

OECD/G20 Base Erosion and Profit Shifting Project

# **Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)**

Inclusive Framework on BEPS



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# Introduction

## April Public Consultation

1. A public consultation on the GloBE Implementation Framework was held in April 2022. At that public consultation, the Inclusive Framework invited input from stakeholders on the development of simplifications and safe harbours. In response to the request for input, stakeholders raised general concerns about the complexity of some of the calculations and adjustments to financial income and taxes required under the GloBE Rules. In particular, they suggested that the GloBE Rules could impose a disproportionate compliance burden on certain MNEs in respect of their operations in high-tax and other low-risk jurisdictions. Some noted that these issues were likely to be particularly acute in the initial years in which the rules were being introduced as MNEs and tax administrations were coming to terms with the operation of the rules. Accordingly, stakeholders called on the Inclusive Framework to develop a set of safe harbours, which would relieve MNEs from performing full GloBE calculations for low-risk jurisdictions during this initial period. Stakeholders also emphasized that guidance on safe harbours should be developed in time for jurisdictions to incorporate safe harbour requirements into their implementing legislation and filing requirements and for MNEs to build the necessary systems to collect the appropriate data needed for compliance. Stakeholders noted that both safe harbours and simplifications would play an important role in reducing compliance and administration costs and improving tax certainty for MNEs.

## Agreed Safe Harbours

2. Building on the input from this public consultation, the Inclusive Framework has agreed on the design of a transitional safe harbour and a regulatory framework for the development of a potential permanent safe harbour as well as a common understanding for a transitional penalty relief regime.

3. The **Transitional CbCR Safe Harbour** described in Chapter 1 is designed as a short-term measure that would effectively exclude an MNE's operations in certain lower-risk jurisdictions from the scope of GloBE in the initial years, thereby providing relief to MNEs in respect of their GloBE compliance obligations as they implement the rules. The safe harbour would allow an MNE to avoid undertaking detailed GloBE calculations in respect of a jurisdiction if it can demonstrate, based on its qualifying CbCR and financial accounting data, that in that jurisdiction it has revenue and income below the de minimis threshold (the de minimis test), an ETR that equals or exceeds an agreed rate (the ETR test), or no excess profits after excluding routine profits (the routine profits test). The Transitional CbCR Safe Harbour uses Revenue and Profit (Loss) before Income Tax from an MNE's CbC Report and income tax expense from an MNE's financial accounts (after eliminating taxes which are not Covered Taxes and Uncertain Tax Positions) to determine whether the MNE's operations in a jurisdiction meet these tests. MNEs would still be required to perform a full Substance-based Income Exclusion (SBIE) calculation to meet the routine profits test.

4. Chapter 2 sets out a framework for the development of a permanent safe harbour that would reduce the number of computations and adjustments an MNE is required to make under the GloBE Rules

or allow the MNE to undertake alternative calculations to demonstrate that no GloBE tax liability arises with respect to a jurisdiction. These **Simplified Calculations Safe Harbours** would permit the MNE to rely on simplified income, revenue, and tax calculations in determining whether it meets the de minimis, routine profits or ETR test under the GloBE Rules. The simplified calculations permitted under this safe harbour would be set out in Administrative Guidance as agreed and issued by the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) on an ongoing basis. Chapter 2 provides an example of a Simplified Calculations Safe Harbour that applies to the treatment of **Non-Material Constituent Entities**.

5. Chapter 3 describes the **Transitional Penalty Relief Regime** which is a common understanding that requires a jurisdiction to give careful consideration as to the appropriateness of applying penalties or sanctions where an MNE has taken reasonable measures to ensure the correct application of the GloBE Rules. The proposal is intended to provide a “soft-landing” in the introduction of the GloBE Rules, recognizing that MNEs are more likely to make mistakes in the initial years of the application of the rules.

6. The following chapters set out the criteria that Constituent Entities located in a jurisdiction must meet to be eligible for a GloBE Safe Harbour. Where the relevant tax administration of an implementing jurisdiction considers that there are specific facts and circumstances that may have materially affected the eligibility of the Constituent Entities for the safe harbour, it could challenge the eligibility of such Constituent Entities under Article 8.2.2. For example, the relevant tax administration may do so where it considers that the information reported in relation to the Transitional CbCR Safe Harbour does not accurately reflect the information in the MNE’s Qualified Financial Statements, and further guidance may be developed on the circumstances under which Article 8.2.2 (b) may be applied to ensure the reliability and consistency of the Qualified CbC Reports for purposes of that safe harbour.

## Future work

7. While this guidance sets out a transitional safe harbour and a framework for a permanent safe harbour, there may be further opportunities for simplification of the rules, and the Inclusive Framework will continue to explore whether other safe harbours and simplifications can be developed at a future time to supplement those described in this guidance.

8. The work of the Inclusive Framework in developing safe harbours has also included work on a **Qualified Domestic Minimum Top-up Tax (QDMTT) safe harbour** that would provide compliance simplifications for MNEs operating in jurisdictions that have adopted a QDMTT. A QDMTT Safe Harbour would eliminate the need for an MNE to perform an additional GloBE calculation in addition to the QDMTT calculation required under local law. The Inclusive Framework will consider such a Safe Harbour as part of the Administrative Guidance on the QDMTT.

# 1 Transitional CbCR Safe Harbour

## Transitional CbCR Safe Harbour

1. During the Transition Period, the Top-up Tax in a jurisdiction for a Fiscal Year shall be deemed to be zero where:

- a. the MNE Group reports Total Revenue of less than EUR 10 million and Profit (Loss) before Income Tax of less than EUR 1 million in such jurisdiction on its Qualified CbC Report for the Fiscal Year; or
- b. the MNE Group has a Simplified ETR that is equal to or greater than the Transition Rate in such jurisdiction for the Fiscal Year; or
- c. the MNE Group's Profit (Loss) before Income Tax in such jurisdiction is equal to or less than the Substance-based Income Exclusion amount, for constituent entities resident in that jurisdiction under the CbCR, as calculated under the GloBE Rules.

2. The terms set out above have the following definitions:

**Simplified Covered Taxes** is a jurisdiction's income tax expense as reported on the MNE Group's Qualified Financial Statements, after eliminating any taxes that are not Covered Taxes and uncertain tax positions reported in the MNE Group's Qualified Financial Statements.

**Simplified ETR** is calculated by dividing the jurisdiction's Simplified Covered Taxes by its Profit (Loss) before Income Tax as reported on the MNE Group's Qualified CbC Report.

**Transition Period** covers all of the Fiscal Years beginning on or before 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028.

**Transition Rate** means:

- (a) 15% for Fiscal Years beginning in 2023 and 2024;
- (b) 16% for Fiscal Years beginning in 2025; and
- (c) 17% for Fiscal Years beginning in 2026.

## Overview

9. The safe harbour described in this Chapter is designed to provide transitional relief for MNE Groups in the initial years during which the GloBE Rules come into effect. This safe harbour seeks to ameliorate the immediate compliance difficulties that MNEs will face in building systems to collect the data needed for undertaking full GloBE calculations by limiting the circumstances in which an MNE will be

required to undertake such calculations to a smaller number of higher-risk jurisdictions. The design of the safe harbour is focused on bright-line rules that use readily available and easily verifiable data rather than seeking to achieve a high degree of precision by undertaking the full GloBE calculations for a jurisdiction. The Transitional CbCR Safe Harbour operates through the use of simplified jurisdictional revenue and income information contained in an MNE's Qualified CbC Report, and jurisdictional tax information contained in an MNE's Qualified Financial Statements. It applies to jurisdictions in which Constituent Entities of the MNE are located ("Tested Jurisdiction"). The operation of the safe harbour works as follows.

The MNE Group's Total Revenue and Profit (Loss) before Income Tax for each jurisdiction is extracted directly from the Qualified CbC Report. If a Tested Jurisdiction produces revenue and income that meet the de minimis test, then the Tested Jurisdiction qualifies for the safe harbour.

The Tested Jurisdiction can also qualify for the safe harbour if its ETR is equal to or greater than the Transition Rate. The ETR is calculated using Profit (Loss) before Income Tax data from CbCR and the income tax expense reflected in the Qualified Financial Statements. The income tax expense used for the ETR test therefore includes deferred items and does not require any adjustments under GloBE (such as the allocation of CFC or Main Entity taxes), other than the removal of taxes which are not Covered Taxes and Uncertain Tax Positions.

The Tested Jurisdiction can qualify for the Transitional CbCR Safe Harbour if it meets the routine profits test. Under this test, an MNE would calculate the jurisdiction's SBIE in accordance with the GloBE Rules (including the Commentary and any Agreed Administrative Guidance) and compare that to the jurisdiction's Profit (Loss) before Income Tax as reported in the MNE's Qualified CbC Report. If a Tested Jurisdiction's SBIE amount is equal to or exceeds its Profit (Loss) before Income Tax, it means the Tested Jurisdiction is less likely to have Excess Profits on which Top-up Tax could be applied, and the Tested Jurisdiction would qualify for the safe harbour.

10. The Transitional CbCR Safe Harbour applies only where the MNE Group prepares its CbC Report using Qualified Financial Statements (discussed further below). Furthermore, the safe harbour does not apply in certain cases identified further in this chapter where the CbC Report as a whole does not provide a reliable indication of the income of the MNE Group. For example, the safe harbour does not apply where the CbC Report does not include all of the information of a Multi-Parented MNE Group. The safe harbour is also limited to a transitional period that applies to Fiscal Years beginning on or before 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028.

