

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),
July 2023**

Inclusive Framework on BEPS



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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 *Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS* (the “GloBE Model Rules”) (OECD, 2021^[1]) (agreed by the Inclusive Framework and published in December 2021) and the *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* (the “Commentary”) (OECD, 2022^[2]) (agreed by the Inclusive Framework and published in March 2022) 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 Rules were approved and released by the Inclusive Framework on 20 December 2021. The GloBE 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^[3]) and the *Model Tax Convention on Income and on Capital: Condensed Version 2017*, (the “OECD Model Tax Convention”) (OECD, 2017^[4]).

3. The Commentary to the GloBE Model Rules was approved and released by the Inclusive Framework on 14 March 2022, together with a set of detailed examples that illustrate the application of the rules to certain fact patterns. 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 under the rules. Although the Commentary is detailed and comprehensive, it does not provide guidance on every aspect of the GloBE Model Rules and, in certain cases, the Commentary specifically identifies issues that will require further consideration and development as part of the GloBE Implementation Framework.

Agreed Administrative Guidance

4. Against this background, Inclusive Framework members have agreed, under Article 8.3 of the GloBE Rules, that an implementing jurisdiction will “apply the GloBE Rules consistent with Agreed Administrative Guidance, subject to any requirements of domestic law.” Agreed Administrative Guidance is defined in Article 10.1 as guidance issued by the Inclusive Framework on either “the interpretation or administration of the GloBE Rules”. Administrative Guidance is expected to play an important role in promoting certainty under the GloBE Rules by clarifying the interpretation of the GloBE Rules and by providing guidance to tax administrations on how to apply the GloBE Rules. Because Agreed Administrative Guidance will also reflect the Inclusive Framework’s common understanding of how the GloBE Rules should be interpreted and applied, such guidance will play an important role in ensuring coordinated outcomes under the GloBE Rules and providing a level playing field for MNE Groups and will be needed on an ongoing basis to address issues as they arise.

5. The definition of Agreed Administrative Guidance in Article 10.1 of the GloBE Rules envisions that the Inclusive Framework may issue guidance on both the interpretation and the operation of the rules. Interpretive guidance provides for consistent and common interpretation of the GloBE Rules that will provide certainty for MNE Groups and facilitate coordinated and transparent outcomes under the rules. It supplements or replaces paragraphs in the Commentary or explains how to apply the language of the rules to particular fact patterns. Operational guidance sets out administrative procedures tax administrations may use to apply the rules and may include guidance on the use of administrative simplifications that result in equivalent outcomes as those provided under the GloBE Rules while avoiding undue compliance and administration costs.

2023 Administrative Guidance

6. This document sets out the second set of Administrative Guidance items released by the Inclusive Framework, following the first set of Administrative Guidance items that were published in February 2023. This second set includes guidance on currency conversion rules when performing GloBE calculations, on tax credits, and on the application of the Substance-based Income Exclusion (SBIE). It also includes further guidance on the design of Qualified Domestic Minimum Top-up Taxes (QDMTT) as well as a QDMTT Safe Harbour. Finally, this document provides a Transitional UTPR Safe Harbour.

7. The Administrative Guidance will be incorporated into a revised version of the Commentary that will be released later this year (and replaces the original version of the Commentary issued in March 2022). The examples included in the Administrative Guidance will be incorporated into a revised set of detailed examples that will be released alongside the revised Commentary. The Inclusive Framework will continue to consider Administrative Guidance priorities on an ongoing basis, where more clarity is required, with the aim of releasing guidance throughout the year as soon as it is agreed so that the Inclusive Framework members can meet their implementation schedule.

1 General Currency Conversion Rules for the GloBE Rules

Introduction

1. Article 3.1.2 of the GloBE Rules specifies that “Financial Accounting Net Income or Loss is the net income or loss determined for a Constituent Entity (before any consolidation adjustments eliminating intra-group transactions) in preparing Consolidated Financial Statements of the Ultimate Parent Entity”. However, neither the GloBE Rules nor the Commentary provide specific guidance in relation to how the relevant GloBE items will be presented and calculated in accordance with the accounting standard used in the preparation of Consolidated Financial Statements of the Ultimate Parent Entity (or under Article 3.1.3, if applicable) including the relevant currency the amounts are required to be in for the purposes of GloBE calculations.

2. Further, in February 2023, “Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)” was released that included updated Commentary in relation to “Rebasing monetary thresholds in the GloBE Rules [AG22.04.T18]”. Under this guidance, jurisdictions are permitted to express GloBE thresholds in a locally denominated currency subject to certain requirements.

3. To ensure that the GloBE Rules work effectively, implementing jurisdictions must apply the rules consistently and coordinate their approach to calculations where foreign currency translations are required. This may avoid discrepancies caused by different currencies used in calculations within MNE Groups, which could lead to disputes over the application of the GloBE Rules.

4. Further guidance may be issued clarifying the interaction of this guidance with specific articles of the GloBE Rules and the Commentary. In addition, guidance on foreign currency translation rules for Qualified Domestic Minimum Top-Up Taxes will be provided separately, along with information on how it relates to this guidance.

5. This guidance also provides an update to the Commentary of the GloBE Rules as amended by the Administrative Guidance in relation to *Rebasing monetary thresholds in the GloBE Rules* [AG22.04.T18] to ensure that the rebasing rules also apply to Euro-denominated thresholds incorporated in the Commentary through Administrative Guidance.

Issues to be considered

6. There are four specific issues in relation to currency conversion rules for the purposes of MNE Groups undertaking the relevant calculations required under the GloBE Rules. These are:

- a. In which currency should the GloBE calculations be made, including for disclosure purposes in the GloBE Information Return?

- b. Where amounts relevant to the GloBE calculations are not already translated into the currency required under sub-paragraph (a) for purposes of preparing Consolidated Financial Statements, how should these amounts be translated?
- c. What currency translation rules should apply for the purposes of translating any Top-Up Tax under the IIR or the UTPR Top-Up Tax Amount determined using the currency required under sub-paragraph (a) into the currency in which the GloBE tax liability is payable?
- d. What currency translation rules apply for the purposes of determining whether a monetary threshold has been met where the monetary threshold is expressed in a currency different from the currency required under sub-paragraph (a)?

7. Co-ordinated foreign currency translation rules are required to ensure consistent application of the GloBE Rules across implementing jurisdictions. Any uniformity in foreign currency translation rules needs to balance consistency in application of implementing jurisdictions, with sufficient flexibility to allow MNE Groups to be able to comply with the GloBE Rules without having to undertake excess compliance requirements while minimising potential distortions caused by foreign exchange movements. For example, requiring the same currency translation logic for all transactions could provide consistency across jurisdictions but would not be consistent with how MNE Groups apply currency translation rules in their Consolidated Financial Statements and would require re-translations of many figures solely for GloBE purposes. Further any uniform foreign currency translation rules must be fit for purpose considering the relevant context to which the rule applies.

The currency in which the GloBE calculations should be made, including for disclosure purposes in the GloBE Information Return.

8. Paragraph 14 of the Introduction to the Commentary for the GloBE Rules notes the following:

The GloBE Rules are intended to be implemented as part of a common approach. A jurisdiction that joins the common approach is not required to adopt the GloBE Rules but, if it chooses to do so, it agrees to implement and administer them in a way that is consistent with the outcomes provided under the GloBE Rules and this Commentary. Consistency in the implementation and administration of the GloBE Rules is intended to result in a transparent and comprehensive system of taxation that provides predictable outcomes for MNEs and avoids the risk of double or over-taxation.

9. The intention of specific foreign currency translation rules for GloBE purpose is to provide a consistent basis of translation to avoid potential disputes and to avoid duplicate translation exercises. It is also intended to provide tax administrations with the ability to rely on the MNE Group's current accounting processes in the preparation of the MNE Group's audited Consolidated Financial Statements to determine the relevant amounts for the application of the GloBE Rules.

10. Article 3.1.2 states that the amounts relevant for determining the Financial Accounting Net Income or Loss of a Constituent Entity are those used in the preparation of the Consolidated Financial Statements of the Ultimate Parent Entity. Under financial accounting standards, MNE Groups are ultimately required to present their Consolidated Financial Statements in the presentation currency of the MNE Group. However, all Constituent Entities in an MNE Group may not be required to have separate financial statements and Constituent Entities within a jurisdiction do not always operate in the same accounting and/or tax functional currency. Frequently, Permanent Establishments will also not have separate financial statements and the financial accounts of the Main Entity will not be maintained in the currency of the jurisdiction in which the Permanent Establishment operates.

11. Where controlled subsidiaries operate in an accounting functional currency different to the presentation currency of the MNE Group, the accounting standards prescribe specific rules for the foreign exchange translation of relevant amounts of a subsidiary into the presentation currency of the MNE Group. MNE Groups may undertake the accounting consolidation process and the foreign exchange translation of amounts not expressed in the presentation currency of the Consolidated Financial Statements in a variety of manners. However, the relevant processes and amounts are likely to be subject to scrutiny as part of an audit process, where one is required to be conducted. The reliance on such amounts and the relevant processes are a fundamental tenet of the GloBE Rules.

12. Given the GloBE Rules rely heavily on the amounts used in the preparation of the Consolidated Financial Statements of an MNE Group, the amounts most relevant to the GloBE calculations may have already been translated into the presentation currency of the MNE Group's Consolidated Financial Statements as part of the accounting consolidation process. Therefore, it is logical that GloBE calculations undertaken by an MNE Group should be undertaken in the presentation currency of the MNE Group's Consolidated Financial Statements. For most MNE Groups, these amounts have been subject to audit as part of the preparation of the MNE Group's Consolidated Financial Statements and therefore provide a consistent and reliable basis for the application of the GloBE calculations.

13. Given the GloBE calculations are ultimately aggregated at the MNE Group level, MNE Groups are required in practice to report the aggregated amounts in a single currency regardless of any foreign exchange translation rules applied.

14. Further, relying on amounts being in the presentation currency of the MNE Group for calculation and reporting purposes should ensure that the compliance burden on Covered Groups is not increased unnecessarily and does not require amounts to be retranslated again if they have already been translated into the presentation currency of the MNE Group.

15. MNE Groups will be required to undertake all the relevant calculations for the GloBE Rules and report the relevant amounts in the GloBE Information Return in the presentation currency of the MNE Group's Consolidated Financial Statements. That is, the presentation currency of the MNE Group's Consolidated Financial Statements will form the foundational basis for the GloBE calculations. Therefore, all relevant amounts will need to be translated to the presentation currency of the MNE Group. This should allow for a common basis and expression of amounts for determining the application of the GloBE Rules to an MNE Group.

