PE1, 21.89 is allocated to PE2, 17.95 is allocated to A Co and 17.52 is allocated to C Co. As C Co is not part of the MNE Group, this allocation of 17.52 to C Co is not included in the Adjusted Covered Taxes of the MNE Group. The remainder (80) is not reallocated.

Example 4.3.2-4

1. The facts are the same as Example 4.3.2-3, except that Jurisdiction X does not tax UPE's dividend income or grant any foreign tax credit with respect to foreign dividend income. The tax rates in jurisdictions and Tax accrued with respect to each PE, distributing Entity and royalty income are as follows:

Jurisdiction	Entity	Income	Corporate income tax rate	Corporate income tax	Withholding tax rate	Withholding tax
Jurisdiction X	UPE	400	20%	80		
Jurisdiction A	PE1	100	5%	5		
	A Co	200*	5%	10	5%	9.5
Jurisdiction B	PE2	250	10%	25		
	UPE's income from B Co payment	100			20%	20
	C Co	200*	10%	20	0%	0
Jurisdiction C	PE3	-50	25%	0		

*Note that distributions from A Co and C Co are not included in the UPE's taxable income under the UPE's domestic tax regime in this example.

**Note that the figures with respect to C Co in this table reflect UPE's proportionate share of the income and taxes of C Co. That is, they are 20% of the total income and taxes of C Co.

2. In this case, under the cross-crediting tax system:

   a. Taxable income of the UPE is 800=400+100+250+100-50.
   b. Pre-credit tax liability payable in Jurisdiction X is 160=800×20%.
   c. Tax accrued in foreign jurisdictions is 50=5+25+20.
   d. Foreign tax credit limitation is 80=160×400/800.
   e. Allowed tax credit is 50 which is the lower of c and d.
   f. Tax payable in jurisdiction X is 110=160-50.

3. The Allocable Covered Taxes is determined as follows:

$$\begin{aligned}&\mathit{Allocable\ Covered\ Taxes}\\&= \mathit{Total\ current\ tax\ expense\ accrued\ by\ the\ Main\ Entity\ with\ respect\ to\ the\ applicable\ tax\ regime}\\&- \mathit{domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income}\\&- \mathit{Blended\ CFC\ Taxes}\end{aligned}$$

(110 - (400×20%)) = 30

4. The Cross-Crediting Allocation Key for each Entity is computed as set out below:

Entity	Main Entity taxable income arising from the foreign source income	Applicable tax rate	Tax accrued with respect to the foreign source income	Cross-Crediting Allocation Key
	[1]	[2]	[3]	[4] = ([1]×[2]) - [3]
PE1	100	20%	5	15
PE2	250	20%	25	25
PE3	-50	20%	0	0
Main Entity	100	20%	20	0
In total				40

5. The Allocable Covered Taxes of 30 is allocated to each Entity as follows:

Entity	Cross-Crediting Allocation key for the Entity	The sum of all Cross-Crediting Allocation Keys	Allocable Covered Taxes	Allocation to the Entity
	[1]	[2]	[3]	[4] = ([1] / [2]) × [3]
PE1	15	40	30	11.25
PE2	25			18.75
PE3	0			0
Main Entity	0			0
In total				30

6. The final result is that the Main Entity has accrued 110 in Covered Taxes, of which 11.25 is allocated to PE1, 18.75 is allocated to PE2. The remainder (80) is not reallocated.

Example 4.3.2-5

1. An MNE Group with a UPE in Jurisdiction X is subject to a worldwide tax system applied by Jurisdiction X. Under this tax system, Jurisdiction X imposes tax on both domestic and foreign source income and allows a tax credit for taxes paid on foreign source income. Jurisdiction X allows cross-crediting of Taxes, but only within certain categories of foreign-source income, i.e., foreign branch income basket, passive income basket, etc. Foreign tax credit limitations are also computed based on the categories. The foreign branch income basket includes the income from all Permanent Establishments. The passive income basket includes the income from both royalty payments and distributions received by the UPE.

2. The UPE has PEs in jurisdictions A (PE1), and B (PE2) and owns a subsidiary (C Co) in jurisdiction C. The UPE owns 100% of C Co and all of C Co's after-tax profits are distributed to the UPE annually. For the Fiscal Year, UPE earns domestic income of 400, PE1 generates income of 100, PE2 generates income of 200. All of the PE income is active income. C Co earns income of 200. The UPE also derives a royalty income of 100 from a non-Constituent Entity (B Co) (which is in addition to its domestic income of 400) in jurisdiction B and a dividend of 200 from a non-Constituent Entity (D Co) in jurisdiction C.

3. Tax rates in jurisdictions and Tax accrued with respect to each PE, distributing Entity and royalty income are as follows:

Jurisdiction	Entity	Income	Corporate income tax rate	Corporate income tax	Withholding tax rate	Withholding tax
Jurisdiction X	UPE	400	20%	80		
Jurisdiction A	PE1	100	25%	25		
Jurisdiction B	PE2	200	30%	60		
	UPE's income from B Co payment	100			20%	20
Jurisdiction C	C Co	200	5%	10	5%	9.5
	D Co	200	5%	10	5%	9.5

4. In this case, under the cross-crediting tax system:

a. Taxable income of the UPE is 1200 = 400+100+200+100+200+200.

b. Pre-credit tax liability payable in Jurisdiction X is 240 = 1200×20%.

c. With respect to the Branch Income basket:

- The Tax accrued is 85 (25 + 60).
- The foreign tax credit limitation is 60 = 240 × ((100+200)/1200).
- The allowed foreign tax credit is 60 (foreign tax credits are limited).

d. With respect to the Passive Income basket:

- The Tax accrued is 59 = 20+10+9.5+10+9.5.
- The foreign tax credit limitation is 100 = 240 × ((100+200+200)/1200).
- The allowed foreign tax credit is 59 (foreign tax credits are not limited).

e. Tax payable in jurisdiction X is 121 = 240 - 59 - 60.

5. The Allocable Covered Taxes are determined as follows:

$$\begin{aligned}&Allocable\ Covered\ Taxes\ for\ Basket\ A\\&= Total\ current\ tax\ expense\ accrued\ by\ the\ Main\ Entity\ with\ respect\ to\ the\ applicable\ tax\ regime\\&- domestic\ tax\ liability\ without\ regard\ to\ any\ foreign\ source\ income\\&- Blended\ CFC\ Taxes - domestic\ tax\ liability\ attributable\ to\ remaining\ baskets\end{aligned}$$

Allocable Covered Taxes for the Branch Income Basket

= 121 – (400 x 20%) – 41 = 0.

Allocable Covered Taxes for the Passive Income Basket

= 121 – (400 x 20%) – 0 = 41.

6. In this example, there have been no taxes imposed on the UPE with respect to the Branch Income Basket. This is because there were sufficient allowable foreign tax credits in the basket to fully displace any further taxation arising in the Main Entity/Parent Entity. Put differently, the allowable tax credits exceeded the pre-credit domestic tax liability that would have arisen with respect to the income in the Branch Income basket. However, there has been additional tax paid in Jurisdiction X with respect to income in the Passive Income Basket. The allowable foreign tax credits do not fully displace the pre-tax credit liability arising with respect to this income. Accordingly, 41 is allocable to the Passive Income Basket. The Passive Income basket is composed of three amounts – an amount from a taxable distribution from C Co (a CE), an amount from a taxable distribution from D Co (a Non-CE) and an amount attributable to the payment income from B Co (a 3rd party).

7. The Passive Income Basket does not contain a Permanent Establishment. However, there are distributions from a Constituent Entity (C Co) and a non-Constituent Entity (D Co). The Cross-Crediting Allocation Keys are given by the formulae:

$$\begin{aligned}&Cross - Crediting\ Allocation\ Key\ for\ a\ distributing\ Entity\\&\qquad = (Parent\ Entity\ taxable\ income\ arising\ from\ distribution\\&\qquad \times applicable\ tax\ rate)\\&\qquad - \text{creditable foreign taxes accrued with respect}\ to\ the\ distribution\end{aligned}$$

Cross-Crediting Allocation Key for C Co = (200 × 20%) – 19.5 = 20.5.

Cross-Crediting Allocation Key for D Co = (200 × 20%) – 19.5 = 20.5

$$Cross-Crediting\ Allocation\ Key\ for\ the\ Main\ Entity\ or\ Parent\ Entity = (Main\ Entity\ taxable\ income\ arising\ directly\ from\ foreign\ source\ income \times applicable\ tax\ rate) - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ foreign\ source\ income$$

Cross-Crediting Allocation Key for UPE = (100 × 20%) – 20 = 0.

8. Accordingly, allocations to C Co and D Co are given by the formula:

$$Allocation\ to\ each\ Entity = Allocable\ Covered\ Taxes\ for\ the\ Basket \times \left(\frac{Cross-Crediting\ Allocation\ Key\ for\ the\ Entity\ for\ the\ Basket}{The\ sum\ of\ all\ Cross-Crediting\ Allocation\ Keys\ in\ the\ Basket}\right).$$

Allocation to C Co = 41 x (20.5 / (20.5+20.5)) = 20.5.

Allocation to D Co = 41 × (20.5 / (20.5+20.5)) = 20.5.

9. The final result is that the UPE has accrued 121 in Covered Taxes, of which 20.5 is allocated to C Co, 20.5 is allocated to D Co which is not included in the Adjusted Covered Taxes of the MNE Group and the remainder (80) is not reallocated.

Example 4.3.2-6

1. UPE is located in Jurisdiction X. UPE has a PE (PE1) and a wholly-owned CFC (A Co) located in Jurisdiction A. UPE has a wholly owned CFC B1 Co (in Jurisdiction B) and C Co (in Jurisdiction C). It also has a 20% Ownership Interest in B2 Co (also located in Jurisdiction B). For the Fiscal Year, the income of these entities and the tax accrued with respect to the jurisdiction in which they are located are set out in the table below. None of the income is Passive Income for the purposes of Article 4.3.3.

Jurisdiction	Entity	Income	Corporate income tax rate	Corporate income tax
Jurisdiction X	UPE	300	30%	90
Jurisdiction A	PE1	50	20%	10
	A Co	150	20%	30
Jurisdiction B	B1 Co	200	25%	50
	B2 Co (20% owned by UPE)	500	25%	125
Jurisdiction C	C Co	200	5%	10

2. Jurisdiction X operates a worldwide tax system and includes both domestic and foreign income of foreign permanent establishments and CFCs. A Co, B1 Co, B2 Co and C Co are all CFCs under the tax regime applicable in Jurisdiction X and UPE is required to include in its taxable income the UPE's proportionate share of their respective income. Jurisdiction X allows for tax credits paid on foreign income and operates a cross-crediting system within certain categories of income. It has three relevant baskets. First, there is a basket for the income of foreign permanent establishments. Second, there is a basket for income of CFCs which are located in jurisdictions with nominal tax rates below 10% (low tax CFC basket). Third, there is a basket for income of CFCs which are located in jurisdictions with nominal tax rates above 10% (non-low tax CFC basket). The foreign tax credit limitation is applied separately with respect to each basket or category of income.

3. In this case, under the cross-crediting tax system:

   a. Taxable income of the UPE is 1000 (300 + 150 + 50 + 200 + (500×20%) + 200).

      b. Pre-credit tax liability payable in Jurisdiction X is 300 = 1000×30%.

      c. With respect to the Branch Income basket:

- The foreign source income is 50
- The Tax accrued is 10.
- The foreign tax credit limitation is 15 (300 x (50/1000)).
- The allowed foreign tax credit is 10 (the foreign tax credits limitation does not apply).
- The branch income basket tax liability is 5 ((50 x 30%) – 10).

d. With respect to the low tax jurisdiction CFC basket:
   - The foreign source income is 200.
   - The Tax accrued is 10.
   - The foreign tax credit limitation is 60 (300 x (200/1000)).
   - The allowed foreign tax credit is 10 (the foreign tax credits limitation does not apply).
   - The low tax jurisdiction CFC basket tax liability is 50 ((200 x 30%) – 10).

e. With respect to the non-low tax jurisdiction CFC basket:
   - The foreign source income is 450 (150 + 200 + (500 x 20%)).
   - The Tax accrued is 105 (30 + 50 + 25).
   - The foreign tax credit limitation is 135 (300 x (450/1000)).
   - The allowed foreign tax credit is 105 (the foreign tax credits limitation does not apply).
   - The non-low tax jurisdiction CFC basket tax liability is 30 ((450 × 30%) – 105)

f. Total tax payable in jurisdiction X is 175 (300 – 10 – 10 – 105).

4. The Allocable Covered Taxes for each basket is given by subtracting from the total tax liability accrued the domestic tax liability calculated without regard to any foreign source income as well as the allocations to the other relevant baskets. In this case, there is 175 of total tax payable and 90 (300 x 30%) is referable to domestic source income. The remaining 85 (175 – (300 x 30%)) must be allocated between the three baskets taking into account the design of the relevant tax system. In this case, the allocations for each basket are:

a. 5 to the branch income basket (175 – (300 x 30%) – (50 + 30));

b. 50 to the low tax jurisdiction CFC basket (175 – (300 x 30%) – (5 + 30); and

c. 30 to the non-low tax jurisdiction CFC basket (175 – (300 x 30%) – (5 + 50)).

5. All 5 of Allocable Covered Taxes in the branch income basket is allocated to the PE as the PE is the only entity with foreign source income in that basket. Accordingly, there is 5 in Covered Taxes allocated from UPE to PE under Article 4.3.2(a).

6. All 50 of the Allocable Covered Taxes in the low tax jurisdiction CFC basket is allocated to C Co as C Co is the only entity with foreign source income in that basket. Accordingly, 50 in Covered Taxes is allocated from UPE to C Co under Article 4.3.2(c). None of the income is Passive Income so Article 4.3.3 does not apply.

7. The 30 of Allocable Covered Taxes in the non-low tax jurisdiction CFC basket must be allocated between A Co, B1 Co and B2 Co in accordance with their respective Cross-Crediting Allocation Keys. The Cross-Crediting Allocation Keys are as follows:

a. A Co is 15 ((150 x 30%) – 30).

b. B1 Co is 10 ((200 x 30%) – 50).

c. B2 Co is 5 ((500 x 20%) x 30%) – (125 x 20%).

8. Accordingly, the allocation to each entity is as follows:

a. The cross-crediting allocation formula makes an allocation to A Co of 15 (30 x 15/30). This is allocated from UPE to A Co under Article 4.3.2(c). None of this income is Passive Income and therefore Article 4.3.3 does not apply.

b. The cross-crediting allocation formula makes an allocation to B1 Co of 10 (30 x 10/30). This is allocated from UPE to B1 Co under Article 4.3.2(c). None of this income is Passive Income and therefore Article 4.3.3 does not apply.

c. The cross-crediting allocation formula makes an allocation to B2 Co of 5 (30 x 5/30). However, as B2 Co is not a Constituent Entity, there is no allocation of Covered Taxes to B2 Co under Article 4.3.2.

9. The income of B2 Co is not included in the GloBE Income of UPE. Accordingly, the 5 in Covered Taxes which has been allocated to B2 Co under the formula is excluded from the Adjusted Covered Taxes of UPE under Article 4.1.3(a).

Example 4.3.2-7

1. Jurisdiction X has a worldwide tax system with cross-crediting and a foreign tax credit limitation which is calculated by reference to baskets of foreign source income. A Main Entity operating in Jurisdiction X has PE1 operating in Jurisdiction A. PE1 has 200 of GloBE Income which is all included in the taxable income of Main Entity. PE1 has accrued 30 in Covered Taxes to Jurisdiction A on this income (at a 15% rate). The Main Entity also has 300 of domestic income (which takes into account 100 of domestic deductions which are allocated to the foreign source income both for the purposes of determining taxable income from foreign sources and applying the foreign tax credit limitation in Jurisdiction X but are not deductible under the tax system in the PE Jurisdiction).

2. The Main Entity's tax liability in Jurisdiction X is calculated as follows:

a. Taxable Income = 500 (100 + 400).

b. Tax rate = 20%.

c. Pre-foreign tax credit tax liability = 100.

d. Foreign Source Income after allocable expenses = 100 (200 – 100).

e. Gross foreign tax credits = 30.

f. Allowable foreign tax credits = 20 = 100×100/500.

g. Tax liability = 80 (100 – 20).

3. The GloBE calculation applies as follows:

a. Step 1 - Calculate the foreign source income of each PE and Entity

i. The foreign source income of PE1 is 100 (200 of income from PE1 is included in the Main Entity's taxable income but 100 of the expenses of the Main Entity are allocated to PE1 both for the purposes of calculating the taxable income from foreign sources and applying the foreign tax credit limitation).

ii. The Main Entity has no foreign source income.

b. Step 2 – determine the Allocable Covered Taxes for the foreign branch basket

i. The Allocable Covered Taxes for the basket are determined by starting with the total tax liability (80) and subtracting the domestic tax liability calculated without regard to foreign source income. Where domestic expenses are allocated to foreign source income for the purposes of the foreign tax credit limitation, they are excluded from the determination of domestic source income. Accordingly, there is 400 of domestic source income (which is the domestic source income of 300 and then adding back 100 in expense allocated to foreign source income for the purposes of the foreign tax credit liability). The hypothetical domestic tax liability on this income is 80 (400 x 20%).

ii. Accordingly, the Allocable Covered Taxes for the foreign branch basket is 0 (80 – 80). There are no Allocable Covered Taxes.

c. As there are no Allocable Covered Taxes to be allocated, the remaining steps are unnecessary.

4. In this example, there is no amount of Main Entity taxation to allocate to the PE. Jurisdiction X's domestic tax system requires an allocation of expenses for the purposes of determining foreign source income and applying its foreign tax credit limitation (200 – 100). The PE has accrued 30 of tax with respect to this income which exceeds the pre-tax credit liability which arises with respect to this income. Accordingly, there is no amount to allocate to the PE.

Example 4.3.2-8

1. Jurisdiction X has a worldwide tax system with cross-crediting and a foreign tax credit limitation which is calculated by reference to baskets of foreign source income. A Main Entity operating in Jurisdiction X has PE1 and PE2 operating in Jurisdictions A and B respectively. PE1 has 100 of GloBE Income which is all included in the taxable income of Main Entity. PE1 has accrued 5 in Covered Taxes to Jurisdiction A on this GloBE Income (at a 5% rate). PE2 has 200 of GloBE Income which is all included in the taxable income of the Main Entity. PE2 has accrued 10 of Covered Tax (at a 5% rate). There are no expenses allocated to PE1 under this methodology. The Main Entity also has 300 of domestic income taking into account the 200 of deductions which are allocated to the foreign source income only for the purposes of applying the foreign tax credit limitation. The 200 of deductions allocated to the foreign branch basket.

2. The Main Entity's tax liability in Jurisdiction X is calculated as follows:

a. Taxable Income = 600 (100 + 200 + 300).

b. Tax rate = 20%.

c. Pre-foreign tax credit tax liability = 120.

d. Foreign Source Income after allocable expenses = 100 (300 – 200).

e. Gross foreign tax credits = 15 (5 + 10).

f. Allowable foreign tax credits = 20 (120×100/600).

g. Tax liability = 105 = (120 – 15).

3. The GloBE calculation applies as follows:

h. Step 1 - Calculate the foreign source income of each PE and Entity

i. The foreign source income of PE1 is 100 (100 of income from PE1 is included in the Main Entity's taxable income).

ii. The foreign source income of PE2 is 200 (200 of income from PE2 is included in the Main Entity's taxable income).

iii. The Main Entity has no foreign source income.

i. Step 2 – determine the Allocable Covered Taxes for the foreign branch basket.

  i. The Allocable Covered Taxes for the basket is determined by starting with the total tax liability (105) and subtracting the domestic tax liability calculated without regard to foreign source income. Where domestic expenses are allocated to foreign source income for the purposes of the foreign tax credit limitation, they are excluded from the determination of domestic source income. Accordingly, there is 500 of domestic source income (which is the domestic source income of 300 and then adding back the 200 in expense allocated to foreign source income for the purposes of the foreign tax credit limitation). The hypothetical domestic tax liability on this income is 100 (500 x 20%).

  ii. Allocable Covered Taxes is 5 (105 – 100).

j. Step 3 – determine the Cross-Crediting Allocation Key with respect to each Entity

  i. The Cross-Crediting Allocation Key for a PE is given by the formula:

$$\begin{aligned} &Cross - Crediting\ Allocation\ Key\ for\ a\ PE \\ &\qquad = (Main\ Entity\ taxable\ income\ arising\ from\ the\ PE \times applicable\ tax\ rate) \\ &\qquad - creditable\ foreign\ taxes\ accrued\ with\ respect\ to\ the\ PE's\ income \end{aligned}$$

PE1's Cross-Crediting Allocation Key is 15 ((100 x 20%) – 5).

PE2's Cross-Crediting Allocation Key is 30 ((200 x 20%) – 10).

k. Step 4 – determine the allocation to each PE

  i. The allocation to each Entity is given by the formula:

$$\begin{aligned} &Allocation\ to\ each\ PE\ or\ Entity \\ &\qquad = Allocable\ Covered\ Taxes \\ &\qquad \times \left(\frac{Cross - Crediting\ Allocation\ Key\ for\ the\ PE\ or\ Entity}{The\ sum\ of\ all\ Cross - Crediting\ Allocation\ Keys}\right). \end{aligned}$$

Accordingly, the allocation to each PE is as follows:

Allocation to PE1 = 5 x (15 / (15+30)) = 1.67.

Allocation to PE2 = 5 × (30 / (15+30)) = 3.33.

4. The final result is that the Main Entity has accrued 105 in Covered Taxes, of which 1.67 is allocated to PE1, 3.33 is allocated to PE2, and the remainder (100) is not reallocated.

Example 4.3.2-9

1. Parent Entity is located in Jurisdiction X and has Sub Co 1 located in Jurisdiction Y. Sub Co 1 earns 100 in profit in Jurisdiction Y and accrues 10 in tax (at a 10% tax rate). Sub Co 1 makes a distribution of 90 to Parent Entity. Under Jurisdiction X's tax system, Parent Entity includes the distribution of 90 in its taxable income. Jurisdiction X grants Parent Entity an indirect tax credit for the foreign taxes paid with respect to that distribution (10) but adds the amount of these indirect foreign tax credits to the taxable income of the Parent Entity. As a result, Parent Entity has an increase in taxable income of 100 and an indirect foreign tax credit of 10.

2. For the purposes of applying the above cross-crediting allocation formula, the foreign source income of Parent Entity is 100. This includes the received distribution of 90 and the 10 'gross-up' for the indirect foreign tax credit amount.

Example 4.3.2-10

1. Main Entity is located in Jurisdiction X and has PE1 (in Jurisdiction A) and PE2 (in Jurisdiction B). In Year 1, Main Entity makes domestic source income of 100. PE1 has a loss of 40 and PE2 has income of 40. In Year 2, the Main Entity has domestic source income of 100, PE1 has income of 40 and PE2 has income of 40. Under Jurisdiction X's tax system, Main Entity directly includes the income or loss of each PE in its taxable income. Jurisdiction X has a 20% tax rate. Jurisdiction A does not have a corporate income tax and Jurisdiction B has a tax rate of 10%. Jurisdiction X has a foreign tax credit limitation equal to 20% of net foreign source income. Any unused foreign tax credits are carried forward to a following year.

2. In Year 1, Main Entity's tax in Jurisdiction X is as follows:

   a. Taxable Income = 100 (100 - 40 + 40).
   b. Tax rate = 20%.
   c. Pre-foreign tax credit tax liability = 20 (100 x 20%).
   d. Foreign Source Income after allocable expenses = 0 (40 – 40).
   e. Gross foreign tax credits = 4.
   f. Allowed foreign tax credits = 0 (20×(0/100)). 4 in foreign tax credits is carried forward.
   g. Tax liability = 20 = (20 – 0).

3. In Year 2, Main Entity's tax in Jurisdiction X is as follows:

   a. Taxable Income = 180 (100 + 40 + 40).
   b. Tax rate = 20%.
   c. Pre-foreign tax credit tax liability = 36 (180 x 20%).
   d. Foreign Source Income after allocable expenses = 80 (40 + 40).
   e. Gross foreign tax credits = 8 (4 + 4) (this includes 4 in carried forward tax expense).
   f. Allowed foreign tax credits = 8 (as the foreign tax credit limitation is 16 (36 ×80/180)).
   g. Tax liability = 28 = (36 – 8).

4. In Year 1, there is no allocation of tax from the Main Entity to either PE. As Jurisdiction X's regime sets off PE1's loss against PE2's income in applying its foreign tax credit limitation, the Main Entity has no foreign source income for Year 1 and there is no amount of Allocable Covered Taxes to be allocated under the formula. There is also no net loss to be taken into account by the Main Entity in determining its taxable income as the loss of PE1 is effectively cancelled out by the income in PE2. As a result, Article 3.4.5 does not apply to reallocate any GloBE Loss from PE1 to the Main Entity. The Adjusted Covered Taxes do not take into account any deferred tax expense for the carried forward foreign tax credits due to the operation of Article 4.4.1(e).

5. In Year 2, the Main Entity has foreign source income of 80. The Allocable Covered Taxes are 8 (28 - (100 x 20%)). This takes into account current taxes as well as the carried forward foreign tax credit. This amount is then allocated between PE1 and PE2 in accordance with their respective Cross-Crediting Allocation Keys (the Main Entity has no foreign source income of its own). PE1's Cross-Crediting Allocation Key is 8 ((40 x 20%) - 0) and PE2's Cross-Crediting Allocation Key is 4 (40 x 20%) – 4). For the purposes of calculating the Cross-Crediting Allocation Key, the taxes accrued by the PE include the current year taxes *but do not take into account* the unused foreign tax credits from the previous year which have been carried forward. As a result, 5.33 is allocated to PE1 (8 x (8/12)) and 2.67 is allocated to PE2 (8 x 4/12). PE1 has an ETR of 13.3% (5.33/40) and PE2 has an ETR of 16.7% ((4+2.67)/40).

Example 4.3.2-11

1. This example is identical to the example above except that Jurisdiction X's foreign tax credit limitation is calculated separately for each Permanent Establishment. That is, there is no netting of foreign branch income and loss in setting the foreign tax credit limitation. This means that there is still 40 in foreign source income (as there is no netting) and the 4 foreign tax credits are allowed for Year 1.

2. In Year 1, Main Entity's tax in Jurisdiction X is as follows:

   a. Taxable Income = 100 (100 - 40 + 40).

   b. Tax rate = 20%.

   c. Pre-foreign tax credit tax liability = 20 (100 x 20%).

   d. Foreign Source Income after allocable expenses = 40.

   e. Gross foreign tax credits = 4.

   f. Allowed foreign tax credits = 4 (as the foreign tax credit limitation is 8 (20×40/100).

   g. Tax liability = 16 = (20 – 4).

3. In Year 2, Main Entity's tax in Jurisdiction X is as follows:

   a. Taxable Income = 180 (100 + 40 + 40).

   b. Tax rate = 20%.

   c. Pre-foreign tax credit tax liability = 36 (180 x 20%).

   d. Foreign Source Income after allocable expenses = 80 (40 + 40).

   e. Gross foreign tax credits = 4.

   f. Allowed foreign tax credits = 4 (as the foreign tax credit limitation is 16 (36×80/180)).

   g. Tax liability = 32 (36 – 4).

4. In Year 1, PE2 has 40 of foreign source income (Step 1). The Allocable Covered Taxes are equal to the total tax liability (16) less the domestic tax liability calculated without regard to foreign source income but taking into account deductions for a foreign PE Loss which gives rise to a GloBE Loss under Article 3.4.5 (12 ((100 – 40) x 20%)). This results in Allocable Covered Taxes of 4 (16 – 12) (Step 2). As PE2 is the only entity with foreign source income, all 4 in Allocable Covered Taxes are allocated to PE2 (Steps 3 and 4). Accordingly, PE2 has an ETR of 20% ((4 + 4) / 40).

5. Assuming the other conditions have been met, Art. 3.4.5 applies with respect to PE1 in Year 1. The Main Entity takes PE1's GloBE Loss into account in calculating its GloBE Income or Loss. Accordingly, the Main Entity's GloBE Income is only 60 for Year 1. It has an ETR of 20% (12/60). Due to the operation of Art. 3.4.5, PE1 has no GloBE Income or Loss. It also has no Covered Taxes.

6. In Year 2, there is foreign source income of 40 for PE2 (Step 1). PE1's 40 of income is treated as domestic source income of the Main Entity as it is income of a foreign PE which offsets a previously included loss for which there had been a GloBE reallocation under Article 3.4.5. The Allocable Covered Taxes are 4 (32 – (140 x 20%)). In calculating the Allocable Covered Taxes, the income of PE1 which is reallocated to the Main Entity under Art. 3.4.5 is treated as domestic source income which is relevant in determining the hypothetical domestic tax liability. As PE2 is the only entity with foreign source income, the 4 in Allocable Covered Taxes is allocated to PE2. As a result, in Year 2, the Main Entity has an ETR of 20% (28/140), PE1 has no GloBE Income or Loss (and no Covered Taxes) and PE2 has an ETR of 20% ((4 + 4)/40).

Example 4.3.2-12 – Carry-forwarded losses from a PE.

1. The Main Entity (in Jurisdiction X) has PE1 (Jurisdiction A) and PE2 (Jurisdiction B). Jurisdiction X has a tax rate of 20% and Jurisdiction A has a tax rate of 5%. In Year 1, PE1 makes a loss of 40. There is no income or loss for Main Entity and PE2. In Year 2, Main Entity has income of 100, PE1 has income of 40 and PE2 has income of 40. In Year 2, PE1 accrues no tax despite the 5% tax rate because it has carried forward losses from the previous year under Jurisdiction A's tax system. PE2 accrues 4 of tax in Jurisdiction B (10% rate). Under its domestic tax system, Jurisdiction X takes into account carry-forward losses from foreign Permanent Establishments when determining the foreign tax credit limitation.

2. In Year 1, Main Entity's tax in Jurisdiction X is as follows:

   a. Taxable Income = -40.
   b. Tax rate = 20%.
   c. Pre-foreign tax credit tax liability = 0.
   d. Foreign Source Income after allocable expenses = 0.
   e. Gross foreign tax credits = 0.
   f. Allowed foreign tax credits = 0.
   g. Tax liability = 0.

3. In Year 2, Main Entity's tax in Jurisdiction X is as follows:

   a. Taxable Income = 140 (100 + 40 + 40 - 40) (including a carry-forward loss of 40).
   b. Tax rate = 20%.
   c. Pre-foreign tax credit tax liability = 28 (140 x 20%).
   d. Foreign Source Income after allocable expenses = 40 (this is PE2's foreign source income of 40. PE1's income of 40 has been reallocated to the Main Entity under Art. 3.4.5 along with the 40 carry forward loss which had previously been allocated to the Main Entity in Year 1).
   e. Gross foreign tax credits = 4.
   f. Allowed foreign tax credits = 4 (as the foreign tax credit limitation is 8 (28 x 40/140. In this example, the Main Entity jurisdiction takes into account the carry forward loss in calculating the FTC limitation).
   g. Tax liability = 24 = (28 – 4).

4. In Year 1, there is no tax liability to allocate from the Main Entity to either PE. PE1's loss is taken into account in determining the taxable income of the Main Entity and, assuming it meets the other criteria, Article 3.4.5 applies to allocate the GloBE Loss from PE1 to the Main Entity. In Year 1, there is a GloBE Loss of 40 in the Main Entity. There is also a GloBE Loss Deferred Tax Asset of 6 (40 x 15%).

5. In Year 2, the Allocable Covered Taxes is 4 (24 – (100 x 20%)). The total tax liability is 24. The domestic tax liability takes into account the 100 of domestic income less the 40 carry forward loss (from the previously allocated 40 loss from PE1 in Year 1) plus the reallocated 40 from PE1 under Article 3.4.5 in Year 2). Accordingly, the hypothetical domestic tax liability is 20 ((100 – 40 + 40) x 20%). PE1 has no foreign source income in Year 2 as its 40 of income is treated as domestic source income of the Main Entity and has been allocated under Art. 3.4.5. PE2 has foreign source income of 40. There is no foreign source income of the Main Entity itself. As a result, all of the Allocable Covered Taxes (4) are allocated to PE2.

6. In Year 2, the GloBE Income of Main Entity is 140 (100 + 40 under Article 3.4.5). Its Adjusted Covered Taxes are 26. This is 20 of domestic tax and 6 as a result of the reversed GloBE Loss DTA of 6 from Year 1 (calculated at 15% of the 40 loss). This is an ETR of 18.5%. This is the outcome of an effective blending of the 20% rate on the domestic income of 100 and the reversal of the GloBE Loss DTA of 6 which has been calculated as 15% of a 40 loss. PE1 has no GloBE Income (as its income is treated as domestic source income of the Main Entity and has been reallocated under Article 3.4.5) and no Covered Taxes. PE2 has 40 in GloBE Income and 8 in Covered Taxes (4 of its own taxes at a 10% rate and 4 of Main Entity taxes which have been allocated). Accordingly, PE2 has an ETR of 20%.

Example 4.3.2-13 – Deferred Tax Expense or benefit interaction

5. An MNE Group with a UPE in Jurisdiction X is subject to a worldwide tax system applied by Jurisdiction X. Under this tax system, Jurisdiction X imposes tax on both domestic and foreign source income, including dividends received from foreign corporations, and allows a tax credit for taxes paid on foreign source income. Jurisdiction X has a cross-crediting foreign tax credit regime pursuant to which taxes paid in all foreign jurisdictions on all categories of foreign source income are creditable against the UPE's tax liability arising from foreign source income. Under the Jurisdiction X's domestic tax regime, the foreign tax credit allowed for any given Fiscal Year cannot exceed the tax liability arising from the income inclusion of foreign sources and the foreign tax credit limitation. The tax rate in Jurisdiction X is 20%.

6. The UPE has PEs in jurisdictions A (PE1), B (PE2) and owns a subsidiary (C Co) in jurisdiction C. The UPE owns 100% of C Co and all of C Co's after-tax profits are distributed to the UPE annually. C Co is not subject to the CFC Tax Regime of Jurisdiction X. The UPE wholly owns a CFC in jurisdiction A (A Co), which is a Constituent Entity. A Co's income is Passive Income. It also has a 20% Ownership Interest in B Co which is located in Jurisdiction B and is neither a Constituent Entity nor a CFC. The dividend income from B Co is included in the UPE's taxable income under the cross-crediting regime but is not within the UPE's GloBE Income or Loss.

Year 1

7. In year 1, UPE earns domestic source income of 400, PE1 generates income of 500, PE2 generates income of 100, and A Co (CFC) generates income of 100 which is passive income. All of the PE income is active income. The UPE derives dividend income of 200 from B Co and dividend income of 300 from C Co. The UPE also derives royalty income of 100 from a 3rd party company located in Jurisdiction C. Jurisdiction X also has a foreign tax credit limitation equal to its domestic tax liability multiplied by the proportion of foreign source income to total income. Suppose that in Jurisdiction A, Jurisdiction B and Jurisdiction C, the financial income and taxable income are the same.

8. Tax rates and Tax accrued with respect to the income of the UPE, each PE, subsidiary, CFC and non-Constituent Entity in the jurisdiction where they are located are as follows:

Jurisdiction	Entity	Financial Income	Taxable Income	Corporate income tax rate	Corporate income tax	Withholding tax rate	Withholding tax
Jurisdiction X	UPE	400	400	20%	80		
Jurisdiction A	PE1	500	500*	5%	25		
	A Co (CFC)	100	100	5%	5		
Jurisdiction B	PE2	100	100*	25%	25		
	B Co** (Non-CE)	200	200	25%	50	10%	15
Jurisdiction C	C Co (Subsidiary)	300	300	5%	15	5%	14.25
	3rd party company	100				10%	10

**Note that the taxable income for these amounts differs between the tax system applicable in the jurisdiction of the PE and the tax system of the UPE under its worldwide system.*

***The figures with respect to B Co in this table reflect UPE's proportionate share of the income and taxes of B Co. That is, they are 20% of the total income and taxes of B Co.*

9. At the beginning of Year 1, PE1 purchases equipment with the carrying value of 400. For accounting purposes, the equipment is depreciated in 2 years and Jurisdiction A also depreciates such asset in 2 years under domestic tax regime. However, Jurisdiction X allows for immediate expense of the asset for tax purposes. In Year 1, PE 2 has recorded a reserve for bad debt of 100. However, the bad debt is only deductible in Jurisdiction X for tax purposes when the debt is proven to be uncollectible. Suppose there is no timing differences with respect to other foreign source income or domestic income of the UPE. As a result, there are differences between the taxable income of PE1 and PE2 as calculated under the tax regime in the jurisdiction of the PE and as calculated under Jurisdiction X's tax regime as applicable to foreign Permanent Establishments.

Allocation of cross-border current tax expense

10. Step 1: determine the amount of each foreign source income which in included in the taxable income of the UPE.

	Jurisdiction A		Jurisdiction B		Jurisdiction C	
	PE1	A Co	PE2	B Co	C Co	3rd Party Company
Taxable Income	300	100	200	200	300	100

Note: Because equipment in PE1 can be expensed immediately in Jurisdiction X, the taxable income of PE 1 included in Jurisdiction X is 300 while its accounting income is 500. This is because for tax purposes, PE1 has a 400 deduction in Year 1 (immediate expensing) while for accounting purposes the 400 carrying value is treated as an expense of 200 in Year 1 and 200 in Year 2. Because the reserve for bad debt is not allowed to be deducted in Jurisdiction X in Year 1, the taxable income of PE2 included in Jurisdiction X is 200 rather than the 100 accounting profit.

11. Step 2: Calculate the Allocable Covered Taxes

a. Taxable income of the UPE is 1600 = 400+300+100+200+200+300+100

b. Pre-credit tax liability payable in Jurisdiction X is 320 = 1600×20%

c. Tax accrued in foreign jurisdictions is 159.25 = 25+5+25+50+15+15+14.25+10

d. Foreign tax credit limitation is 240 = 320×(1200/1600)

e. Allowed foreign tax credit is 159.25 which is the lower of c and d

f. Tax payable in Jurisdiction X is 160.75 = 320-159.25

g. Allocable Covered Taxes = 160.75- (400×20%) = 80.75

12. Step 3: Determine the Cross-crediting Allocation Key for each PE and Entity's foreign source income

Entity	Main Entity taxable income arising from the foreign source income	Applicable tax rate	Tax accrued with respect to the foreign source income	Cross-Crediting Allocation Key
	[1]	[2]	[3]	[4] = ([1]×[2]) - [3]
PE1	300	20%	25	35
A Co	100		5	15
PE2	200		25	15
B Co	200		65	0
C Co	300		29.25	30.75
Main Entity	100		10	10
In total				105.75

13. Step 4: Determine allocation to each PE and Entity

	Allocable Covered Taxes	Cross-Crediting Allocation key for the Entity	The sum of all Cross-Crediting Allocation Keys	Allocation to the Entity
	[1]	[2]	[3]	[4] = [1] x ([2]/[3])
PE1	80.75	35	105.75	26.73
A Co		15		11.45
PE2		15		11.45
B Co		0		0
C Co		30.75		23.48
Main Entity		10		7.64
In total				80.75

14. For purposes of Article 4.3.3, the ETR for A Co (ignoring any CFC Tax Regimes and tax transparency regimes) would have been 5% (= 5/100) and thus the Top-up Tax Percentage for A Co is 10%(=15%-5%). Therefore, the current tax expense of 10 is allocated to A Co and the remaining amount of 1.45 (=11.45-10) is included in the Adjusted Covered Taxes of the UPE.

15. As a result, of the 160.75 in current taxes accrued by the Main Entity (UPE), 71.66 (=80.75 – 7.64 – 1.45) is allocated between its PE1, A Co, PE2, B Co and C Co. The remaining 89.09 is not reallocated and remains as Covered Tax of UPE.

Allocation of <u>*deferred tax expense or benefit*</u>

16. At the end of Year 1, the carrying value of the equipment of PE1 is 200, and the tax basis of the equipment is 0. The timing difference is 200 and the UPE records a DTL of 40(=200×20%) with respect to the equipment based on the timing difference. There is no creditable tax credit in relation to the equipment. The deferred tax expense arising from the recognition of the DTL is recast to 30 and allocated to PE1.

17. With respect to the reserve for bad debt in PE2, there is a deductible timing difference of 100 in the UPE. The UPE records a DTA of 20(=100×20%) accordingly. The deferred tax benefit arising from the recognition of the DTA is recast to 15 and allocated to PE2.

Adjusted Covered Taxes after allocation

18. The calculation of Adjusted Covered Taxes is as follows:

Jurisdiction	Entity	Tax accrued in each jurisdiction	Allocation of Current tax expense	Current tax expense after allocation	Deferred tax expense after recast before allocation	Allocation of Deferred tax	Deferred tax expense included	Adjusted Covered Taxes
		[1]	[2]	[3]=[1]+[2]	[4]	[5]	[6]=[4]+[5]	[7]=[3]+[6]
X	UPE	160.75	-71.66+10*	99.09	15	-15	0	99.09
A	PE1	25	26.73	51.73		30	30	81.73
	A Co (CFC)	5	10	15				15
B	PE2	25	11.45	36.45		-15	-15	21.45
	B Co (Non-CE)	65	0	65				65
C	C Co (Subsidiary)	29.25	23.48	52.73				52.73

**Note: The 10 of withholding tax paid in jurisdiction C with respect to the royalty income of UPE shall be added to the Adjusted Covered Taxes of the UPE.*

ETR for each jurisdiction

19. The calculations of the Year 1 ETR for each jurisdiction are as follows:

	Jurisdiction X	Jurisdiction A	Jurisdiction B	Jurisdiction C
GloBE Income	400+100*	600	100	300
Adjusted Covered Taxes	99.09	96.73	21.45	52.73
ETR	19.82%	16.12%	21.45%	17.58%

**Note: The 100 of royalty income derived from a 3rd party company in Jurisdiction C shall be added to the GloBE Income of the UPE.*

Year 2

20. The facts are the same as Year 1, except that the bad debt in PE 2 has been proven to be uncollectible in year 2 and is allowed as a deduction for tax purposes in Jurisdiction X.

Allocation of cross-border current tax expense

21. Step 1: determine the amount of foreign source income which is included in the taxable income of the UPE.

	Jurisdiction A		Jurisdiction B		Jurisdiction C	
	PE1	A Co	PE2	B Co	C Co	3rd Party Company
Taxable Income	700*	100	0*	200	300	100

**Note: As all of the depreciation of the equipment in PE1 was claimed in Year 1 (under immediate expensing), there are no further deductions for this equipment under Jurisdiction X's tax law in Year 2. Accordingly, the taxable income of PE1 included in Jurisdiction X is 700 (500 + 200). Furthermore, the bad debt of PE2 which had been taken as an expense for accounting purposes in Year 1 is allowed as a deduction for tax purposes in Jurisdiction X in Year 2. Accordingly, the taxable income of PE2 included in Jurisdiction X is 0 (100 – 100).*

22. Step 2: Calculate the Allocable Covered Taxes

a. Taxable income of the UPE is 1800 = 400+700+100+0+200+300+100

b. Pre-credit tax liability payable in Jurisdiction X is 360 = 1800×20%

c. Tax accrued in foreign jurisdictions is 159.25 = 25+5+25+50+15+15+14.25+10

d. Foreign tax credit limitation is 280 = 360×(1400/1800)

e. Allowed foreign tax credit is 159.25 which is the lower of c and d

f. Tax payable in jurisdiction X is 200.75 = 360-159.25

g. Allocable Covered Taxes = 200.75 – (400×20%) = 120.75

23. Step 3: Determine the Cross-crediting Allocation Key for each PE and Entity.

Entity	Main Entity taxable income arising from the foreign source income	Applicable tax rate	Tax accrued with respect to the foreign source income	Cross-Crediting Allocation Key
	[1]	[2]	[3]	[4] = ([1]×[2]) - [3]
PE1	700	20%	25	115
A Co	100		5	15
PE2	0		25	0
B Co	200		65	0
C Co	300		29.25	30.75
Main Entity	100		10	10
In total				170.75

24. Step 4: Determine allocation to each PE and Entity

	Allocable Covered Taxes	Cross-Crediting Allocation key for the Entity	The sum of all Cross-Crediting Allocation Keys	Allocation to the Entity
	[1]	[2]	[3]	[4] = [1] x ([2]/[3])
PE1	120.75	115	170.75	81.32
A Co		15		10.61
PE2		0		0
B Co		0		0
C Co		30.75		21.75
Main Entity		10		7.07
In total				120.75

25. For purposes of Article 4.3.3, assume that the Top-up Tax Percentage for A Co is 10%. Therefore, the current tax expense of 10 is allocated to A Co and the remaining amount of 0.61 (=10.61-10) is included in the Adjusted Covered Taxes of the UPE.

26. As a result, of the 200.75 in current taxes accrued by the Main Entity (UPE), 113.07 (120.75 – 7.07 – 0.61) is allocated between its PE1, A Co, PE2, B Co and C Co. The remaining 87.68 is not reallocated and remains as Covered Tax of UPE.

Allocation of deferred tax expense or benefit

27. At the end of Year 2, the carrying value of the equipment of PE1 is 0, and the tax basis of the equipment is 0. There is no timing difference and the UPE records a reversal of the DTL that was recast to 30 with respect to the equipment based on the timing difference. The deferred tax benefit of 30 arising from this DTL reversal is allocated to PE1.

28. With respect to the reserve for bad debt in PE2, there is no longer a timing difference at the end of Year 2 and the UPE records a reversal of the DTA that was recast to 15 accordingly. The deferred tax expense of 15 arising from this DTA reversal is allocated to PE2.

Adjusted Covered Taxes after allocation

29. The calculation of Adjusted Covered Taxes are as follows:

Jurisdiction	Entity	Tax accrued in each jurisdiction	Allocation of Current tax expense	Current tax expense after allocation	Allocable deferred tax expense for GloBE purposes	Allocation of deferred tax	Deferred tax expense included	Adjusted Covered Taxes
		[1]	[2]	[3]=[1]+[2]	[4]	[5]	[6]=[4]+[5]	[7]=[3]+[6]
X	UPE	200.75	-113.07+10*	97.68	-15	+15	0	97.68
A	PE1	25	81.32	106.32		-30	-30	76.32
	A Co (CFC)	5	10	15				15
B	PE2	25	0	25		15	15	40
	B Co (Non-CE)	65	0	65				65
C	C Co (Subsidiary)	29.25	21.75	51				51

**Note: The 10 of withholding tax paid in jurisdiction C with respect to the royalty income of UPE shall be added to the Adjusted Covered Taxes of the UPE.*

ETR for each jurisdiction

30. The calculations of the Year 2 ETR for each jurisdiction are as follows:

	Jurisdiction X	Jurisdiction A	Jurisdiction B	Jurisdiction C
GloBE Income	400+100*	600	100	300
Adjusted Covered Taxes	97.68	91.32	40	51
ETR	19.54%	15.22%	40%	17%

**Note: The 100 of royalty income derived from a 3rd party company in Jurisdiction C shall be added to the GloBE Income of the UPE.*

4. Allocation of Cross-border Deferred Taxes

4.1. Extension of the Substitute Loss Carry-forward DTA Introduction

1. The February 2023 Administrative Guidance introduced the Substitute Loss Carry-forward DTA which applied where a Parent Entity has a domestic tax loss in the same year as foreign CFC income against which it is used. The same issues arise both with respect to other Constituent Entities (foreign Permanent Establishments, Hybrid Entities and Reverse Hybrid Entities) and where the domestic loss of the Main Entity or Parent Entity is carried forward and used against the income of a Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity in a subsequent year. This guidance addresses the application of the Substitute Loss Carry-forward DTA in such cases. The guidance only addresses cases where the relevant loss arises from the Main Entity or Parent Entity jurisdiction (that is, a domestic source loss). It does not address cases where a loss arising from one Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity is used to offset income from another Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity.

2. The Inclusive Framework will further consider whether this mechanism is fully effective in addressing cases where losses arising from the Main Entity or Parent Entity jurisdiction are used to offset income arising from a Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity. It will consider whether the applicable mechanism (including limitations on the application of the Substitute Loss Carry-forward DTA) is sufficient in all cases. The Inclusive Framework will also consider whether adjustments are appropriate in cases where a loss arising from one Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity is used against taxable income arising from another Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity under the Main Entity or Parent Entity's domestic tax law.

3. Certain domestic tax regimes require a Constituent Entity with a domestic tax loss to use that loss against foreign income prior to the use of the foreign tax credits which arise with respect to that income. Under certain domestic tax regimes, these foreign tax credits can be carried forward and used against future domestic income. Paragraphs 82.1 to 82.4 of the Commentary to Article 4.4.1€ clarify that in such cases a 'Substitute Loss Carry-forward DTA' can arise (subject to certain limitations).

4. Paragraph 82.2 of the Commentary to Article 4.4.1(e) sets out the general requirements for a Substitute Loss Carry-forward DTA to arise where the excess foreign tax credits can be carried forward into a subsequent year. Although the Substitute Loss Carry-forward DTA guidance was aimed at CFC Tax Regimes, neither paragraph 82.1 nor paragraph 82.2 refer specifically to a CFC Tax Regime. Arguably, the language in these paragraphs applies to foreign source income arising for a Parent Entity under a CFC Tax Regime or via a Hybrid Entity or Reverse Hybrid Entity and for a Main Entity with respect to a foreign Permanent Establishment.

5. Paragraph 82.3 of the Commentary to Article 4.4.1(e) notes that certain CFC Tax Regimes produce equivalent results despite not allowing for excess foreign tax credits to be carried forward through a loss recapture mechanism. In such cases, the GloBE Rules also create a Substitute Loss Carry-forward DTA. Unlike paragraphs 82.1 and 82.2, paragraph 82.3 of the Commentary to Article 4.4.1(e) refers to CFC Tax Regimes specifically. It does not address whether it applies to cases where equivalent regimes arise with respect to a Main Entity and its foreign Permanent Establishments or a Constituent Entity which includes the income of a foreign Hybrid Entity or foreign Reverse Hybrid Entity in its domestic taxable income.

4.1.1. Issues

6. It is necessary to clarify whether the guidance on Substitute Loss Carry-forward DTAs in paragraph 82.3 is also applicable to foreign source income derived from Permanent Establishments, Hybrid Entities or Reverse Hybrid Entities where the conditions of the guidance are also met.

7. It is also necessary to clarify whether the guidance on Substitute Loss Carry-forward DTAs also applies to domestic source tax loss carry-forwards.

4.1.2. Guidance

8. The Inclusive Framework has determined that the Substitute Loss Carry-forward DTA guidance in paragraphs 82.1 through 82.4 should be equally applicable to other similar domestic corporate income tax regimes which apply with respect to foreign Permanent Establishments and foreign subsidiaries that are treated as Hybrid Entities or Reverse Hybrid Entities under the GloBE Rules. The following amendments shown in bold text will be made to paragraphs 82.1 and 82.3 of the Commentary to Article 4.4.1(e):

> 82.1 However, there are circumstances where it is inappropriate for an amount of deferred tax expense with respect to the generation and use of tax credits to be excluded from the Total Deferred Tax Adjustment Amount for a Constituent Entity for the Fiscal Year. This is the case where a jurisdiction taxes foreign source income **(arising under a CFC Tax Regime or a regime which taxes foreign branches, Permanent Establishments, Hybrid Entities or Reverse Hybrid Entities)** and under the domestic tax rules of the jurisdiction, a Constituent Entity may use foreign tax credits to reduce domestic tax on income in a subsequent year after a domestic source loss has offset foreign source income. In such cases, without a specific exemption, the Constituent Entity's ETR may be lowered as the use of the foreign tax credit carry-forward is excluded from the Constituent Entity's Adjusted Covered Taxes. This result would occur notwithstanding the fact that the Constituent Entity will generate a smaller deferred tax asset in respect of a loss carry-forward because the domestic tax loss offset the foreign source income. Had the foreign source income not offset the domestic tax loss, the full amount of the tax loss would have been reflected in the Constituent Entity's deferred tax asset and therefore would be included in Covered Taxes when used by the Constituent Entity in future Fiscal Years.

82.3 Certain CFC Tax Regimes do not allow foreign tax credit carry-forwards but provide for equivalent results through a loss recapture mechanism that similarly allows excess foreign tax credits arising in a subsequent year to offset the domestic tax liability on the domestic source income that has been re-sourced as foreign source income. **Some domestic corporate income tax regimes provide equivalent treatment through a loss recapture mechanism (including in cases where a foreign tax credit carry-forward is also allowed) for the foreign income of foreign branches, Permanent Establishments or foreign subsidiaries which are treated as fiscally transparent under the domestic regime and which are Hybrid Entities or Reverse Hybrid Entities under the GloBE Rules.** Provided ~~this~~ **the applicable** loss recapture mechanism does not provide for an outcome that is more generous than the outcome that would be provided for if a loss carry-forward had been generated (i.e. a DTA recast at the Minimum Rate), then equivalent adjustments shall be made as necessary to recognise the effect of this mechanism on Adjusted Covered Taxes. To ensure equivalent outcomes under the GloBE Rules, **if the applicable regime does not allow foreign tax credit carry-forwards,** the amount of a Constituent Entity's tax loss for a tax year that is subject to a recapture mechanism is treated as giving rise to a Substitute Loss Carry-forward DTA arising in the year of the tax loss**. In any case in which such a loss recapture mechanism applies, whether or not a foreign tax credit carry-forward is allowed, the Substitute Loss Carry-forward DTA is treated as** reversing as the tax loss is recaptured, but only to the extent the recapture mechanism increases the foreign tax credit used to offset tax liability on income included in the Constituent Entity's GloBE Income or Loss.

9. The following paragraphs are to be added following paragraph [82.5] of the Commentary to Article 4.4.1(e):

82.6 The issues outlined above also arise where a Main Entity or Parent Entity has a domestic source tax loss carry-forward which is used to offset income of a foreign Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity. In these cases, where the carry-forward loss gave rise to a DTA which is taken into account for the purposes of determining the Main Entity or Parent Entity's Total Deferred Tax Adjustment Amount, the relevant deferred tax expense will reverse when the carry-forward loss is used, resulting in an increase in the Adjusted Covered Taxes of the Parent Entity. In these circumstances, a Substitute Loss Carry-forward DTA will be treated as arising and reversing to the same extent as if the domestic source tax loss carry-forward were a domestic source tax loss in the same tax year and subject to the limitations in paragraph [82.3]. Similarly, a Substitute Loss Carry-forward DTA is also available in these circumstances where equivalent results are provided through another mechanism (for example, by recharacterizing subsequent domestic income as foreign source income for the purposes of the foreign tax credit limitation) that does not provide for an outcome that is more generous than the outcome that would be provided for if a loss carry-forward had been generated (i.e. a DTA recast at the Minimum Rate).

82.7 The Inclusive Framework will further consider whether this mechanism is fully effective in addressing cases where losses arising from the Main Entity or Parent Entity jurisdiction are used to offset income arising from a Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity. It will consider whether the applicable mechanism (including limitations on the application of the Substitute Loss Carry-forward DTA) is sufficient in all cases. The Inclusive Framework will also consider whether adjustments are appropriate in cases where a loss arising from one Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity is used against taxable income arising from another Permanent Establishment, CFC, Hybrid Entity or Reverse Hybrid Entity under the Main Entity or Parent Entity's domestic tax law.

4.2. Principles for allocating deferred taxes from one Constituent Entity to another Constituent Entity

4.2.1. Introduction

10. The GloBE Rules seek to match Covered Taxes with the relevant GloBE Income. Where taxes are accrued by a Constituent Entity in one jurisdiction with respect to GloBE Income which is earned by a different Constituent Entity located in another jurisdiction, the GloBE Rules allow for the cross-border allocation of Covered Taxes. This is addressed in Article 4.3 of the GloBE Rules. The allocation of Covered Taxes from one Constituent Entity to another Constituent Entity is subject to various limitations, including a limitation on the allocation of taxes incurred with respect to Passive Income where the tax has been incurred with respect to a CFC, Hybrid Entity or Reverse Hybrid Entity. The Passive Income limitation is contained in Article 4.3.3.

11. Where Covered Taxes are expected to be accrued by a Constituent Entity in a different year to the year in which that Constituent Entity earns the GloBE Income to which they relate, the rules addressing timing differences operate to match the timing of Covered Taxes to the timing of GloBE Income. Timing differences are addressed in Article 4.4 of the GloBE Rules, which relies upon deferred tax accounting.

12. The Covered Taxes of the relevant Constituent Entity are adjusted by the Total Deferred Tax Adjustment Amount. This is the mechanism used to manage timing differences between the recognition of GloBE Income and the Covered Taxes which have been accrued with respect to that income. The Total Deferred Tax Adjustment Amount is based upon the deferred tax expense or benefit which has been accrued in the financial accounts of the Constituent Entity in accordance with Article 3.1 of the Model Rules (for example, the financial accounts used in the preparation of the Consolidated Financial Statements where Article 3.1.2 applies) (subject to adjustments). Where the deferred tax expense or benefit has been calculated by reference to a tax rate which is higher than the Minimum Rate, it will be 'recast' to the Minimum Rate. That is, the deferred tax assets and liabilities will be calculated as if the applicable tax rate were 15% if the relevant statutory rate is above 15%.

13. These two mechanisms (in Article 4.3 and Article 4.4) raise the question of how the GloBE Rules address cases where there is deferred tax expense or benefit recorded in the financial accounts of one Constituent Entity which arises due to the GloBE Income of a different Constituent Entity. This is clarified in paragraph 42 to the Commentary on Article 4.3.1, which confirms that the allocation of Covered Taxes from one entity to another under Article 4.3.1 also applies to deferred taxes under Article 4.4.

14. Deferred tax expenses or benefits with respect to CFC Tax Regimes can arise for different reasons. In some cases, a deferred tax liability arises because the income of the CFC is recognized for accounting purposes before it is recognized for tax purposes. For instance, a deferred tax liability could arise as a result of an asset owned by the CFC that is depreciated over 15 years under the applicable accounting standard but can be depreciated over 5 years for the purposes of the relevant CFC Tax Regime.

15. Alternatively, a deferred tax liability could arise because some CFC Tax Regimes only include the CFC's income in the taxable income of the Parent Entity in the following year. This one-year delay in the recognition of the income under the CFC Tax Regime creates a timing difference between the recognition of the income in the accounts of the CFC under the applicable accounting standard and the inclusion of that same income under the CFC Tax Regime applicable to the Parent Entity. Accordingly, the Constituent Entity will record a deferred tax liability in recognition of the tax due the following year.

16. Under certain circumstances, a Parent Entity may also record deferred tax assets with respect to a foreign subsidiary Constituent Entity which is subject to the applicable CFC Tax Regime. This could occur where there is an expense in the subsidiary which is recognised under the applicable accounting standard before it is allowed as a deduction under the applicable CFC Tax Regime. For example, the applicable accounting standard may provide a reserve for bad debts where bad debts are only deductible for tax purposes when the debt is proven to be un-collectible.

17. A further complication arises as different MNE Groups may adopt different practices with respect to the recognition of their deferred tax expenses or benefits where foreign tax credits arise with respect to the CFC's income. For example, if the timing of recognition of income was the same under both the CFC's domestic income tax regime and the CFC Tax Regime, the MNE Group may record the deferred tax liability on a 'net basis' or on a 'gross basis'. Consider a case where 100 income is recognised for accounting purposes in year 1 but for tax purposes (in both the CFC's domestic tax system and the CFC Tax Regime) it is recognised in Year 2. The applicable tax rate under CFC's domestic income tax regime is 15% and the tax rate under the Parent Entity's CFC Tax Regime was 20%. In Year 2, the Parent Entity will have a 20 pre-credit tax liability along with a 15 foreign tax credit for the 15 of tax paid by the CFC itself. As a result, the Parent Entity pays 5 of CFC Tax in Year 2.

18. If the MNE Group adopts a 'net basis' approach, the Parent Entity would simply record a 5 deferred tax liability in Year 1 when the income is recognised for accounting purposes. This 5 deferred tax liability reflects the net amount of CFC Tax Regime tax which is anticipated in Year 2 (after taking into account both the CFC's income and the foreign tax credit for the CFC taxes). Alternatively, the MNE Group may adopt a 'gross basis' approach and record a 20 deferred tax liability for the CFC's income as well as a 15 deferred tax asset for the anticipated foreign tax credit.

19. While the gross basis approach and the net basis approach net to the same position (5 deferred tax expense), the gross basis approach separately records a deferred tax asset for a foreign tax credit which, without further clarification, could be excluded from GloBE consideration due to the operation of Article 4.4.1(e). If the effect of the deferred tax asset for the expected foreign tax credit were ignored, the actual deferred tax expense that will arise under the CFC Tax Regime would be over-stated and it would not be appropriate to allocate the over-stated amount to the CFC under Article 4.3.2(c). In the example, there is only 5 of CFC tax that will arise in respect of the CFC's income and no more than that should be allocated to the CFC under Article 4.3.2. Furthermore, the entire amount of the DTL must be excluded from the computation of the Constituent Entity-owner's Adjusted Covered Taxes (except as provided in Article 4.3.3) because it is related to income that is earned by the CFC and is thus effectively excluded from the Constituent Entity-owner's financial accounting income and thus its GloBE Income.

20. Accordingly, guidance is needed to clarify that only the net deferred tax can be allocated under Article 4.3.2 and that any deferred tax expense or benefit in excess of the net amount is excluded from the Constituent Entity-owner's Adjusted Covered Taxes. The cross-border allocation of deferred taxes requires consideration of the relevant foreign tax credits in order to determine the net deferred tax amount for allocation. However, this does not mean that a deferred tax asset is granted with respect to foreign tax credits. Deferred tax assets with respect to tax credits are excluded from the Total Deferred Tax Adjustment Amount by the operation of Article 4.4.1(e).

21. The methodology for allocating deferred tax expenses or benefits from one Constituent Entity to another Constituent Entity must address two key limitations noted above. The first is the limitation on the allocation of Passive Income in Article 4.3.3. The second is the requirement to 'recast' deferred tax expenses or benefits to the Minimum Rate where they have been recorded at above the Minimum Rate.

22. With respect to the Passive Income limitation in Article 4.3.3, the limitation operates so that the Covered Taxes in excess of the limitation remain Covered Taxes of the Parent Entity. The Passive Income limitation is designed to prevent the pushdown of CFC Taxes on Passive Income from 'sheltering' other sources of low taxed profit in the subsidiary jurisdiction.

23. With respect to the 'recast' requirement in Article 4.4,1, the taxes referable to the amount in excess of 15% are counted when they are accrued in current tax expense. For example, if there is 100 of income recognized for accounting purposes in Year 1 but only recognized for tax purposes in Year 2 and an applicable tax rate of 20%, the Constituent Entity can only take into account a 15 deferred tax expense (that is, it has been subject to a 'recast' at 15%). This can allow the Constituent Entity to recognize 15 of Adjusted Covered Taxes in Year 1 to match the recognized GloBE Income. In Year 2, the timing difference reverses and the Constituent Entity pays 20 of tax under the domestic tax system. For GloBE purposes, this results in a net inclusion of 5 in Year 2 Adjusted Covered Taxes as a result of an inclusion of 20 of Covered Taxes and a reduction of 15 of reversed deferred tax expenses. The result is that the non-recast amount (the 5 in excess of the allowed deferred tax expense) is taken into account when it is accrued in current tax expense.

24. Blended CFC Tax regimes present specific challenges with respect to the cross-border allocation of taxes. At least in part as a result of these challenges, Authorised Financial Accounting Standards do not always require, or even allow, for deferred tax expenses or benefits to be calculated with respect to Blended CFC Tax Regimes. In light of both this complexity and the inconsistent treatment between accounting standards, this guidance disregards both the accrual and reversal of any deferred tax expense or benefit associated with a Blended CFC Tax Regime such that only current tax expense associated with a Blended CFC Tax Regime is allocable under Article 4.3.2(c). Accordingly, the cross-border allocation of Blended CFC Tax Regimes is exclusively addressed in paragraphs 58.1 to 58.7 of the Commentary to Article 4.3.2.

4.2.2. Issues

25. Administrative Guidance is necessary to clarify the methodology by which deferred tax expenses and benefits recorded with respect to a Parent Entity (or Main Entity) are to be allocated to another Constituent Entity under Article 4.3.2(a), (c), (d), (e).

4.2.3. Guidance

26. Where a deferred tax expense or benefit arises in the financial accounts of a Parent Entity with respect to a CFC Tax Regime, the deferred tax expense or benefit is allocated to the applicable CFC and recast to the Minimum Rate if the Parent Entity's applicable tax rate is higher than 15%. However, the cross-border allocation is subject to the limitation in Article 4.3.3 on the 'push down' of Passive Income. The cross-border allocation of the deferred tax expense or benefit is to occur on a 'net basis' which prevents the allocation of a deferred tax expense which will not be paid due to an offsetting foreign tax credit. This approach is designed to maintain consistency with both the mechanisms for allocating Covered Taxes from one Constituent Entity to another Constituent Entity and for addressing timing differences.

27. The principles applicable to allocation of deferred CFC taxes also apply with respect to allocation of deferred taxes of a Parent Entity in respect of income from a Hybrid Entity or Reverse Hybrid Entity and deferred taxes of a Main Entity in respect of a Permanent Establishment, except that Article 4.3.3. does not apply to taxes allocable to a Permanent Establishment.