11. If an MNE Group has not applied the Transitional CbCR Safe Harbour with respect to a jurisdiction in a Fiscal Year in which the MNE Group is subject to the GloBE Rules, the MNE Group cannot qualify for that safe harbour for that jurisdiction in a subsequent year. Further detail on the operation of the Transitional Period, including the application of the transition rules under Article 9.1, is set out below.

12. To access the safe harbour, the MNE Group would need to comply with the filing requirements in the GloBE Information Return that are specific to the Transitional CbCR Safe Harbour. For example, a Tested Jurisdiction that would like to apply the routine profits safe harbour would need to include, in its GloBE Information Return, the same information for its SBIE calculation that it would otherwise be required to include if it performed a full SBIE calculation under Article 5.3 of the GloBE Rules.

13. The Transitional CbCR Safe Harbour uses CbCR and financial account information as proxies for determining whether Tested Jurisdictions are likely to have an ETR that is at or above the minimum rate, income and revenue that is less than the de minimis threshold, or income that is equal or less than the SBIE amount. Given that they are proxies, the CbCR or financial accounting information may include extraneous items that are out of scope from the GloBE Rules (for example, the income of certain Excluded Entities). However, once it has been determined that a Tested Jurisdiction meets the ETR test, de minimis test or routine profits test, then any Constituent Entity that is located in the qualifying Tested Jurisdiction will qualify for the safe harbour in accordance with Article 8.2.

## Source of information

### Source of Information

1. The terms set out below have the following definitions:

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

**Total Revenue** means an MNE Group's Total Revenues in a jurisdiction as reported on its Qualified CbC Report.

**Profit (Loss) before Income Tax** means an MNE Group's Profit (Loss) before Income Tax in a jurisdiction as reported on its Qualified CbC Report.

**Qualified Financial Statements** means:

- a) the accounts used to prepare the Consolidated Financial Statements of the UPE (to mirror the requirement under Article 3.1.2);
- b) separate financial statements of each Constituent Entity provided they are prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard if the information contained in such statements is maintained based on that accounting standard and it is reliable; or
- c) in the case of a Constituent Entity that is not included in an MNE Group's Consolidated Financial Statements on a line-by-line basis solely due to size or materiality grounds, the financial accounts of that Constituent Entity that are used for preparation of the MNE Group's CbC Report.

### ***GloBE Income (Loss) and Revenue***

14. The Transitional CbCR Safe Harbour relies on CbCR data as the basis for calculating an MNE's revenue and income on a jurisdictional basis. Because the GloBE Rules and the rules for CbCR have a similar scope, it is expected that MNEs that are subject to the GloBE Rules will generally already be collecting CbCR information. Furthermore, the rules for identifying Constituent Entities and allocating income to a jurisdiction under CbCR are broadly in line with those in the GloBE Rules. On this basis, the CbCR serves as a reasonable proxy for excluding these low-risk jurisdictions from the information collection and compliance requirements of the GloBE Rules. Allowing a CbCR-based safe harbour is expected to provide MNEs with significant compliance savings and a welcome degree of certainty during the Transition Period.

15. The Transitional CbCR Safe Harbour uses the CbC Report as a risk assessment tool to determine whether a top-up tax liability is likely to arise in accordance with the GloBE Rules. The CbC Report must not be used to compute a GloBE tax liability. If the conditions of the safe harbour are not met, then the general rules apply, and any potential liability to Top-up Tax must be computed under the ordinary GloBE Rules. This use of the CbC Report is consistent with the Final Report on Action 13.

#### *Qualified Financial Statements*

16. Concerns as to the variability in the quality of the underlying data used to prepare a CbCR may be addressed by limiting an MNE's qualification for the safe harbour to those cases where the MNE prepares a Qualified CbC Report. A Qualified CbC Report is one prepared using Qualified Financial Statements.



17. Qualified Financial Statements are defined as the accounts used to prepare the Consolidated Financial Statements of the UPE (which mirror the requirement under Article 3.1.2), or separate financial statements of each Constituent Entity provided they are prepared in accordance with either an Acceptable Financial Accounting Standard, or if the information contained in such statements is reliable, another Authorised Financial Accounting Standard. The latter case is similar to the rule provided in Article 3.1.3 of the Model Rules except that it does not require to test whether there are permanent differences of EUR 1 million that arise from the application of the standard.

18. MNE Groups may have Constituent Entities which are included in the scope of GloBE but are not included in an MNE Group's Consolidated Financial Statements on a line-by-line basis solely due to size and materiality grounds (see Article 1.2.2 of the GloBE Rules). If the Constituent Entities are not consolidated and do not have separate financial statements prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard, they will not meet the requirement set forth under paragraph a or b of the definition of Qualified Financial Statements. In this case, paragraph c of the definition of Qualified Financial Statements allows the MNE Group to use the same financial accounts of such Constituent Entities that are used to prepare the MNE Group's CbC Report.

19. Notwithstanding the requirement to use Qualified Financial Statements, it is recognized that there may be some significant differences between the determination of jurisdictional revenue and profit under CbCR and GloBE. In designing this safe harbour, however, Inclusive Framework members have balanced these concerns against the need for simplicity and the preference for safe harbours that use bright line rules and are based on existing data. Inclusive Framework members consider these factors to be particularly important in the initial years of implementation, when the GloBE Rules are being introduced and MNEs and tax administrations are coming to terms with implementation and building the requisite data collection and reporting systems. Furthermore, many of the rules for calculating income in CbCR are broadly in line with those in the GloBE Rules. Where differences exist, any adjustment to align outcomes would generally be one that could go both ways, meaning that such differences do not give rise to a systemic risk that undermines the integrity of the GloBE Rules. Reliability risks are also mitigated due to the transitional nature of the safe harbour and a buffer on ETR.

### **Covered Taxes**

20. As described previously, income is extracted from the Profit (Loss) before Income Tax line of a Qualified CbC Report. Although Income Tax Paid (on Cash Basis) and Income Tax Accrued (Current Year) are both reported in an MNE's CbCR, neither of these measures are considered reliable for the purposes of the Transitional CbCR Safe Harbour. The measure of taxes the Inclusive Framework has chosen for the purposes of the safe harbour is income tax expense as recorded in a Constituent Entity's financial accounts, provided that such Constituent Entity's income is included in the CbC Report but does not include taxes that are not Covered Taxes as described in Article 4.2.2. Income tax expense includes all below-the-line tax expenses (e.g., the zakat). Using income tax expense from Qualified Financial Statements is not necessarily adding another source of data because as described above, the MNE would already have used this source of data to prepare its Qualified CbC Report.

21. 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.

22. Uncertain tax positions can be material and can overstate a jurisdiction's ETR in comparison to GloBE. Removing uncertain tax positions from the income tax expense does not increase the compliance

burden of the MNE Group since the income tax expense and uncertain tax positions are recorded in distinct line items in an MNE Group's trial balances that are used to prepare its Qualified Financial Statement and accompanying notes. Income tax expense before adjusting for uncertain tax positions is also mathematically equivalent to Income Tax Accrued (Current Year) plus deferred tax expenses<sup>1</sup>, and again both items are readily available in an MNE's Qualified CbC Report and Qualified Financial Statements.

## Applicable tests

23. In order to qualify for the Transitional CbCR Safe Harbour, a Tested Jurisdiction needs to pass at least one of the following tests: (a) de minimis test; (b) simplified ETR test; or (c) routine profits test. This section describes the operation of these tests.

### ***De minimis test***

24. The *De minimis* test is similar to the *De Minimis* Exclusion in Article 5.5 of the GloBE Rules, which applies if:

the Average GloBE Revenue of a jurisdiction is less than EUR 10 million; and

the Average GloBE Income is less than EUR 1 million or the jurisdiction has an Average GloBE Loss.

25. In the case of the Transitional CbCR Safe Harbour, the test works in the same way except that it only considers Total Revenue and Profit (Loss) before Income Tax of the current year as reflected in the CbC Report. This test removes the need to calculate CbCR Revenue and Income over multiple years and would extend the benefit of the safe harbour to those MNEs that have previously not been preparing their financial accounts based on standards set forth in Article 3.1 of the GloBE Rules but have switched to meet such standards. Note that the condition in subparagraph (b) is met when the Tested Jurisdiction has a loss.

26. An exclusion to the de minimis test applies in the case of Entities that are Constituent Entities by virtue of Article 1.2.2 (b) (i.e., Entities held for sale). Where the Constituent Entities of an MNE Group in a jurisdiction include an Entity held for sale, that jurisdiction cannot rely on the de minimis test where the sum of the total Revenue of those Entities when combined with the total CbCR Revenue in that jurisdiction (as reported in the MNE's Qualified CbC Report) equals or exceeds EUR 10 million. This rule operates as an exclusion from the de minimis test (rather than an adjustment) that is intended to prevent an MNE Group from relying on the de minimis test when it holds Entities in that jurisdiction for sale that have revenues that are large enough to have prevented the MNE from relying on the de minimis exclusion if those Entities had been included in the consolidation.

### ***Simplified ETR test***

27. The Simplified ETR test mirrors the mechanics of the GloBE Rules. The MNE Group would need to compute the ETR of a jurisdiction by dividing the jurisdiction's Simplified Covered Taxes by the jurisdiction's Profit (Loss) before Income Tax as reported on the MNE's Qualified CbC Report. The jurisdiction's Simplified Covered Taxes is the aggregate Simplified Covered Taxes of the Constituent Entities resident in that jurisdiction for CbCR purposes.