Where amounts relevant to the GloBE calculations are not already translated into the presentation currency, how should these amounts be translated?

16. As described in paragraph 118.17 of the Commentary to Article 10.1, Authorised Financial Accounting Standards permit MNE Groups to employ either of two basic paradigms for converting transactions from the local functional accounting currency to the presentation currency of the Consolidated Financial Statements. Under the first, transactions conducted in a currency other than the presentation currency are contemporaneously translated and recorded in the financial accounts in the presentation currency. Under the second, transactions are recorded in the financial accounts in the functional currency of the Constituent Entity and translated to the Consolidated Financial Statements presentation currency in the consolidation process. Accounting systems used by MNE Groups may differ significantly in how much of the data needed for the GloBE calculations is reported in accordance with the Authorised Financial Accounting Standard and readily available in the necessary detail in the presentation currency of the Consolidated Financial Statements.

17. MNE Groups using the first paradigm are likely to have most of their data relevant for the calculations readily available in the presentation currency. MNE Groups using the second paradigm will often only have aggregated data available at the consolidated level in the presentation currency. As this

data is frequently not sufficiently detailed for many of the GloBE calculations and adjustments, these MNE Groups will have to rely on data available in the local accounting functional currency of a Constituent Entity (i.e. pre-consolidation amounts). Hence, not all of the relevant amounts for GloBE purposes will be readily available in the presentation currency the Consolidated Financial Statements of the MNE Group. However, whether the data is collected from the MNE Group's accounting system post-translation (in the presentation currency of the Consolidated Financial Statements of the MNE Group) or pre-translation (in the local functional currency), it is fundamentally the same information reported according to the underlying Authorised Financial Accounting Standard of the MNE Group.

18. Therefore, where an MNE Group has amounts that have not been translated to the presentation currency as part of the accounting consolidation process but those amounts need to be translated for purposes of the GloBE calculations, MNE Groups will be required to translate such amounts in accordance with the applicable foreign currency translation rules in the Authorised Financial Accounting Standard used to compute the Financial Accounting Net Income or Loss of Constituent Entities in the jurisdiction. The applicable foreign currency translation rules include the equivalent of IAS 21 or ASC 830, as well as other parts of the Authorised Financial Accounting Standard that relate to specific currency translation issues, such as currency translation in a hyperinflationary environment.

19. Requiring the GloBE calculations to be undertaken in local currency of the jurisdiction where a Constituent Entity is located (but in accordance with the Authorised Financial Accounting Standard applicable to the MNE Group's Consolidated Financial Statement) and the use of a single foreign exchange rate to be uniformly applied to translate amounts of a Constituent Entity to the presentation currency of the Consolidated Financial Statements, may have some simplicity advantages over using the principles in the accounting standards. However, it is not considered appropriate because it lacks sufficient flexibility and may embed potential foreign exchange related distortions into the aggregated GloBE calculations for the MNE Group, especially in specific situations (i.e. hyperinflationary economies).

20. IAS 21 and ASC 830 (and their equivalents in other Authorised Financial Accounting Standards) provides principles for foreign currency translation of the amounts of a subsidiary, depending on classification of the relevant amount and the characteristics of the subsidiary. For purposes of determining the translation exchange rates to use for particular items relevant to the GloBE calculations, MNE Group's will be able to utilise the flexibility in determining the relevant exchange rate afforded by the Authorised Financial Accounting Standard applicable to its Consolidated Financial Statements, subject to the principles set out in that standard. For example, IAS 21 centers around three main principles:

- **Practicality:** although IAS 21 defaults to the exchange rates at the closing or transaction dates (i.e. spot rate), it stipulates that MNE Groups may use approximations such as average rates for the relevant period for practical reasons (if it is not a currency of a hyperinflationary economy or where the currency for other reasons fluctuates significantly).¹
- **Consistency:** although IAS 21 does not prescribe when and how a group might change the translation logic (such as spot rate, monthly average, annual average), IAS 21 generally allows changes to the currencies used (functional currencies or presentation currency) only if there is a change to the underlying transactions, events, and conditions.²
- **Transparency:** IAS 21 requires Groups to disclose the fact and the reason for any changes to the functional currency.³

21. For example, IAS 21 prescribes that income and expense items be translated based on exchange rates at the dates of the transactions (i.e. spot rate). However, the use of average rates is permitted for

¹ IAS 21, ¶ 40.

² IAS 21, ¶¶ 13 and 36).

³ IAS 21, ¶ 54.

practical reasons unless exchange rates are subject to significant fluctuation, most notably in hyperinflation economies. The frequency of measurement of the exchange rate (weekly, monthly, or yearly) will be dependent on the practicality of information available to the MNE Group and whether the frequency gives a reasonable approximation of the actual exchange rate. This may also differ depending on the relevant income or expense item.

22. MNE Groups will be required to adhere to the principles set out in the relevant accounting standards on currency translation when translating amounts for GloBE purposes, just as they would if the amounts were subject to these requirements under the relevant Authorised Financial Accounting Standard.

Foreign currency translation rules applicable for the purposes of translating any Top-Up Tax under the IIR or the UTPR Top-Up Tax Amount determined using the presentation currency into the currency in which the GloBE tax liability is payable.

23. Given the relevant calculations for GloBE purposes will be undertaken in the presentation currency of the MNE Group's Consolidated Financial Statements, the Top-Up Tax under the IIR or the UTPR Top-Up Tax Amount allocated to Constituent Entities in accordance with Chapter 2 of the GloBE Rules may need to be translated into local currency of the implementing jurisdiction for the purposes of assessment and/or payment.

24. However, uniformity in foreign exchange translation to local currency for these purposes is not necessary to ensure consistent application of the GloBE Rules because the relevant underlying GloBE calculations have been undertaken in the presentation currency of the MNE Group's Consolidated Financial Statements. Therefore, implementing jurisdictions are to determine their own foreign currency translation rules applicable to translate amounts from the presentation currency into local currency, provided the exchange rate is considered reasonable on the basis that it is determined by reference to exchanges rates during the Fiscal Year or payment date. Jurisdictions may choose to adopt any reasonable foreign currency translation basis, including (but not restricted to):

- The average foreign exchange rate for the Fiscal Year;
- The foreign exchange rate on the last day of the Fiscal Year; or
- The foreign exchange rate on the date payment is required.

25. While jurisdictions are free to choose any foreign exchange translation basis, it is recommended that specific rules are adopted in domestic legislation to give MNE Group's certainty to comply with the GloBE Rules.

Foreign currency translation rules for determining whether a GloBE threshold expressed in a currency other than the presentation currency has been met

26. Under paragraphs 19.1 and 19.2 of the Introduction to the Commentary of the GloBE Rules, where the thresholds are expressed in domestic legislation in a non-EUR currency, the amounts will need to be rebased annually to ensure a coordinated application of the GloBE Rules as well as consistency in the thresholds used by different jurisdictions on an ongoing basis.

27. Under paragraphs 19.1 and 19.2, the relevant thresholds are rebased in domestic legislation based on the average foreign exchange rate for the December month of the previous Fiscal Year. The previous December monthly average exchange rate for rebasing amounts in non-EUR currency was chosen because the rate needed to be incorporated into domestic legislation prior to or before the end of the Fiscal Year to give certainty to MNE Groups. This applies to all monetary thresholds in the GloBE Rules and Commentary, including:

- a. Articles 1.1, 1.2 and 6.1.1 – which refer to revenue included in the Consolidated Financial Statements equal to or greater than EUR 750 million.
- b. Article 3.1.3 – which refers to permanent differences in excess of EUR 1 million.
- c. Articles 4.6.1 and 4.6.4 – which refer to an aggregate decrease of less (Article 4.6.1) or more (Article 4.6.4) than EUR 1 million in the Adjusted Covered Taxes.
- d. Paragraphs 5.5.1(a) and (b) – which refer to Average GloBE Revenue of such jurisdiction is less than EUR 10 million and Average GloBE Income or Loss of such jurisdiction is a loss or is less than EUR 1 million.
- e. Article 9.3.2 – which refers the sum of the Net Book Values of Tangible Assets of all Constituent Entities located in all jurisdictions other than the Reference Jurisdiction does not exceed EUR 50 million.
- f. Article 10, ‘Material Competitive Distortion’ – which refers to the aggregate variation greater than EUR 75 million in a Fiscal Year as compared to the amount that would have been determined by applying the corresponding IFRS principle or procedure.
- g. Article 10, ‘Policy Disallowed Expenses’ – which refers to expenses accrued by the Constituent Entity for fines and penalties that equal or exceed EUR 50 000.

28. Where the presentation currency of the MNE Group differs from the currency in which thresholds are expressed in the domestic law of an implementing jurisdiction, the amount calculated in the presentation currency will need to be translated to determine whether the relevant threshold is met. While the general foreign exchange translation rules above require foreign exchange translation to be undertaken in accordance with the accounting standards, relying on the accounting standards to translate the amount relevant to the monetary thresholds may not be possible as the accounting standards are based on translating amounts to the presentation currency of the MNE Group’s Consolidated Financial Statements, not translating those amounts to another currency. Further, reliance on other metrics, such as the average rate for the Fiscal Year or the spot rate on the last day of the Fiscal Year to determine whether the relevant threshold is met may lead to inconsistent outcomes between jurisdictions where the threshold has been rebased in domestic legislation in a non-EUR currency.

29. Therefore, for the purposes of determining whether the relevant threshold has been met, the MNE Group will be required to translate the relevant amount from its presentation currency to the currency in which the relevant threshold is expressed in domestic law, based on the average foreign exchange rate for the December month of the previous Fiscal Year. This will ensure consistency in application of monetary thresholds across jurisdictions. This mirrors the requirement for the jurisdiction to rebase annually GloBE monetary thresholds expressed in local currency.

30. The average foreign exchange rate for the December month of the previous Fiscal Year will be determined by:

- If the domestic threshold is expressed in EUR - the foreign exchange rates as quoted by the European Central Bank (ECB). Where the ECB does not provide a foreign exchange reference rate for the local currency of a jurisdiction, the average foreign exchange rate will be determined based on the rate quoted by the jurisdiction’s Central Bank.
- If the domestic threshold is expressed in a non-EUR currency - the average foreign exchange rate will be determined based on the rate quoted by the jurisdiction’s Central Bank.