Allocation of deferred tax expenses or benefits under a CFC Tax Regime

28. This Guidance is to be applied for CFC Tax Regimes, other than Blended CFC Tax Regimes. The guidance sets out a five-step process for allocating deferred tax expenses or benefits under Article 4.3.2(c).

29. The first step is to separate the deferred tax assets and liabilities reflected in the Parent Entity's financial accounts with respect to the assets and liabilities of each CFC Constituent Entity and determine the deferred tax expense or benefit (that is, a negative deferred tax expense) as a consequence of the movement of such assets and liabilities in the particular year split between the following three categories based upon the relevant income of the CFC:

a. Income which is not GloBE Income;

b. GloBE Income which is not Passive Income; and

c. GloBE Income which is Passive Income.

30. The second step is to calculate the pre-foreign tax credit deferred tax expense or benefit arising under the CFC Tax Regime for the Parent Entity (Step 2A) as well any creditable foreign taxes expected to be paid by the CFC Constituent Entity which would give rise to foreign tax credits which would be available (absent a foreign tax credit limitation) to offset the expected pre-foreign tax credit expense ('Relevant Creditable Foreign Taxes')(Step 2B). Some Constituent Entities may already record the pre-foreign tax credit deferred tax expense with respect to CFC Income separately from the deferred tax asset for the relevant foreign tax credit in their financial accounts. Other Constituent Entities may adopt a 'net basis' approach and only record the net deferred tax expense having taken into account both the pre-foreign tax credit liability under the CFC Tax Regime and a foreign tax credit for the foreign taxes paid by the CFC Constituent Entity expected to offset the pre-foreign tax credit liability. To the extent the financial accounts adopt a 'net basis' approach, the calculation will need to be disaggregated to calculate the pre-foreign tax credit deferred tax expense for the CFC tax separately from the relevant deferred tax benefit (that is, negative deferred tax expense) arising from the foreign tax credits.

31. The Relevant Creditable Foreign Taxes under Step 2B comprises two amounts. First, it includes any creditable foreign taxes which have been paid with respect to the relevant source of income. This includes taxes paid in a different tax year but giving rise to foreign tax credits which could be carried forward or carried back to offset the expected pre-foreign tax credit liability under the domestic tax regime of the Parent Entity. This first amount is not limited by any applicable foreign tax credit limitation. Second, it includes a reasonable allocation of excess foreign tax credits arising from other sources of income which are available for use against the relevant source of income under the tax regime applicable in the Parent Entity jurisdiction. This will include excess foreign tax credits arising from income of other entities located in other jurisdictions if such tax credits may be cross-credited under the tax regime applicable in the Parent Entity jurisdiction. The amount of excess foreign tax credits arising from other sources of income is limited by any applicable foreign tax credit limitation. Any excess foreign tax credits must be allocated between the relevant pre-foreign tax credit deferred tax expenses using a reasonable allocation method which takes into account the design of the relevant domestic tax system and making reasonable assumptions where necessary. A reasonable method could not result in an allocation of the same creditable foreign tax in multiple years. The total Relevant Creditable Foreign Taxes under Step 2B cannot exceed the pre-foreign tax credit deferred tax expense calculated under Step 2A.

32. For example, consider a case where there is an expected future inclusion of 100 of CFC Income in the Parent Entity which is subject to a 25% rate with an expected foreign tax credit of 5 on the relevant income. Some Constituent Entities may record this in their financial accounts as a 25 deferred tax expense on the CFC Income in addition to a 5 deferred tax asset (and therefore deferred tax benefit) for the 5 of foreign tax credits. Other Constituent Entities may record this in their financial accounts as a net 20 deferred tax expense. If a Constituent Entity adopts the latter approach, the deferred tax expense on the CFC Tax will need to be disaggregated into two amounts to determine the pre-foreign tax credit deferred tax expense (25) and the Relevant Creditable Foreign Taxes with respect to this expense (5).

33. The third step is to allocate the deferred tax expense or benefit for the first category (deferred tax expense or benefit with respect to income which is not GloBE Income). This category is allocated to the CFC Constituent Entity but then excluded due to the operation of Article 4.4.1(a). Accordingly, this deferred tax expense or benefit is not taken into account by either the Parent Entity or the CFC Constituent Entity.

34. The fourth step is to allocate the deferred tax expense or benefit for the second category (deferred tax expense or benefit with respect to GloBE Income which is not Passive Income) to the CFC Constituent Entity. Unless the MNE Group makes a relevant Five-Year Election as outlined in paragraph 43, the full amount of the deferred tax expense or benefit is allocated to the CFC Constituent Entity. Accordingly, no amount of deferred tax expense or benefit with respect to this category remains in the Parent Entity. Once allocated, the CFC Constituent Entity must 'recast' its pre-foreign tax credit deferred CFC tax liability down to 15% if it had been calculated by reference to a tax rate above 15%. This step is necessary to produce outcomes which are consistent with the principle that deferred tax expenses or benefits are only taken into account at a rate of up to 15%. The Relevant Creditable Foreign Taxes are not recast to the minimum rate (nor are they adjusted by reference to any applicable foreign tax credit limitation). The amount of Relevant Creditable Foreign Taxes is also capped at the amount of the relevant pre-foreign tax credit deferred tax expense. The CFC Constituent Entity includes in its deferred tax expense the amount given by the following formula:

$$CFC\ Constituent\ Entity\ DTE\ Inclusion =$$

$$Movement\ in\ (the\ recast\ gross\ CFC\ Tax\ DTL\ (or\ DTA) - Relevant\ Creditable\ Foreign\ Taxes\ (or\ used\ foreign\ tax\ credits)$$

35. The recast CFC Tax DTL or DTA is computed by multiplying the difference in carrying value of the asset or liability for accounting and tax purposes by 15%. The CFC Constituent Entity deferred tax expense inclusion amount effectively reflects the additional amount, if any, of CFC Tax that is expected to be paid in the future if the applicable rate under the CFC Tax Regime were 15% or the CFC tax that is paid currently that relates to accounting income that is expected to be reported in the future. This gives effect to the policy intention behind recasting deferred taxes at 15% whilst also taking into account the fact that CFC Tax Regimes may impose additional tax on top of that imposed on the CFC Constituent Entity itself. Any additional taxes (above a combined 15% rate from the CFC Tax Regime and the Covered Taxes on the underlying CFC) are taken into account only when they are accrued in current tax expense.

36. For example, consider a case where 100 of GloBE Income is recorded in Year 1 with respect to a CFC and there is an expected future inclusion of 100 of CFC Income in the Parent Entity in Year 2 which is subject to a 25% rate with an expected foreign tax credit of 5 on the relevant income (also arising in Year 2). The DTL for the deferred CFC tax (pre-foreign tax credit) will be 25 but this will be 'recast' down to 15. The Relevant Creditable Foreign Taxes of 5 are not recast. This ensures that the correct net figure is included. Accordingly, the net deferred CFC tax expense allocable to the CFC Constituent Entity under Article 4.3.2(c) is 10. The CFC Constituent Entity will record its own deferred tax expense of 5 for its domestic corporate income tax and include a net deferred tax expense of 10 in its Adjusted Covered Taxes. Accordingly, the total deferred tax liability with respect to the CFC Constituent Entity in Year 1 is 15. This is in line with the principle that anticipated future tax expenses are capped at a 15% rate.

37. In Year 2, the timing difference reverses and the CFC itself pays its 5 tax liability and the Parent Entity pays its 20 CFC tax liability (25 – 5 tax credit). This causes a reversal of 25 in the DTL in the Parent Entity's accounts. For GloBE purposes, this is a 15 reversal of the Parent Entity's deferred tax expense (after the recast). In Year 2, the Parent Entity also uses the 5 in Relevant Creditable Foreign Taxes which had been taken into account in Year 1. As a result, the CFC Constituent Entity DTE Inclusion is -10 (= (-15) – (-5)). This is the reversal of the 10 in Constituent Entity DTE Inclusion from Year 1. However, when combined with the 20 in current taxes accrued with respect to the CFC in Year 2, the result is a net addition of 10 to the Adjusted Covered Taxes of the CFC.

38. In some cases, there may be a recast gross CFC DTA. This would arise, for example, where an amount is included in the taxable income of the Parent Entity before it is included in the GloBE Income of the CFC. In practical terms, the MNE Group has effectively paid tax on an amount which will only subsequently be included in GloBE Income. In these cases, there will be a negative CFC Constituent Entity DTE Inclusion in the earlier year which reverses when the GloBE Income is recognized.

39. For example, consider a case where 100 of taxable income arises in the CFC and in the Parent Entity (under a CFC Tax Regime) in Year 1. This same income is only recognized as GloBE Income of the CFC in Year 2. In Year 1, the CFC is subject to a tax rate of 5% (giving rise to a tax credit of 5) while the Parent Entity is subject to a tax rate of 25% on the CFC Income. In Year 1, the Parent Entity pays 20 in tax (25 – 5) giving rise to a net DTA of 20 in its financial accounts (this could be recorded as a DTA of 25 and a DTL of 5). The CFC itself has paid 5 in tax and has a DTA of 5 in its financial accounts. In this case, the recast gross CFC Tax DTA is -15 (recast from -25) and the relevant used foreign tax credits is -5. As a result, the CFC Constituent Entity DTE Inclusion is -10 (= (-15) – (-5)). When combined with the current tax accrued by the Parent Entity of 20, there is a net addition of 10 to the CFC's Adjusted Covered Taxes from the Parent Entity in Year 1. In Year 2, the GloBE Income arises and the timing difference reverses. There is a CFC Constituent Entity DTE Inclusion of 10.

40. A recast gross CFC DTA will also arise where the income is included in the Parent Entity's CFC Tax Regime in Year 1 but is only included in both the taxable income and GloBE Income of the CFC in Year 2. Consider a case that is identical to the above example except that the income of the CFC is only recognized for tax purposes in the CFC jurisdiction in Year 2 (rather than Year 1). In such a case, there will be a pre-foreign tax credit CFC Tax liability of 25 in Year 1. If the Parent Entity jurisdiction does not allow for the use of foreign tax credits against this amount (as no foreign taxes have been paid with respect to this amount in Year 1), then the Parent Entity will pay CFC Tax of 25. This will give rise to current tax expense of 25 and an offsetting DTA of 25 in the Parent Entity's accounts which will be recast to 15 for GloBE purposes. The CFC Constituent Entity DTE Inclusion will be a deferred tax expense of -15 (a deferred tax benefit). The current tax expense of 25 will also be allocated to the CFC Jurisdiction. As a result, the net impact on the CFC Constituent Entity's Adjusted Covered Taxes will be 10 in Year 1 (25 – 15). In Year 2, the deferred tax benefit will reverse, increasing the Adjusted Covered Taxes of the CFC Constituent Entity by 15. The CFC itself will also pay 5 in tax under its domestic CIT in Year 2 but this has not given rise to foreign tax credits which are available for use against the CFC Tax in Year 1. The Parent Entity has paid 25 in CFC Tax, 15 of which was matched to the underlying GloBE Income through the deferred tax methodology (that is, in Year 2) and the remaining 10 (the amount in excess of the Minimum Rate) is taken into account when accrued in current tax expense (Year 1).

41. The fifth step is to allocate the third category (deferred tax expenses or benefits with respect to GloBE Income which is Passive Income). Article 4.3.3 limits the amount of CFC Taxes which can be allocated to the CFC to the amount which would raise the Covered Taxes on the passive income (included under the CFC Regime) to 15%. Any CFC Taxes in excess of this limitation remain in the Covered Taxes of the Parent Entity.

42. Unless the MNE Group makes a relevant Five-Year Election as outlined in paragraph 43, the Parent Entity will allocate the deferred tax expense or benefit with respect to CFC Taxes on GloBE Income which is Passive Income to the CFC subsidiary as follows. First, it must calculate the Passive Income limitation in Article 4.3.3 with respect to all taxes (current and deferred) arising under a CFC Tax Regime or a fiscal transparency rule. The limitation in Article 4.3.3 is applied collectively to all such taxes allocated to a Constituent Entity pursuant to Article 4.3.2(c) and (d). If the combined allocation of deferred and current taxes to the CFC can be made without exceeding the limitation in Article 4.3.3, the full allocation is made. To the extent that the combined allocation of all Covered Taxes and deferred tax expense for the year would exceed the amount specified in paragraph 4.3.3(b), the excess shall be treated as first comprised of new deferred tax expense and then current tax expense and such excess will not be allocated to the CFC. To the extent that an amount of deferred tax expense cannot be allocated to the CFC due to the operation of Article 4.3.3(b), the amount will be included in the deferred tax expense of the Parent Entity.

43. Alternatively, an MNE Group can make a Five-Year Election with respect to a jurisdiction to exclude the allocation of all deferred tax expenses and benefits under Article 4.3.2(a), (c), (d) and (e) arising under tax regimes (including subnational tax regimes) applicable to Constituent Entities located in that jurisdiction. This means that the election is made with respect to the Parent Entity jurisdiction and not with respect to each Permanent Establishment or subsidiary jurisdiction separately. Where the election is made, the deferred tax expense or benefit which otherwise would have been allocated from the Constituent Entity located in the jurisdiction subject to the election to another Constituent Entity under Article 4.3.2(a), (c), (d) and (e) will be excluded from the Adjusted Covered Taxes of all Constituent Entities and Permanent Establishments. The relevant deferred tax expense or benefit must also be excluded from the Adjusted Covered Taxes of the Parent Entity or Main Entity which accrues the deferred tax expense. Where the election is made, the deferred tax expense or benefit with respect to Passive Income which would have been allocated to another Entity under Article 4.3.2(c) or (d) if Article 4.3.3 were not applied is also excluded from the Adjusted Covered Taxes of the Parent Entity. Where the election has been made, taxes arising under the relevant tax regimes are only allocated when they are accrued in current tax expense.

44. The following paragraphs are to be added following paragraph 71.3 of the Commentary to Article 4.4.1:

> 71.4. Where deferred tax expenses or benefits arise under a CFC Tax Regime other than a Blended CFC Tax Regime, the deferred tax expenses or benefits are to be allocated to the CFC Constituent Entities in accordance with the following five step process. Accrual and reversal of any deferred tax expense or benefit arising under a Blended CFC Tax Regime is excluded from the MNE Group's computation of Adjusted Covered Taxes for all jurisdictions. This five-step process only allocates the deferred tax expenses and benefits with respect to the CFC Tax Regime itself. It does not allocate deferred tax expenses and benefits with respect to taxes which are creditable foreign taxes for the purposes of applying the CFC Tax Regime. For example, if a CFC Tax Regime provided a credit for corporate income tax paid by a CFC, the five-step methodology only applies to allocate deferred tax expenses and benefits under the CFC Tax Regime. It does not apply to allocate deferred tax expenses or benefits with respect to the corporate income tax of the CFC itself.
>
> 71.5. The first step is to separate the deferred tax expenses and benefits reflected in the Parent Entity's financial accounts with respect to the assets and liabilities of each CFC Constituent Entity into three categories based upon the relevant income of the CFC:
>
> a. income that is not GloBE Income.
>
> b. GloBE Income that is not Passive Income; and
>
> c. GloBE Income that is Passive Income.

71.6. The second step is to calculate the pre-foreign tax credit deferred CFC tax expense arising in the accounts of the Parent Entity with respect to the CFC income in each of the three categories above. The pre-foreign tax credit deferred CFC tax expense or benefit is the deferred tax expense or benefit which would arise if the Parent Entity did not have any foreign tax credits to use against that CFC income. In general, this is the amount of CFC income expected to be included in the taxable income of the Parent Entity multiplied by the applicable tax rate. A pre-foreign tax credit deferred CFC tax benefit can also arise if there is CFC income that is currently included in taxable income but is only expected to be included in accounting income in the future.

71.7 In the second step, the MNE Group must also calculate the Relevant Creditable Foreign Taxes. The Relevant Creditable Foreign Taxes are creditable foreign taxes (including any QDMTTs for which a foreign tax credit is available under the Parent Entity's foreign tax regime) which could be available to offset the expected (pre-foreign tax credit) CFC tax liability. This is composed of two amounts. First, it includes all creditable foreign taxes imposed with respect to the relevant income (calculated without reduction for any foreign tax credit limitation). Second, it includes a share of any excess foreign tax credits arising from other sources of income which are available for cross-crediting against tax liabilities arising from the relevant source of income under the Parent Entity's domestic tax regime. The amount of excess foreign tax credits arising from other sources available to be offset is reduced by any applicable foreign tax credit limitation. The Relevant Creditable Foreign Taxes must be allocated to each category using a reasonable allocation method which takes into account the design of the relevant domestic tax system and making reasonable assumptions where necessary. The total Relevant Creditable Foreign Taxes (comprising both amounts outlined above) is limited to the pre-foreign tax credit deferred CFC tax expense.

71.8. The third step is to determine and allocate the deferred tax expense or benefit attributable to income that is not GloBE Income. For example, this could occur where a Parent Entity recorded a deferred tax liability with respect to anticipated capital gain of a CFC which is referable to the CFC's Ownership Interest in another entity which is not a Portfolio Shareholding. As this deferred tax expense is with respect to a potential Excluded Equity Gain or Loss which is excluded from GloBE Income under Article 3.2.1(c), the deferred tax expense is attributable to income which is not GloBE Income (unless the MNE Group has made an applicable Equity Investment Inclusion Election). The deferred tax expense attributable to income that is not GloBE Income is the pre-foreign tax credit deferred CFC tax expense referable to that income less the amount of creditable foreign taxes with respect to that income as determined under the second step. This deferred tax expense is allocated to the CFC Constituent Entity but then excluded from the Total Deferred Tax Adjustment Amount due to the operation of Article 4.4.1(a). Accordingly, deferred tax expenses referable to this category are not taken into account by either the Parent Entity or the CFC.

71.9. The fourth step is to allocate the deferred tax expense or benefit attributable to GloBE Income which is not Passive Income to the CFC Constituent Entity. The deferred tax expense or benefit attributable to GloBE Income is the pre-foreign tax credit deferred CFC tax expense or benefit referable to that income less the amount of creditable foreign taxes with respect to that income as determined under the second step. Subject to an MNE Group making the election outlined below in paragraph 71.16, the CFC Constituent Entity includes in its deferred tax expense the amount given by the following formula:

$$CFC\ Constituent\ Entity\ DTE\ Inclusion =$$

$$Movement\ in\ (the\ recast\ gross\ CFC\ Tax\ DTL\ (or\ DTA)) - Relevant\ Creditable\ Foreign\ Taxes\ (or\ used\ foreign\ tax\ credits)$$

The full amount of the deferred tax expense can only be allocated to the CFC Constituent Entity. Accordingly, no amount of deferred tax expense or benefit with respect to this category remains in the Parent Entity. Where a recast gross CFC Tax DTL arises, the formula subtracts Relevant Creditable Foreign Taxes to reach the CFC Constituent Entity DTE Inclusion. Where a recast gross CFC Tax DTA arises, the formula subtracts foreign tax credits which have been used against the pre-foreign tax credit liability giving rise to that DTA in order to reach the CFC Constituent Entity DTE Inclusion.

71.10. Under this formula, a recast gross CFC Tax DTA enters the formula as a negative figure. Similarly, the use of a foreign tax credit enters the formula as a negative figure. For example, consider a case where a CFC earns 100 which is included in the taxable income of both the CFC and in the Parent Entity (under a CFC Tax Regime) in Year 1 under their respective domestic tax regimes. This same income is not recognized as GloBE Income of the CFC until Year 2. In Year 1, the CFC is subject to a tax rate of 5% (giving rise to a tax credit of 5) while the Parent Entity is subject to a tax rate of 25% on the CFC Income. In Year 1, the Parent Entity has a pre-foreign tax credit liability of 25 but uses 5 of foreign tax credits in Year 1 which results in 20 in tax paid (25 – 5). The Parent Entity has a DTA of 20 while the CFC itself has paid 5 in tax and has a DTA of 5. In this case, the recast gross CFC Tax DTA is -15 and the relevant used foreign tax credits is -5. As a result, the CFC Constituent Entity DTE Inclusion is -10 (= (-15) – (-5)) for Year 1. When combined with the current tax accrued by the Parent Entity of 20, there is a net addition of 10 to the CFC's Adjusted Covered Taxes from the Parent Entity in Year 1.

71.11 If the pre-foreign tax credit deferred CFC tax liability (or asset) was calculated by reference to a rate above the Minimum Rate, it will be 'recast' down to 15%. The expected creditable foreign taxes on this income (as determined under the second step) are not recast to the Minimum Rate. The Relevant Creditable Foreign Taxes are also capped at the amount of the relevant recast gross CFC Tax DTL. Any additional Relevant Creditable Foreign Taxes are disregarded. Where there is a recast gross CFC Tax DTL, the excess (if any) of the pre-foreign tax credit deferred CFC tax liability over the expected foreign creditable taxes is allocated to the CFC. The movement in that net deferred tax liability for the Fiscal Year is included in the CFC's deferred tax expense.

71.12. When the timing difference reverses and the CFC Tax is accrued in current tax expense in respect of the GloBE Income which is not Passive Income, the reversal of the DTL that was allocated to the CFC Constituent Entity will offset the current tax expense. In some cases, the reduction in Adjusted Covered Taxes by reason of the DTL reversal may be smaller than the additional current tax expense, such as where the DTL was recast, in which case any amount of CFC Taxes that had been excluded due to the 'recast' and that exceeds the foreign tax credit allowed will be included in the Covered Taxes of the CFC. This may also occur where the actual foreign tax credit in the year of the reversal is less than the Relevant Creditable Foreign Taxes taken into account in determining the amount of deferred CFC tax expense (for example, because of a foreign tax credit limitation). Conversely, the reduction in Adjusted Covered Taxes by reason of the DTL reversal may exceed the current tax expense in some cases, such as where the actual foreign tax credit is greater than the Relevant Creditable Foreign Taxes that were taken into account in determining the amount of deferred CFC tax expense (for example, due to additional tax credits available due to cross-crediting). No amount of CFC Taxes on this category of income are included in the deferred tax expenses or Covered Taxes of the Parent Entity.

71.13 In some cases, the Parent Entity may have a pre-foreign tax credit deferred CFC tax asset. This could arise where there is an amount included in taxable income before it is included in accounting income. If the Parent Entity has recorded a deferred tax benefit (a negative deferred tax expense) for such amounts which has been calculated by reference to a rate above the Minimum Rate, it will be ‘recast’ down to 15%. Any amount of deferred tax asset in excess of the recast and any related deferred tax liability related to the deferred tax asset will be included in the CFC’s deferred tax expense in the year it accrues.

71.14 The fifth step is to allocate the deferred tax expenses or benefits attributable to GloBE Income which is Passive Income. Subject to an MNE Group making the election outlined below in paragraph 71.16, the Parent Entity will need to determine whether all of the current and deferred tax with respect to the Passive Income can be allocated to the CFC. Article 4.3.3. limits the total amount of current and deferred taxes which can be allocated to a Constituent Entity for a given Fiscal Year to an amount equal to the Top-up Tax Percentage for the CFC Jurisdiction calculated without regard to the current and deferred Covered Taxes to be pushed down to the subsidiary under the CFC Tax Regime or fiscal transparency rule multiplied by the amount of the subsidiary’s Passive Income that is includible under the CFC Tax Regime or fiscal transparency rule (under Article 10.2.2). To the extent that the limitation is applicable, any disregarded amount will be included in the Adjusted Covered Taxes of the Parent Entity.

71.15 Where the limitation in Article 4.3.3 applies, it is necessary to determine which current and deferred CFC Taxes have been allocated to the CFC and which have not. Accordingly, there is an ordering rule with respect to the cross-border allocations. The first allocation is made with respect to the reversal of any deferred tax expenses or benefits which had previously been allocated from the Parent Entity to the CFC. The second allocation is made with respect to any CFC current tax expense (for example, as a result of applying the cross-crediting allocation mechanism as contained in paragraphs 52 to 52.33 of the Commentary to Article 4.3.2). The third allocation is made with respect to any further deferred tax expense or benefit which has arisen during the year. Where the Article 4.3.3 limitation prevents the cross-border allocation of all of the CFC tax, any remaining CFC taxes are included in the Covered Taxes of the Parent Entity. As a result of this ordering rule, reversals of deferred tax assets and liabilities that were taken into account when they arose by the Parent Entity or CFC will be taken into account by the same Constituent Entity (whether that is the Parent Entity or the CFC).

71.16 An MNE Group can make a Five-Year Election with respect to a jurisdiction to exclude the allocation of all deferred tax expenses and benefits under Article 4.3.2(a), (c), (d) and (e) arising under tax regimes (including subnational tax regimes) applicable to Constituent Entities located in that jurisdiction. In other words, the election is made with respect to the Parent Entity jurisdiction and not with respect to each Permanent Establishment or subsidiary jurisdiction separately. Where the election is made, the deferred tax expense or benefit which otherwise would have been allocated from the Constituent Entity located in the jurisdiction subject to the election to another Constituent Entity under Article 4.3.2(a), (c), (d) and (e) will be excluded from the Adjusted Covered Taxes of all Constituent Entities and Permanent Establishments. The relevant deferred tax expense or benefit must also be excluded from the Adjusted Covered Taxes of the Parent Entity or Main Entity which accrues the deferred tax expense. Where the election is made, the deferred tax expense or benefit with respect to Passive Income which would have been allocated to another Entity under Article 4.3.2(c) or (d) if Article 4.3.3 were not applied is also excluded from the Adjusted Covered Taxes of the Parent Entity. Where the election has been made, taxes arising under the relevant tax regimes are only allocated when they are accrued in current tax expense.

71.17 For example, an MNE Group has a Parent Entity (A Co) in Jurisdiction A which has two subsidiaries – B Co (in Jurisdiction B) and C Co (in Jurisdiction C). A Co is subject to CFC Tax Regimes at both the national level (National CFC Tax) and subnational level (Subnational CFC Tax). If the MNE Group made the Five-Year Election with respect to Jurisdiction A, only current tax expense would be taken into account with respect to the National CFC Tax and Subnational CFC Tax. The deferred tax expenses or benefits with respect to these CFC Tax Regimes would be excluded from the Adjusted Covered Taxes of A Co, B Co and C Co. The Five-Year Election applies for all taxes for which there can be an allocation under Article 4.3.2(a), (c), (d) and (e) imposed on Constituent Entities located in Jurisdiction A. The MNE Group cannot elect to apply deferred tax expenses or benefits to National CFC Tax but not Subnational CFC Tax. Similarly, the election also cannot be made with respect to the allocation of CFC Taxes imposed on A Co with respect to CFCs in Jurisdiction B but not CFCs in Jurisdiction C.

Allocation of deferred tax expenses and benefits from a Parent Entity to a Hybrid Entity or Reverse Hybrid Entity

45. The following paragraph will be inserted after paragraph 59.3 of the Commentary to Article 4.3.2(d):

59.4. The principles outlined in paragraphs 71.4 to 71.17 of the Commentary to Article 4.4.1 also apply to the allocation of deferred taxes to a Hybrid Entity or Reverse Hybrid Entity under a tax transparency regime.

Allocation of deferred tax expenses and benefits from a Main Entity to a Permanent Establishment

46. The text in strikethrough will be deleted from paragraph 52 of the Commentary to Article 4.3.2(a):

52. Determining the amount of Tax paid on a PE income inclusion is more complicated when cross-crediting is allowed because Taxes paid by one PE are allowed to reduce the tax liability arising in respect of other PE income inclusions. Cross-crediting means that the Tax paid with respect to an income inclusion from a low-taxed PE may not equal the pre-credit tax liability on the inclusion less the tax credit allowed for Taxes paid by that PE. ~~**Deferred tax liabilities with respect to PE income are allocated in the same manner. The rules with respect to the recognition of deferred tax liabilities are set forth in Article 4.4.**~~

47. The following paragraph will be inserted after paragraph 52.34 of the Commentary to Article 4.3.2(a):

52.35. The principles outlined in paragraphs 71.4 to 71.13 and 71.16 to 71.17 of the Commentary to Article 4.4.1 also apply with respect to taxation regimes which include the income of foreign Permanent Establishments. With respect to such regimes, any taxes on GloBE Income which is Passive Income are allocated as part of step four as outlined in paragraphs 71.9 to 71.13. Paragraphs 71.14 and 71.15 are not applicable because the limitation in Article 4.3.3 is not applicable to the allocation of taxes on foreign Permanent Establishments under paragraph 4.3.2(a).

Deferred tax expenses and benefits on Transition

48. The text in bold will be added to paragraph 5 of the Commentary to Article 9.1.1:

5. Article 9.1.1 sets out the deferred tax accounting attributes of a Constituent Entity that may be utilised in calculating the ETR in a jurisdiction in the Transition Year and subsequent years. Rather than requiring an MNE Group to undertake complex calculations as if the Constituent Entity had been subject to the GloBE Rules in prior years, it uses a simplified approach that allows the MNE Group to take into account the deferred tax accounting attributes of the MNE Group at the beginning of the Transition Year, at the lower of the Minimum Rate or the applicable domestic tax rate. The applicable domestic tax rate is the rate at which an item of deferred tax expense has been recorded in the financial accounts. However, deferred tax assets in respect of GloBE Losses that have been recorded at a rate lower than the Minimum Rate may be recast at the Minimum Rate if the taxpayer can demonstrate that the deferred tax asset is attributable to a loss that would have been a GloBE Loss had the MNE Group been subject to the GloBE Rules in the year in which the loss arose. These attributes include losses that have not been recognised due to an accounting recognition adjustment or valuation allowance. **Any deferred tax assets or liabilities arising under a Blended CFC Tax Regime are disregarded for all jurisdictions for the purposes of Article 9.1.1.**

4.2.4. Examples

Example 4.4.1(e)-3

1. A Co is a Constituent Entity of a MNE Group in Country A. Country A imposes a 25% CIT rate and has a Controlled Foreign Company (CFC) Tax Regime which imposes Taxes on shareholders in respect of Passive Income derived by foreign (CFC) subsidiaries. Country A CFC Tax Regimes provides for the taxation of the CFC income by including such income in the domestic taxable income of the CE-owner in the tax year immediately following the tax year when the income is derived by the CFC.

2. A Co wholly owns B Co, which is located in Country B. Country B imposes a 5% CIT rate on Passive Income and imposes 9% CIT rate on operating income. B Co is the only Constituent Entity located in Country B.

3. In year 1, B Co has GloBE Income of 200, of which 100 is Passive Income. B Co pays 14 of Country B tax, including 5 of Country B tax on Passive Income and 9 of Country B tax on other income.

4. In Year 2, Country A imposes its CFC charge on the 100 of Passive Income earned by B Co in Year 1. This CFC charge is computed by applying the Country A CIT rate of 25% to the Passive Income earned by B Co, less any applicable foreign tax credit (FTC) for taxes paid on that Passive Income. In this context, A Co records a DTL for the deferred CFC tax (pre-foreign tax credit) of 25 and records a DTA for the foreign tax credit of 5 for accounting purposes.

Year 1

5. The table below illustrates the tax calculation for both A Co and B Co in Year 1.

A Co (Country A)	
Country A Income	
Operating Income	0
CFC Inclusion (B Co)	0
Total Taxable Income	0
Country A Tax	
Tax on Operating Income (25%)	0
DTL on CFC Inclusion (25%)	25
DTA on Foreign Tax Credit (CFC Inclusion)	-5
Total Country A current Tax expense	0
Total Country A accrued Tax expense* (current and deferred)	20
**Entirely attributable to CFC inclusion since there is no other income*	

B Co (Country B)	
Country B Income	
Operating Income	100
Passive Income	100
Total Taxable Income	200
Country B Tax	
Tax on Operating Income (9%)	9
Tax on Passive Income (5%)	5
Total Country B current Tax expense	14
Total Country B accrued Tax expense (current and deferred)	14

6. For purposes of GloBE Rules, the DTL on the CFC Inclusion of 25 is recast to 15. The Relevant Creditable Foreign Taxes with respect to the income remains 5 (it is not recast). Accordingly, the net deferred CFC tax expense allocable to B Co which would be allocable to B Co prior to the application of Article 4.3.3 is 10 (=15 - 5).

7. Article 4.3.3 is then applied to limit the extent to which the deferred tax expense or benefit can be allocated to the CFC. In year 1, the ETR for Country B (ignoring any CFC Tax Regimes and tax transparency regimes) would have been 7% (=14/200). Its Top-up Tax Percentage absent the application of CFC Tax Regimes and tax transparency regimes would be 8% (=15%-7%). Therefore, the maximum amount of CFC Taxes that can be allocated from Country A to Country B is 8 (the lesser of 10 and 8 = (8%×100)). The remaining deferred tax expense of 2 is included in the deferred tax expense of A Co.

8. The table below illustrates the allocation of the deferred tax expense and the calculation of Adjusted Covered Taxes for both A Co and B Co.

	Current tax expense	Deferred tax expense for accounting purposes	Allocable deferred tax expense for GloBE purposes	Cross-border allocation of deferred tax expense	Deferred tax expense after allocation	Adjusted Covered Taxes
A Co	0	20	10	-8	2	2
B Co	14	0	0	8	8	22

9. The ETR calculations for Country A and Country B are as follows:

	Country A	Country B
GloBE Income	0	200
Adjusted Covered Taxes	2	22
ETR	--	11%

Year 2

10. In year 2, A Co imposes its CFC charge on the 100 of Passive Income earned by B Co in year 1. Accordingly, A Co pays its CFC tax liability of 20 (=25-5) and records a reversal of DTL of 25 and a reversal of DTA of 5 in its accounts.

11. In year 2, B Co has GloBE Income of 300, of which 200 is Passive Income. B Co pays 19 of Country B tax, including 10 of Country B tax on Passive Income and 9 of Country B tax on other income. There is an expected future inclusion of 200 of CFC Income in A Co in Year 3 which is subject to a 25% rate with an expected foreign tax credit of 10 on the relevant income. Accordingly, A Co records a DTL for the deferred CFC tax (pre-foreign tax credit) of 50 and records a DTA for the foreign tax credit of 10 in its accounts.

12. The table below illustrates the tax calculation for both A Co and B Co in Year 2.

A Co (Country A)	
Country A Income	
Operating Income	0
CFC Inclusion (B Co)	100
Total Taxable Income	100
Country A Tax	
Tax on Operating Income (25%)	0
DTL on CFC Inclusion (25%)	-25+50
DTA on Foreign Tax Credit (CFC Inclusion)	5-10
CFC tax	20
Total Country A current Tax expense	20
Total Country A accrued Tax expense (current and deferred)*	40
**Entirely attributable to CFC inclusion since there is no other income*	

B Co (Country B)	
Country B Income	
Operating Income	100
Passive Income	200
Total Taxable Income	300
Country B Tax	
Tax on Operating Income (9%)	9
Tax on Passive Income (5%)	10
Total Country B current Tax expense	19
Total Country B accrued Tax expense (current and deferred)	19

13. Before applying Article 4.3.3, it is necessary to calculate the allocations which would have been made in the absence of Article 4.3.3. First, there has been a reversal of previously allocated deferred tax expense (that is, -2 to A Co and -8 to B Co). Second, the current taxes must be allocated. In this case, 20 of tax has been paid by A Co, all of which is allocable to B Co. This allocation is determined independently of the allocation of deferred taxes. Third, there is the allocation of further deferred tax expenses. In this case, there would be an allocation of 20 to B Co (this is the 50 in pre-foreign tax credit liability, recast to 30 and then subtracting the expected foreign tax credits of 10). As a result, prior to the application of Article 4.3.3, there would be a net allocation to B Co of 32 (-8 + 20 + 20).

14. Second, it is necessary to calculate the limitation under Article 4.3.3. Under Article 4.3.3, the ETR for Country B (ignoring any CFC Tax Regimes and tax transparency regimes) would have been 6.33% (=19/300). Its Top-up Tax Percentage absent the application of CFC Tax Regimes and tax transparency regimes would be 8.67% (=15%-6.33%). Therefore, the maximum amount of CFC Taxes that can be allocated from Country A to Country B is 17.34 (the lesser of 32 and 17.34 (=8.67%×200)).

15. As the Article 4.3.3 limitation is less than the full allocation under the CFC Tax Regime, it is necessary to determine which amounts are not allocated due to the limitation. As outlined in paragraph 71.12, the allocations are made in the order (i) reversal of previously allocated amounts (-8), (ii) current tax expenses (20) and (iii) further deferred tax expense (20). As -8 is less than 17.34, the first allocation from the reversal of previously allocated amounts can be made. The second (ii) allocation can also be made as 12 (-8 + 20) is less than 17.34. However, the final allocation cannot be made in full as 32 (-8 + 20 + 20) is greater than 17.34. Accordingly, the full allocations are made under (i) and (ii) but only 5.34 (17.34 – 12) of (iii) can be allocated. Accordingly, of the 20 in further deferred tax expense, 5.34 is allocated to B Co and 14.66 (20 – 5.34) is retained by A Co due to the limitation in Article 4.3.3.

16. As a result, due to the ordering rule in paragraph 71.12, Article 4.3.3 applies to allow full allocations of (i) previously allocated deferred taxes which are reversing (-8 to B Co and -2 to A Co) and (ii) current taxes (20 to B Co). However, of (iii) the further deferred tax expenses, only 5.34 is allocated to B Co and the remainder is allocated to A Co (14.66).

17. The table below illustrates the allocation of the deferred tax expense and the calculation of Adjusted Covered Taxes for both A Co and B Co.

	Current tax expense before allocation	Cross-border Allocation of Current tax expense	Current Tax expense after allocation	Deferred tax expense for accounting purposes	Allocable deferred tax expense for GloBE purposes	Cross-border allocation of deferred tax expense	Deferred tax expense after allocation	Adjusted Covered Taxes
A Co	20	-20	0	20	-10+20*	- (-8) - 5.34	12.66	12.66
B Co	19	20	39	0	0	(-8) + 5.34	-2.66	36.34

Note: Allocable deferred tax expense for GloBE purposes for A Co is 10 (=-10+20), which includes the reversal of deferred tax expense recognized in year 1 (-10) and future deferred tax expense recognized in year 2 (20) which is the 50 in pre-foreign tax credit liability, recast to 30 and then subtracting the expected foreign tax credits of 10.

18. The ETR calculations for Country A and Country B are as follows:

	Country A	Country B
GloBE Income	0	300
Adjusted Covered Taxes	12.66	36.34
ETR	--	12.11%

Example 4.4.1(e)-4

1. A Co is a Constituent Entity of a MNE Group in Country A. Country A imposes a 20% CIT rate. Country A taxes foreign branches and allows for foreign tax credit to eliminate double taxation. A Co has a PE in Country B. Country B imposes 10% income tax.

2. In Year 1, the PE purchases a machine with carrying value of 900. For accounting purposes, the machine is depreciated for three years (300 per year). In Country B, the PE is allowed to use an accelerated depreciation method to deduct the expenses of the machine in two years (450 per year). In Year 2 and Year 3, there is no timing difference other than the one arising from the machine purchased by the PE in Year 1.

3. The table below illustrates the timing differences and recognition of deferred tax liability in the PE.

	Carrying value of the machine	Tax basis of the machine	Timing differences	Deferred tax liability	Deferred tax expense with respect to DTL movements
	[1]	[2]	[3] = [1]-[2]	[4] = [3]×10%	
Year 1	600	450	150	15	15
Year 2	300	0	300	30	15
Year 3	0	0	0	0	-30

4. In Year 1, there is no timing difference with respect to the domestic income of A Co reported for accounting purposes in its domestic tax regime. However, Country A imposes taxes on PE and allows for an immediate expense of 900 for the purchase of the machine by the PE. In Year 2 and Year 3, there is no timing difference other than the one arising from the machine purchased by the PE in Year 1.

5. Because a DTL recorded in a PE that upon reversal will increase the taxes paid in Country B, it may give rise to foreign tax credits in Country A that will be used to reduce its tax liability. In this case, the DTL in relation to the PE will result in a deferred tax asset being recorded by A Co, i.e., the deferred benefit of the future tax credits)

6. The table below illustrates the timing differences and recognition of DTL and DTA in A Co.

	Carrying value of the machine	Tax basis of the machine	Timing differences	Deferred tax liability	Deferred tax expense with respect to DTL movements	DTA with respect to foreign tax credit	Deferred tax expense with respect to DTA movements	Deferred tax expense
	[1]	[2]	[3]=[1]-[2]	[4]=[3]×20%	[5]	[6]	[7]	[8]=[5]+[7]
Year 1	600	0	600	120	120	15	-15	105
Year 2	300	0	300	60	-60	30	-15	-75
Year 3	0	0	0	0	-60	0	30	-30

7. In year 1, A Co records a DTL of 120 based on the timing difference of the machine in the PE. The DTL on the PE income of 120 is recast to 90 (recasting from a 20% rate to a 15% rate) and the creditable foreign taxes with respect to this amount remains 15 (it is not recast). Accordingly, the net deferred tax expense allocable to PE is 75 = (90-15). The deferred tax expense for purposes of calculating Adjusted Covered Taxes in PE is 90 (=15+75). This is the PE's own deferred tax expense of 15 in addition to the allocation of 75 in deferred tax expense allocated from A Co. The deferred tax expense of 105 accrued by A Co shall not be included in the Adjusted Covered Taxes of A Co for GloBE purposes.

8. The table below illustrates the allocation of deferred tax expense for A Co to the PE in year 1.

	Deferred tax expense for accounting purposes	Allocable deferred tax expense for GloBE purposes	Allocation of deferred tax expense	Deferred tax expense after allocation
A Co	105	75	-75	0
PE	15	15	75	90

9. In year 2, A Co records reversal of DTL of 60 based on the timing difference of the machine in the PE. The DTL on the PE income of -60 is recast to -45 (recasting from a 20% rate to a 15% rate) and the creditable foreign taxes with respect to this amount remains 15 (it is not recast). Accordingly, the net deferred tax expense or benefit allocable to PE is -60 (= -45-15). This is a deferred tax benefit (a negative deferred tax expense). The deferred tax benefit for purposes of calculating Adjusted Covered Taxes in PE is -45 (=15-60). This is the PE's own deferred tax expense of 15 in addition to the allocation of -60 in deferred tax expense (or benefit) allocated from A Co. The deferred tax expense or benefit of -75 accrued by A Co shall not be included in the Adjusted Covered Taxes of A Co for GloBE Purposes.

10. The table below illustrates the allocation of deferred tax expense for A Co to the PE in year 2.

	Deferred tax expense for accounting purposes	Allocable deferred tax expense for GloBE purposes	Allocation of deferred tax expense	Deferred tax expense after allocation
A Co	-75	-60	60	0
PE	15	15	-60	-45

11. In year 3, A Co records reversal of DTL of 60 based on the timing difference of the machine in the PE. The DTL on the PE income of -60 is recast to -45 (recasting from a 20% rate to a 15% rate) and the use of creditable foreign taxes is -30. Accordingly, the net deferred tax expense or benefit allocable to PE is -15 (=-45+30). The deferred tax expense or benefit for purposes of calculating Adjusted Covered Taxes in PE is -45 (=-30-15). The deferred tax expense or benefit of -30 accrued by A Co shall not be included in the Adjusted Covered Taxes of A Co for GloBE Purposes.

12. The table below illustrates the allocation of deferred tax expense for A Co to the PE in year 3.

	Deferred tax expense for accounting purposes	Allocable deferred tax expense for GloBE purposes	Allocation of deferred tax expense	Deferred tax expense after allocation
A Co	-30	-15	15	0
PE	-30	-30	-15	-45

5. Allocation of profits and taxes in structures including Flow-through Entities

5.1. Introduction

1. The GloBE Rules are designed to ensure that multinational enterprises pay a minimum level of tax on their profits in each jurisdiction. There are consequently rules to determine how profits and taxes should be allocated between jurisdictions.

2. This guidance clarifies how the rules are intended to allocate profits and taxes between Constituent Entities in structures where different jurisdictions take different views as to whether Entities in the structure are fiscally transparent. This guidance is important to ensure profits and taxes are allocated appropriately and consistently between jurisdictions.

3. Generally, the GloBE Rules assign profits to the Constituent Entity that earned the income. The jurisdiction where that Constituent Entity is located would typically have, or be expected to have, the right to tax those profits. So, for example, the GloBE Rules assign profits of a Permanent Establishment to the Permanent Establishment and those profits are reflected in the GloBE computations of the jurisdiction where the Permanent Establishment is located. Similarly, Article 3.2.3 generally requires adjustments to ensure that the allocation of profits between Constituent Entities reflects the allocation of profit between those entities for local tax purposes. These income allocation rules are designed to ensure that the Effective Tax Rate computation for each jurisdiction appropriately reflects the existing allocation of taxing rights between jurisdictions.

4. The income allocation rules are complemented by Article 4.3, which reallocates Covered Taxes between Constituent Entities. The Article applies to specified cases when a Constituent Entity is charged tax in respect of the profits of another Constituent Entity. It reallocates that tax to the Constituent Entity that recognises the profit under the GloBE Rules. This ensures that the ETR calculation in each jurisdiction properly reflects the full amount of taxes that the multinational has paid on those profits. The tax is matched with the income that has been subject to the tax.

5. The principle of matching the tax with the income that has been subject to the tax also applies to Flow-through Entities (i.e. entities that are fiscally transparent in the jurisdiction where the entity is created). However, instead of moving the tax to the location of the income as in the case of taxes on the income of a Controlled Foreign Company (CFC) or Permanent Establishment, profit of a Flow-through Entity is assigned to the Constituent Entity that is, or would be expected to be, taxable on those profits. Article 3.5.1 sets out how this profit should be allocated. Under this article, the profit is first allocated to any Permanent Establishment through which the business of the Flow-through Entity is carried on. This means the profits will be attributed to the jurisdiction where the profit was earned (which will often be the jurisdiction where the Flow-through Entity was created) when that jurisdiction has taxing rights over those business profits.

Any profits that are not allocated to a Permanent Establishment are then allocated to its owners to the extent that the Flow-through Entity is treated as fiscally transparent in the jurisdiction of the owner, i.e. it is a Tax Transparent Entity. Thus, the profits are allocated to the owner under the GloBE Rules if the owner is taxed on its share of the Flow-through Entity's profits. This treatment is designed to match the income with the tax on a jurisdictional basis.

6. If, on the other hand, the Flow-through Entity is not treated as fiscally transparent in the jurisdiction of an owner, i.e. it is a Reverse Hybrid Entity, that owner's share of the profits is not allocated and remains the profits of the Flow-through Entity, which is treated as a Stateless Entity. This reflects that the MNE Group is not subject to residence-based taxation on those profits in either the jurisdiction where the Flow-through Entity was created or the jurisdiction of its owner.

7. This Administrative Guidance considers various issues relating to the allocation of profits under Article 3.5.1(b) as well as related issues with the profit and tax allocation of Flow-through Entities and Hybrid Entities. However, the Administrative Guidance does not address issues relating to Permanent Establishments and so the issues discussed, and examples cited, assume either that there is no Permanent Establishment through which the business of a Flow-through Entity is carried on, or that the allocation under Article 3.5.1(a) has already occurred prior to the allocation of the remaining profits of the Flow-through Entity.

5.2. Application of Article 3.5.1(b) and Article 10.2.1 definitions

5.2.1. Issue 1: Tax law of the jurisdiction in which the owner is located

8. Article 10.2.1 determines whether a Flow-through Entity is classified as a Tax Transparent Entity or a Reverse Hybrid Entity based on how the Flow-through Entity is treated in the "jurisdiction in which the owner is located". This determination is made with respect to each Ownership Interest so a Flow-through Entity can be both a Tax Transparent Entity and a Reverse Hybrid Entity where it has multiple owners.

9. Paragraph 154 of the Commentary to Article 10.2.1 of the Model Rules states that the reference to the "jurisdiction in which the owner is located" refers to the jurisdiction of the direct owner of the Flow-through Entity. Accordingly, the difference between a Tax Transparent Entity and a Reverse Hybrid Entity depends on whether the domestic tax law of the jurisdiction of the direct owner treats the Entity as fiscally transparent.

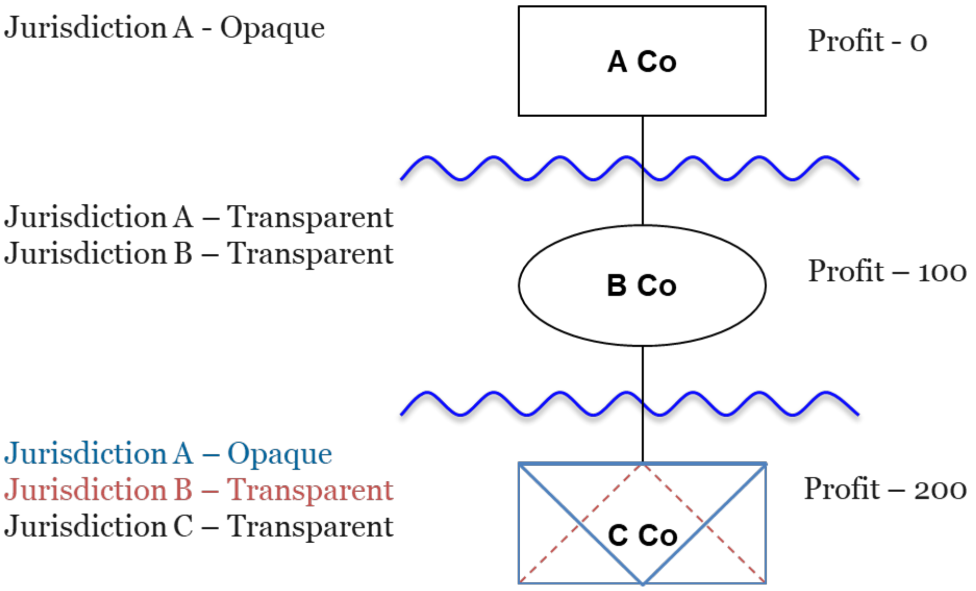
10. Stakeholders have identified that there is some uncertainty over how Article 10.2.1 applies when a Flow-through Entity is held directly by another Flow-through Entity.

11. The uncertainty arises because Flow-through Entities are generally treated as Stateless Constituent Entities that do not have a location under the GloBE Rules. Some have interpreted this to mean that a Flow-through Entity cannot be the direct owner for the purposes of Article 10.2.1 because it is not located in a jurisdiction (unless it is the UPE or an Intermediate Parent Entity that is subject to an IIR). Under this interpretation, the direct owner would consequently be ignored, and Article 10.2.1 would be applied by reference to the next owner further up the ownership chain.

12. In contrast, others have interpreted that the direct owner of the Flow-through Entity is the owner for the purposes of Article 10.2.1, even if that direct owner is a Flow-through Entity.

13. These different interpretations could result in implementing jurisdictions attributing profits to different jurisdictions, creating a significant risk of uncoordinated outcomes and multiple jurisdictions imposing top-up taxes in relation to the same profits.

14. This is illustrated in the following example.



15. This example is based on a structure where A Co wholly owns B Co and B Co owns C Co. A Co is located in Jurisdiction A. B Co and C Co were created in Jurisdictions B and C respectively but are fiscally transparent in those jurisdictions and are thus treated as Stateless Constituent Entities under the GloBE Rules. B Co has 100 of profit and C Co has 200 of profit. The table below summarises how each jurisdiction's tax laws treat the Entities.

	Classification of Entities in the ownership chain		
Jurisdiction	A Co	B Co	C Co
A	Opaque	Transparent	Opaque
B		Transparent	Transparent
C			Transparent

16. In this case, the tax base of A Co would include B Co's profit of 100. It will not include C Co's profit of 200 because under jurisdiction A's law, C Co is not fiscally transparent.

17. The profits of C Co will also not be taxable in Jurisdictions B or C. This is because both B Co and C Co are considered fiscally transparent in the jurisdiction in which they are created and are consequently not subject to Covered Taxes in respect of their income.

18. Under the GloBE Rules, the 100 profit of B Co will be allocated to A Co. This is because B Co is a Tax Transparent Entity in relation to A Co. However, the allocation of the 200 profit of C Co depends upon whether Jurisdiction A or Jurisdiction B is considered the jurisdiction where the "owner" is located for the purposes of Article 10.2.1(a) and (b).

19. If Jurisdiction A were considered the jurisdiction of the owner under Article 10.2.1, C Co would be treated as a Reverse Hybrid Entity because Jurisdiction A views C Co as fiscally opaque. This would result in C Co's 200 of profits being attributed to C Co and included in a separate ETR computation.

20. Alternatively, if Jurisdiction B were considered the jurisdiction of the owner, then C Co would be treated as a Tax Transparent Entity because Jurisdiction B views C Co as fiscally transparent. C Co's 200 of profits would be allocated to A Co because B Co is also a Tax Transparent Entity. Under this analysis, A Co's adjusted profits would be 300, despite the fact A Co is only subject to tax on 100 of those profits.

21. This question of which owner is relevant for purposes of Article 10.2.1 needs to be clarified in order to prevent uncoordinated application of the rules. The Inclusive Framework considers that the status of a Flow-through Entity as a Tax Transparent Entity or Reverse Hybrid Entity should generally be determined by reference to the tax law of the Constituent Entity-owner closest to such Entity in the ownership chain that is not itself a Flow-through Entity.

22. This interpretation of "owner" is more consistent with the underlying principles of profit allocation and matching taxes with the related income that are reflected in the GloBE Rules. Under these principles, the profits of a Flow-through Entity should only be allocated to an owner when the owner is subject to tax on those profits, in order to ensure that the income and the tax with respect to that income are included in the same jurisdictional ETR computation. Conversely, if an owner is not subject to tax on the income, the profits should remain with the Flow-through Entity.

23. It follows from this that the profits of a Flow-through Entity should not generally be allocated to another Flow-through Entity (a 'Flow-through Entity owner') under the GloBE Rules. This is because the Flow-through Entity owner will typically not be subject to a Covered Tax on its profits or the profits of an Entity that it owns, given it is treated as fiscally transparent under the tax laws of the jurisdiction in which it was created.

24. This will be true for both stateless Flow-through Entities and Flow-through Entities which are located in a jurisdiction because they are required to apply the IIR. In both cases, the Flow-through Entity owner will not be subject to a Covered Tax on its profits or the profits of an Entity that it owns. Consequently, the profits should not be allocated to a Flow-through Entity owner in either case and the application of Article 10.2.1 will not depend upon the location of the Flow-through Entity owner.

25. There is however an exception when the Flow-through Entity owner is the UPE of the MNE Group ('Flow-through UPE'). This is because the owners of the UPE will not be Constituent Entities of the MNE Group. As such, the profits of the Flow-through Entity owner or any Flow-through Entities it owns cannot be allocated to these owners. The owners could nonetheless be subject to tax on those profits. Article 7.1 is designed to address this situation by reducing the GloBE Income of the UPE to the extent that the owners are subject to tax on those profits (or the other conditions in Article 7.1 are met). The profits of a Flow-through Entity will be allocated to the UPE so that Article 7.1 is tested by reference to the total profits that could be subject to tax in the hands of the owners.

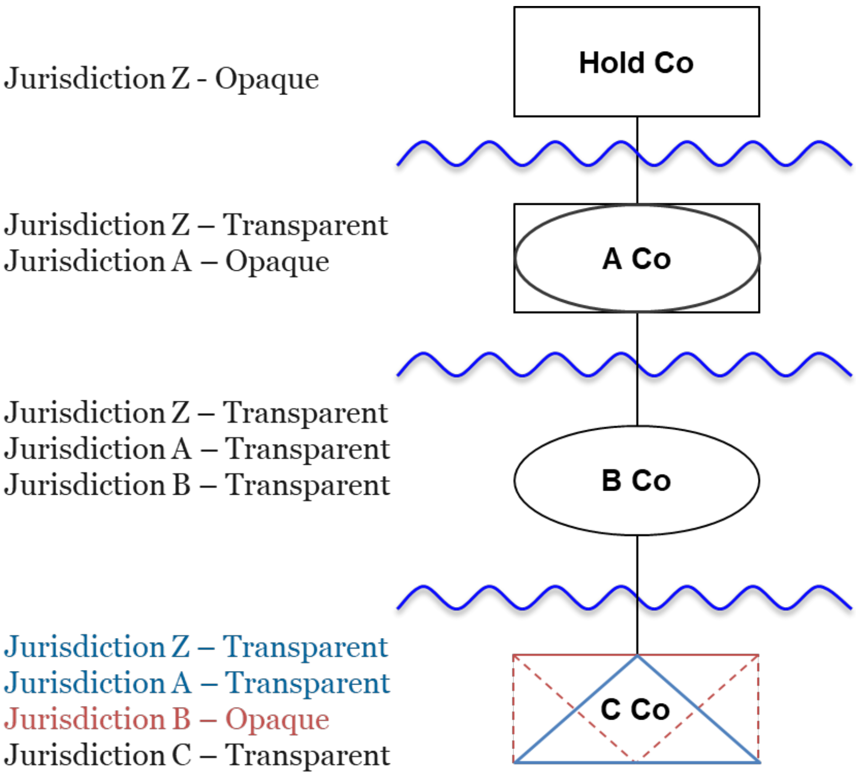
26. Consequently, the Commentary will be updated to clarify that a Flow-through Entity (other than a Flow-through UPE) will not be considered an owner for the purposes of Article 10.2.1. Instead, the owner for the purposes of Article 10.2.1 will be the next owner further up the ownership chain that is not a Flow-through Entity or where there is no such Entity, a Flow-through UPE (referred to as the Reference Entity in the guidance below).

27. This means that the treatment of an Entity as a Tax Transparent Entity or Reverse Hybrid Entity will depend on how the tax law of the Reference Entity's jurisdiction treats the Entity. Further, because this determination is made based on each Ownership Interest, an Entity with multiple owners in different jurisdictions could have more than one classification for GloBE purposes. Where this guidance refers to the tax law of the relevant Entity's jurisdiction, it is referring to all of the laws of the jurisdiction that result in treatment of the Entity as fiscally transparent and taxation of its income or loss at the owner level. In other words, tax law in the context of determining whether an Entity is fiscally transparent means the jurisdiction's laws, including tax laws, that affirmatively provide for the result that the Entity's income, expenditure, profit or loss is considered that of the owner for purposes of a Covered Tax.

28. The Commentary will also be updated to clarify what is meant by fiscally transparent in the case of an Entity that is not subject to a corporate income tax or other Covered Tax. A jurisdiction must have tax laws that affirmatively provide for fiscal transparent treatment to satisfy the definition. Accordingly, a jurisdiction that does not have a generally applicable corporate income tax or a similar Covered Tax cannot

be considered to treat an Entity created in the jurisdiction or an Entity owned by an Entity created in the jurisdiction as fiscally transparent. However, an Entity located in a jurisdiction without a corporate income tax may still be considered a Tax Transparent Entity in certain cases under Article 10.2.4.

29. This rule also appropriately addresses situations where more than one owner is subject to tax on a Flow-through Entity's income. This can arise when an owner that is subject to tax on the Flow-through Entity's income is a Hybrid Entity. This is illustrated in the following example.



	Classification of Entities in the ownership chain			
Jurisdiction	Hold Co	A Co	B Co	C Co
Z	Opaque	Transparent	Transparent	Transparent
A		Opaque	Transparent	Transparent
B			Transparent	Opaque
C				Transparent

30. The example is the same as that in paragraphs 14 and 15 above, except that C Co is viewed as fiscally transparent in Jurisdiction A and not fiscally transparent in Jurisdiction B; and there is a fourth Entity at the top of the structure, Hold Co. The tax laws of Hold Co's jurisdiction treat the three other Entities in the ownership chain as fiscally transparent. Both Hold Co and A Co are subject to tax on C Co's income. This raises the question which Entity should be allocated C Co's profit under the GloBE Rules.

31. This guidance allocates C Co's profit to A Co because it is the Entity closest to C Co in the ownership chain that is not a Flow-through Entity, i.e. it is not fiscally transparent in its jurisdiction. A Co meets the definition of a Hybrid Entity because Jurisdiction Z views A Co as fiscally transparent. Consequently, any taxes that Hold Co pays on C Co's profits will be reallocated to A Co under Article 4.3.2(d).

32. This solution ensures that the principle of matching the tax with the income that has been subject to the tax is satisfied. C Co's profits and taxes on those profits will be recognised in the same jurisdictional ETR computation. The solution is consistent with the general approach to the profit and tax allocation of Hybrid Entities, which is to recognise the profit in the Hybrid Entity and then allocate any taxes in respect of these profits paid by the owner to the Hybrid Entity.

5.2.2. Guidance

33. The strikethrough text will be deleted, and the bold text will be added to paragraphs 154 to 156 of the Commentary to Article 10.2.1.

> 154. Flow-through Entities can further be divided into two categories: Tax Transparent Entities and Reverse Hybrid Entities. The difference between these terms depends on how **those Entities are treated under the tax law of** the ~~direct~~ owners (i.e. **direct or indirect** owners of their Ownership Interest)~~ are treating them under their domestic tax law~~. **The determination of whether a tested Entity is a Tax Transparent Entity or Reverse Hybrid Entity is made for each Ownership Interest. As a result, an Entity with multiple owners in different jurisdictions could have more than one classification for GloBE purposes.**
>
> **154.1 Whether a Flow-through Entity (the tested Entity) is a Tax Transparent Entity or a Reverse Hybrid Entity depends on how the tax law of the jurisdiction in which the Reference Entity is located treats the tested Entity and each Entity through which the Reference Entity owns its Ownership Interest in the tested Entity. The Reference Entity is the Constituent Entity-owner that is closest in the ownership chain to the tested Entity and that is either (a) not a Flow-through Entity or (b) where there is no such Constituent Entity-owner, a Flow-through Entity that is the Ultimate Parent Entity of the MNE Group (Flow-through UPE).**
>
> 155. A Flow-through Entity is a Tax Transparent Entity if the tax law of the **Reference Entity's jurisdiction treats the tested Entity and each Entity through which the Reference Entity owns its Ownership Interest in the tested Entity** ~~owners also treat it~~ as fiscally transparent.~~ and requires the owner to recognize the income, expenditure, profit or loss of the Flow-through Entity as if it was income earned or expenditure borne by the owners~~.
>
> 156. ~~On the other hand, a~~ A Flow-through Entity is a Reverse Hybrid Entity if the~~ domestic~~ tax law of the jurisdiction in which the Reference Entity is located does not treat the tested Entity and each Entity through which the Reference Entity owns its Ownership Interest in the tested Entity ~~the owners are not treating it~~ as fiscally transparent~~ and therefore, it does not recognize the income, expenditure, profit or loss when earned or incurred by the Entity, but until the Entity distributes profits or make an equivalent payment to its owners~~.

34. The bold text will be added to paragraph 160 of the Commentary to Article 10.2.2.

> 160. Article 10.2.2 describes what is meant by fiscally transparent in Articles 10.2.1 and 10.2.5. It states that an Entity is treated as fiscally transparent under the laws of a jurisdiction, if such jurisdiction treats the income, expenditure, profit or loss of that Entity as if they were derived or incurred by the direct owner of the Entity in proportion to its interest. **This requires the jurisdiction to have laws that affirmatively provide for the result that the Entity's income, expenditure, profit or loss is considered to be the owner's income, expenditure, profit or loss for purposes of a Covered Tax. For example, a jurisdiction that does not have a corporate income tax or a similar Covered Tax cannot be considered to treat an Entity created in the jurisdiction or an Entity owned by an Entity created in the jurisdiction as fiscally transparent.**

35. The strikethrough text in the heading will be deleted, and paragraph 214 to the Commentary to Article 3.5.1 is replaced by a new paragraph 214.