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<sup>1</sup> *Pre-UTP income tax expense* (from Qualified Financial Statements) is essentially *Income Tax Accrued* (from CbCR) plus deferred tax expense. Most MNEs that prepare CbCR can easily add deferred tax expense, which is a line item on their Qualified Financial Statements, to *Income Tax Accrued* (from CbCR) to obtain *Pre-UTP income tax expense*.

28. If the ETR of the jurisdiction is equal to or greater than the Transition Rate, then the Tested Jurisdiction would qualify for the safe harbour. If the ETR of the jurisdiction is below the Transition Rate, the Tested Jurisdiction would not qualify for the safe harbour and the jurisdictional ETR is disregarded for purposes of the provisions of the GloBE Rules. For example, if the ETR of a jurisdiction is 10% based on the Transitional CbCR Safe Harbour calculations, then such percentage cannot be used for purposes of determining the Top-up Tax Percentage in accordance with Article 5.2.1 of the Model Rules. The MNE Group would need to undertake the GloBE calculations or benefit from the simplified calculations under the Permanent Safe Harbour. The Transition Rate is different for each of the Fiscal Years in which the Transition CbCR Safe Harbour applies. 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.

### ***Routine profits test***

29. The routine profits test compares a Tested Jurisdiction's SBIE amount under the GloBE Rules to such jurisdiction's Profit (Loss) before Income Tax as reported in such MNE's Qualified CbC Report. If a jurisdiction's SBIE amount equals or exceeds its Profit (Loss) before Income Tax, it means that it is likely that little (or no) excess profits arise in such jurisdiction, and the Tested Jurisdiction would qualify for the safe harbour. For purpose of the Transitional CbCR Safe Harbour, the SBIE shall be computed in accordance with Article 5.3 of the GloBE Rules. The SBIE amount computed for purposes of the routine profit test does not take into account the payroll and tangible assets of Entities that are not Constituent Entities under the CbCR (e.g., Entities held for Sale) or under GloBE (e.g., Excluded Entities). If the Constituent Entity is located in different jurisdictions under CbCR and GloBE, its payroll and tangible assets are excluded from the SBIE amount for the routine profit test of both jurisdictions.

30. A Tested Jurisdiction with a loss or zero profits will not have income that exceeds the routine profits amount, and therefore will always meet the routine profits test. It will not be necessary for the MNE to calculate the jurisdiction's SBIE in these circumstances. This outcome mirrors the outcome under Article 5.1 of the GloBE Rules, where an ETR computation is not necessary if a Tested Jurisdiction does not have any Net GloBE Income.

31. This test would benefit MNE Groups that utilize significant labour or tangible assets by identifying jurisdictions with ample substance compared to their profit and excluding such MNE Groups from having to perform full GloBE calculations for such jurisdictions.

### **Transition Period**

32. The purpose of the Transition Period is to provide relief to MNE Groups in respect of their GloBE compliance obligations during the initial years that the rules are being implemented. In practice, it is expected that MNE Groups with a Fiscal Year that begins in 2024 will be subject to the IIR in that Fiscal Year and the UTPR one year later in the Fiscal Year beginning in 2025. This means that for most MNE Groups, the Transition Period will provide three Fiscal Years of compliance relief for the IIR and 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 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028). At the end of the Transition Period, the safe harbour would expire and no longer be available. The Transitional CbCR Safe Harbour is available only for a set period of time (as opposed to being available for X years after a jurisdiction implements or an MNE becomes subject to the GloBE Rules). This facilitates a coordinated application of the GloBE Rules between jurisdictions because MNEs would be subject to the same Transition Period regardless of when a jurisdiction introduces the rules.

33. The policy intent of the Transitional CbCR Safe Harbour is to reduce the compliance burden on MNEs during the Transition Period. The safe harbour achieves this by deeming the top-up tax to zero for

a Fiscal Year for those jurisdictions that are treated as low-risk in accordance with the terms of the safe harbour. The benefit and policy intent of the Transitional CbCR Safe Harbour would, however, be undermined if the MNE was nevertheless required to perform the full set of GloBE calculations in that jurisdiction for other purposes under the GloBE Rules. An MNE would secure little in the way of compliance benefits from the Transitional CbCR Safe Harbour if it was excluded from the need to perform an ETR calculation in the current year, but it was required to perform the same calculation in order to accurately calculate its GloBE tax liability in a subsequent year. Therefore, during the Fiscal Years in which an MNE qualifies for and applies the Transitional CbCR Safe Harbour in a low-risk jurisdiction, the implementing jurisdiction should apply the GloBE Rules in such a way that the MNE will not be required to undertake a detailed ETR calculation for that jurisdiction until the first Fiscal Year that the Transitional CbCR Safe Harbour no longer applies. This approach will have the following impact on the application of the GloBE Rules:

no Top-up Taxes arise in or with respect to a Fiscal Year in which a Tested Jurisdiction benefits from the Transitional CbCR Safe Harbour, including Additional Current Top-up Taxes (e.g., as a result of applying Article 4.1.5 or from recalculating Top-up Taxes in a subsequent year when the GloBE Rules apply to such Tested Jurisdiction);

the Transition Year<sup>2</sup> referred to in Article 9.1.1 would be the first Fiscal Year in which the relevant Tested jurisdiction no longer qualifies for or applies the Transitional CbCR Safe Harbour;

the transition rule set out in Article 9.1.2 shall continue to apply to the Constituent Entities of that jurisdiction during the Fiscal Years in which a Tested Jurisdiction benefits from the Transitional CbCR Safe Harbour;

the Transition Year referred to in Article 9.1.3 would be the first Fiscal Year in which the Tested jurisdiction no longer qualifies for or applies the Transitional CbCR Safe Harbour, unless the jurisdiction where the disposing Entity is located comes within the scope of the GloBE Rules<sup>3</sup> or the disposal of the assets creates a taxable gain, as determined by Agreed Administrative Guidance; and

the GloBE Loss Election with respect to a Tested Jurisdiction can be delayed until that Tested Jurisdiction ceases to qualify for or apply the Transitional CbCR Safe Harbour (i.e., the election has to be made in the first GloBE Information Return that includes the general calculations of the jurisdiction).

34. An MNE that qualifies for the Transitional CbCR Safe Harbour on a jurisdictional basis is still subject to the GloBE Rules and the safe harbour does not discharge the MNE Group from complying with group-wide GloBE requirements. For example, an MNE Group would still need to prepare and file its GloBE Information Return, including the information concerning the application of the Transitional CbCR Safe Harbour in a jurisdiction where applicable. The group-wide transitional relief periods described in Article

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<sup>2</sup> Transition Year, as defined in the GloBE Rules, applies on a jurisdiction-by-jurisdiction basis. For example, if an MNE Group operates in two jurisdictions and only one Tested Jurisdiction benefits from the Transitional CbCR Safe Harbour, then the Transition Year referred to in this subparagraph would apply to only the qualifying Tested Jurisdiction. In the case of an Investment Entity that benefits from the Transitional CbCR Safe Harbour, the Transition Year is the first Fiscal Year in which the safe harbour does not apply to that Investment Entity. Also, for the purpose of the transition rules, the jurisdiction of a JV or JV Subsidiary is treated as a separate jurisdiction from that of other Constituent Entities and other JV Groups.

<sup>3</sup> A jurisdiction comes within the scope of the GloBE Rules when that jurisdiction is subject to a Qualified IIR, a Qualified UTPR or a QDMTT.

9.2 to 9.4 of the GloBE Rules would not be extended as a result of certain Tested Jurisdictions qualifying for the Transitional CbCR Safe Harbour.

35. If an MNE Group has not applied the Transitional CbCR Safe Harbour with respect to a jurisdiction in a Fiscal Year in which it is subject to the GloBE Rules, the MNE Group cannot qualify for that safe harbour for that jurisdiction in a subsequent year (“once out, always out” approach).

36. This once out, always out approach does not apply when the MNE Group did not have Constituent Entities located in a jurisdiction in a previous Fiscal Year. For instance, an MNE Group is subject to the GloBE Rules in year 2023. In that year, the MNE Group has no Constituent Entities located in Jurisdiction X. In year 2024, it incorporates a Constituent Entity in that jurisdiction. In this case, the MNE Group could still access the Transitional CbCR Safe Harbour with respect to that jurisdiction in year 2024.

37. If, upon audit, it is determined that the taxpayer did not apply the Transitional CbCR Safe Harbour correctly, and a jurisdiction should not have benefited from the Transitional CbCR Safe Harbour for a particular Fiscal Year, the GloBE Rules would apply fully for that and any subsequent Fiscal Year.

## Treatment of Certain Entities and Groups

### Special Rule for Joint Ventures

1. The provisions of the Transitional CbCR Safe Harbour shall apply to the Joint Venture and JV Subsidiaries as if they were Constituent Entities of a separate MNE Group, except that the GloBE Income or Loss and Total Revenue would be the ones reported in Qualified Financial Statements.