31. It is recognised that this may lead to counter-intuitive outcomes in some cases. For example, a Constituent Entity applying Article 3.1.3 may have permanent differences in its financial accounts expressed in GBP, the local currency, below the rebased GBP equivalent of EUR 1 million. However,

because the permanent differences are required to be translated to the MNE Group's presentation currency (for example, USD) based on the average rate of the Fiscal Year and then translated from USD to GBP based on the December average of the previous Fiscal Year, it may be the case that due to foreign exchange effects, the permanent differences exceed or fall below the rebased GBP equivalent of EUR 1 million. However, without this rule, there is a significant risk that a monetary threshold may be met in one implementing jurisdiction but not in another due to foreign exchange rate effects, which would result in inconsistent and uncoordinated outcomes across jurisdictions.

32. However, the guidance above is limited to determining whether the relevant threshold has been exceeded. To the extent that the relevant threshold is exceeded, any resulting adjustment will be based on the amount translated in accordance with the general principles prescribed in paragraphs 16 to 22 above. That is, the amount of the adjustment may be different to amount for determining whether the relevant threshold has been met.

33. This guidance also provides an update to the Commentary of the GloBE Rules as amended by the Administrative Guidance in relation to *Rebasing monetary thresholds in the GloBE Rules* [AG22.04.T18] to ensure that the rebasing rules also apply to Euro-denominated thresholds incorporated in the Commentary through Administrative Guidance. This also applies to any future Euro-denominated thresholds incorporated in the Commentary of the GloBE Rules by Administrative Guidance. For example, the guidance applies to the De Minimis test (Total Revenue of less than EUR 10 million and Profit (Loss) before Income Tax of less than EUR 1 million) under the Transitional CbCR Safe Harbour.

Guidance

34. The following guidance will be inserted after paragraph 17 of the Introduction to the Commentary:

17.1 In addition, to ensure the co-ordination and consistency of an MNE Group's GloBE calculations in each jurisdiction, MNE Groups will be required to undertake their GloBE calculations for each relevant jurisdiction in the presentation currency of their Consolidated Financial Statements. The presentation currency of the MNE Group is the currency in which its Consolidated Financial Statements are presented. This requirement applies regardless of the local currency of the relevant jurisdiction.

17.2 Depending on the accounting and consolidation processes within a MNE Group, many of the amounts needed for GloBE computations will have been translated to the presentation currency based on the Authorised Financial Accounting Standard in connection with the preparation of the Consolidated Financial Accounts. Other amounts that are relevant to the GloBE calculations will not have been translated for purposes of the Consolidated Financial Statements, either because those amounts do not exist in presentation currency or because the amounts are translated at the aggregate level for GloBE computation purposes post accounting consolidation (i.e. not at the Constituent Entity level). These amounts will need to be translated to the presentation currency specifically for GloBE computation purposes. An MNE Group must translate amounts necessary for the GloBE calculations to the presentation currency pursuant to the relevant currency translation principles of the Authorised Financial Accounting Standard used to prepare its Consolidated Financial Statements (for example, IAS 21 or ASC 830), regardless of whether such translations are required for preparation of the Consolidated Financial Statements or for other financial accounting purposes.

17.3 After the amount of Top-Up Tax allocable (or equivalent adjustment) to a Constituent Entity in accordance with Chapter 2 of the GloBE Rules in the MNE Group's presentation currency has been determined, jurisdictions are free to apply their own foreign currency translation rules to convert the Top-up Tax liability due in their jurisdiction into local currency, as long as the exchange

rate used is reasonable and relevant to the Fiscal Year. Jurisdictions may choose to adopt any reasonable foreign exchange translation basis, including (but not restricted to):

- a. The average foreign exchange rate for the Fiscal Year;
- b. The foreign exchange rate on the last day of the Fiscal Year; or
- c. The foreign exchange rate on the date payment is required.

While jurisdictions are free to choose any foreign exchange translation basis, it is recommended that specific rules are adopted in domestic legislation to give MNE Group's certainty to comply with the GloBE Rules.

35. The following language will be inserted in subparagraph (h) in paragraph 19.1 of the Introduction to the Commentary:

19.1

h. Any Euro-denominated threshold incorporated into the Commentary of the GloBE Rules through Administrative Guidance.

36. The following guidance will be inserted after paragraph 20 of the Introduction to the Commentary:

20.1 To minimise potential distortions and to ensure consistent application of the monetary thresholds in the GloBE Rules, the MNE Group must translate the relevant threshold amounts from its presentation currency to the currency used in the implementing jurisdiction's domestic law based on the same average foreign exchange rate for the December month of the calendar year prior to the commencement of the relevant Fiscal Year. The average foreign exchange rate for the December month of the previous Fiscal Year will be determined by:

- If the domestic threshold is expressed in EUR - the foreign exchange reference rates as quoted by the European Central Bank (ECB). Where the ECB does not provide a foreign exchange reference rate for the local currency of a jurisdiction, the average foreign exchange rate will be determined by that quoted by the implementing jurisdiction's Central Bank.
- If the domestic threshold is expressed in a non-EUR currency - the average foreign exchange rate will be determined by that quoted by the implementing jurisdiction's Central Bank.

20.2 Similar to the explanation provided in paragraph 19.2 above, where a threshold amount has been calculated in relation to the previous Fiscal Year, MNE Groups will not be required to recalculate and retranslate the amount based on the December average exchange rate applicable to the current Fiscal Year. That is, the amount of revenue of the MNE Group (for example, EUR 750 million) for the Fiscal Year commencing in 2023, translated into local currency based on the average foreign exchange rate for the month of December 2022 determined by the foreign exchange reference rates as quoted by the ECB, will remain the same for local currency purposes, for the purposes of calculations (for example, Article 1.1) for future Fiscal Years.

20.3 Where a jurisdiction does not rely on European Central Bank's exchange rates, to assist taxpayers in undertaking the necessary foreign exchange translations, it is recommended that jurisdictions make the average rates calculated by reference to the jurisdiction's Central Bank quoted rates for the month of December publicly available.

20.4 It is recognised that this translation requirement may lead to counter-intuitive outcomes for MNE Groups. For example, MNE Group members in a jurisdiction may have an accounting functional currency in local currency. Under Article 3.1.3, a Constituent Entity in its financial accounts (expressed in the local currency, for example GBP) may have permanent differences

below the rebased GBP equivalent of EUR 1 million. However, because the permanent differences are required to be translated to the MNE Group's presentation currency (for example, USD) based on the average rate of the Period and then translated from USD to GBP based on the December average of the previous Fiscal Year, it may be the case that due to foreign exchange effects, the permanent differences exceed the rebased GBP equivalent of EUR 1 million. Similarly, the foreign exchange translation rules may also have the opposite effect. However, given the fundamental importance that the GloBE monetary thresholds apply consistently across implementing jurisdictions, such outcomes are considered acceptable to give certainty to MNE Groups and tax administrations in the application of the GloBE Rules to a Covered Group for a Fiscal Year.

37. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraphs 21 and 22 of the Introduction to the Commentary:

~~21. Where a jurisdiction implements GloBE Rules using monetary thresholds that are in a currency other than Euros this creates the potential for differences in the application of the GloBE Rules between that jurisdiction and other jurisdictions. For example, Country Y could use its local currency to set the monetary threshold for determining whether a fine or penalty falls within the definition of a Policy Disallowed Expense. While this threshold is originally set at the local currency equivalent of EUR 50 000, the value of Y\$ may subsequently fall against the Euro such that, when the threshold is applied, the actual monetary threshold is set at the equivalent of EUR 35 000. In this case, the drop in the exchange rate effectively results in a potential increase in the measurement of the GloBE tax base under Country Y law for certain MNE Groups because it results in fines and penalties being added back to the calculation of GloBE Income, thereby increasing the denominator of the ETR calculation. In the rare circumstances where there are differences in the application of a threshold in one jurisdiction from other jurisdictions and in the determination of the GloBE tax base, these differences could potentially, in turn, have adverse implications for co-ordination and rule order. Such differences could result in a jurisdiction applying the charging provisions under Chapter 2 in circumstances that were not contemplated by the GloBE Rules, thereby undermining the expected outcomes for another jurisdiction that has also adopted these rules.~~

22. Accordingly, jurisdictions that implement monetary thresholds in a currency other than Euros must create provision in their law to ensure that any such differences do not result in outcomes that are inconsistent with the common approach and the intended outcomes under the Model Rules and this Commentary. Such coordination mechanisms may be considered as part of the process for assessing whether the domestic rules meet the qualification standards for a Qualified IIR, Qualified UTPR or Domestic Minimum Top-up Tax. ~~MNE Groups using a currency different to the local currency under domestic law.~~

38. Paragraphs 23 and 24 of the Introduction to the Commentary of the GloBE Rules will be deleted.

39. The text in bold will be inserted in, and the language in strikethrough will be removed from, paragraph 13 of the Commentary to Article 1.1:

13. In cases where the revenue threshold in a jurisdiction's domestic law is set in a currency other than the Euro and **the revenue threshold is revised** on a yearly basis, the applicable revenue threshold for the Fiscal Year is the last revenue threshold in effect as of the beginning of the Fiscal Year. **As discussed in paragraphs 19.1 through 19.2, jurisdictions will be required to re-base non-EUR denominated thresholds annually, based on the average exchange rate of the December of the previous calendar year.** For example, Country A rebases its revenue threshold in local currency in ~~December~~ **January** of each year **based on the average rate of the December of the previous calendar year**, effective for Fiscal Years beginning **on or after 1 January**. The MNE Group has a Fiscal Year that starts on 1 July 2024 and ends on 30 June 2025. The MNE Group applies the revenue threshold that is in effect on 1 July 2024.

40. The following guidance will be inserted after paragraph 13 of the Commentary to Article 1.1:

13.1 At the end of the Fiscal Year commencing 1 July 2024, the MNE Group will need to determine whether it meets the relevant GloBE monetary thresholds in the jurisdiction. If the presentation currency of the MNE Group's Consolidated Financial Statements differs from the currency in which the GloBE monetary thresholds are expressed in the jurisdiction's domestic law, the MNE Group will be required to translate the amount from the presentation currency to the currency prescribed in the jurisdiction's domestic law based on the average exchange rate of the December month of the calendar year immediately preceding the start of the MNE Group's Fiscal Year. Following the example in paragraph 13 above, for the Fiscal Year commencing 1 July 2024, the MNE Group would use the average exchange rate for December 2023 in translating its revenue to local currency to apply the relevant threshold.