Residual allocated to ~~direct~~ owners

~~214. If the Constituent Entity-owners are also Tax Transparent Entities, then paragraph (b) of Article 3.5.1 applies again and allocates the residual Financial Accounting Net Income or Loss to the next Constituent Entity-owner up the ownership chain (unless the Ownership Interest holder is the UPE, in which case Article 3.5.1(c) applies). Thus, if all the Constituent Entities are Tax Transparent Entities (i.e. a Tax Transparent Structure), all of the MNE Group's income or loss is ultimately allocated to the UPE under Article 3.5.1(b) and 3.5.1(c).~~

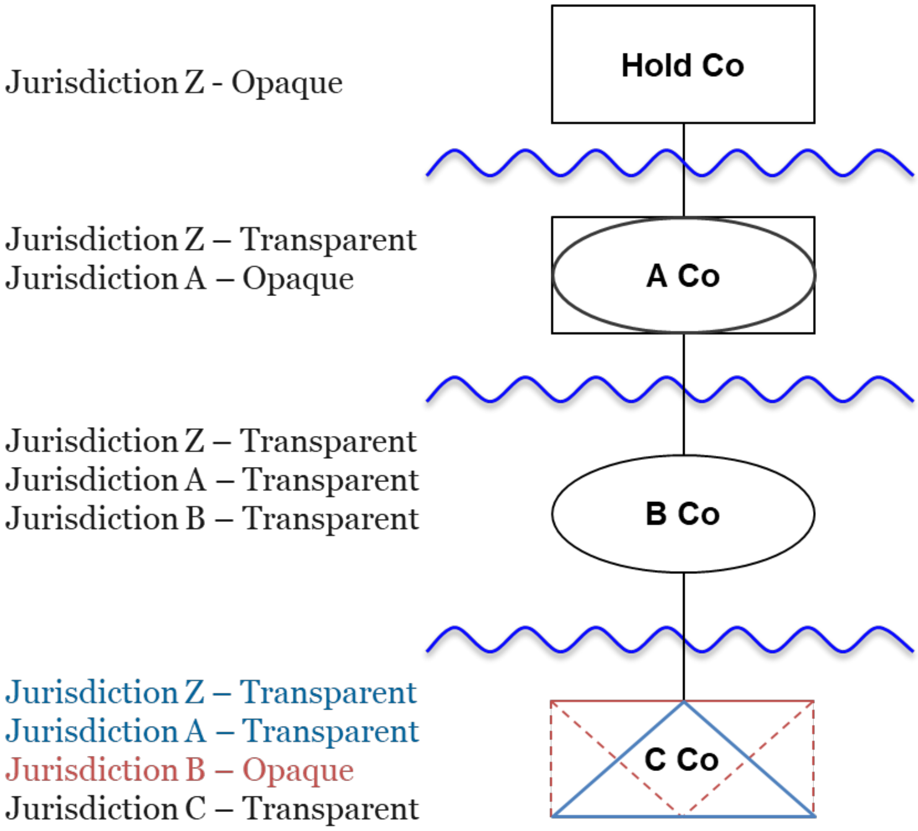
214. **The income of a Tax Transparent Entity is allocated to the Constituent Entity-owner that is the Reference Entity under Article 10.2.1. This ensures the income allocation is consistent with the rules that classify a Flow-through Entity as a Tax Transparent Entity or Reverse Hybrid Entity.**

5.2.3. Examples

36. The following examples will be included in the GloBE Model Rules Examples.

Example 10.2.1-1

1. Assume Hold Co owns A Co, A Co owns B Co, and B Co owns C Co. Hold Co is not a Flow-through Entity. The tax law of the jurisdiction in which Hold Co is located, Jurisdiction Z, treats Hold Co as a fiscally opaque entity and A Co, B Co and C Co as fiscally transparent. The tax law of the jurisdiction in which A Co is located, Jurisdiction A, treats A Co as fiscally opaque, and B Co and C Co as fiscally transparent. The tax law of the jurisdiction in which B Co is created, Jurisdiction B, treats B Co as fiscally transparent but treats C Co as fiscally opaque. The tax law of the jurisdiction in which C Co is created, Jurisdiction C, treats C Co as fiscally transparent. See illustration below.

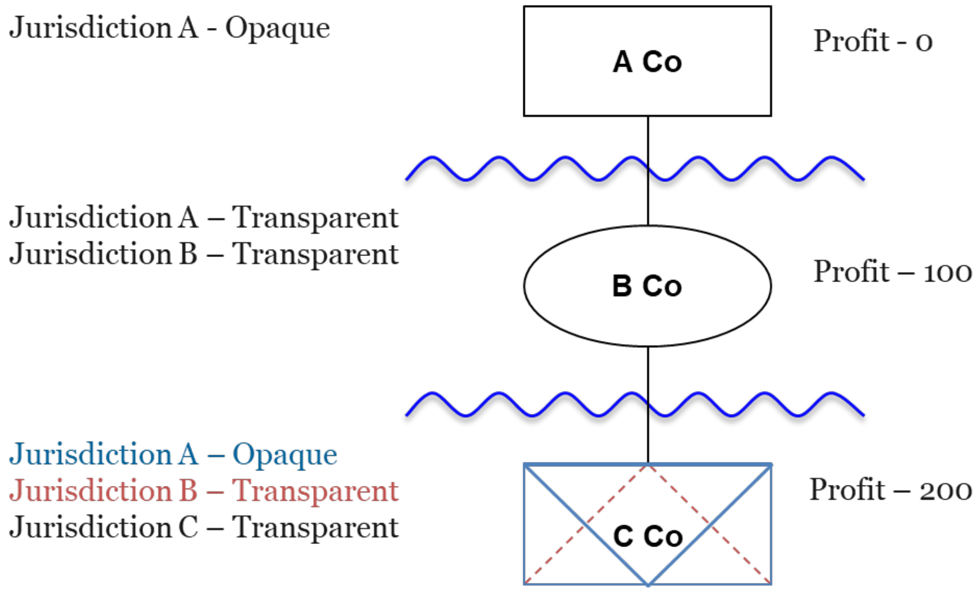


2. C Co is a Flow-through Entity because it is treated as fiscally transparent by the tax law of the jurisdiction where it was created (Jurisdiction C). It is a Tax Transparent Entity because A Co is the Reference Entity and Jurisdiction A's tax laws treat C Co and every Constituent Entity through which A Co's Ownership Interest in C Co is owned as fiscally transparent. A Co is the Reference Entity because it is the closest Constituent Entity-owner to C Co that is not treated as fiscally transparent under the tax laws in its place of creation (i.e. a Flow-through Entity).

3. In accordance with Article 3.5.1(b), the profit or loss of C Co is consequently allocated to A Co because A Co is the Reference Entity which determined that C Co is a Tax Transparent Entity. A Co also meets the Hybrid Entity definition because Jurisdiction Z's tax laws treat A Co as fiscally transparent so A Co's profits are subject to tax in both Jurisdiction A and Jurisdiction Z. Consequently, any Covered Taxes paid by Hold Co with respect to C Co's income shall be allocated to A Co under Article 4.3.2(d) because A Co is a Hybrid Entity and the profit or loss of C Co has been allocated to A Co.

Example 10.2.1-2

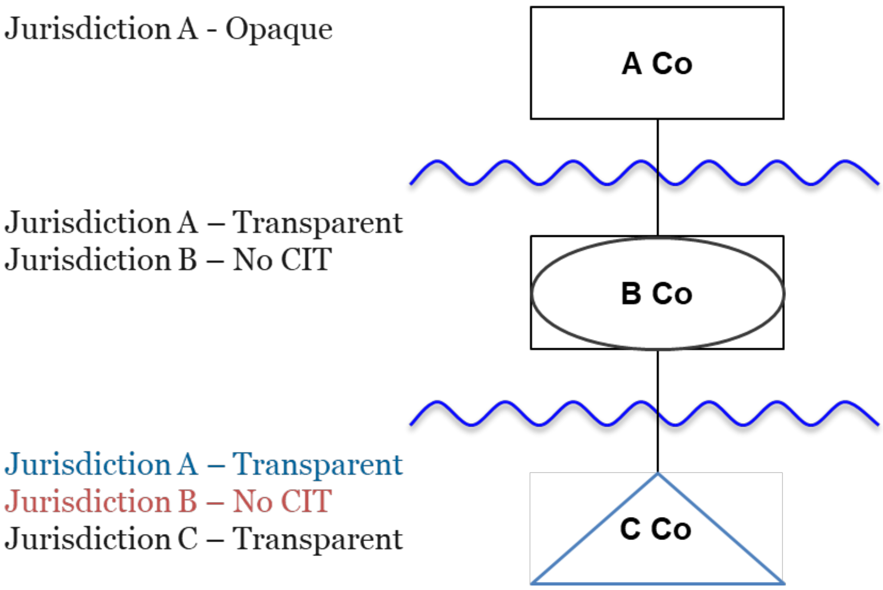
1. Assume A Co owns B Co and B Co owns C Co. A Co is not a Flow-through Entity. The tax law of the jurisdiction in which A Co is located, Jurisdiction A, treats A Co as fiscally opaque, B Co as fiscally transparent and C Co as fiscally opaque. The tax law of the jurisdiction in which B Co is created, Jurisdiction B, treats B Co and C Co as fiscally transparent. The tax law of the jurisdiction in which C Co is created treats C Co as fiscally transparent. Assume B Co's profit is 100 and C Co's profit is 200. See illustration below.



2. C Co is a Reverse Hybrid Entity because it is a Flow-through Entity that is not treated as fiscally transparent by the tax law of the first owner up the ownership chain that is not a Flow-through Entity (i.e. A Co). C Co's 200 of profit is not allocated to B Co or A Co, and remains in C Co in accordance with Article 3.5.1(c). This follows the principle that no jurisdiction's tax law is treating C Co's income as income of its own Constituent Entities. B Co is a Tax Transparent Entity because it is treated as fiscally transparent by the tax legislation of the first owner up the ownership chain that is not a Flow-through Entity (i.e. A Co). The 100 of profit of B Co is allocated to A Co in accordance with Article 3.5.1(b).

Example 10.2.1-3

1. Assume A Co wholly owns B Co which in turn owns C Co. A Co is located in Jurisdiction A. B Co and C Co are created in Jurisdictions B and C, respectively.



2. A Co is subject to tax on C Co's profits in Jurisdiction A, B Co is not considered fiscally transparent under Article 10.2.4. The table below summarises how each jurisdiction's tax laws treat the entities.

	Classification of Entities in the ownership chain		
Jurisdiction	A Co	B Co	C Co
A	Opaque	Transparent	Transparent
B		N/A	N/A
C			Transparent

3. B Co is created in a jurisdiction without a Corporate Income Tax and as such does not have laws that treat B Co or C Co as fiscally transparent. Accordingly, B Co is the Reference Entity because it is the Entity closest to C Co in the ownership chain that is not a Flow-through Entity. C Co is a Reverse Hybrid Entity because it is fiscally transparent under the tax laws of Jurisdiction C but not Jurisdiction B. C Co's profit is consequently allocated to C Co under Article 3.5.1(c).

5.3. Application of Article 3.5.3

37. Article 3.5.3 reduces a Flow-through Entity's Financial Accounting Net Income or Loss by the amount of income or loss that is allocable to owners that are not Group Entities and whose Ownership Interests in the Flow-through Entity are owned directly or indirectly through a Tax Transparent Structure. This ensures that the MNE Group does not pay top-up tax on income that it is not entitled to and on which no Constituent Entity is subject to tax.

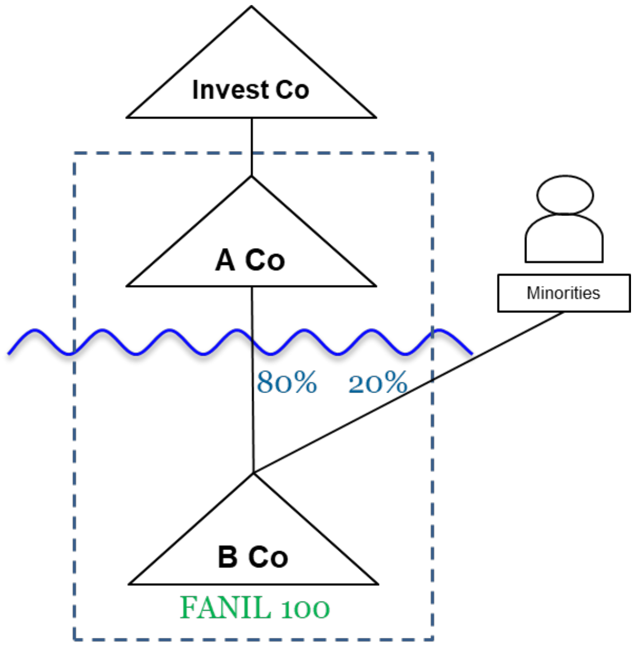
38. Two issues have been raised around the application of this Article. The first concerns the application of Article 3.5.3 to a partially owned Flow-through Entity when the UPE of the MNE Group is also a Flow-through Entity. The second concerns how Article 3.5.3 applies when the minority owners hold their interest in the tested Entity indirectly through another Constituent Entity of the MNE Group.

5.3.1. Issue 2a: Interaction of Article 3.5.3 and Article 3.5.4(b)

39. Article 3.5.4 states that Article 3.5.3 does not apply in the following two scenarios: (a) where the UPE of the MNE Group is a Flow-through Entity; and (b) where such a Flow-through UPE owns the Flow-through Entity directly or indirectly through a Tax Transparent Structure.

40. Article 3.5.4 was included to ensure that Ownership Interests that non-group Entities hold in the UPE do not cause the Financial Accounting Net Income or Loss of a Flow-through Entity to be reduced under Article 3.5.3. Otherwise, Article 3.5.3 could have resulted in the Financial Accounting Net Income or Loss of a Flow-through Entity being reduced to zero where the UPE is the Flow-through Entity or where the Flow-through Entity is owned by a Flow-through UPE through a Tax Transparent Structure. This is because the owners of the Flow-through UPE are all non-Group Entities. This would essentially have excluded the Entity, and potentially the entire MNE Group, from the GloBE Rules irrespective of whether the income is taxed in the hands of the non-Group owners. Instead, Article 7.1 applies and defines the conditions that needs to be met for the income to be reduced.

41. Stakeholders have identified some uncertainty over how Article 3.5.4(b) applies to Flow-through Entities that are not wholly owned by the UPE. Some have interpreted Article 3.5.4(b) to only disapply Article 3.5.3 with respect to Ownership Interests in the Flow-through Entity that are owned by non-Group Entities through the UPE. This would mean that the Financial Accounting Net Income or Loss allocable to other non-Group Entities would still be excluded by Article 3.5.3. Others consider that Article 3.5.3 does not apply to any Ownership Interests owned by non-Group Entities when Article 3.5.4(b) is met. The impact of the different interpretations is illustrated in the following example.



42. In this example, A Co is the UPE of the MNE Group and a Flow-through Entity. It is owned by Invest Co. A Co holds 80% of the Ownership Interests in B Co, a Flow-through Entity that is part of the same MNE Group. The remaining 20% of the Ownership Interests in B Co are directly held by persons that are not Group Entities. The Financial Accounting Net Income or Loss of B Co is 100.

43. Article 3.5.4 will apply because A Co is a Flow-through UPE. This ensures that B Co's Financial Accounting Net Income or Loss is not reduced because of Invest Co's Ownership Interests in A Co. The interpretation that Article 3.5.4 disapplies Article 3.5.3 fully would mean that none of the Financial Accounting Net Income or Loss of B Co will be excluded. The full 100 would be allocated to A Co in accordance with Article 3.5.1(b). Because the owners of the UPE will not be subject to tax on the 20 of income that is attributable to the Ownership Interests in B Co owned by non-Group Entities, it is unlikely the GloBE Income of the Flow-through UPE would be reduced to nil under Article 7.1. This could result in the MNE Group paying a top-up tax liability in respect of the income attributable to the non-Group Entity owners. This would be inconsistent with the policy intention of Articles 3.5.3 and 3.5.4.

44. Alternatively, if Article 3.5.4(b) applies to the extent that the Ownership Interests are owned directly or indirectly by the UPE, then it means that Article 3.5.3 continues to apply with respect to the Ownership Interests owned by non-Group Entities. The effect is that the Financial Accounting Net Income or Loss of B Co is reduced by 20 in accordance with Article 3.5.3 and the remaining 80 are then allocated to A Co in accordance with Article 3.5.1(b).

45. This provides for the correct answer on the application of Article 3.5.3 because the provision continues to apply to Ownership Interests owned by persons that are not Group Entities and not the UPE. It also provides for a consistent answer because it has the same effect on:

a. a structure where the Ownership Interests in the Flow-through Entity are owned directly by the UPE and directly or indirectly (through a Tax Transparent Structure) by persons that are not Group Entities; and

b. a structure where the Ownership Interests are owned indirectly by the UPE through a Tax Transparent Structure, and directly or indirectly (through a Tax Transparent Structure) by persons that are not Group Entities.

46. Therefore, this guidance clarifies that Article 3.5.4(b) applies when the Ownership Interests in the Flow-through Entity are owned by the UPE directly or indirectly through a Tax Transparent Structure and applies to the extent of the Ownership Interests owned by the UPE.

5.3.2. Guidance

47. The bold text and new paragraph 232.1 will be added to the Commentary to Article 3.5.4:

232**.** Article 3.5.4 sets out two cases where Article 3.5.3 does not apply. The first one is included in paragraph (a) which covers the case where the UPE is a Flow-through Entity. ~~Paragraph (b) covers the situation where the Flow-through Entity is held by a Flow-through UPE~~ ~~**directly or**~~ ~~through a Tax Transparent Structure. These cases are~~ **This case is** not contemplated in Article 3.5.3 because all of the owners of the Flow-through Entity are non-Group owners, ~~which~~ **and** is **instead** covered by Article 7.1.

232.1. Paragraph 3.5.4(b) disapplies Article 3.5.3 in relation to Ownership Interests of the Flow-through Entity that are owned directly by the UPE or indirectly by the UPE through a Tax Transparent Structure. This ensures the Financial Accounting Net Income or Loss of a Flow-through Entity is not reduced due to Ownership Interests of the UPE's owner(s). Instead, Article 3.5.1 will apply to allocate the profit of the Flow-through Entity between Constituent Entities, and Article 7.1 would apply to the UPE. However, Article 3.5.4(b) only disapplies Article 3.5.3 in respect of owners which have indirect Ownership Interests in the Flow-through Entity through Ownership Interests in the UPE. Article 3.5.3 will continue to apply to the extent that Ownership Interests in the Flow-through Entity are owned by non-Group Entities either directly or indirectly through Ownership Interests in Entities other than the UPE.

5.3.3. Example

48. The following example will be included in the GloBE Model Rules Examples.

Example 3.5.4-1

1. A Co is the UPE of the MNE Group and a Flow-through Entity. It owns 80% of the Ownership Interests in B Co, a Flow-through Entity that is part of the same MNE Group. The remaining 20% of the Ownership Interests in B Co are owned by persons that are not Group Entities.

2. The profit of B Co is 100. In this case, Article 3.5.4(b) applies only with respect to the 80% of the Ownership Interests in B Co that are owned by the UPE (which represent 80 of B Co's profit). This means that Article 3.5.3 still applies with respect to the 20% of the Ownership Interests in B Co that are owned by the persons that are not Group Entities and therefore, B Co's profit should be reduced by 20 prior to the allocation of the profit in accordance with Article 3.5.1.

5.3.4. Issue 2b: Application of Article 3.5.3 when a minority owner holds its interest indirectly through another Constituent Entity

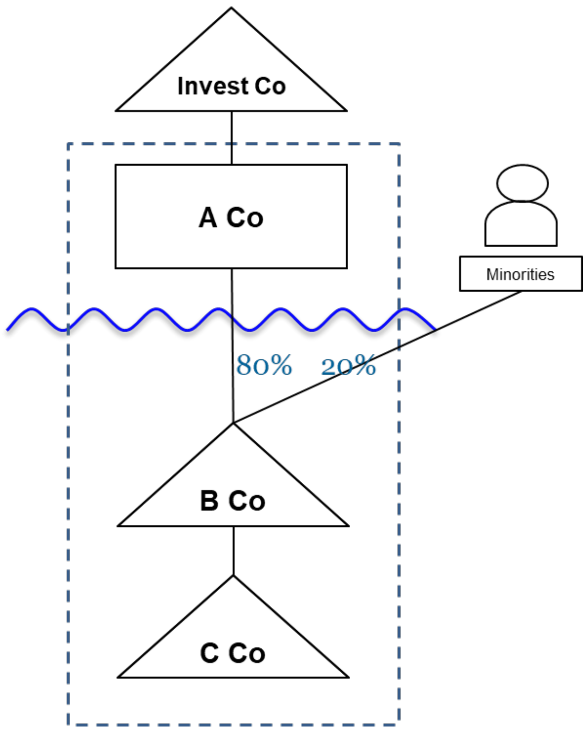
49. As above, Article 3.5.3 reduces the FANIL of a Flow-through Entity by the amount that is allocable to owners that are not Group Entities ('minority owners'). This reduction applies when these owners hold their interest in the tested Entity either directly or through a Tax Transparent Structure.

50. Where a minority owner holds its Ownership Interests in the tested Entity directly, the FANIL of the tested Entity will be reduced under Article 3.5.3 regardless of whether the tax laws of the minority owner's jurisdiction treat the tested Entity as a fiscally transparent entity. The FANIL will consequently be reduced even in cases where the minority owner is not subject to tax in respect of the tested Entity's income. This reflects that the MNE Group is not entitled to the income attributable to the minority owner, and prevents the MNE Group from having to determine the treatment of the tested Entity according to the jurisdiction(s) of minority owners.

51. In contrast, where a minority owner owns its Ownership Interests in the tested Entity indirectly, the FANIL will only be reduced when the interest is owned through a Tax Transparent Structure (i.e. a chain of Tax Transparent Entities). This condition reflects that an indirect interest owned through a Tax Transparent Structure is comparable to a direct interest because in both cases there will not be a Constituent Entity in the MNE Group that is subject to tax on the income. This also ensures that indirect Ownership Interests of minority owners do not lead to the FANIL of the tested Entity being reduced under Article 3.5.3 when its owner is a Constituent Entity that is not a Flow-through Entity. This reflects that the income of the tested Entity is attributable to the Constituent Entity-owner and so it is appropriate to include this income as part of the MNE Group's GloBE Income.

52. However, Inclusive Framework members have raised that there is some uncertainty over whether the reference to Tax Transparent Structure in Article 3.5.3 only refers to Ownership Interests of Constituent Entities of the MNE Group or whether it also covers the Ownership Interests owned by the minority investors.

53. This is illustrated in the following example.



54. The example is similar to the Example in Issue 2a, except that A Co is not a Flow-through Entity and the minority owners' Ownership Interests in C Co (the tested Entity) are owned through B Co, which is also a Flow-through Entity and is a Constituent Entity in the MNE Group.

55. A Co is the Reference Entity as it is the closest Constituent Entity-owner to C Co in the ownership chain that is not a Flow-through Entity. Both B Co and C Co are Tax Transparent Entities in relation to A Co.

56. If the reference to Tax Transparent Structure in Article 3.5.3 is determined solely by reference to the Ownership Interests owned directly or indirectly by Constituent Entities in the MNE Group and the treatment of the Entities in the Tax Transparent Structure under the laws of the Reference Entity's jurisdiction, then Article 3.5.3 will be satisfied given the minority owners hold their interests through B Co, which is treated as a Tax Transparent Entity according to A Co. Accordingly, the FANIL of C Co will be reduced to reflect that 20% of the Ownership Interests are (indirectly) attributable to owners that are not Group Entities. The remaining 80% of the profit will be allocated to A Co.

57. Conversely, if the reference to Tax Transparent Structure also refers to the treatment of the Entities through which the minority owners own their Ownership Interests in the tested Entity under the laws of the minority owners' jurisdiction(s), then C Co's FANIL would only be reduced to the extent that the tax laws of the minority owners' jurisdiction(s) treat B Co as a fiscally transparent entity. Where these tax laws do not treat B Co as a fiscally transparent entity, the FANIL would not be reduced under Article 3.5.3. 100% of C Co's profits would consequently be allocated to A Co, in spite of the fact that A Co has only 80% of the Ownership Interests in C Co. This would also lead to substantially different outcomes based on whether the minority owners' Ownership Interests in the tested Entity are owned directly or indirectly.

58. The Inclusive Framework has agreed that the first interpretation is correct. The Commentary will consequently be revised to clarify that Article 3.5.3 requires the FANIL to be reduced when the minority owners' Ownership Interests in the tested Entity are held directly or are indirectly owned through a Constituent Entity-owner which is a Flow-through Entity and is closer in the ownership chain to the tested Entity than the Reference Entity (i.e. is between the tested Entity and the Reference Entity).

5.3.5. Guidance

59. Paragraph 231 of the Commentary to Article 3.5.3 is revised to read as follows:

> 231. This provision also applies where the Ownership Interests of the tested Entity are owned indirectly by non-Group Entities through a Tax Transparent Structure. An Entity that is not a Group Entity is considered to indirectly own its interest in a tested Entity through a Tax Transparent Structure where the non-Group Entity owns an interest in a Flow-through Entity that sits between the Reference Entity and the tested Entity in the MNE Group's ownership structure.

5.4. Allocation of cross-border taxes under Article 4.3 in structures including Flow-through Entities

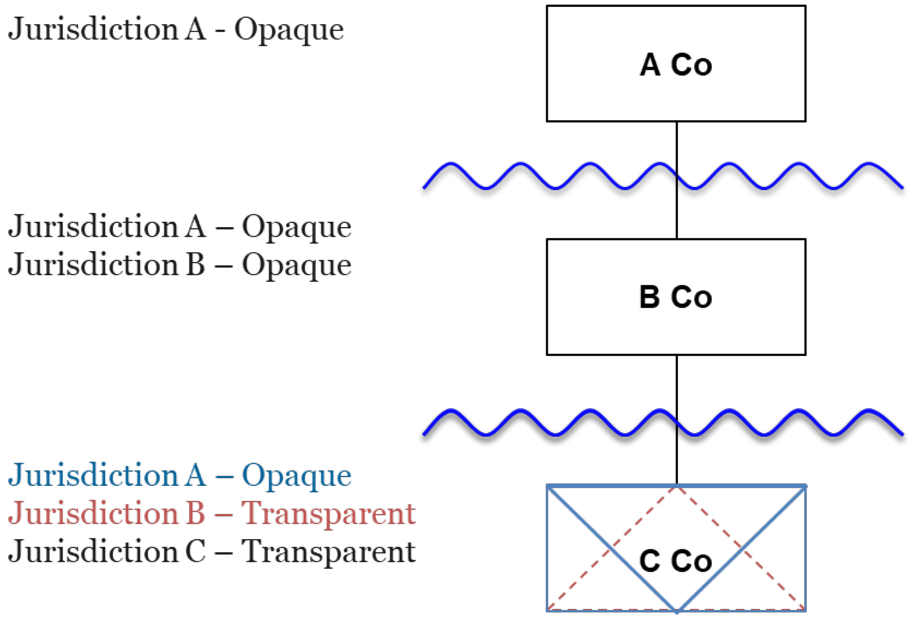
5.4.1. Issue 3: Allocation of cross-border taxes under Article 4.3 in structures including Flow-through Entities

60. Where profits of a Tax Transparent Entity are allocated to a Constituent Entity-owner under Article 3.5.1(b), Article 4.3.2(b) provides that any Covered Taxes accrued by the Tax Transparent Entity with respect to this income should also be allocated to the Constituent Entity-owner. This is based on the

matching principle that taxes should be included in the same jurisdictional ETR computation as the profits to which they relate.

61. However, Article 4.3.2(b) refers only to Covered Taxes that are accrued in the Tax Transparent Entity's financial accounts that are used to compute its Financial Accounting Net Income or Loss. It does not expressly apply to any Covered Taxes that are reallocated from another Constituent Entity to the Tax Transparent Entity under another provision in Article 4.3, for example a CFC charge.

62. This raises the question whether these Covered Taxes should also be reallocated to the Constituent Entity-owner of the Tax Transparent Entity or whether these Covered Taxes should be treated as Covered Taxes of the Tax Transparent Entity. This is illustrated in the following example:



63. Pursuant to this new guidance, C Co is a Tax Transparent Entity and its profits will be allocated to B Co. However, A Co is subject to tax under a Controlled Foreign Company Tax Regime on the profits of C Co. This CFC tax charge would be allocated to C Co under Article 4.3.2(c). The question addressed by this guidance is whether this CFC tax charge would subsequently be allocated to B Co along with the income of C Co.

64. This guidance clarifies that taxes allocated to a Tax Transparent Entity under Article 4.3.2 should be allocated under Article 4.3.2(b) in the same way as Covered Taxes accrued by the Tax Transparent Entity. In other words, the tax will follow the allocation of the income.

65. This means Covered Taxes should first be allocated to the Tax Transparent Entity under the relevant sub-paragraph of Article 4.3.2. Article 4.3.2(b) then applies to both Covered Taxes accrued by the Tax Transparent Entity and any Covered Taxes that are allocated to it.

66. This ensures that Covered Taxes are ultimately allocated to the same Constituent Entity to which the Financial Accounting Net Income or Loss was allocated under Article 3.5.1. This is consistent with the matching principle and ensures the jurisdictional ETR computations include all Covered Taxes with respect to the income.

67. In some cases, the same Flow-through Entity can be considered a Tax Transparent Entity, in part, and a Reverse Hybrid Entity, in part. In these cases, Article 3.5.1 allocates the profit or loss of the Flow-through Entity to the Constituent Entity-owner to the same extent that the Entity's income, expenditure, profit or loss is treated as being derived or incurred by the owner in proportion to its interest in the Entity. Any profit or loss not allocated to the Constituent Entity-owner remains in the Flow-through Entity (i.e. the amount that relates to its treatment as a Reverse Hybrid Entity). Article 4.3.2(b) would follow this allocation and allocate Covered Taxes to the relevant Constituent Entity-owner(s) (where the Flow-through Entity is a Tax Transparent Entity) and to the Reverse Hybrid Entity (where the Flow-through Entity is a Reverse Hybrid Entity) to the same extent that the profit or loss of the Flow-through Entity is allocated under Article 3.5.1.

68. However, where the Covered Taxes related to a CFC charge are allocated to the Tax Transparent Entity under Article 4.3.2(c), the mechanism of following Article 3.5.1(b) is modified to ensure CFC taxes are only allocated to Reference Entities through which the Parent Entity paying the CFC tax owns its Ownership Interests in the Tax Transparent Entity (i.e. the CFC). This ensures the CFC tax is matched with the income that the tax relates to. The allocation mechanism ignores Ownership Interests held by other owners (e.g. Reference Entities that are not owned by the Parent Entity paying the CFC tax and minority owners) to ensure that the full amount of CFC tax is allocated.

69. Finally, there is a question about the interaction between this guidance and the allocation mechanism for Blended CFC Tax Regimes. The computation of the Blended CFC Allocation Key takes into account the income attributable to the CFC. This means that this calculation needs to be undertaken before allocating income of a CFC that is a Flow-through Entity to a Constituent Entity-owner. After the right amount of CFC tax has been allocated to the CFC based on the Blended CFC Allocation Key, then its profit along with the amount of Blended CFC Tax allocated to the CFC shall be allocated to Constituent Entity-owners in accordance with Article 3.5.1 and Article 4.3.2(b).

5.4.2. Guidance

70. The following text will be added to the Commentary to Article 4.3.2(b)

> 57.1. Article 4.3.2(b) applies to CFC tax charges allocated to a Tax Transparent Entity under Article 4.3.2(c) as well as to Covered Taxes accrued in the financial accounts of the Tax Transparent Entity. Such CFC tax charges could be imposed on the profit of a Tax Transparent Entity where a Constituent Entity-owner, other than the Reference Entity, does not treat the Entity as fiscally transparent and therefore considers it a Controlled Foreign Company. In such cases, Article 4.3.2(b) allocates the amount of CFC tax imposed with respect to the profit of the Tax Transparent Entity to the Constituent Entity-owner to which the profit has been allocated pursuant to Article 3.5.1(b). The initial allocation of the CFC tax down to the Tax Transparent Entity under Article 4.3.2(c) (prior to that allocation to the Constituent Entity-owner under Article 4.3.2(b)) is still subject to the limitation of Article 4.3.
>
> 57.2. A Tax Transparent Entity may be owned by multiple Reference Entities. In such cases, CFC taxes imposed with respect to the profit of the Tax Transparent Entity should only be allocated to a Reference Entity when the Parent Entity (that pays the CFC tax) owns its Ownership Interest in the Tax Transparent Entity indirectly through the Reference Entity.

57.3. Where the Parent Entity (that pays the CFC tax) owns its Ownership Interests in the Tax Transparent Entity through multiple Reference Entities, the CFC tax is allocated between these Reference Entities to the same extent that the profit or loss of the Tax Transparent Entity is allocated between those Reference Entities (i.e. in the same proportion). This is consistent with the principle that Covered Taxes follow the GloBE Income or Loss to which it was imposed. This rule also applies in situations where the same Flow-through Entity is considered a Tax Transparent Entity and a Reverse Hybrid Entity with respect to different Ownership Interests. In such cases, the amount of the CFC tax is allocated to the Reference Entity (where the Flow-through Entity is a Tax Transparent Entity) and the Reverse Hybrid Entity (where the Flow-through Entity is a Reverse Hybrid Entity) to the same extent that the profit or loss of the CFC is allocated to the Reference Entity and the Reverse Hybrid Entity under Article 3.5.1.

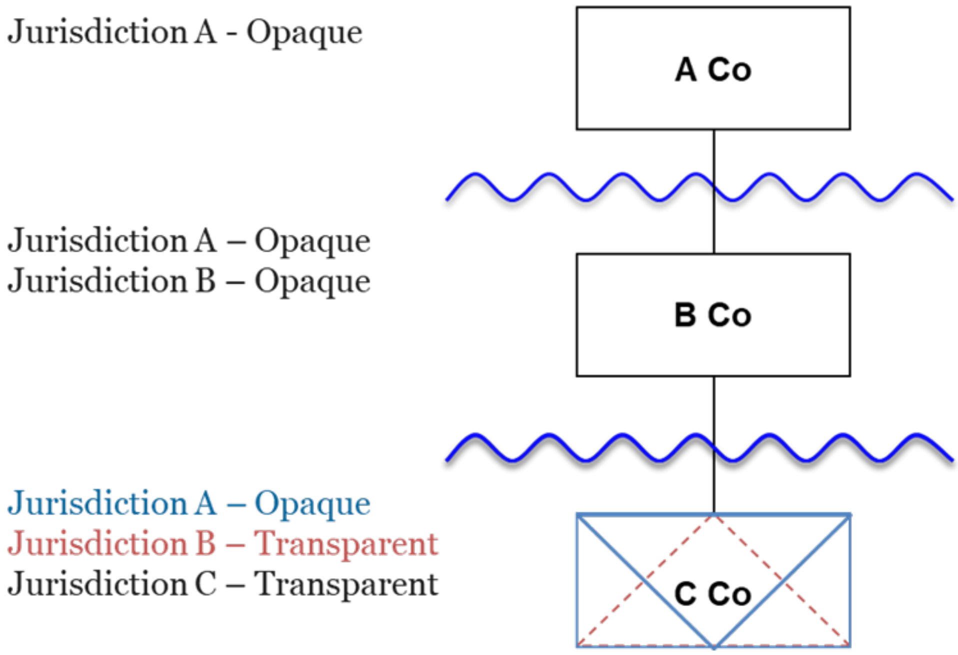
57.4. The computation of the Blended CFC Allocation Key for purposes of allocating Blended CFC Taxes (see paragraphs 58.1 to 58.7) takes into account the income attributable to the CFC. If the CFC is a Tax Transparent Entity, the computation of the Blended CFC Allocation Key shall be made before allocating the profit or loss of the Tax Transparent Entity to a Constituent Entity-owner. After the right amount of Blended CFC Tax has been allocated to the CFC (i.e., the Tax Transparent Entity), the profit or loss is allocated in accordance with Article 3.5.1. After the allocation of the profit or loss, the amount of Blended CFC Tax that has been previously allocated to the CFC in accordance with the Blended CFC Allocation Key will be allocated to the Constituent Entity-owner in accordance with Article 4.3.2(b) as explained in paragraphs 58.8 to 58.10.

5.4.3. Example

71. The following example will be included in the GloBE Model Rules Examples

Example 4.3.2-3 CFC taxes paid in respect of a Tax Transparent Entity

1. A Co owns B Co, and B Co owns C Co. The jurisdiction in which A Co is located, jurisdiction A, does not treat A Co, B Co or C Co as fiscally transparent. The jurisdiction in which B Co is located, jurisdiction B, treats B Co as not fiscally transparent and C Co as fiscally transparent. The jurisdiction in which C Co is created treats C Co as fiscally transparent. See illustration below.

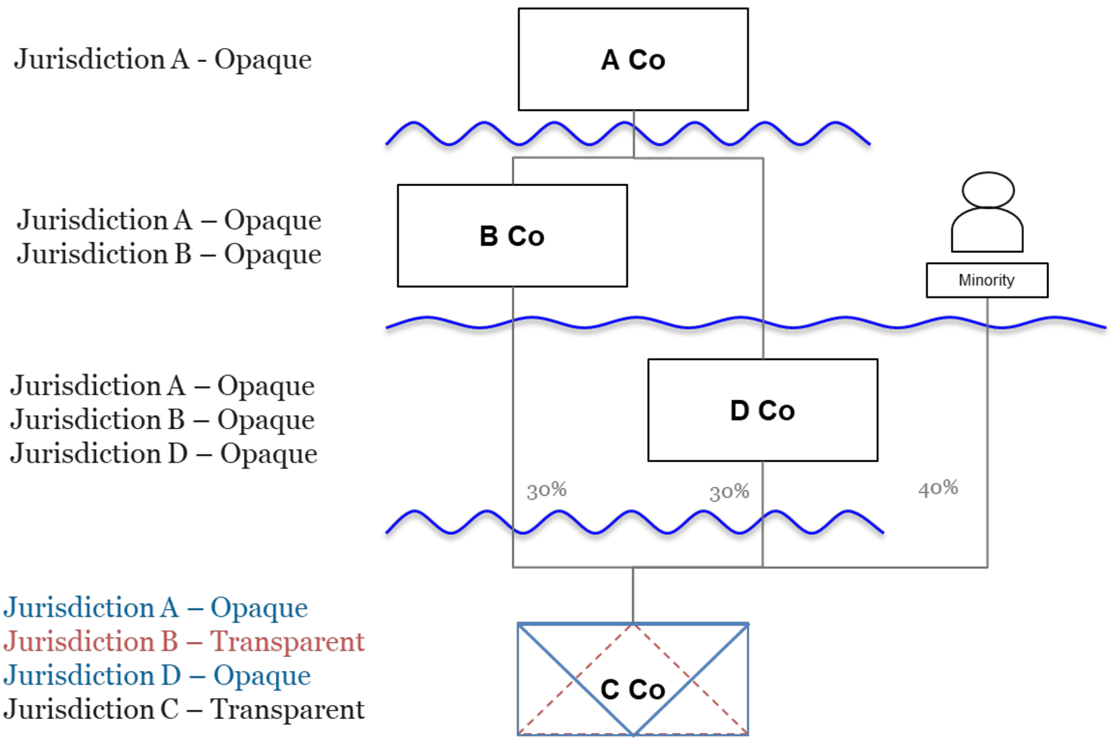


2. C Co has a profit of 100 and an ETR of 0%. B Co is the Reference Entity as it is the closest Constituent Entity-owner in the ownership chain to C Co that is itself not a Flow-through Entity. C Co is a Tax Transparent Entity according to the law of Jurisdiction B.

3. Jurisdiction A requires A Co to apply its CFC Tax Regime with respect to the profit of C Co and charges a CFC tax of 15 on that profit. Article 4.3.2(c) allocates the CFC tax (15) paid by A Co to C Co. This tax is then allocated to B Co under Article 4.3.2(b) because C Co's profit has been allocated to B Co under Article 3.5.1.

Example 4.3.2-4 CFC taxes paid in respect of a Tax Transparent Entity – cont.

1. The facts are the same as those in Example 4.3.2-3, except that C Co is only 30% owned by B Co. D Co, located in Jurisdiction D which does not see C Co as fiscally transparent, owns another 30%, while a minority owner located in Jurisdiction B owns the remaining 40% of C Co. See illustration below.



2. Jurisdiction B and D do not have Controlled Foreign Company Tax Regimes. Jurisdiction A requires A Co to apply its CFC Tax Regime with respect to its ownership interests in the profits of C Co and charges a CFC tax of 9 (15%*60%*100) on these profits. Article 4.3.2(c) allocates the CFC tax paid by A Co (9) to C Co.

3. The next step is to consider whether there is a further allocation of the 9 of CFC tax under Article 4.3.2(b). B Co and D Co are Reference Entities and are both held by A Co (the Parent Entity paying the CFC tax). C Co is a Tax Transparent Entity in relation to B Co and a Reverse Hybrid Entity in relation to D Co. As C Co is a Tax Transparent Entity in relation to B Co, part of the CFC tax will be further allocated to B Co under Article 4.3.2(b). The remaining part will remain in C Co. This matches the allocation of the tax with the allocation of profit. The 9 of CFC tax is allocated in the same proportion as how C Co's profits are allocated between B Co and C Co under Article 3.5.1 (ignoring any Ownership Interests attributable to minority owners or Reference Entities which are not owned by A Co), so 4.5 (9*(30/60)) is allocated to B Co and 4.5 is allocated to C Co. No CFC tax is allocated to the minority owner.

5.5. Hybrid Entities

72. Article 4.3.2(d) allocates Covered Taxes that are included in the financial accounts of a Constituent Entity-owner of a Hybrid Entity to the Hybrid Entity. This is again based on the matching principle that taxes should be included in the same jurisdictional ETR computation as the profits to which they relate.

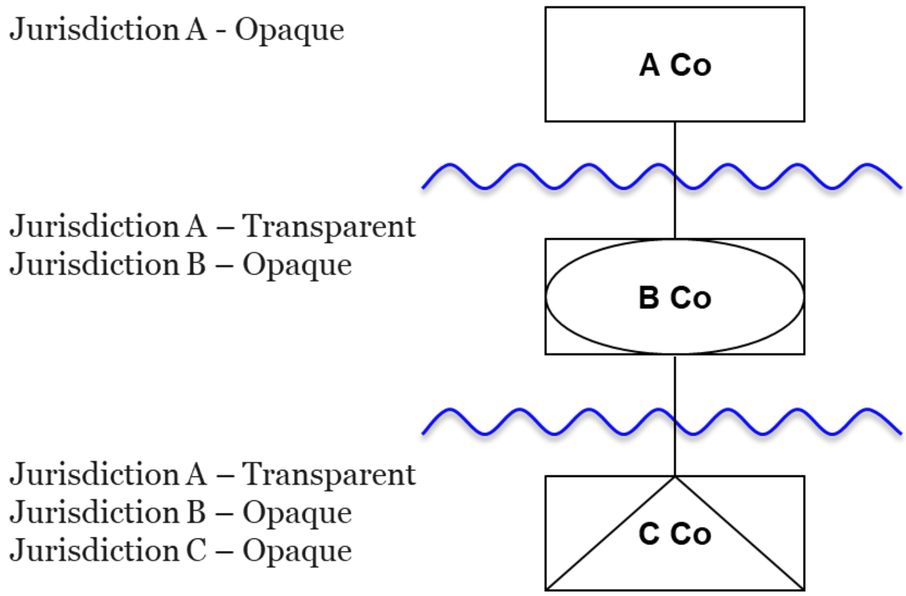
73. A Hybrid Entity is defined in Article 10.2.5 as a separate taxable person for income tax purposes in the jurisdiction where it is located but fiscally transparent in the jurisdiction where its owner is located.

74. Two issues have been identified with this definition. First, it is not clear from Article 10.2.5 nor its Commentary whether the word "owner" refers only to the direct owner or if it also refers to the indirect owner. Second, Entities which are located in jurisdictions without a CIT will not be treated as a separate taxable person for income tax purposes in their jurisdiction and so will not meet the definition in Article 10.2.5.

5.5.1. Issue 4: Extension to indirect owners

75. The first issue is relevant in cases where the indirect owner is subject to a Covered Tax on the Hybrid Entity's income. If Article 10.2.5 were limited to the direct owner, then any tax paid by the indirect owner would not be taken into account for the GloBE calculations in the jurisdiction where the Hybrid Entity is located. A further question would be whether such tax could be included in the GloBE calculations of the Parent Entity considering Articles 4.1.3(a) (which removes taxes related to income excluded from the GloBE calculations) and 4.3.3 (which requires taxes paid by a Parent Entity which cannot be allocated to a CFC or Hybrid Entity because of the passive income limitation to be kept in the parent jurisdiction).

76. This is illustrated in the following example:



77. In this example, A Co wholly owns B Co which in turn wholly owns C Co. A Co is located in Jurisdiction A, B Co in Jurisdiction B and C Co in Jurisdiction C. The table below summarises how each jurisdiction's entity classification rules treat the entities.

	Classification of Entities in the ownership chain		
Jurisdiction	A Co	B Co	C Co
A	Opaque	Transparent	Transparent
B		Opaque	Opaque
C			Opaque

78. Jurisdiction A regards both B Co and C Co as fiscally transparent entities. A Co is consequently subject to tax on C Co's profits. As C Co is regarded as fiscally opaque in Jurisdiction C, it will also be subject to tax on its profits.

79. Jurisdiction B's tax laws do not treat C Co as a fiscally transparent entity. This means C Co will not meet the Hybrid Entity definition with respect to B Co. This would also be the case where Jurisdiction B does not have a Corporate Income Tax, and accordingly does not have tax laws, because in such cases Jurisdiction B will not treat C Co as a fiscally transparent entity. If the reference to owner in Article 10.2.5 is limited to the direct owner, this would prevent taxes paid by A Co on C Co's profits from being allocated to C Co. This could result in double taxation if top-up taxes are payable with respect to C Co. This could also result in an inflated ETR for Jurisdiction A if the tax is included in the ETR computation for Jurisdiction A as a result of not being allocated to C Co.

80. Alternatively, if the reference to ‘owner’ in Article 10.2.5 includes an indirect owner, then C Co would be regarded as a Hybrid Entity because A Co is also subject to tax on its profits. This would allow any taxes paid by A Co with respect to these profits to be allocated to C Co under Article 4.3.2(d), which would prevent double taxation and be more consistent with the matching principle of the GloBE Rules.

81. The Inclusive Framework considers this is the more appropriate outcome and accordingly, the Commentary to Article 10.2.5 will be modified to clarify that the word “owner” refers to both the direct and indirect Constituent Entity-owner of the Entity. Consequently, Covered Taxes reflected in the financial accounts of the direct and indirect Constituent Entity-owners that relates to the income of the Hybrid Entity and are imposed because the Entity is fiscally transparent under the tax law applicable to such direct and indirect Constituent Entity-owners will be allocated to the Hybrid Entity subject to the limitations in Article 4.3.3.

5.5.2. Guidance

82. The bold text will be added to paragraph 59 of the Commentary to Article 4.3.2(d):

> 59. Paragraph (d) allocates Taxes of **direct and indirect** Constituent Entity-owners arising in connection with the income of Hybrid Entities. If a Constituent Entity-owner of a Hybrid Entity is located in a tax jurisdiction that imposes Tax on the owner’s share of the Hybrid Entity’s income under a fiscal transparency regime (see discussion in Commentary to Article 10.2), the Covered Taxes included in the financial accounts of the Constituent Entity-owner should be assigned to the Hybrid Entity. The same general process described in paragraph (a) above for allocating Covered Taxes imposed on the Main Entity in respect of a PE can be used to determine the amount of taxes allocated by a Constituent Entity owner to a Hybrid Entity, however any taxes allocated to a Hybrid Entity by a Constituent Entity-owner in respect of Passive Income are subject to limitation under Article 4.3.3, which is discussed further below. If the Constituent Entity-owner is subject to a withholding tax or net basis taxes on distributions from the Hybrid Entity, such Taxes would also be allocated to the Hybrid Entity pursuant to paragraph (e).

83. The following paragraphs will be added after paragraph 59 of the Commentary to Article 4.3.2(d):

> 59.1. Article 4.3.2(d) allocates Covered Taxes included in the financial accounts of a direct and indirect Constituent Entity-owner on the income of the Hybrid Entity to the Hybrid Entity. This means that Covered Taxes in the financial accounts of multiple Constituent Entity-owners having, directly or indirectly, the same Ownership Interests can be allocated to the Hybrid Entity.
>
> 59.2. For example, A Co is a tax resident in jurisdiction A which owns B Co, a tax resident in jurisdiction B, which owns C Co, a tax resident in jurisdiction C. The MNE Group owns no other Constituent Entities in jurisdiction C. A Co, B Co and C Co are not Flow-through Entities. Jurisdiction A treats B Co and C Co as fiscally transparent. Jurisdiction B also treats C Co as fiscally transparent. C Co’s profit is 100 which is composed only of active income and subject to a 10% tax in jurisdiction C (10 of tax). Jurisdiction B taxes C Co’s profit at a rate of 15% and provides a foreign tax credit such that B Co pays 5 of tax. Jurisdiction A also taxes C Co’s profit at a rate of 18% and provides a foreign tax credit for taxes paid in jurisdictions B and C such that A Co pays 3 of tax. The taxes paid by A Co and B Co are reflected in their financial accounts.
>
> 59.3. In this case, Article 4.3.2(d) will effectively allocate 5 of tax paid by B Co and 3 of tax paid by A Co to C Co because those taxes were paid in respect of C Co’s income. The Effective Tax Rate of jurisdiction C will be 18% ([10+5+3]/100).

5.5.3. Issue 5: Entities located in jurisdictions without a Corporate Income Tax

84. The second issue relates to when a Constituent Entity is located in a jurisdiction without a corporate income tax or another Covered Tax. Pursuant to the guidance in paragraph 34 of this document, such Entities cannot be considered fiscally transparent under the definition of fiscal transparency in Article 10.2.2 unless it is considered a Tax Transparent Entity in certain cases under Article 10.2.4. If the Constituent Entity is not treated as a fiscally transparent Entity under the specific rule in Article 10.2.4, for instance because it has a place of business in the jurisdiction where it was created, then its profits will not be allocated to another Constituent Entity.

85. If a Constituent Entity-owner is located in a jurisdiction that regards the Constituent Entity as fiscally transparent, this owner could nonetheless be subject to tax on the Constituent Entity's profits. However, this tax would not be allocated to the Constituent Entity because Article 4.3.2(d) only applies when the Constituent Entity is a Hybrid Entity or a Reverse Hybrid Entity. Under Article 10.2.5, an Entity can only be considered a Hybrid Entity if it is treated as a separate taxable person for income tax purposes in the jurisdiction where it is located. Consequently, the Hybrid Entity definition in Article 10.2.5 does not apply when a Constituent Entity is located in a jurisdiction without a CIT because the Entity will not be treated as a separate taxable person in such a jurisdiction.

86. This would lead to a breakdown in the matching principle because the tax of the Constituent Entity-owner will not be included in the same jurisdictional ETR computation as the profit to which it relates. There is also no clear policy justification for only allocating taxes to a Constituent Entity when it is located in a jurisdiction with a CIT.

87. Accordingly, the Inclusive Framework has agreed to clarify that the Hybrid Entity definition will also apply to an Entity that is not treated as fiscally transparent under Article 10.2.4 and is located in a jurisdiction under Article 10.3.1(b).

5.5.4. Guidance

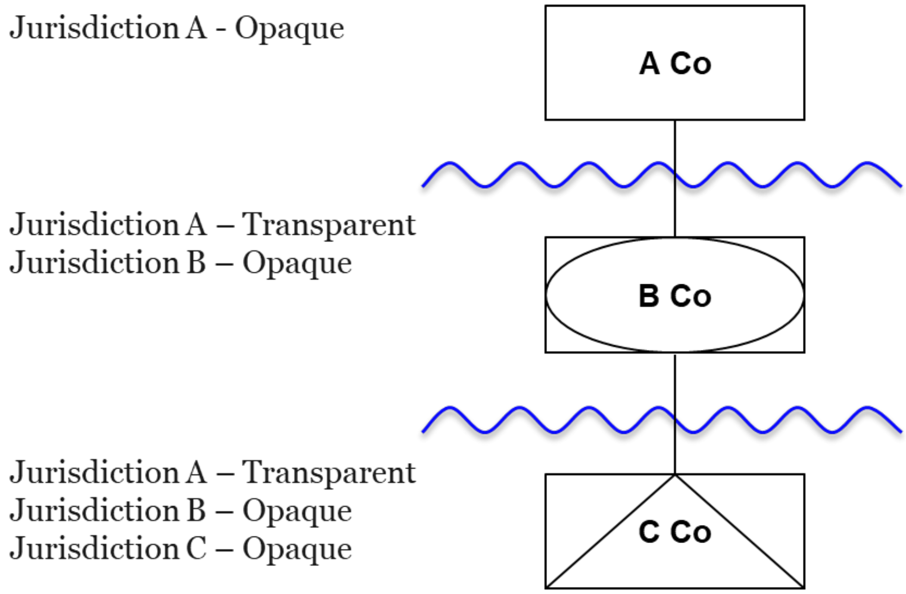
88. The bold text will be added to the Commentary to 10.2.5:

> 169. Article 10.2.5 defines a Hybrid Entity as an Entity that is treated as a separate taxable person for income tax purposes in the jurisdiction where it is located (i.e. a tax resident) but treated as fiscally transparent in the jurisdiction where its owners are located. **An Entity that is located in a jurisdiction that does not have a Corporate Income Tax will also be treated as a Hybrid Entity if it is treated as fiscally transparent in the jurisdiction where its owners are located and is not treated as a fiscally transparent entity under Article 10.2.4 (for example because the Entity has a place of business in the jurisdiction where it was created). The word "owner" refers to both the direct and indirect owner of the Ownership Interests of the Hybrid Entity.** Similar to other definitions in Article 10.2, the phrase "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" allows that an Entity can be considered a Hybrid Entity only with respect to the owners that treat it as fiscally transparent. The term Hybrid Entity is relevant for purposes of Article 4.3.2(d).

5.5.5. Examples

Example 10.2.1-4 Extension of Article 10.2.5 to indirect owners

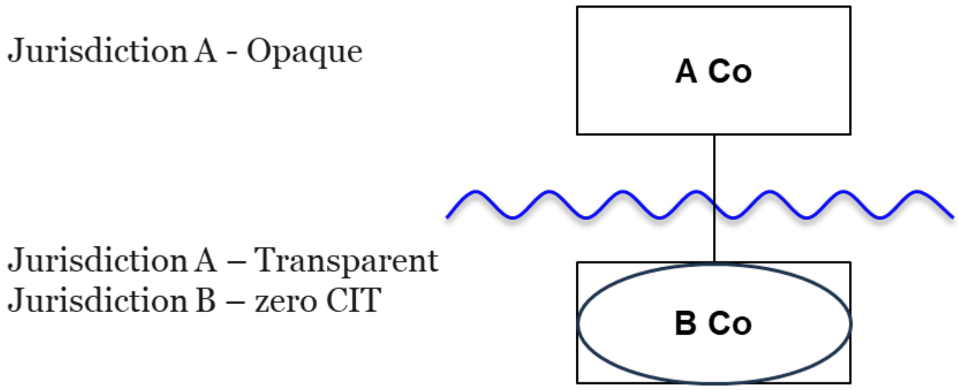
1. Assume A Co wholly owns B Co which in turn wholly owns C Co. A Co is located in Jurisdiction A, B Co in Jurisdiction B and C Co in Jurisdiction C. Jurisdiction A regards both B Co and C Co as fiscally transparent entities. Jurisdiction B's tax laws do not treat C Co as a fiscally transparent entity. See illustration below.



2. C Co is a Hybrid Entity because A Co, the 'owner' referred to in Article 10.2.5, is subject to tax on C Co's profits. Consequently, any taxes paid by A Co with respect to C Co's profits are allocated to C Co under Article 4.3.2(d).

Example 10.2.1-5 Entities located in jurisdictions without a Corporate Income Tax

1. Assume A Co owns B Co. The tax laws of Jurisdiction A treat B Co as fiscally transparent, therefore A Co is subject to tax on B Co's profits. Jurisdiction B does not have a Corporate Income Tax regime. B Co does not meet the definition of a Tax Transparent Entity under Article 10.2.4 because it has a place of business in Jurisdiction B, where it is created. See illustration below.



2. B Co is a Hybrid Entity because it is treated as fiscally transparent in the jurisdiction where its owner is located and is not treated as a fiscally transparent entity under Article 10.2.4.

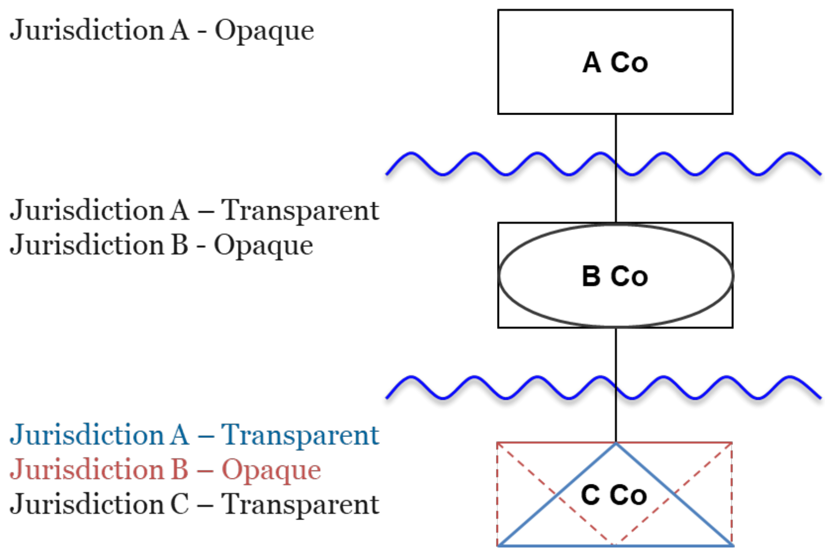
5.6. Taxes paid by a Constituent Entity-owner with respect to a Reverse Hybrid Entity's income

5.6.1. Issue 6: Matching of taxes and income where an owner is subject to tax with respect to a Reverse Hybrid Entity's income

89. Under this guidance, the tax law of the Reference Entity's jurisdiction determines whether a Flow-through Entity is treated a Tax Transparent Entity or a Reverse Hybrid Entity. This will generally ensure the profits of a Flow-through Entity are allocated consistently with the principles that income should be allocated to the jurisdiction that would be expected to have the primary taxing rights in respect of that income and the matching principle that income and tax with respect to that income should be matched in the same jurisdictional ETR computation.

90. However, this rule may not always put the Flow-through Entity's profit and the MNE Group's tax on that profit in the same jurisdictional ETR computation if the Entity is owned through a chain of Entities. This is because the jurisdictions where the owners are located could take different views on the transparency of an Entity, leading some owner(s) to conclude that an Entity is fiscally transparent and (the) other owner(s) to conclude that it is not fiscally transparent. This inconsistent treatment will lead to a mismatch in the allocation of profits and taxes if an indirect owner views the Entity (and each Entity through which the owner owns its Ownership Interest in the Entity) as fiscally transparent and pays tax on its income, but the Reference Entity views the Entity as fiscally opaque. This is because under this guidance, the Entity will be classified as a Reverse Hybrid Entity (because it is not viewed as fiscally transparent by the Reference Entity), and this will prevent the profits of the Entity from being allocated to the indirect owner that is subject to tax on the Entity's income. Further, the taxes paid by the indirect owner on this income would not be allocated to the Reverse Hybrid Entity under Article 4.3.2.

91. This is illustrated in the following example.



92. In this example, A Co wholly owns B Co which in turn owns C Co. A Co is located in Jurisdiction A, B Co in Jurisdiction B, and C Co in Jurisdiction C. The table below summarises how each jurisdiction's tax laws treat the entities.

	Classification of Entities in the ownership chain		
Jurisdiction	A Co	B Co	C Co
A	Opaque	Transparent	Transparent
B		Opaque	Opaque
C			Transparent

93. Because Jurisdiction A's tax laws consider both B Co and C Co as fiscally transparent, the profits or losses of C Co are included in A Co's taxable income and subject to tax. These profits or losses are not taxed in either Jurisdiction B, because its tax laws regard C Co as fiscally opaque, or Jurisdiction C, because its tax laws regard C Co as fiscally transparent.

94. Under Article 10.2.1, C Co is considered a Reverse Hybrid Entity because B Co is the Reference Entity, and the tax laws of Jurisdiction B do not treat C Co as fiscally transparent. This means that the GloBE Income or Loss of C Co is not allocated to another Constituent Entity and is effectively treated as stateless income. The tax paid by A Co with respect to C Co's income is not allocated to C Co.

95. This outcome is inconsistent with the policy of matching income and the taxes on that income for purposes of the GloBE ETR computations. This could result in double taxation to the extent that Top-up Taxes are paid under an IIR or UTPR in respect of C Co's profits in addition to the taxes A Co has paid on those profits. Similarly, there are also instances where the direct owners of the Reverse Hybrid Entity are subject to tax on the income of the Reverse Hybrid Entity. Leaving the Covered Tax in the jurisdiction of the direct owners while the profits remaining with the Reverse Hybrid Entity can also lead to double taxation under GloBE.

96. Accordingly, the Commentary will be revised to clarify that Covered Taxes paid by a direct or indirect Constituent Entity-owner with respect to the profits of a Reverse Hybrid Entity are allocated to the Reverse Hybrid Entity under Article 4.3.2(d). This will ensure that taxes are appropriately matched with the income that the tax relates to, in line with the matching principles of the GloBE Rules. Article 4.3.2(d) shall apply in the same way to the income of a Reverse Hybrid Entity as it applies to the income of a Hybrid Entity. Accordingly, the allocation of Covered Taxes from a Constituent Entity-owner to a Reverse Hybrid Entity will be subject to the passive income limitation in Article 4.3.3.

97. For the purposes of computing the ETR under a QDMTT, Paragraphs 118.28 to 118.30 of the Commentary require a QDMTT to exclude from the Adjusted Covered Taxes the Covered Tax expense of a Constituent Entity-owner on income of a Hybrid Entity that is allocable to a Hybrid Entity located in the QDMTT jurisdiction, as well as the Covered Tax expense of a Constituent Entity-owner on income of a Reverse Hybrid Entity that is allocable to a Reverse Hybrid Entity created in the QDMTT jurisdiction. For the avoidance of doubt, this requirement does not apply to taxes imposed by a QDMTT jurisdiction itself on a direct or indirect Constituent Entity-owner's share of income of a Reverse Hybrid Entity created in the QDMTT jurisdiction, as such taxes resulted from the QDMTT jurisdiction's exercise of its primary taxing rights.

5.6.2. Guidance

98. The following additions in bold will be made to the Commentary to Article 4.3.2(d):

Paragraph (d) - Hybrid Entities ***and Reverse Hybrid Entities***

59. Paragraph (d) allocates Taxes of Constituent Entity-owners arising in connection with the income of Hybrid Entities **and Reverse Hybrid Entities**. If a Constituent Entity-owner of a Hybrid Entity **or Reverse Hybrid Entity** is located in a tax jurisdiction that imposes Tax on the owner's share of the Hybrid Entity~~'s~~ **or Reverse Hybrid Entity's** income under a fiscal transparency regime (see discussion in Commentary to Article 10.2), the Covered Taxes included in the financial accounts of the Constituent Entity-owner should be assigned to the Hybrid Entity **or Reverse Hybrid Entity**. **In some cases, an indirect Constituent Entity-owner that is further up the ownership chain than the Reference Entity (i.e. the owner whose tax law determined that the Flow-through Entity is treated as a Reverse Hybrid Entity) may be subject to tax on the Reverse Hybrid Entity's income under a domestic fiscal transparency regime notwithstanding that the Entity is not a Tax Transparent Entity under the GloBE Rules. Similarly, the jurisdiction in which the Reverse Hybrid Entity is created may impose a Covered Tax on a direct Constituent Entity-owner that is located in another jurisdiction in respect of the Reverse Hybrid Entity's income. In those cases, Taxes of the Constituent Entity-owner must be allocated to the Reverse Hybrid Entity in the same manner as if it were a Hybrid Entity.** The same general process described in paragraph (a) above for allocating Covered Taxes imposed on the Main Entity in respect of a PE can be used to determine the amount of taxes allocated by a Constituent Entity owner to a Hybrid Entity **or Reverse Hybrid Entity**, however any taxes allocated to a Hybrid Entity **or Reverse Hybrid Entity** by a Constituent Entity-owner in respect of Passive Income are subject to limitation under Article 4.3.3, which is discussed further below. If the Constituent Entity-owner is subject to a withholding tax or net basis taxes on distributions from the Hybrid Entity **or Reverse Hybrid Entity**, such Taxes would also be allocated to the Hybrid Entity **or Reverse Hybrid Entity** pursuant to paragraph (e).

99. The bold text will be added to the Commentary to Article 4.3.3:

62. Article 4.3.3 imposes a limitation on the "push-down" of Taxes from a Constituent Entity-owner that are attributable to Passive Income of the subsidiary Constituent Entity. This rule is designed to maintain the integrity of the jurisdictional blending rules in relation to mobile income. In the absence of Article 4.3.3, the rules in Article 4.3.2(c) and (d), which allocate Taxes paid by a Constituent Entity-owner under a CFC Tax Regime or in respect of a Hybrid Entity **or Reverse Hybrid Entity**, would effectively blend the Taxes paid on that mobile income in the Constituent Entity-owner's high tax jurisdiction with other income arising in the Low-Tax Jurisdiction. Without the rule of Article 4.3.3, an MNE Group could shift mobile income from high-tax jurisdictions to Low-Tax Jurisdictions to reduce overall tax liability (including Top-up Tax liability) in the MNE Group.