### Special Rule for Tax Neutral UPEs

2. The Transitional CbCR Safe Harbour shall not apply in the UPE jurisdiction where the UPE is a Flow-through Entity unless all the Ownership Interests in the UPE are held by Qualified Persons.
3. Subject to paragraph 2, where a UPE is a Flow-through Entity or subject to Deductible Dividend Regime, the Profit (Loss) before Income Tax (and any associated taxes) of the UPE shall be reduced to the extent where such amount is attributable to or distributed as a result of an Ownership Interest held by a Qualified Person.
4. For purposes of paragraphs 2 and 3, a Qualified Person means:
  - (a) in respect of a UPE that is a Flow-through Entity, a holder described in Article 7.1.1 (a) to (c) of the Model Rules; and
  - (b) in respect of a UPE that is subject to Deductible Dividend Regime, a holder described in Article 7.2.1 (a) to (c) of the Model Rules.

### Special Rules for Investment Entities and their Constituent Entity-owners

5. Where an Investment Entity is resident in a jurisdiction for CbCR purposes (the Investment Entity Jurisdiction):

- (a) subject to paragraph 6 below, the Investment Entity is required to make a separate GloBE calculation under Articles 7.4 – 7.6;
  - (b) the Investment Entity Jurisdiction and the jurisdiction of residence of any Constituent Entity Owner may continue to benefit from the Transitional CbCR Safe Harbour; and
  - (c) the Profit (Loss) before Income Tax and Total Revenue of the Investment Entity (and any associated taxes) shall be reflected only in the jurisdictions of its direct Constituent Entity-owners in proportion to their Ownership Interest.
6. The Investment Entity is not required to make a separate GloBE calculation where an election has not been made under Article 7.5 or 7.6 and all the Constituent Entity Owners are resident in the Investment Entity Jurisdiction.
7. For the purposes of paragraphs 5 and 6, an Investment Entity includes an Insurance Investment Entity.

### Special Rule for Net Unrealised Fair Value Loss

8. A Net Unrealised Fair Value Loss shall be excluded from Profit (Loss) Before Income Tax if that loss exceeds EUR 50 million in a jurisdiction.
9. A Net Unrealised Fair Value Loss means the sum of all losses, as reduced by any gains, which arise from changes in fair value of Ownership Interests (except for Portfolio Shareholdings).

### Exclusions

10. The following Constituent Entities, MNE Groups or jurisdictions are excluded from the Transitional CbCR Safe Harbour:
- (a) Stateless Constituent Entities;
  - (b) Multi-parented MNE Groups where a single Qualified CbC Report does not include the information of the combined groups;
  - (c) Jurisdictions with Constituent Entities that have elected to be subject to Eligible Distribution Tax Systems under Article 7.3; and
  - (d) Jurisdictions that have not benefited from the Transitional CbCR Safe Harbour in a previous Fiscal Year in which the MNE Group is subject to the GloBE Rules, unless the MNE Group did not have any Constituent Entities in that jurisdiction in the previous year.

38. Whether a Constituent Entity qualifies for the Transitional CbCR Safe Harbour depends on in which jurisdiction it is located under the GloBE Rules. For example, if a Constituent Entity is resident in a qualifying Tested Jurisdiction under the CbC rules, but that Constituent Entity is located in a non-qualifying Tested Jurisdiction under the GloBE Rules, that Constituent Entity would not benefit from the Transitional CbCR Safe Harbour.

39. In addition, certain Entities are subject to special GloBE computations. The sections below describe the GloBE and CbCR treatment of many of these Entities, as well as their treatment under the Transitional CbCR Safe Harbour.

## **Entities or sub-groups that are excluded from CbCR**

### *Joint Ventures and JV Subsidiaries (Article 6.4).*

40. In CbCR, Joint Ventures and JV Subsidiaries are not constituent entities of an MNE group because they are reported under the equity method. Under the GloBE Rules, these Entities are treated as Constituent Entities and have a special treatment because their GloBE Income or Loss and Adjusted Covered Taxes is not blended with the Constituent Entities of the main MNE Group. This means that if a Tested Jurisdiction qualifies for the Transitional CbCR Safe Harbour, extending the benefit to Joint Ventures and JV Subsidiaries would be inappropriate because the computations were made not taking into account such Entities.

41. However, disallowing access to JVs and JVs Subsidiaries from the Transitional CbCR Safe Harbour would seem counter intuitive given the additional difficulties an MNE Group may have in applying the GloBE Rules to these Entities owing to the fact that their income, expenses, assets, liabilities and cash flows are not consolidated on a line-by-line basis. Therefore, an additional measure is needed to allow JVs and JV Subsidiaries access the Transitional CbCR Safe Harbour.

42. Paragraph 1 of the box above is a special rule that allows Joint Ventures and JV Subsidiaries to access the Transitional CbCR Safe Harbour. This rule allows the same rules for the safe harbour to apply to the JV and JV Subsidiary except that, instead of computing the GloBE Income or Loss based on CbC data, the MNE Group is required to take such information from Qualified Financial Statement data. In other respects, the requirements of the safe harbour would remain the same. For example, Covered Taxes will be equal to the Simplified Covered Taxes that derives from Qualified Financial Statement data. Furthermore, if the JV is a Tax Transparent Entity or subject to a Deductible Dividend Regime (e.g., UPE of a JV Group or a standalone JV), the rules referred below for Flow-through UPEs or UPEs subject to Dividend Distribution Regimes would apply.

43. The safe harbour computations are the same as the general GloBE Rules in the sense that these Entities have to be treated as if they were members of a separate MNE Group. For example, if two Constituent Entities and a Joint Venture are located in the same jurisdiction, then two separate safe harbour computations have to be undertaken. One for the Constituent Entities and the other for the Joint Venture. This includes the computation of the de minimis test where JVs in the jurisdiction would apply a de minimis test and CEs in the same jurisdiction would apply a separate de minimis test.

### *Entities held for sale (Articles 1.2.2(b) & 1.3.1(a))*

44. GloBE is broader than CbCR because it also applies to Group Entities that have been excluded from the Consolidated Financial Statements on the grounds that they are held for sale (see Articles 1.2.2(b) and 1.3.1(a)). Therefore, the income and taxes of Entities held for sale will not be taken into account when determining jurisdictional income or ETR under the safe harbour. Where a Tested Jurisdiction qualifies for the Transitional CbCR Safe Harbour, the question that arises is whether the Constituent Entities that are held for sale should also benefit from that safe harbour notwithstanding the fact that their income and taxes are not included in the CbC Report.

45. The policy rationale that points towards the use of CbC Reports and Financial Statements as a basis for calculating the thresholds under the Transitional CbCR Safe Harbour also points to the conclusion that Entities which are held for sale should qualify for the safe harbour where they are located in a GloBE Safe harbour jurisdiction. These Entities could be either profitable or loss-making or located in high tax or low tax jurisdictions. Therefore, excluding them under the Transitional CbCR Safe Harbour does not necessarily give rise to any systemic risk to the integrity of the GloBE Rules. In the case of Entities with low tax profits, any risk needs to be balanced against the policy objective of providing transitional relief to MNEs to mitigate compliance burdens in the initial years that the rules are being introduced. These

challenges are particularly acute in the context of Entities held for sale given that they are not included in the consolidation.

### ***Entities and subgroups that qualify for special treatment under GloBE***

#### *Stateless Constituent Entities*

46. Stateless Constituent Entities are subject to separate ETR calculations under GloBE because they are not located in a jurisdiction. For example, a Reverse Hybrid Entity is subject to separate GloBE calculations because it is not located in a jurisdiction. These Entities are excluded from the Transitional CbCR Safe Harbour.

47. This rule has no practical effect for Tax Transparent Entities whose income is 100% allocated to Permanent Establishments or to their Constituent Entity-owners. This is because such Tax Transparent Entities would have no GloBE Income or Loss to be tested under the GloBE Rules.

#### *Minority-Owned Constituent Entities*

48. Minority-Owned Constituent Entities (MOCEs) are subject to a separate jurisdictional ETR calculation in accordance with Article 5.6. This means that under GloBE, the MOCEs are separated from rest of the Constituent Entities located in the same jurisdiction for purposes of the ETR calculation. In other cases, the MOCEs located in a jurisdiction could even be separated into different groups if they belong to separate Minority-owned Subgroups.

49. MOCEs are constituent entities under CbCR because they are fully consolidated and are reported in the jurisdiction where they have their tax residence. However, the concept of a MOCE does not exist in CbCR rules and therefore, the difference between CbCR and GloBE is that in GloBE, “normal” Constituent Entities and MOCEs located in the same jurisdiction are separated into two or more groups for purposes of the ETR calculation. Consistent with the general approach taken to Entities which are held for sale, the existence of a MOCE in a jurisdiction should not impact the eligibility of an MNE’s operations in a jurisdiction for the Transitional CbCR Safe Harbour. As with Entities held for sale, the MOCE could be either profitable or loss-making or high tax or low tax. Therefore, including them within the calculation under the Transitional CbCR Safe Harbour does not necessarily give rise to any systemic risk to the integrity of the GloBE Rules. While the income and taxes of the MOCE will be blended with that of other Group Entities under the Transitional CbCR Safe Harbour, any risk needs to be balanced against the policy objective of providing transitional relief to MNEs in order to mitigate compliance burdens in the initial years that the rules are being introduced. Therefore, MOCEs are not subject to a special treatment under the Transitional CbCR Safe Harbour, which means that if they are located in a jurisdiction that meet the tests, then it should also benefit from the safe harbour.