41. The following guidance will be inserted after paragraphs 10 of the Commentary to Article 2:

10.1 As noted in paragraphs 17.1 and 17.2 of the Introduction to this Commentary, MNE Groups are required to undertake the GloBE calculations for all jurisdiction in the presentation currency of the MNE Group's Consolidated Financial Statements. Therefore, Top-Tax liability allocated to Constituent Entities (including any relevant reduction) under Article 2 will be calculated in the presentation currency of the MNE Group's Consolidated Financial Statements. Therefore, MNE Groups may be required to translate the Top-up Tax liability expressed in the presentation currency of its Consolidated Financial Statements to the local currency of the jurisdiction to which the amount is applicable. As jurisdictions may choose to adopt any reasonable foreign exchange translation basis for this, MNE Groups will need to make such translations based on the specific provisions contained in the domestic law of the relevant jurisdiction.

42. The following guidance will be inserted after paragraph 5 of the Commentary of the GloBE Rules for Article 3.1.2:

5.1 The GloBE Income or Loss of all Constituent Entities should be calculated in the presentation currency of the MNE Group's Consolidated Financial Accounts. This means that the Financial Accounting Net Income or Loss of a Constituent Entity is the net income or loss determined for the Constituent Entity in preparing the MNE Group's Consolidated Financial Statements, that has been translated into the presentation currency of the MNE Group's Consolidated Financial Statements (before any consolidation adjustments eliminating intra-group transactions). In addition, all amounts relevant to determining the GloBE Income or Loss of a Constituent Entity will need to be translated into the presentation currency of the MNE Group's Consolidated Financial Accounts in accordance with the relevant Authorised Financial Accounting Standard used in preparation of the Consolidated Financial Statements. This is regardless of whether the Financial Account Standard requires such amounts to be translated to the presentation currency of the MNE Group's Consolidated Financial Statements.

5.2 The Accounting Standards permit MNE Groups to employ either of two basic paradigms for converting transactions from the local functional currency to the presentation currency of the Consolidated Financial Statements of the MNE Group. Under the first, transactions conducted in the functional currency are contemporaneously translated and recorded in the financial accounts in the presentation currency. Under the second, transactions are recorded in the financial accounts in the functional currency and translated to the Consolidated Financial Statements presentation currency in the consolidation process. For this and other reasons, MNE Group's accounting systems may differ significantly in how much of the data is translated so that it can be reported in the presentation currency. Consequently, some of the data that is needed for the GloBE calculations is readily available in the presentation currency of the Consolidated Financial Statements and some is not.

5.3 MNEs using the first paradigm are likely to have most of their data relevant for determining a Constituent Entity's GloBE Income or Loss readily available in the presentation currency of the Consolidated Financial Statements of the MNE Group. MNE Groups will not be required to retranslate amounts that have already been translated under the relevant accounting standard in the preparation of their Consolidated Financial Statement.

5.4 MNE Group's using the second paradigm will often only have aggregated data available at consolidated level in the presentation. Hence, not all or even very few of the relevant amounts for GloBE purposes will be readily available in the presentation currency the Consolidated Financial Statements of the MNE Group. Where the GloBE Rules require calculations or adjustments based on more detailed data, these MNE Groups will have to rely on data, which is often only available in local functional currency of the Constituent Entity. Using such data as the starting point for the GloBE calculations should not create integrity risks because whether the data is collected from the MNE Group's accounting system after consolidation (in the presentation currency) or pre-consolidation (in the local functional currency), it is fundamentally the same information used to develop the Consolidated Financial Statements, provided the amounts are recorded in accordance with the accounting standard applicable to the Consolidated Financial Statements of the MNE Group (but not yet translated to the presentation currency).

5.5 Where this is the case, the relevant amounts required to determine a Constituent Entity's GloBE Income or Loss will need to be translated to the presentation currency in accordance with the principles prescribed by the equivalent of IAS 21 and ASC 830 of the relevant Authorised Financial Accounting Standard used in preparation of the Consolidated Financial Statements. In addition, other parts of the relevant Authorised Financial Accounting Standard that deal with foreign exchange translations shall also be applicable, including the relevant guidance in relation to hyperinflation.

5.6 Accounting standards are not prescriptive in how MNE Groups should set their translation logic from functional currency to presentation currency. For example, the standards do not specify a translation logic, such as spot rate or annual average, for specific types of transactions. Instead, these standards are principle-based, providing a framework around how MNE Groups are to set an appropriate translation logic. This framework provides MNE Groups with some flexibility to choose an appropriate translation logic and the ability to choose different translation logics for different transactions and accounts. Therefore, MNE Groups using the second paradigm (as described in paragraph 5.4) will be afforded the same flexibility available under the relevant accounting standard. However, in determining the relevant translation logic, MNE Group's will be required to meet the reasonable approximation requirements of the relevant Authorised Accounting Standard, as if the relevant amount were being translated directly as part of the accounting consolidation process.

43. The following guidance will be inserted after paragraph 16 of the Commentary to Article 3.1.3:

16.1 Similar to the requirement for Article 3.1.2, amounts determined in accordance with Article 3.1.3 must be translated into the presentation currency of the Consolidated Financial Statements for the purpose of determining a Constituent Entity's GloBE Income or Loss in accordance with the guidance set out in paragraphs 5 to 5.6 of the Commentary to Article 3.1.2. This requirement applies regardless of the fact that such amounts may have been determined in accordance with another Authorised Financial Accounting Standard. Unless the foreign currency translation requirements of the Authorised Financial Accounting Standards used pursuant to Article 3.1.3 significantly diverge from those of the Authorised Financial Accounting Standard used to prepare the Consolidated Financial Statements, it is expected that the foreign currency translation logic applicable to any amounts required to be translated to the presentation currency would be the

same as if the amounts had been translated under the accounting standard used to prepare the Consolidated Financial Statements.

44. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraphs 66 through 74 of the Commentary to Article 3.2.1:

Paragraph (f) - Asymmetric Foreign Currency Gains or Losses

66. Paragraph (f) adjusts for Asymmetric Foreign Currency Gain or Loss. These are generally foreign currency exchange gains or losses (FXGL) that arise due to differences between the **Constituent Entity's** functional currency for accounting purposes and the one used for local tax purposes.

67. The GloBE Rules do not make any adjustments for FXGL when the **accounting and tax** functional currencies **of the Constituent Entity** are the same. In those circumstances, any FXGL reflected in the financial accounts are included in the GloBE Income or Loss computation, irrespective of whether the local tax rules impose tax on FXGL. If FXGL is exempt under local tax rules, there will be a permanent difference that does, and should, affect the ETR of the jurisdiction.

68. The GloBE Rules do, however, make adjustments to avoid distortions that could arise when the functional currencies used **by a Constituent Entity** for accounting and tax differ. The definition of Asymmetric Foreign Currency Gain or Loss in Article 10.1 includes four types of FXGL. The FXGL included in the definition are described based on the relationship between the tax functional currency **of the Constituent Entity**, the accounting functional currency and a third foreign currency. The tax functional currency is the functional currency used to determine the Constituent Entity's taxable income or loss for a Covered Tax in the jurisdiction in which it is located. The accounting functional currency is the functional currency ~~used to determine~~ of the Constituent Entity for accounting purposes. A third foreign currency is a currency that is not the Constituent Entity's tax functional currency or accounting functional currency. The adjustments required under Article 3.2.2(f) with respect to each type of Asymmetric Foreign Currency Gain or Loss are explained below.

69. Paragraph (a) of the definition applies to transactions in the accounting functional currency **of a Constituent Entity** that produce taxable gain or loss because the tax functional currency is different. It brings the tax FXGL into the Financial Accounting Net Income or Loss. Paragraph (a) requires a positive adjustment to Financial Accounting Net Income or Loss in the amount of the tax foreign currency exchange (FX) gain and a negative adjustment to Financial Accounting Net Income or Loss in the amount of the tax FX loss.

70. Paragraph (a) also applies where an asset or liability denominated in the accounting functional currency is retranslated in the tax functional currency so that a tax FXGL arises, despite no FXGL arising for accounting purposes.

71. Paragraph (b) of the definition applies to transactions in the tax functional currency **of a Constituent Entity** that produce an accounting gain or loss because the accounting functional currency **of the Constituent Entity** is different. It removes the accounting FXGL from the Financial Accounting Net Income or Loss. Thus, paragraph (b) requires a negative adjustment to Financial Accounting Net Income or Loss in the amount of the accounting FX gain and a positive adjustment to Financial Accounting Net Income or Loss in the amount of the accounting FX Loss.

72. Paragraph (b) also applies where an asset or liability denominated in the tax functional currency is retranslated in the accounting functional currency so that an accounting FXGL arises, but no FXGL arises for tax purposes.

73. Paragraph (c) of the definition is the exclusionary arm of the rule in respect of FXGL arising from transactions in a third foreign currency. These transactions may result in an FXGL vis-à-vis

both the accounting currency and tax functional currency **of the Constituent Entity**. However, paragraph (c) only applies to the FXGL in respect of the accounting functional currency. It excludes these gains and losses from the GloBE Income or Loss computation by requiring a negative adjustment to Financial Accounting Net Income or Loss in the amount of the accounting FX gain and a positive adjustment to Financial Accounting Net Income or Loss in the amount of the accounting FX Loss.

74. Paragraph (d) of the definition is the inclusionary arm of the rules for third foreign currency gains. It includes the gain or loss determined with respect to the tax functional currency by requiring a positive adjustment to Financial Accounting Net Income or Loss in the amount of the tax FX gain and a negative adjustment to Financial Accounting Net Income or Loss in the amount of the tax FX loss. This rule applies irrespective of whether the FXGL in the tax functional currency is includible in taxable income or subject to tax in the Constituent Entity's location. For purposes of paragraph (d), if the FX gain or loss is not subject to tax under local law, the tax FX gain or loss is the amount that would have arisen for tax purposes if the Constituent Entity had been subject to tax on the gain or loss using the same method for determining FXGL as is used in the financial accounts.

74.1 While the adjustment for Asymmetric Foreign Currency Gains and Losses is determined by reference to the Constituent Entity's tax functional currency and accounting function currency, the resulting amount of the required adjustment will need to be translated to the presentation currency of the MNE Group's Consolidated Financial Statements, for the purposes of determining the Constituent Entity's GloBE Income or Loss. This translation to the presentation currency should be undertaken in accordance with Article 3.1.2 and Article 3.1.3 and the relevant commentary to those Articles.