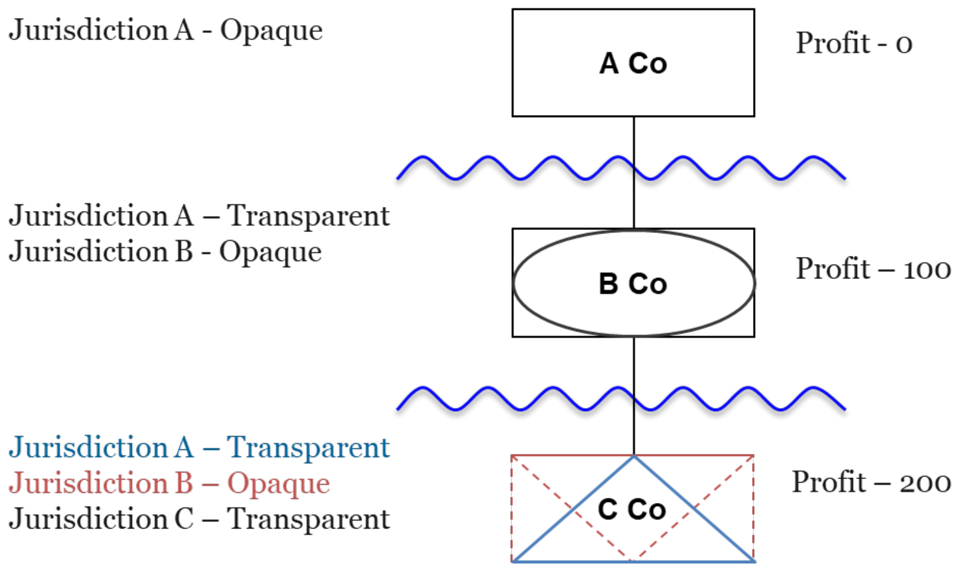
100. The following additions in bold will be made to the Commentary to the definition of a Qualified Domestic Minimum Top-up Tax in Article 10.1:

118.30 For purposes of computing the ETR, a QDMTT shall exclude Covered Tax expense of: (i) a Constituent Entity-owner under a CFC Tax Regime that is allocable to a domestic Constituent Entity under Article 4.3.2(c) of the GloBE Rules; (ii) a Main Entity that is allocable under Article 4.3.2(a) to a Permanent Establishment located in the jurisdiction; (iii) a Constituent Entity-owner on income of a Hybrid Entity **or a Reverse Hybrid Entity** that is allocable **under Article 4.3.2(d)** to a Hybrid Entity **or Reverse Hybrid Entity that is either** located in the jurisdiction **or is included in the scope of the QDMTT because the QDMTT applies to stateless Flow-through Entities created in the QDMTT jurisdiction** ~~under Article 4.3.2(d)~~; and (iv) a Constituent Entity-owner (e.g. net basis taxes), other than a withholding tax imposed by the QDMTT jurisdiction, that is allocable to a distributing Constituent Entity located in the jurisdiction under Article 4.3.2(e). Withholding taxes that are described in Article 4.3.2(e) imposed by the QDMTT jurisdiction itself on distributions from a Constituent Entity located in the QDMTT jurisdiction are allocated to the distributing Constituent Entity under the QDMTT. **Similarly, Covered Taxes accrued in the financial accounts of a Constituent Entity-owner of a Hybrid Entity or Reverse Hybrid Entity are included in the Adjusted Covered Taxes of the Hybrid Entity or Reverse Hybrid Entity where the taxes (a) are allocated to the Hybrid Entity or Reverse Hybrid Entity under Article 4.3.2(d), (b) are imposed by the jurisdiction of the Hybrid Entity or Reverse Hybrid Entity and (c) relate to the income of the Hybrid Entity or Reverse Hybrid Entity. This could include for example taxes in respect of immovable property located in the QDMTT jurisdiction.**

5.6.3. Examples

Example 10.2.1-6

1. Assume A Co owns B Co and B Co owns C Co. A Co is not a Flow-through Entity. The tax law of the jurisdiction in which A Co is located, Jurisdiction A, treats A Co as fiscally opaque and B Co as fiscally transparent and C Co as fiscally transparent. B Co is not a Flow-through Entity. The tax law of the jurisdiction in which B Co is created, Jurisdiction B, does not treat C Co as fiscally transparent. The tax law of the jurisdiction in which C Co is created treats C Co as fiscally transparent. Assume B Co's profit is 100 and C Co's profit is 200. See illustration below.



2. B Co is the Reference Entity because it is the closest Constituent Entity-owner to C Co that is not a Flow-through Entity. Because Jurisdiction B's tax laws do not treat C Co as fiscally transparent, C Co's income will not be subject to tax in Jurisdiction B. C Co would consequently be treated as a Reverse Hybrid Entity.

3. A Co is subject to tax on C Co’s income. Any taxes paid by A Co in respect to C Co’s profit of 200 will be allocated to C Co under Article 4.3.2(d).

6. Treatment of Securitisation Vehicles

6.1. Securitisation Vehicles

6.1.1. Introduction

1. Securitisation is a financing technique that enables a creditor (the “originator”) – typically a credit institution or a corporation – to refinance a set of loans, exposures or receivables, such as residential loans, auto loans or leases, consumer loans, credit cards or trade receivables, by transforming them into tradable securities.

2. The originator pools and repackages a portfolio of its assets and typically organises them into different risk categories for different investors, thus giving investors access to investments in assets to which they normally would not have direct access and enabling the originator to raise finance at a lower cost. Returns to investors are generated from the cash flows of the assets.

3. The technique requires the repackaged portfolio of assets to be isolated from the credit risk of the originator. This is accomplished by using special purpose vehicles (SPVs) to hold the assets (or assets deriving their value from them) and issue the debt secured on them, thus making the wider creditworthiness of the originator irrelevant to the credit risk assumed by the holders of the SPV’s debt instruments. Such SPVs are often referred to as “bankruptcy remote” because of this isolation of the assets.

6.1.2. Overview

4. In a classical securitisation transaction, assets producing the relevant revenue streams – (for example loans, mortgages, bonds, leases, or contracts corresponding to the performance of such assets or exposures) will be transferred by the originator to an SPV (or multiple SPVs). These SPVs could take the form of a company or a trust or a similar arrangement depending on the structure concerned.

5. Where the SPV is a company, the SPV will typically be owned by an unconnected third party which does not consolidate the SPV. Where it is a trust or similar arrangement, the originator may hold Ownership Interests in the SPV, or it may not hold such Ownership Interests which could instead be held by an unconnected third party. In the case of a securitisation transaction with multiple SPVs, one SPV may hold all of the Ownership Interests of another SPV (e.g. all of the ordinary shares of a company) but the Ownership Interests in the upper tier SPV may be owned by an unconnected third party. This facilitates the bankruptcy remoteness of the SPV from the originator, by ensuring it will not be subject to secondary liabilities and isolates the risk of the asset pool (which is further described below) from the wider credit risk associated with the originator.

6. The SPV may be consolidated into the same group as the originator, and consequently be a Constituent Entity in the originator's Group under the GloBE Rules. This could be due to the originator's Ownership Interests in the SPV or due to a servicing agreement or other arrangement that the originator enters into with the SPV, under which the originator takes responsibility for the day-to-day management of the asset pool. This (together with the cash extraction mechanism below) can lead to it being treated as having control under some financial accounting standards. Even within the same accounting standard, the consolidation requirements can be sensitive to the precise details and structuring of the arrangement, like the terms of the servicing agreement or other arrangement. It is often not clear cut and there are many cases where the question of whether to consolidate an SPV into its originators group is difficult and nuanced (and where different auditors can take different views of the same arrangements). The outcome can have significant implications under the GloBE Rules, because the SPV would be treated as a Constituent Entity of the originator's Group in cases where it is consolidated.

7. The SPV will issue debt instruments normally via the bond markets. The proceeds of the debt instruments issued are used to finance the acquisition of the asset pool. The payment stream on the assets is then used to service the debt instruments. In a synthetic securitisation, the underlying asset pool is not transferred to an SPV. Instead, the SPV becomes party to a derivative contract or guarantee under which it assumes the risk of the performance of the underlying asset pool, while itself also owning highly secure assets such as government debt. The combination of returns from the highly secure assets and additional payments received from the originator group in consideration of the SPV becoming party to the derivative contract or guarantee in relation to the underlying asset pool put the SPV – and hence its creditors in the same economic position as if the SPV had itself owned the underlying asset pool.

8. The originator (or another Constituent Entity in the same MNE Group as the originator) will often also hold some of the debt instruments issued by the SPV (which commonly rank junior to the debt issued to third-party creditors). This enables the SPV to hold more collateral in the form of the underlying asset pool than the principal on the debt instruments issued to third parties, thus replicating the economic effect of typical commercial transactions where third-party lenders will generally require security over underlying assets with a greater value than the amount they are lending. This reduces the risk of the third-party lenders because any losses would first fall on the originator. This overcollateralization and the bankruptcy remoteness described above enables third-party loan notes to be issued at a lower cost than if the originator had borrowed directly.

9. The SPV generally has an asset pool yielding more income than it is expected to need to meet its liabilities. This incorporates a margin of error if some of the assets do not produce as much income as expected. It also means the transferred asset pool will often yield a greater amount than is necessary to service and repay the SPV's debt instruments. The SPV is only designed to make a negligible profit, at most, on the difference between the payment stream it receives from the underlying asset pool and its costs servicing the debt instruments so the structure will typically include a mechanism to return any excess cash from the SPV to the originator or another Constituent Entity in the same MNE Group as the originator ("cash extraction mechanism"). The precise form of the cash extraction mechanism varies depending on the structure, but payments are commonly made on a monthly or quarterly basis so surplus cash is typically not retained in the SPV for a significant period of time.

Hedging arrangements

10. As noted above, SPVs are generally structured so they only make a negligible profit (at most) over the life of the transaction, after taking into account the impact of the cash extraction mechanism. This is because the cash extraction mechanism will require surplus cash to be paid out to the originator (or another Constituent Entity in the same MNE Group as the originator).

11. Despite this, SPVs can recognise significant profits or losses in their Financial Accounting Net Income or Loss in a given Fiscal Year. This can arise through hedging arrangements, which SPVs use to hedge risks that could lead to the payment stream from the asset pool becoming insufficient to meet the SPV's liabilities under the debt instruments. These commonly include currency hedges where the loan notes were issued in a different currency than the currency of the asset pool or interest rate swaps where the SPV is exposed to interest rate risk (for example if the assets carry a fixed rate of interest but debt instruments carry a variable rate of interest).

12. Where the SPV is unable to, or does not, adopt hedge accounting, these hedging instruments can be subject to fair value accounting and changes in their fair value will lead to profits or losses being recognised in the income statement. This can create a mismatch if the corresponding profit or loss on the hedged asset or liability is not also subject to fair value accounting.

13. Many SPVs do not as a rule recognise deferred tax. This can be because the SPV is exempt from Corporate Income Tax or because the hedged profits and losses are excluded from the tax base and the SPV is only subject to Corporate Income Tax on the negligible profit it has made in the Fiscal Year. Where deferred tax is not recognised, there will not be an amount in the Adjusted Covered Taxes to offset the impact of the GloBE Income or Loss attributable to the hedge. This could lead to a top-up tax in relation to the Fiscal Years where fair value profits arise from the hedge, even though the SPV will not recognise more than a negligible profit from the overall transaction.

6.1.3. Issues to be considered

Impact of imposing a top-up tax liability on the SPV

14. Securitisation transactions are designed to achieve objectives such as lowering the originator's cost of borrowing or reducing its liquidity risks by transferring assets to a bankruptcy remote entity that is removed from the wider risks of the originator and is thus able to achieve a better credit rating. This could be significantly undermined if the SPV became liable to top-up tax charges under the GloBE Rules because the exposure to a potential top-up tax charge elsewhere in the group would mean the SPV is no longer actually insulated from the originator Group. This could impact the solvency of the SPV and lead credit rating agencies to downgrade its credit rating (even before any tax liability materialises), which could affect the viability of many securitisation transactions.

Treatment of profits or losses arising in a securitisation vehicle

15. The Model Rules have generally been designed to ensure that the GloBE Rules do not impose top-up taxes when the MNE Group has not made an economic profit in the jurisdiction or because income has been taxed in a different period than the period in which the income is recognised in under the GloBE Rules.

16. As noted above, SPVs used in securitisation transactions will be structured so that any surplus cash recognised by a SPV will be paid to the originator and so the SPV cannot make more than a negligible profit from the arrangement (after taking into account the cash extraction mechanism). As the SPV will, at most, make a negligible economic profit over the life of the arrangement, the SPV would not be expected to give rise to significant top-up taxes under the GloBE Rules even if that negligible profit was untaxed.

17. However, fair value movements, for example in relation to hedging arrangements, can give rise to significant profits or losses in a given Fiscal Year. Furthermore, the mechanisms in the Model Rules to deal with this volatility in the profit and loss may not always work effectively for SPVs because deferred tax is not usually recognised. Consequently, there will not be a corresponding amount of Adjusted Covered Taxes to offset the impact of these amounts of GloBE Income or GloBE Loss. This could lead to top-up taxes being payable that are not commensurate with the economic profit the SPV has made.

6.1.4. Guidance

18. The Inclusive Framework agrees that jurisdictions adopting QDMTTs are not required to impose top-up tax liabilities on SPVs used in securitisation transactions. The Commentary will consequently be revised to clarify that a QDMTT liability in respect of a Securitisation Entity should generally be imposed on other Constituent Entities located in the jurisdiction. The Commentary will also clarify that a QDMTT may exclude a Securitisation Entity from its scope (such that the Securitisation Entity is not treated as a Constituent Entity for the purposes of that QDMTT).

19. The Inclusive Framework also agrees that QDMTTs that impose the top-up tax liability computed for a Securitisation Entity on other Constituent Entities located in the jurisdiction or that exclude Securitisation Entities from the scope of the tax would both still meet the Consistency Standard for the purposes of the QDMTT Safe Harbour. Revisions will consequently be made to the Commentary to add these to the Switch-off Rule.

20. The Commentary already provides that Article 2.4.1 does not prescribe how the UTPR Top-up Tax Amount is allocated among the Constituent Entities that are located in the UTPR jurisdiction. Therefore, jurisdictions may exclude Securitisation Entities from liability to top-up taxes under the UTPR. A jurisdiction that excludes Securitisation Entities from liability to top-up taxes under the UTPR would not be in a position to impose any additional cash tax expense in the scenario where the Securitisation Entity is the only Constituent Entity located in the jurisdiction. In the unlikely scenario where the UTPR jurisdiction would be allocated UTPR Top-up Tax in a year when a Securitisation Entity is the only Constituent Entity located in the jurisdiction, Article 2.6.3 provides that this jurisdiction would be excluded from the allocation mechanism provided under Article 2.6.1 in subsequent Fiscal Years if the top-up tax remains uncollected.

21. As a Securitisation Entity would not be expected to be a Parent Entity within a MNE Group, it would not in practice be liable to a top-up tax charge under the IIR and so no changes to the Commentary are necessary.

22. The Inclusive Framework also recognises Securitisation Entities can have significant accounting profits or losses in a given Fiscal Year, even in circumstances where negligible economic profit or loss is realised over the life of the transaction. It will in a timely manner consider issuing further Administrative Guidance to ensure that the use of securitisation transactions (and arrangements of the kind entered into by SPVs that give rise to fair value movements) do not result in MNE Groups paying top-up taxes that are not commensurate with the economic profit that the SPV has made from the activities. This will include considering whether a Securitisation Entity should be treated as being deconsolidated from the MNE Group for the purposes of the GloBE Rules and whether these issues could be addressed by making an adjusted realisation basis election available in relation to the profits of SPVs. Further consideration will also be given to the treatment of any distributions received by the originator or any Constituent Entities in the MNE Group from the SPV.

23. The following paragraph will be inserted into the Commentary to the definition of Qualified Domestic Minimum Top-up Tax in Article 10.1

Securitisation Entity

> 118.40.10 Securitisation Entities are designed to be bankruptcy remote from the originator and the other Constituent Entities of the MNE Group. A jurisdiction may therefore allocate the liability for any QDMTT top-up tax to another Constituent Entity (if any) that is located in the jurisdiction. A QDMTT may also include provisions that ensure the top-up tax cannot be imposed on a Securitisation Entity. A QDMTT may also exclude a Securitisation Entity from its scope (i.e. the Securitisation Entity could be excluded from the Effective Tax Rate calculation for the jurisdiction). In this case, the income of such Securitisation Entities would remain within the scope of the GloBE Rules.

24. The following paragraphs will be added to the Commentary to Article 10.1:

Securitisation Entity

148.1 Special purpose entities used in securitisation transactions (securitisation entities) are structured so they only make, at most, a negligible profit over the life of the transaction. This is because the arrangements between the securitisation entity and the originator of the assets will typically include a cash extraction mechanism that requires surplus cash to be paid out to the originator (or another Constituent Entity in the same MNE Group as the originator).

148.2 A "Securitisation Entity" means an Entity which is a participant in a Securitisation Arrangement, and which satisfies all of the following conditions:

a. the Entity only carries out activities that facilitate one or more Securitisation Arrangements
b. it grants security over its assets in favour of its creditors (or the creditors of another Securitisation Entity)
c. it pays out all cash received from its assets to its creditors (or the creditors of another Securitisation Entity) on an annual or more frequent basis, other than:
    i. cash retained to meet an amount of profit required by the documentation of the arrangement, for eventual distribution to equity holders (or equivalent); or
    ii. cash reasonably required under the terms of the arrangement for either (or both) of the following purposes:
        1. to make provision for future payments which are required, or will likely be required, to be made by the Entity under the terms of the arrangement; or
        2. to maintain or enhance the creditworthiness of the Entity

148.3 An Entity shall not be treated as a Securitisation Entity unless any profit referred to in paragraph 148.2(c)(i) above for a given Fiscal Year is negligible relative to the revenues of the Entity.

148.4 A Securitisation Arrangement means an arrangement which satisfies the following conditions:

a. It is implemented for the purpose of pooling and repackaging a portfolio of assets (or exposures to assets) for investors that are not Constituent Entities of the MNE Group in a manner that legally segregates one or more identified pools of assets and
b. It seeks through contractual agreements to limit the exposure of those investors to the risk of insolvency of an Entity holding the legally segregated assets by controlling the ability of identified creditors of that Entity (or of another Entity in the arrangement) to make claims against it through legally binding documentation entered into by those creditors.

25. The following additions in bold will be made to the Commentary to the QDMTT Safe Harbour:

38. To strike the right balance between having a QDMTT Safe Harbour that applies on a jurisdictional basis and avoiding that particular restrictions affect the ability of a QDMTT to meet the Consistency Standard, the Inclusive Framework agreed that the following cases should not affect a QDMTT from meeting the Consistency Standard:

(a) A QDMTT jurisdiction decides not to impose a QDMTT on Flow-through Entities created in its jurisdiction.

(b) A QDMTT jurisdiction decides not to impose a QDMTT on Investment Entities subject to Articles

7.4, 7.5, and 7.6 of the GloBE Rules.

(c) A QDMTT jurisdiction decides to adopt Article 9.3 in a QDMTT legislation with no limitation (i.e., option three of paragraph 118.51 of the QDMTT Commentary).

(d) A QDMTT jurisdiction includes members of a JV Group (which includes Joint Ventures) within the scope of the QDMTT but imposes the liability on Constituent Entities of the main group instead of directly on the members of the JV Group as permitted under paragraph 118.11 of the QDMTT Commentary.

(e) A QDMTT jurisdiction decides not to impose a QDMTT on Securitisation Entities.

Example 10 Securitisation Entities

49.1 A jurisdiction may decide not to impose a QDMTT on Securitisation Entities. This could be because Securitisation Entities are not included within the scope of the QDMTT. Alternatively, Securitisation Entities could be included within the scope of the QDMTT, but the QDMTT could include provisions that ensure any top-up tax liabilities cannot be imposed on a Securitisation Entity. In either case, the Consistency Standard will still be met notwithstanding the QDMTT is not imposed on these Securitisation Entities. The MNE Group will apply the Switch-off Rule with respect to the jurisdiction where the Securitisation Entity is located. However, where the jurisdiction includes Securitisation Entities within the scope of its QDMTT, but includes provisions to impose any top-up tax liability in respect of the income of a Securitisation Entity on another CE of the MNE Group that is not a Securitisation Entity, or on the Securitisation Entity itself if the top-up tax liability cannot be otherwise collected, the MNE group will not apply the Switch-off Rule with respect to the jurisdiction where the Securitisation Entity is located (i.e. the MNE Group would be allowed to apply the QDMTT Safe Harbour for the QDMTT jurisdiction).

OECD/G20 Base Erosion and Profit Shifting Project

Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules

Inclusive Framework on BEPS

OECD

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This document was approved by the OECD/G20 Inclusive Framework on BEPS on 13 January 2025 and prepared for publication by the OECD Secretariat.

Please cite as:

OECD (2025), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-article-9-1-globe-rules-pillar-two-january-2025.pdf.

Table of contents

Executive Summary 4

1 Application of Article 9.1 to deferred tax assets arising from tax benefits provided by General Government 6

1.1. Introduction 6

1.2. Revisions to Commentary 7

1.3. Example 13

Executive Summary

Background

1. In October 2021 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) agreed a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation of the economy. As part of the October Statement, Inclusive Framework members agreed to a co-ordinated system of Global anti-Base Erosion (GloBE) rules that are designed to ensure large multinational enterprises pay a minimum level of tax on the income arising in each jurisdiction where they operate. In the October Statement, it was agreed that the GloBE Rules would have the status of a common approach. Under this common approach, jurisdictions are not required to adopt the GloBE rules, but, if they choose to do so, they will implement and administer the rules in a way that is consistent with the agreed outcomes. The common approach also means that Inclusive Framework members accept the application of the GloBE rules applied by other members, including agreement as to rule order and the application of any agreed safe harbours.

2. The GloBE Model Rules were approved and released by the Inclusive Framework on 20 December 2021 *Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS* (OECD, 2021[1]). The GloBE Model Rules consist of an interlocking and coordinated system of rules which are designed to be implemented into the domestic law of each jurisdiction and operate together to ensure large MNE Groups are subject to a minimum effective tax rate of 15% on any excess profits arising in each jurisdiction where they operate. Consistent with the intention of the Inclusive Framework, the GloBE Rules (including the IIR and UTPR) are designed so that the imposition of top-up tax in accordance with those rules will be compatible with the provisions of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the "UN Model Double Tax Convention") (UN, 2021[2]) and the *Model Tax Convention on Income and on Capital: Condensed Version 2017*, (the "OECD Model Tax Convention") (OECD, 2017[3]).

3. The Commentary to the GloBE Model Rules was first approved and released by the Inclusive Framework on 14 March 2022 *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS* (OECD, 2022[4]) The Commentary clarifies the interpretation and operation of the provisions in the GloBE Model Rules and includes some examples illustrating how the rules apply to specific fact patterns. The Commentary is intended to promote a consistent and common interpretation of the GloBE Model Rules in order to provide certainty for MNE Groups and to facilitate coordinated outcomes among implementing jurisdictions. Although the Commentary is detailed and comprehensive, it does not provide guidance on every aspect of the GloBE Model Rules.

4. The GloBE Model Rules envision that the Inclusive Framework may issue guidance on both the interpretation and the operation of the rules. The Inclusive Framework has provided interpretive guidance to ensure consistent and common interpretation of the GloBE Rules, provide certainty for MNE Groups and facilitate coordinated and transparent outcomes under the rules. Once agreed, the Administrative Guidance is incorporated into the Commentary as it supplements or replaces paragraphs in the Commentary or explains how to apply the language of the rules to particular fact patterns.

Administrative Guidance on Article 9.1

5. This document includes guidance on addresses the treatment of certain deferred tax assets that arose prior to the application of the global minimum tax as a result of certain governmental arrangements or following the introduction of a new corporate income tax. This Administrative Guidance will be incorporated into the Commentary.

Application of Article 9.1 to deferred tax assets arising from tax benefits provided by General Government

Introduction

1. Article 9.1 of the Model Rules provides simplified transition rules that allow deferred tax accounting attributes, including deferred tax assets resulting from prior year losses, that arose prior to the Transition Year to be used in the calculation of the ETR to prevent distortions upon an MNE Group entering into the GloBE Rules. However, the Article 9.1 transition rules are not intended to serve as a mechanism that MNE Groups or General Governments can use to engage in transactions or provide tax attributes that produce deferred tax assets that when reversed will effectively shelter all or a portion of an MNE Group's future low-taxed income from the GloBE Rules.

2. After 30 November 2021, some MNE Groups have entered into arrangements with General Governments that provided tax benefits such as tax credits or basis step-ups in advance of the GloBE Rules or a Domestic Minimum Top-up Tax (DMTT) coming into effect with respect to their jurisdiction. Some MNE Groups in receipt of these benefits have recorded them as deferred tax assets (DTAs) in the financial accounts and may intend to take them into account under the Article 9.1 transition rules for deferred tax assets and liabilities.

3. In light of these issues, the Inclusive Framework has agreed the following Administrative Guidance to further clarify the application of the Article 9.1 transitional rules, especially in relation to DTAs arising from tax benefits provided by General Government after 30 November 2021. This guidance clarifies that the deferred tax expenses arising from the reversal of DTAs arising from governmental arrangements, as well as DTAs and deferred tax liabilities (DTLs) arising from similar events such as retroactive elections or General Governments granting MNE Groups a step-up in basis when introducing a new corporate income tax regime before the GloBE Rules come into effect, but after 30 November 2021, are excluded under the transition rules in Articles 9.1. This guidance contains a Grace Period under which the deferred tax expenses, subject to a cap, can be included in the Total Deferred Tax Adjustment Amount under Article 4.4 or Simplified Covered Taxes under the Transitional CbCR Safe Harbour. Implementing Jurisdictions have agreed that they will not seek to apply their rules to neutralise the deferred tax expenses under Article 9.1 during the Grace Period (except to the extent that the deferred tax expense arises from reversals during the Grace Period exceeds the Grace Period Limitation).

Interaction with Related Benefits and qualified status

4. The GloBE Model Rules provide that a jurisdiction that has implemented a Qualified IIR, Qualified UTPR, or QDMTT must implement and administer its domestic law in a way that is consistent with the outcomes provided under the GloBE Model Rules and the Commentary and must not provide benefits

related to its rules. Therefore, if the General Government of a jurisdiction has provided such benefits, it would not have met the requirements to obtain QDMTT status under the transitional qualification mechanism.

5. The Inclusive Framework also considers that the tax benefits described in paragraph 2 would constitute a benefit related to a jurisdiction's rules ('a Related Benefit') to the extent they are provided in a jurisdiction that has implemented a DMTT and that jurisdiction does not exclude the associated deferred tax expenses through Article 9.1. Therefore, when the tax benefits described in paragraph 2 are provided by the General Government of a DMTT jurisdiction, the DMTT legislation would not be qualified. As part of agreeing this Administrative Guidance, however, the Inclusive Framework has also agreed an exceptional derogation that would allow a jurisdiction whose General Government has provided tax benefits through governmental arrangements to self-certify for transitional qualified status for the QDMTT and QDMTT Safe Harbour. This is based on the understanding that (i) the jurisdiction will apply this Administrative Guidance to neutralize a portion of the deferred tax expense arising from the tax benefits and that (ii) if the jurisdiction does not apply this Administrative Guidance, the switch-off rule in the QDMTT Safe Harbour will apply so that other Implementing Jurisdictions can neutralize the same portion of the deferred tax expense arising from the tax benefits instead.

Further work on Related Benefits

6. The GloBE Model Rules depend on an accurate measure of tax expense to compute an MNE Group's Effective Tax Rate. To that end, the definition of "Tax" in the GloBE Model Rules includes only compulsory "unrequited" payments to General Government and Adjusted Covered Taxes are reduced in respect of any refund of tax (see Article 4.1.3(c)). The Inclusive Framework is currently developing guidance to assist MNE Groups and tax administrations in identifying benefits provided by any jurisdiction that must be treated as a refund of tax that reduces Adjusted Covered Taxes. Such benefits include tax credits, government grants, and other benefits that are calculated based on income or taxes. Similar guidance is being developed in the context of benefits offered by a jurisdiction that has implemented a QDMTT, which will include a mechanism to ensure consistent outcomes are achieved by adjusting the amount of QDMTT payable and applying a switch-off mechanism that limits the operation of the QDMTT Safe Harbour where necessary.

7. In addition, the Inclusive Framework is currently developing guidance that will clarify how to identify "Related Benefits" and consider how they impact on the qualified status of a jurisdiction's rules. The Administrative Guidance will be supplemented by an ongoing monitoring process that will ensure a coordinated assessment of whether benefits are Related Benefits. This process will be designed to facilitate a coordinated and robust approach that protects the integrity of the GloBE Model Rules, and therefore will cover benefits provided by any part of the General Government, including through investment promotion agencies or subnational governmental authorities. Implementing jurisdictions will consequently involve other parts of the General Government during the ongoing monitoring process to ensure there is sufficient information to assess those benefits. The monitoring process is expected to cover all fiscal years for which the global minimum tax applies.

Revisions to Commentary

Article 9.1

8. The bold text will be added to paragraph 4 of the Commentary to Article 9.1.

> 4. To address these concerns, Article 9.1 provides for transition rules. Consistent with the general mechanism to address temporary differences contained in Article 4.4, these transition rules build on deferred tax accounting concepts. The transition rules allow existing deferred tax

accounting attributes, including deferred tax assets resulting from prior year losses, to be used in the calculation of the ETR to prevent distortions upon entry into the GloBE regime of a Constituent Entity of a MNE Group. **However, the Article 9.1 transition rules are not intended to serve as a mechanism that MNE Groups or General Governments can use to engage in transactions or provide tax attributes that produce deferred tax assets that when reversed will effectively shelter all or a portion of an MNE Group's future low-taxed income from the GloBE Rules. While Article 9.1.1 generally takes into account the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial accounts of all of the Constituent Entities in a jurisdiction for the Transition Year, Article 9.1.2 and Article 9.1.3 exclude or limit the amount of deferred tax assets that can be included in certain circumstances. This Commentary provides further explanation about the deferred tax assets and liabilities that are excluded under these Articles. While the Commentary explains the intended outcome under Article 9.1.1 through 9.1.3, implementing jurisdictions can achieve such outcomes through different methods (such as through interpretation of Article 9.1.1).** As further discussed below, the transition rules differ from the general mechanisms contained in Chapter 4 in some ways.

Article 9.1.1

9. The language in strikethrough will be deleted and the sentences in bold will be added to paragraph 6.4 of the Commentary to Article 9.1.1:

> **6.4.** Further, except as provided in Article 9.1.2, attributes imported into the GloBE attributes pursuant to Article 9.1.1 are not subject to any adjustments to deferred tax expense under Article 4.4.1(a), (b), (c), or (d), or Article 4.4.4. Under Article 9.1.1, a Constituent Entity's tax attributes at the beginning of the Transition Year shall include any deferred tax asset that was not recognised **due to an expectation that there may be insufficient taxable income for it to be utilised in the future (or in the near future, if the Constituent Entity's accounting policy only recognizes such deferred tax assets that are expected to be used within a short time after they arise), but shall not include a deferred tax asset that cannot be reflected or disclosed under the Authorised Financial Accounting Standard used to determine the Constituent Entity's Financial Accounting Net Income or Loss (except deferred tax assets that are taken into account under paragraph 51.2 of the Commentary to Article 6.2.1 or the Commentary to Article 9.1.3)** ~~because the recognition criteria was not met~~**.**

Article 9.1.2

10. The text of paragraph 8 of the Commentary to Article 9.1.2 is reorganized into paragraphs 8 through 8.2. The language in strikethrough will be deleted and the sentences in bold will be added to paragraphs 8 through 8.2:

> 8. Article 9.1.2 provides a limitation to prevent the **exploitation** ~~triggering~~ of permanent difference**s between GloBE Income or Loss and taxable income** ~~losses before applicability of the GloBE Rules~~ **through deferred tax assets that would be reflected or disclosed in the financial accounts of a Constituent Entity for the Transition Year**. **Any deferred tax expenses attributable to the reversal of a deferred tax asset excluded by Article 9.1.2 shall not be included in the Total Deferred Tax Adjustment Amount under Article 4.4**. **The following paragraphs describe the elements that must be met in order for Article 9.1.2 to apply to a deferred tax asset. First, those deferred tax assets must arise from items excluded from the computation of GloBE Income or Loss under Chapter 3. Second, those deferred tax assets must be generated in a transaction that takes place after 30 November 2021.**

Items excluded from the computation of GloBE Income or Loss under Chapter 3

8.1. The reference to "items excluded from the computation of GloBE Income or Loss under Chapter 3" includes not only deferred tax assets attributable to the items expressly excluded under Chapter 3 but also deferred tax assets associated with non-economic expenses or losses for tax purposes. An example of this would be a Constituent Entity that triggers a domestic tax loss **in a transaction in 2022** with respect to an item that is not taken into account in the calculation of GloBE Income or Loss, such as depreciation deductions in excess of an asset's cost. Absent the Article 9.1.2 limitation, such attribute would be imported into the GloBE attributes upon becoming subject to the rules. **Also, the reference includes deferred tax assets that are not attributable to the prepayment of tax in relation to income that would or will be included in GloBE Income or Loss. Further, the reference includes tax benefits that are designed to achieve similar effects as the example described above, including tax credits based on future expenditure or activity. For the avoidance of doubt, Article 9.1.2 does not apply to a deferred tax asset relating to a tax credit if it arises independently of a governmental arrangement, as described in paragraphs 8.3 and 8.4 of the Commentary to Article 9.1.2. In addition, Article 9.1.2 does not apply to any deferred tax asset, or portion of a deferred tax asset, that is taken into account for GloBE purposes under paragraph 51.2 of the Commentary to Article 6.2.1 (relating to transactions that take place prior to the Transition Year that are subject to Article 6.2.1(c)).**

Transaction that takes place after 30 November 2021

8.2. The limitation in Article 9.1.2 applies to any deferred tax asset **related to items excluded from the computation of GloBE Income or Loss under Chapter 3 that is** generated in a transaction that takes place after 30 November 2021. **It can therefore apply to a deferred tax asset arising from a transaction that takes place after the Transition Year if the deferred tax asset was reflected or disclosed in the financial accounts for the Transition Year.** Article 9.1.2 does not have retroactive tax implications, but rather sets out rules with respect to how certain attributes are taken into account in Fiscal Years to which the GloBE Rules apply.

11. The following paragraphs will be added after paragraph 8.2 of the Commentary to Article 9.1.2:

Definition of Transaction for arrangements with General Governments, retroactive elections and enactment of CIT legislation

8.3. Article 9.1.2 is not limited to commercial transactions. For purposes of Article 9.1.2, the term "transaction" is interpreted broadly and includes any agreement, ruling, decree, grant or similar arrangement with a General Government (hereinafter referred to as governmental arrangement), as well as any amendment or modification to a pre-existing governmental arrangement. A deferred tax asset that is attributable to a governmental arrangement falls within the scope of Article 9.1.2 where such governmental arrangement provides the taxpayer with a specific entitlement to a tax credit or other tax relief (for example, a tax basis step-up) that does not arise independently of the arrangement.

8.4. For purposes of paragraph 8.3, a tax credit or other tax relief arises independently of the governmental arrangement if no critical aspect of the credit or relief, such as the eligibility or amount, relies on discretion exercised by the General Government. For example, paragraph 8.3 does not apply to a statutory entitlement to a tax credit for eligible expenditure incurred by a taxpayer, merely because the grant of that relief requires a decision or acknowledgement that the taxpayer has satisfied or is obligated to satisfy the statutory criteria for that credit or other tax relief.

8.5. For greater certainty, the operation of Article 9.1.2 means that the following tax attributes, for instance, are excluded from the Article 9.1.1 computation:

a. A deferred tax asset that is attributable to a governmental arrangement concluded or amended after 30 November 2021 where such governmental arrangement provides the taxpayer with a specific entitlement to a tax credit or other tax relief (including, for example, a tax basis step-up) that does not arise independently of the arrangement.

b. A deferred tax asset that is attributable to an election or choice exercised or changed by a Constituent Entity after 30 November 2021 and that retroactively changes the treatment of a transaction in determining its taxable income in a tax year for which an assessment by the tax authority was already made or a tax return was already filed.

c. A deferred tax asset or a deferred tax liability arising from a difference in the tax basis or value and accounting carrying value of an asset or liability if the tax basis or value was established pursuant to a corporate income tax that was enacted by a jurisdiction that did not have a pre-existing corporate income tax and that was enacted after 30 November 2021 and before the Transition Year.

8.6. Deferred tax expense attributable to a deferred tax asset or deferred tax liability described in sub-paragraph (a), (b), or (c) of paragraph 8.5 shall be excluded from the Total Deferred Tax Adjustment Amount under Article 4.4 and Simplified Covered Taxes under the Transitional CbCR Safe Harbour.

8.7. Article 9.1.2 excludes from the Article 9.1.1 computation a deferred tax asset to the extent attributable to a loss that arose more than five fiscal years preceding the effective date of a newly enacted corporate income tax by a jurisdiction that did not have a pre-existing corporate income tax. Article 9.1.2 does not apply to automatically exclude a deferred tax asset to the extent attributable to a loss in the five fiscal years preceding the effective date of a newly enacted corporate income tax. Rather, Article 9.1.2 applies to such deferred tax assets to the same extent as it applies to a deferred tax asset arising from a loss under an existing corporate income tax.

Grace Period for deferred tax attributes described in paragraph 8.5

8.8 As an exception, a portion of the deferred tax expenses attributable to the reversal of a deferred tax asset described in subparagraph (a), (b), or (c) of paragraph 8.5 can be taken into account during a Grace Period up to a Grace Period Limitation for purposes of computing the Total Deferred Tax Adjustment Amount under Article 4.4 or Simplified Covered Taxes under the Transitional CbCR Safe Harbour, whichever is applicable. The Grace Period includes:

a. for deferred tax expenses attributable to the reversal of a deferred tax asset described in subparagraph (a) or (b) of paragraph 8.5, all Fiscal Years beginning on or after 1 January 2024 and before 1 January 2026 but not including a Fiscal Year that ends after 30 June 2027, or

b. for deferred tax expenses attributable to the reversal of a deferred tax asset described in subparagraph (c) of paragraph 8.5, all Fiscal Years beginning on or after 1 January 2025 and before 1 January 2027 but not including a Fiscal Year that ends after 30 June 2028.

8.9. The maximum amount of deferred tax expense attributable to the reversal of deferred tax assets described in paragraph 8.5 that can be taken into account during the Grace Period (the Grace Period Limitation) shall be an amount that is equal to the aggregate of 20 percent of the amount of each such deferred tax asset originally recorded and taken into account at the lower of the Minimum Rate or the applicable domestic tax rate.

8.10. Deferred tax expense attributable to the reversal of a deferred tax asset (or portion thereof) is not eligible for the Grace Period under paragraph 8.8 and is not taken into account in determining the Grace Period Limitation under paragraph 8.9 to the extent that such deferred tax asset (or a portion of a deferred tax asset) results from:

a. a governmental arrangement described in subparagraph (a) of paragraph 8.5 that is concluded or amended after 18 November 2024, or

b. an election or choice that is exercised or changed after 18 November 2024 and that has retroactive effect as described in subparagraph (b) of paragraph 8.5, or

c. a difference in the tax basis or value and accounting carrying value of an asset or liability established pursuant to a corporate income tax that was enacted after 18 November 2024.

8.11. The exception referred to in paragraph 8.8 is not designed to allow acceleration of the reversal of the deferred tax assets to increase the amount of deferred tax expenses that can be taken into account in the Grace Period. Therefore, the amount of deferred tax expenses attributable to the reversal of a deferred tax asset described in paragraph 8.5 that can be taken into account in a Fiscal Year during the Grace Period is further limited to the amount that would have reversed during the same Fiscal Year in the Grace Period under the law in effect, any election (or choice) in effect, the accounting methodology used for the deferred tax asset, and the terms of the governmental arrangement on 18 November 2024. Thus, if a change in the law, election (or choice), accounting methodology, or the terms of the arrangement after 18 November 2024 results in an increase in the amount of a deferred tax asset described in paragraph 8.5 that reverses during the Grace Period, the additional amount that reverses compared to the amount that would have reversed absent the change shall be excluded.

8.12. For the avoidance of doubt, the sum of the total amount of deferred tax expense that is attributable to the reversal of deferred tax assets described in paragraph 8.5 that a Constituent Entity may include in the Total Deferred Tax Adjustment Amount under Article 4.4 and the Simplified Covered Taxes under the Transitional CbCR Safe Harbour shall not exceed the maximum amount allowable under paragraphs 8.9 through 8.11 during the Grace Period.

Article 9.1.3

12. The bold text will be added to paragraph 10.8 of the Commentary to Article 9.1.3:

10.8. The acquiring Entity may take into account a deferred tax asset to the extent that the disposing Entity paid tax in respect of the transaction and to the extent of any deferred tax asset that would have been taken into account under Article 9.1.1 but was reversed or was not created by the disposing Entity (Other Tax Effects) because gain from the disposition was included in the taxable income of the disposing Entity. **Other Tax Effects shall not include any amount of a deferred tax asset that is described in paragraph 8.5 of the Commentary to Article 9.1.2 that reversed or was not created**. If there is a group taxation regime applicable to the disposing Entity, this paragraph shall be applied by reference to the taxes paid by the group and Other Tax Effects on the group under the group taxation regime.

Transitional CbCR Safe Harbour

13. The text in bold will be added to the end of paragraph 13 of Chapter 1 of Annex A to the Commentary:

13. Using income tax expense for the Simplified ETR calculation means including deferred taxes in the ETR numerator. Including deferred taxes aligns with the design of the GloBE Rules because it recognizes the impact of timing differences. The GloBE Rules require making certain adjustments to deferred tax expense (i.e., the net movement of deferred tax liabilities and deferred tax assets), which can give rise to additional complexity in the determination of the GloBE ETR. However, for the transitional period, it is recognized that such adjustments can be disregarded except for uncertain tax positions **and for deferred tax expenses attributable to the reversal of deferred tax assets and deferred tax liabilities described in paragraph 19 below**.

14. The following sentence will be added to the end of paragraph 19 of Chapter 1 of Annex A to the Commentary:

> Simplified Covered Taxes shall exclude deferred tax expenses attributable to the reversal of deferred tax assets and deferred tax liabilities described in subparagraph (a), (b), or (c) of paragraph 8.5 of the Commentary to Article 9.1.2 in a tested Fiscal Year, except that the Simplified Covered Taxes within the Grace Period described in paragraph 8.8 of the Commentary to Article 9.1.2 can include the deferred tax expense attributable to the reversal of such deferred tax assets up to the maximum amount allowed under paragraphs 8.9 through 8.11 of the Commentary to Article 9.1.2.

QDMTT Safe Harbour

15. The following paragraphs will be added after paragraphs 38.d and 39, respectively, of Chapter 3 of Annex A to the Commentary:

> e. The General Government of a QDMTT jurisdiction that provided the tax attributes described in paragraph 8.5 of the Commentary to Article 9.1.2 and the QDMTT jurisdiction does not exclude those tax attributes from Article 9.1.1 computations in determining the Total Deferred Tax Adjustment Amount or the Simplified Covered Taxes under the Transitional CbCR Safe Harbour.
>
> 39.1 When the MNE Group is required to apply the Switch-off rule in respect of a QDMTT jurisdiction, the Filing Constituent Entity shall not make an election to apply the QDMTT Safe Harbour in respect of that jurisdiction and the information provided in section 3 of the GloBE Information Return in respect of that jurisdiction shall be filled on the basis of the GloBE Model Rules and the Commentary (or on the basis of the domestic legislation of the jurisdiction that has taxing rights in respect of the QDMTT jurisdiction if there is only one jurisdiction with taxing rights other than the QDMTT jurisdiction). In addition, in circumstances where the MNE Group may be required to apply the Switch-off rule in respect of a QDMTT jurisdiction pursuant to paragraph 38.e of Chapter 3 of Annex A to the Commentary, additional information must be provided to the relevant jurisdiction(s) with taxing rights in respect of the QDMTT jurisdiction. The Inclusive Framework will develop a framework to capture the relevant information that affected MNE Groups must file in connection with their GloBE Information Return. This additional information includes the information necessary to determine whether the Switch-off rule applies and the information necessary to evaluate the correctness of a Constituent Entity's tax liability under the GloBE Rules or eligibility for the Transitional CbCR Safe Harbour, which would include the information necessary to determine the original amount of a deferred tax asset identified in paragraph 8.5 of the Commentary to Article 9.1.2 as well as the Grace Period Limitation and the amount of such deferred tax asset remaining at the beginning of the Transition Year or a tested Fiscal Year under the Transitional CbCR Safe Harbour.

16. The following paragraphs will be added after paragraph 49 of Annex A-3 to the Commentary:

> *Example 10 – deferred tax asset arising from negotiated agreements with General Government*

49.1. Paragraph 8.5 of the Commentary to Article 9.1.2 describes certain deferred tax assets that will be excluded from the application of Article 9.1.1. Paragraphs 8.8 through 8.12 then allow a portion of the deferred tax expense associated with those deferred tax assets to be included in the Total Deferred Tax Adjustment Amount under Article 4.4. If a QDMTT jurisdiction allows the deferred tax expense associated with a deferred tax asset that has been disallowed in line with paragraph 8.5 of the Commentary to Article 9.1.2 to be taken into account in determining Adjusted Covered Taxes or the applicability of the Transitional CbCR Safe Harbour under the QDMTT, the MNE Group will be subject to a Switch-off Rule which prevents the MNE Group from applying the QDMTT Safe Harbour in relation to all Constituent Entities located or created in the QDMTT jurisdiction and requires the MNE Group to switch to the credit method for QDMTT provided under Article 5.2.3(d) of the GloBE Rules for such Constituent Entities.

Example

17. The following examples will be included in the GloBE Model Rules Examples:

Example 9.1.2 – 1

1. This example illustrates the determination of the Grace Period and Grace Period Limitation, assuming that a Constituent Entity accrues in 2023 a deferred tax asset that is disallowed under subparagraph (a) of paragraph 8.5 of the Article 9.1.2 Commentary. The original balance of that deferred tax asset is 1000, and there is no recast because the deferred tax asset is not attributable to a GloBE Loss and has been recorded at or below the Minimum Rate. The Constituent Entity records a deferred tax expense of 100 in its financial accounts associated with the reversal of such deferred tax asset each year from 2024 to 2033. See table below:

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Beginning balance	1000	900	800	700	600	500	400	300	200	100
Reversal	-100	-100	-100	-100	-100	-100	-100	-100	-100	-100
End balance	900	800	700	600	500	400	300	200	100	0

2. The Profit (Loss) Before Tax as well as Simplified Covered Taxes of the Constituent Entity (before excluding deferred tax expenses attributable to the reversal of deferred tax assets and liabilities described in paragraph 8.5) are as follows:

	2024	2025	2026
Profit (Loss) before Income Tax	2000	2000	2000
Simplified Covered Taxes (before adjustment)	300	320	340
Current tax expense	200	220	240
Deferred tax expense	100	100	100
Simplified ETR (before adjustment)	15%	16%	17%

3. Under paragraphs 8.8 and 8.9 of the commentary to Article 9.1.2, the Grace Period is the 2024 and 2025 Fiscal Years, and the Grace Period Limitation is 20% of the amount of the deferred tax asset originally recorded. In this example, the Grace Period Limitation is 200.

4. In 2024, the 100 deferred tax expense is allowed in the Simplified Covered Taxes computation (because it is less than the 200 Grace Period Limitation). The Simplified ETR is 15% and the Tested Jurisdiction consequently qualifies for the Transitional CbCR Safe Harbour for that Tested Fiscal Year.
5. For the 2025 Fiscal Year, the 100 deferred tax expense is allowable in the Simplified Covered Taxes computation, because the cumulative amount of deferred tax expense attributable to the reversal of the disallowed deferred tax assets in 2024 and 2025 does not exceed the 200 Grace Period Limitation. Therefore, the Simplified ETR for 2025 is 16% and the MNE Group once again qualifies for the Transitional CbCR Safe Harbour.
6. For the 2026 Fiscal Year, the Grace Period has ended. The 100 deferred tax expense recorded in 2026 is excluded from the Simplified Covered Taxes calculation and as a result the MNE Group is not eligible for the Transitional CbCR Safe Harbour in the 2026 tested Fiscal Year. Accordingly, its Transition Year in respect of that jurisdiction is 2026. The 100 of deferred tax expense attributable to the reversal of the disallowed deferred tax asset in 2026 is excluded from the Total Deferred Tax Adjustment Amount under Article 4.4.

Example 9.1.2 – 2

1. The facts in this example are the same as Example 9.1.2 – 1, except that the MNE Group records deferred tax expense of 200 in 2024 (i.e., the full amount up to the cap) and is unable to qualify for the Transitional CbCR Safe Harbour for 2025. This example illustrates the application of the Grace Period Limitation within the Grace Period under the Transitional CbCR Safe Harbour. The original balance (as of 1 January 2024) of that deferred tax asset is 1000, and the Constituent Entity records a deferred tax expense of 200 in its financial accounts associated with the reversal of such deferred tax asset in 2024 and 100 each year from 2025 to 2032. See table below:

	2024	2025	2026	2027	2028	2029	2030	2031	2032
Beginning balance	1000	800	700	600	500	400	300	200	100
Reversal	-200	-100	-100	-100	-100	-100	-100	-100	-100
End balance	800	700	600	500	400	300	200	100	0

2. The Profit (Loss) Before Tax as well as Simplified Covered Taxes of the Constituent Entity (before excluding deferred tax expenses attributable to the reversal of deferred tax assets and liabilities described in paragraph 8.5) are as follows:

	2024	2025
Profit (Loss) before Income Tax	2000	2000
Simplified Covered Taxes (before adjustment)	300	200
Current tax expense	100	100
Deferred tax expense	200	100
Simplified ETR (before adjustment)	15%	10%

3. Under paragraphs 8.8 and 8.9 of the commentary to Article 9.1.2, the Constituent Entity may include in its Simplified Covered Taxes an amount of the deferred tax expenses attributable to the reversal of the deferred tax asset in the Grace Period, and such amount cannot exceed

the Grace Period Limitation of 20% of the amount of the deferred tax asset originally recorded. In this example, the Grace Period Limitation is 200.

4. In 2024, the 200 deferred tax expense is allowed in the Simplified Covered Taxes computation (because it does not exceed the 200 Grace Period Limitation). The Simplified ETR is 15% and the Tested Jurisdiction consequently qualifies for the Transitional CbCR Safe Harbour for that tested Fiscal Year.
5. For the 2025 Fiscal Year, the 100 deferred tax expense is not allowable in the Simplified Covered Taxes computation, because the cumulative amount of deferred tax expense attributable to the reversal of the disallowed deferred tax assets that the Constituent Entity has included in the Total Deferred Tax Adjustment Amount under Article 4.4 and the Simplified Covered Taxes under the Transitional CbCR Safe Harbour is 200, which is equivalent to the Grace Period Limitation in this case. Therefore, the Simplified ETR for 2025 is 5% and the MNE Group does not qualify for the Transitional CbCR Safe Harbour. Accordingly, its Transition Year in respect of that jurisdiction is 2025.
6. For the 2025 Fiscal Year, no deferred tax expense attributable to the reversal of the disallowed deferred tax assets can be included in the MNE Group's GloBE computations because the Grace Period Limitation cannot be exceeded. The 100 of deferred tax expense attributable to the reversal of the disallowed deferred tax asset in 2025 is excluded from the Total Deferred Tax Adjustment Amount under Article 4.4.

OECD/G20 Base Erosion and Profit Shifting Project

Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package

Inclusive Framework on BEPS

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This document was approved and declassified by the OECD/G20 Inclusive Framework on BEPS on 5 January 2026 and prepared for publication by the OECD Secretariat.

Please cite this publication as:
OECD (2026), *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package: Inclusive Framework on BEPS*, OECD, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/side-by-side-package.pdf.

Corrigenda to OECD publications may be found at: https://www.oecd.org/en/publications/support/corrigenda.html.

Table of contents

Foreword 4

1 Side-by-Side Package 6
1. Introduction 6
2. Material Simplifications 6
3. Substance-based Tax Incentives 7
4. Side-by-Side System 8

2 Simplified ETR Safe Harbour 10
1. Introduction 10
2. Simplified Jurisdictional ETR 24
3. Simplified Income or Loss 28
4. Simplified Taxes 40
5. Simplified Treatment of Cross-border Income & Taxes 53
6. Tax-Neutral Entities 59
7. Eligibility Restrictions 61

3 Extension of the Transitional CbCR Safe Harbour 68
1. Introduction 68
2. Administrative Guidance 68

4 Substance-based Tax Incentive Safe Harbour 70
1. Substance-based Tax Incentive Safe Harbour 70
2. Qualified Tax Incentives 71
3. Treatment of Qualified Tax Incentives 74
4. Substance Cap 78

5 Side-by-Side System 79
1. Side-by-Side Safe Harbour 79
2. UPE Safe Harbour 86

References 88

Foreword

1. In October 2021 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) agreed a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation of the economy. As part of the October Statement, Inclusive Framework members agreed to a co-ordinated system of Global anti-Base Erosion (GloBE) rules that are designed to ensure large multinational enterprises (MNEs) pay a minimum level of tax on the income arising in each jurisdiction where they operate. In the October Statement, it was agreed that the GloBE Rules would have the status of a common approach. Under this common approach, jurisdictions are not required to adopt the GloBE Rules, but, if they choose to do so, they will implement and administer the rules in a way that is consistent with the agreed outcomes. The common approach also means that Inclusive Framework members accept the application of the GloBE Rules applied by other members, including agreement as to rule order and the application of any agreed safe harbours.

2. The GloBE Model Rules were approved and released by the Inclusive Framework on 20 December 2021 *Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS* (OECD, 2021[1]). The GloBE Model Rules consist of an interlocking and co-ordinated system of rules which are designed to be implemented into the domestic law of each jurisdiction and operate together to ensure large MNE Groups are subject to a minimum effective tax rate of 15% on any excess profits arising in each jurisdiction where they operate. Consistent with the intention of the Inclusive Framework, the GloBE Rules (including the IIR and UTPR) are designed so that the imposition of top-up tax in accordance with those rules will be compatible with the provisions of the *United Nations Model Double Taxation Convention between Developed and Developing Countries 2021* (the "UN Model Double Tax Convention") (United Nations Department of Economic and Social Affairs, 2022[2]) and the *Model Tax Convention on Income and on Capital: Condensed Version 2017*, (the "OECD Model Tax Convention") (OECD, 2017[3]).

3. The Commentary to the GloBE Model Rules was first approved and released by the Inclusive Framework on 14 March 2022 *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS* (OECD, 2022[4]) The Commentary clarifies the interpretation and operation of the provisions in the GloBE Model Rules and includes some examples illustrating how the rules apply to specific fact patterns. The Commentary is intended to promote a consistent and common interpretation of the GloBE Model Rules in order to provide certainty for MNE Groups and to facilitate co-ordinated outcomes among implementing jurisdictions. Although the Commentary is detailed and comprehensive, it does not provide guidance on every aspect of the GloBE Model Rules.

4. The GloBE Model Rules envision that the Inclusive Framework may issue guidance on both the interpretation and the operation of the rules. The Inclusive Framework has provided interpretive guidance to ensure consistent and common interpretation of the GloBE Rules, provide certainty for MNE Groups and facilitate co-ordinated and transparent outcomes under the rules. Once agreed, the Administrative Guidance is incorporated into the Commentary as it supplements or replaces paragraphs in the Commentary or explains how to apply the language of the rules to particular fact patterns.

Side-by-Side Package

5. This document on the Side-by-Side package includes the Simplified Effective Tax Rate (ETR) Safe Harbour, an extension of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour, the Substance-based Tax Incentive Safe Harbour, and a Side-by-Side System. This Administrative Guidance will be incorporated into the Commentary to the GloBE Model Rules.

1 Side-by-Side Package

1. Introduction

6. The Inclusive Framework recognises the Global Minimum Tax (GMT) as a substantial policy initiative which plays an important role in stabilising the international tax system through a common approach. With a view to preserving these benefits while providing greater stability, simplicity and certainty, the Inclusive Framework has agreed a package of measures relating to the GMT consisting of material simplifications, greater alignment of substance-based tax incentives with qualified refundable tax credits, and a Side-by-Side (SbS) system. This package of measures has been agreed in the context of an unwavering commitment to address substantial level playing field risks along with risks of base erosion and profit shifting (BEPS). These measures are set out in detail in this document and summarised below.

2. Material Simplifications

7. The Inclusive Framework is committed to delivering material simplifications for both taxpayers and tax administrations in connection with the implementation of the GMT. As a first step in this ongoing commitment, the Inclusive Framework has agreed a package of simplifications including: a Simplified Effective Tax Rate (ETR) Safe Harbour; an extension of the Transitional CbCR (country-by-country reporting) Safe Harbour; and a work programme for additional simplifications.[1]

2.1. Simplified ETR Safe Harbour

8. A foundational starting point for simplification is the introduction of a permanent Simplified ETR Safe Harbour. This safe harbour seeks to address a key concern of the business community by substantially reducing the compliance burden associated with the GMT in a meaningful share of jurisdictions where in-scope multinational enterprise groups operate. Under this safe harbour, an MNE Group's ETR is determined pursuant to a simple calculation based on the income and taxes drawn from the MNE Group's reporting packages with minimal adjustments. The Simplified ETR Safe Harbour will be available to MNE Groups in all jurisdictions from the beginning of 2027 or the beginning of 2026 in certain circumstances.

2.2. Extension of the Transitional CbCR Safe Harbour

9. To allow sufficient time for smooth implementation of the Simplified ETR Safe Harbour, the Inclusive Framework has also agreed to an extension of the Transitional CbCR Safe Harbour for one year. This will provide in-scope taxpayers the choice of opting either for the Simplified ETR Safe Harbour or the Transitional CbCR Safe Harbour during a transition period.

[1] The Inclusive Framework is grateful for the contributions from the Business at OECD Tax Committee and the wider stakeholder community and looks forward to continuing constructive engagement.

2.3. Work programme for additional simplification

10. While the Simplified ETR Safe Harbour represents a significant step towards simplification of the rules, the Inclusive Framework recognises that the journey does not stop here and commits to a work programme[2] to achieve additional clarifications and simplifications, while ensuring the continued integrity of the rules, including:

- finishing the ongoing work on a routine profits test and a de minimis test (scheduled to conclude within the first half of 2026);
- continuing to work, in close cooperation with business and other stakeholders (including through the Amsterdam Dialogue format), towards further simplification of the GloBE Rules themselves with a particular focus also on continuity issues, to ensure that taxpayers can benefit from the simplifications under the safe harbour even where, in a subsequent year, they may not qualify for that safe harbour and are required to calculate their ETR under the full GloBE Rules;
- taking forward further administrative guidance on technical issues relating to the GloBE Rules; and
- exploring integration of the simplified calculations in the Simplified ETR Safe Harbour into the design of the GMT, recognising the implementation challenges faced by lower capacity jurisdictions in particular.

11. In addition, the Inclusive Framework will do further work to streamline reporting obligations. This work will consider adaptations to the GloBE Information Return, the GIR XML Schema and the related validation rules to apply the agreed safe harbours. To support a co-ordinated implementation of such reporting obligations and prevent issues that might arise in the exchange of GIR information, this work will be concluded in the first half of 2026 so jurisdictions can adopt the relevant changes to the GIR in time for the Fiscal Years for which the agreed safe harbours apply.

3. Substance-based Tax Incentives

12. Beyond its work on simplifications, the Inclusive Framework recognises tax incentives are a widely used tool to promote substantial investments and economic development. The Inclusive Framework has therefore adopted a safe harbour to allow MNE Groups to continue to benefit from certain tax incentives that are strongly connected to economic substance in the jurisdiction. This treatment is subject to clear and transparent limits that ensure the GMT will continue to provide an effective floor on income tax competition between jurisdictions.

13. The Substance-based Tax Incentive (SBTI) Safe Harbour allows an MNE Group to treat certain Qualified Tax Incentives (QTIs) as an addition to the Covered Taxes of the Constituent Entities located in the jurisdiction. A QTI is one that is generally available to taxpayers and is calculated based on expenditures incurred (an expenditure-based incentive) or on the amount of tangible property produced in the jurisdiction (production-based tax incentive). A Substance Cap limits the allowance for QTIs by reference to the amount of substance in the jurisdiction. The cap is equal to the greater of 5.5% of the payroll costs or depreciation of tangible assets in the jurisdiction. On an elective basis, the MNE Group can use an alternative cap which is equal to 1% of the carrying value of tangible assets in the jurisdiction.

---

[2] In addition to the work on substantive rules, the Inclusive Framework is also focusing on the tax compliance dimension with ongoing work through the Amsterdam Dialogue format on a common up-front compliance and risk assessment framework, using a collaborative approach involving business and academia, with a view to delivering the policy objectives of the GMT in a way that limits compliance costs and promotes consistency across implementing jurisdictions.

4. Side-by-Side System

14. While the Inclusive Framework considers that the adoption of a co-ordinated GMT, based on a common approach, should be the primary system for ensuring minimum taxation, the Inclusive Framework also recognises that some jurisdictions may already have implemented a tax regime which incorporates minimum taxation requirements with respect to the domestic and foreign income of MNE Groups headquartered in that jurisdiction. Where such tax regimes have and maintain similar policy objectives, overlapping scope, and a complementary policy impact as the GMT; taking into account the success of qualified domestic minimum top up taxes (QDMTTs), and based on the commitment of members to address any BEPS or level playing field risks arising from the GMT and its interplay with the SbS System, the Inclusive Framework has agreed to the SbS and UPE Safe Harbours that apply to MNE Groups headquartered in jurisdictions which the Inclusive Framework has determined meet the requirements for an eligible tax regime.

15. The SbS Safe Harbour will only be available to an MNE Group that has its UPE located in a jurisdiction which has both an eligible domestic tax regime and an eligible worldwide tax regime. These tax regimes will only be eligible if they effectively achieve a minimum level of taxation of MNE Groups' domestic and foreign operations. When it elects for the safe harbour, an MNE Group will not be subject to the IIR or UTPR.

16. Within this context, the Inclusive Framework also agreed a safe harbour for jurisdictions with regimes that only meet the domestic part of the eligibility criteria. The UPE Safe Harbour will provide a safe harbour with respect to the domestic profits of MNE Groups headquartered in jurisdictions which have a pre-existing eligible domestic tax regime. When it elects for the safe harbour, an MNE Group will not be subject to the UTPR in respect of the profits located in the UPE jurisdiction.

17. Where the Inclusive Framework has determined that a jurisdiction has a Qualified SbS or UPE Regime, that jurisdiction shall be listed as such on the Central Record.

18. Upon request by a member jurisdiction, the Inclusive Framework will assess that jurisdiction's pre-existing tax regimes against the eligibility criteria for a Qualified SbS or UPE Regime by the end of the first half of 2026. The Inclusive Framework will assess the eligibility as a Qualified SbS Jurisdiction of any other IF jurisdiction once that jurisdiction initiates such a request to the Inclusive Framework in 2027 or 2028. The assessment of that jurisdiction's eligibility will be undertaken in a timely manner and on the same basis outlined above and taking into account that the Inclusive Framework considers that the adoption of a co-ordinated GMT, based on a common approach for ensuring minimum taxation (particularly through the implementation of QDMTTs) is critically important and should be the primary system. The timing of any access to the SbS Safe Harbour will take into consideration when the legislation entered into effect and the time necessary to review the eligibility of a regime as well as any information gathered as part of the stocktake.

19. All MNE Groups (including those eligible for the SbS or UPE Safe Harbours) remain subject to the QDMTT in all QDMTT jurisdictions in which they operate. In all QDMTT jurisdictions, the QDMTT for all MNE Groups must continue to be calculated without the pushdown of taxes on controlled foreign companies or foreign branches.

4.1. Stocktake

20. The Inclusive Framework's agreement to the SbS package (including the SbS and UPE Safe Harbours) is underpinned by a commitment to ensure that any substantial risks that might be identified with respect to the level playing field or BEPS are addressed to preserve the common policy objectives of the GMT and the SbS system. In furtherance of this commitment, the Inclusive Framework will undertake

a stocktake pursuant to an evidence-based objective process to be agreed by the Inclusive Framework and concluded by 2029.

21. The stocktake will take into account data on the effect of the GMT and the SbS system including the level of implementation of QDMTTs. The stocktake also will assess unintended effects such as any emerging material competitive imbalances identified between MNE Groups and any negative trends in taxpayer behaviours including changes in corporate structures to shift profits to achieve low-tax outcomes (for example, inversions or a material increase in profits located in low-tax jurisdictions without QDMTTs). The stocktake will consider all data that is relevant to making an informed judgment on the operation of the GMT and its interplay with any Qualified SbS Regime or Qualified UPE Regime in light of the common policy objectives.

22. Informed by the stocktake, and to uphold the SbS agreement and facilitate its continued operation, the Inclusive Framework commits to take action to address any substantial identified risks to the level playing field or BEPS. The form of any such action will depend upon the common nature and materiality of any risks identified and an assessment of how those risks could be most effectively addressed in a way that preserves the policy objectives of the SbS agreement and the GMT. The Inclusive Framework also commits to consider targeted solutions where more concentrated level playing field risks arise. The stocktake will also enable the Inclusive Framework to identify opportunities for alignment and simplification including opportunities for enhancing alignment of Qualified UPE Regimes with QDMTTs.

4.2. Reinforcing effectiveness of QDMTTs

23. Neither of the safe harbours agreed as part of the SbS System will interfere with or prevent QDMTTs applying to the operation of all MNE Groups and those QDMTTs will continue to be calculated without a pushdown of CFC or other owner-level taxes. In addition, all IF members remain committed to crediting QDMTTs on the same terms as any other creditable foreign income tax.

24. In light of the importance of supporting jurisdictions in their implementation of QDMTTs, the Inclusive Framework will continue with the work on reducing administrative burdens for jurisdictions and simplifying compliance for MNE Groups subject to the GMT. This work will include the identification of possible further coordination opportunities that could reduce the compliance burdens for MNE Groups with operations in QDMTT jurisdictions.

25. The Inclusive Framework agrees that conditional or discriminatory taxes will not be recognised as Covered Taxes and will consider further work on how this will be consistently applied. The qualified status of domestic minimum top-up taxes remains dependent on their consistent and non-discriminatory application to MNE Groups, regardless of whether an MNE Group has elected to apply the SbS Safe Harbour. In light of this, the Inclusive Framework notes the role of the peer review and ongoing monitoring in connection with the GMT, including the work on Related Benefits.