#### *Multi-parented MNE Groups (Article 6.5)*

50. Multi-Parented MNE Groups are two or more Groups that have been combined into a single group in accordance with the requirements of a Staple Structure or Dual-listed Arrangement as set out in Article 6.5 of the GloBE Rules. Under these rules, a Multi-parented MNE Group is treated as a single MNE Group notwithstanding the separate ownership structure of the different groups.

51. In most cases, it is expected that such MNE Groups would submit a combined CbC Report for the whole Multi-Parented MNE Group based on the same Consolidated Financial Statements used for purposes of GloBE. Under these circumstances, it would be appropriate to apply the Transitional CbCR Safe Harbour because the CbC Report includes the information of all the Constituent Entities in the Multi-parented MNE Group.



52. However, in case where different CbC Reports are submitted for each the Groups that compose the Multi-parented MNE Group or where the CbC Report does not include information of one of the Groups or Constituent Entities (because, for example, it does not meet the CbCR standards), then it would not be appropriate to use the CbC Report for purposes of the Transitional CbCR Safe Harbour. For that reason, paragraph 2(b) disallows the application of the safe harbour under these circumstances.

### *Tax Neutral UPEs*

53. Paragraphs 2 and 3 deal with UPEs subject to tax neutral regimes. Under the GloBE Rules, 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. A brief description of these regimes and their treatment under the Transitional CbCR Safe Harbour is described in the next paragraphs.

#### **Flow through UPEs (Article 7.1)**

54. Flow-through Entities are subject to special treatment under the GloBE Rules. If a Group Entity is a Tax Transparent Entity, its GloBE Income or Loss and Adjusted Covered Taxes (if any) are allocated to their Constituent Entity-owners (unless they have previously been attributed to a Permanent Establishment). This flow-through treatment does not apply to UPEs because their owners are not Constituent Entities of the MNE Group. Article 7.1 therefore provides an alternative mechanism that allows the GloBE Income of the UPE to be reduced by the amount of income that is allocated to its owners provided that those owners are subject to tax at a rate of at least 15%.

55. Under GloBE, a Flow-through UPE is located in its jurisdiction of creation (see Article 10.3.2(a)). However, under CbCR, a Flow-through Entity is a stateless Entity. This means that under CbCR, the income of a Flow-through UPE will be reported as stateless, while, under GloBE, the income and taxes of a Flow-through UPE would be reported in the jurisdiction where it is created. However, this difference in treatment between CbCR and GloBE will not impact GloBE outcomes where Article 7.1 applies to the Flow-through UPE.

56. If Article 7.1 applies, and the GloBE Income of the Flow-through UPE is reduced to zero, then CbCR and GloBE would match because both systems would exclude the income of the Entity from the jurisdiction. In these cases, it is appropriate to apply the Transitional CbCR Safe Harbour to the Entities located in the jurisdiction and to exclude the application of the GloBE Rules to the flow-through UPE.

57. If Article 7.1 does not apply (or not all the income of the Flow-through UPE is reduced to zero in accordance with such provision), then the income and taxes recorded for CbCR and GloBE would differ. The GloBE Rules would require the income of the flow-through UPE to be added in the jurisdiction, while CbCR would treat such income as stateless. Under these circumstances, it is not appropriate to apply the Transitional CbCR Safe Harbour to the UPE jurisdiction because the information in the CbC Report would not match. For this reason, paragraph 2 disallows the application of the Transitional CbCR Safe Harbour in this particular case.

58. It is not necessary to exclude the jurisdiction of the Flow-through UPE from the Transitional CbCR Safe Harbour where all the income (loss) of the Flow-through UPE is attributable to a Permanent Establishment, (irrespective of whether such PE is located in the jurisdiction of the Flow-through UPE or a third jurisdiction) where the conditions of Article 7.1.1 of the Model Rules are met. This is consistent with Article 7.1.4 of the GloBE Rules.

#### **UPEs subject to Deductible Dividend Regimes (Article 7.2)**

59. Article 7.2 contains a set of rules for UPEs that are subject to Deductible Dividend Regimes. A Deductible Dividend Regime is a tax regime designed to yield a single level of taxation on the owners of

an Entity through the allowance of a deduction from the income of the Entity for distributions of profits to the owners. The owners are subject to tax on the dividends and the Entity is subject to tax on the earnings that are not distributed.

60. The objective of Article 7.2 is to avoid understating the ETR of the UPE. This normally happens because the tax deduction on the distribution is not considered as an expense for accounting purposes, and the taxes paid by the UPE's ownership-interest holders on such distributions are not considered as Covered Taxes because they are not paid by Constituent Entities of the MNE Group. Thus, Article 7.2 corrects this issue by allowing the MNE to reduce the UPE's GloBE Income by the amount of the Deductible Dividends provided that some conditions are met (e.g., the shareholder is subject to tax on the dividend at a nominal rate of at least 15%).

61. This same problem arises in the context of CbCR because the Profit (Loss) before Income Tax reflects accounting profit and not taxable income. Without any adjustments, the MNE would probably be forced to undertake full GloBE computations for the UPE jurisdiction because the UPE jurisdiction's ETR would be understated under the Transitional CbCR Safe Harbour as a result of not being able to claim a deduction that would otherwise be granted in accordance with Article 7.2. Thus, to avoid this situation, paragraph 3 of the box above provides the same deduction that would be otherwise granted under Article 7.2. This deduction would be made to the Profit (Loss) before Income Tax of the jurisdiction of the UPE.

62. This benefit would only be available if the conditions of Article 7.2 are met and operates in the same way as in the general rules. This includes providing the exact same information that would otherwise be provided when applying this rule outside the safe harbour and removing the UPE's taxes from the safe harbour computations in accordance with Article 7.2.2.

#### *Entities subject to Eligible Distribution Tax Systems (Article 7.3)*

63. Entities subject to an Eligible Distribution Tax System can be subject to a special treatment under Article 7.3 that allows them to recognize a Deemed Distribution Tax in a Fiscal Year for a tax that would be paid during a later year (during a four-year period). This means that the tax is recognized in a Fiscal Year, but the income tax expense is expected to be reflected in a future Fiscal Year. Article 7.3 is an annual election that applies and affects the ETR of all the Constituent Entities of the jurisdiction.

64. During the Transition Period, in-scope MNE Groups can elect to treat Entities subject to Eligible Distribution Tax Systems for the first Fiscal Year in accordance with Article 7.3 (which applies to all Constituent Entities in a jurisdiction). In such cases, an MNE would first decide whether to apply the Transitional CbCR Safe Harbour to such Constituent Entities. If the Transitional CbCR Safe Harbour is not applied, the MNE would decide whether to apply Article 7.3. Once an MNE elects to apply Article 7.3, it would then not be eligible to apply the Transitional CbCR Safe Harbour to jurisdictions with Constituent Entities subject to Eligible Distribution Tax Systems through the rest of the Transition Period.

65. If the MNE decides not to apply Article 7.3 for the first Fiscal Year, it can access the Transitional CbCR Safe Harbour in a jurisdiction with an Eligible Distribution Tax System under the same conditions as for any other jurisdiction.

#### *Investment Entities and Insurance Investment Entities (Articles 7.4 – 7.6)*

66. Investment Entities (including Insurance Investment Entities) that are not treated as tax transparent are subject to special treatment under the GloBE Rules. The default treatment for Investment Entities is set out in Article 7.4, where the Investment Entity is required to calculate its ETR separately from that of the other CEs located in the same jurisdiction. The GloBE Rules further provide the MNE with two alternative methods for treating an Investment Entity's GloBE Income (Loss) and Adjusted Covered Taxes.

The MNE can elect to treat the Investment Entity as a Tax Transparent Entity where it qualifies

for that treatment under Article 7.5. This election has the effect of allocating the GloBE Income (Loss) and Adjusted Covered Taxes of the Investment Entity to the Constituent Entity-owner; and

the MNE can elect to exclude the GloBE Income (Loss) of the Investment Entity and to include distributions made by the Entity to be included in the GloBE Income (Loss) of the Constituent Entity-owner. If distributions are not made within a four-year period, the MNE is subject to a Top-up Tax that results from multiplying the portion of the Undistributed Net GloBE Income by 15%.

67. Non-tax transparent Investment Entities are not subject to any special treatment under CbCR. Their Profit (Loss) before Income Tax must be reported in their jurisdiction of tax residence. In some cases, however, Profit (Loss) of the Investment Entity can be reported twice in the CbC Report. This can occur, for example, where the CbC Report is not prepared based on consolidated accounts and where the accounts of the Constituent Entity-owner report investments in the Investment Entity on mark-to-market basis.

68. In order to address these differences between GloBE and CbCR while correctly accounting for Investment Entities under the Transitional CbCR Safe Harbour, the following general approach should be taken in the application of the safe harbour:

the Investment Entity is excluded from the benefit of the Transitional CbCR Safe Harbour and the MNE Group will apply the ordinary GloBE Rules to determine whether any Top-up Tax arises in respect of the GloBE Income of that Investment Entity, subject to the elections under Articles 7.5 and 7.6; and

the jurisdictions where the Constituent Entity-owner and the Investment Entity are located continue to be eligible to apply the safe harbour. If those jurisdictions otherwise qualify for the safe harbour, all the Constituent Entities in that jurisdiction would deem their Top-up Tax to be zero except for the Investment Entities that are still subject separate computations.