45. The text in strikethrough will be removed from paragraphs 75 of the Commentary to Article 3.2:

Paragraph (g) - Policy Disallowed Expenses

75. Paragraph (g) adjusts for Policy Disallowed Expenses which are defined in Article 10.1 to mean expenses accrued by the Constituent Entity for illegal payments, including bribes and kickbacks, and expenses accrued by the Constituent Entity for fines and penalties. There is a materiality threshold that prevents the rule from applying in the case of de minimis fines and because the rule only applies to fines and penalties that equal or exceed EUR 50 000 (or an equivalent amount in the ~~functional~~ currency in which the Constituent Entity's Financial Accounting Net Income or Loss was calculated). There is no such threshold for bribes and kickbacks which are always disallowed.

46. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraph 103 of the Commentary to Article 4.4.5:

Paragraph (f)

103. Net gains **on** foreign currency exchange **are** taken into account in paragraph (f) of Article 4.4.5. Monetary items such as payables, receivables, and loans denominated in a foreign currency (i.e. different from the ~~functional~~ **presentation currency of the MNE Group's Consolidated Financial Statements used for calculation the Constituent Entity's GloBE Income or Loss**) are translated at the closing rate for accounting purposes, which is the spot exchange rate at the reporting date. Any foreign exchange gains and losses are generally recognised in the financial accounting income of a Constituent Entity. Domestic tax laws, however, may not recognise these unrealised foreign exchange gains and losses until a realisation event occurs, such as a repayment of a loan.

47. The text in bold will be inserted in paragraph 83 of the Commentary to Article 5.5.1:

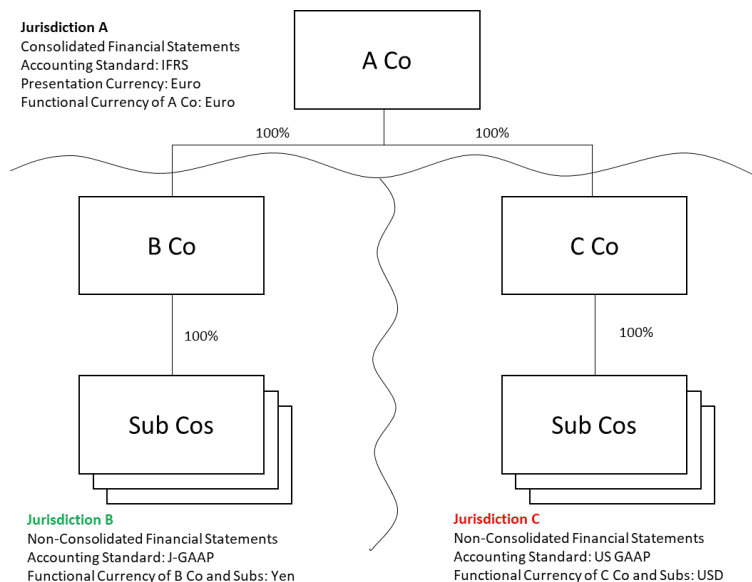
83. The two conditions provided in Article 5.5.1 are denominated in the Euro currency. Like the revenue threshold, this may require the MNE Group to convert its revenue and income into Euros and may require a jurisdiction that measures the de minimis conditions in local currency to re-base the de minimis threshold amounts on a yearly basis to align with the references provided in the GloBE Rules. **Where the threshold is determined in a currency different to the presentation currency of the Consolidated Financial Statements, MNE Groups should translate the relevant amounts based on the average exchange rate of December for the calendar year immediately preceding the commencement of the MNE Group's Fiscal Year.**

Examples

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

Article 3.1.2

Example 1

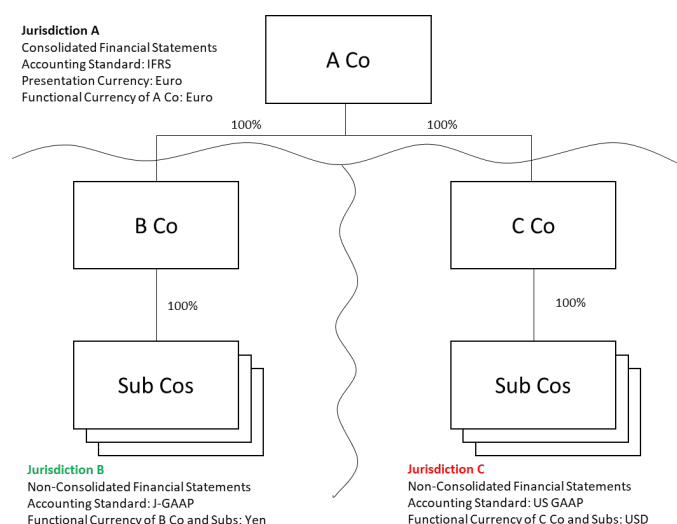


1. An MNE Group's UPE is A Co, located in jurisdiction A. The MNE Group's Consolidated Financial Statements are prepared using IFRS and the presentation currency is Euro.
2. A Co has two subsidiaries, B Co (located in jurisdiction B) and C Co (located in jurisdiction C). Both B Co and C Co have subsidiaries also located in jurisdiction B and C respectively. The non-consolidated accounts for B Co and its subsidiaries are prepared in accordance with Japanese GAAP (J-GAAP). The functional accounting currency of B Co and its subsidiaries is Japanese Yen. The non-consolidated accounts for C Co and its subsidiaries are prepared in accordance with US GAAP. The functional accounting currency of C Co and its subsidiaries is USD. None of the subsidiaries are located in a hyperinflationary economy.
3. The MNE Group's accounting consolidation system is set up to contemporaneously translate and record all entity level postings in local functional currency to the Consolidated Financial Statements-currency (Euro). As a result, all of the detailed data relevant for the GloBE Income and Loss of each Constituent Entity is readily available in the presentation currency of the Consolidated Financial Statements (Euro). The MNE Group's accounting consolidation system uses spot rates at the date of transaction for income statement items and closing rates for

balance sheet items. This foreign exchange translation logic is consistent with the relevant principles of IFRS.

- The principles of IFRS may also support other foreign exchange translation logics. However, the foreign exchange translation logic used in the MNE Group's accounting consolidation system should be respected under the GloBE Rules because it is consistent with the relevant IFRS principles.

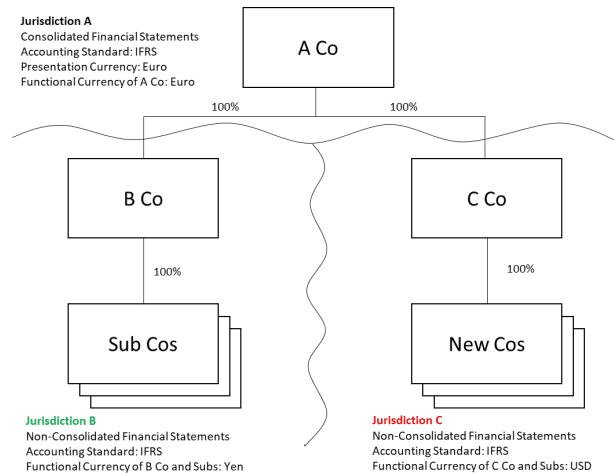
Example 2



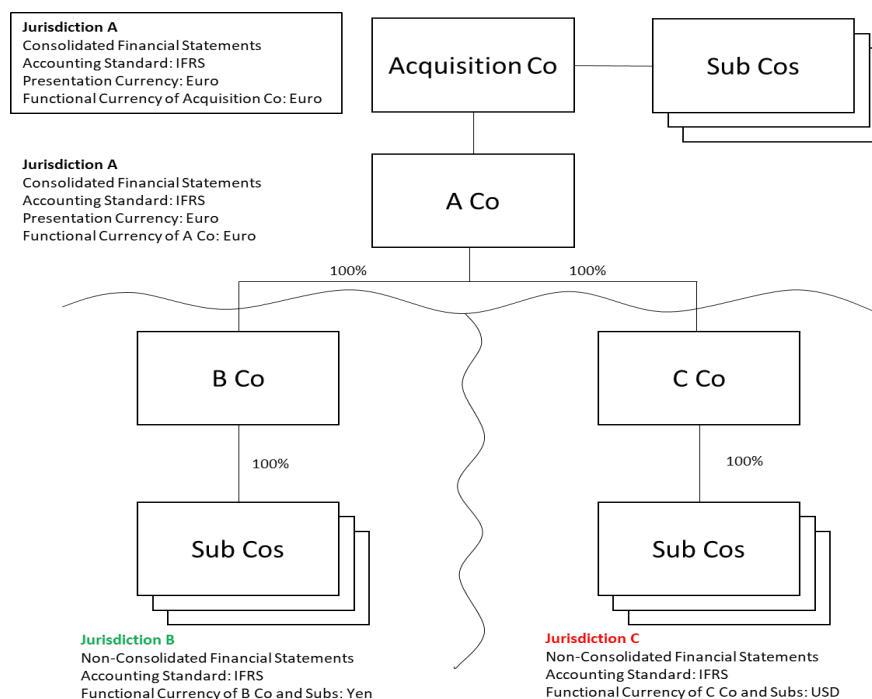
- An MNE Group's UPE is A Co, located in jurisdiction A. The MNE Group's Consolidated Financial Statements are prepared using IFRS and the presentation currency is Euro.
- A Co has two subsidiaries, B Co (located in jurisdiction B) and C Co (located in jurisdiction C). Both B Co and C Co have various subsidiaries also located in jurisdiction B and C respectively. The non-consolidated accounts for B Co and its subsidiaries are prepared in accordance with J-GAAP. The functional accounting currency of B Co and its subsidiaries is Japanese Yen. The non-consolidated accounts for C Co and its subsidiaries are prepared in accordance with US GAAP. The functional accounting currency of C Co and its subsidiaries is USD. None of the subsidiaries are located in a hyperinflationary economy.
- The MNE Group's accounting consolidation system is set up to record the entity level data in the local accounting functional currency and translate to the Consolidated Financial Statements presentation currency (Euro) in accordance with IFRS during the monthly consolidation process. The consolidation of the local data is completed at an aggregate account balance level (i.e. not per posting or transaction) using the monthly average rate for income statement items and closing rate for balance sheet items. As a result, most of the detailed data required to calculate each Constituent Entity's GloBE Income or Loss is only available in the local functional currency (i.e. JPY and USD).
- The MNE Group's accounting system cannot determine the portion of the annual amount the income or expense that was posted in each month and thus cannot apply monthly translation rates to different portions of the income or expense. For practical reasons, the MNE Group therefore uses yearly average rates when converting the relevant profit and loss GloBE data points from local currency to the presentation currency. Using a yearly average rate for these adjustment items is appropriate under the relevant principles of IFRS.