26. Finalising the work on integrity measures will preserve the integral role of QDMTTs by ensuring a minimum level of taxation and addressing any risk of competitive distortions.

2 Simplified ETR Safe Harbour

1. Introduction

1.1. Development of the Simplified ETR Safe Harbour

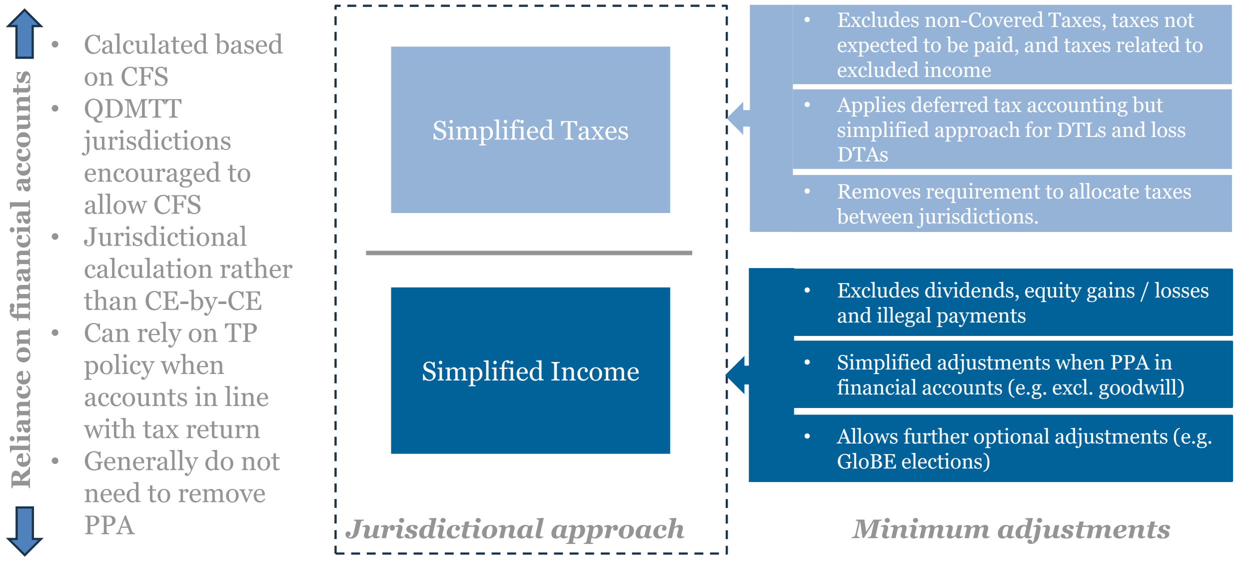
1.1.1. Background

1. In many jurisdictions the combination of a broad tax base and the applicable tax rate means that MNE Groups with operations in those jurisdictions will have an effective tax rate that is expected to exceed 15%. MNE Groups also report that where they are liable to Top-up Taxes, these taxes are typically concentrated in a limited number of jurisdictions. There will consequently be many jurisdictions in which MNE Groups will not incur Top-up Tax liabilities. Requiring compliance with the full GloBE Rules would impose compliance costs for MNE Groups and administrative burdens for jurisdictions that have adopted the GloBE Rules in cases where there is a very low risk of there being any Top-up Tax due.

2. The Transitional CbCR Safe Harbour (TCSH) has provided a temporary solution that alleviates much of the compliance and administration burdens. However, in light of the transitional nature of the safe harbour, Business at OECD (BIAC) approached the Inclusive Framework with a proposal for an alternative permanent safe harbour that would provide simplified calculations that an MNE Group can use to demonstrate that it will not have a Top-up Tax liability in a jurisdiction without the need to undertake the full GloBE computations. Such a simplification would also allow tax administrations to focus compliance resources on the jurisdictions where Top-up Tax liabilities are expected to arise.

3. Following extensive discussions at working party level and constructive and ongoing engagements with business stakeholders via the Business at OECD (BIAC) tax committee and its Business Advisory Group on Pillar Two, the Inclusive Framework has sought to develop a Simplified ETR Safe Harbour which seeks to incorporate the key simplifications identified by BIAC in a way that does not give rise to integrity concerns. As with other safe harbours developed through the Administrative Guidance process, this safe harbour deems the Top-up Tax in a jurisdiction to be zero when it applies. Figure 1.1 below provides an overview of this Simplified ETR calculation.

Figure 1.1. Overview of the Simplified ETR calculation



4. The key design elements of the safe harbour, illustrated in Figure 1.1 above and described in further detail below, could be incorporated into the GloBE Model Rules through Administrative Guidance in order to facilitate continuity across years when the MNE Group applies the Simplified ETR safe harbour in some years and not others and provide further compliance simplifications for MNE Groups operating in jurisdictions that do not qualify for the safe harbour. For instance, it may be possible to use some simplifications for purposes of determining the GloBE ETR (but not necessarily for purposes of determining GloBE Income or Loss). Work on incorporating these simplifications into the GloBE Model Rules will be undertaken in 2026.

1.1.2. Overview of design of safe harbour

5. The following paragraphs describe in further detail the design of the safe harbour as illustrated in the diagram above.

Reliance on the financial accounts

6. The safe harbour calculations will rely primarily on the data collected within the existing accounting systems used by the MNE Group. Both the income and taxes are calculated based on the financial accounting data used to prepare the MNE Group's Consolidated Financial Statements (CFS). QDMTT jurisdictions that have adopted the Local Financial Accounting Standard (LFAS) Rule would, however, by default require the Simplified ETR calculations to be made in accordance with the local financial accounting standard under the same conditions as the full QDMTT calculations (e.g. when all the local constituent entities already collect information in accordance with that standard). Those jurisdictions are not obligated to allow safe harbour calculations based on other financial accounting standards but are encouraged to allow MNE Groups to use the financial accounting standard used to prepare the CFS for the safe harbour calculations when the CFS are prepared under Acceptable Financial Accounting Standards that are widely used by MNE Groups, such as IFRS and US GAAP, and that the jurisdiction's tax administration is familiar with or considers sufficiently similar to the LFAS.

7. Recognising that the existing accounting systems will not always hold sufficiently detailed data at an entity level, MNE Groups will be able to compute the Simplified ETR starting from the jurisdictional data in their accounting systems (i.e. without the need to separately report the Simplified Income or Simplified

Taxes for each entity in the jurisdiction), provided that data is consistent with a simple aggregation of the Simplified Income and Simplified Taxes of the local Constituent Entities.

8. To ensure the safe harbour is robust and does not create opportunities for arbitrage, the safe harbour includes eligibility criteria that mean MNE Groups will be required to ensure that each GloBE tax attribute is allocated once, and only once, to a jurisdiction. For example, an MNE Group will not be eligible if its systems produce GloBE accounts in which there is income includible in Simplified Income which is not allocated to any jurisdiction (or a Stateless Constituent Entity).

9. In order to ensure certainty and reduce volatility in the ETR calculation, the Simplified ETR Safe Harbour will allow MNE Groups to rely on the intragroup pricing determined in line with their transfer pricing policy (as reported on their local tax returns) in determining Simplified Income and Simplified Taxes at the jurisdictional level.

10. In line with the TCSH, the safe harbour also allows for simplifications to the jurisdictional income calculation in the case of mergers and acquisitions by removing the requirement to exclude purchase price allocation (PPA) accounting adjustments from the financial accounts (subject to exceptions further detailed below) when the MNE Group's financial accounts include both income and deferred taxes in relation to these items. In such cases, the adjustments can be avoided without creating distortions to the Simplified ETR because the effect on the Simplified ETR of including income and tax adjustments in respect of a PPA will be similar to a Simplified ETR that was calculated on the basis that neither the income nor tax were included. Most MNE Groups that elect to apply the safe harbour should be eligible for these simplifications, which is expected to provide significant simplification because it will allow more MNE Groups to rely on their existing financial accounting data.

Simplified income

11. The Simplified Income calculation is based on the financial accounting data used to prepare the MNE Group's CFS and incorporates a limited number of adjustments. There are a small number of adjustments that the Inclusive Framework considers consistent with the policy of the GloBE Rules. These include the removal of dividends and equity gains and losses, to ensure the Simplified ETR is not distorted through including income that is commonly exempted from tax (often on the basis that it has already been brought within the charge to taxation), and which is excluded under the GloBE Rules. These adjustments are designed to be improvements over the Transitional CbCR Safe Harbour that are expected to make the Simplified ETR Safe Harbour more accessible and more stable for MNE Groups. In many cases, these basic adjustments to remove dividends and equity gains and losses are expected to be the only adjustments an MNE Group makes to the jurisdictional income calculation.

12. To address integrity concerns, there may also be some further adjustments to income in certain instances, for instance to adjust for a goodwill impairment or a tax-free step-up in basis. The safe harbour includes optional adjustments and elections that MNE Groups can choose to apply. This allows MNE Groups to make additional adjustments which can be significant to the ETR, for example to align the jurisdictional income with the tax base rules in the local jurisdiction. These adjustments allow for better alignment of the safe harbour with the outcomes under the GloBE Rules while avoiding the need for unnecessary adjustments. Similarly, the safe harbour provides for adjustments relevant for MNE Groups in certain industries, like insurance and shipping, that will allow them to access the benefits of the safe harbour.

13. Overall, the safe harbour significantly reduces the number of adjustments compared to the full GloBE computations. This is achieved by relying on other aspects of the financial accounts, which ensure a reliable measure of the ETR for the jurisdiction. For instance, there are simplifications for GloBE Income items that are reported in equity or Other Comprehensive Income (OCI). Those items do not need to be brought into the Simplified Income computation if the related deferred taxes are at or above the Minimum Rate and is also reported in equity or OCI. Excluding that income and related tax from the Simplified ETR

computation will not create distortions because including both in the computation would not move the ETR above or below the Minimum Rate.

Simplified taxes

14. The Simplified Taxes calculation is based on the income tax expense reported in the financial accounts and incorporates deferred tax accounting to address the impact of timing differences and to minimise recordkeeping burdens. Deferred tax expense movements related to deferred tax liabilities are not included in the computation if the MNE Group would have been required to determine whether they may reverse after five years and then trace how long it takes for them to reverse under the GloBE Rules (“recapture rule”). This exclusion minimises recordkeeping burden required by the recapture rule, which was one of the key simplifications identified by BIAC. Deferred tax liabilities that relate to items that are not covered by this recapture rule, such as cost recovery allowances on tangible assets or capitalised R&D expenditure, are included in Simplified Taxes. Furthermore, in order to address level playing field and integrity concerns, the net deferred tax expense is recast at the Minimum Rate pursuant to a simplified methodology. Similarly, the safe harbour relies on simplified calculations to address cases where loss deferred tax assets are inflated through permanent differences (or through high-risk timing differences) between financial accounting and the local tax base. This will allow MNE Groups to access the safe harbour in loss years.

15. The safe harbour also disregards valuation allowances and recognition adjustments so that tax losses and other deferred tax assets are appropriately recognised in the ETR computation, addressing a concern that businesses have raised around the Transitional CbCR Safe Harbour. There is also a simplified approach for cross-border allocation of income and taxes in relation to Permanent Establishments where MNE Groups may elect to include both the tax and income at the Main Entity level. The safe harbour also significantly reduces the cases when MNE Groups are required to recalculate the ETRs of earlier Fiscal Years.

Continuity

16. The safe harbour provides a robust ETR test that is designed to provide stability for MNE Groups by limiting the potential for ETR volatility through simplifications, optional adjustments and consistency requirements. Nevertheless, it may be the case that an MNE Group has a low ETR in a jurisdiction in a particular year and cannot qualify for the safe harbour. Allowing such an MNE Group to re-access the safe harbour will ensure the safe harbour provides enduring simplification for MNE Groups. There are re-entry rules which are designed to prevent the complexities that would arise from an MNE Group routinely bouncing between the safe harbour and the full GloBE computations.

17. The Inclusive Framework will provide further guidance on how the safe harbour income and tax adjustments apply when an MNE Group leaves the safe harbour and enters the full GloBE computations, with a view to preserving the simplifications that can be relied upon during the safe harbour years. The Inclusive Framework will also consider further guidance on how the safe harbour income and tax adjustments apply when an MNE Group has been subject to the full GloBE computations and enters the safe harbour, with a view to preserving continuity.

Next steps

18. The Simplified ETR Safe Harbour represents another milestone in the Inclusive Framework’s ongoing commitment to further simplification of the GloBE Model Rules and the accompanying information reporting requirements. The Inclusive Framework will consider information reporting obligations for purposes of the Simplified ETR Safe Harbour and examine whether reporting simplifications could be extended to cases where the safe harbour does not apply. The Inclusive Framework will also monitor the operation of this safe harbour to ensure that it achieves meaningful simplification and will continue to

identify opportunities for further simplifications. In doing so, the Inclusive Framework will also seek to incorporate the simplifications developed for the safe harbour into the full GloBE computations, where appropriate.

19. Work is ongoing on a safe harbour for other low-risk situations from a GloBE perspective, which could arise because the level of profit in the jurisdiction is low (a de minimis test) or low in comparison with the substance in that jurisdiction (a routine profits test). The Inclusive Framework will also consider further simplifications for Investment Entities and Minority-Owned Constituent Entities for the purpose of the Simplified ETR Safe Harbour. The work on these simplifications is scheduled to be concluded in the first half of 2026.

20. The Inclusive Framework will monitor whether any refinements are needed to address any integrity concerns. In particular, the Inclusive Framework will develop an anti-arbitrage rule that would apply under the main rules and any safe harbour. This rule would prevent MNE Groups entering into arrangements to avoid Top-up Tax by shifting GloBE Income and Covered Taxes between jurisdictions.

1.2. Overview of the Simplified ETR Safe Harbour

Box 1.2. Overview of the Simplified ETR Safe Harbour

Safe Harbour Test

1. At the election of the Filing Constituent Entity, the Top-up Tax in a Tested Jurisdiction for a Fiscal Year shall be deemed to be zero for that Fiscal Year where:
   a. the Tested Jurisdiction has a Simplified ETR of at least the Minimum Rate, where the Simplified ETR is calculated by dividing the Simplified Taxes by the Simplified Income, or
   b. the Tested Jurisdiction has a Simplified Loss.

Tested Jurisdiction

2. A Tested Jurisdiction consists of Constituent Entities, Permanent Establishments, Joint Ventures, or JV Subsidiaries for which a separate ETR is required to be calculated under the GloBE Model Rules.

3. A Filing Constituent Entity may make an Annual Election to include Constituent Entities that are not Minority-Owned Constituent Entities and Same-country Investment Entities located in the same jurisdiction under Article 10.3 and that are eligible to elect the Simplified ETR Safe Harbour under section 7.2 as a single Tested Jurisdiction for purposes of the Simplified ETR Safe Harbour. A Same-country Investment Entity is an Investment Entity or Insurance Investment Entity if all of its Constituent Entity-owners are also located in the same jurisdiction under Article 10.3 as the Entity and none of those owners have made an election under Article 7.5 or Article 7.6.

Source of Information

4. The Simplified Income and Simplified Taxes for a Tested Jurisdiction are calculated based on the financial accounting data used to prepare the MNE Group’s Consolidated Financial Statement (CFS) consistent with the principles of Article 3.1.2 and 3.1.3, except as otherwise required by the Simplified ETR Safe Harbour.

5. As an exception to paragraph 4, when a QDMTT jurisdiction has adopted the Local Financial Accounting Standard (LFAS) rule and an MNE Group is required to apply the local financial accounting standard for QDMTT computations, that MNE Group must compute the Simplified Income or Loss and Simplified Taxes for that Tested Jurisdiction using the financial accounts prepared under LFAS rule (unless the QDMTT LFAS jurisdiction allows the use of the accounting standard of its CFS for purposes of the Simplified ETR Safe Harbour).

Simplified income

6. Simplified Income or Loss of a Tested Jurisdiction is calculated by adjusting the Jurisdictional Profit (or Loss) before Income Tax by: Basic Adjustments (i.e. removing Excluded Dividends, Excluded Equity Gains or Losses, and adding expenses accrued for bribes, kickbacks, other illegal payments as well as for fines and penalties that equal or exceed EUR 250,000), any applicable Industry Adjustments, Conditional Adjustments, and any Optional Adjustments elected by the MNE Group.
7. The Jurisdictional Profit (or Loss) before Income Tax (JPBT) of a Tested Jurisdiction is equal to the aggregate Financial Accounting Net Income or Loss of the Constituent Entities in the Tested Jurisdiction plus the Jurisdictional Income Tax Expense (JITE) of those Constituent Entities.

Industry Adjustments

Financial Services Industry Adjustments

8. JPBT excludes the insurance company income described in Article 3.2.9, unless the MNE Group makes an Annual Election not to apply the exclusion.
9. JPBT is adjusted for payments and receipts in respect of Additional Tier One Capital and Restricted Tier One Capital pursuant to Article 3.2.10.

Shipping Industry Adjustments

10. JPBT excludes the International Shipping Income and Qualified Ancillary International Shipping Income described in Article 3.3, unless the MNE Group makes a Five-Year Election not to apply the Shipping Income Exclusion in the computation of the Simplified Income for the Tested Jurisdiction in Fiscal Years in which the computation of the aggregate amount of International Shipping Income and Qualified Ancillary International Shipping Income is positive. The election does not apply to any Fiscal Year in which the computation of the aggregate amount of International Shipping Income and Qualified Ancillary International Shipping Income results in a loss. The election does not apply in any Fiscal Year for which the Simplified ETR Safe Harbour does not apply.

Conditional adjustments for Equity-reported Items

11. No adjustment to JPBT is required for an Equity-reported Item of expense or loss.
12. An adjustment to JPBT is required for an Equity-reported Item of income. However, that adjustment is waived when (i) the income is subject to tax at a rate that equals or exceeds the Minimum Rate and (ii) the related income taxes are accounted in equity or OCI. If the related income tax is a deferred tax liability, the condition (ii) can only be met if it is a Recapture Exception Accrual.
13. The Equity-reported Items are:
    a. Included Revaluation Method Gain or Losses (Article 3.2.1(d)); and
    b. Prior Period Errors and Changes in Accounting Principle (Article 3.2.1(h)).

M&A Simplification and Fair-value election

14. In general, Chapter 6 of the GloBE Model Rules relating to corporate restructurings applies for purposes of the Simplified ETR Safe Harbour. Accordingly, the effect of the GloBE-to-book Difference attributable to an M&A Transaction must be removed from the JPBT and JITE to determine Simplified Income and Simplified Taxes, except as provided in section 3.4.2.
15. An MNE Group can apply the M&A Simplification to compute the Simplified ETR provided that all of the assets (except for goodwill) and liabilities for which a GloBE-to-book Difference is identified for the Tested Jurisdiction have the same tax basis before and after the M&A Transaction and corresponding deferred tax assets or liabilities accrued at a rate that equals or exceeds the Minimum Rate.
16. Pursuant to the M&A Simplification:
    a. the effect of the GloBE-to-book Difference on the JPBT for the Tested Jurisdiction is not removed from the computation;
    b. the accrual of the deferred tax assets and liabilities attributable to the M&A Transaction is not included in Simplified Taxes, and
    c. the reversal of deferred tax assets and liabilities attributable to the M&A Transaction, including deferred tax liabilities that are not Recapture Exception Accruals, is included in Simplified Taxes.
17. Any impairment or amortization of goodwill that does not have a corresponding deferred tax liability (or that has a corresponding deferred tax liability recorded at a tax rate below the Minimum Rate) is added back to the JPBT (and the reversal of the related deferred tax liability, if any, is excluded from Simplified Taxes).
18. In a year for which the Simplified ETR Safe Harbour is elected, an MNE Group may make an election under Article 6.3.4 where the tax basis of the assets and liabilities is adjusted to the fair value as determined in connection with a triggering event (including a triggering event related to an M&A Transaction) that occurs for local tax purposes in the current Fiscal Year.
19. In a year for which the Simplified ETR Safe Harbour is elected, an MNE Group may also make an election under Article 6.3.4 in relation to assets and liabilities where the tax basis of the assets and liabilities is adjusted to the fair value as determined in connection with an M&A Transaction that occurred in a prior Fiscal Year, provided that the Article 6.3.4 election was not available for that year. When an election under Article 6.3.4 is made pursuant to this paragraph, the GloBE-to-book Difference of each asset and liability is included in the computation of Simplified Income either in the year of the election or ratably over a five-year period, starting from the year of the election. The Article 6.3.4 election applies to all the assets and liabilities that were transferred in the relevant M&A Transaction.
20. Any amount of gain or loss allocated to a Fiscal Year pursuant to an Article 6.3.4 election is included in the Simplified Income of that Fiscal Year.
21. An M&A Transaction means a transaction in which assets and liabilities are transferred in connection with:
    a. an acquisition of the controlling Ownership Interest of an Entity that is not described in Article 6.2.2, or
    b. a GloBE Reorganization.

22. GloBE-to-book Difference means the difference between the GloBE carrying values of the assets and liabilities acquired in an M&A Transaction (and determined in accordance with Articles 6.2 and 6.3) and the accounting carrying values of those assets and liabilities that is attributable to the M&A Transaction and any corresponding deferred tax assets and liabilities reflected in the financial accounts.

Simplified Taxes

23. The starting point for the determination of the Simplified Taxes for a Tested Jurisdiction is the Jurisdictional Income Tax Expense. This amount is equal to the sum of the current and deferred income tax expense or benefit accrued in the FANIL of the Constituent Entities located in the Tested Jurisdiction and any deferred taxes recorded at the consolidated level that are attributable to Constituent Entities in the Tested Jurisdiction.

24. This amount is then subject to the following adjustments:

    a. Policy-based adjustments (i.e. reduced by current or deferred tax expense attributable to a tax that is not a Covered Tax under Article 4.2.2, and adjusted for tax refunds and credits under Article 4.1.3 (b) and (c));

    b. Adjustment to ensure correlation between Simplified Taxes and Simplified Income (i.e. reduced by the amount of any tax expense associated with items of income that are not included in Simplified Income, under Article 4.1.3(a) and 4.4.1(a));

    c. Adjustments for uncertain taxes and taxes that are not payable promptly (i.e. adjusted for accruals and payments of uncertain tax positions under Articles 4.1.2(c) and 4.1.3(d), reduced by the amount of current tax expense not expected to be paid within three years under Article 4.1.3(e), and adjusted under Article 4.4.6 for accrual or reversal of uncertain tax positions and taxes on distributions);

    d. Deferred Tax Adjustments.

        i. Deferred tax expense is recast at the Minimum Rate using the following formula:

$$Deferred\ Tax\ Expense\ in\ Simplified\ Taxes * \frac{Minimum\ Rate}{Accounted\ Tax\ rate}$$

        where:

        - The Deferred Tax Expense in Simplified Taxes is the total amount of deferred tax expense, including the accrual and reversal of deferred tax assets and liabilities that are taken into account in the Simplified Taxes for the Tested Jurisdiction for the Fiscal Year; and
        - The Accounted Tax Rate is the income tax rate used to recognise deferred taxes in the relevant financial accounts (before any valuation allowance).

        ii. Deferred tax expenses are reflected without regard to any valuation allowances, or accounting recognition adjustments.

        iii. Deferred tax expenses are adjusted for changes in the income tax rate under Article 4.4.1(d), and

        iv. Deferred tax expenses related to deferred tax liabilities that are not Recapture Exception Accruals are excluded. The DTL Recapture Rule generally does not apply under the Safe Harbour.

    e. Any Optional Adjustments elected by the MNE Group.

Simplified Adjustment for Negative Taxes in Simplified Loss year

25. In a Fiscal Year for which a Simplified Loss and negative Simplified Taxes are determined for a Tested Jurisdiction, the Simplified Adjustment for Negative Taxes, if any, must be determined.

26. The Simplified Adjustment for Negative Taxes is the negative amount, if any, that results from subtracting the product of the Simplified Loss multiplied by the Minimum Rate from the Simplified Taxes. The Simplified Adjustment for Negative Taxes formula can be expressed as follows:

*Simplified Taxes – (Simplified Loss * Minimum Rate).*

27. The Simplified Adjustment for Negative Taxes is carried forward and included in the computation of Simplified Taxes, or Adjusted Covered Taxes in a Fiscal Year to which the safe harbour does not apply, in the same manner as the Excess Negative Tax Carry-forward is included in the computation of Adjusted Covered Taxes.

28. In lieu of paragraphs 25 through 27, an MNE Group may elect to determine a Loss DTA Adjustment for a Fiscal Year during the Transitional Period if it had a tax loss, a Simplified Loss and Net Negative Taxes for the Transition Year and each Fiscal Year in the Transitional Period preceding that Fiscal Year. The Loss DTA Adjustment is carried forward and reduces (but not below zero) the amount of the loss DTA reversal tentatively computed in the Simplified Taxes (or Adjusted Covered Taxes) in a subsequent Fiscal Year. The Loss DTA adjustment is reduced at the end of each year by the amount used to reduce the loss DTA reversal in that year, and any outstanding amount is carried forward to subsequent years.
    a. The Loss DTA Adjustment is the sum of: (i) the amount of the loss DTA reflected in the JITE (determined without regard to valuation allowance or accounting recognition adjustment) attributable to permanent differences (including non-economic deductions and exempt income) recast at the Minimum Rate, and (ii) the amount of deferred tax liabilities accrued during the Fiscal Year attributable to goodwill and other intangibles with an indefinite life recast at the Minimum Rate.
    b. An MNE Group has Net Negative Taxes for a Fiscal Year when the JITE for the Tested Jurisdiction, adjusted for valuation allowances and accounting recognition adjustments on deferred tax assets, is nil or a net negative amount.
    c. The Transitional Period is comprised of five consecutive Fiscal Years starting with the Transition Year.

29. If any Excess Negative Tax Carry-forward is outstanding at the beginning of a Fiscal Year, that Excess Negative Tax Carry-forward is included in the computation of Simplified Taxes in the same manner as the Excess Negative Tax Carry-forward is included in the computation of Adjusted Covered Taxes.

Optional adjustments

30. An MNE Group may make any of the GloBE elections permitted under Chapter 3 of the GloBE Model Rules and related Commentary.

31. The Non-Material Constituent Entities Simplified Calculation is available under the Simplified ETR Safe Harbour.

32. The following GloBE adjustments are required for the Simplified ETR computation, unless the MNE Group makes a Five-Year Election not to make the adjustment:
    a. Asymmetric Foreign Exchange Currency Gain or Loss (Article 3.2.1(f));
    b. Accrued Pension Expense (Article 3.2.1(i)); and

33. An MNE Group may make an Annual Election to include in its Simplified Taxes any amount of Covered Taxes accrued as an expense but not included in income tax expense in the financial accounts in accordance with Article 4.1.2(a).
34. An MNE Group may make an Annual Election to include in Simplified Taxes any Covered Taxes related to an Equity-reported Item of income that is included in Simplified Income or Loss under section 3.4.1.
35. An MNE Group may make an Annual Election to include in Simplified Taxes and Simplified Income the amount of any tax credits that:
    a. are Qualified Refundable Tax Credits or Marketable Transferable Tax Credits;
    b. are accounted as tax reduction in the JITE; and
    c. originated in the Fiscal Year of the election or in a prior fiscal year but are not fully utilised as of the year of the election. In the latter case: (i) the amount of the tax credit not yet utilised as of the year of the election is included in the Simplified Income in the year of election, and (ii) the election continues to apply until the tax credit is fully utilised.
36. The election for Substance-based Tax Incentive Safe Harbour is available under the Simplified ETR Safe Harbour.
37. An MNE Group may elect to apply the GloBE Loss election (Article 4.5).

Transition Year rules

38. The Transition Year for a Tested Jurisdiction that has not already had a Transition Year is the first year that the MNE Group elects the Simplified ETR Safe Harbour for the Tested Jurisdiction.
39. Articles 9.1.1 to 9.1.3 and the related Commentary apply in determining Simplified Income and Simplified Taxes.

Tax adjustments after year end

40. Where there is an change (increase or decrease) to the Covered Tax liability or income for a Fiscal Year (the transaction year) that is accrued after the end of that Fiscal Year, the increase or decrease in tax or income is included in the Simplified Taxes or Simplified Income for the Fiscal Year in which it is reflected in the financial accounts (the accrual year), except as provided in paragraph 42.
41. An MNE Group may make a Five-Year Election to include all increases or decreases in Covered Tax liability and income that accrue within 12 months of the end of the transaction year in the Simplified Taxes and Simplified Income of the transaction year. This election applies to increases or decreases in Covered Tax liability and income in all jurisdictions in which the MNE Group operates. This election does not apply to Covered Tax liability or income adjustments related to transfer price adjustments and can be made independently of the election for transfer price adjustments in section 5.2.
42. If a net decrease to the Covered Tax liability for a previous Fiscal Year that is not attributable to a decrease in Simplified Income accrued more than 12 months after the end of that Fiscal Year and including that net decrease in the Simplified Taxes of the accrual year would cause the Simplified ETR to be below the Minimum Rate, the MNE Group may exclude the net decrease for that previous Fiscal Year from the Simplified Taxes of the accrual year if:
    a. after adjusting the Simplified Taxes by the net decrease accrued in any Fiscal Year in respect of that previous Fiscal Year and any corresponding deferred tax effects for that previous Fiscal Year, the Simplified ETR for that previous Fiscal Year is not below the Minimum Rate; or

b. after adjusting the Adjusted Covered Taxes by the net decrease accrued in any Fiscal Year in respect of that previous Fiscal Year and any corresponding deferred tax effects for that previous Fiscal Year, the GloBE ETR for that previous Fiscal Year is not below the Minimum Rate.

Cross-border allocation of income and taxes

43. An MNE Group must follow Articles 3.4, 3.5, and 4.3.2(b) to allocate income and taxes of a Permanent Establishment (PE) and Flow-through Entity.

44. The amount of taxes allocable from a Main Entity to a PE or from a Constituent Entity-owner to a subsidiary Constituent Entity under Article 4.3.2(a), (c), (d), or (e) are excluded from all Tested Jurisdictions, unless the MNE Group makes the Five-Year Election in paragraph 50. However, withholding taxes imposed on distributions from a Constituent Entity by the jurisdiction where that subsidiary Constituent Entity is located are not excluded.

45. In lieu of applying Articles 3.4.4 and 3.4.5, a Filing Constituent Entity may make a PE Simplification Election with respect to Permanent Establishments of Main Entities located in a jurisdiction that has adopted anti-hybrid rules consistent with BEPS Action 2 and that has a taxable branch regime. The election is subject to the condition that any deferred taxes on the Main Entity's income and expenses attributable to domestic operations are not reflected in JITE below the Minimum Rate.

46. Under the PE Simplification Election:

    a. the Simplified Income or Loss of each PE is included in the Simplified Income or Loss of the Main Entity's Tested Jurisdiction to the extent that it is treated as income or loss in the computation of the domestic taxable income under the taxable branch regime in the Main Entity jurisdiction;

    b. the Main Entity's current and deferred taxes related to the income or loss of those PEs as determined under the tax legislation are included in the Simplified Taxes of the Main Entity's Tested Jurisdiction;

    c. the amount of foreign tax credit used by the Main Entity to reduce its current tax expense related to including the PE's income are included in the Simplified Taxes of the Main Entity's Tested Jurisdiction; and

    d. the Simplified Income and Simplified Taxes of the PE's Tested Jurisdiction (or GloBE Income and Adjusted Covered Taxes of the PE's jurisdiction, if the Simplified ETR Safe Harbour does not apply) are determined without regard to Article 3.4.5 and Article 4.3.4.

47. The PE Simplification Election is an Annual Election and is made on a jurisdictional basis. Where a Simplified Loss of a PE has been included in the Simplified Income of a jurisdiction pursuant to the election, the MNE Group must make the election in each subsequent Fiscal Year until the Fiscal Year after the Simplified Income of the Main Entity's jurisdiction has included an equal amount of Simplified Income of that PE.

48. For the purposes of the PE Simplification Election, where there are foreign tax credits attributable to different types of foreign source income, the MNE Group determines the amount of foreign tax credit used in the year and related to PE income by multiplying the total amount of foreign tax credit used in the year by the ratio of the PE income included in taxable income to the total amount of foreign source income included in taxable income. The amount of foreign tax credit included in Simplified Taxes cannot exceed the result of multiplying the nominal tax rate in the Main Entity jurisdiction by the total income of PEs included in Main Entity's taxable income.

49. The PE Simplification Election has no impact on the Simplified ETR Safe Harbour computation of the Tested Jurisdiction of a PE. The Simplified ETR Safe Harbour computations for those Tested Jurisdictions mirror the QDMTT approach and an MNE Group must exclude any taxes paid by a

Main Entity on income attributable to a PE from the Simplified ETR computation for the Tested Jurisdiction of the PE, unless an election under paragraph 50 below is made.

50. An MNE Group may make a Five-Year Election to allocate taxes described in Article 4.3.2(a), (c), (d) and (e) to another Constituent Entity in accordance with Articles 4.3.2 and 4.3.3. Where those taxes are allocated to a Constituent Entity that is located in a jurisdiction that does not have a QDMTT, the taxes are included in the Simplified Taxes for the Tested Jurisdiction that includes that Constituent Entity.

Transfer pricing adjustments

Transactions between Constituent Entities located in different Tested Jurisdictions.

51. Where there is a TP taxable income adjustment made after the end of the Fiscal Year, that relates to transaction between Constituent Entities located in different Tested Jurisdictions, the TP taxable income adjustment is included as an adjustment to JPBT of the Fiscal Year in which it accrued (the accrual year). A TP taxable income adjustment is equal to the difference between the transfer price recorded in the financial accounts at the end of the Fiscal Year and the transfer price used to compute taxable income for the year. Any increase or decrease in Covered Tax liability attributable to the TP taxable income adjustment is also included in the accrual year. Where there is a TP taxable income adjustment in a Tested Jurisdiction and no corresponding TP taxable income adjustment in the counterparty, an adjustment equal to the TP taxable income adjustment must be made to the JPBT of the counterparty's Tested Jurisdiction.

52. An MNE Group may make a Five-Year Election to include TP taxable income adjustments and any related increases or decreases in Covered Tax liability that accrue within 12 months of the end of the Fiscal Year for which the TP taxable income adjustments are made (the transaction year) as an adjustment to JPBT and JITE of the transaction year. This election applies to TP taxable income adjustments and any related increase or decrease in Covered Tax liability in all jurisdictions in which the MNE Group operates.

Transactions between Constituent Entities located in different Tested Jurisdictions that are accounted at cost

53. Where a Constituent Entity (the seller) has transacted with another Constituent Entity (the buyer) in a different Tested Jurisdiction and the transaction is recorded at cost in the financial accounts, the JPBT of the seller's Tested Jurisdiction must be adjusted to reflect the transfer price used to determine the taxable income (or the Arm's Length Price, if the transaction is not taxable).

54. The buyer will use the carrying value in the financial accounts of its assets (except intangible assets) and liabilities to determine its Simplified Income. The buyer also must use the corresponding DTA (recast at the Minimum Rate) recorded in respect of the difference between the tax and accounting carrying values in computing its Simplified Taxes. The Simplified Income and Simplified Taxes for the buyer's jurisdiction are calculated based on the Arm's Length Price for any intangible assets that were transferred and based on the carrying value of the asset or liability recorded in its financial accounts for all other assets and liabilities arising from the transaction.

Transactions between Constituent Entities in the same Tested Jurisdiction

55. Paragraph 51 applies to a sale or other transfer of an asset between Constituent Entities that are located in the same Tested Jurisdiction when that sale or transfer results in a loss. If the tax law of the jurisdiction disallows the loss instead of adjusting the sale price to arm's length, the amount of the disallowed loss is deemed to be a transfer pricing adjustment in the amount of the disallowed loss.

Tax Neutral UPEs

56. The Simplified Income or Loss and Simplified Taxes of a UPE that is a Flow-through Entity or a Permanent Establishment described in Article 7.1.4 shall be reduced in accordance with Article 7.1. As an exception, the Simplified Income or Loss and Simplified Taxes of any such Entity shall be deemed to be zero where all the Ownership Interests in the UPE are held by Qualified Persons.

57. The Simplified Income or Loss and Simplified Taxes of a UPE or Constituent Entity described in Article 7.2.3 that is subject to Deductible Dividend Regime shall be reduced in accordance with Article 7.2. As an exception, the Simplified Income or Loss and Simplified Taxes of any such Entity shall be deemed to be zero where:

    a. all the Ownership Interests in the UPE are held by Qualified Persons; and

    b. all the income is distributed as Deductible Dividends.

58. If the Simplified Income or Loss and Simplified Taxes of all the Entities in a Tested Jurisdiction are deemed to be zero under paragraph 56 or 57, the Top-up Tax for the Tested Jurisdiction is deemed to be zero.

59. If the conditions of paragraph 58 are not met, the Top-up Tax for the Tested Jurisdiction is deemed to be zero if the Simplified ETR for the jurisdiction equals or exceeds the Minimum Rate after adjusting Simplified Income or Loss and Simplified Taxes for the Tested Jurisdiction in accordance with paragraph 56 and 57.

60. For purposes of paragraphs 56 and 57, a Qualified Person means:

    a. in respect of a UPE that is a Flow-through Entity, a holder described in Article 7.1.1 or Article 7.1.2; and

    b. in respect of a UPE that is subject to Deductible Dividend Regime, a holder described in Article 7.2.1.

Tax Transparent Entities

61. The Simplified Income or Loss and Simplified Taxes of a Tax Transparent Entity other than a UPE shall be deemed to be zero where all of the income and taxes of the Tax Transparent Entity (after application of Article 3.5.3) is allocated to Permanent Establishments under Article 3.5.1(a) and 4.3.2(a) or to Constituent Entity-owners under Articles 3.5.1(b) and 4.3.2(b).

62. If the Simplified Income or Loss and Simplified Taxes of all of the Entities in a Tested Jurisdiction are deemed to be zero under paragraph 61, the Top-up Tax for the Tested Jurisdiction is deemed to be zero.

Investment Entity Tax Transparency Election

63. The Top-up Tax of an Investment Entity or Insurance Investment Entity shall be deemed to be zero for a Fiscal Year where it is treated as a Tax Transparent Entity for all of its Constituent Entity-owners due to an election under Article 7.5 or under the definition of Tax Transparent Entity in Article 10.2.

Ineligible Tested Jurisdictions

64. An MNE Group is not eligible to elect the Simplified ETR Safe Harbour for the following Tested Jurisdictions:

    a. Stateless Constituent Entities, except as provided in section 6.2;

    b. Investment Entities, except as provided in section 6.3; and

c. Tested Jurisdictions with Constituent Entities in respect of which the MNE Group has made an Eligible Distribution Tax System election under Article 7.3 and there is an outstanding balance of the Deemed Distribution Tax Recapture Account for the jurisdiction at the beginning of the Fiscal Year.

First Election and Re-entry Requirements

65. An MNE Group is eligible to elect the Simplified ETR Safe Harbour for the first time in respect of a Tested Jurisdiction for a Fiscal Year if it did not have a Top-up Tax liability for that Tested Jurisdiction in every Fiscal Year beginning within 24 months before the first day of the Fiscal Year for which the Simplified ETR Safe Harbour is elected.

66. If an MNE Group fails to qualify for the Simplified ETR Safe Harbour in a Fiscal Year after electing it in a previous Fiscal Year for the same Tested Jurisdiction, the MNE Group may re-elect the Simplified ETR Safe Harbour if it did not have Top-up Tax liability in any of the Fiscal Years beginning within 24 months of the first day of the Fiscal Year for which the Safe Harbour was not elected, under either (i) full GloBE Rules or (ii) any Specified Safe Harbour.

67. A Specified Safe Harbour means the Simplified Calculation Safe Harbour for Non-Material Constituent Entities and any other Safe Harbour that the Inclusive Framework agrees on and that it considers should be treated as a Specified Safe Harbour for purposes of the re-entry rule.

Integrity rules

68. To be eligible for the Simplified ETR Safe Harbour, an MNE Group must make the necessary adjustments to its Simplified Income and Simplified Taxes computations to produce outcomes which are consistent with the following four principles:

a. Matching principle – intragroup income is not recognised in a Fiscal Year later than the Fiscal Year when the corresponding expense is recognised and the amount of income matches the amount of the corresponding expense;

b. Full allocation principle – all income is allocated to a Tested Jurisdiction;

c. Single expense and loss principle – expenses and losses are only deducted once and in a single Tested Jurisdiction; and

d. Single tax principle – taxes are only recorded once and in a single Tested Jurisdiction.

69. When the matching principle is not satisfied, the MNE Group must adjust the JPBT in the Tested Jurisdiction of the Constituent Entity that recognised the expense to eliminate the expense. However, if the matching principle would be failed solely because one of the parties applies the safe harbour using a Local Financial Accounting Standard, the matching principle will be treated as being satisfied.

70. When the full allocation principle is not satisfied, the MNE Group must include the income in the correct Tested Jurisdiction under the Model GloBE Rules.

71. When the single expense and loss principle is not satisfied, the MNE Group must adjust the JPBT in the Tested Jurisdiction of any Constituent Entity that recognised the expense to eliminate the expense.

72. Any financial instrument issued by one Constituent Entity and held by another Constituent Entity in the same MNE Group must be classified as debt or equity consistently for both the issuer and the holder based on the financial accounting standard used by the issuer in the computation of its Simplified Income.

Applicability date

73. A Filing Constituent Entity can elect the Simplified ETR Safe Harbour for a Tested Jurisdiction for a Fiscal Year that commences on or after 31 December 2026.

74. [*Optional provision*] A Filing Constituent Entity can elect the Simplified ETR Safe Harbour for a Tested Jurisdiction for a Fiscal Year that commences on or after 31 December 2025 if:

    a. The QDMTT Safe Harbour applies with respect to the Tested Jurisdiction;

    b. Only one Jurisdiction has taxing rights under the GloBE Rules with respect to the Tested Jurisdiction; or

    c. All Jurisdictions that have taxing rights under the GloBE Rules with respect to the Tested Jurisdiction have made the Simplified ETR Safe Harbour available for any Fiscal Years that commence on or after 31 December 2025 under their relevant legislation and an election for the Simplified ETR Safe Harbour is made by the MNE Group with respect to that Tested Jurisdiction in applying the legislation of all those Jurisdictions.

2. Simplified Jurisdictional ETR

Box 2. Simplified Jurisdictional ETR

1. At the election of the Filing Constituent Entity, the Top-up Tax in a Tested Jurisdiction for a Fiscal Year shall be deemed to be zero for that Fiscal Year where:

    a. the Tested Jurisdiction has a Simplified ETR of at least the Minimum Rate, where the Simplified ETR is calculated by dividing the Simplified Taxes by the Simplified Income, or

    b. the Tested Jurisdiction has a Simplified Loss.

2. A Tested Jurisdiction consists of Constituent Entities (including Permanent Establishments), Joint Ventures, or JV Subsidiaries for which a separate ETR is required to be calculated under the GloBE Model Rules.

3. A Filing Constituent Entity may make an Annual Election to include Constituent Entities that are not Minority-Owned Constituent Entities and Same-country Investment Entities located in the same jurisdiction under Article 10.3 and that are eligible to elect the Simplified ETR Safe Harbour under section 7.2 as a single Tested Jurisdiction for purposes of the Simplified ETR Safe Harbour. A Same-country Investment Entity is an Investment Entity or Insurance Investment Entity if all of its Constituent Entity-owners are also located in the same jurisdiction under Article 10.3 as the Entity and none of those owners have made an election under Article 7.5 or Article 7.6.

4. The Simplified Income or Loss and Simplified Taxes for a Tested Jurisdiction are calculated based on the financial accounting data used to prepare the MNE Group's Consolidated Financial Statement (CFS) consistent with the principles of Article 3.1.2 and 3.1.3, except as otherwise required by the Simplified ETR Safe Harbour.

5. As an exception to paragraph 4, when a QDMTT jurisdiction has adopted the Local Financial Accounting Standard (LFAS) rule and an MNE Group is required to apply the local financial accounting standard for QDMTT computations, that MNE Group must compute the Simplified Income or Loss and Simplified Taxes for that Tested Jurisdiction using the relevant local financial accounting standards (unless the QDMTT LFAS jurisdiction allows the use of the accounting standard of its CFS for purposes of the Simplified ETR Safe Harbour).

2.1. Tested Jurisdiction

2.1.1. In general

21. The Simplified ETR Safe Harbour is applied on a Tested Jurisdiction basis. A Tested Jurisdiction consists of a single Constituent Entity or a group of Constituent Entities for which a separate ETR is required to be calculated for the purposes of the GloBE Rules. The term Constituent Entity should be interpreted in the safe harbour rules to include a Permanent Establishment, Joint Venture, or JV Subsidiary where the context requires.

22. The location of a Constituent Entity, Joint Venture or JV Subsidiary is determined by applying Article 10.3 of the GloBE Rules. Generally, Constituent Entities that are located in the same jurisdiction are blended in a single Tested Jurisdictions for purposes of the GloBE Rules and the Simplified ETR Safe Harbour. In some instances, an MNE Group may have multiple Tested Jurisdictions for Constituent Entities located in a single jurisdiction. For instance, each of the following groups of Constituent Entities are treated as a separate Tested Jurisdiction:

a. all Constituent Entities, including Non-Material Constituent Entities, located in the same jurisdiction, except those described in paragraphs (d) and (e) below;

b. all members of the same JV Group located in the same jurisdiction;

c. each stand-alone Joint Venture;

d. all Constituent Entities of the same Minority-Owned Subgroup located in the same jurisdiction; and

e. each stand-alone Minority-Owned Constituent Entity (MOCE).

23. In addition, each Investment Entity and Insurance Investment Entity that is eligible for the Safe Harbour as provided in section 6.3 is treated as a separate Tested Jurisdiction and each Stateless Constituent Entity that is eligible for the safe harbour as provided in section 6.2 is treated as a separate Tested Jurisdiction.

24. For example, if an MNE Group has 10 Constituent Entities (that are not MOCEs or Investment Entities), three entities belonging to one JV Group and two entities belonging to different JV Group, one stand-alone MOCE and one Investment Entity (that is eligible for the Simplified ETR Safe Harbour under Section 6.3) located in jurisdiction A, then the MNE Group has five Tested Jurisdictions for the purpose of the Simplified ETR Safe Harbour in jurisdiction A: one Tested Jurisdiction for the 10 Constituent Entities, one Tested Jurisdiction for each of the two JV Groups, one Tested Jurisdiction for the stand-alone MOCE, and one Tested Jurisdiction for the Investment Entity.

25. Excluded Entities are not Constituent Entities of an MNE Group and are not subject to the GloBE Rules (except for purposes of calculating the revenue threshold for an MNE Group to which they belong or unless the MNE Group elects not to treat an Entity as Excluded Entity under Article 1.5.3). Accordingly, as with the GloBE Rules, the income and taxes of Excluded Entities are not included in the Simplified ETR computation for any Tested Jurisdiction (except in the case of an election under Article 1.5.3).

2.1.2. Election for Investment Entities

26. A Filing Consituent Entity may make an Annual Election to include Constituent Entities (that are not MOCEs) and Same-country Investment Entities located in the same jurisdiction under Article 10.3 and that are eligible to elect the Simplified ETR Safe Harbour under section 7.2, in a single Tested Jurisdiction. A Same-country Investment Entity is an Investment Entity and Insurance Investment Entity if all of its Constituent Entity-owners are also located in the same jurisdiction as the Entity and none of those owners have made an election under Article 7.5 or Article 7.6.

2.2. Source of Information

2.2.1. Same source of information as for GloBE purposes

27. The Simplified ETR is computed using data from the financial accounts consistently with the principles of Article 3.1.2 and 3.1.3, except as otherwise required by the safe harbour. This means that in most cases, the MNE Groups will use financial data for the jurisdiction that was used in the preparation of the UPE's Consolidated Financial Statements (CFS) to determine Simplified Income and Simplified Taxes for the Tested Jurisdiction. For a Tested Jurisdiction that includes a Constituent Entity that is not consolidated on a line-by-line basis (e.g. a Joint Ventures or an Entity held for sale), an MNE Group must use the same data source as required under Article 3.1.2 or Article 3.1.3 for that Entity to compute the Simplified ETR for that Tested Jurisdiction. In the case of a Non-Material Constituent Entity located in the Tested Jurisdiction, an MNE Group may elect to determine its Simplified Income and Simplified Taxes in accordance with the Non-material Constituent Entity Simplified Calculations (see Commentary, Annex A, Chapter 2, Section 2). MNE Groups may also elect to consolidate transactions in the same Tested Jurisdiction under Article 3.2.8 (see section 3.5).

28. For the avoidance of doubt, where Constituent Entities maintain their financial accounts based on a fiscal period that is different to the Fiscal Year of the UPE, paragraphs 13.2 through 13.8 of the Commentary to Article 1.1.1, which apply to all GloBE computations, shall apply also to the Simplified ETR computations.

2.2.2. QDMTT LFAS jurisdictions

29. When a QDMTT jurisdiction has adopted the Local Financial Accounting Standard rule (referred to as a QDMTT LFAS jurisdiction) and an MNE Group is required to apply the local financial accounting standard for QDMTT computations, that MNE Group must use the relevant local accounting standard also in computing the Simplified ETR for QDMTT purposes as required under that rule.

30. The Inclusive Framework recognises that using the CFS accounting standard in both GloBE and QDMTT calculations for all safe harbour jurisdictions allows MNE Groups to centralise their compliance process and thereby reduces compliance burden. It also mitigates opportunities for arbitrage between financial accounting standards under both the GloBE Model Rules and the Simplified ETR Safe Harbour. Therefore, QDMTT LFAS jurisdictions are encouraged to allow MNE Groups to use the accounting standard of its CFS for purposes of applying the Simplified ETR Safe Harbour under their QDMTT legislation.

31. The Inclusive Framework also recognises that QDMTT LFAS jurisdictions may lack familiarity with every Authorised Financial Accounting Standard and may struggle to audit safe harbour computations under some of those standards absent a full reconciliation between the LFAS and the unfamiliar accounting standard of the CFS, which would be a burdensome undertaking for both the MNE Group and the tax authority. At the same time, the MNE Group's local tax team has expertise in applying LFAS for corporate income tax purposes. Accordingly, an MNE Group that would be required to use the LFAS to determine its liability under a QDMTT must use the LFAS in the Simplified ETR Safe Harbour computations unless the jurisdiction specifically allows the use of the financial accounting standard used by the MNE Group in its CFS. For this purpose, the QDMTT jurisdiction may provide an election for an MNE Group to perform the safe harbour computations using any other Authorised Financial Accounting Standard that the jurisdiction's tax administration is familiar with or considers sufficiently similar to the LFAS. In order to facilitate compliance, the Inclusive Framework will collect and publish on the OECD website information on the Authorised Financial Accounting Standards allowed for purposes of the Simplified ETR Safe Harbour in QDMTT LFAS jurisdictions.

32. If an MNE Group elects to use the accounting standard of its CFS in one QDMTT LFAS Jurisdiction, however, it must make the election in all jurisdictions that provide the election and apply the accounting standard used in the CFS to perform the safe harbour computations for all Tested Jurisdictions. This consistency requirement does not extend to Tested Jurisdictions in which the MNE Group would use an accounting standard different from the one used in the CFS pursuant to Article 3.1.3. To avoid manipulation, an MNE Group must also use the same accounting standard to compute its Simplified ETR from one Fiscal Year to another. For example, an MNE Group that elects to apply the Simplified ETR based on the accounting standard of its CFS in one Fiscal Year under a QDMTT that allows for such a computation, must use the accounting standard of its CFS in all subsequent Fiscal Years including upon re-election of the safe harbour after applying the QDMTT based on the LFAS.

2.2.3. Jurisdictional aggregate data

33. The Simplified ETR Safe Harbour applies on a Tested Jurisdiction basis. Simplified Income or Loss and Simplified Taxes of each Constituent Entity must be allocated to the Tested Jurisdiction in which the relevant Constituent Entity or Constituent Entity-owner is located under the GloBE Rules, except as provided under the Simplified ETR Safe Harbour. However, the MNE Group does not necessarily need to determine the Simplified Income and Simplified Taxes on a Constituent Entity-by-Constituent Entity basis.

34. Determining the Simplified Income or Loss and Simplified Taxes on a jurisdictional basis, rather than first on an entity basis and then aggregating the results, will significantly reduce the compliance burden of MNE Groups and address a key business concern. Existing accounting data collection systems (e.g. ERP) employed by MNE Groups often use entity-by-entity data to prepare their CFS. Therefore, much of the data that is required for the Simplified ETR computations is recorded and available at an entity level (e.g. current tax expense, uncertain tax positions). However, a significant amount of data may be recorded at a consolidation level without being allocated to specific entities (e.g. certain stock-based compensation expense and shared service cost allocations). In most cases, allocating the data to a specific Constituent Entity and subsequently aggregating the Constituent Entities' results will not change or improve the accuracy of the Simplified Income or Simplified Taxes when compared to just allocating the data directly to a Tested Jurisdiction. To the extent that an MNE Group's existing data collection system reliably allows the MNE Group to allocate income and taxes to Tested Jurisdictions so that it achieves the same outcome as achieved under the GloBE Rules, they may rely on those systems to determine the Simplified Income or Loss and Simplified Taxes for a Tested Jurisdiction. Where the same outcome is not achieved from this source of data, it is necessary for an MNE Group to make adjustments to the information drawn from their existing data collection systems to arrive at the correct figures in the Simplified ETR calculation. Such a discrepancy may arise, for instance, in the case of income and taxes of a Tax Transparent Entity or a Permanent Establishment.

35. The fact that MNE Groups may not need to compute Entity-specific data under these circumstances does not mean Entity-level data will not be used in the Simplified ETR Safe Harbour. For example, MNE Groups will still need to compute Constituent Entity-specific data for Permanent Establishments and add that to the Simplified Income or Loss and Simplified Taxes for a Tested Jurisdiction. As another example, MNE Groups would need to compute entity-specific data to determine the location of a Constituent Entity under Article 10.3.4(b).

36. The currency translation rules defined for GloBE purposes also apply for ETR Safe Harbour purposes.

3. Simplified Income or Loss

Box 3. Computation of Simplified Income or Loss

1. Simplified Income or Loss of a Tested Jurisdiction is the result determined from adjusting the Jurisdictional Profit or Loss before Income Tax by:

    a. Basic Adjustments (see section 3.2);

    b. Industry Adjustments (see section 3.3)

    c. Any applicable Conditional Adjustments (see section 3.4); and

    d. Any Optional Adjustments elected by the MNE Group (see section 3.5).

3.1. Jurisdictional Profit (or Loss) before Income Tax

Box 3.1. Jurisdictional Profit (or Loss) before Income Tax

1. The Jurisdictional Profit (or Loss) before Income Tax (JPBT) of a Tested Jurisdiction is equal to the aggregate Financial Accounting Net Income or Loss of the Constituent Entities in the Tested Jurisdiction plus the Jurisdictional Income Tax Expense (JITE) of those Constituent Entities.

37. The Simplified Income calculation starts from the Jurisdictional Profit (or Loss) before Income Tax (JPBT) determined for the Tested Jurisdiction. The JPBT is calculated by determining the aggregate Financial Accounting Net Income or Loss (FANIL) of the Constituent Entities in the Tested Jurisdiction and then adding the Jurisdictional Income Tax Expense (JITE) of those Constituent Entities (excluding any deferred income taxes reflected in the consolidated accounts) and any amount of Covered Taxes that were not treated as an income tax expense in the FANIL and to which an election under section 4.4.1. applies.

38. FANIL has the same meaning as under the GloBE Model Rules and so it is generally calculated consistently with the GloBE Model Rules using the financial accounts used in the preparation of the Consolidated Financial Statements (see section 2.2.3. above). Consolidation adjustments to eliminate intragroup transactions must be reversed so that the profits and losses from intragroup transactions are recognised in the JPBT, except for transactions that are between Constituent Entities located in the same Tested Jurisdiction where an election under Article 3.2.8 has been made. Similarly, any income or expense attributable to Purchase Price Allocation accounting that is reflected in the aggregate FANIL should be reversed, except as provided under the M&A Simplification described in section 3.4.2.

3.2. Basic Adjustments to JPBT

Box 3.2. Basic Adjustments

1. The Basic Adjustments to JPBT are:
   a. Removing Excluded Dividends;
   b. Removing Excluded Equity Gains or Losses; and
   c. Adding expenses accrued for: (i) bribes, kickbacks and other illegal payments as well as for (ii) fines and penalties that equal or exceed EUR 250,000.

3.2.1. Excluded Dividends

39. The JPBT is adjusted to remove Excluded Dividends as defined under Article 3.2.1(b). The adjustment ensures that the Simplified income calculation does not result in double taxation and ensures that the Simplified ETR is not depressed through the inclusion of income which is non-taxable because of a participation exemption or dividends received deduction. In addition, consistent with the treatment under the GloBE Model Rules (as provided under the Commentary to Article 3.2.1(b)), where a movement in policyholder reserves of an insurance company economically matches an Excluded Dividend (net of the investment management fee) from a security held on behalf of a policyholder (for example, unit linked insurance), the movement in the insurance reserves is not allowed as an expense in the computation of Simplified income (i.e. it is excluded from the JPBT).

3.2.2. Excluded Equity Gains or Losses

40. The JPBT is adjusted to remove Excluded Equity Gains or Losses as defined under Article 3.2.1(c) of the GloBE Model Rules. This adjustment ensures the Simplified ETR is not distorted compared to the GloBE ETR through including income and expenses that would be excluded under the GloBE Model Rules and which are commonly exempted from tax through a participation exemption. However, consistent with the treatment under the GloBE Model Rules (as provided under the Commentary to Article 3.2.1(c)), any expenses from movements in policyholder reserves of an insurance company related to Excluded Equity Gains or Losses from securities held on behalf of policyholders (for example, unit linked insurance) are not allowed as deductions in the computation of Simplified income (i.e. they are excluded from the JPBT).

3.2.3. Policy Disallowed Expenses

41. The JPBT is adjusted to exclude any expenses for bribes, kickbacks and other illegal payments, consistently with Article 3.2.1(g). The adjustment is made because the public policy reasons behind the adjustment in the GloBE Model Rules apply equally in the context of the Simplified ETR Safe Harbour. This rule applies without regard to any financial accounting disclosure requirements.

42. The JPBT is also adjusted to add-back the expense accrued for any fine or penalty that equals or exceeds EUR 250 000 (or an equivalent in the functional currency in which the JPBT was calculated). This threshold applies on a per penalty basis, in the same way as the one for fines and penalties in Article 3.2.1(g). This higher threshold aims at simplifying the compliance burden of identifying and excluding smaller fines and penalties for purposes of the Simplified ETR Safe Harbour.

3.3. Industry adjustments

3.3.1. Financial Services Industry Adjustments

Box 3.3.1. Financial Services Industry Adjustments

1. JPBT excludes the insurance company income described in Article 3.2.9, unless the MNE Group makes an Annual Election not to apply the exclusion.
2. JPBT is adjusted for payments and receipts in respect of Additional Tier One Capital and Restricted Tier One Capital pursuant to Article 3.2.10.

GloBE adjustment for recharge for policyholder taxes

43. An MNE Group must apply Article 3.2.9 of the GloBE Model Rules in the computation of the Simplified Income or Loss for the Tested Jurisdiction, unless it makes an Annual Election not to perform the adjustment.

GloBE adjustment for Additional Tier One Capital and Restricted Tier One Capital

44. An MNE Group must apply Article 3.2.10 of the GloBE Model Rules in the computation of the Simplified Income or Loss for the Tested Jurisdiction, regardless of whether the Additional Tier One (AT1) or Restricted Tier One (RT1) instrument is treated as debt or equity in the financial accounts.

45. To ensure symmetry in the Simplified ETR computation, where an item of income or expense attributable to AT1 or RT1 capital accounted in equity (or Other Comprehensive Income) is included in the Simplified Income or Loss pursuant to Article 3.2.10, any corresponding tax accounted in equity (or Other Comprehensive Income) shall also be included in Simplified Taxes.

3.3.2. Shipping Industry Adjustments

Box 3.3.2. Adjustments for Shipping industry

1. JPBT excludes the International Shipping Income and Qualified Ancillary International Shipping Income described in Article 3.3 unless the MNE Group makes a Five-Year Election not to apply the exclusion in Fiscal Years in which the computation of the aggregate amount of International Shipping Income and Qualified Ancillary International Shipping Income is positive. The election does not apply to any Fiscal Year in which the computation of the aggregate amount of International Shipping Income or Qualified Ancillary International Shipping Income results in a loss. The election does not apply in any Fiscal Year for which the Simplified ETR Safe Harbour does not apply.

GloBE adjustment for Shipping Income exclusion

46. An MNE Group that derives International Shipping Income or Qualified Ancillary International Shipping Income in a Tested Jurisdiction must apply Article 3.3 of the GloBE Model Rules and Article 4.1.3(a) in respect of any Covered Taxes on the excluded international shipping income in the computation of the Simplified Income and Simplified Taxes of the Tested Jurisdiction, unless the MNE Group makes a Five-Year election not to apply Article 3.3 to Fiscal Years in which the computation of the aggregate amount of International Shipping Income and Qualified Ancillary International Shipping Income is positive.

47. The election is made by not applying Article 3.3 and therefore by including International Shipping Income and Qualified Ancillary International Shipping Income in the computation of Simplified Income and not applying Article 4.1.3(a) in the computation of Simplified Taxes. The election can be made also in instances where the computation of either the International Shipping Income or the Qualified Ancillary International Shipping Income results in a loss, provided that the computation of the combined amount of International Shipping Income and Qualified Ancillary International Shipping Income is positive. The election, however, does not apply to a Fiscal Year in which there is a loss from the computation of the aggregate amount of International Shipping Income and Qualified Ancillary International Shipping Income. Further, the election only applies in Fiscal Years for which the Simplified ETR Safe Harbour is elected. Thus, an MNE Group that makes the election must apply Article 3.3 in any Fiscal Year for which it performs the full GloBE computations, as well as in any Safe Harbour Year in which there is a loss from the computation of International Shipping Income and Qualified Ancillary International Shipping Income. However, the five-year period runs from the Fiscal Year for which the election was made and takes into account both Fiscal Years when the Simplified ETR Safe Harbour applied and Fiscal Years when it does not apply.

48. For example, assume that an MNE Group applies the Simplified ETR Safe Harbour and elects not to apply Article 3.3 in Year 1. The MNE Group does not elect the safe harbour and applies full GloBE computations (without reporting any Top-up Tax liability with respect to the Tested Jurisdiction) in Years 2 and 3. The MNE Group must apply Article 3.3 in Years 2 and 3 when applying the full GloBE rules. If it re-elects for the Simplified ETR Safe Harbour in Year 4, however, the MNE Group is still under the Five-year Election and cannot apply Article 3.3 in the computation of the Simplified Income and Simplified Taxes for that Fiscal Year unless it has a loss from the computation of the aggregate amount of International Shipping Income and Qualified Ancillary International Shipping Income in that Fiscal Year. The MNE Group may revoke the Five-Year Election in Year 6 or following (irrespective of whether the revocation year is a Fiscal Year when the MNE Group applies the Simplified ETR Safe Harbour or the full GloBE Rules). After the election is revoked, however, a new election cannot be made with respect to the four Fiscal Years succeeding the revocation year.

3.4. Conditional Adjustments to Simplified Income

3.4.1. Adjustments for equity-reported items

Box 3.4.1. Adjustments for Equity-reported Items

1. No adjustment to JPBT is required for an Equity-reported Item of expense or loss.
2. An adjustment to JPBT is required for an Equity-reported Item of income. However, that adjustment is waived when (i) the income is subject to tax at a rate that equals or exceeds the Minimum Rate and (ii) the related income taxes are accounted in equity or OCI. If the related income tax is a deferred tax liability, the condition (ii) can only be met if it is a Recapture Exception Accrual.
3. The Equity-reported Items are:
   a. Included Revaluation Method Gain or Losses (Article 3.2.1(d)); and
   b. Prior Period Errors and Changes in Accounting Principle (Article 3.2.1(h)).

49. In general, GloBE Income or Loss does not include amounts reported in Other Comprehensive Income (OCI) or in equity (together, equity-reported items), which are generally excluded from the computation of FANIL (or deferred until such time the amounts are recycled into the Income Statement). However, there are exceptions for certain equity-reported items, such as Included Revaluation Method

Gains or Losses and Prior Period Errors and Changes in Accounting Principle. In these cases, the GloBE Rules require the FANIL to be adjusted to include the relevant equity-reported income or expenses in the computation of the GloBE Income or Loss. In other words, the amounts are moved from equity or OCI into the FANIL for the purposes of computing GloBE Income. In many cases, there will be deferred taxes associated with such equity- reported items, and so the GloBE adjustments will include both an adjustment to include additional income or expense and a matching adjustment to the Adjusted Covered Taxes to include the corresponding deferred taxes (under Article 4.1.1(c)).

50. The Simplified ETR Safe Harbour provides simplified rules which exclude the requirements to make these GloBE adjustments in certain cases where this would not affect the MNE Group's ability to apply the safe harbour with respect to the Tested Jurisdiction because the Simplified ETR would generally not move above or below the Minimum Rate regardless of whether the adjustment is made or waived.

51. The adjustment is waived in all cases when the Equity-reported Item is a negative amount (i.e. an expense or loss). This is because the adjustment would reduce the Simplified Income and so would in most cases either increase the Simplified ETR (when there would not be an equivalent reduction to the Simplified Taxes) or would have a neutral impact on the ETR (when there would be a corresponding reduction to the Simplified Taxes).