69. As part of the Investment Entity's separate GloBE computation, the Filing Constituent Entity can continue to elect to apply the treatment provided under Articles 7.5 or 7.6. This Five-Year Election will be carried over to the years in which the Transitional CbCR Safe Harbour no longer applies. The rules described in the paragraphs above apply equally to Insurance Investment Entities that apply the rules in Articles 7-4 to 7.6.

70. The general rule above is subject to the following qualifications:

An Investment Entity that does not elect to apply the treatment provided under Articles 7.5 or 7.6. is not required to undertake a separate GloBE calculation where the Investment Entity and its Constituent Entity-owners are located in the same jurisdiction.

When applying the Transitional CbCR Safe Harbour in the jurisdictions where the Constituent Entity-owner and the Investment Entity are located, the jurisdictional Profit (Loss) before Income Tax should be adjusted as necessary so that the income and associated taxes of the Investment Entity are only taken into account in the owner's jurisdiction.

71. The first qualification operates as a simplification in that it avoids the need for an Investment Entity to undertake a separate GloBE calculation when the Investment Entity and its owners (and their corresponding income and taxes) are recorded in the same jurisdiction for CbCR purposes. The second qualification avoids the risk of double counting under CbCR by ensuring that all income reported in the CbC Report is recorded only once in the jurisdiction of the owner. In a case where a portion of the Ownership Interests of the Investment Entity are held by owners that are not members of the MNE Group, the Profit (Loss) before Income Tax attributable to such owners are excluded from the Transitional CbCR Safe Harbour computations.

72. Investment Entities are excluded from the benefit of the Transitional CbCR Safe Harbour and the MNE Group applies the ordinary GloBE Rules to determine whether any Top-up Tax arises in respect of the GloBE Income of that Investment Entity (except in the case described in paragraph 6 of the box above). Accordingly, if an Investment Entity elects to apply Article 7.6 to calculate its GloBE ETR then the MNE will still be required to maintain an account for purposes of determining the Undistributed Net GloBE Income in accordance with Article 7.6.3 to Article 7.6.5. Any amount that has not been distributed within the four-year period during or after the Transition Period (i.e., Undistributed Net GloBE Income for the Tested Fiscal Year) would still be subject to a Top-up Tax in accordance with Article 7.6. Furthermore, where an Investment Entity makes a distribution to the Constituent Entity-owner after the end of the Transition Period, those distributions must be included in the GloBE Income (Loss) of the Constituent Entity-owner in accordance with the requirements of that Article. This treatment applies notwithstanding that the underlying income of the Investment Entity was reported in a prior year in the jurisdiction of such owner as part of the Transitional CbCR Safe Harbour.

### ***Treatment of Net Unrealised Fair Value Loss***

73. A Net Unrealised Fair Value Loss means all losses, as reduced by any gains, arising from changes in fair value of Ownership Interests (except for Portfolio Shareholdings). The loss element includes impairment losses and any reversals of impairment. These items are excluded from the GloBE Income or Loss computation because these are treated as an Excluded Equity Gain or Loss in accordance with Article 3.2.1 (c) of the GloBE Rules. To the extent that they are reflected in the Profit (Loss) before Income Tax under CbCR, they can cause Profit (Loss) before Income Tax to be underestimated and hence lead to distortive effects when applying the Transitional CbCR Safe Harbour tests.

74. For these reasons, Net Unrealised Fair Value Loss should be excluded from Profit (Loss) before Income Tax of a jurisdiction if such amount exceeds EUR 50 million. No adjustment in respect of Net Unrealised Fair Value Loss shall be made if a Tested Jurisdiction reports a Net Unrealised Fair Value Loss not exceeding EUR 50 million or a net fair value gain (i.e., when fair value gains and reversals of impairments are higher than fair value losses and impairments) with respect to Ownership Interest (except for Portfolio Shareholding). To the extent there is a gain (including a reversal of impairment) from changes in fair value of an Ownership Interest (except for a Portfolio Shareholding) in a Fiscal Year, such gain may offset the loss up to the amount of the loss. For example, if an MNE Group has two investments held in Country X and incurs in the same Fiscal Year both an impairment loss of 80 on Investment A and a reversal of impairment of 80 on Investment B (impairment loss of 80 suffered in a prior year), there is no Net Unrealised Fair Value Loss for the Fiscal Year, as both are included in the Profit (Loss) before Income Tax for that Fiscal Year and there is no net loss resulting from the impairment. No adjustment is made to the numerator of the ETR calculation (i.e., taxes).

## 2 Permanent Safe Harbour

75. Where an MNE's operations in a jurisdiction do not meet the requirements of a transitional safe harbour, they may still qualify for the terms of a permanent safe harbour. Similar to the Transitional CbCR Safe Harbour, qualifying for the permanent safe harbour on a jurisdictional basis does not exempt the MNE Group from complying with group-wide GloBE requirements such as the requirement to prepare and file its GloBE Information Return.

76. This chapter describes a framework for a potential **Simplified Calculations Safe Harbour**. The simplified calculations developed under this framework would be part of a permanent safe harbour that is designed to simplify compliance with the GloBE Rules by reducing the number and complexity of calculations MNE Groups are required to make, while at the same time ensuring that these simplified calculations do not undermine the consistency and transparency of outcomes under the GloBE Rules.

## Simplified Calculations Safe Harbour Framework

### Simplified Calculations Safe Harbour

1. The Top-up Tax (other than Additional Current Top-up Tax) for a jurisdiction shall be deemed to be zero for a Fiscal Year when the Tested Jurisdiction has met the requirements of the:
  - (a) Routine Profits Test;
  - (b) De Minimis Test; or
  - (c) Effective Tax Rate Test.
2. A Constituent Entity may use a Simplified Income Calculation, Simplified Revenue Calculation, or a Simplified Tax Calculation for the purposes of determining whether any of these tests are met in the Fiscal Year.
3. A Tested Jurisdiction meets:
  - (a) the **Routine Profits Test** if its GloBE Income as determined under the simplified income calculation is equal or less than the amount that results from computing the Substance-based Income Exclusion for that jurisdiction in accordance with Article 5.3 of the GloBE Rules.
  - (b) the **De Minimis Test** if the Average GloBE Revenue of such jurisdiction Income as determined under the simplified income calculation is less than EUR 10 million, and the Average GloBE Income of that jurisdiction is less than EUR 1 million or has a loss in accordance with Article 5.5 of the GloBE Rules.
  - (c) the **ETR Test** if the Effective Tax Rate of the jurisdiction as determined under the simplified income and tax calculation, is at least 15% as determined in accordance with Article 5.1.1 of the GloBE Rules.
4. The **Simplified Income Calculation, Simplified Revenue Calculation, and Simplified Tax Calculation** (together “Simplified Calculations”) are alternative calculations to the GloBE Income or Loss, GloBE Revenue and Adjusted Covered Taxes calculations required under the GloBE Rules, respectively. These calculations will be provided in Agreed Administrative Guidance where the Inclusive Framework on BEPS has determined that adjustment or simplification:
  - (a) provides for the same final outcomes as those provided under the GloBE Rules; or
  - (b) does not otherwise undermine the integrity of the GloBE Rules.

77. The goal of the Simplified Calculations Safe Harbour is to allow MNE Groups to avoid making certain complex GloBE calculations in situations where the calculation could be simplified without altering the MNE Group’s GloBE outcomes or otherwise undermining the integrity of the GloBE Rules.

### **Agreed Administrative Guidance**

78. The safe harbour as described in this chapter provides a framework for the subsequent development of Agreed Administrative Guidance on the use of these Simplified Calculations. Such guidance could be released by the Inclusive Framework and incorporated by reference into the Simplified Calculations Safe Harbour. The MNE Group would then be able to rely on that safe harbour when filing its GloBE Information Return and calculating its ETR on a jurisdictional basis. To access the benefit of the Simplified Calculations Safe Harbour, the MNE Group would need to comply with the filing requirements that are agreed as part of the Agreed Administrative Guidance for that Safe Harbour.

79. Basing the safe harbour on simplifications that are agreed through Administrative Guidance:
- protects the integrity of the outcomes under the GloBE Rules by ensuring that these simplifications are applied on an agreed and consistent basis;
  - provides Inclusive Framework members with a degree of flexibility in the design and application of the safe harbour by allowing them to add additional simplifications in the future; and
  - creates an additional element of tax certainty for MNEs that rely on the safe harbour when completing their GloBE Information Return and calculating their Top-up Tax liability in each implementing jurisdiction.
80. This approach, however, applies without prejudice to Article 8.3 of the Model Rules which provides that the application of Agreed Administrative Guidance is subject to the requirements of domestic law.

### ***Application of the safe harbour***

81. The Routine Profits, *De Minimis* and ETR tests set out in the framework for the Simplified Calculations Safe Harbour are intended to be the same as those set out in the GloBE Rules: the routine profit test mirrors the SBIE amount; the *De Minimis* Test follows the De Minimis Exclusion; and the ETR test is based on the GloBE ETR calculations. Where a Tested Jurisdiction meets the requirements of one of these tests, the MNE would be treated as not having any top-up tax liability arising in that jurisdiction.

82. Where a Tested Jurisdiction qualifies for the Simplified Calculations Safe Harbour, the current top-up tax will be reduced to zero in accordance with Article 8.2. The application of this safe harbour does not reduce to zero any Additional Current Top-up Tax that may arise.