- As the foreign exchange translation logic used to determine each Constituent Entity's GloBE Income or Loss is consistent with the relevant principles of IFRS, the conversion logic should be respected under the GloBE Rules.

Example 3



- The MNE Group's consolidated financial statements are prepared using IFRS and the Group's presentation currency is Euro. The accounts for B Co and its subsidiaries are prepared in accordance with IFRS. The accounting functional currency of B Co and its subsidiaries is Japanese Yen. The accounts for C Co and its subsidiaries are prepared in accordance with IFRS. The accounting functional currency of C Co and its subsidiaries is US Dollars. None of the subsidiaries are located in a hyperinflationary economy.
- The MNE Group's consolidation system is set up to contemporaneously translate and record all entity level postings in local functional currency to the presentation-currency of the MNE Group (i.e. it uses the first conversion paradigm). Consequently, the detailed data relevant for calculating each Constituent Entity's GloBE Income or Loss is readily available in the presentation-currency of the MNE Group (i.e. Euro). The MNE Group's accounting consolidation system uses spot rates at the date of transaction for income statement items and closing rates for balance sheet items.
- Due to a recent acquisition (New Cos), certain subsidiaries are not part of the consolidation system. For commercial reasons (e.g. system costs and the low materiality of these entities), it is decided not to incorporate these entities into the MNE Group's accounting consolidation system. The entity level postings for these entities are therefore completed in the local accounting functional currency and then translated to the presentation currency on an aggregated basis in the monthly consolidation process.
- For these Constituent Entities, the detailed data relevant for determining their GloBE Income or Loss is only available in local functional currency (i.e. USD). The MNE Group's accounting system cannot determine the portion of the annual amount the income or expense that was posted in each month and thus cannot apply monthly translation rates to different portions of the income or expense. Therefore, the MNE Group uses a yearly average rate when converting from local currency to the presentation currency for these Constituent Entities. As the foreign currency translation logic is compliant with the accounting standard applicable to the Consolidated Financial Statements, the foreign currency translation logic should be respected for determining the GloBE Income or Loss for these Constituent Entities.

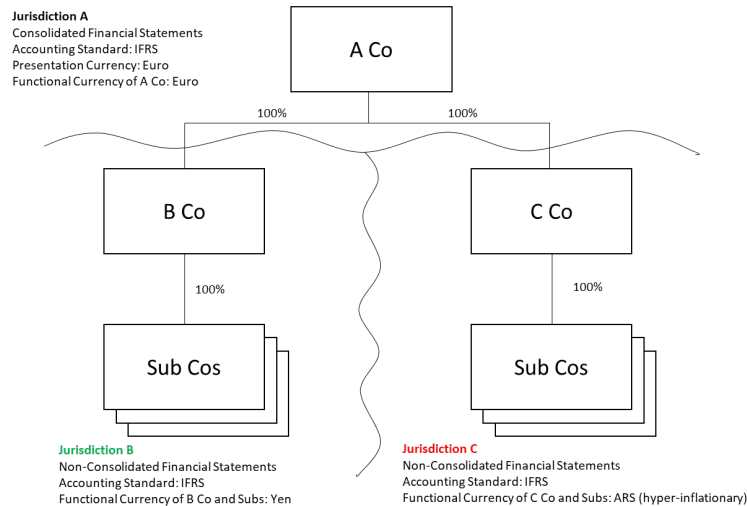
Example 4

1. The A Co Group's consolidated financial statements are prepared using IFRS and the Group's presentation currency is Euro. The accounts for B Co and its subsidiaries are prepared in accordance with IFRS. The accounting functional currency of B Co and its subsidiaries is Japanese Yen. The accounts for C Co and its subsidiaries are prepared in accordance with IFRS. The accounting functional currency of C Co and its subsidiaries is US Dollars. None of the subsidiaries are located in a hyperinflationary economy.
2. The A Co Group's accounting consolidation system is set up to record the entity level data in the local functional currency and translate to the presentation-currency during the monthly consolidation process. The consolidation of the local data has been done at an aggregate account balance level (i.e. not per posting or transaction) using monthly averages for Profit and Loss items and closing rate for Balance Sheet items. Consequently, the detailed data relevant for determining each Constituent Entity's GloBE Income or Loss is only available in local functional currency (i.e. JPY and USD). As in Example 2, the MNE Group uses yearly average rates to convert from local currency to presentation-currency for GloBE calculation purposes.
3. Due to a recent acquisition, the A Co Group has become part of a larger MNE Group and the new UPE-entity for GloBE purposes is Acquisition Co. Acquisition Co Group uses IFRS and its presentation currency is the Euro. Acquisition Co Group's consolidation system is set up to contemporaneously translate and record all entity level postings in local functional currency to the presentation currency. It has been decided to incorporate the A Co Group into Acquisition Co's consolidation system, which is planned to take 3 years. During that period, Acquisition Co will continue to use the A Co Group's foreign currency translation logic in parallel to the logic used by the Acquisition Co Group. That is, Acquisition Co will maintain its current foreign currency translation logic for Sub-Cos, while it will maintain A Co Group's (and its subsidiary) different foreign currency translation logic during the 3-year period. These different logics will be applied even where the A Co Group and the Acquisition Co Group have subsidiaries located in the same jurisdiction. Upon incorporation of the A Co Group into Acquisition Co Group's

consolidation system, it will use the same foreign currency translation logic (i.e. contemporaneous translation) as the Acquisition Co Group.

- Given the foreign currency translation logics used both before and after the system implementation are in accordance with the accounting standard applicable to the Consolidated Financial Statements of the MNE Group, the foreign currency translation logics should be respected for the purposes of determining each Constituent Entity's GloBE Income or Loss.

Example 5



- The MNE Group's consolidated financial statements are prepared using IFRS and the Group's presentation currency is Euro. The accounts for B Co and its subsidiaries are prepared in accordance with IFRS. The accounting functional currency of B Co and its subsidiaries is Japanese Yen. The accounts for C Co and its subsidiaries are prepared in accordance with IFRS. The accounting functional currency of C Co and its subsidiaries is Argentine Peso. The C Co Group is located in a hyperinflationary economy.
- The MNE Group's consolidation system is set up to record the entity level data in the local functional currency and translate to the presentation currency of the Consolidated Financial Statements during the monthly consolidation process (i.e. it uses the second conversion paradigm). The consolidation of the local data is completed at an aggregate account balance level (i.e. not per posting or transaction) using monthly averages for income statement items and closing rates for balance sheet items.
- As a result, more granular data required to calculate each Constituent Entity's GloBE Income or Loss is only available in the local functional currency (i.e. JPY and ARS). A requirement to use monthly averages to convert these more granular adjustments would be un-administrable for the MNE Group, whose accounting consolidation processes are not designed to track the time and applicable foreign exchange rate for each individual posting performed at an unconsolidated entity level.

For practical reasons, the MNE Group therefore uses yearly average rates when converting the relevant profit and loss GloBE data points from local currency to the presentation -currency. Whereas using a yearly average rate is an appropriate foreign currency translation logic under the accounting standards and should be respected under the GloBE rules for the B Co Group, this is not appropriate for the C Co Group. For the C Co Group, the foreign currency translation logic should follow a similar set of principles as those set out for hyperinflationary economies in the Group's financial accounting standards (in this case, IFRS).

2 Guidance on Tax Credits

Introduction

Importance of Tax credit treatment for ETR purposes

1. The treatment of tax credits under the GloBE Rules is important because they can have a significant impact on the Jurisdictional ETR calculation depending upon whether they are treated as GloBE Income or a reduction to Covered Taxes. Tax credits will reduce the ETR under either treatment. However, if a tax credit is treated as GloBE Income, it will reduce the ETR by a smaller amount than if it is treated as a reduction in Covered Taxes.

IF agreement on refundable tax credits

2. Working Party 11 first began considering the treatment of government grants and tax credits in the spring of 2020. That consideration led to a lengthy discussion of government grants and tax credits in the Pillar Two Blueprint that ultimately formed the foundation of the GloBE Rules on the treatment of refundable tax credits. When the GloBE Rules were agreed, the IF considered refundable tax credits broadly equivalent to government grants and therefore treated them as GloBE income. The treatment of refundable tax credits under the GloBE Rules is largely consistent with the financial accounting treatment of refundable tax credits. However, the Model Rules required that tax credits be refundable within four years in order to receive this favourable treatment. The GloBE Rules depart from the financial accounting treatment of refundable tax credits where they do not meet the condition that they are refundable within four years, and provide specific rules for their treatment as a reduction to Covered Taxes.

3. The agreed treatment was grounded in the accounting principles applicable to tax credits, such as IAS 20 (government grant accounting) and IAS 12 (income tax accounting). However, the GloBE Rules provide a specific treatment (GloBE Income) for tax credits that are refundable within four years (Qualified Refundable Tax Credits or QRTCs) and a specific treatment (reduction of Covered Taxes) for tax credits that are refundable after four years (Non-Qualified Refundable Tax Credits or Non-QRTCs). The treatment of these tax credits under the GloBE Rules is mandatory, irrespective of how the tax credits are accounted for by the MNE Group.

4. The Commentary sets out a broad definition of the meaning of “refundable” in the context of the treatment of QRTCs under the GloBE Rules:

Refundable means that the amount of the credit that has not been used already to reduce Covered Taxes is either payable as cash or cash equivalent. For this purpose, cash equivalent includes checks, short-term government debt instruments, and anything else treated as a cash equivalent under the financial accounting standard used in the Consolidated Financial Statements as well as the ability to use the credit to discharge liabilities other than a Covered Tax liability. If the credit is only available to reduce Covered Taxes, i.e. it cannot be refunded in cash or credited against another tax, it is not refundable for this purpose.

Special treatment for QFTBs

5. In February 2023, the Inclusive Framework released Administrative Guidance (February AG) that addressed the treatment of Qualified Flow-through Tax Benefits (QFTBs) that are derived through a Qualified Ownership Interest (QOI) in a Tax Transparent Entity. In the structures at issue, the investor that holds the QOI recovers its investment through receiving tax benefits that flow through the Tax Transparent Entity. The February AG allows the investor in the QOI to treat these tax benefits derived through the Tax Transparent Entity as taxes paid to the extent of the investment. Tax benefits exceeding the QOI investment are treated as tax reductions. This essentially puts the investor in the QOI in the same position as if it instead used the amount invested in the QOI to pay its taxes.