52. When the Equity-reported Item is a positive amount (i.e. income), no adjustment to JPBT is required if the income is subject to tax at a rate that equals or exceeds the Minimum Rate and the related income taxes are accounted in equity or OCI. If the income item is subject to tax in a subsequent period, the related deferred tax liability must be a Recapture Exception Accrual and accrued at a rate that equals or exceeds the Minimum Rate. If those conditions are not present in the case of an Equity-reported item of income, an adjustment under Article 3.2.1(d) or Article 3.2.1(h) will be required.

53. The first requirement for waiver of the adjustment is that the income item is subject to tax in the jurisdiction of the Constituent Entity at a rate that equals or exceeds the Minimum Rate. Including that income and related taxes in the Simplified ETR computation would increase the Simplified ETR. There is no integrity risk in excluding that income. On the other hand, if the income is not taxable or subject to tax at a lower rate, then excluding the income and taxes from the ETR computation would create an integrity risk because including them could bring the Simplified ETR below the Minimum Rate. Likewise, if the related taxes (that are charged at a rate that is lower than the Minimum Rate) were included in current tax expense (on the profit and loss statement) but the income were included in equity or OCI, the exclusion of those taxes from Simplified Taxes and exclusion of the income from Simplified Income this mismatch would present a similar integrity risk.

54. To the extent that the related taxes are deferred taxes accrued at a rate that equals or exceeds the Minimum Rate, these deferred taxes would be recast at the Minimum Rate when included in the Simplified Taxes. Inclusion of such equity-reported income items is generally expected to have a neutral impact on the Simplified ETR because the amount of deferred taxes in the Simplified ETR calculation would be precisely the amount needed to shield the income from the Top-up Tax, without providing any excess taxes that could shelter any other low-taxed profit in the jurisdiction. Thus, the inclusion cannot bring the Simplified ETR for the Tested Jurisdiction above the Minimum Rate if it is otherwise below. Similarly, the inclusion cannot bring the Simplified ETR for the Tested Jurisdiction below the Minimum Rate if it is otherwise above because any additional Simplified Income is accompanied by corresponding additional Simplified Taxes at the Minimum Rate, which cannot shield any other income from Top-up Tax.

55. There is a specific condition for deferred tax liabilities in relation to Equity-reported Items of income. Like current tax expense and accruals of deferred tax assets, the related deferred tax liabilities must also be reported in the equity or OCI and accrued at a rate that equals or exceeds the Minimum Rate. In addition, the deferred tax liability must be a Recapture Exception Accrual. This limitation avoids a more favourable treatment for non-REA deferred tax liabilities reported in equity or OCI than in the income tax expense.

3.4.2. M&A Simplification and Article 6.3.4 election

Box 3.4.2. M&A Simplification

1. In general, Chapter 6 of the GloBE Model Rules relating to corporate restructurings applies for purposes of the Simplified ETR Safe Harbour. Accordingly, the effect of the GloBE-to-book Difference attributable to an M&A Transaction must be removed from the JPBT and JITE to determine Simplified Income and Simplified Taxes, except as provided in section 3.4.2.
2. An MNE Group can apply the M&A Simplification to compute the Simplified ETR provided that all of the assets (except for goodwill) and liabilities for which a GloBE-to-book Difference is identified for the Tested Jurisdiction have the same tax basis before and after the M&A Transaction and corresponding deferred tax assets or liabilities accrued at a rate that equals or exceeds the Minimum Rate.
3. Pursuant to the M&A Simplification:
    a. the effect of the GloBE-to-book Difference on the JPBT for the Tested Jurisdiction is not removed from the computation;
    b. the accrual of the deferred tax assets and liabilities arising from the M&A Transaction is not included in Simplified Taxes, and
    c. the reversal of deferred tax assets and liabilities arising from the M&A Transaction, including deferred tax liabilities that are not Recapture Exception Accruals, is included in Simplified Taxes.
4. Any impairment or amortization of goodwill that does not have a corresponding deferred tax liability (or that has a corresponding deferred tax liability recorded at a tax rate below the Minimum Rate) is added back to the JPBT (and the reversal of the related deferred tax liability, if any, is excluded from Simplified Taxes).
5. In a year for which the Simplified ETR Safe Harbour is elected, an MNE Group may make an election under Article 6.3.4 where the tax basis of the assets and liabilities of a Constituent Entity is adjusted to the fair value as determined in connection with a triggering event (including a triggering event related to an M&A Transaction) that occurs for local tax purposes in the current Fiscal Year.
6. In a year for which the Simplified ETR Safe Harbour is elected, an MNE Group may also make an election under Article 6.3.4 where the tax basis of the assets and liabilities of a Constituent Entity is adjusted to the fair value as determined in connection with an M&A Transaction that occurred in a prior Fiscal Year, provided that the Article 6.3.4 election was not available for that year. When an election under Article 6.3.4 is made pursuant to this paragraph, the GloBE-to-book Difference attributable to each asset and liability is included in the computation of Simplified Income either in the year of the election or ratably over a five-year period, starting from the year of the election. The Article 6.3.4 election applies to all the assets and liabilities that were transferred in the relevant M&A Transaction.
7. Any amount of gain or loss allocated to a Fiscal Year pursuant to an Article 6.3.4 election is included in the Simplified Income of that Fiscal Year.
8. An M&A Transaction means a transaction in which assets and liabilities are transferred in connection with:

a. an acquisition of the controlling Ownership Interest of an Entity that is not described in Article 6.2.2, or

b. a GloBE Reorganization.

9. GloBE-to-book Difference means the difference between the GloBE carrying values of the assets and liabilities acquired in an M&A Transaction (and determined in accordance with Articles 6.2 and 6.3) and the accounting carrying values of those assets and liabilities that is attributable to the M&A Transaction and any corresponding deferred tax assets and liabilities reflected in the financial accounts.

M&A Simplification

56. Special rules apply to the computation of Simplified Income and Simplified Taxes when there has been an M&A Transaction. An M&A Transaction is a transfer of assets and liabilities that occurs in connection with either: (i) an acquisition of a controlling Ownership Interest (i.e. a share deal) in a third-party transaction that is not described in Article 6.2.2, or (ii) a GloBE Reorganization as defined under GloBE rules (i.e. Article 10.1). These rules apply to an M&A Transaction that occurred in the current Fiscal Year or in a previous Fiscal Year. However, the special rules are only relevant to the extent that the assets and liabilities acquired in the M&A Transaction are still reflected in the financial accounts used to determine the aggregate FANIL for a Fiscal Year to which the Simplified ETR Safe Harbour applies.

57. The special rules for M&A Transactions simplify the treatment of a GloBE-to-book Difference, which is the difference that arises as a result of an M&A Transaction between the accounting carrying values of the assets and liabilities transferred in an M&A Transaction that are used to determine the aggregate FANIL for the Tested Jurisdiction and the corresponding GloBE carrying values (determined under Article 6.2 and 6.3). This often occurs in connection with the acquisition of a controlling Ownership Interest of an entity where the Purchase Price Allocation (PPA) accounting is incorporated into the financial accounts that are used to determine the aggregate FANIL. Similarly, a GloBE-to-book Difference may arise in connection with a GloBE Reorganization when a corresponding gain or loss is recognised in the financial accounts used to determine the aggregate FANIL. If the PPA accounting for an M&A Transaction is not reflected in the financial accounts used to determine the aggregate FANIL, there will not be a GloBE-to-book Difference and no need to apply the M&A Simplifications or make an election under Article 6.3.4.

58. These GloBE-to-book Differences affect the amount of depreciation or amortization or other expenses or gains and losses that are reflected in the aggregate FANIL and income tax expense in the Fiscal Year of the M&A Transaction and in subsequent periods. Unless the M&A Simplification applies or an election under Article 6.3.4 is made, the MNE Group must remove the effect of these GloBE-to-book Differences from the JPBT to determine Simplified Income and from income tax expense to determine Simplified Taxes (i.e. the Simplified Income must be computed in accordance with Chapter 6, and the Simplified Taxes must be computed in accordance with Article 4.4, subject to the Deferred Tax Adjustments illustrated under section 4.2.4. below).

59. Adjustments for the GloBE-to-book Differences, however, are not necessary in the Simplified ETR Safe Harbour where the MNE Group is eligible to apply the M&A Simplification. To be eligible to apply the M&A Simplification, all the assets and liabilities that are acquired in connection with M&A Transactions and for which a GloBE-to-book Difference is identified for the Tested Jurisdiction must have the same tax basis before and after the transaction and the MNE Group must have corresponding deferred tax assets or liabilities accrued at a rate that equals or exceeds the Minimum Rate. In other words, the GloBE-to-Book difference identified in connection with the M&A Transaction should have corresponding deferred taxes accrued in the financial accounts. The only exception is for goodwill, which is explained below. Such deferred taxes will be reflected in the financial accounts that are used to determine the aggregate FANIL. If those conditions are not met for all or some of the assets or liabilities acquired in an M&A Transaction,

the effect of the GloBE-to-book Difference must be removed from JPBT and from the JITE in line with GloBE Model Rules, unless an election is made under Article 6.3.4.

60. Paragraph 3 of Box 3.4.2 describes the functioning of the M&A Simplification, which affects both the computation of Simplified Income and Simplified Taxes. In general, the GloBE-to-book Differences are not removed from the JPBT and the reversal of any deferred taxes related to the GloBE-to-book Difference are included in the Simplified Taxes.

61. The M&A Simplification does not apply to the assets and liabilities transferred in an M&A Transaction for which a step-up occurs for tax purposes, but only to the assets and liabilities for which the tax basis remains unchanged.

62. Under the M&A Simplification, the accrual of the deferred taxes related to the GloBE-to-book Difference (where the tax basis remains unchanged) is not taken into account in computing Simplified Taxes, regardless of whether the accrual occurs in the year of the M&A Transaction or in a subsequent year. Usually, no adjustment is required to produce this result because under many financial accounting standards, such as IFRS, deferred taxes on a business combination are initially recognised (reflected) on the balance sheet with a corresponding adjustment to goodwill rather than being recognised in the income tax expense.

63. In contrast, reversals of deferred taxes related to the GloBE-to-book Difference are taken into account. Under the M&A Simplification, the effect of the GloBE-to-book Difference reflected in the aggregate FANIL is neutralised by the reversal of the corresponding deferred taxes. For example, assuming the effect of a GloBE-to-book Difference reflected in the aggregate FANIL for asset depreciation is 100 euro more than without the GloBE-to-book Difference, the effect of the additional depreciation will be neutralized in the Simplified ETR Safe Harbour by the inclusion in Simplified Taxes of the corresponding deferred tax liability reversal of 15 euro.

64. The reversal of a deferred tax liability that relates to a GloBE-to-book Difference and that is not a Recapture Exception Accrual (non-REA DTL) is also included in the Simplified Taxes. Allowing reversals of these non-REA DTLs in the Simplified Taxes represents an exception to the general rule that excludes non-REA DTLs from the computation of Simplified Taxes. However, it does not create an integrity risk because the original accrual of the DTL cannot be taken into account in the Simplified Taxes or Adjusted Covered Taxes computation. Thus, the ETR of a previous year cannot have been overstated due to a DTL that did not reverse for more than five years.

65. Under many Authorised Financial Accounting Standards, including IFRS and US GAAP, deferred tax liabilities cannot be recorded in respect of the initial recognition of goodwill arising on a business combination. As a result, the impairment or amortization of such goodwill would have a distortive effect on the Simplified ETR because it would reduce Simplified Income without a reversal of a deferred tax liability to reduce Simplified Taxes by an amount equal to the Minimum Rate on the impairment or amortization. Therefore, the goodwill impairment and any amortization must be added back to determine the Simplified Income and Simplified ETR. Any deferred tax liability that arises in a subsequent year in respect of such goodwill (e.g. as a result of a tax free step-up in basis of the goodwill with subsequent tax amortization and/or impairment) is also disregarded in the computation of Simplified Taxes because the GloBE carrying value of such goodwill is nil, unless an election under Article 6.3.4 is made (see paragraphs below).

66. Where the applicable accounting standard allows for the amortization of goodwill and the recognition of corresponding deferred tax liabilities on goodwill arising in connection with an M&A Transaction, no adjustment will be required to add back any goodwill impairment or amortization, provided that the goodwill impairment/amortization expense has a corresponding deferred tax liability reversal accounted in the income tax expense at a rate that is equal to or greater than the Minimum Rate. However, any impairment or amortization of goodwill that does not have a corresponding deferred tax liability (or that has a

corresponding deferred tax liability recorded at a tax rate below the Minimum Rate) is added back to the JPBT (and the reversal of the related deferred tax liability, if any, is excluded from Simplified Taxes).

67. The assets and liabilities of an M&A Transactions may not be eligible for the M&A Simplifications for different reasons. For instance, if the relevant tax basis remained unchanged with no deferred tax accounting or with deferred taxes accounted at a lower rate than the Minimum Rate, the M&A Simplification does not apply. Instead, the normal GloBE Rules apply to the computation of Simplified Income and Simplified Taxes, i.e. the relevant GloBE-to-Book Difference must be removed from the Simplified Income and Simplified Taxes computations.

68. In addition, the M&A Simplification does not apply if the tax basis of the assets and liabilities was adjusted to the fair value in connection with the M&A Transaction. In that case, the MNE Group has two alternatives for determining Simplified Income and Simplified Taxes. First, it may make an Article 6.3.4 election to include the GloBE-to-Book Difference in the Simplified Income either fully in the year of the election or ratably over five years. The second alternative is to apply the adjustments required by Chapter 6 of the GloBE Model Rules to determine its Simplified Income and Simplified Taxes.

69. In any case in which it is necessary to compute Top-up Tax under the GloBE Model Rules, the effect of the GloBE-to-book Difference must be removed from the computation of Excess Profits and Adjusted Covered Taxes. The M&A Simplification does not relieve the MNE Group of any obligation to maintain sufficient records related to M&A Transactions to compute its Top-up Tax under the GloBE Model Rules in any subsequent Fiscal Year. In recognition of the complexity and administrative burden related to removing the impact of PPA accounting from the GloBE Income, the Inclusive Framework will give further consideration to methodologies that could simplify removal of the portion of the original PPA amount arising from the M&A Transaction that is reflected in the computation of Excess Profits under the GloBE Model Rules for a particular Fiscal Year. Any such simplification would necessarily require the MNE Group, at a minimum, to produce evidence of the net amount of the PPA that arose in the M&A Transaction.

Article 6.3.4 election

70. The Article 6.3.4 election is available in the Simplified ETR Safe Harbour computation in any circumstance that it is available under the GloBE Model Rules, i.e. in connection with any relevant tax triggering event occurring in the Fiscal Year, including the ones related to M&A Transactions (paragraph 5 of the Box above). The Article 6.3.4 election is also available in connection with triggering events regardless of whether any or all of the gain or loss related to the tax basis adjustment is includible in taxable income. If some or all of the gain or loss is includible in taxable income and the election is made, the related taxes are included in Simplified Taxes. In addition, the Article 6.3.4 election is available under safe harbour in connection with M&A Transactions that occurred in a prior Fiscal Year and under certain conditions.

71. The Article 6.3.4 election allowed under paragraph 6 of the Box above provides an MNE Group with an option to eliminate the GloBE-to-book Difference identified in connection with an M&A Transaction that occurred in a prior Fiscal Year, provided that:

a. the Article 6.3.4 election was not available in that prior year (e.g. it was either a pre-GloBE year or a transitional safe harbour applied); and

b. the tax basis of all or some of the transferred assets and liabilities are adjusted to the fair value that is determined in connection with an M&A Transaction. The election applies to all the assets and liabilities transferred in connection with the M&A Transaction, including also assets and liabilities for which the tax basis was not adjusted to fair value, if any.

72. Where the election is made after the year in which the M&A Transaction occurred, the GloBE-to-book Difference is determined based on the accounting carrying values of the assets and liabilities at the beginning of the year in which the election is made. Because the GloBE carrying value of the assets and liabilities is equal to the accounting carrying value as a consequence of the Article 6.3.4 election, the

corresponding deferred taxes, if any, in the financial accounts should be used for purposes of determining Simplified Taxes.

73. Paragraph 7 of the Box above specifies that the GloBE-to-book Difference is included in the Simplified Income either in the year of election or ratably over a period of five Fiscal Years, beginning in the Fiscal Year for which the election is made. Where the GloBE-to-book Difference is spread over five years pursuant to an election under Article 6.3.4, the pro rata amount allocated to a Fiscal Year is included in the computation of Simplified Income for that Fiscal Year. If the Safe Harbour does not apply for a Fiscal Year included in the five-year period, the pro rata amount allocated to that Fiscal Year is included in the computation of GloBE Income or Loss. Similarly, if an Article 6.3.4 election was made in a Fiscal Year to which the Safe Harbour did not apply, any gain or loss allocated to a Fiscal Year must be included in the Simplified Income computation.

74. The following example illustrates the application of the M&A Simplification and the requirement of having to add-back to the JPBT the impairment/amortization of goodwill that does not have a corresponding deferred tax liability.

Example 1. Target acquisition with no tax step-up in basis

75. The Parent Entity of an MNE Group acquires the 100% of the Ownership Interests in a Constituent Entity (CE1) for 1000. The net equity (i.e. the carrying value of the assets in excess of the carrying value of liabilities) of CE1 at the time of acquisition is 800. Therefore, the PPA accounting when preparing the CFS is 200 (1000 – 800). In this case, the PPA is entirely allocated to a single tangible asset. The local tax basis of the tangible asset does not change as a consequence of the share deal (i.e. no step-up in tax basis). Therefore, a corresponding DTL is recognised in connection with the accounted PPA value, equal to 30, based on a CIT rate of 15% (200*15% = 30). The DTL accrual of 30 increases CE1's liabilities and a corresponding amount is allocated to goodwill, such that the net equity increase due to PPA accounting remains 200. This is the PPA accounting typically applied under IFRS and other widely-used Acceptable Financial Accounting Standards.

76. The PPA accounting is represented in the below table.

PPA	Tangible Asset	200
	DTL (15%)	(30)
	Goodwill	30
	Total	**200**

77. The higher accounting basis of the tangible asset and the accounting recognition of the goodwill do not impact the FANIL of CE1 in the year of acquisition. However, those higher values (i.e. the PPA values) will result in higher expenses (and less income) due to higher depreciation of the tangible asset and possible impairment of the goodwill in the subsequent years. In the example it is assumed that the tangible asset is ratably depreciated over five years starting from Year 1, the year after the acquisition, and the goodwill is fully impaired in the fifth year after the acquisition (Year 5). In Year 1 through Year 4, the depreciation expenses accrued in the JPBT are 40 more than if the PPA were excluded (= 200/ 5) and for Year 5, the expenses accrued in JPBT are 70 more than if the PPA were excluded (40 of additional depreciation plus 30 of goodwill impairment). The depreciation of the tangible asset will also determine the reversal of the DTL accrued in relation to the higher accounting basis. In particular, the 40 of annual additional depreciation of the tangible asset will result in a DTL reversal of 6 (= 40*15%) each year.

78. For Year 1 through Year 4, the PPA accounting will have a neutral impact on the Simplified ETR computation because the reduction in JPBT (denominator) will have a proportional reduction in JITE (numerator). It is explained in the below table. The table is based on the assumption that without PPA accounting the Simplified Income is 1000 and Simplified Taxes are 150.

Year 1 – 4	Simplified ETR without PPA accounting	Simplified ETR with PPA accounting
Simplified Taxes	150	144 (=150 – 6)
Simplified Income	1000	960 (=1000 – 40)
Simplified ETR	**15%**	**15%**

79. For Year 5, the impairment of the goodwill will have to be added-back for ETR Safe Harbour computation pursuant to the M&A Simplification and thus will not impact the Simplified ETR computation. This adjustment will grant a neutral impact on the ETR computation, as represented in the below table.

Year 5	Simplified ETR without PPA accounting	Simplified ETR with PPA accounting and add-back of goodwill impairment
Simplified Taxes	150	144 (=150 – 6)
Simplified Income	1000	960 (= 1000 – 40 – 30) + 30
Simplified ETR	**15%**	**15%**

80. The adjustment for goodwill impairment eliminates a distortive effect to the Simplified ETR. If the goodwill impairment were not adjusted the Simplified ETR with PPA accounting would be higher than the one without PPA accounting (15%). In particular, the denominator would be lowered by 30 without a corresponding and proportional decrease in numerator, resulting in a Simplified ETR increased to 15.5% (=144/930).

3.5. Optional Adjustments

3.5.1. GloBE Elective Adjustments

Box 3.5.1. GloBE Elective Adjustments

1. An MNE Group may make any of the GloBE elections permitted under Chapter 3 of the GloBE Model Rules and related Commentary.
2. The Non-Material Constituent Entities Simplified Calculation is available under the Simplified ETR Safe Harbour.

81. The GloBE Model Rules contain several elections that MNE Groups can choose to apply in the computation of GloBE Income. Such GloBE elections are also available in Safe Harbour computation, unless specifically excluded.

82. MNE Groups generally make the elections only when the benefits of the elective treatment outweigh the compliance burden of making the relevant income and tax adjustments. Elections may be particularly beneficial in the context of the Simplified ETR Safe Harbour because they may increase the accuracy of the Simplified ETR enough that the MNE Group can avoid the full GloBE computations, which would be more burdensome than making the election.

83. The GloBE elections available under Chapters 3 of the GloBE Model Rules are also available when computing the Simplified Income and Simplified Taxes. Thus, the following elections are available:

a. Inclusion of all Portfolio Shareholding dividends (Article 3.2.1(b))

b. Equity Investment Inclusion Election (Article 3.2.1(c));

c. Election to treat FX hedging as Excluded Equity Gain or Loss (Article 3.2.1(c));

d. Debt Release (Article 3.2.1(i));

e. Stock-based Compensation Election (Article 3.2.2);

f. Realization principle election (Article 3.2.5);

g. Capital gain spread over five year (Article 3.2.6), and

h. Intra-group transactions election (Article 3.2.8).

84. The MNE Group can make the elections for a Fiscal Year to which the Simplified ETR Safe Harbour applies and if the election is a Five-Year election, must continue to apply the election until it is revoked. If the MNE Group made any of these elections in a Fiscal Year for which the Simplified ETR Safe Harbour did not apply, the MNE Group must continue to apply the election in subsequent years for which the Simplified ETR Safe Harbour applies until it is revoked.

85. The election for Non-Material Constituent Entities (NMCE) Simplified Computation is also available under the Simplified ETR Safe Harbour. The election is an Annual Election and can be performed for some or all the NMCEs located in the Tested Jurisdiction. Under the election, the Simplified Income of an NMCE is equal to Total Revenue determined in accordance with the Relevant CbC Regulations and Simplified Taxes for the NMCE is equal to the Income Tax Accrued (Current Year) determined in accordance with the Relevant CbC Regulations.

Continuity aspects of the election under Article 3.2.6

86. The Article 3.2.6 election can be made both in a full GloBE year and in a Safe Harbour year. In both cases, a continuity issue may arise because the four Fiscal Years preceding the election year may include one or more years for which the Simplified ETR Safe Harbour was elected.

87. Where the Look-back period includes a year for which the Simplified ETR Safe Harbour was elected, the MNE Group must add the net gain allocable to that year pursuant to Article 3.2.6 to the Simplified Income previously determined for the Fiscal Year and re-determine the Simplified ETR for such Fiscal Year. If the re-determined Simplified ETR exceeds the Minimum Rate, the Additional Current Top-up Tax for that Fiscal Year is deemed to be zero. If the re-determined Simplified ETR for any such Fiscal Year is below the Minimum Rate, the Effective Tax Rate and the Additional Current Top-up Tax, if any, for that Fiscal Year must be computed in accordance with the full GloBE Rules. Any Additional Current Top-up Tax arising in respect of a previous Fiscal Year will not be considered Top-up Tax paid in respect of that Fiscal Year for purposes of applying the requirements of section 7.2.

3.5.2. Optional Exclusions

Box 3.5.2. Optional Exclusions

1. The following GloBE adjustments are required for the Simplified ETR computation, unless the MNE Group makes a Five-Year Election not to make the adjustment:
   a. Asymmetric Foreign Exchange Currency Gain or Loss (Article 3.2.1(f)); and
   b. Accrued Pension Expense (Article 3.2.1(i)).

GloBE adjustment for AFXGL

88. The JPBT must be adjusted to take into account any Asymmetric Foreign Exchange Currency Gain or Loss (AFXGL) determined for the Tested Jurisdiction in accordance with Article 3.2.1(f), unless the MNE Group makes a Five-Year election not to make an adjustment for AFXGL in the computation of Simplified Income and GloBE Income or Loss.

89. The election not to apply Article 3.2.1(f) is a Five-Year Election and is made in the Fiscal Year for which the Simplified ETR Safe Harbour applies by not applying that Article in the computation of Simplified Income and Simplified Taxes for the Tested Jurisdiction. If the election is made, Article 3.2.1(f) does not apply in any Fiscal Year until the election is revoked, regardless of whether the MNE Group elects for the Simplified ETR Safe Harbour or applies the GloBE Rules for that Fiscal Year.

GloBE adjustment for accrued pension expense

90. In all cases where its contributions to a Pension Fund are different from the amounts accrued as an expense in the financial accounts with respect to that Pension Fund, an MNE Group must perform the adjustment required under Article 3.2.1 (i) of the GloBE Rules and relevant administrative guidance, unless the MNE Group makes a Five-Year election not to apply Article 3.2.1 (i).

91. The election not to apply Art. 3.2.1 (i) is a Five-Year Election that is made by not applying the Article in the computation of Simplified Income and Simplified Taxes for the Tested Jurisdiction in the first Fiscal Year to which the election applies. If the election is made, Article 3.2.1(i) does not apply in any Fiscal Year until the election is revoked, regardless of whether the MNE Group elects for the Simplified ETR Safe Harbour or applies the GloBE Rules for that Fiscal Year.

4. Simplified Taxes

Box 4. Basic calculations

1. The starting point for the determination of the Simplified Taxes for a Tested Jurisdiction is the Jurisdictional Income Tax Expense. This amount is equal to the sum of the current and deferred income tax expense or benefit accrued in the FANIL of the Constituent Entities located in the Tested Jurisdiction and any deferred taxes recorded at the consolidated level that are attributable to Constituent Entities in the Tested Jurisdiction.
2. This amount is then subject to the following adjustments:
   a. Policy-based adjustments

i. Reduced by current or deferred tax expense attributable to a tax that is not a Covered Tax under Article 4.2.2;

ii. Adjusted for tax refunds and credits under Article 4.1.3 (b) and (c);

b. Adjustment to ensure correlation between Simplified Taxes and Simplified Income

i. Reduced by the amount of any tax expense associated with items of income that are not included in Simplified Income, under Article 4.1.3(a) and 4.4.1 (a);

c. Adjustments for uncertain taxes and taxes that are not payable promptly

i. Adjusted for accruals and payments of uncertain tax positions under Articles 4.1.2 (c), 4.1.3 (d);

ii. Reduced by the amount of current tax expense not expected to be paid within three years under Article 4.1.3 (e);

iii. Adjusted under Article 4.4.6 for accrual or reversal of uncertain tax positions and taxes on distributions.

d. Deferred Tax Adjustments

i. Deferred tax expense is recast at the Minimum Rate using the following formula:

$$Deferred\ Tax\ Expense\ in\ Simplified\ Taxes * \frac{Minimum\ Rate}{Accounted\ Tax\ rate}$$

where:

- The Deferred Tax Expense in Simplified Taxes is the total amount of deferred tax expense, including the accrual and reversal of deferred tax assets and liabilities that are taken into account in the Simplified Taxes for the Tested Jurisdiction for the Fiscal Year; and
- The Accounted Tax Rate is the income tax rate used to recognise deferred taxes in the relevant financial accounts (before any valuation allowance).

ii. Deferred tax expenses are reflected without regard to any valuation allowances, or accounting recognition adjustments;

iii. Deferred tax expenses are adjusted for changes in the income tax rate, under Article 4.4.1(d); and

iv. Deferred tax expenses related to deferred tax liabilities that are not Recapture Exception Accruals are excluded. The DTL Recapture Rule generally does not apply under the Safe Harbour.

e. Any Optional Adjustments elected by the MNE Group.

4.1. Jurisdictional Income Tax Expense

92. The Simplified Taxes calculation starts from the Jurisdictional Income Tax Expense (JITE) determined for the Tested Jurisdiction and then takes into account the adjustments to JITE described below. The JITE is the sum of the income tax expense reflected in the aggregate FANIL of the CEs in the Tested Jurisdiction plus any deferred income taxes related to that FANIL reflected in the consolidated accounts. Where income and expense attributable to PPA accounting is reflected in the financial accounts used to calculate the JPBT and the M&A Simplification applies, the JITE will include deferred taxes attributable to PPA accounting for the M&A Transaction (see section 3.4.2 above).

4.2. Basic adjustments to JITE

4.2.1. Policy-based adjustments

93. The JITE is subject to adjustments that are intended to reflect the design choices of the GloBE Model Rules and preserve their intended policy outcomes.

94. Specifically, the JITE is adjusted to remove any amount that is not a Covered Tax, as defined in Article 4.2.1 of the GloBE Model Rules. Further, the MNE Group may elect to add any amount of Covered Taxes that was not treated as an income tax expense in the financial accounts pursuant to Article 4.1.2(a) (see section 4.4.1 below).

95. The JITE is then adjusted for refunds and credits where necessary to align it with Article 4.1.3(b) and (c).

4.2.2. Adjustments to ensure correlation between Simplified Taxes and Simplified Income

96. The JITE must be adjusted to prevent distortions in the Simplified ETR computation stemming from mismatches between income included in Simplified Income and taxes included in Simplified Taxes.

97. In line with Articles 4.1.3 (a) and 4.4.1 (a) of the GloBE Model Rules, the JITE is adjusted to exclude any tax expense with respect to income that is not included in the Simplified Income. The exclusion applies to any current tax expense related to items of income (e.g. any tax expense accrued in relation to dividends on non-Portfolio Shareholdings) and any deferred expense related to items of income or expense (e.g. any DTAs arising from accrued expenses that are only tax deductible when paid), including any Covered Tax on the International Shipping Income and Qualified Ancillary International Shipping Income in cases where the MNE Group did not make a Five-Year election to include shipping income in the Simplified Income. For the avoidance of doubt, Simplified Taxes are not subject to a positive adjustment when a loss or expense that arises in the current year is deducted for tax purposes but is not included in the computation of Simplified Income.

4.2.3. Adjustments for uncertain taxes and taxes that are not payable promptly

98. The JITE is subject to adjustments that ensure Simplified Taxes does not include any taxes that are not certain to be paid and current taxes that are not payable promptly.

99. The JITE is adjusted to exclude any tax expenses arising from the accrual or reversal of an uncertain tax position (as determined under the relevant financial accounting standard) and Disallowed Accrual in the same manner as Article 4.1.2(c), Article 4.1.3(d) and Article 4.4.6 of the GloBE Model Rules. Consequently, tax expenses associated with an uncertain tax position or Disallowed Accrual will only be included in the Simplified Taxes if and when such taxes are paid.

100. The JITE is further adjusted to exclude any current tax expense for taxes that are not expected to be paid within three years under Article 4.1.3(e).

4.2.4. Deferred Tax Adjustments

101. Income tax expenses attributable to deferred tax assets and liabilities included in the Simplified Taxes are subject to certain adjustments. Where a Covered Tax does not have any timing differences compared to the FANIL (e.g. Zakat) or the relevant financial accounting standard does not provide for deferred tax accounting, the MNE Group will not have any deferred tax expense and therefore will not need to make the adjustments described in this section. Further, where the MNE Group makes a GloBE Loss Election, all income tax expenses or benefits attributable to deferred tax assets and liabilities in the

financial accounts are removed from the computation of Simplified Taxes and the deferred tax expense or benefit attributable to the GloBE Loss DTA are included in the computation of Simplified Taxes.

Valuation allowance or accounting recognition adjustment

102. When calculating the deferred tax expense or benefit for the purposes of the Simplified ETR, the MNE Group must ignore the impact of any valuation allowance or accounting recognition adjustment that has been recognised with respect to a deferred tax asset because of an expectation that there may be insufficient taxable income for the deferred tax asset to be utilised in the future. This includes (i) cases where the deferred tax asset was not initially recorded in the financial accounts in the period that a tax loss arose and (ii) cases where the deferred tax asset was recorded together with an offsetting liability. This adjustment applies in the same way as the adjustment in Articles 4.4.1(c) and 4.4.2(c) and ensures that the Simplified ETR appropriately recognises when tax loss carry-forwards have been offset against taxable income.

Adjustments for change in tax rate

103. The JITE is adjusted to exclude the additional or lower net amount of deferred tax expense resulting from a tax rate change, consistently with the GloBE adjustment under Article 4.4.1 (d) of the GloBE Model Rules. This will ensure that any tax rate change that occurs above the Minimum Rate (i.e. when both the original and the new tax rate are above the Minimum Rate), will be excluded pursuant to Article 4.4.1(d) and consistently with the deferred tax recast requirement. To the extent that Article 4.6.2 or Article 4.6.3 would apply in respect of tax rate changes that bring the tax rate from below to above the Minimum Rate or vice-versa, the simplified methodology set out in section 4.6 is available.

Generation and use of tax credits

104. The JITE is adjusted to exclude deferred tax expense attributable to the generation and use of tax credits pursuant to Article 4.4.1(e), except to the extent permitted by the Commentary to that article (i.e. a Substitute Loss Carry-forward DTA).

Exclusion of deferred tax liability that is not a Recapture Exception Accrual

105. Lastly, the JITE is generally adjusted to exclude any deferred tax expenses attributable to deferred tax liability that is not a Recapture Exception Accrual (REA) under Article 4.4.5. This simplifies the compliance burden for MNE Groups because it means the MNE Group will not need to apply the DTL recapture rules in Article 4.4 and therefore will not need to track the period between the accrual and reversal of a deferred tax liability.

106. There are two exceptions to the general rule:

a. when the deferred tax expense arises from reversal of a deferred tax liability attributable to an M&A Transaction and the MNE Group includes the effect of the M&A Transaction in the Simplified ETR computation pursuant to section 3.3.2; and

b. when the deferred tax expense arises from reversal of a deferred tax liability that was included in the computation of the effective tax rate in a prior Fiscal Year under a Qualified IIR, Qualified UTPR, or QDMTT.

107. In the first case, the reversal of the deferred tax liability is included in Simplified Taxes regardless of whether it is an REA. Otherwise, the Simplified ETR would be over-stated because the Simplified Income would be reduced by higher depreciation, amortization or impairment expenses than the taxable income, but the Simplified Taxes would not be reduced by the reversal of the deferred tax liability. A deferred tax liability that relates to an M&A Transaction, however, is not subject to the recapture rules to the extent that

deferred tax liability was not accrued in the profit and loss statement (and therefore not included in Adjusted Covered Taxes or Simplified Taxes) in a prior Fiscal Year. Under those circumstances, the accrual of the deferred tax liability could not have avoided Top-up Tax liability in a previous year, which is the concern addressed by the DTL recapture rule.

108. In the second case, the reversal of the deferred tax liability must be included in the Simplified Taxes because it relates to a deferred tax liability that was included in an ETR computation under a Qualified IIR, Qualified UTPR, or a QDMTT in a prior Fiscal Year. If the reversal were excluded, the MNE Group would obtain a double benefit because the DTL would have increased the ETR in the year in which it accrued and was included in the ETR computation and would increase the ETR in the year it reverses if the reversal were excluded.

4.2.5. Recasting of deferred tax expense

109. Deferred tax expenses in the Simplified Taxes must be recast at the Minimum Rate, but only if the related deferred tax assets or liabilities were computed in the financial accounts based on a tax rate that is higher than the Minimum Rate.

110. Recasting deferred tax expense is simplified in the safe harbour. Under the GloBE Rules, each deferred tax asset and liability is recast separately and the deferred tax expense for the jurisdiction is computed based on the recast deferred tax assets and liabilities. Under the safe harbour, the net deferred tax expense that goes into Simplified Taxes is recast. For the purposes of the Safe Harbour computation, the recast should be calculated according to the following formula:

$$Deferred\ Tax\ Expense\ in\ Simplified\ Taxes * \frac{Minimum\ Rate}{Accounted\ Tax\ rate}$$

Where:

a. The Deferred Tax Expense in Simplified Taxes is the total amount of deferred taxes, including the accrual and reversal of deferred tax assets and liabilities that are taken into account in the Simplified Taxes for the Tested Jurisdiction for the Fiscal Year; and

b. The Accounted Tax Rate is the income tax rate used to recognise deferred taxes in the relevant financial accounts (before any valuation allowance).

111. For jurisdictions where the corporate income tax system provides for a single tax rate that applies to a single tax basis, the Accounted Tax rate is expected to correspond with such rate. In a jurisdiction where an MNE Group's operations are subject to multiple Covered Taxes with different tax rates and bases, the MNE Group must recast those taxes using a methodology that is consistent with the deferred tax recasting principles of the GloBE Model Rules. The Inclusive Framework will consider providing more detailed guidance under both the GloBE Model Rules and the Simplified ETR Safe Harbour on the computation and the recasting of deferred tax expense for MNE Groups that have operations in a jurisdiction where they are subject to multiple Covered Taxes with different tax rates and bases.

4.3. Simplified adjustment for negative taxes in Simplified Loss years

Box 4.3. Simplified Adjustment for Negative Taxes in Simplified Loss year

1. In a Fiscal Year for which a Simplified Loss and negative Simplified Taxes are determined for a Tested Jurisdiction, the Simplified Adjustment for Negative Taxes, if any, must be determined.

2. The Simplified Adjustment for Negative Taxes is the negative amount, if any, that results from subtracting the product of the Simplified Loss multiplied by the Minimum Rate from the Simplified Taxes. The Simplified Adjustment for Negative Taxes formula can be expressed as follows:

   *Simplified Taxes– (Simplified Loss * Minimum Rate).*

3. The Simplified Adjustment for Negative Taxes is carried forward and included in the computation of Simplified Taxes, or Adjusted Covered Taxes in a Fiscal Year to which the safe harbour does not apply, in the same manner as the Excess Negative Tax Carry-forward is included in the computation of Adjusted Covered Taxes.
4. In lieu of paragraphs 1 through 3, an MNE Group may elect to determine a Loss DTA Adjustment for a Fiscal Year during the Transitional Period if it had a tax loss, a Simplified Loss, and Net Negative Taxes for the Transition Year and each Fiscal Year in the Transitional Period preceding that Fiscal Year. The Loss DTA Adjustment is carried forward and reduces (but not below zero) the amount of the loss DTA reversal tentatively computed in the Simplified Taxes (or Adjusted Covered Taxes) in a subsequent Fiscal Year. The Loss DTA adjustment is reduced at the end of each year by the amount used to reduce the loss DTA reversal in that year, and any outstanding amount is carried forward to subsequent years.
   a. The Loss DTA Adjustment is the sum of: (i) the amount of the loss DTA reflected in the JITE (determined without regard to valuation allowance or accounting recognition adjustment) attributable to permanent differences (including non-economic deductions and exempt income) recast at the Minimum Rate, and (ii) the amount of deferred tax liabilities accrued during the Fiscal Year attributable to goodwill and other intangibles with an indefinite life recast at the Minimum Rate.
   b. An MNE Group has Net Negative Taxes for a Fiscal Year when the JITE for the Tested Jurisdiction, adjusted for valuation allowances and accounting recognition adjustments on deferred tax assets, is nil or a net negative amount.
   c. The Transitional Period is comprised of five consecutive Fiscal Years starting with the Transition Year.
5. If any Excess Negative Tax Carry-forward is outstanding at the beginning of a Fiscal Year, that Excess Negative Tax Carry-forward is included in the computation of Simplified Taxes in the same manner as the Excess Negative Tax Carry-forward is included in the computation of Adjusted Covered Taxes.

112. In a Fiscal Year for which a Simplified Loss and negative Simplified Taxes are determined for a Tested Jurisdiction, the MNE Group must determine whether there is a Simplified Adjustment for Negative Taxes for the Tested Jurisdiction.

113. A Simplified Adjustment for Negative Taxes arises when the negative Simplified Taxes for the year are less than the Simplified Loss Multiplied by the Minimum Rate. The Simplified Adjustment for Negative Taxes is the negative amount of the difference.

114. The Simplified Adjustment for Negative Taxes is carried forward and included as a negative amount in the computation of Simplified Taxes in the same manner as the Excess Negative Tax Carry-forward is included in the computation of Adjusted Covered Taxes. Likewise, an Excess Negative Tax Carry-forward determined under the GloBE Rules is included in the computation of Simplified Taxes in the same manner as it is included in the computation of Adjusted Covered Taxes.

115. Paragraph 4 of the Box also provides for an alternative, the Loss DTA Adjustment, that an MNE Group may elect to apply in lieu of the Simplified Adjustment for Negative Taxes under certain conditions during the transitional period. This alternative methodology provides MNE Groups coming into the

Transition Year in a loss position with temporarily relief from the obligation to compute Simplified Taxes for the purposes of applying the ETR Safe Harbour. When elected, this methodology is applicable for the five-year period beginning with the Transition Year but only for Fiscal Years during the period that have a tax loss, a Simplified Loss and Net Negative Taxes (nil or negative taxes after adjusting for valuation or recognition adjustments). In addition, the methodology is only available for a Fiscal Year after the Transition Year if the MNE Group had a tax loss, a Simplified Loss, and Net Negative Taxes for each Fiscal Year in the five-year period that preceded the Fiscal Year. In other words, the methodology is not available after a Fiscal Year during the five-year period for which the MNE Group had taxable income, Simplified Income, or a positive amount of Simplified Taxes.

116. The Loss DTA Adjustment is equal to the sum of two components:

a. the portion of the current year loss DTA corresponding to permanent differences (e.g. super deductions or exempt income), as reflected in the JITE, without regard to valuation allowance or accounting recognition adjustments, and recast at Minimum Rate; and

b. the deferred tax liabilities accrued in the current year in relation to goodwill and other intangibles with indefinite life, recast at Minimum Rate.

117. The Loss DTA Adjustment that is generated in a Fiscal Year is carried-forward and used in a subsequent fiscal year according to a criterion that is consistent with the utilization rule defined for Simplified Adjustment for Negative Taxes (paragraph 3 of the Box) and for the Excess Negative Tax Carried-forward (Article 4.1.5). In particular, the loss DTA reversal that is tentatively computed in a subsequent fiscal year should be reduced (but not below zero) by the amount of the Loss DTA Adjustment resulting at the beginning of that year as carried forward from the previous fiscal year. At the end of each year, the amount of the Loss DTA adjustment to be carried forward to the subsequent year is reduced by the amount (if any) used to reduce the loss DTA reversal in that year.

4.4. Optional adjustments

Box 4.4. GloBE Elective Adjustments

1. An MNE Group may make an Annual Election to include in its Simplified Taxes any amount of Covered Taxes accrued as an expense but not included in income tax expense in the financial accounts in accordance with Article 4.1.2(a).
2. An MNE Group may make an Annual Election to include in Simplified Taxes any Covered Taxes related to any equity-reported item of income that is included in Simplified Income or Loss under section 3.4.1.
3. An MNE Group may make an Annual Election to include in Simplified Taxes and Simplified Income the amount of any tax credits that:
   a. are Qualified Refundable Tax Credits or Marketable Transferable Tax Credits;
   b. are accounted as tax reduction in the JITE; and
   c. originated in the Fiscal Year of the election or in a prior fiscal year but are not fully utilised as of the year of the election. In the latter case: (i) the amount of the tax credit not yet utilised as of the year of the election is included in the Simplified Income in the year of election, and (ii) the election continues to apply until the tax credit is fully utilised.

4. The election for the Substance-based Tax Incentive Safe Harbour is available under the Simplified ETR Safe Harbour.
5. An MNE Group may elect to apply the GloBE Loss election (Article 4.5).

4.4.1. Covered tax

118. An MNE Group may elect to include in its Simplified Taxes any amount of Covered Taxes accrued as an expense but not included in income tax expense in the financial accounts in accordance with Article 4.1.2(a). This is an Annual Election that applies with respect to the Tested Jurisdiction.

4.4.2. Taxes paid in respect of Equity Reported Items included in Simplified Income

119. An MNE Group may elect to include any Covered Taxes related to any equity-reported item that is included in Simplified Income or Loss under section 3. This is an Annual Election that applies with respect to the Tested Jurisdiction.

120. Pursuant to section 3.4.1, the JPBT may be adjusted to include certain equity-reported items. If the adjustments are made, the JITE must also be adjusted to reflect the corresponding taxes associated with the adjustments to Simplified Income. These adjustments are similar those under Article 4.1.1(c) of the GloBE Model Rules and are designed to ensure that the taxes associated with the relevant income are appropriately reflected in the Simplified ETR computation.

4.4.3. Tax Credits that are QRTC or MTTC accounted as tax reduction

121. For simplicity, tax credits that are accounted as tax reduction do not have to be analysed under the safe harbour to determine whether they qualify as Qualified Refundable Tax Credits (QRTCs) or Marketable Transferable Tax Credits (MTTCs). The default rule under the Simplified ETR computation is that no adjustment is made for tax credits accounted as a tax reduction and they will continue to be treated as a tax reduction in the computation of Simplified Taxes.

122. However, the MNE Group may make an Annual Election with respect to the Tested Jurisdiction to apply the GloBE adjustment for QRTCs and MTTCs accounted as tax reductions under Article 4.1.2(d) with the consequential adjustment to Simplified Income under Article 3.2.4. Accordingly, any tax credit that qualifies as a QRTC or MTTC and that is accounted as tax reduction in the JITE will be added to the Simplified Taxes and Simplified Income if the election is made.

123. The election applies both to tax credits that originate in the Fiscal Year of the election and to tax credits that originated in a prior fiscal year and have not been fully utilised as of the year of the election. In the latter case, the amount of the tax credit to be included in the Simplified Income is equal to the amount of tax credit not yet utilised as of the year of the election. As for tax credits that are utilised over a multiple-year period, the election is applied until the complete utilization of the tax credit. This ensures that the increase to the Simplified Income (in the year of election) is symmetrical to the increase to Simplified Taxes during the relevant period for which the QRTC or MTTC is utilised.

4.4.4. Substance-based Tax Incentives

124. The election in relation to Substance-based Tax Incentives is also available under the Simplified ETR Safe Harbour. The adjustments to GloBE Income and Adjusted Covered Taxes under that election apply equally in the computation of Simplified Income and Simplified Taxes.

4.4.5. GloBE Loss Election

125. Article 4.5 of the GloBE Model Rules provides an election for MNE Groups to effectively carry GloBE Losses forward with the establishment of a deemed deferred tax asset. That election is also available under the Simplified ETR Safe Harbour.

126. The MNE Group needs to make a GloBE Loss Election in the GIR filed for the first Fiscal Year when it has a Constituent Entity located in the jurisdiction for which the election is made. If the election is made, the MNE Group must then continue to apply the election in all subsequent Fiscal Years irrespective of whether the Simplified Safe Harbour or the full GloBE Rules apply in those Fiscal Years.

4.4.6. Other GloBE elections

127. The following GloBE elections provided in Chapter 4 of the GloBE Rules are already required as default treatment in the Safe Harbour computations, therefore allowing an election for those adjustment would be not meaningful:

a. Unclaimed Accrual election (Article 4.4.7)

b. Immaterial decreases in Covered Tax (Article 4.6.1) and

c. Election not to allocate cross-border deferred taxes (paragraph 71.16 in the Commentary to Article 4.4.1).

4.5. Transition Year rules

Box 4.5. Transition Year rules

1. The Transition Year for a Tested Jurisdiction that has not already had a Transition Year is the first year that the MNE Group elects the Simplified ETR Safe Harbour for the Tested Jurisdiction.
2. Articles 9.1.1 to 9.1.3 and the related Commentary apply in determining Simplified Income and Simplified Taxes.

128. Unlike the Transitional CbCR Safe Harbour, the Simplified ETR Safe Harbour does not delay the Transition Year for a Tested Jurisdiction. The Transition Year for a Tested Jurisdiction is the earlier of the Transition Year otherwise determined under the GloBE Model Rules and Commentary (including a new Transition Year under paragraph 188.49.2 of the Commentary on the QDMTT definition) or the first Fiscal Year that the MNE Group elects to apply the Simplified ETR Safe Harbour for that jurisdiction. MNE Groups will have a single Transition Year in respect of each Tested Jurisdiction. The Transition Year does not reset when an MNE Group re-enters the Simplified ETR Safe Harbour after exiting in a previous Fiscal Year.

129. For example, assume an MNE Group is required to apply a Qualified IIR with respect to a Tested Jurisdiction. The jurisdiction was eligible for the Transitional CbCR Safe Harbour for the 2024 to 2026 Fiscal Years. The MNE Group elects to apply the Simplified ETR Safe Harbour in 2027 but is not eligible for 2028 and 2029. In 2030, it once again elects the Simplified ETR Safe Harbour. In this case, the Transition Year for the jurisdiction is 2027.

130. Article 9.1.1 and Article 9.1.2 apply to deferred tax assets and liabilities that arose prior to the Transition Year for purposes of calculating Simplified Taxes in the same manner and to the same extent as they apply to the calculation of Adjusted Covered Taxes. Thus, the MNE Group may take into account all of the deferred tax assets and liabilities allowed under Article 9.1.1, except to the extent that any such deferred tax assets are not allowed under Article 9.1.2, in calculating its Simplified Taxes in and after the

Transition Year. The reversal of any deferred tax liability that is not treated as a Recapture Exception Accrual (including a deferred tax liability that arose prior to the Transition Year) is excluded from the computation of Simplified Taxes, unless the MNE Group included that deferred tax liability in the computation of Adjusted Covered Taxes for a previous Fiscal Year when it was subject to the GloBE Rules or a QDMTT.

131. Similarly, Article 9.1.3 applies in the same manner as it applies to the determination of the carrying value of an asset and any related deferred tax asset as it applies under the GloBE Model Rules. Thus, for example, the MNE Group must use the transferor's carrying value of an asset that is subject to Article 9.1.3 in calculating its Simplified Income and must use the related deferred tax asset, if any, determined under Article 9.1.3 in calculating its Simplified Taxes.

132. Paragraph 10.8.1 to the Commentary to Article 9.1.3 allows the acquiring Entity of an acquired asset to take into account a deferred tax asset in respect of tax paid by the transferring Entity (or Other Tax Effects) where the acquiring Entity recorded the acquired asset at the transferring Entity's carrying value upon disposition. Under paragraph 10.9 to the Commentary to Article 9.1.3, a Constituent Entity that recorded an acquired asset subject to Article 9.1.3 at fair value in its financial accounts may use the carrying value of that asset for GloBE purposes if it would have otherwise been entitled to a deferred tax asset equal to the Minimum Rate under the Article 9.1.3 Commentary. A Constituent Entity that records the acquired asset at the transferring Entity's carrying value may take into account a deferred tax asset calculated at the Minimum Rate and a Constituent Entity that records the acquired asset at fair value may use the carrying value of the acquired asset provided that the transferring Entity is generally subject to tax on gains from the same type of Article 9.1.3 asset transfers at a rate that equals or exceeds the Minimum Rate (and without the need to identify the specific amount of tax it paid on an asset-by-asset basis in respect of each Article 9.1.3 transfer). The Inclusive Framework will consider further simplifications in relation to compliance with Article 9.1.3 for purposes of both the safe harbour and the full GloBE computations.

133. Because the Simplified ETR Safe Harbour does not extend the Transition Year, Article 9.1.3 does not apply to transfers of assets from a disposing Constituent Entity that is located in a Tested Jurisdiction that applies the Simplified ETR Safe Harbour.

4.6. Tax adjustments after year end

Box 4.6. Tax adjustments after year end

1. Where there is a change (increase or decrease) to the Covered Tax liability or income for a Fiscal Year (the transaction year) that is accrued after the end of that Fiscal Year, the increase or decrease in tax or income is included in the Simplified Taxes or Simplified Income for the Fiscal Year in which it accrued (the accrual year), except as provided in paragraph 3.
2. An MNE Group may make a Five-Year Election to include all increases or decreases in Covered Tax liability and income that accrue within 12 months of the end of the transaction year in the Simplified Taxes and Simplified Income of the transaction year. This election applies to increases or decreases in Covered Tax liability and income in all jurisdictions in which the MNE Group operates. This election does not apply to Covered Tax liability or income adjustments related to transfer price adjustments and can be made independently of the election for transfer price adjustments in section 5.2.
3. If a net decrease to the Covered Tax liability for a previous Fiscal Year that is not attributable to a decrease in Simplified Income accrued more than 12 months after the end of that Fiscal Year and including that net decrease in the Simplified Taxes of the accrual year would cause the Simplified

ETR to be below the Minimum Rate, the MNE Group may exclude the net decrease for that previous Fiscal Year from the Simplified Taxes of the accrual year if:

a. after adjusting the Simplified Taxes by the net decrease accrued in any Fiscal Year in respect of that previous Fiscal Year and any corresponding deferred tax effects for that previous Fiscal Year, the Simplified ETR for that previous Fiscal Year is not below the Minimum Rate; or

b. after adjusting the Adjusted Covered Taxes by the net decrease accrued in any Fiscal Year in respect of that previous Fiscal Year and any corresponding deferred tax effects for that previous Fiscal Year, the GloBE ETR for that previous Fiscal Year is not below the Minimum Rate.

4.6.1. Treatment of changes to the Covered Taxes liability and income after of the end of the Fiscal Year

134. The Consolidated Financial Statements are typically prepared before the tax return is due. As a result, the tax expense in those statements will generally be an estimate of the tax liability for the period. In the following year, the MNE Group will adjust or 'true-up' its consolidated financial statements to correct for differences between the estimated amount and the actual amount. This true-up adjustment is permitted under most Authorised Financial Accounting Standards, unless the difference is significant enough that it is required to be treated as a prior period error.

135. The Simplified Taxes are generally calculated based on the income tax expense in the Consolidated Financial Statements and thus the Simplified Taxes will be computed based on an estimate of the income tax liability for the Tested Fiscal Year. This could result in a misalignment in the measurement of the Simplified ETR in cases where the Simplified Income is based on the updated actual income for the period. This will most commonly occur for transfer pricing adjustments in cases when the corporate income tax liability is computed using a different transfer price to the price of the transaction recorded in the financial accounts, which are discussed in section 5.2 below. To reduce the number of adjustments to the greatest extent possible, the Simplified ETR Safe Harbour generally does not require an MNE Group to adjust its Simplified Taxes to take account of the true-up adjustments to income or taxes that occur after year end. In other words, MNE Groups generally are not required to update the estimate of the JITE and JPBT to reflect the actual liability or income for the period. Instead, by default, the true-up adjustments will be reflected in the Simplified Taxes and Simplified Income of the accrual year.

136. An MNE Group may make a Five-Year Election to include increases or decreases in Covered Tax liability and income (except for increases in tax and income related to transfer pricing adjustments) that accrue within 12 months of the end of the transaction year in the Simplified Taxes and Simplified Income of the transaction year. This election applies to all jurisdictions in which the MNE Group operates. The election does not apply to transfer pricing adjustments because those adjustments are addressed separately in section 5.2. This election for true-up adjustments can be made independent of the similar election that is allowed for transfer pricing adjustments. In the Fiscal Year for which the true-up election is made, any income and taxes accrued in respect of the preceding transaction year must be included in the Simplified Income and Simplified Taxes of the election year. In the Fiscal Year for which the true-up election is revoked, any income and taxes taken into account in the preceding transaction year under the election must be excluded from the Simplified Income and Simplified Taxes of the revocation year.

4.6.2. Treatment of changes to the Covered Tax liability of a prior Fiscal Year more than 12 months after the end of that Fiscal Year

137. The Simplified ETR Safe Harbour generally applies the same simplified approach for dealing with changes to a Covered Tax liability or income for a Fiscal Year that occur more than 12 months after the end of that Fiscal Year has passed. In general, such changes are taken into account in the accrual year, however, there is no election to take them into account in the transaction year. Special rules apply to a

decrease in tax liability that does not have a corresponding adjustment to income. This approach will minimise the situations in which MNE Groups are required to recalculate the ETR for a prior Fiscal Year to which the Simplified ETR Safe Harbour had been applied.

Tax changes attributable to income adjustments

138. When the post-year end adjustment increases the Covered Taxes liability (e.g. because the tax authority raises an additional tax assessment) for a previous Fiscal Year ("the transaction year"), MNE Groups include these additional taxes in the financial accounts in the Fiscal Year in which the assessment was made ("the accrual year"). Some MNE Groups include both the income adjustment and the tax adjustment in their financial accounts in the accrual year. Other MNE Groups include the tax adjustment but not the income adjustment in their financial accounts in the accrual year. In those latter cases, the additional taxes could distort the Simplified ETR in the accrual year. The Simplified ETR Safe Harbour requires the MNE Group to include the income adjustment in the accrual year. For this purpose, a change in the Covered Taxes liability attributable to a transfer pricing adjustment is considered a change in the Covered Taxes liability attributable to an increase or decrease in Simplified Income and the amount of the change in the transfer price for tax purposes must be included in the Simplified Income if it is not already reflected in the financial accounts.

139. This approach is simpler than requiring some MNE Groups to adjust their JPBT and JITE and no more burdensome than requiring other MNE Groups to adjust only their JITE. This will also ensure that all Simplified Income and Simplified Taxes are included in a Simplified ETR computation. Moreover, this approach could be considered as a simplification to Article 4.6.1 of the GloBE Model Rules, providing more continuity between the safe harbour and the GloBE Model Rules.

140. In a case where the transfer price is adjusted for tax purposes in the jurisdiction of the seller and the buyer, but the MNE Group records a DTA for the buyer instead of adjusting the carrying value of the asset, the accrual of that DTA is excluded from Simplified Taxes in the same manner as under section 5.2.2.

141. Further, where Article 4.6.3 would require a positive adjustment to Adjusted Covered Taxes, the positive adjustment is included in Simplified Taxes for the Fiscal Year in which the deferred tax asset or liability reverses consistent with Article 4.6.3.

Other tax changes

142. There may be cases when a post-filing adjustment increases or decrease the Covered Tax liability for a prior Fiscal Year without a corresponding increase or decrease in the income for that period. Article 4.6.1 generally includes the tax increase or decrease in the accrual year. However, in the case of a large decrease in a Covered Tax liability, Article 4.6.1 requires the ETR for the prior Fiscal Year to be recomputed and an Additional Current Top-up Tax liability may be charged if the revised ETR is below the Minimum Rate. This is designed to protect the integrity of the GloBE Rules by preventing MNE Groups from manipulating the timing of tax recognition to inflate the ETR. However, it is not limited to arrangements which are designed to optimise the ETR under the GloBE Rules and applies equally to any case when there is a reduction to the Covered Taxes liability of an earlier year (for example because of a late claim to a relief available in the jurisdiction).

143. Stakeholders have explained that the requirement to recalculate the ETR of the prior Fiscal Year in these situations could reduce the value of the Simplified ETR Safe Harbour because it could require the MNE Group to retrospectively make the full GloBE computations for those earlier years and this may require MNE Groups to develop the systems to collect the necessary information for this even in situations where no post-filing adjustments ultimately materialise.

144. The Simplified ETR Safe Harbour consequently adopts a simplified approach for the treatment of reductions in Covered Tax liability which will reduce the need to recalculate the ETR of prior Fiscal Years.

Under this approach, the refund is reflected in the Simplified Taxes in the accrual year and so no adjustments are required to the JITE in that Fiscal Year. Increases in a Covered Tax liability with no corresponding income adjustment are also reflected in the Simplified taxes in the accrual year, consistent with Article 4.6.1.

145. It is possible that including the refund for a previous Fiscal Year or refunds from multiple previous Fiscal Years in the accrual year could lead to the MNE Group's Simplified ETR falling below the Minimum Rate when it would still have been eligible to apply the safe harbour in the prior Fiscal Years if the ETR for those years had been recalculated to take account of the refund for that year. Furthermore, it is possible that no Additional Current Top-up Tax liabilities would be due because the MNE Group would then apply Article 4.6.1 and carry the negative taxes back to those earlier Fiscal Years. This would mean that the MNE Group would lose access to the safe harbour when there is no loss of Top-up Tax. In recognition of this, the Simplified ETR Safe Harbour permits the MNE Group to add back all the refunds for a specific previous Fiscal Year (a Qualified Refund Year) to its Simplified Taxes in the accrual year to the extent those refunds and any corresponding deferred tax effects would not result in a Simplified ETR below the Minimum Rate in the previous Fiscal Year to which those refunds relate (or a GloBE ETR below the Minimum Rate in a Fiscal Year for which the Simplified ETR Safe Harbour did not apply). The definition of Qualified Refund Year is cumulative in the sense that the determination of whether the Simplified ETR is below the Minimum Rate for that previous Fiscal Year takes into account all refunds accrued in respect of that previous Fiscal Year, not just those accrued in the current Fiscal Year.

146. For example, the MNE Group originally claimed the Simplified ETR Safe Harbour in Years 1 and 2. In Year 1, its Simplified Taxes were 300 and its Simplified Income was 1200. In Year 2 its Simplified Taxes were 250 and its Simplified Income was 1500. In Year 3, the MNE Group receives a refund of 100 of the taxes paid in respect of Year 1 and 50 of the taxes paid in respect of Year 2. Its Simplified Income in Year 3 was 1000 and its JITE is 100 (which represents 250 of taxes on the income of that year less the 150 refund). Its Simplified ETR in Year 3 would consequently be 10% (=100/1,000) if the full amount of the refunds were taken into account in that year. However, the MNE Group would still have a Simplified ETR of more than the Minimum Rate in Year 1 (16.7% = [300-100]/1200) after adjusting for the refund of taxes included in the Simplified Taxes of that year. Thus, Year 1 is a Qualified Refund Year and the refund can be allocated to Year 1 and added back to Simplified Taxes of Year 3; the Simplified ETR for Year 3 is then 15% (= [50 + 100]/1000) and the Simplified ETR Safe Harbour applies to Year 3. Year 2 is not a Qualified Refund Year and cannot be added back to Simplified Taxes in Year 3 because the 50 refund would have reduced the ETR in Year 2 below the Minimum Rate (13% = [250-50]/1500). If in Year 4, another refund of 80 were accrued in respect of Year 1, Year 1 would have a Simplified ETR below the Minimum Rate taking into account all refunds related to Year 1(10% = [300-100-80]/1200). Thus, Year 1 would not be a Qualified Refund Year in Year 4 and the 80 refund cannot be added back to Simplified Taxes of Year 4.

147. Further, where Article 4.6.2, Article 4.6.3, or Article 4.6.4 would require a negative adjustment to Adjusted Covered Taxes, the simplification described in this section applies.

5. Simplified Treatment of Cross-border Income & Taxes

5.1. Cross-border allocation of income and taxes

Box 5.1. Cross-border allocation of income and taxes

1. An MNE Group must follow Articles 3.4, 3.5, and 4.3.2(b) to allocate income and taxes of a Permanent Establishment (PE) and Flow-through Entity.
2. The amount of taxes allocable from a Main Entity to a PE or from a Constituent Entity-owner to a subsidiary Constituent Entity under Article 4.3.2(a), (c), (d), or (e) are excluded from all Tested Jurisdictions, unless the MNE Group makes the Five-Year Election in paragraph 8. However, withholding taxes imposed on distributions from a Constituent Entity by the jurisdiction where that subsidiary Constituent Entity is located are not excluded.
3. In lieu of applying Articles 3.4.4 and 3.4.5, a Filing Constituent Entity may make a PE Simplification Election with respect to Permanent Establishments of Main Entities located in a jurisdiction that has adopted anti-hybrid rules consistent with BEPS Action 2 and that has a taxable branch regime. The election is subject to the condition that any deferred taxes on the Main Entity's income and expenses attributable to domestic operations are not reflected in JITE below the Minimum Rate.
4. Under the PE Simplification Election:
   a. the Simplified Income or Loss of each PE is included in the Simplified Income or Loss of the Main Entity's Tested Jurisdiction to the extent that it is treated as income or loss in the computation of the domestic taxable income under the taxable branch regime in the Main Entity jurisdiction;
   b. the Main Entity's current and deferred taxes related to the income or loss of those PEs as determined under the tax legislation are included in the Simplified Taxes of the Main Entity's Tested Jurisdiction;
   c. the amount of foreign tax credit used by the Main Entity to reduce its current tax expense related to including the PE's income are included in the Simplified Taxes of the Main Entity's Tested Jurisdiction; and
   d. the Simplified Income and Simplified Taxes of the PE's Tested Jurisdiction (or GloBE Income and Adjusted Covered Taxes of the PE's jurisdiction, if the Simplified ETR Safe Harbour does not apply) are determined without regard to Article 3.4.5 and Article 4.3.4.
5. The PE Simplification Election is an Annual Election and is made on a jurisdictional basis. Where a Simplified Loss of a PE has been included in the Simplified Income of a jurisdiction pursuant to the election, the MNE Group must make the election in each subsequent Fiscal Year until the Fiscal Year after the Simplified Income of the Main Entity's jurisdiction has included an equal amount of Simplified Income of that PE.
6. For the purposes of the PE Simplification Election, where there are foreign tax credits attributable to different types of foreign source income, the MNE Group determines the amount of foreign tax credit used in the year and related to PE income by multiplying the total amount of foreign tax credit used in the year by the ratio of the PE income included in taxable income to the total amount of foreign source income included in taxable income. The amount of foreign tax credit included in Simplified Taxes cannot exceed the result of multiplying the nominal tax rate in the Main Entity jurisdiction by the total income of PEs included in Main Entity's taxable income.