#### *De Minimis Test*

83. The *De Minimis* Test follows the De Minimis Exclusion in Article 5.5. It applies where the Average GloBE Revenue of such jurisdiction is less than EUR 10 million, and the Average GloBE Income is less than EUR 1 million (including cases where the jurisdiction has a loss). The rules in Article 5.5 are equally applicable for purposes of determining such numbers. The only difference is that the Simplified Income and Revenue Calculations will provide for adjustments or simplifications to undertake this test.

#### *Routine Profits Test*

84. Similarly, the Routine Profits Test mirrors the SBIE in Article 5.3. Thus, the amount is the same that would otherwise be computed under the general GloBE computation, with the only difference being that the Simplified Income Calculation will provide for adjustments or simplifications to undertake this test.

85. In cases where a jurisdiction has a GloBE loss as determined under the Simplified Income Calculation, the Routine Profits Test will apply because no profits arise with respect to that jurisdiction. The effect of satisfying the routine profit test will be to deem the current Top-up Tax to be zero (i.e., not the Additional Top-up Tax including one that arises under Article 4.1.5). Further Agreed Administrative Guidance could be developed to allow MNEs to avoid undertaking the full loss computations for purposes of determining whether an Article 4.1.5 liability arises.

#### *ETR Test*

86. The ETR Test follows the GloBE Rules because it requires the jurisdiction ETR to be at least 15%. The ETR of the jurisdiction is equal to the sum of Adjusted Covered Taxes of each Constituent Entity located in the jurisdiction divided by the Net GloBE Income of the jurisdiction for the fiscal year. As part of

the permanent safe harbour, the ETR of the jurisdiction can be computed based on the Simplified Calculations.

### **Parameters of Simplified Calculations**

87. All the Simplified Calculations developed in Agreed Administrative Guidance would need to meet one of the parameters set out in Paragraph 4 of the box above. That is to say the calculations would provide for the same outcomes as those contemplated under the Model Rules and Commentary or be based on alternative calculations that would not otherwise undermine the integrity of the GloBE Rules.

#### *Same outcomes under GloBE rules*

88. Under the first parameter, the final outcome of the Simplified Calculations must be the same as those provided in the GloBE Rules. This means that the calculations need to serve as a “shortcut” to determine whether Top-up Tax liability will arise with respect to a jurisdiction or a Constituent Entity.

89. For example, the Inclusive Framework could agree on further Administrative Guidance that allows an MNE to disregard a particular adjustment to the Financial Accounting Net Income or Loss (FANIL) where the adjustment does not change the outcome of the GloBE Rules. Assume that the FANIL includes portfolio dividends and the jurisdiction already meets the *De Minimis* Exclusion without any adjustment. Under GloBE, the MNE would be required to determine which of those dividends are excluded from the GloBE base, which requires the MNE to determine whether such dividends derive from Short-term Portfolio Shareholdings or from Investment Entities subject to Article 7.6. The Administrative Guidance could allow the MNE to avoid making this adjustment because even if all the portfolio dividends are excluded, the MNE would still comply with the *De Minimis* Test.

#### *Outcomes do not undermine integrity of GloBE Rules*

90. Under the second parameter, the calculations need to provide for outcomes that do not otherwise undermine the integrity of the GloBE Rules. This standard allows the Inclusive Framework to provide alternative calculations for determining GloBE Income or Revenue, or Adjusted Covered Taxes even if these calculations would not result in the same outcomes as under the GloBE Rules, as long as they do not create an integrity risk to the GloBE Rules. For example, a Simplified Calculation may result in the understatement of revenues or GloBE Income, or overstatement of Adjusted Covered Taxes when compared to the outcomes that would have occurred if such Constituent Entities had performed the full GloBE calculations. Such calculation could still be incorporated into a Simplified Calculation if the reduction in compliance burden as a result of the Safe Harbour would sufficiently outweigh the risk of a small loss in Top-up Tax liability.

**91.** The simplifications agreed through Agreed Administrative Guidance could be developed in consultation with the Pillar 2 Business Advisory Group (BAG) and other stakeholders. The focus of this work will be targeted at those aspects of income, revenue, and tax calculations that raise the greatest compliance concerns.

### **Simplified Calculation for Non-Material Constituent Entities**

92. The following paragraph below sets out the Simplified Income and Tax Calculations which an MNE could apply for its Non-Material Constituent Entities (NMCEs) under the Simplified Calculation Safe Harbour framework described in this Chapter.

93. For the purposes of the Simplified Calculations:

The GloBE Revenue and GloBE Income of a NMCE is the Total Revenue of that



Constituent Entity as determined in accordance with Relevant CbC Regulations. Relevant CbC Regulations shall mean the CbCR regulations of the UPE jurisdiction or of the surrogate parent entity jurisdiction if a CbC Report is not filed in the UPE jurisdiction. If a jurisdiction does not have domestic CbC regulations, Relevant CbC Regulations shall mean the OECD BEPS Action 13 Final Report and the OECD Guidance on the Implementation of Country-by-Country Reporting (OECD CbCR Guidance).

The Adjusted Covered Taxes of a NMCE is the Income Tax Accrued as determined in accordance with the Relevant CbC Regulations.

A NMCE is a Constituent Entity of an MNE Group that is not consolidated on a line-by-line basis in the MNE Group's audited consolidated financial statements solely for size or materiality grounds and includes any Permanent Establishment of such Constituent Entity.

## **Background**

94. Entities that are related through ownership or control but are excluded from the MNE Group's consolidated financial statements solely on size or materiality grounds qualify as Constituent Entities of an MNE Group under Article 1.2.2(b) of the GloBE Rules. NMCEs typically include subsidiaries with no or minimal operations, or with operations that are in wind-down or liquidation phase.

95. While the exclusion of NMCEs is not mandatory under the applicable accounting framework, it is common practice for MNEs to exclude their NMCEs from the scope of their consolidated financial statements where it could be reasonably expected that the omission of the NMCEs' financial data would not influence the decisions made by primary users of the financial statements. The decision to exclude an Entity from the consolidated financial statements is typically driven by a cost-benefit analysis, where the expected cost of incorporating financial information of NMCEs into the consolidated financial statements would be disproportionate in terms of its impact on those financial statements as a whole. NMCEs are, however, included in the scope of GloBE and CbCR because they may play a role in achieving low tax outcomes, and therefore could pose a GloBE integrity risk if excluded entirely from the GloBE calculations.

96. Under the GloBE Rules, the starting point for determining the GloBE Income or Loss is the financial accounts used for the preparation of the Group's consolidated financial statements determined in accordance with the accounting standards applied by the UPE of the MNE Group. NMCEs might prepare their financial accounts in accordance with local accounting standards which might be different than the ones used at the UPE for the consolidated financial statements. Furthermore, the NMCE may not have any legal obligation to prepare financial accounts and may rely on management accounts for the purposes of CbCR. These accounts are not required to be in line with the accounting standards of the UPE because this step is not necessary for the preparation of the consolidated financial statements, however, those accounts are expected to be used by the external auditor to determine the materiality of the Entity.

97. Where the NMCE's financial statements are prepared in accordance with local accounting standards other than the ones used by the UPE, it is possible for the MNE Group to rely on those financial accounts for GloBE purpose provided that the conditions set forth in Article 3.1.3 are met.

98. In general terms, the inclusion of all NMCEs within the scope of GloBE Rules raises the following compliance challenges in terms of data collection, processing and recording, even in cases where Article 3.1.3 is claimed. In particular, information may not be incorporated into group accounting systems but may be kept and managed on separate accounting platforms, even outsourced to external providers. Even where the UPE maintains management accounts for NMCEs under Acceptable or Authorised Accounting Standards, such set of financial data on NMCEs may not be sufficiently detailed or complete, and they may not be available in a timely manner to comply with the GloBE relevant obligations.

99. MNE Groups have raised concerns about incurring significant additional compliance costs in bringing the financial accounts (and financial accounting systems) of NMCEs located in jurisdictions in which no Top-up Tax would arise into line with GloBE requirements and the potential compliance risk for failure to do so. Therefore, the objective of the Simplified Calculations for NMCEs is to avoid detailed adjustments as would otherwise be required in the GloBE Rules by allowing computations that are both simplified and conservative, and which will not compromise the integrity of the GloBE Rules.

### ***Simplified Calculations Safe Harbour for NMCEs***

100. Using the objectives outlined above, a Simplified Calculations Safe Harbour is developed for NMCEs. The Simplified Income, Revenue and Tax Calculations of the NMCEs under the safe harbour use conservative elements to avoid undermining the integrity of the GloBE Rules. The NMCE Simplified Calculations could be combined with the GloBE calculations of other Constituent Entities for the purposes of determining whether a Tested Jurisdiction meets the requirements of the Simplified Calculations Safe Harbour. Those calculations may include other Simplified Calculations that could be developed in the future through Agreed Administrative Guidance.

101. The NMCE Simplified Calculations, together with any transition rules, will be incorporated into future Agreed Administrative Guidance on Permanent Safe Harbour.

#### *Definition of NMCE*

102. The NMCE definition includes all the subsidiaries and their Permanent Establishments (if any), that, as a matter of fact, are excluded from the scope of the consolidated financial statements in a given Fiscal Year. The NMCE definition is based on the common practice of MNE Groups in excluding non-material subsidiaries from the scope of the consolidated financial statements, where they can demonstrate that the omission would not influence the judgement of the stakeholders to which the consolidated financial statements is addressed. There is not an unequivocal bright-line definition of materiality threshold within the relevant accounting principles. For example, both IFRS<sup>4</sup> and US GAAP<sup>5</sup> provide for a general concept of materiality, which is essentially whether the omission or misstatement of an item could reasonably influence the judgement of a person who is relying on the financial report. This general concept needs to be adapted to the specifics of each MNE Group (e.g., industry and size).