Additional guidance is needed

6. Although the Model Rules and Commentary prescribe specific treatment for refundable tax credits, they do not provide comprehensive rules for the treatment of all tax credits and some of the existing Commentary on the GloBE treatment of tax credits is unclear.

Transferable tax credits

7. At the time the GloBE Rules were agreed, the IF gave no consideration to the treatment of transferable tax credits. A transferable tax credit has similarities to a refundable tax credit from the perspective of both the originator of the credit and the government providing the credit. From the originator's perspective, a transferable tax credit can either be used to pay its income taxes or sold to someone else and the proceeds used to pay its income taxes or other expenses. A transferable tax credit is not as valuable to the originator as a refundable tax credit when the originator lacks sufficient tax liability to absorb the tax credit because the originator will have to sell the tax credit at a discount rather than getting a full refund from the government. However, it still has a cash value to the originator to the extent that the credit is readily tradeable in an active market. From the government's perspective, it will have to forego tax revenue equal to the face amount of transferable tax credits that trade in an active market in all cases because they will be used by the originator or a purchaser to reduce their tax liability. In fact, some governmental accounting standards require governments that grant transferable tax credits to treat them as government expenditures for accounting and budgeting purposes.

Unresolved issues related to QFTBs

8. The February AG on Qualified Flow-through Tax Benefits (QFTBs) left several questions unresolved. An issue in need of further guidance is the treatment of the developer of the project that originates the tax credits. The February AG indicated that further consideration would be given to the timing of the tax adjustments by the investor that holds a QOI. Under the February AG, the investor treats QFTBs as tax expense until the QOI investment is fully recovered and then as a tax reduction. For accounting purposes, however, investors in these structures often use the proportional amortization method to determine when and to what extent the income tax expense is adjusted. Under this method, the investor's profit from the investment is spread over the investment period.

Timing of income from QRTC

9. The originator of a QRTC has the right to a refund of the amount of the tax credit within four years. The Commentary to the GloBE Rules states that "the full amount of a QRTC will be treated as GloBE Income of the recipient Constituent Entity in the year such entitlement accrues." The Constituent Entity may not actually receive the refund or use all of the tax credit in the year that it satisfies the tax credit requirements. IAS 20 does not provide specific timing rules for refundable tax credits that are accounted for as government grants leaving MNE Groups with leeway in how they are accounted for. Some MNE

Groups may include refundable tax credits as income in full in the year the Constituent Entity becomes eligible for the tax credit or as income to the extent it is used or refunded each year. Alternatively, if the refundable tax credit arises in connection with an investment in an asset, the MNE Group may account for it as income over the productive life of the asset.

Clarification of treatment of non-refundable tax credits

10. The Pillar Two Blueprint sets out an analysis of the accounting treatment of non-refundable tax credits:

235. ... An ITC that is determined or limited by reference to an entity's income tax liability or provided in the form of an income tax deduction is likely to be accounted for under IAS 12 (Income Taxes) and recorded in the financial accounts as a reduction in current tax expense...

236. Therefore, it is expected that generally under IFRS and equivalent accounting standards any "refundable" ITCs would be treated as income, whereas any non-refundable ITCs would be treated as a reduction in a tax liability.

11. Article 4.1.1 of the Model Rules could be interpreted as providing that the treatment of non-refundable credits under the GloBE Rules follows their financial accounting treatment. However, the GloBE Rules and Commentary do not provide clear and comprehensive guidance on the treatment of non-refundable tax credits. Article 4.1.3(c) can be interpreted in a way that treats non-refundable credits as tax reductions. Article 4.1.3(c) provides that the reductions to Covered Taxes include:

any amount of Covered Taxes refunded or credited, except for any Qualified Refundable Tax Credit, to a Constituent Entity that was not treated as an adjustment to current tax expense in the financial accounts.

The reference to QRTCs in Article 4.1.3(c) could be read as suggesting that all other tax credits are in scope of the rule. The Commentary, however, indicates that the provision is focused on refunds of Covered Taxes that were previously paid, with the reference to "credited" as a means of acknowledging that some tax refunds are credited against other liabilities of the taxpayer that is due the refund.

12. The Commentary on the treatment of QRTCs as GloBE Income also contains statements that may create uncertainty in implementing and interpreting the rules. Paragraph 113 of the Commentary to Article 3.2.4 provides:

a tax credit that does not meet the conditions for being a Qualified Refundable Tax Credit, i.e. a Non-Qualified Refundable Tax Credit, but that was treated as income in the financial accounts, must be deducted in full from the measure of net income in the financial statements, and there must be a corresponding reduction of Adjusted Covered Taxes under Article 4.1.3(b).

Without the phrase "i.e. a Non-Qualified Refundable Tax Credit", this sentence would mean that any tax credit that is not a QRTC is treated as a tax reduction because all other credits would not meet the conditions for being a QRTC. That phrase, however, seems to limit the sentence to refundable tax credits that do not meet the conditions for being a QRTC.

13. Finally, paragraph 57.3 of the Commentary to Article 3.2.1(c), which was added by the February AG, states that both Non-QRTCs and non-refundable tax credits are treated as reductions to Adjusted Covered Taxes under the GloBE Rules.

14. Given the lack of clarity in the rules and commentary and the resulting uncertainty in the intended operation of the rules addressing the position of tax credits, this guidance seeks to stabilize and codify the treatment of tax credits based on their character in the hands of the Constituent Entity based on bright-line rules and economic criteria that reflects the way they are accounted for under existing accounting standards.

Reference to accounting treatment where guidance is incomplete or unclear

15. The general principle embedded in Article 3.1 is that where GloBE Rules do not provide for specific provisions addressing the treatment of specific items or transactions, the starting point for applying the rules should be the relevant accounting standards used to determine the Financial Accounting Net Income or Loss for GloBE purposes. The GloBE Rules and Commentary do not address the treatment of transferable tax credits and are not clear on the treatment of other tax credits. Accordingly, in the absence of specific rules dealing with transferable and non-refundable tax credits, the corresponding GloBE treatment needs to be considered in light of the MNE Group's accounting treatment pursuant to Article 3.1.

Income tax accounting – IAS 12 and ASC 740

16. IAS 12 and ASC 740 govern the accounting treatment of income tax expense under IFRS and US GAAP, respectively. Income tax credits are generally treated as reductions to income tax expense under IAS 12 and ASC 740 because they reduce the recipient's income tax liability. However, neither IFRS nor US GAAP provides comprehensive, authoritative guidance on the accounting treatment of tax credits.

17. Investment tax credits (ITCs) are often accounted for differently from other types of tax credits. Under ASC 740, ITCs that are related to specific assets can be accounted for either as a reduction to income tax expense in the year the qualifying asset is placed in service or may be included in income ratably over the productive life of the qualifying asset.

18. IFRS does not have specific guidance on ITCs. In fact, ITCs are expressly excluded from the scope of IAS 12 and IAS 20. Accountants applying IFRS to ITCs, however, generally analogize to the treatment of other tax credits under IAS 12 and IAS 20 and determine which accounting treatment is more appropriate based on the features and requirements of the tax credit. An ITC that is determined or limited by reference to an entity's income tax liability or provided in the form of an income tax deduction is likely to be accounted for under IAS 12 and recorded in the financial accounts as a reduction in current tax expense. Where IAS 20 accounting is appropriate, an ITC may be accounted for as income ratably over the productive life of the qualifying asset.

Government Grant Accounting – IAS 20

19. IAS 20 governs the accounting treatment of government grants under IFRS. US GAAP does not have specific guidance on the treatment of government grants. However, in applying US GAAP, accounting professionals apply the principles of IAS 20.

20. IAS 20 defines government grants as "assistance by government in the form of transfers of resources to an entity in return for past or future compliance with certain conditions relating to the operating activities of the entity". Government grants often involve a direct payment or transfer of resources to an entity, but some are administered via the tax system for efficiency reasons. In those cases, the grant is credited against the entity's tax liability and any amount exceeding the tax liability is refunded to the entity. A tax credit falls into the IAS 20 framework where it is a transfer of resources and the transfer is in return for past or future compliance with certain conditions and activities.

21. Under government grant accounting, the amount of the grant is included in the entity's income. Where government grant accounting treatment is applicable to a tax credit, this accounting treatment applies notwithstanding the fact that the government grant is realized in the form of a credit against the entity's income tax liability. In effect, the accounting treats the entity as receiving a government grant and using it to pay the income tax liability.

22. Accounting professionals uniformly consider refundable tax credits to be transfers of resources within the meaning of IAS 20 because the benefit is not conditioned on or limited by the recipient's tax liability. If the tax credit exceeds the tax liability, the government will provide the difference in cash or cash

equivalents. Accordingly, refundable tax credits are treated as income of the recipient under IFRS and US GAAP.

23. Beyond refundable tax credits, the determination of whether a tax credit is treated as an income tax reduction or as income is based on the terms and characteristics of the tax credit. In respect of non-refundable tax credits, the main features that are typically considered by accounting professionals as indicators that a tax credit can be treated as income are:

- a. The ability to offset the tax credit against other taxes (e.g. VAT, stamp duty, payroll tax); and
- b. The ability to transfer the tax credit to another party in an active market.

24. Conversely, the circumstance that a tax credit can only be offset against income taxes and cannot be directly settled in cash when there is insufficient taxable profit is an indicator that the tax credit should be treated as an income tax reduction.

Application of the accounting standards to originators of transferable tax credits

25. Transferable tax credits have existed for some time. However, the size and scale of the transferable credits arising under the Inflation Reduction Act (IRA) in the US created a need for more specific accounting guidance on transferable tax credits.⁴ The IRA transferable tax credits can be offset against income tax of the originator or transferred to another party and used to offset the income tax liability of the purchaser. However, an IRA transferable tax credit can be transferred only once and thus a purchaser cannot re-transfer it.

26. In recent consultations on the proper accounting treatment of IRA transferable tax credits under US GAAP, the Financial Accounting Standards Board (FASB) concluded that the most appropriate accounting treatment is income tax reduction. However, FASB also agreed that other treatments of the IRA transferable tax credits by the original recipient (the originator) were permissible. Specifically, it concluded that an originator could apply income treatment for these transferable tax credits or could apply an intent-based treatment, where the ones the originator intends to sell are treated as income and the ones the originator intends to use are treated as income tax reductions.