7. The PE Simplification Election has no impact on the Simplified ETR Safe Harbour computation of the Tested Jurisdiction of a PE. The Simplified ETR Safe Harbour computations for those Tested Jurisdictions mirror the QDMTT approach and an MNE Group must exclude any taxes paid by a Main Entity on income attributable to a PE from the Simplified ETR computation for the Tested Jurisdiction of the PE, unless an election under paragraph 8 below is made.
8. An MNE Group may make a Five-Year Election to allocate taxes described in Article 4.3.2(a), (c), (d) and (e) to another Constituent Entity in accordance with Articles 4.3.2 and 4.3.3. The election does not apply to taxes described in Article 4.3.2(a) when a PE Simplification Election is in effect in the Main Entity jurisdiction. Where those taxes are allocated to a Constituent Entity that is located in a jurisdiction that does not have a QDMTT, the taxes are included in the Simplified Taxes for the Tested Jurisdiction that includes that Constituent Entity.

148. In general, MNE Groups must follow Chapters 3 and 4 of the QDMTT Commentary for the cross-border allocation of Simplified Income or Loss and Simplified Taxes. Thus, MNE Groups apply Article 4.3.2(b) and allocate Covered Taxes included in the financial accounts of a Tax Transparent Entity with respect to Simplified Income or Loss allocated to a Constituent Entity-owner pursuant to Article 3.5.1(b) to that Constituent Entity-owner. Where the MNE Group includes a loss attributable to a PE in its Simplified Income pursuant to Article 3.4.5, Article 4.3.4 applies to the determination of Simplified Taxes in both the Main Entity's jurisdiction and the PE's jurisdiction.

149. In general, the Simplified ETR Safe Harbour mirrors the QDMTT approach to the allocation of cross-border taxes from a Main Entity or Constituent Entity-owner to a PE or subsidiary Constituent Entity. An MNE Group must exclude any taxes paid by a Main Entity or Constituent Entity-owner on income attributable to a PE or subsidiary Constituent Entity from the Simplified ETR computation for the Tested Jurisdiction of the Main Entity or Constituent Entity-owner as well as the Tested Jurisdiction of the PE or subsidiary Constituent Entity. This requirement applies also where the PE Simplification Election, set out below, applies. As provided in the QDMTT Commentary, however, this requirement does not apply to withholding taxes imposed on distributions from a subsidiary Constituent Entity by the jurisdiction where that subsidiary Constituent Entity is located.

150. In lieu of applying Articles 3.4.4 and 3.4.5, a Filing Constituent Entity may make a PE Simplification Election with respect to Permanent Establishments of Main Entities located in a jurisdiction that has adopted anti-hybrid rules consistent with BEPS Action 2 and that has a taxable branch regime. The election is subject to the condition that any deferred taxes on the Main Entity's income and expenses attributable to domestic operations are not reflected in JITE at a rate below the Minimum Rate.

151. Under the PE Simplification Election:

a. the Simplified Income or Loss of each PE is included in the Simplified Income or Loss of the Main Entity's Tested Jurisdiction to the extent that it is treated as income or loss in the computation of the domestic taxable income under the taxable branch regime in the Main Entity jurisdiction;
b. the Main Entity's current and deferred taxes related to the income or loss of those PEs as determined under the tax legislation are included in the Simplified Taxes of the Main Entity's Tested Jurisdiction;
c. the amount of foreign tax credit used by the Main Entity to reduce its current tax expense related to including the PE's income is included in the Simplified Taxes of the Main Entity's Tested Jurisdiction; and
d. the Simplified Income and Simplified Taxes of the PE's Tested Jurisdiction (or GloBE Income and Adjusted Covered Taxes of the PE's jurisdiction, if the Simplified ETR Safe Harbour does not apply) are determined without regard to Article 3.4.5 and Article 4.3.4.

152. The election is an Annual Election and is made on a jurisdictional basis. Where a Simplified Loss of a PE has been included in the Simplified Income of a jurisdiction pursuant to the election, the MNE Group must make the election in each subsequent Fiscal Year until the Fiscal Year after the Simplified Income of the Main Entity's jurisdiction has included an equal amount of Simplified Income of that PE. When the PE Simplification Election applies, Articles 3.4.4, 3.4.5, and 4.3.4 do not apply to the computation of Simplified Income or Simplified Taxes of the Main Entity's Tested Jurisdiction or the PE's jurisdiction. While the election is in effect, those articles also do not apply to the computation of GloBE Income or Loss and Adjusted Covered Taxes of the PE's jurisdiction where the Simplified ETR Safe Harbour does not apply to the PE's jurisdiction. For any taxable year in which a PE Simplification Election is in effect for a jurisdiction, Covered Taxes of a Main Entity located in that jurisdiction cannot be allocated to a Permanent Establishment pursuant to Article 4.3.2(a) or an election to apply Article 4.3.2(a) in the safe harbour.

153. For the purposes of the election, the foreign tax credit used is the amount of the income tax reduction attributable to foreign tax credits and may include foreign tax credits that accrued in the taxable year or foreign tax credits that were carried forward from a previous taxable year. However, the foreign tax credit included in the Simplified Taxes under this election cannot exceed the result of multiplying the nominal tax rate of the Main Entity jurisdiction by the PE's income included in the taxable income of the Main Entity. The election is subject to the condition that any deferred taxes on the Main Entity's income and expenses attributable to domestic operations are not reflected in JITE below the Minimum Rate. This requirement is aimed at mitigating the residual risk that PE taxes could shelter low-taxed income in the Main Entity jurisdiction.

154. For example, Main Entity A is located in jurisdiction A, which has a 20% nominal tax rate. Jurisdiction A has 100 of total income, 20 of which relates to a PE located in Jurisdiction B. The PE's taxable income in Jurisdiction A and Jurisdiction B is equal to its financial accounting income. ME's total taxable income in A is 100, which is subject to a tax rate of 20% in A. PE's taxable income in B is 20, which is subject to a tax rate of 10% in B and the tax paid to Jurisdiction B is 2. Main Entity A has total income tax expense equal to 20 (i.e. 18 in Jurisdiction A and 2 in Jurisdiction B) because it had 100 of total income (from domestic sources and from the PE) which resulted in a pre-foreign tax credit liability of 20 which was then reduced by a foreign tax credit of 2 allowed in respect of the foreign-source income derived through the PE. Rather than excluding the PE income and the corresponding taxes, the MNE Group elects to include the 20 of PE's income in the Main Entity jurisdiction. Under the PE Simplification Election, the Simplified Income of the Main Entity is equal to 100 and not 80 as it also includes the PE Simplified Income of 20 and the corresponding Simplified Taxes amount to 20 as a result of the following computations: the total income tax expense of 20 is reduced by 2 (i.e. the local taxes paid in Jurisdiction B) and increased by 2 (the corresponding PE foreign tax credit used in the year), resulting to 20. The Simplified ETR is 20% (= [20 - 2 + 2])/[80 + 20]). If instead, the MNE Group had paid 5 of tax to Jurisdiction B in respect of the PE's taxable income and Jurisdiction A allowed 5 of foreign tax credits to reduce the tax liability, the MNE Group could only include 4 in the Simplified Taxes because the tax credit add-back is limited to the result of the PE income included in the taxable income of the A Co multiplied by the nominal tax rate of 20%, i.e. 4.

155. For the purposes of the PE Simplification Election, where the amount of foreign tax credit used in the year relates to multiple sources of foreign income, such as PE income and royalty income, the MNE Group determines the amount of the foreign tax credit used in the year and related to PE income on a proportional basis. In particular, the amount related to PE income is determined by multiplying the total amount of the foreign tax credit used in the year by the ratio of the PE income included in taxable income to the total foreign sourced income included in taxable income. This simplification is aimed at relieving the MNE Group from the compliance burden of analytically determining the amount of the foreign tax credits related to PE income actually used in the year by the Main Entity.

156. For example, assuming the Main Entity derives 150 of foreign income in the taxable year, 100 of which relates to foreign PEs and 50 of which relates to a cross-border royalty payment. The total amount of the foreign tax credit used in the year is equal to 15. By applying the proportional calculation indicated

in the rule, the MNE determines that the foreign tax credit utilization related to the PE income is equal to 10 (=15 x (100/150)) of the total amount of the foreign tax credit used in the year.

157. An MNE Group may make a Five-Year Election to allocate taxes described in Article 4.3.2(a), (c), (d) or (e) to another Constituent Entity in accordance Articles 4.3.2 and 4.3.3. The election is a group-wide election and applies to all taxes described in Article 4.3.2(a), (c), (d) and (e); it cannot be limited to taxes described in only one of the paragraphs. However, the election does not apply to taxes described in Article 4.3.2(a) when a PE Simplification Election is in effect in the Main Entity jurisdiction. When the election is made:

a. taxes allocated to a Constituent Entity that is located in a jurisdiction that does not have a QDMTT are included in the Simplified Taxes for the Tested Jurisdiction that includes that Constituent Entity; and

b. taxes allocable to a Constituent Entity that is located in a jurisdiction that has a QDMTT are excluded from Simplified Taxes of all jurisdictions.

5.2. Transfer pricing adjustments

Box 5.2. Transfer pricing adjustments

Transactions between Constituent Entities located in different Tested Jurisdictions

1. Where there is a TP taxable income adjustment made after the end of the Fiscal Year, that relates to transaction between Constituent Entities located in different Tested Jurisdictions, the TP taxable income adjustment is included as an adjustment to JPBT of the Fiscal Year in which it accrued (the accrual year). A TP taxable income adjustment is equal to the difference between the price recorded in the financial accounts at the end of the Fiscal Year and the transfer price used to compute taxable income for the year. Any increase or decrease in Covered Tax liability attributable to the TP taxable income adjustment is also included in the accrual year. Where there is a TP taxable income adjustment in a Tested Jurisdiction and no corresponding TP taxable income adjustment in the counterparty, an adjustment equal to the TP taxable income adjustment must be made to the JPBT of the counterparty's Tested Jurisdiction.

2. An MNE Group may make a Five-Year Election to include TP taxable income adjustments and any related increases or decreases in Covered Tax liability that accrue within 12 months of the end of the Fiscal Year for which the TP taxable income adjustments are made (the transaction year) as an adjustment to JPBT and JITE of the transaction year. This election applies to TP taxable income adjustments and any related increase or decrease in Covered Tax liability in all jurisdictions in which the MNE Group operates.

Special cases

Transactions between Constituent Entities located in different Tested Jurisdictions that are accounted at costs

3. Where a Constituent Entity (the seller) has transacted with another Constituent Entity (the buyer) in a different Tested Jurisdiction and the transaction is recorded at cost in the financial accounts, the JPBT of the seller's Tested Jurisdiction must be adjusted to reflect the transfer price used to determine the taxable income (or the Arm's Length Price, if the transaction is not taxable).

4. The buyer will use the carrying value in the financial accounts of its assets (except intangible assets) and liabilities to determine its Simplified Income. The buyer also must use the corresponding DTA (recast at the Minimum Rate) recorded in respect of the difference between the tax and accounting

carrying values in computing its Simplified Taxes. The Simplified Income and Simplified Taxes for the buyer's jurisdiction are calculated based on the Arm's Length Price for any intangible assets that were transferred and based on the carrying value of the asset or liability recorded in its financial accounts for all other assets and liabilities arising from the transaction.

Transactions between Constituent Entities in the same Tested Jurisdiction

5. Paragraph 1 applies to a sale or other transfer of an asset between Constituent Entities that are located in the same Tested Jurisdiction when that sale or transfer results in a loss. If the tax law of the jurisdiction disallows the loss instead of adjusting the sale price to arm's length, the amount of the disallowed loss is deemed to be a transfer pricing adjustment in the amount of the disallowed loss.

5.2.1. Treatment of cross-border transfer pricing adjustments within 12 months of the end of the transaction year

158. In general, Article 3.2.3 applies in the Simplified ETR Safe Harbour. Thus, MNE Groups will generally follow the prices reflected in their financial accounts when computing Simplified Income. Consistent with Paragraph 97 of the Commentary to Article 3.2.3, this reflects an expectation that Constituent Entities' financial accounts generally will reflect transactions between Group Entities based on the Arm's Length Principle and at the same price. There are two exceptions to this; first, when the Constituent Entity applies a different transfer price for corporate income tax purposes, and second, when the financial accounts record the transaction at cost. The application of Article 3.2.3 in the safe harbour in these cases is explained further below.

159. When an MNE Group computes its taxable income, it may use a transfer price different to the price recorded in its financial accounts. This "TP taxable income adjustment" could be due to an Advance Pricing Agreement (APA) or because the MNE Group self-assesses that the price in the financial accounts is not consistent with the Arm's Length Principle. Where the TP taxable income adjustment was made within 12 months after the end of the transaction year, the MNE Group includes the TP income adjustment as an adjustment to its JPBT for the accrual year. Any difference between the income tax expense reflected in the financial accounts at year end and the amount reflected in the actual Covered Taxes liability for the transaction year that relates to the JPBT adjustment must also be included as an adjustment to JITE for the accrual year. This ensures that the Simplified ETR is not distorted through including taxes accrued based on the transfer price adjusted to arm's length without including the income to which those taxes relate. The adjustments under this section 5.2.1 are required regardless of whether there is a tax adjustment that would trigger application of section 4.6.1.

160. It is expected that in most cases, when the MNE Group makes a TP taxable income adjustment, there will be a corresponding TP taxable income adjustment by the counterparty to the transaction. Where there is a TP taxable income adjustment in a Tested Jurisdiction and no corresponding TP taxable income adjustment in the counterparty, an adjustment equal to the TP taxable income adjustment must be made to the JPBT in the counterparty's Tested Jurisdiction. The risk of double non-taxation arising from a unilateral transfer pricing adjustment in an under-taxed jurisdiction addressed in paragraphs 100-103 of the Commentary to Article 3.2.3 is not present in the Simplified ETR Safe Harbour because under-taxed jurisdictions will not qualify for the safe harbour; instead, under-taxed jurisdictions will be subject to those rules on making unilateral transfer pricing adjustments under the GloBE Rules.

161. An MNE Group may make a Five-Year Election to include TP taxable income adjustments and any related differences in Covered Tax liabilities as adjustments to the JPBT and JITE of the transaction year. In the Fiscal Year for which the election is made, any income and taxes accrued in respect of the preceding transaction year must be included as adjustments to the JPBT and JITE in the election year. In the Fiscal

Year for which the election is revoked, any income and taxes taken into account in the preceding transaction year under the election must be excluded from the JPBT and JITE in the revocation year.

5.2.2. Transactions between Constituent Entities located in different Tested Jurisdictions that are accounted at cost

162. Under some Authorised Financial Accounting Standards, intragroup transactions are (or can be) recorded at cost. In such cases, there will be no accounting profit or loss recognised on an intragroup sale of an asset, and the acquiring entity will recognise the transferred assets at the carrying value of the assets before the transfer rather than at their fair value. Article 3.2.3 applies to such transfers and requires the selling Constituent Entity's income to be adjusted so that the transaction is reflected consistently with the Arm's Length Principle. Under the safe harbour, the MNE Group must adjust the JPBT of the seller's jurisdiction to match the price used for the computation of its taxable income, unless the transaction was not taxable, in which case the adjustment to JPBT is based on the Arm's Length Principle. The MNE Group must generally recognise the asset or liability based on the carrying value in the financial accounts and use this to determine the Simplified Income of the acquiring entity's jurisdiction. The MNE Group also must use a corresponding DTA (recast at the Minimum Rate) recorded in respect of the difference between the tax basis (or, if different, the fair value, such as where the transaction was not taxable) and accounting carrying values in computing the Simplified Taxes for the acquiring entity's jurisdiction. This will provide simplification by allowing MNE Groups to rely on their existing financial accounts to the greatest extent possible.

163. However, there is an exception for intangible assets, which must be recognised at the value that was taken into account by the disposing entity in computing its Simplified Income or GloBE Income (i.e. based on the Arm's Length Price). This ensures such assets are treated consistently under the Simplified ETR Safe Harbour regardless of the MNE Group's accounting policy for intragroup transfers and is necessary because the use of a DTA to address the difference between the tax and accounting carrying values would often produce an outcome that is more beneficial to the MNE Group than the outcome that would result from application of the GloBE Model Rules. This is because deferred tax liabilities post-acquisition attributable to amortization of intangible assets will frequently be subject to the recapture rule in Article 4.4.4 when such assets are transferred at their fair value and subsequently amortized. In contrast, the recapture rule will not apply when the asset was accounted for at cost because it does not apply to deferred tax assets.

5.2.3. Intragroup transactions between Constituent Entities located in the same Tested Jurisdiction

164. Article 3.2.3 also applies to transactions between Constituent Entities located in the same Tested jurisdiction in two circumstances. The first is when there are intragroup transactions between Constituent Entities located in different blending groups (i.e. in different Tested Jurisdictions). These transactions are treated as cross-border transactions for the purposes of the Simplified ETR Safe Harbour and are therefore subject to the same requirements explained above.

165. The second case is when there is a sale of an asset that results in a loss. Article 3.2.3 requires an adjustment to the extent that the loss is not recorded at an arm's length price. The Article 3.2.3 requirements applicable to cross-border transactions apply to a sale or other transfer of an asset between Constituent Entities that are located in the same Tested Jurisdiction that results in a loss. If the tax law of the jurisdiction disallows the loss instead of adjusting the sale price to an arm's length price, the amount of the disallowed loss is deemed to be a transfer pricing adjustment in the amount of the disallowed loss.

6. Tax-Neutral Entities

6.1. Tax Neutral UPEs

Box 6.1. Tax Neutral UPEs

1. The Simplified Income or Loss and Simplified Taxes of a UPE that is a Flow-through Entity or a Permanent Establishment described in Article 7.1.4 shall be reduced in accordance with Article 7.1. As an exception, the Simplified Income or Loss and Simplified Taxes of any such Entity shall be deemed to be zero where all the Ownership Interests in the UPE are held by Qualified Persons.
2. The Simplified Income or Loss and Simplified Taxes of a UPE or Constituent Entity described in Article 7.2.3 that is that is subject to Deductible Dividend Regime shall be reduced in accordance with Article 7.2. As an exception, the Simplified Income or Loss and Simplified Taxes of any such Entity shall be deemed to be zero where:
   a. all the Ownership Interests in the UPE are held by Qualified Persons; and
   b. all the income is distributed as Deductible Dividends.
3. If the Simplified Income or Loss and Simplified Taxes of all the Entities in a Tested Jurisdiction are deemed to be zero under paragraph 1 or 2, the Top-up Tax for the Tested Jurisdiction is deemed to be zero.
4. If the conditions of paragraph 3 are not met, the Top-up Tax for the Tested Jurisdiction is deemed to be zero if the Simplified ETR for the jurisdiction equals or exceeds the Minimum Rate after adjusting Simplified Income or Loss and Simplified Taxes for the Tested Jurisdiction in accordance with paragraph 1 and 2.
5. For purposes of paragraphs 1 and 2, a Qualified Person means:
   a. in respect of a UPE that is a Flow-through Entity, a holder described in Article 7.1.1 or Article 7.1.2; and
   b. in respect of a UPE that is subject to Deductible Dividend Regime, a holder described in Article 7.2.1.

166. The GloBE Model Rules contain special rules that are applicable to UPEs that are subject to tax neutral regimes. Flow-through UPEs are subject to special treatment in accordance with Article 7.1, and UPEs subject to Deductible Dividend Regimes are subject to special rules in accordance with Article 7.2. To ensure consistency, the Simplified ETR Safe Harbour incorporates those rules but also provides a simplification for cases where the GloBE Income or Loss and Adjusted Covered Taxes would have been reduced to zero under those rules.

167. As a simplification for MNE Groups, the Simplified Income or Loss and Simplified Taxes of a UPE will be deemed to be zero where all of the income and taxes of the UPE would be reduced to zero as a result of Article 7.1 or 7.2. This avoids the need to determine the Simplified Income or Loss and Simplified Taxes before reducing them to zero. In order to determine whether these amounts would be reduced to zero under Article 7.1, the MNE Group must determine whether all of the UPE's Ownership Interests are owned by persons that meet the criteria set under Article 7.1.1 and Article 7.1.2 of the Model Rules. For UPEs that are subject to Deductible Dividend Regime, the MNE similarly must determine whether all of the UPE's Ownership Interests are owned by persons that meet the criteria set under Article 7.2.1 but must also determine whether all the income of the UPE has been distributed in respect of those Ownership Interests. This approach similarly applies to any Permanent Establishment or Constituent Entity described

in Article 7.1.4 or 7.2.3. If all of the Simplified Income or Loss and Simplified Taxes of all of the Entities in the Tested Jurisdiction are deemed to be zero, the Top-up Tax for the Tested Jurisdiction is deemed to be zero.

168. If the Top-up Tax is not deemed to be zero because some of the Ownership Interests are not owned by Qualified Persons or there are other Constituent Entities located in the jurisdiction that are not eligible to apply Article 7.1 or Article 7.2, the Simplified ETR must be computed for the jurisdiction. In performing that computation, Simplified Income or Loss and Simplified Taxes for the Tested Jurisdiction are adjusted to the extent permitted under the simplification. For example, if the Tested Jurisdiction included a Tax Transparent UPE owned exclusively by Qualified Persons and another Constituent Entity that is not a Flow-Through Entity, the Simplified ETR for the Tested Jurisdiction would be determined based only on the Simplified Income or Loss and Simplified Taxes of the other Constituent Entity because those of the UPE would be deemed zero.

6.2. Tax Transparent Entities

Box 6.2. Tax Transparent Entities

1. The Simplified Income or Loss and Simplified Taxes of a Tax Transparent Entity other than a UPE shall be deemed to be zero where all of the income and taxes of the Tax Transparent Entity (after application of Article 3.5.3) is allocated to Permanent Establishments under Article 3.5.1(a) and 4.3.2(a) or to Constituent Entity-owners under Articles 3.5.1(b) and 4.3.2(b).
2. If the Simplified Income or Loss and Simplified Taxes of all of the Entities in a Tested Jurisdiction are deemed to be zero under paragraph 1, the Top-up Tax for the Tested Jurisdiction is deemed to be zero.

169. The income of Flow-through Entities is allocated under Article 3.5 and, if the Flow-through Entity is a Tax Transparent Entity that is not the UPE, any Covered Taxes imposed on that income are allocated under Article 4.3.2(b) (see Section 5.1). In many cases, application of Articles 3.5 and 4.3.2(b) will leave the Flow-through Entity with zero income and zero taxes. Therefore, the Simplified Income or Loss and Simplified Taxes of a Tax Transparent Entity will be deemed to be zero where all of the income and taxes of the Tax Transparent Entity would be reduced to zero as a result of Articles 3.5 and 4.3.2(b).

170. A Tax Transparent Entity will often be considered a Stateless Constituent Entity located in a separate jurisdiction with no other Constituent Entities. In other cases, the Tax Transparent Entity may be the only Constituent Entity located in a Tested Jurisdiction for other reasons. In those circumstances, there would not be any Top-up Tax liability under the GloBE Rules because there is no GloBE Income or Loss in the jurisdiction of the Flow-through Entity. Therefore, further, if the Simplified Income or Loss and Simplified Taxes of all of the Entities in a Tested Jurisdiction are deemed to be zero, the Top-up Tax for the Tested Jurisdiction is deemed to be zero.

6.3. Investment Entity Tax Transparency Election

Box 6.3. Investment Entity Tax Transparency Election

1. The Top-up Tax of an Investment Entity or Insurance Investment Entity shall be deemed to be zero for a Fiscal Year where it is treated as a Tax Transparent Entity for all of its Constituent Entity-owners due to an election under Article 7.5 or under the definition of Tax Transparent Entity in Article 10.2.

171. Article 7.5.1 provides a Five-Year election to treat an Investment Entity or Insurance Investment Entity as a Tax Transparent Entity. The election is available to Constituent Entity-owners of Investment Entities or Insurance Investment Entities that are subject to tax in its location under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity and the tax rate applicable to the Constituent Entity-owner with respect to such income equals or exceeds the Minimum Rate.

172. This election is also available under the Simplified ETR Safe Harbour (see Section 7.1.2.). Where an election under Article 7.5 is made for each Constituent Entity-owner of the Investment Entity, the Investment Entity will be treated as a Tax Transparent Entity located in a separate Tested Jurisdiction. For this purpose, a Constituent Entity-owner will be considered to have made an election under Article 7.5 if the Investment Entity is in fact a Tax Transparent Entity with respect to that Constituent Entity-owner. The income and taxes of Investment Entities will be allocated pursuant to Article 3.5 and Article 4.3.2(b) (see Section 5.1) and the Top-up Tax for the Investment Entity will be deemed to be zero.

7. Eligibility Restrictions

7.1. Ineligible Tested Jurisdictions

Box 7.1. Ineligible Tested Jurisdictions

1. An MNE Group is not eligible to elect the Simplified ETR Safe Harbour for the following Tested Jurisdictions:
   a. Stateless Constituent Entities, except as provided in section 6.2;
   b. Investment Entities, except as provided in section 6.3; and
   c. Tested Jurisdictions with Constituent Entities in respect of which the MNE Group has made an Eligible Distribution Tax System election under Article 7.3 and there is an outstanding balance of the Deemed Distribution Tax Recapture Account for the jurisdiction at the beginning of the Fiscal Year.

7.1.1. Stateless Entities

173. A Stateless Constituent Entity is treated as a separate Tested Jurisdiction for the purposes of the Simplified ETR Safe Harbour. Stateless Constituent Entities are not eligible for the Simplified ETR Safe Harbour and will therefore be subject to the full GloBE computations. This is because the Stateless Constituent Entity will not be taxable in the jurisdiction in which the Entity was created (in the case of a Flow-through Entity) or where the place of business is located (in the case of a Stateless Permanent

Establishment). This means a Stateless Constituent Entity is unlikely to have sufficient Simplified Taxes to meet the Simplified ETR test.

174. There may be exceptional cases where a Reverse Hybrid Entity's GloBE ETR is above the Minimum Rate, for example where taxes are allocated to the Reverse Hybrid Entity pursuant to Article 4.3.2(c), (d), or (e). However, the Reverse Hybrid Entity's Simplified ETR would still not meet the Minimum Rate in such a case because the Simplified ETR Safe Harbour does not allow taxes to be allocated to a Tested Jurisdiction under Article 4.3.2(c), (d), or (e). Excluding Stateless Constituent Entities is consequently consistent with the overall design of the safe harbour and will simplify the rules, by avoiding creating new complex boundaries.

175. As an exception, a Stateless Constituent Entity that is a Tax Transparent Entity (including a Tax Transparent Entity that also meets the definition of an Investment Entity) may still be eligible to the Simplified ETR Safe Harbour where all of its income and taxes are allocated to its Constituent Entity-owners under Article 3.5 and Article 4.3.2(b). In these cases, the Top-up Tax for a Fiscal Year for the Stateless Constituent Entity will be deemed to be zero (see Section 6.2).

7.1.2. Investment Entities

176. As an MNE Group is required to compute a separate ETR for Investment Entities under Article 7.4, an Investment Entity(s) will be treated as a separate Tested Jurisdiction for the purposes of applying the Simplified ETR Safe Harbour.

177. As Investment Entities are designed to be tax neutral, it is anticipated that the jurisdiction where the Investment Entity is located will not typically impose corporate income taxes on the Investment Entity and that any such taxes on the income of the Investment Entity would generally be imposed on the investors of the fund. Consequently, it is unlikely an Investment Entity's ETR would meet the Minimum Rate. In light of this, Investment Entities are ineligible for the Simplified ETR Safe Harbour and will be subject to the full GloBE computations.

178. Where the Filing Constituent Entity makes an election under Article 7.5 or Article 7.6, the jurisdiction(s) where the Constituent Entity-owner(s) of the Investment Entity is located will continue to be eligible for the Simplified ETR Safe Harbour. In such cases, the MNE Group must make the necessary adjustments to the Simplified Income and Simplified Taxes of the Constituent Entity-owner(s) in line with the requirements of these elections. So, for example, where an election is made under Article 7.5, the Investment Entity will be treated as a Tax Transparent Entity for the purposes of the Simplified ETR Safe Harbour and the JPBT of the jurisdiction where the Constituent Entity-owner is located must be adjusted to include the FANIL of the Investment Entity. Under section 6.3, the investment Entity will be deemed to have a Top-up Tax of zero if all of the Constituent Entity-owners make an Article 7.5 election. Similarly, where an election is made under Article 7.6, the JPBT of the jurisdiction where the Constituent Entity-owner is located must be adjusted to include any income from distributions or deemed distributions which have been treated as a reduction in the calculation of the Investment Entity's Undistributed Net GloBE Income under Article 7.6. The Inclusive Framework will consider whether a simplified methodology utilising mark-to-market financial accounting data of the Constituent Entity-owner can be utilised for an Investment Entity that is subject to an election under Article 7.6.

179. The Inclusive Framework will also consider further simplifications for Investment Entities for the purpose of the Simplified ETR Safe Harbour

7.1.3. Tested Jurisdictions subject to an election under Article 7.3

180. An MNE Group that made an Eligible Distribution Tax System election under Article 7.3 for a Tested Jurisdiction cannot elect to apply the Simplified ETR Safe Harbour to that Tested Jurisdiction if there was an outstanding balance of the Deemed Distribution Tax Recapture Account for that Tested Jurisdiction at

the beginning of the Fiscal Year. Beginning with the Fiscal Year immediately following the Fiscal Year that the Deemed Distribution Tax Recapture Account for a Tested Jurisdiction is reduced to nil, the MNE Group is eligible to elect the Simplified ETR Safe Harbour for that Tested Jurisdiction.

7.2. Entry and Re-entry criteria

Box 7.2. First Election and Re-entry Requirements

1. An MNE Group is eligible to elect the Simplified ETR Safe Harbour for the first time in respect of a Tested Jurisdiction for a Fiscal Year if it did not have a Top-up Tax liability for that Tested Jurisdiction in every Fiscal Year beginning within 24 months before the first day of the Fiscal Year for which the Simplified ETR Safe Harbour is elected.
2. If an MNE Group does not make an election for the Simplified ETR Safe Harbour in a Fiscal Year after electing it in a previous Fiscal Year for the same Tested Jurisdiction, the MNE Group may re-elect the Simplified ETR Safe Harbour if it did not have Top-up Tax liability in any of the Fiscal Years beginning within 24 months of the first day of the Fiscal Year for which the Safe Harbour was not elected, under either (i) full GloBE Rules or (ii) any Specified Safe Harbour.
3. Specified Safe Harbour means the Simplified Calculation Safe Harbour for Non-Material Constituent Entities and any other Safe Harbour that the Inclusive Framework agrees on and that it considers should be treated as a Specified Safe Harbour for purposes of the re-entry rule.

7.2.1. First Election

181. Where a Tested Jurisdiction falls in and out of the safe harbour, complexity can arise due to the waiver or modified application of certain GloBE Rules in the Safe Harbour. Further, if an MNE Group frequently fails the Simplified ETR test in a Tested Jurisdiction, this would be an indication that the MNE Group is not consistently subject to high taxation in the jurisdiction and therefore should not be eligible for the Simplified ETR Safe Harbour.

182. Provided that it meets the relevant requirements, an MNE Group is eligible to elect the Simplified ETR Safe Harbour for the first time if it did not have a Top-up Tax liability for the Tested Jurisdiction in each of the Fiscal Years that began within the preceding 24 months. Where an MNE Group seeks to make an election to include Constituent Entities and Same-country Investment Entities as a single Tested Jurisdiction, it is only eligible to apply the Simplified ETR Safe Harbour to that Tested Jurisdiction if did not have Top-up Tax liability with respect to both Constituent Entities and all Same-country Investment Entities in each of the Fiscal Years that began within the preceding 24 months.

183. The first eligibility test is satisfied if the MNE Group had no Top-up Tax liability in every Fiscal Year beginning within 24 months before the first day of the Fiscal Year for which the Simplified ETR is elected for any reason, including as a result of applying the full GloBE computations or qualifying for the Transitional CbCR Safe Harbour. An MNE Group that was not subject to the GloBE Rules or a QDMTT in respect of the Tested Jurisdiction for a Fiscal Year is considered to not have a Top-up Tax liability for that Fiscal Year (regardless of whether it had a Constituent Entity located in the Jurisdiction for that Fiscal Year).

184. The table below illustrates in the last column whether the MNE Group is eligible for the Simplified ETR safe harbour in respect of a Tested Jurisdiction for the current Fiscal Year, in a series of scenarios applying to the preceding two years (Fiscal Year minus 2 and Fiscal Year minus 1). For this purpose, SH means Safe Harbour and TCSH means Transitional CbCR Safe Harbour.

Fiscal Year -2	Fiscal Year -1	Current Fiscal Year
Not subject to GloBE	Not subject to GloBE	Yes
Not subject to GloBE	Another SH	Yes
Not subject to GloBE	Full GloBE (no Top-up Tax)	Yes
Not subject to GloBE	Full GloBE (Top-up Tax)	No
Full GloBE (No Top-up Tax)	Full GloBE (no Top-up Tax)	Yes
Full GloBE (No Top-up Tax)	Another SH (not TCSH)	Yes
Full GloBE (No Top-up Tax)	Full GloBE (Top-up Tax)	No
Another SH	Full GloBE (no Top-up Tax)	Yes
Another SH	Full GloBE (Top-up Tax)	No
Another SH	Another SH	Yes
Full GloBE (Top-up Tax)	Not Subject to GloBE	No
Full GloBE (Top-up Tax)	Full GloBE (No Top-up Tax)	No

7.2.2. Re-entry requirements

185. Provided that it meets the relevant requirements, an MNE Group is eligible to elect the Simplified ETR Safe Harbour for a Tested Jurisdiction in the Fiscal Year immediately following a Fiscal Year when the MNE Group elected the Simplified ETR Safe Harbour for that Tested Jurisdiction. This means MNE Groups can generally elect the Simplified ETR Safe Harbour year-after-year.

After the Simplified ETR Safe Harbour was elected with respect to a Tested Jurisdiction, however, the MNE Group may not be eligible or may not elect for the safe harbour in a given Fiscal Year. If that happens, the MNE Group can only re-elect the Safe Harbour if it had no Top-up Tax liability with respect to the Tested Jurisdiction in every Fiscal Year beginning within 24 months of the first day of the Fiscal Year for which the Safe Harbour was not elected, as a result of applying either: (i) full GloBE computations; or (ii) any Specified Safe Harbour. Where the MNE Group seeks to make an election to include Constituent Entities and Same-country Investment Entities as a single Tested Jurisdiction, the requirement to have no Top-up Tax in the preceding Fiscal Years as a result of applying the full GloBE computations or any Specified Safe Harbour must be met for both the standard Constituent Entities all the Same-country Investment Entities Tested Jurisdiction.

186. A Specified Safe Harbour means the Simplified Calculation Safe Harbour for Non-Material Constituent Entities and any other Safe Harbour that the Inclusive Framework agrees on and that it considers should be treated as a Specified Safe Harbour for purposes of the re-entry rule. The Transitional CbCR Safe Harbour does not qualify as Specified Safe Harbour due to the “once out, always out” approach that does not allow an MNE Group to elect for Transitional CbCR Safe Harbour if it elected for the Simplified ETR Safe Harbour in a previous Fiscal Year in which it was subject to the GloBE Rules. The QDMTT Safe Harbour also does not qualify as a Specified Safe Harbour because the MNE Group might had Top-up Tax liability under the QDMTT in a Fiscal Year in which it elected for the QDMTT Safe Harbour.

187. The re-entry rule does not consider any Additional Current Top-up Tax liability attributable to a previous Fiscal Year (and therefore the re-entry criteria will be met even if there is an Additional Top-up Tax liability in one or both of the preceding Fiscal Years).

188. The table below illustrates in the last column whether the MNE Group is eligible for the Simplified ETR safe harbour in respect of a Tested Jurisdiction for the current Fiscal Year, in a series of scenarios applying to the preceding two years (Fiscal Year minus 2 and Fiscal Year minus 1). For this purpose, SH means Safe Harbour.

Fiscal Year -3	Fiscal Year -2	Fiscal Year -1	Current Fiscal Year
Simplified ETR SH	Full GloBE (no Top-up Tax)	Full GloBE (no Top-up Tax)	Yes
Simplified ETR SH	Full GloBE (no Top-up Tax)	Specified Safe Harbour	Yes
Simplified ETR SH	Specified Safe Harbour	Specified Safe Harbour	Yes
Simplified ETR SH	Full GloBE (no Top-up Tax)	Full GloBE (Top-up Tax)	No
Simplified ETR SH	Full GloBE (Top-up Tax)	Full GloBE (no Top-up Tax)	No
Simplified ETR SH	Full GloBE (Top-up Tax)	Specified Safe Harbour	No

7.3. Integrity rules

Box 7.3. Integrity rules

1. To be eligible for the Simplified ETR Safe Harbour, an MNE Group must make the necessary adjustments to its Simplified Income and Simplified Taxes computations to produce outcomes which are consistent with the following four principles:
   a. Matching principle – intragroup income is not recognised in a Fiscal Year later than the Fiscal Year when the corresponding expense is recognised and the amount of income matches the amount of the corresponding expense;
   b. Full allocation principle – all income is allocated to a Tested Jurisdiction;
   c. Single expense and loss principle – expenses and losses are only deducted once and in a single Tested Jurisdiction; and
   d. Single tax principle – taxes are only recorded once and in a single Tested Jurisdiction.
2. When the matching principle is not satisfied, the MNE Group must adjust the JPBT in the Tested Jurisdiction of the Constituent Entity that recognised the expense to eliminate the expense. However, if the matching principle would be failed solely because one of the parties applies the safe harbour using a Local Financial Accounting Standard, the matching principle will be treated as being satisfied.
3. When the full allocation principle is not satisfied, the MNE Group must include the income in the correct Tested Jurisdiction under the Model GloBE Rules.
4. When the single expense and loss principle is not satisfied, the MNE Group must adjust the JPBT in the Tested Jurisdiction of any Constituent Entity that recognised the expense to eliminate the expense.
5. When the single tax principle is not satisfied, the MNE Group must adjust the JITE in the Tested Jurisdiction of any Constituent Entity that recognised the tax expense to eliminate the tax expense.
6. Any financial instruments issued by one Constituent Entity and held by another Constituent Entity in the same MNE Group must be classified as debt or equity consistently for both the issuer and the holder based on the financial accounting standard used by the issuer in the computation of its Simplified Income.

189. The Simplified ETR Safe Harbour is only available where an MNE Group reliably allocates its relevant GloBE tax attributes to different Tested Jurisdictions. The Simplified ETR Safe Harbour should not be available if the MNE Group double counts of certain attributes (for example, allocating the same GloBE expense to multiple jurisdictions) or if there are attributes which are not allocated to any Tested Jurisdiction (for example, GloBE Income which is not allocated to any Tested Jurisdiction or a Stateless Constituent Entity). Accordingly, an MNE Group is only eligible for the Simplified ETR Safe Harbour if the

MNE Group makes all adjustments necessary to ensure that its Simplified Income and Simplified Taxes computations produce outcomes which are consistent with the Model GloBE Rules and any simplifications under the Safe Harbour and satisfy the following four principles:

a. Matching principle – Intragroup income is not recognised in a Fiscal Year later than the Fiscal Year when the corresponding expense is recognised and the amount of income matches the amount of the corresponding expense;

b. Full allocation principle – All profit or loss is allocated to a Tested Jurisdiction;

c. Single expense and loss principle – Each expense and each loss is deducted only once and in a single Tested Jurisdiction; and

d. Single tax principle – Taxes are only recorded once and in a single Tested Jurisdiction.

190. An MNE Group that does not meet these requirements cannot access the Simplified ETR Safe Harbour unless it makes any necessary adjustments to conform to those principles. For simplicity, expenses, losses, and taxes that are reflected in the accounts for more than one jurisdiction are excluded from the computation of Simplified Income and Simplified Taxes in all those jurisdictions. This avoids the need to develop rules to determine the jurisdiction for which the expense, loss, or taxes should be allowed. For the matching principle, the adjustment is made in the jurisdiction in which the expense was recorded, and for the full allocation principle, the adjustment is made for the jurisdiction in which the income is reported under the GloBE Rules.

191. To prevent MNE Groups from routinely failing the Simplified ETR Safe Harbour as a result of differences between the accounting standard of the CFS and the LFAS required in a QDMTT jurisdiction, the matching principle is treated as satisfied if the matching principle would be failed solely because one of the parties applies the safe harbour using a Local Financial Accounting Standard. However, any financial instrument issued by one Constituent Entity and held by another Constituent Entity in the same MNE Group must be classified as debt or equity consistently for both the issuer and the holder based on the financial accounting standard used by the issuer in the computation of its Simplified Income. This uniform classification requirement is consistent with the Commentary to definition of Ownership Interest under Article 10.1 of the GloBE Model Rules.

192. The full allocation principle requires that all of the profit or loss of each Constituent Entity, without regard to elimination adjustments in the consolidation process, is reflected in the Simplified Income of the Tested Jurisdiction that includes that Constituent Entity.

193. For the sake of clarity, if an expense is economically deducted only once by the MNE Group, the single expense and loss principle of paragraph (c) is met irrespective of whether that expense was recorded by more than one Constituent Entity due to intra-group cost-sharing or recharging agreements. Assume, for example, that A Co and B Co are Constituent Entities of the ABC MNE Group, and they are both located in Jurisdiction A. A Co incurs an expense of 100 that is then re-charged on B Co. A Co will record an expense of 100 and offset it with 100 of income received from B Co. B Co, in turn, will record and deduct the expense of 100. Paragraph (d) is met because the expense of 100 is economically deducted only once, irrespective of the fact that it was recorded and deducted by both A Co and B Co.

194. The single expense and loss principle and the single tax principle do not apply where the expense, loss or tax is subject to the simplification for PE income in section 5.1.

195. The Inclusive Framework will provide future guidance to address other integrity concerns, including concerns arising from mismatches between LFAS and CFS accounting standards in both the Simplified ETR Safe Harbour and the full GloBE computations.

7.4. Applicability date

Box 7.4. Applicability date

1. A Filing Constituent Entity can elect the Simplified ETR Safe Harbour for a Tested Jurisdiction for a Fiscal Year that commences on or after 31 December 2026.
2. [*Optional provision*] A Filing Constituent Entity can elect the Simplified ETR Safe Harbour for a Tested Jurisdiction for a Fiscal Year that commences on or after 31 December 2025 if:
   a. The QDMTT Safe Harbour applies with respect to the Tested Jurisdiction;
   b. Only one Jurisdiction has taxing rights under the GloBE Rules with respect to the Tested Jurisdiction; or
   c. All Jurisdictions that have taxing rights under the GloBE Rules with respect to the Tested Jurisdiction have made the Simplified ETR Safe Harbour available for any Fiscal Years that commence on or after 31 December 2025 under their relevant legislation and an election for the Simplified ETR Safe Harbour is made by the MNE Group with respect to that Tested Jurisdiction in applying the legislation of all those Jurisdictions.

196. Implementing Jurisdictions and QDMTT-only Jurisdictions must incorporate the Simplified ETR Safe Harbour framework in their domestic legislation and make it available for any Fiscal Year beginning on or after 31 December 2026.

197. An Implementing Jurisdiction or QDMTT-only Jurisdiction, however, is allowed to make the safe harbour available for any Fiscal Year beginning on or after 31 December 2025. When that is the case, the Filing Constituent Entity can make an election for the Simplified ETR Safe Harbour in instances when: (i) the QDMTT Safe Harbour applies with respect to the Tested Jurisdiction; (ii) only one Jurisdiction that has taxing rights with respect to the Tested Jurisdiction; or (ii) all jurisdictions that have taxing rights with respect to the Tested Jurisdiction have adopted the earlier application of the Simplified ETR Safe Harbour and an election for the safe harbour with respect to that Tested Jurisdiction is made by the MNE Group in applying the legislation of all those jurisdictions. For this purpose, whether a Jurisdiction has taxing rights under the GloBE Rules is described in paragraphs 23 to 27 of the GloBE Information Return.

3 Extension of the Transitional CbCR Safe Harbour

1. Introduction

1. In December 2022, the Inclusive Framework agreed on a Transitional CbCR Safe Harbour (TCSH) to reduce the compliance burden on MNE Groups operating in high-taxed jurisdictions and provide transitional relief as the GloBE Rules come into effect. The safe harbour allows MNE Groups to avoid undertaking detailed GloBE calculations in respect of a jurisdiction if they can demonstrate, based on their qualifying CbCR and financial accounting data, that in that jurisdiction they have an ETR that equals or exceeds an agreed rate (the Simplified ETR test), no excess profits after excluding routine profits (the routine profits test), or revenue and income below the de minimis threshold (the de minimis test). As agreed in December 2022, the TCSH was made available for a Transition Period that covered all Fiscal Years beginning on or before 31 December 2026 but not including a Fiscal Year that ends after 30 June 2028.

2. In December 2025, however, the Inclusive Framework agreed on a Simplified ETR Safe Harbour (SESH) that is designed as a replacement for the Simplified ETR Test in the TCSH. Although work is ongoing on a de minimis safe harbour and routine profits safe harbour to replace those tests currently available in the TCSH, this work is not yet ready for approval by the Inclusive Framework.

3. To support an orderly transition from the TCSH to the SESH, the Inclusive Framework has agreed the following Administrative Guidance that extends the application of the TCSH to Fiscal Years beginning on or before 31 December 2027 but not including a Fiscal Year that ends after 30 June 2029. The Transition Rate for 2026 Fiscal Years will also apply to 2027 Fiscal Years.

2. Administrative Guidance

4. The text in strikethrough will be deleted and the text in bold will be added to the definition of Transition Period in paragraph 2 of the box 1.1 of Annex A1 (Transitional CbCR Safe Harbour) to the Commentary:

> 2. Transition Period covers all the Fiscal Years beginning on or before 31/12/202**7**~~6~~ but not including a Fiscal Year than ends after 30/06/202**9**~~8~~.

5. The text in bold will be added to paragraph (c) of the definition of Transition Rate in paragraph 2 of the box 1.1 of Annex A1 (Transitional CbCR Safe Harbour) to the Commentary:

> c. 17% for Fiscal Years beginning in 2026 **and 2027**.

6. The text in strikethrough will be deleted and the text in bold will be added to the last sentence of paragraph 2 of Annex A1 (Transitional CbCR Safe Harbour) to the Commentary:

> 2. . . . The safe harbour is also limited to a transitional period that applies to Fiscal Years beginning on or before 31/12/202**7**~~6~~ but not including a Fiscal Year that ends after 30/6/202**9**~~8~~.

7. The text in bold will be added to the last sentence of paragraph 20 of Annex A1 (Transitional CbCR Safe Harbour) to the Commentary:

> 20. . . . The Transition Rate is 15% for Fiscal Years beginning in 2023 and 2024, 16% for Fiscal Years beginning in 2025, and 17% for Fiscal Years beginning in 2026 **and 2027**.

8. The text in strikethrough will be deleted and the text in bold will be added to the second sentence of paragraph 24 of Annex A1 (Transitional CbCR Safe Harbour) to the Commentary:

> 24. . . . This means that for most MNE Groups, the Transition Period will provide **up to four** ~~three~~ Fiscal Years of compliance relief for the IIR **and the QDMTT**, **and up to three** ~~two~~ Fiscal Years of compliance relief for the UTPR. The safe harbour would only apply during the Transitional Period (i.e., beginning on or before 31/12/202**7**~~6~~ but not including a Fiscal Year that ends after 30/6/202**9**~~8~~). . .

4 Substance-based Tax Incentive Safe Harbour

1. The SBTI Safe Harbour allows an MNE Group to treat certain substance-based tax incentives (QTIs) as an addition to the Adjusted Covered Taxes of the Constituent Entities located in the jurisdiction. These adjustments are limited by a Substance Cap that is calculated by reference to the MNE Group's payroll and tangible assets in the jurisdiction.

1. Substance-based Tax Incentive Safe Harbour

2. The SBTI Safe Harbour eliminates the Top-up Tax that would otherwise be attributable to QTIs. This recognises that incentives that are provided in relation to substantive activities in a jurisdiction are less susceptible to BEPS risks and are therefore less likely to give rise to the risks that the GMT was designed to address. The SBTI Safe Harbour applies by reducing the Top-up Tax payable in a jurisdiction where, and to the extent that, the Top-up Tax is attributable to the use of QTIs in that jurisdiction.

Substance-based Tax Incentive Safe Harbour

1. At the election of the Filing Constituent Entity, the amount of Top-up Tax in a Tested Jurisdiction that corresponds to Qualified Tax Incentives for the Fiscal Year is deemed to be zero.
2. The Top-up Tax that corresponds to the Qualified Tax Incentives is equal to the difference between:
   (i) the Top-up Tax for the Tested Jurisdiction calculated under the treatment of Qualified Tax Incentives provided in paragraph 4, and
   (ii) the Top-up Tax that would have been calculated for the Tested Jurisdiction if the election had not been made.
3. A QTI means a generally available Tax Incentive to the extent that the amount of the incentive is calculated based on expenditures incurred, or on the amount of tangible property produced in the jurisdiction. An incentive is a Tax Incentive if it reduces the current or future liability for a Covered Tax in the jurisdiction but also includes a QRTC or an MTTC when the Filing Constituent Entity has made an Annual Election to treat that credit as a QTI. An expenditure-based tax incentive is not qualified if the value of the tax benefit from the incentive exceeds the amount of expenditure incurred.
4. When the Substance-based Tax Incentive Safe Harbour election is made, the Adjusted Covered Taxes of the Constituent Entities located in the jurisdiction are increased by the lower of the amount of QTIs used in the Fiscal Year and the Substance Cap for the Tested Jurisdiction.
5. The Amount of a QTI used in a Fiscal Year is:

(i) the reduction in the Covered Tax liability in the Fiscal Year due to the utilisation of a tax credit, or

(ii) the amount of enhanced allowance or super deduction claimed in the Fiscal Year multiplied by the statutory tax rate, or

(iii) the amount of income attributable to eligible expenditure that is exempt multiplied by the statutory tax rate or, in case of application of a preferential tax rate, that amount of income attributable to eligible expenditure multiplied by the difference between the statutory and preferential tax rates.

6. The Substance Cap for a MNE Group for a jurisdiction for a Fiscal Year is:

(i) 5.5% multiplied by the greater of the sum of the Eligible Payroll Costs of Eligible Employees that perform activities for the MNE Group in the jurisdiction or the depreciation and depletion recorded in the Financial Accounting Net Income or Loss in respect of Eligible Tangible Assets located in the jurisdiction for that Fiscal Year, or

(ii) if the MNE Group makes a Five-Year Election for the jurisdiction, 1% of the carrying value of Eligible Tangible Assets located in the jurisdiction (excluding land and other non-depreciable assets) for that Fiscal Year.

7. If a Filing Constituent Entity revokes an election to use the computation provided in paragraph 6(ii), the depreciation and depletion in respect of an Eligible Tangible Asset shall be excluded in applying paragraph 6(i) if the carrying value of that asset was included in the Substance Cap in a previous Fiscal Year to which the Substance-based Tax Incentive Safe Harbour applied.

8. A Filing Constituent Entity can make the Substance-based Tax Incentive Safe Harbour election for a Tested Jurisdiction for a Fiscal Year that commences on or after 1 January 2026.

2. Qualified Tax Incentives

3. The QTI definition applies to *expenditure-based tax incentives* as well as certain *production-based tax incentives*. The definition generally applies to tax incentives that reduce the liability for a Covered Tax of the taxpayer. It therefore does not apply to an incentive that reduces the liability for a non-Covered Tax or an incentive that applies only to expenditures incurred in producing income excluded from GloBE Income, or to subsidies and grants, even if these were related to the taxpayer's expenditure. A Filing Constituent Entity can however make an election to treat a Qualified Refundable Tax Credit (QRTC) or a Marketable Transferable Tax Credit (MTTC) as a QTI provided the credit qualifies as an expenditure- or production-based tax incentive.

2.1. Expenditure-based tax incentive

4. An expenditure-based tax incentive is one where the amount of tax relief available to the taxpayer is based on a portion of qualifying expenditures incurred. Expenditure-based tax incentives operate, through the tax system, to reduce the final economic cost of a taxpayer's inputs by a fixed and determinable amount. Jurisdictions that offer expenditure-based incentives typically target them at expenditures that are specific to, or incurred in, activities that are expected to have positive spillovers such as research and development, productivity improvements, or positive environmental impacts. Because expenditure-based tax incentives are calculated as a portion of costs incurred, they have a direct and clear connection with the investment they are intended to incentivise. By reducing the taxpayer's marginal cost of that investment, they are expected to address recognised instances of market failure and encourage additional investment at the margin that would have not otherwise have occurred.

5. The policy, scope and design of expenditure-based tax incentives vary across jurisdictions. The QTI definition consequently is intended to apply broadly and does not limit which tax incentives are eligible based on the type of expenditure that the incentive applies to. This provides for a neutral treatment of expenditure-based tax incentives and avoids the need for a complex line drawing exercise that could result in arbitrary or uncertain outcomes. It also provides flexibility for jurisdictions in the design of their expenditure-based tax incentives while ensuring that the treatment of QTIs remains transparent and administrable and does not result in uncertainty or impose undue compliance burdens on businesses. Nonetheless, the QTI treatment is targeted at tax incentives that are designed to encourage investments in substance in the jurisdiction. The Substance Cap therefore limits the increase to Adjusted Covered Taxes for QTIs based on the level of substance in the jurisdiction.

2.1.1. Different forms

6. Expenditure-based tax incentives can be provided in different forms. Some incentives are provided in the form of a credit against the payment of the tax liability, while others such as enhanced allowances or "super deductions" provide tax relief in the form of an additional deduction in computing the tax liability. These differences are not relevant in determining whether an expenditure-based tax incentive is a QTI. Instead, the key requirement is that the amount of the incentive must be calculated directly by reference to the expenditure incurred. This means an incentive that exempts a certain amount of income from tax could also be treated as an expenditure-based tax incentive provided the amount that is exempt is calculated directly by reference to expenditure.

7. Tax allowances for capital expenditure that only give rise to timing differences do not fall within the definition of QTIs. An incentive that accelerates the standard capital expenditure deduction schedule, such as immediate expensing, would consequently not be within scope. This is because the deferred tax mechanisms used in the GloBE Rules already address these timing differences and prevent such incentives from giving rise to Top-up Taxes. However, if these incentives also include super deductions or enhanced allowances that result in an exclusion of income that is in excess of the original investment or expenditure, the excess amount gives rise to a permanent difference in the same way as a tax credit or an allowance and may be considered as an expenditure-based tax incentive under these rules.

2.1.2. Exclusion if the amount of the tax benefit exceeds the expenditure incurred

8. The QTI definition excludes an expenditure-based tax incentive from being treated as a QTI if the value of the tax benefit of the incentive exceeds the expenditure (upon which the amount of the incentive was calculated) incurred. When making this assessment, the relevant tax incentive is considered together with all other tax incentives provided in respect of the same item of expenditure. This reflects the policy that expenditure-based tax incentives should be designed to provide targeted subsidies for a portion of the expenditure incurred in order to promote investments that would otherwise not be made without the state support. The allowance for expenditure-based tax incentives is calculated by reference to the value of tax benefit from the incentive. The value of a tax benefit is the maximum amount by which the tax liability can be reduced by the tax incentive. For a tax credit, this will be the amount of the tax credit. For incentives provided in the form of a super deduction, enhanced allowance or exemption, the value of the tax benefits from the incentive will be the amount of the additional deduction or excluded income multiplied by the statutory tax rate.

2.2. Production-based tax incentive

9. Incentives may be designed to support a desired activity but not be based directly on expenditure. For example, production-based tax incentives are based on the amount of production or reduction in industrial byproducts created during the production by the taxpayer. Production-based tax incentives can apply based on the units produced or on a reduction in negative externalities such as emissions. These

incentives are generally provided in the form of a tax credit and typically calculate the amount of relief based on the amount of a defined output produced by the taxpayer (e.g. widgets or clean energy). In economic terms, such incentives reduce the taxpayer’s marginal cost for each unit of output, thereby providing jurisdictions with a more direct and efficient way of incentivising desirable outputs from targeted industries.

10. While these incentives are based on the output of the economic activity (in contrast to expenditure-based tax incentives which are based on the expenditure that is input into that economic activity), they are conceptually similar to expenditure-based tax incentives because the amount of the incentive is directly based on the level of activity or investment. The key distinction is that, while expenditure-based tax incentives provide relief in proportion to costs incurred, production-based tax incentives reward production, by granting tax relief in proportion to the output generated. These incentives are often used as a substitute for expenditure-based tax incentives where it is considered difficult to reliably define and measure the cost of inputs going into the activity (for example, the cost of improving the efficiency of a manufacturing process).

11. The QTI definition therefore includes production-based tax incentives. However, the definition includes limitations which are designed to ensure production-based tax incentives are only eligible when the amount of the incentive is directly based on the level of activity in the jurisdiction. Firstly, production-based tax incentives are only eligible when the incentive is calculated based on the volume of the production. Incentives that are calculated based on the value of the production are excluded. This is because incentives that are based on the actual value of goods or revenues from sale are considered income-based tax incentives. Secondly, production-based tax incentives are only included when they are based on the production of tangible property in the jurisdiction. This includes production in relation to manufacturing activities as well as the production of electricity and includes processing activities such as extraction and refining. This limits the definition to production which is strongly associated with substance in the jurisdiction. Finally, the definition requires that the incentive is based on the units produced in the jurisdiction providing the incentive.

2.3. Calculation based on incurred expenditure or output produced

12. The QTI definition requires that the incentive is calculated based on expenditure that has been incurred or output that has been produced by the time that the amount of the incentive is determined. This limitation is intended to ensure that an incentive is only eligible when the amount of the incentive is calculated based on actual activities or on the cost of a previous investment. It consequently excludes incentives from being eligible when the amount of the incentive is calculated in respect or expenditures or production that had already been made before the incentive was in effect or on the basis of a commitment to future expenditure or production when no actual expenditure has been incurred or units have been produced when the amount of the incentive is determined. An administrative procedure where an administrator confirms that the project meets the eligibility requirements (including, if applicable, also the estimated maximum amount of the incentive based on estimated future expenditures) for the incentive in advance of the expenditures being incurred would not prevent the incentive being eligible provided that the amount of the incentive is finally determined when those costs have actually been incurred.

13. Expenditure is incurred when it is accrued in the financial accounts used to calculate the Financial Accounting Net Income or Loss or when a payment is made. Consequently, an incentive would be eligible if it was calculated based on the expenditure incurred in connection with an acquisition of an asset, even if the asset is non-depreciable or the depreciation expenses start accruing at a later date. Similarly, an incentive would meet the requirement if it were calculated based on the depreciation expense recognised in the period in relation to an asset that was acquired in a previous period. The expenditure does not need to be incurred in the same period that the amount of the incentive was determined. An incentive would meet the requirement when it is calculated based on expenditures made in previous periods (except when

these expenditures pre-date the incentive coming into effect). This reflects some substance-based tax incentives are only provided once the expenditures made in respect of the qualifying projects have been completed, to ensure that the obligations to fulfil the incentive have been met. Likewise, a production-based tax incentive can also meet this requirement when the incentive was provided in respect of output in a previous period. For instance, some production-based tax incentives are provided in the period that the units of production are sold because this facilitates the effective supervision and administration of the incentive and may be when the desired positive externalities are realised.

14. Finally, the requirement does not mean that the incentive must be utilised in the year that it was calculated to be treated as an eligible incentive. Consequently, an incentive that is only utilised in a fiscal year after the expenditure or production has occurred would still be eligible.

2.4. Incentive must be generally available

15. The QTI definition requires that the incentive is generally available to taxpayers. This excludes incentives that include eligibility criteria that restrict the incentive to in-scope MNE Groups, for example if specific legal restrictions ensure the incentive is only provided to MNE Groups with consolidated revenues exceeding the revenue threshold of Article 1.1 of the GloBE Model Rules.

16. It also excludes an incentive that would not have arisen independently of a governmental arrangement. This is defined in paragraph 8.3 of the Commentary to Article 9.1.2 and includes any agreement, ruling, decree, grant or similar arrangement between an MNE Group and General Government. An incentive arises independently of the governmental arrangement if no critical aspect of the incentive relies on discretion by the General Government. For instance, an incentive would not be prevented from being eligible as a QTI merely because the grant of the incentive requires a decision or acknowledgement that the taxpayer has satisfied or is obligated to satisfy the published or statutory criteria for that incentive.

2.5. Ongoing monitoring

17. The Inclusive Framework is developing guidance that clarifies when benefits provided by a jurisdiction must be treated as a return of tax that reduces Adjusted Covered Taxes, as well as further guidance on the identification of benefits that are related to the implementation of the GMT (Related Benefits). This guidance will be supported by an ongoing monitoring process to ensure a co-ordinated assessment of whether benefits are Related Benefits.

18. As part of this, the Inclusive Framework will also develop an ongoing monitoring process that monitors QTIs and ensures a co-ordinated assessment of whether QTIs are Related Benefits. This recognises that the treatment of QTI as an increase to Adjusted Covered Taxes when no such taxes are paid means there is a similar risk an incentive could be designed so that it formally meets the definition of a QTI but in practice operates to mitigate the impact of the GMT rather than functioning as a targeted incentive to promote a particular substantive activity or investment in a jurisdiction. The Inclusive Framework will do further work to address concerns raised by those incentives and also ensure that those determined to be Related Benefits will be excluded from being treated as QTIs.

3. Treatment of Qualified Tax Incentives

3.1. Adjustments for QTIs

19. When the SBTI Safe Harbour election is made, adjustments in respect of QTIs are made to the Effective Tax Rate calculation for the Tested Jurisdiction. These are made at the jurisdictional level and so are applied after the Adjusted Covered Taxes and GloBE Income has been calculated under Chapters 3 and 4 of the GloBE Model Rules.

20. In broad terms, QTIs are treated as an increase to the Adjusted Covered Taxes in the Tested Jurisdiction. The amount of that increase is the lower of the amount of those QTIs that are used in the Fiscal Year and the Substance Cap. The methodology for calculating the amount of QTIs used in a Fiscal Year and the Substance Cap are explained in detail in this section and Section 3 below.

21. Unlike QRTCs and MTTCs, QTIs are not included in GloBE Income. This means the treatment of an incentive as a QTI could be more beneficial to an MNE Group than the treatment provided for QRTCs and MTTCs. To address this, an MNE Group can make an Annual Election to treat certain QRTCs or MTTCs as a QTI. In such cases, the QRTC or MTTC is excluded from GloBE Income and is instead treated as a reduction to Adjusted Covered Taxes, before the QTI adjustment to increase Adjusted Covered Taxes is applied in the same way as it applies to any other type of QTI. The Substance Cap applies to the total adjustment for QTIs.

22. This election can only be made for a QRTC or MTTC that meets the definition of a QTI (i.e. for a QRTC or MTTC which is expenditure-based or production-based). The election can be made for some QRTCs or MTTCs and not others and can also be made for only part of the income of a QRTC or MTTC. Consequently, an MNE Group is expected to make the election only to the extent of the Substance Cap. Any QRTC or MTTC (or part of a QRTC or MTTC) which is not subject to the election continues to be treated as a QRTC and MTTC and is included in GloBE Income. When the election is made in respect of a QRTC or MTTC that is treated as taxable income, the tax that is attributable to the part of the QRTC or MTTC that is excluded from GloBE Income is excluded from Adjusted Covered Taxes under Article 4.1.3(a) of the GloBE Model Rules.

Example of the adjustments for QTIs

An MNE Group has Net GloBE Income of 11,000 in Jurisdiction A. This includes 1,000 of QRTCs which are expenditure-based and meet the definition of a QTI. The MNE Group's pre-credit tax liability is 1,500 but this is reduced by the 1,000 of QRTCs and 500 of non-refundable expenditure-based credits which also meet the QTI definition. The MNE Group's Adjusted Covered Taxes under Chapter 4 of the GloBE Model Rules would consequently be 1,000 (the 1,500 of pre-credit liability reduced by the 500 of non-refundable credits). The MNE Group's Effective Tax Rate for the jurisdiction would be 9.1% (1,000/11,000) and a Top-up Tax liability would be due.

The Filing Constituent Entity elects to apply the SBTI Safe Harbour. The Substance Cap for the Fiscal Year is 1,100.

If the MNE Group only adjusts the non-refundable expenditure-based credit, its Adjusted Covered Taxes would be increased to 1,500. It's revised ETR would be 13.6% (1,500/11,000).

As there is 600 of Substance Cap remaining, the MNE Group elects to treat 600 of the QRTC as a QTI. Consequently, the GloBE Income is reduced by 600. The remaining 400 of QRTCs is still treated as a QRTC and is therefore still included in GloBE Income.

The revised ETR under the SBTI Safe Harbour is therefore 14.4% (1,500/10,400).

3.2. Calculating the amount of Qualified Tax Incentives used in a Fiscal Year

23. As noted above, an MNE Group can elect to treat a certain amount of QTIs as Adjusted Covered Taxes when calculating its ETR in a jurisdiction for the purposes of the SBTI Safe Harbour. The amount that is adjusted is the lower of the QTIs used in the Fiscal Year and the substance cap. The following paragraphs set out how to calculate the amount of a QTI used in the Fiscal Year.