103. The determination of whether to treat a subsidiary as outside the scope of consolidation is grounded on quantitative and qualitative criteria, and this assessment is carried out by the MNE's management, and then shared and agreed in advance with the external auditor in charge of the statutory audit of the consolidated financial statements. Within its mandate, the auditor verifies that the proposed exclusion of the non-material subsidiaries does not have a financial impact exceeding, on an aggregate basis, the materiality thresholds which are fixed by the auditor itself for the purpose of its mandate (quantitative analysis). Under a qualitative assessment, MNEs further take into account other elements, such as the projected performance of the business (e.g., typically only run-down businesses are excluded), the existence or the likelihood of a legal controversy, etc. Non-material subsidiaries are treated as third parties for financial reporting purposes (i.e., no elimination for intragroup flows, including dividends) and

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<sup>4</sup> IFRS definition: Information is material if omitting, misstating, or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity.

<sup>5</sup> US GAAP concept of materiality: The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.

do not have to prepare their financial statements under the accounting standards of the UPE. The investment in these Entities is generally recorded at cost and distributions are treated as income.

104. Non-material subsidiaries are identified for the purposes of the preparation of consolidated financial statements, where the external auditor has an important role in the definition of the relevant materiality thresholds for a given MNE Group. Therefore, to meet the definition of NMCE for the purpose of the Simplified Calculations, the consolidated financial statements must be subject to external audit. Where the consolidated financial statements are prepared but not subject to an external audit, or where they are prepared solely for GloBE purposes, the NMCE definition would not be met, and the Simplified Calculations provided for the NMCE would consequently not be available for the MNE Group. Providing the requirement of an external audit aims at granting impartiality to the definition of NMCEs for a given MNE Group and ensures the reliability of the NMCE's financial data because it is subject to certain checks in order to properly judge the relevant materiality. In this respect, the external audit requirement could be considered as a safeguard to the integrity of the rule.

#### *Source of Information*

105. The Simplified Calculations for NMCEs shall be extracted, on a Constituent Entity-by-Constituent Entity basis, from the financial accounts available to NMCEs using definitions stipulated in the Relevant CbC Regulations, provided that the external auditor to the consolidated financial statements relied on the data taken from these financial accounts to determine the non-materiality of that NMCE.

106. For NMCE whose revenues exceeds EUR 50 million, the financial accounts used to qualify for the Simplified Calculations Safe Harbour must be prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard.

#### *Simplified Revenue and Income Calculation*

107. The GloBE Revenue and GloBE Income of an NMCE is the Total Revenue of the NMCE as determined in accordance with the Relevant CbC Regulations. The OECD CbCR guidance provides for a broad definition of Revenue, which includes: "revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts", including any "extraordinary income and gains from investment activities". Revenue excludes dividends received from other Constituent Entities and other comprehensive income (e.g., "comprehensive income/earnings, revaluation, and/or unrealised gains reflected in net assets and the equity section").<sup>6</sup> Revenue as defined in the CbCR framework is a suitable proxy under the Simplified Income Calculation because it is readily available and because it represents a conservative approximation of the GloBE Income for an NMCE since the GloBE Income of an Entity is reasonably expected to be significantly lower than its Total Revenue as defined in the CbCR. Total Revenue also serve as a reasonable proxy for revenue under the Simplified Revenue Calculation.

#### *Simplified Tax Calculation*

108. The Adjusted Covered Taxes of a NMCE is the Income Tax Accrued as determined in accordance with the Relevant CbC Regulations. Under CbCR, Income Tax Accrued excludes any deferred tax expenses, other non-current items (such as transfer pricing adjustments), and provisions for uncertain tax liabilities. Income Tax Accrued as determined in line with the CbCR framework is a suitable proxy for the Simplified Tax Calculation because it is readily available.

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<sup>6</sup> Source: OECD BEPS Action 13 Final Report; OECD Guidance on the Implementation of Country-by-Country Reporting.

*Future changes to CbCR*

109. The OECD's CbCR model rules are undergoing review as part of the 2020 Review of Country-by-Country Reporting. The Inclusive Framework will monitor changes to the model rules as they relate to Total Revenues and Income Tax Accrued, so that any changes do not give rise to issues which may cause the NMCE Simplified Calculations to undermine the integrity of the GloBE Rules.

***Simplified Calculation does not undermine integrity of GloBE Rules.***

110. The Simplified Calculations for NMCEs provide an alternative method of calculating the ETR of such Entities, the alternative method does not undermine the integrity of the GloBE Rules. The calculation of GloBE Income and Adjusted Covered Taxes for an NMCE are based on a conservative measure of income.

GloBE Income is based on Total Revenue as determined under CbCR which is broadly defined to capture revenues of any description and includes any "extraordinary income and gains from investment activities" without a deduction for current expenses. While Total Revenue does not include intra-group dividends and "comprehensive income/earnings, revaluation and/or unrealised gains reflected in net assets and the equity section", this is consistent with the requirements for calculating GloBE income under the ordinary rules.

Similarly, the measure of Adjusted Covered Taxes is based on the Current Year's Accrued Income Tax which excludes any deferred tax expenses, adjustments for non-current items and provisions for uncertain tax liabilities. The exclusion of deferred taxes can be expected to give rise to some volatility in the numerator of the ETR fraction, however, the exclusion of deferred taxes is generally consistent with the exclusion of expenses from the denominator given that such expenses are generally the items that give rise to deferred tax assets. The exclusion of deferred tax items is also broadly consistent with the treatment of Unclaimed Accruals under the GloBE Rules.

The definitions of Total Revenue and Accrued Income Tax in CbCR provide a measure of consistency and reliability in the determination of revenues and taxes of NMCEs.

111. Given the broader definition of income and the narrower definition of taxes, the Simplified Income, Revenue and Tax Calculations under this safe harbour are expected to result in a higher income and lower ETR than that provided under the GloBE Rules. Accordingly, the Inclusive Framework considers that the Simplified Calculations for NMCEs should not undermine the integrity of the GloBE Rules and will review the methodology used in this Simplified Calculation no later than 2028 to evaluate whether the integrity of the GloBE Rules is undermined.

# 3 Transitional Penalty Relief

## Transitional Penalty Relief

1. During the Transition Period, no penalties or sanctions should apply in connection with the filing of a GloBE Information Return where a tax administration considers that an MNE has taken “reasonable measures” to ensure the correct application of the GloBE Rules. A tax administration may consider that an MNE has taken reasonable measures where the MNE can demonstrate that it has acted in good faith to understand and comply with the relevant domestic application of the GloBE Rules and the QDMTT.
2. **Transition Period** means any Fiscal Year beginning on or before 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028.

## Overview

112. The penalty relief described in this Chapter is designed to provide transitional relief for MNE groups in the initial years during which the GloBE Rules come into effect. It reflects a common understanding amongst implementing jurisdictions on the necessity to provide relief to taxpayers in those cases where an MNE has taken reasonable measures to ensure the correct application of the GloBE Rules.

113. A common understanding on penalty relief is intended to provide MNEs (and those responsible for managing its tax compliance obligations) with a “soft-landing” during the initial years in which the rules are being introduced. This soft landing will allow MNEs and tax administrations to familiarize themselves with the rules and develop the data collection and the reporting and compliance systems to comply with the new rules without the risk of being penalised for making reasonable mistakes.

## Transitional Penalty Relief

114. The common understanding on penalties requires that implementing jurisdictions give careful consideration as to the appropriateness of applying penalties or sanctions where an MNE has taken reasonable measures to ensure the correct application of the GloBE Rules.

115. The term “reasonable measures” is not defined by this document. Rather it should be understood in light of each jurisdiction’s existing rules and practice. An MNE can demonstrate it has taken reasonable measures if it can demonstrate it has, in good faith, put in place the appropriate systems to understand and comply with the rule. Whether a taxpayer has met the standard of taking reasonable measures must be assessed by a tax administration based on the facts and circumstances of the case. For example, a tax administration could waive the imposition of a penalty on the UPE or Filing Constituent Entity if such Entity fully disclosed the impugned GloBE computation to the tax administration. Other examples where tax administrations may waive penalties or sanctions during the Transition Period, include:

where there is a mistake of fact that is reasonable in the circumstances;

the errors can be reasonably attributed to unfamiliarity with the rules in the initial implementation years (e.g., isolated mathematical or transposition errors);

the requirements of the rule are unclear and the MNE's actions are based on a reasonable interpretation of the rule; or

the MNE's actions do not result in a reduction of top-up tax liability in the current or future year.

116. In many cases, jurisdictions already provide, as a matter of law or administrative practice, for penalty relief in accordance with the common understanding. Other jurisdictions may need to adapt these penalty relief requirements to fit within their constitutional and legal system. While the common understanding aims to provide relief for all penalties or sanctions in connection with a GloBE Information Return, the requirement that the MNE must take reasonable measures means that, in practice, the transitional penalty relief would not apply to cases of avoidance, fraud, or abuse. Finally, the transitional penalty relief would not impact the requirement to correct any errors and pay any unpaid/underpaid Top-up Tax (including any interest) for previous Fiscal Years in accordance with requirements of domestic legislation.