3.2.1. Tax credits

24. When the QTI is a tax credit, the amount of QTIs used in the Fiscal Year is simply the amount of the tax credit that was used to reduce the Covered Tax liability in the period. For example, if the corporate income tax liability before tax credits was 100 and this was reduced to 40 after the application of tax credits, the amount of QTIs used in the period would be 60. If the taxpayer also utilised another 20 of tax credits that are QTIs that were carried forward from an earlier Fiscal Year, then the amount of QTIs used in the period would be 80 (representing the 60 of credits generated and used in the Fiscal Year and the 20 of credits carried forward from the earlier period). In such a case, the QTI adjustments apply after Article 4.4.1(e) of the GloBE Model Rules has been applied. Consequently, any deferred tax expenses attributable to the reversal of a deferred tax asset would continue to be excluded when a tax credit carried forward from an earlier period is utilised but then there may be a separate QTI adjustment to increase the Adjusted Covered Taxes.

3.2.2. Super deductions, enhanced allowances and exemptions calculated based on expenditure

25. As the QTI adjustment is made through an increase to the Adjusted Covered Taxes, the amount of a super deduction, enhanced allowance or exemption from income needs to be expressed in terms of its tax value. This is equal to the additional tax deduction (this will typically be the excess of the deduction over the expenditure incurred but could also be the total amount of the deduction where the expenditure incurred would otherwise be non-deductible under the domestic tax laws) or income that is exempted multiplied by the statutory tax rate in the jurisdiction. For example, if an incentive provided a 150% deduction for the expenditure, the value of the super deduction (i.e. the additional deduction) will be equal to 50% of the expenditure multiplied by the statutory tax rate. Similarly, if an incentive exempted an amount of income that is equal to 50% of the expenditure, then the value of the exemption is equal to the amount that is exempt multiplied by the statutory tax rate.

26. The amount of the super deduction or enhanced allowance or exemption used in the Fiscal Year will be equal to the value of the super deduction or allowance or exemption that is claimed. A super deduction or allowance or exemption is claimed when it is included in the computation of the Covered Tax liability. So, assume the taxpayer is eligible for a 300% deduction for the expenditure (i.e. a 200% super deduction in addition to the deduction for the expenditure incurred) and has qualifying expenditures of 1,000. Its Financial Accounting Net Income or Loss is 2,000 (which is comprised of 3,000 of other income minus the qualifying expenditures of 1,000). The QTI gives the taxpayer an additional tax deduction of 2,000 which reduces its taxable profit to nil. The QTI used in the period is equal to the 2,000 of deduction multiplied by the statutory tax rate.

27. It is possible that a super deduction or exemption results in the taxpayer making a taxable loss for the period. For example, if the taxpayer’s Financial Accounting Net Income or Loss in the above example was changed to 1,000, the taxpayer would have incurred a tax loss of 1,000. In this case, the taxpayer would only derive the full benefit of the QTI when the tax loss is used in a later period. Nonetheless, the QTI adjustment would be made in the year that the super deduction or exemption is claimed (i.e. the Fiscal Year in which the loss arose). This QTI adjustment would increase the Adjusted Covered Taxes in that year and would therefore reduce the amount of any Additional Top-up Tax liability or Excess Negative Tax Carry Forward (under Article 4.1.5 or Article 5.2.3 of the GloBE Model Rules), which would be expected to arise in these circumstances due to the recognition of deferred tax assets. As the amount of Additional Top-up Tax charged under Article 4.1.5 of the GloBE Model Rules or an Excess Negative Tax Carry Forward will be reduced, the approach will provide a benefit to MNE Groups in later Fiscal Years when the loss is utilised because the reversal of the DTA will not be offset (to the same extent) by the Excess Negative Tax reduction to Covered Taxes.

Example of calculation mechanism for a super deduction, allowance or exemption

Jurisdiction A has a corporate income tax with a 15% statutory tax rate. The jurisdiction provides a super deduction which is eligible to be treated as a QTI. The example ignores the Substance-based Income Exclusion and assumes the Substance Cap is greater than the value of the tax benefit of the super deduction for simplicity.

An MNE Group has 1,000 of Financial Accounting Net Income or Loss for Fiscal Year X1. The taxable income (before the super deduction is applied) is also 1,000. The additional super deduction is equal to 1,500. The MNE Group consequently has no taxable profit in the jurisdiction and does not pay any Covered Tax in the period. It has a tax loss of 500 which can be carried forward to reduce the tax liability in future years and therefore recognises a DTA of 75. There is consequently negative Adjusted Covered Taxes in the Fiscal Year of 75.

In Fiscal Year X2, the MNE Group has 500 of Net GloBE Income in Jurisdiction A. It utilises the tax loss from Fiscal Year X1 against this income and so pays no corporate income tax in that year. The DTA in relation to the tax loss is reversed and so increases the Adjusted Covered Taxes by 75.

If the SBTI Safe Harbour election is not made, the MNE Group would pay a Top-up Tax liability of 150 (calculated as 1,000 of Net GloBE Income multiplied by the 15% Top-up Tax Percentage). Additionally, there would be an Excess Negative Tax Carry Forward of 75.

In Fiscal Year X2, the 75 of Adjusted Covered Taxes would therefore be reduced by the 75 Excess Negative Tax Carry Forward and so the MNE Group would incur a Top-up Tax liability of 75 (500 of Net GloBE Income multiplied by the 15% Top-up Tax percentage). Therefore, the total Top-up Tax liability over the two years would be 225 and the tax value of the super deduction would be fully neutralised through Top-up Taxes.

The MNE Group consequently decides to make the SBTI Safe Harbour election. The ETR for Fiscal Year X1 is therefore recalculated under the agreed conditions for treating QTIs in the safe harbour. As the super deduction is treated as reducing the Covered Tax, the adjustment for QTI is made to the numerator. Therefore, the Adjusted Covered Taxes are increased by the amount of the super deduction that is used in Fiscal Year X1. This is equal to 225, which is calculated by multiplying the 1,500 additional deduction by the 15% statutory tax rate.

The Adjusted Covered Taxes are therefore 150 (-75 +225) and the revised ETR is 15% (150 divided by 1,000). There is consequently no Top-up Tax in Fiscal Year X1. There is also no Excess Negative Tax Carry Forward. As a result, the Adjusted Covered Taxes in Fiscal Year X2 are not reduced and so will be equal to 75 (because of the reversal of the DTA from the utilisation of the loss). The ETR in Fiscal Year X2 is therefore also equal to 15% (75 divided by 500) and no Top-up Tax liability is due.

3.2.3. Income calculated based on expenditure that is subject to a preferential tax rate

28. The QTI definition also includes certain tax incentives that provide a preferential tax rate when those incentives calculate the eligible income based on a portion of expenditures incurred. The amount of these incentives also needs to be expressed in terms of their tax value in order to determine the adjustment for QTIs. This is equal to the amount of the income subject to the preferential rate multiplied by the difference between the statutory tax rate and the preferential tax rate.

29. For example, assume the statutory tax rate in a jurisdiction is 20%. The jurisdiction provides an incentive which applies a reduced tax rate of 15%. The income which is eligible for the reduced rate is

calculated based on a percentage of the taxpayer's qualifying expenditures. If 2,000 of income was taxed at the reduced rate, the value of the incentive would be equal to 100 (2,000 * 5%).

4. Substance Cap

30. The amount of the adjustment for QTIs is limited by the Substance Cap in the jurisdiction. This ensures that the amount of the allowance for QTIs is limited by reference to the amount of substance in the jurisdiction. The cap has been designed based on the measure of substance developed in the Substance-based Income Exclusion (SBIE). This provides a jurisdictional level measure that removes the need to assess each incentive individually to evaluate whether, and the extent to which, it is provided in relation to "substance". Reliance on the same factors that are used in the calculation of the SBIE will reduce compliance costs and the potential for disputes. There is however some additional flexibility on how the cap is calculated which recognises there are differences in the labour and asset intensity between different industries and better aligns the cap with the design of existing substance-based tax incentives.

31. There are two methods to calculate the Substance Cap for the jurisdiction. The first method is based on the greater of 5.5% of the payroll costs or the depreciation and depletion expense in respect of Eligible Tangible Assets. This method utilises depreciation rather than carrying value as this is often expected to produce a more stable and consistent measure of substance over time and reduce volatility in the level of the Substance Cap. This method takes the higher of the payroll cost or the depreciation so that the cap provides an appropriate measure of substance in relation to incentives which are either predominantly payroll or asset based. Under this method, the Eligible Payroll Costs also includes payroll costs that are capitalised and included in the value of Eligible Tangible Assets (i.e. payroll costs that are excluded from the SBIE under Article 5.3.3(a) of the GloBE Model Rules). These costs do not need to be excluded from Eligible Payroll Costs to prevent double counting because this method for computing the Substance Cap is based on either the payroll or tangible assets.

32. The first method applies unless the MNE Group makes a Five-Year Election to utilise the second method for a jurisdiction. The second method is based on the carrying value on Eligible Tangible Assets (excluding land and other non-depreciable assets). This method is designed to provide an appropriate measure of substance in relation to incentives which are given on the initial capital expenditure on an asset. This is because the second method would tend to provide greater relief in the initial years of the life of an asset where the carrying value tends to be higher, and so may provide greater alignment to the Fiscal Years in which the benefit of the tax incentive is received.

33. If the MNE Group revokes an election to apply the second method, then the assets for which carrying value was previously included in calculating the Substance Cap must be excluded from the calculation of the depreciation and depletion expense in paragraph 6(i). This prevents an MNE Group from benefiting from applying the second method at the beginning of the useful life of an asset and then switching to the first method once an asset's carrying value has been reduced by depreciation or depletion.

5 Side-by-Side System

1. While the Inclusive Framework considers that the adoption of a co-ordinated GMT, based on a common approach, should be the primary system for ensuring minimum taxation, the Inclusive Framework also recognises that some jurisdictions may already have implemented a tax regime which incorporates minimum taxation requirements with respect to the domestic and foreign income of MNE Groups headquartered in that jurisdiction. Where such tax regimes have and maintain similar policy objectives, overlapping scope, and a complementary policy impact as the GMT, taking into account the success of qualified domestic minimum top up taxes (QDMTTs), and based on the commitment of members to address any BEPS or level playing field risks arising from the GMT and its interplay with the SbS System, the Inclusive Framework has agreed to the SbS and UPE Safe Harbours that apply to MNE Groups headquartered in jurisdictions which the Inclusive Framework has determined meet the requirements for an eligible tax regime.

1. Side-by-Side Safe Harbour

2. The SbS Safe Harbour provides a mechanism for recognising cases when an MNE Group is headquartered in a jurisdiction with a tax system that imposes minimum tax requirements with respect to domestic and foreign income. It provides a safe harbour for such MNE Groups to minimize compliance and administration costs consistent with the policy objectives of the GMT. The operating mechanics of the SbS Safe Harbour are set out in the box below.

Side-by-Side Safe Harbour

1. At the election of the Filing Constituent Entity, the Top-up Tax for a jurisdiction for a Fiscal Year shall be deemed to be zero for purposes of the IIR and the UTPR where the Constituent Entities located in the jurisdiction are eligible for the Side-by-Side Safe Harbour ("SbS Safe Harbour"). The Constituent Entities of an MNE Group are eligible for the Side-by-Side Safe Harbour for a Fiscal Year if the UPE of that MNE Group is located in a jurisdiction with a Qualified SbS Regime for the Fiscal Year.
2. Where an election for the SbS Safe Harbour has been made, the Top-up Tax arising with respect to any interest in a Joint Venture or JV Subsidiary owned by a Constituent Entity of an MNE Group will also be deemed to be zero under the IIR and the UTPR if the UPE of that MNE Group is located in a jurisdiction with a Qualified SbS Regime.
3. A jurisdiction has a Qualified SbS Regime if it:
   a. has an eligible domestic tax system;
   b. has an eligible worldwide tax system;

c. provides a foreign tax credit for QDMTTs on the same terms as any other creditable Covered Tax; and

d. enacted its eligible domestic tax system and eligible worldwide tax system prior to 1 January 2026 or a later date in accordance with the procedures set out in paragraph 27 of this document.

4. An eligible domestic tax system is one that has:

a. at least a 20% statutory nominal corporate income tax (CIT) rate after taking into account preferential adjustments and sub-national corporate income taxes (where applicable);

b. a QDMTT or a corporate alternative minimum tax that is based on financial statement income, subject to appropriate adjustments consistent with the policy objectives of minimum taxation, at a nominal rate of at least 15%, and is applicable to a substantial portion of the aggregate income of in-scope MNE Groups' operations in the jurisdiction; and

c. no material risk that in-scope MNE Groups headquartered in the jurisdiction will be subject to an effective rate of tax (evaluated taking into account incentives consistent with the treatment of such incentives under the GloBE Rules and agreed safe harbours) on the overall profits of their domestic operations below 15%.

5. An eligible worldwide tax system is one that:

a. has a comprehensive tax regime applicable to all resident corporations on foreign income and which is imposed on a broad base that:

i. includes the active and passive income of foreign branches and controlled foreign companies regardless of whether or not that income is distributed; and

ii. is only subject to limited income exclusions which are consistent with the policy objectives of minimum taxation (for example, excluding categories of income which are generally high taxed);

b. incorporates substantial mechanisms which operate unilaterally to address BEPS risks; and

c. has no material risk that in-scope MNE Groups headquartered in the jurisdiction will be subject to an effective rate of tax (evaluated taking into account incentives consistent with the treatment of such incentives under the GloBE Rules and agreed safe harbours) on the overall profits of their foreign operations below 15%.

6. Where the Inclusive Framework has determined that a jurisdiction has a Qualified SbS Regime, that jurisdiction shall be listed as such on the Central Record.

7. An MNE Group with its UPE located in a jurisdiction that has a Qualified SbS Regime can elect for the SbS Safe Harbour for Fiscal Years commencing on or after 1 January 2026 or a later year as listed in the Central Record.

3. Where an MNE Group has its UPE located in a jurisdiction with a Qualified SbS Regime and has made the election for this safe harbour to apply, the SbS Safe Harbour will apply to all of that MNE Group's controlled domestic and foreign operations. The SbS Safe Harbour can only be elected by MNE Groups which have their UPE located in a jurisdiction with a Qualified SbS Regime (as determined applying Art. 10.3).

4. Where the safe harbour applies then, for the purposes of applying the IIR and UTPR, the Top-up Tax is deemed to be zero with respect to all of that MNE Group's Constituent Entities, including Stateless Constituent Entities and Minority-owned Constituent Entities. The Top-up Tax will also be reduced to zero under the IIR that would otherwise apply at the level of an Intermediate Parent Entity (including a Partially-owned Parent Entity).

1.1. Application to JVs

5. Where an MNE Group has made an election for the SbS Safe Harbour to apply, the Top-up Tax will also be deemed to be zero with respect to such an MNE Group's interests in a Joint Venture or JV Subsidiary. This will apply regardless of whether or not there are also Constituent Entities in the same jurisdiction as the Joint Venture or JV Subsidiary. However, the application of this safe harbour will not affect the application of the IIR or the UTPR to any other MNE Group's interest in the same Joint Venture or JV Subsidiary.

6. The election will also not affect the Top-up Tax of an Entity which would have been a Joint Venture of an MNE Group eligible for the SbS Safe Harbour except for the fact that the Entity was itself an Ultimate Parent Entity of an MNE Group that is subject to the GloBE Rules (that is, an Entity which would have been a Joint Venture except for the application of paragraph (a) of the definition of Joint Venture in Art. 10.1). Accordingly, the SbS Safe Harbour would not apply to an MNE Group with its UPE located in a jurisdiction without a Qualified SbS Regime even if 50% of the Ownership Interests in its UPE are held by a different MNE Group which is eligible for the SbS Safe Harbour.

1.2. No impact on QDMTT

7. The SbS Safe Harbour does not affect the application of QDMTTs and does not deem any Top-up Tax to be zero for the purposes of a QDMTT calculation. A QDMTT will continue to apply (including to the foreign operations of MNE Groups headquartered in a jurisdiction with a Qualified SbS Regime) and to be calculated without taking into account taxes imposed on Permanent Establishments or direct and indirect owners in respect of income of their controlled foreign companies as required under paragraph 118.30 of the Commentary to the definition of QDMTT. Any such QDMTT will be creditable under the GMT and any Qualified SbS Regime. Accordingly, a jurisdiction cannot allow an MNE Group to apply the SbS Safe Harbour for the purposes of the QDMTT.

1.3. No application to MNE Groups not headquartered in a jurisdiction with a Qualified SbS Regime

8. The SbS Safe Harbour will not affect the application of the IIR or the UTPR with respect to any MNE Group with its UPE located in a jurisdiction which does not have a Qualified SbS Regime. For example, an MNE Group with its UPE located in a jurisdiction which does not have a Qualified SbS Regime is not eligible to elect the SbS Safe Harbour and both the IIR and UTPR will continue to apply to all of its operations. An MNE Group with a UPE located in a jurisdiction which does not have a Qualified SbS Regime cannot elect for the SbS Safe Harbour in respect of its operations, including in respect of its operations in jurisdictions with a Qualified SbS Regime.

1.4. Eligibility criteria

1.4.1. Eligible domestic tax system

9. In order to have a Qualified SbS Regime, a jurisdiction must have an eligible domestic tax system. This contains three requirements.

Nominal tax rate of at least 20%

10. The first requirement is that the statutory nominal corporate income tax (CIT) rate is at least 20%, taking into account (where applicable) preferential adjustments (following paragraph 11) and sub-national corporate income taxes (following paragraph 12). The statutory nominal tax rate is the tax rate generally imposed on in-scope MNE Groups on a comprehensive measure of income. A jurisdiction will have a

statutory rate on a comprehensive measure of income where that rate is applicable to a broad tax base which is not subject to material exclusions.

11. In determining the nominal rate, the statutory rate is adjusted to reflect any preferential adjustments that generally apply to all income of in-scope MNE Groups. If taxpayers are entitled to a deduction, exclusion or tax credit equal to a certain percentage of the included income an equivalent adjustment would be made to the statutory nominal corporate income tax rate. For example, if a jurisdiction has a 20% tax rate but taxpayers are entitled to a deduction equal to 25% of their income, the jurisdiction will have a 15% statutory nominal corporate income tax rate for the purposes of this requirement. Similarly, if taxpayers are entitled to exclude 25% of their taxable income, or are entitled to a tax credit equal to 5% of their taxable income, the jurisdiction would be treated as having a 15% statutory nominal tax rate for these purposes.

12. This rate may take into account sub-national corporate income taxes provided that such taxes are structured so that in the case of all sub-national jurisdictions, the combined rate generally applicable to in-scope MNE Groups will be equal to or greater than 20%. Accordingly, the combined tax rate (taking into account any deduction or crediting in the national tax amount) which is applied to the sub-national jurisdiction with the lowest tax rate is the relevant rate for jurisdictions with different sub-national corporate income tax rates. If a jurisdiction has a corporate income tax regime which meets this requirement, it is unnecessary to consider any other tax regimes applicable in that jurisdiction.

Corporate alternative minimum tax

13. The second requirement is that there is a QDMTT or a corporate alternative minimum tax based on financial statement income at a nominal rate of 15% or above. Under a corporate alternative minimum tax, corporations are subject to taxation based on the higher of the amount of tax liability under the corporate alternative minimum tax rules and the amount of tax liability under their regular corporate income tax rules. This minimum tax may be subject to appropriate adjustments that are consistent with the policy objectives of a minimum tax. While a QDMTT would meet this requirement, a corporate alternative minimum tax based on financial statement income can satisfy this requirement without meeting the requirements of a QDMTT.

14. A corporate alternative minimum tax must be based upon financial statement income (of either the MNE Group as a whole or a subset of that MNE Group). However, adjustments are allowed if they are consistent with the policy objectives of minimum taxation. For example, adjustments to financial statement income which seek to adopt depreciation schedules from the tax system or to align the treatment of stock compensation are considered to be consistent with the policy objectives of minimum taxation. Similarly, an exclusion of high tax income from the alternative minimum tax would also be consistent with the policy objectives of minimum taxation. Furthermore, a corporate alternative minimum tax liability may be offset by foreign or domestic tax credits where those credits are provided consistently with the policy objectives of minimum taxation. For example, the corporate alternative minimum tax could be applicable to the worldwide income of the taxpayer and count foreign tax credits towards meeting the required minimum rate.

15. The corporate alternative minimum tax must be applicable to a substantial portion of the aggregate income of MNE Groups that are in-scope of the GloBE Rules (in-scope MNE Groups). This criterion considers the total net income in the jurisdiction of in-scope MNE Groups rather than the total net income of taxpayers which are in-scope of the relevant corporate alternative minimum tax regime. For example, a corporate alternative minimum tax which only applied to the MNE Groups operating in the jurisdiction with net income above a set threshold would satisfy this requirement if the threshold were set at a level such that a substantial portion of the collective sum of net income of all in-scope MNE Groups' net income from operations in the jurisdiction were included within the corporate alternative minimum tax. This criterion does not require a substantial portion of the net income of each in-scope MNE Group to be subject to the corporate alternative minimum tax.

No material risk of ETR outcomes below 15%

16. The third requirement is that there is no material risk that MNE Groups with their UPE located in the jurisdiction and in-scope of the GloBE Rules will be subject to an effective rate of tax on the overall profits of their domestic operations below 15%. The assessment of the minimum effective tax rate should be made based on the design and operation of the GloBE Rules (including applicable safe harbours and following the same treatment of incentives including substance-based tax incentives). A material risk is a risk that is of significant magnitude and probability that policymakers would foreseeably consider it as the basis for revising an applicable tax regime.

17. An evaluation of this criterion is based on a pragmatic assessment of the overall operation of the tax system applicable in the relevant jurisdiction, including the availability and treatment of tax credits and incentives under the tax system. The mere possibility that MNE Groups could have an effective overall rate of tax on their domestic operations below 15% based on a hypothetical scenario does not mean that a jurisdiction will not satisfy this requirement. For example, a jurisdiction could still satisfy this requirement if it had a corporate tax regime which produced an effective tax rate slightly below 15% on certain types of income but MNE Groups which benefited from this incentive were likely to have substantial other income from domestic operations which was taxed well above 15% such that the average tax rate was highly likely to be above 15%. On the other hand, a regime would not satisfy this requirement if MNE Groups are eligible for tax incentives in that jurisdiction and the potential scope and size of those incentives give rise to a material risk that MNE Groups will be subject to an effective rate of tax that is below 15% on those operations.

18. This criterion is to be considered holistically, over time, and at an aggregate level (and not considering each MNE Group separately). This criterion could be met due to the application of a jurisdiction's corporate alternative minimum tax (depending on its design) and may also take into account any legislated regimes to address BEPS risks (such as anti-hybrid rules in line with BEPS Action 2 and interest limitation rules in line with BEPS Action 4).

1.4.2. Eligible worldwide tax system

19. In order to have a Qualified SbS Regime, a jurisdiction must also have an eligible worldwide tax system. This has three requirements.

Comprehensive tax regime

20. The first requirement is a comprehensive tax regime applicable to all corporations on foreign income. The base used for the calculation of foreign income must be broad and not subject to material exclusions. The income must include both the active and passive income of controlled foreign companies even when that income is not distributed to its shareholders. For these purposes, controlled foreign companies must include any foreign company that is controlled by a domestic owner.

21. The only exception to this comprehensive inclusion requirement is that there may be limited exclusions from taxable income where those exclusions are consistent with the policy objectives of minimum taxation. For example, where the regime only excludes income which is generally taxed at a high rate in the source jurisdiction (for example, income from the extractive sector such as oil and gas). If, however, a regime excluded a type of highly mobile income (such as royalty income), it would not meet this requirement.

Mechanisms to address BEPS risks

22. The second requirement is that the regime must include appropriately targeted but substantial mechanisms designed to address significant BEPS risks. For example, a regime could satisfy this requirement by having rules which prevented foreign tax credits arising with respect to active income being

used to offset a (pre-credit) tax liability arising with respect to passive income. Similarly, a regime could satisfy this requirement by requiring a taxpayer to separately consider inclusions from CFCs which are subject to low taxation from those subject to high taxation in the CFC jurisdiction. A regime will not satisfy this second requirement unless it includes a mechanism to prevent foreign tax credits on high tax active income from offsetting a (pre-credit) tax liability arising from low tax passive income.

No material risk of ETR outcomes below 15%

23. The third requirement is that there is no material risk that in-scope MNE Groups headquartered in the jurisdiction will be subject to an effective rate of tax on the profits of their collective foreign operations below 15%. This assessment of the minimum effective tax rate should be made based on the design and operation of the GloBE Rules (including applicable safe harbours and following the same treatment of incentives). A material risk is a risk that is of significant magnitude and probability that policymakers would foreseeably consider it as the basis for revising an applicable tax regime.

24. An evaluation of this criterion is based on a pragmatic assessment of the overall operation of the tax system applicable in the relevant jurisdiction as well as the creditable foreign taxes which are recognized under that tax system. The commentary applicable to the third criterion of an eligible domestic tax system with respect to a material risk of ETR outcomes below 15% is also generally applicable to this criterion.

1.4.3. Foreign tax credit for QDMTTs

25. In order to have a Qualified SbS Regime, a jurisdiction must allow a foreign tax credit for QDMTTs on the same terms as any other creditable Covered Tax. The foreign tax credit for QDMTTs may be subject to foreign tax credit limitations which are generally applicable.

1.4.4. Eligible domestic and worldwide tax systems assessment date

26. Upon request by a member jurisdiction, the Inclusive Framework will assess that jurisdiction's pre-existing tax regimes against the eligibility criteria for a Qualified SbS Regime by the end of the first half of 2026.

27. The Inclusive Framework will assess the eligibility as a Qualified SbS Jurisdiction of any other Inclusive Framework jurisdiction once that jurisdiction initiates such a request to the IF in 2027 or 2028. The assessment of that jurisdiction's eligibility will be undertaken in a timely manner on the same basis outlined above and taking into account that the Inclusive Framework considers that the adoption of a co-ordinated GMT, based on a common approach for ensuring minimum taxation (particularly through the implementation of QDMTTs) is critically important and should be the primary system. The timing of any access to the SbS Safe Harbour will take into consideration when the legislation entered into effect and the time necessary to review the eligibility of a regime as well as any information gathered as part of the stocktake.

1.5. Effective date

28. The SbS Safe Harbour is applicable for Fiscal Years commencing on or after 1 January 2026 or a later year as listed in the Central Record. Where a jurisdiction adopts the SbS Safe Harbour into its domestic law after this date, it is expected to do so with retrospective effect taking into account the fact that it is an election which is wholly relieving for taxpayers. If, contrary to this expectation and despite this fact, a jurisdiction is unable to adopt this Safe Harbour from 1 January 2026 due to constitutional grounds

or other superior law, that jurisdiction must implement this Safe Harbour from the earliest practical date.[3] The SbS Safe Harbour does not affect Fiscal Years commencing before 1 January 2026.

1.6. Information Reporting for SbS Safe Harbour

29. An MNE Group will be able to make the SbS Safe Harbour election in the GloBE Information Return in a field that will be added to Section 1. Further work will be done on revisions to the GIR and the XML Schema to specify a field to indicate that the SbS Safe Harbour is being elected and to identify particular fields that might not be required for MNE Groups that elect the SbS Safe Harbour. For example, some data points may not be required for such MNE Groups, because those data points relate only to the operation of the IIR and UTPR, which will not be relevant where the SbS Safe Harbour has been elected. In any case, an MNE Group which makes the SbS Safe Harbour election in a jurisdiction with an IIR or UTPR will provide only Section 1 of the GIR to that jurisdiction and is not required to complete Section 1.4 (the high-level summary of GloBE information).

30. The SbS Safe Harbour does not affect the reporting obligations for Fiscal Years commencing before 1 January 2026. In addition, MNE Groups that elect for the SbS Safe Harbour remain subject to the QDMTT and, accordingly, will remain subject to GIR filing obligations for QDMTT purposes. Thus, an MNE Group that makes the SbS Safe Harbour election will provide any QDMTT-only Jurisdiction with Section 1 of the GIR (with the exception of Section 1.4 providing the high-level summary of GloBE information) and the Jurisdictional Section for that jurisdiction. If a jurisdiction has both a QDMTT and an IIR and/or a UTPR, an MNE Group that makes the SbS Safe Harbour election will provide that Jurisdiction with Section 1 of the GIR (but is not required to complete Section 1.4 with the high-level summary of GloBE information) and the Jurisdictional Section for that jurisdiction.

31. Furthermore, as previously agreed by the Inclusive Framework, the reporting of aggregated GIR and QDMTT data on an anonymised basis will be considered as part of the peer review and monitoring process to be developed by the Inclusive Framework, such as the GloBE Income, Adjusted Covered Taxes, ETR, the Substance-based Income Exclusion, as well as Top-up Taxes.

1.7. Notification of material changes to a Qualified SbS Regime

32. A jurisdiction listed on the Central Record is required to notify the Inclusive Framework if it materially amends its Qualified SbS Regime within three months of the relevant change (for example, the date of enactment where the change arises from legislation). Upon receipt of such a notification, the Inclusive Framework will consider the best path forward. For these purposes, an amendment is material if it could have foreseeably impacted an Inclusive Framework determination on eligibility as a Qualified SbS Regime. For example, a material change could include a reduction in the corporate tax rate, the repeal of a CFC Tax Regime or the introduction of a new income exclusion, exemption or preferential regime. However, a jurisdiction is not required to notify the Inclusive Framework if it has made an amendment to an aspect of a Qualified SbS Regime where that aspect was not taken into account in establishing that there was no material risk that in-scope MNE Groups headquartered in the jurisdiction will be subject to an effective rate of tax of below 15% on the profits of their domestic or foreign operations. Nevertheless, a jurisdiction is still required to notify the Inclusive Framework if it has materially expanded the availability of a tax incentive or preferential regime.

[3] In such a case, each UTPR Jurisdiction (including those that have adopted the SbS Safe Harbour) would be taken into account in applying the allocation formula in Art. 2.6.1, and a jurisdiction that has not yet adopted the SbS Safe Harbour would not be allocated more than its UTPR Percentage of the UTPR Top-up Tax Amount.

2. UPE Safe Harbour

33. The operating mechanics of the UPE Safe Harbour are set out in the box below. The UPE Safe Harbour applies for Fiscal Years commencing on or after 1 January 2026 and effectively replaces the Transitional UTPR Safe Harbour which expires at the end of 2025.

UPE Safe Harbour

1. At the election of the Filing Constituent Entity, the Top-up Tax for the UPE Jurisdiction for a Fiscal Year shall be deemed to be zero for purposes of the UTPR where the Constituent Entities located in the UPE Jurisdiction are eligible for the UPE Safe Harbour. An MNE Group will be eligible for the UPE Safe Harbour for a Fiscal Year if the UPE of that MNE Group is located in a jurisdiction with a Qualified UPE Regime for that Fiscal Year.
2. A jurisdiction has a Qualified UPE Regime if it has an eligible domestic tax system which was enacted and in effect as at 1 January 2026. An eligible domestic tax system is one that has:
   a. at least a 20% statutory nominal corporate income tax (CIT) rate after taking into account preferential adjustments and sub-national corporate income taxes (where applicable);
   b. a QDMTT or a corporate alternative minimum tax based on financial statement income, subject to appropriate adjustments consistent with the policy objectives of minimum taxation, at a nominal rate of at least 15%, and is applicable to a substantial portion of the aggregate income of in-scope MNE Groups' operations in the jurisdiction; and
   c. no material risk that in-scope MNE Groups headquartered in the jurisdiction will be subject to an effective rate of tax (evaluated taking into account incentives consistent with the treatment of such incentives under the GloBE Rules and agreed safe harbours) on the overall profits of their domestic operations below 15%.
3. Where the Inclusive Framework has determined that a jurisdiction has a Qualified UPE Regime, that jurisdiction shall be listed as such on the Central Record.
4. The UPE Safe Harbour is applicable for Fiscal Years commencing on or after 1 January 2026.

35. Where an MNE Group has its UPE located in a jurisdiction with a Qualified UPE Regime and makes an election for the UPE Safe Harbour, the Top-up Tax for that MNE Group is deemed to be zero for the purposes of applying the UTPR with respect to all of its Constituent Entities located in the UPE Jurisdiction. The location of the UPE is determined applying the rules in Art. 10.3.

36. The UPE Safe Harbour will not affect the application of the IIR or the UTPR with respect to any MNE Group with its UPE located in a jurisdiction which does not have a Qualified UPE Regime. Similarly, the UPE Safe Harbour does not affect the application of the IIR or UTPR with respect to any of an MNE Group's Constituent Entities which are located outside of the UPE Jurisdiction. The UPE Safe Harbour has no impact on the operation of QDMTTs.

2.1. Eligibility criteria

37. The criteria for an eligible domestic tax system for the purposes of having a Qualified UPE Regime are the same as the eligible domestic tax system criteria for a Qualified SbS Regime. The Commentary applicable to those paragraphs is equally applicable to the UPE Safe Harbour.

2.1.1. Eligible domestic tax system enacted before 2026

38. In order to have a Qualified UPE Regime, a jurisdiction must have an eligible domestic tax system which was enacted and in effect on 1 January 2026. A domestic tax system which meets these requirements as at that date will remain eligible notwithstanding non-material changes that have been made to that legislation (for example, to simplify the drafting) that take effect following 1 January 2026.

39. Upon request by a member jurisdiction, the Inclusive Framework will assess that jurisdiction's pre-existing tax regimes against the eligibility criteria for a Qualified UPE Regime by the end of the first half of 2026.

2.2. Effective date

40. The UPE Safe Harbour is applicable for Fiscal Years commencing on or after 1 January 2026. This is the same effective date as for the SbS Safe Harbour. The commentary applicable to the effective date for the SbS Safe Harbour is equally applicable to the UPE Safe Harbour.

2.3. Information Reporting for UPE Safe Harbour

41. The GIR will be amended to include an additional data point for the MNE Group to make an election for the UPE Safe Harbour. As the general section of the GIR provides information on the corporate structure of the MNE Group, including identification of the UPE and the jurisdiction where it is located, MNE Groups will not be required to provide any additional information to demonstrate their eligibility for the safe harbour.

2.4. Notification of material changes to a Qualified UPE Regime

42. A jurisdiction listed on the Central Record is required to notify the Inclusive Framework if it materially amends its Qualified UPE Regime. The commentary on the notification of material changes to a Qualified SbS Regime is equally applicable to this requirement.

References

OECD (2022), *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/1e0e9cd8-en. [4]

OECD (2021), *Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en. [1]

OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Paris, https://doi.org/10.1787/mtc_cond-2017-en. [3]

United Nations Department of Economic and Social Affairs (2022), *United Nations Model Double Taxation Convention Between Developed and Developing Countries 2021*, United Nations, https://doi.org/10.18356/9789210001007. [2]

OECD/G20 Base Erosion and Profit Shifting Project

Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Application of the Transitional UTPR Safe Harbour to MNE Groups with 52-53-Week Fiscal Years

Inclusive Framework on BEPS

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This document was approved by the OECD/G20 Inclusive Framework on BEPS on 11 May 2026 and prepared for publication by the OECD Secretariat.

Please cite this document as:
OECD (2026), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Application of the Transitional UTPR Safe Harbour to MNE Groups with 52-53-Week Fiscal Years: Inclusive Framework on BEPS*, OECD, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-on-application-of-transitional-utpr-safe-harbour-to-mne-groups.pdf.

Administrative Guidance

Further guidance on the Transitional UTPR Safe Harbour

Overview

1. In July 2023, the Inclusive Framework agreed on the Transitional UTPR Safe Harbour to provide transitional relief with respect to the UPE Jurisdiction. Under the Transitional UTPR Safe Harbour, the UTPR Top-up Tax Amount calculated for the UPE Jurisdiction shall be deemed to be zero for Fiscal Years which run no longer than 12 months that begin on or before 31 December 2025 and end before 31 December 2026.

2. Some MNE Groups may have accounting periods (and therefore Fiscal Years) which are made up of full weeks and end on the same day of the week each year (for example, the closest Sunday to 31 December) and therefore run for either 52 or 53 weeks (depending on the year) under their financial accounting standard. Most Fiscal Years will be 52 weeks (i.e. 364 days). In order for the MNE Group's Fiscal Year to remain within a set number of days of the relevant date (e.g. 31 December) every five to six years, a week is added to the MNE Group's Fiscal Year, leading to a 53-week Fiscal Year instead of 52.

3. It is possible for an MNE Group to have a 53-week Fiscal Year that begins on or before 31 December 2025 but ends after 31 December 2026. Absent a clarification in the Transitional UTPR Safe Harbour, such an MNE Group may not be eligible for any safe harbour from the UTPR in respect of its UPE jurisdiction for such a fiscal year because the Side-by-Side Safe Harbour and the UPE Safe Harbour apply to Fiscal Years commencing on or after 1 January 2026. This guidance clarifies that the Transitional UTPR Safe Harbour will apply to an MNE Group with a Fiscal Year that begins on or before 31 December 2025 and ends on or before 3 January 2027. Accordingly, where an MNE Group with a 53-week Fiscal Year has its UPE located in a jurisdiction that is eligible both for the Transitional UTPR Safe Harbour, and then for the SbS Safe Harbour or UPE Safe Harbour for Fiscal Years commencing on or after 1 January 2026, that MNE Group will remain eligible for the Transitional UTPR Safe Harbour until the SbS Safe Harbour or UPE Safe Harbour applies.

Guidance

4. The text in bold will be added to the definition of Transition Period in paragraph 2 of the Box 4.1 of Annex A1 (Transitional UTPR Safe Harbour) to the Commentary:

> 2. Transition Period means the Fiscal Years which run no longer than 12 months that begin on or before 31 December 2025 and end **on or** before ~~31 December 2026~~ **3 January 2027**.

5. The text in bold will be added to the paragraph 4 of Chapter 4 of Annex A1 (Transitional UTPR Safe Harbour) to the Commentary:

> 4. This Transitional UTPR Safe Harbour is designed to provide transitional relief in the UPE Jurisdiction during the first two years in which the GloBE rules come into effect. Under the Transitional UTPR Safe Harbour, the UTPR Top-up Tax Amount calculated for the UPE

Jurisdiction shall be deemed to be zero for Fiscal Years which run no longer than 12 months that begin on or before 31 December 2025 and end **on or** before ~~31 December 2026~~ **3 January 2027**. **Some MNE Groups may have a 52-53 week Fiscal Year due to their accounting period as determined under the relevant financial accounting standard. An MNE Group with a 52-53 week Fiscal Year always has their Fiscal Year end on the same day of the week (e.g. a Sunday) and the Fiscal Year is either 52 or 53 weeks in length depending on the year. For such MNE Groups it is possible to have a 53-week Fiscal Year which starts on or before 31 December 2025. For example, an MNE Group may have a 53-week Fiscal Year which started on 28 December 2025 and ends on 2 January 2027. The UTPR Top-up Tax Amount calculated for the UPE Jurisdiction for such a Fiscal Year will be deemed to be zero under the Transitional UTPR Safe Harbour.**

Sammanfattning av promemorian Nya förenklingsregler och andra kompletteringar i lagen om tilläggsskatt

I denna promemoria lämnas förslag om en ny förenklingsregel som ska gälla hela systemet med tilläggsskatt (Side-by-Side Safe Harbour) och en ny förenklingsregel som ska gälla kompletteringsregeln för tilläggsskatt (UPE Safe Harbour). Därutöver lämnas förslag om regler om kvalificerade skatteincitament (Substance-based Tax Incentive Safe Harbour). Vidare föreslås kompletteringar av bestämmelserna om uppskjuten skattekostnad när koncernenheter i en stat börjar omfattas av tilläggsskattereglerna. Det lämnas vidare förslag om att förlänga den tillfälliga förenklingsregeln för tilläggsskatt med ett år samt vissa andra kompletteringar.

Genom lagen (2023:875) om tilläggsskatt genomfördes direktivet om säkerställande av en global minimiskattenivå för multinationella koncerner och storskaliga nationella koncerner i Europeiska unionen. Syftet med direktivet är att genomföra de modellregler om en global minimibeskattning som arbetats fram inom ramen för OECD/G20:s Inclusive Framework on Base Erosion and Profit Shifting (IF). Modellreglerna kompletteras av förklaringar och exempel i kommentaren till modellreglerna. Under 2023 och 2024 har IF antagit administrativa riktlinjer med kompletteringar till kommentaren för att ytterligare klargöra hur reglerna ska tolkas och tillämpas. Den 13 januari 2025 och 5 januari 2026 antogs ytterligare sådana administrativa riktlinjer. I den utsträckning det är fråga om förtydliganden och exempel omfattas riktlinjerna redan av de bestämmelser som finns i lagen om tilläggsskatt. Lagen behöver dock i viss mån ändras och kompletteras.

Lagändringarna föreslås träda i kraft den 1 januari 2027 och tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026. Det införs en möjlighet för den rapporterande enheten att begära retroaktiv tillämpning av bestämmelserna.

Promemorians lagförslag

Förslag till lag om ändring i lagen (2023:875) om tilläggsskatt

Härigenom föreskrivs i fråga om lagen (2023:875) om tilläggsskatt

dels att 1 kap. 10 §, 2 kap. 1, 29, 29 a och 30 §§, 4 kap. 1 och 25–27 §§, 7 kap. 67 och 68 §§ och 8 kap. 1, 2, 4 och 9 §§ och rubriken närmast före 2 kap. 29 § ska ha följande lydelse,

dels att det ska införas sex nya paragrafer, 4 kap. 17 a–17 d §§ och 8 kap. 18 a och 18 b §§, och närmast före 4 kap. 17 a och 17 d §§ och 8 kap. 18 a § nya rubriker av följande lydelse.

Nuvarande lydelse	*Föreslagen lydelse*
1 kap.	
10 §	
Om en koncern som *omfattades* av lagens tillämpningsområde *året före det aktuella räkenskapsåret* delas i två eller flera *nya* koncerner, ska beloppsgränsen i 3 § anses vara uppnådd	Om en koncern som *omfattas* av lagens tillämpningsområde delas i två eller flera koncerner, ska beloppsgränsen i 3 § *för en koncern* anses vara uppnådd
– för det *räkenskapsår då* delningen *sker*: om summan av intäkterna i koncernredovisningen för *vardera ny koncern* för det räkenskapsåret uppgår till minst 750 miljoner euro, och	– för det *första räkenskapsåret som avslutas närmast efter* delningen: om summan av intäkterna i koncernredovisningen för *den koncernen* för det räkenskapsåret uppgår till minst 750 miljoner euro, och
– för det andra till fjärde räkenskapsåret efter delningen: om summan av intäkterna i koncernredovisningen för *vardera ny koncern* uppgår till minst 750 miljoner euro under minst två av *dessa* räkenskapsår.	– för det andra till fjärde räkenskapsåret *som avslutas närmast* efter delningen: om summan av intäkterna i koncernredovisningen för *den koncernen* uppgår till minst 750 miljoner euro under minst två av *de fyra* räkenskapsår *som avslutas närmast efter delningen*.
Första stycket gäller i fråga om varje arrangemang där koncernenheterna i en koncern delas upp i två eller flera *nya* koncerner och inte längre ingår i samma moderföretags koncernredovisning.	Första stycket gäller i fråga om varje arrangemang där koncernenheterna i en koncern delas upp i två eller flera koncerner och inte längre ingår i samma moderföretags koncernredovisning.

2 kap.

1 §[1]

I detta kapitel finns definitioner av vissa begrepp samt förklaringar till hur vissa termer och uttryck används i denna lag. Det finns definitioner av vissa begrepp och förklaringar till hur vissa termer och uttryck används i lagen också i andra kapitel.

Definitioner av följande begrepp samt förklaringar till hur vissa termer och uttryck används finns i nedan angivna paragrafer:

allmänt erkänd redovisningsstandard i 20 §
asymmetrisk vinst och förlust i utländsk valuta i 3 kap. 13 §
balansvärde i 5 kap. 5 §
beskattningsår i 24 §
bestämmande inflytande i 14 §
betydande snedvridning av konkurrensen i 3 kap. 7 §
bokfört nettovärde av materiella tillgångar i 23 §
delägarbeskattad enhet i 7 kap. 2 §
delägd moderenhet i 13 §
dotterföretag till ett samriskföretag i 7 kap. 44 §
effektiv skattesats i 3 kap. 37 §
enhet i 6 § första stycket
fast driftställe i 7 kap. 17 §
fastighetsinvesteringsföretag i 40 §
försäkringsinvesteringsenhet i 41 §
godkänd redovisningsstandard i 21 §
godkänt utdelningsskattesystem i 31 §
huvudenhet i 7 kap. 18 §
huvudregel för tilläggsskatt i 4 §
hybridenhet i 41 a §
hör hemma i 1 kap. 11–16 §§
icke kvalificerat imputationsbelopp i 28 §
icke marknadsmässigt överlåtbart skattetillgodohavande i 29 f §
ideell organisation i 34 §
internationell organisation i 33 §
investeringsenhet i 38 §
investeringsenhet för pensioner i 37 §
investeringsfond i 39 §
justerat resultat i 3 kap. 2 §
justerad skattekostnad i 3 kap. 23 §
kompletteringsregel för tilläggsskatt i 5 §
koncern i 7 §
koncernenhet i 8 §
koncernredovisning i 19 §
kvalificerat imputationsbelopp i 27 §
kvalificerat skatteincitament i 4 kap. 17 c §
kvalificerat skattetillgodohavande i 29 §
lågbeskattad koncernenhet i 44 §

[1] Senaste lydelse 2025:1461.

lågskattestat i 45 §
marknadsmässigt överlåtbart skattetillgodohavande i 29 a–29 e §§
medräknade skatter i 3 kap. 24–26 §§
mellanliggande moderenhet i 12 §
minimiskattesats i 25 §
minoritetsägd koncernenhet i 7 kap. 42 §
modellreglerna i 47 §
moderenhet i 10 §
moderföretag i 11 §
myndighetsenhet i 32 §
nettoskattekostnad i 3 kap. 8 §
offentligt organ i 6 § tredje stycket
omorganisering i 7 kap. 59 §
omvänd hybridenhet i 7 kap. 4 §
pensionsenhet i 35 §
pensionsfond i 36 §
portföljinnehav i 17 §
procentsats för tilläggsskatt i 3 kap. 38 § första stycket
rapporterande enhet i 43 §
redovisat resultat i 18 §
regel om nationell tilläggsskatt i 3 §
räkenskapsår i 22 §
samriskföretag i 7 kap. 43 §
skattetillgodohavande i 29 §
skattetransparent enhet i 7 kap. 3 §
stat i 46 §
statslös koncernenhet i 48 §
substansbelopp i 5 kap. 2 §
svensk koncernenhet i 9 §
system för beskattning av kontrollerade utländska företag i 26 §
system med avdragsgill utdelning i 7 kap. 66 §
särskild uppskjuten skattefordran i 4 kap. 13 §
tilläggsskatt i 2 §
tilläggsskattebelopp i 3 kap. 37–39 §§
tilläggsskatterapport i 42 §
undantagna utdelningar i 3 kap. 9 §
undantagen vinst och förlust avseende ägarintressen i 3 kap. 10 §
undantagna enheter i 1 kap. 5–8 §§
värdet beträffande tilläggsskatt i 23 a §
ägarenhet i 16 §
ägarintresse i 15 §
överskjutande vinst i 3 kap. 38 § andra stycket
övrigt skattetillgodohavande i 30 §.

Kvalificerat skattetillgodohavande	*Skattetillgodohavande och kvalificerat skattetillgodohavande*

29§

	Med skattetillgodohavande avses ett tillgodohavande som ger innehavaren rätt att minska kostnaden

	för medräknade skatter i den stat som beviljar tillgodohavandet.

Med kvalificerat skattetillgodohavande avses

1. ett anspråk på återbetalning *(skattetillgodohavande)* som är utformat på ett sådant sätt att det ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla betalningen enligt lagstiftningen i den stat som beviljar detta, eller	1. ett *skattetillgodohavande med* anspråk på återbetalning som är utformat på ett sådant sätt att det ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla betalningen enligt lagstiftningen i den stat som beviljar detta, eller

2. om skattetillgodohavandet delvis återbetalas, den del av skattetillgodohavandet som ska betalas kontant eller på något motsvarande sätt till en koncernenhet inom fyra år från den dag då koncernenheten har rätt att erhålla detta belopp.

Ett kvalificerat skattetillgodohavande ska inte omfatta något skattebelopp som kan avräknas eller återbetalas på grundval av ett imputationsbelopp enligt 27 eller 28 §.

29 a §[2]

Med marknadsmässigt överlåtbart skattetillgodohavande avses ett *tillgodohavande*	Med marknadsmässigt överlåtbart skattetillgodohavande avses ett *skattetillgodohavande*

1. som inte är ett kvalificerat skattetillgodohavande,

2. som ger innehavaren en rätt att minska sin kostnad avseende medräknade skatter i den stat som beviljar tillgodohavandet,	
3. som uppfyller kriteriet om överlåtbarhet i 29 b §, och	*2.* som uppfyller kriteriet om överlåtbarhet i 29 b §, och
4. vars överlåtbarhet uppfyller kriteriet om marknadsmässighet i 29 c §.	*3.* vars överlåtbarhet uppfyller kriteriet om marknadsmässighet i 29 c §.

30 §[3]

Med övrigt skattetillgodohavande avses ett *anspråk på återbetalning* som inte omfattas av 29, 29 a eller 29 f §.	Med övrigt skattetillgodohavande avses ett *skattetillgodohavande* som inte omfattas av 29 *§ andra stycket*, 29 a *§* eller 29 f §.

4 kap.

1 §[4]

I detta kapitel finns bestämmelser om

– val som påverkar det justerade resultatet (2–12 k §§),

[2] Senaste lydelse 2024:1248.
[3] Senaste lydelse 2024:1248.
[4] Senaste lydelse 2024:1248.

– val som påverkar den justerade skattekostnaden (13–*17* §§),	– val som påverkar den justerade skattekostnaden (13–*17 d* §§),

– tillkommande tilläggsskattebelopp när det sammanlagda justerade resultatet i en stat är en förlust (18–19 a §§),

– justering av skattekostnad i efterhand (20–24 §§), och

– uppskjutna skattefordringar, uppskjutna skatteskulder och överförda tillgångar vid övergången till systemet (25–28 b §§).

Kvalificerade skatteincitament

17 a §

Vid tillämpning av 3 kap. 37 § får den rapporterande enheten välja att de sammanlagda justerade skattekostnaderna ska ökas med ett belopp som motsvarar skatteeffekten av ett kvalificerat skatteincitament. Ökningen får inte överstiga det högsta av följande belopp:

1. 5,5 procent av personalkostnaderna enligt 5 kap. 3 §,

2. 5,5 procent av de redovisade kostnaderna för avskrivningar på tillgångar som avses i 5 kap. 4 § i den stat där koncernenheterna hör hemma.

Vid tillämpning av första stycket ska

– personalkostnader i 1 även omfatta sådana kostnader som anges i 5 kap. 3 § andra stycket 1, och

– redovisade kostnader för avskrivningar i 2 inte omfatta avskrivningar på sådana tillgångar som avses i 5 kap. 4 a §.

Den rapporterande enheten får, i stället för vad som anges i första stycket 1 och 2, välja att det belopp som skattekostnaden ska ökas med får uppgå till högst 1 procent av det redovisade värdet av sådana tillgångar som avses i 5 kap. 4 § och som finns i den stat där koncernenheterna hör hemma. Värdet av mark, övriga icke avskrivningsbara tillgångar och sådana tillgångar som avses i 5 kap. 4 a § ska inte ingå i det redovisade värdet. Ett sådant val *gäller i fem år från och med det räkenskapsår som valet avser. Därefter fortsätter valet att gälla, om den rapporterande enheten inte återkallar valet. Om valet återkallas kan ett nytt val göras först fem år efter det år som återkallelsen avser. Om valet återkallas ska tillgångar som har omfattats av valet undantas från beräkningen enligt första stycket 2.*

17 b §

Med kvalificerat skatteincitament avses ett allmänt tillgängligt skatteincitament till den del det är utgiftsbaserat eller produktionsbaserat. Ett skatteincitament är ett incitament som minskar kostnaden för aktuella eller framtida medräknade skatter. Ett skatteincitament är utgiftsbaserat om det baseras på utgifter som en koncernenhet har haft när incitamentet beviljas och summan av skatteeffekten av incitamentet och övriga skatteincitament för samma utgift inte överstiger den utgift som incitamentet baseras på. Ett skatteincitament är produktionsbaserat om det baseras på volymen av materiella tillgångar, inklusive elektricitet, som har producerats i staten när incitamentet beviljas.

17 c §

Med skatteeffekt av ett kvalificerat skatteincitament avses följande:

1. den minskning av medräknade skatter som har redovisats för ett räkenskapsår på grund av ett utnyttjat skatteincitament i form av en skattereduktion,

2. den del av ett kostnadsavdrag för ett beskattningsår som överstiger 100 procent av utgiften multiplicerad med bolagsskattesatsen,

	3. en skattefri inkomst multiplicerad med bolagsskattesatsen, och *4. en inkomst som beskattas med en lägre skattesats än den generellt tillämpliga bolagsskattesatsen multiplicerad med skillnaden mellan dessa skattesatser.* *Kvalificerade respektive marknadsmässigt överlåtbara skattetillgodohavanden* *17 d §* *Den rapporterande enheten får, i stället för vad som anges i 3 kap. 18–18 c, välja att behandla hela eller delar av ett kvalificerat skattetillgodohavande eller ett marknadsmässigt överlåtbart skattetillgodohavande som ett kvalificerat skatteincitament om skattetillgodohavandet uppfyller villkoren i 17 b §.*

25 §

Vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för ett övergångsår enligt 26 § och för varje därpå följande räkenskapsår ska alla de uppskjutna skattefordringar och uppskjutna skatteskulder som återspeglas eller redovisas i alla koncernenheters räkenskaper i en stat beaktas för övergångsåret.	Vid fastställande av den effektiva skattesatsen för koncernenheter i en stat för ett övergångsår enligt 26 § och för varje därpå följande räkenskapsår ska alla de uppskjutna skattefordringar och uppskjutna skatteskulder som återspeglas eller redovisas i alla koncernenheters räkenskaper i en stat beaktas för övergångsåret. *Detta gäller dock inte om de uppskjutna skattefordringarna och uppskjutna skatteskulderna avser skatt som har tagits ut enligt ett sådant system för beskattning av kontrollerade utländska företag som avses i 2 kap. 26 §, och skatten för kontrollerade utländska företag enligt detta system beräknas gemensamt för samtliga sådana företag.*

Uppskjutna skattefordringar och uppskjutna skatteskulder ska räknas med utifrån den skattesats som är lägst av minimiskattesatsen och den tillämpliga nationella skattesatsen. En uppskjuten skattefordran som har redovisats till en skattesats som är lägre än minimiskattesatsen får dock räknas om enligt minimiskattesatsen om den skattskyldige kan visa att den uppskjutna skattefordran är hänförlig till en justerad förlust.

Effekter som uppstår när värdet på en uppskjuten skattefordran justeras eller när principer för att ta upp en sådan fordran i räkenskaperna ändras ska inte påverka värdet av den uppskjutna skattefordran.

26 §

Med övergångsår för en stat avses det första räkenskapsår då en *koncernenhet* omfattas av *en lagstiftning som är likvärdig med och administreras på ett sätt som är förenligt med* *1. bestämmelserna i rådets direktiv 2022/2523, i den ursprungliga lydelsen, eller* *2. när det gäller en stat utanför Europeiska unionen, modellreglerna.*	Med övergångsår för en stat avses det första räkenskapsår då en *koncern* omfattas av *lagens tillämpningsområde vad avser den staten.*

27 §[5]

Uppskjutna skattefordringar och uppskjutna skatteskulder som avses i 25 § ska inte justeras enligt 3 kap. 34 eller 35 §.

Uppskjutna skattefordringar som härrör från sådana poster som enligt 3 kap. inte ska ingå vid beräkningen av det justerade resultatet ska dock undantas från den beräkning som avses i 25 § när sådana uppskjutna skattefordringar uppkommer i en transaktion som har ägt rum efter den 30 november 2021.

	Följande uppskjutna skattefordringar och uppskjutna skatteskulder ska undantas från den beräkning som avses i 25 §: *1. uppskjutna skattefordringar som uppstått på grund av en överenskommelse med myndigheterna i en stat som har ingåtts eller ändrats efter den 30 november 2021,* *2. uppskjutna skattefordringar som uppstått då en koncernenhet gjort eller ändrat ett val efter den 30 november 2021, om valet retroaktivt ändrar behandlingen av en transaktion som har ingått i koncernenhetens beskattningsbara inkomst ett tidigare beskattningsår,* *3. uppskjutna skattefordringar och uppskjutna skatteskulder som*

[5] Senaste lydelse 2024:1248.

uppstått till följd av att en koncernenhet använt ett högre skattemässigt värde än det bokförda värdet vid övergången till systemet när bolagsskatt har införts i en stat efter den 30 november 2021 men före övergångsårets början, och

4. en uppskjuten skattefordran till den del fordran beror på en förlust som har uppstått mer än fem räkenskapsår innan bolagsskatt har införts i en stat.

7 kap.

67 §

Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska minskas med belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om

Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska minskas*, dock lägst till noll,* med belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om

1. mottagaren beskattas för utdelningen med en skattesats som är lika med eller högre än minimiskattesatsen och inkomsten hänförs till ett beskattningsår som avslutas senast tolv månader efter utgången av räkenskapsåret, eller

2. det rimligen kan förväntas att det sammanlagda beloppet av medräknade skatter för moderföretaget och skatt som mottagaren betalar på utdelningen är lika med eller överstiger den utdelande enhetens inkomst multiplicerad med minimiskattesatsen.

Vid tillämpningen av bestämmelserna i första stycket ska mottagaren anses ha beskattats för utdelning som lämnats i förhållande till inköp från ett inköpskooperativ till den del utdelningen minskar en avdragsgill utgift eller kostnad.

68 §

Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska, utöver vad som anges i 67 §, minskas med det belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om mottagaren är

Den justerade vinsten för ett moderföretag i en koncern som omfattas av ett system med avdragsgill utdelning ska, utöver vad som anges i 67 §, minskas*, dock lägst till noll,* med det belopp som delas ut som avdragsgill utdelning inom tolv månader efter utgången av det räkenskapsår som den justerade vinsten avser, om mottagaren är

1. en fysisk person som är medlem i ett inköpskooperativ, och utdelningen lämnas i förhållande till gjorda inköp,

2. en fysisk person som har skatterättslig hemvist och är skattskyldig i den stat där moderföretaget hör hemma och dennes ägarintressen ger rätt till högst fem procent av vinst och tillgångar i moderföretaget, eller

3. ett offentligt organ, en myndighetsenhet, en internationell organisation, en ideell organisation eller en pensionsfond som hör hemma i den stat där moderföretaget hör hemma.

8 kap.

1 §[6]

I detta kapitel finns bestämmelser om

– tidsgräns för den tillfälliga förenklingsregeln (2 §),

– villkor för den tillfälliga förenklingsregeln (3–7 a §§),

– särskilda enheter och koncerner (8–11 §§),

– verkan av konstlade arrangemang (11 a–11 g §§),

– undantag från tillämpningen av den tillfälliga förenklingsregeln (12 §),

– övergångsår (13 §),

– förenkling av kompletteringsregeln för tilläggsskatt (14 §),

– en förenklingsregel för koncernenheter utan väsentlig betydelse för koncernredovisningen (15–17 §§),

– en förenklingsregel för utländsk nationell tilläggsskatt (18 §), *och*	– en förenklingsregel för utländsk nationell tilläggsskatt (18 §),
	– förenklingsregler när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem (18 a och 18 b §§), och

– val (19 §).

2 §[7]

Bestämmelserna i 3–13 §§ gäller för koncernenheter i en stat för tid som

– motsvarar de räkenskapsår som gäller för enheternas moderföretag, och

– börjar närmast efter den 31 december 2023 men före den 1 januari *2027*.	– börjar närmast efter den 31 december 2023 men före den 1 januari *2028*.
Bestämmelserna gäller dock inte för räkenskapsår som avslutas efter den 30 juni *2028*.	Bestämmelserna gäller dock inte för räkenskapsår som avslutas efter den 30 juni *2029*.

4 §

Tilläggsskattebeloppet för koncernenheterna i en stat ska anses vara noll, om koncernenheterna tillsammans har en effektiv skattesats som är lika med eller större än den procentsats som anges i tredje stycket. Den effektiva skattesatsen ska motsvara kvoten mellan koncernenheternas skattekostnad enligt andra stycket och deras vinst eller förlust före inkomstskatt enligt koncernens kvalificerade land-för-land-rapport.

[6] Senaste lydelse 2024:1248.

[7] Senaste lydelse 2024:1248.

Nuvarande lydelse	Föreslagen lydelse
Med skattekostnad avses i första stycket sådan skattekostnad som redovisas i koncernens kvalificerade finansiella rapport minskad med skatter som inte är medräknade skatter och medräknade skatter som hänför sig till en osäker skattesituation.	Med skattekostnad avses i första stycket sådan skattekostnad som redovisas i koncernens kvalificerade finansiella rapport minskad med skatter som inte är medräknade skatter och medräknade skatter som hänför sig till en osäker skattesituation. *Skattekostnaden ska även minskas med belopp som återförs i redovisningen och som avser uppskjutna skattefordringar enligt 4 kap. 27 § tredje stycket 1–3.*

Procentsatsen enligt första stycket ska vara
– 15 procent för räkenskapsår som börjar under 2024,
– 16 procent för räkenskapsår som börjar under 2025, och

– 17 procent för räkenskapsår som börjar under 2026.	– 17 procent för räkenskapsår som börjar under 2026 *och 2027*.

9 §

Vid tillämpningen av 3–7 §§ gäller följande för moderföretag som är delägarbeskattade enheter eller enheter som omfattas av ett system med avdragsgill utdelning. Vinsten före bolagsskatt ska minskas i den utsträckning som beloppet är hänförligt till en persons ägarintresse i den delägarbeskattade enheten eller utdelat till följd av en ägarandel som innehas av en sådan person.	Vid tillämpningen av 3–7 §§ gäller följande för moderföretag som är delägarbeskattade enheter eller enheter som omfattas av ett system med avdragsgill utdelning. Vinsten före bolagsskatt ska minskas*, dock lägst till noll,* i den utsträckning som beloppet är hänförligt till en persons ägarintresse i den delägarbeskattade enheten eller utdelat till följd av en ägarandel som innehas av en sådan person.

Med person avses i första stycket en sådan innehavare av ett ägarintresse som bestämmelserna i 7 kap. 12 och 13 §§ avser eller sådana mottagare som bestämmelserna i 67 och 68 §§ avser.

För delägarbeskattade enheter gäller första stycket bara om samtliga ägarintressen i moderföretaget innehas av någon som avses i 7 kap. 12 och 13 §§.

	Förenklingsregler när moderföretag hör hemma i en stat med ett parallellt minimibeskattningssystem
	18 a §
	Tilläggsskattebeloppet enligt huvud- och kompletteringsregeln för tilläggsskatt ska anses vara noll för koncernenheter om moderföretaget hör hemma i en stat med

ett parallellt system för minimibeskattning av inhemsk och utländsk inkomst som är godkänt av OECD/G20 Inclusive Framework on BEPS.

Det som sägs om koncernenheter i första stycket gäller också för samriskföretag och dotterföretag till samriskföretag som tillhör en koncern vars moderföretag uppfyller villkoret i första stycket. Det gäller dock bara för den koncernens andel av tilläggsskattebeloppet.

18 b §

Tilläggsskattebeloppet enligt kompletteringsregeln för tilläggsskatt ska anses vara noll för den stat där moderföretaget hör hemma om den staten har ett parallellt system för minimibeskattning av inhemsk inkomst som är godkänt av OECD/G20 Inclusive Framework on BEPS.

---

1. Denna lag träder i kraft den 1 januari 2027.
2. Lagen tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2026 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2026.
3. Den rapporterande enheten får tillämpa samtliga eller vissa av bestämmelserna första gången för beskattningsår som börjar närmast efter den 31 december 2024 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2024. Bestämmelserna i 4 kap. 17 a–17 d §§, 8 kap. 18 a och 18 b §§ får dock tillämpas första gången för beskattningsår som börjar närmast efter den 31 december 2025 eller, i fråga om svenska handelsbolag, räkenskapsår som börjar närmast efter den 31 december 2025.

Bilaga 7

Förteckning över remissinstanserna

Bokföringsnämnden, Fastighetsägarna Sverige, FAR, Finansinspektionen Finansbolagens Förening, Fondbolagens förening, Förvaltningsrätten i Stockholm, Juridiska fakultetsnämnden vid Stockholms universitet, Juridiska fakultetsnämnden vid Uppsala universitet, Kammarrätten i Göteborg, Näringslivets Regelnämnd, Näringslivets Skattedelegation, Regelrådet, Skatteverket, Svensk Försäkring, Svensk Handel, Svensk Sjöfart, Svensk Värdepappersmarknad, Svenska Bankföreningen, Swedish Private Equity & Venture Capital Association (SVCA), Sveriges advokatsamfund, Svenskt Näringsliv.