Application of the accounting standards to purchasers of transferable tax credits

27. The FASB concluded that a purchaser of an IRA transferable tax credit must treat the purchase price of the credit as income tax expense. The difference between the purchase price and face value of the tax credit (the discount) reduces the income tax expense. The purchase price represents the entity's cost to satisfy its tax liability; thus, it cannot be treated as a reduction of income tax expense. This conclusion is consistent with the fact that the IRA transferable tax credits cannot be re-sold by the person that purchases them from the originator and can only be used to reduce a tax liability of the purchaser.

28. The accounting practice developed in Italy for IFRS adopters in relation to the purchase of certain non-refundable tax credits is to treat them as financial assets under IFRS 9 (Financial Instruments). The treatment as financial asset pursuant to IFRS 9 is indicated as the most appropriate accounting treatment in an official document released by the Italian regulatory authorities.⁵ The tax credits that are the subject of the IFRS guidance are different than transferable IRA tax credits because they can be offset against income taxes and other taxes (e.g. VAT, stamp duty, payroll cost) and can be transferred indefinitely in the market. Pursuant to the guidance, the purchaser accrues interest income equal to the discount as the

⁴ The IRA also established certain refundable credits. Those credits are accounted for as income under US GAAP.

⁵ Bank of Italy (bank regulatory authority), Consob (Financial markets regulatory authority) and IVASS (insurance supervisory authority).

credit matures. If the credit is used to satisfy a tax liability, the purchaser treats the face value of the credit as tax expense. Alternatively, if the purchaser re-sells the tax credit, it determines gain or loss based on the carrying value of the credit (generally, the original purchase price plus accrued income). This treatment is essentially the same as income treatment for a refundable tax credit but relies on IFRS 9 instead of IAS 20.

Summary

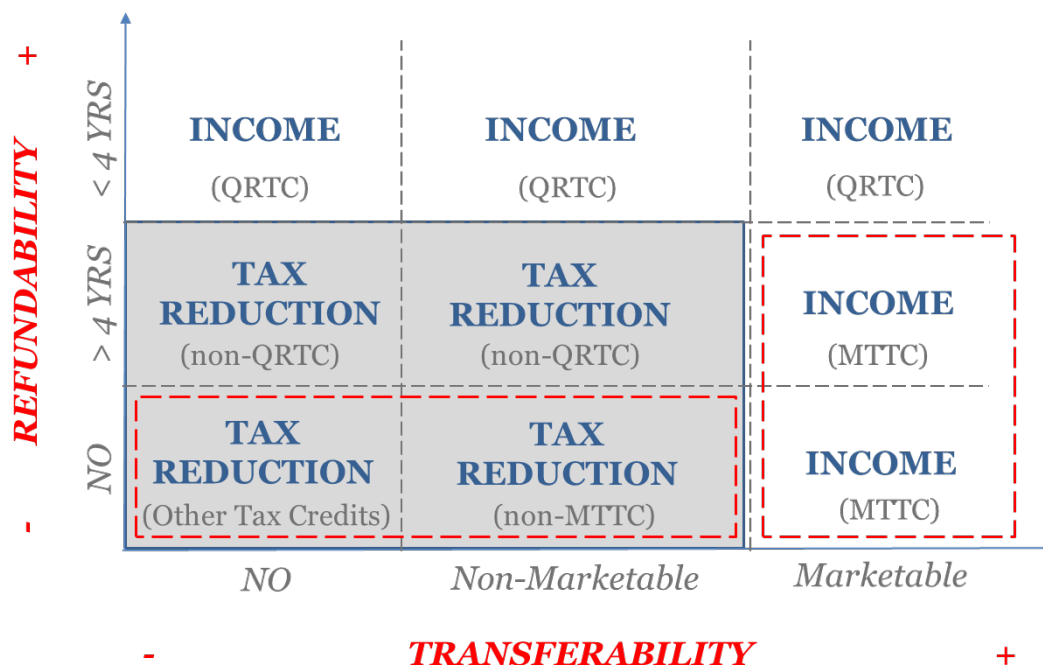
29. Neither IFRS nor US GAAP provides comprehensive, authoritative guidance on the accounting treatment of tax credits. Instead, the applicable accounting framework – income treatment or tax expense reduction treatment – is determined based on the specific features of the credits and any locally-developed accounting practice. Locally-developed accounting practices may not always reach the same conclusions about the substantive features of a tax credit in relation to determining the applicable accounting treatment. In addition, the accounting guidance that exists is often not mandatory such that different companies may adopt different accounting policies for the same tax credits. Consequently, it is possible that the accounting practice in different jurisdictions for certain types of tax credits might diverge so that tax credits having substantially equivalent features but established in different jurisdictions receive different accounting treatment.

30. Because the treatment of tax credits can have a significant effect on the ETR, the Inclusive Framework has determined that a uniform and mandatory treatment of tax credits is necessary to ensure that different financial accounting rules do not advantage or disadvantage some MNE Groups.

Guidance

31. The GloBE Rules contain explicit, mandatory treatment applicable to the Constituent Entity originating Qualified Refundable Tax Credits (QRTCs) and Non-Qualified Refundable Tax Credits (Non-QRTCs). This Administrative Guidance establishes the mandatory GloBE treatment applicable to the Constituent Entity originating Marketable Transferable Tax Credits (MTTCs), Non-Marketable Transferable Tax Credits (Non-MTTCs), and Other Tax Credits (OTCs) and the mandatory GloBE treatment applicable to the Constituent Entity purchasing QRTCs, MTTCs, Non-QRTCs and Non-MTTCs.

32. The table below summarizes the GloBE treatment associated with each of the above categories. Income treatment, i.e. inclusion of the tax credit in the computation of GloBE Income or Loss, applies to both QRTCs and MTTCs. Tax reduction treatment, i.e. reduction to Covered Taxes, applies to non-QRTCs, non-MTTCs, and all OTCs.



33. For the purposes of determining the GloBE category of a tax credit, the refundability criteria should be tested primarily, and the transferability should be tested subordinately. Accordingly, if a tax credit meets the refundability criteria and qualifies as a QRTC, it will be defined as a QRTC regardless of whether it could be also transferable at a marketable price. If the tax credit rather does not meet the refundability criteria (i.e. it is either a non-refundable or a non-QRTC), then the transferability criteria shall be tested in order to determine whether the tax credit could be considered a Marketable Transferable Tax Credit.

Marketable Transferable Tax Credits

34. Marketable Transferrable Tax Credits have similarities to Qualified Refundable Tax Credits from the perspective of both the Entity originating the credit and the government providing the credit. In order to provide similar treatment to these tax credits, Marketable Transferable Tax Credits shall be treated as income and not as a tax reduction. The revisions to the Commentary set out below are intended to produce this result for both the originator and the purchaser.

35. The following guidance will be inserted before the heading for *Qualified Refundable Tax Credits* of the Commentary to Article 3.2.4:

109.1 The Commentary to Article 3.2.4 sets out the Inclusive Framework's agreement on the treatment of Qualified Refundable Tax Credits and Marketable Transferable Tax Credits under the GloBE Rules. The treatment provided in Article 3.2.4 applies only to tax credits that are Qualified Refundable Tax Credits or Marketable Transferable Tax Credits. Where a tax credit regime provides for tax credits that are partially refundable or transferable (i.e. tradeable), such that only a fixed percentage or portion of the credit is refundable or transferable, the credit shall be bifurcated and the part that is refundable or transferable shall be tested to determine whether it is a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit. The Commentary under

Article 4.1.3(b) or (c) applies to any tax credit or any part of a tax credit that does not meet the definition of a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit.

36. The text in bold will be added to paragraph 111 of the Commentary to Article 3.2.4.

111. The face value of a Qualified Refundable Tax Credit will be treated as GloBE Income of the recipient Constituent Entity in the year such entitlement accrues. **However, if the Qualified Refundable Tax Credit is related to the acquisition or construction of assets and the Constituent Entity that engages in the activities that generate the credit (the Originator) has an accounting policy of reducing the carrying value of its assets in respect of such tax credits, or recognising the credit as deferred income, such that the income from the tax credit is recognized over the productive life of the asset, the Originator shall follow this same accounting policy for Qualified Refundable Tax Credits to determine its GloBE Income or Loss without changing the character of the credit.** This reflects that these types of refundable tax credits share features of, and should be treated in the same way as, government grants that form part of income, given that they are in effect government support for a certain type of activity that can ultimately be received in cash or cash equivalent. See also the Commentary on the definition of Qualified Refundable Tax Credit. **The Inclusive Framework will consider providing further guidance to address transitional issues and deferred tax implications in respect of QRTCs and other tax credits, including for those QRTCs and other tax credits that are taxable income.**

37. The following text will be added after paragraph 112 of the Commentary to Article 3.2.4:

Marketable Transferable Tax Credits

112.1 Marketable Transferable Tax Credit means a tax credit that can be used by the holder of the credit to reduce its liability for a Covered Tax in the jurisdiction that issued the tax credit and that meets the legal transferability standard and the marketability standard in the hands of holder.

(a) Legal transferability standard. The legal transferability standard is met for the Originator of a tax credit if the tax credit regime is designed in a way that the Originator can transfer the credit to an unrelated party in the Fiscal Year in which it satisfies the eligibility criteria for the credit (Origination Year) or within 15 months of the end of the Origination Year. The legal transferability standard is met for a purchaser of a tax credit if the tax credit regime is designed in a way that the purchaser can transfer the credit to an unrelated party in the Fiscal Year in which it purchased the tax credit. If under the legal framework that applies to the credit, a purchaser of the tax credit cannot legally transfer the tax credit to an unrelated party or is subject to more stringent legal restrictions on transfer of the credit than the Originator, the tax credit does not meet the legal transferability standard in the hands of the purchaser.

(b) Marketability standard. The marketability standard is met for the Originator of a tax credit if it is transferred to an unrelated party within 15 months of the end of the Origination Year (or, if not transferred or transferred between related parties, similar tax credits trade between unrelated parties within 15 months of the end of the Origination Year) at a price that equals or exceeds the Marketable Price Floor. The marketability standard is met for a purchaser if that purchaser acquired the credit from an unrelated party at a price that equals or exceeds the Marketable Price Floor. Marketable Price Floor means 80% of the net present value (NPV) of the tax credit, where the NPV is determined based on the yield to maturity on a debt instrument issued by the government that issued the tax credit with equal or similar maturity (and up to 5-year maturity) issued in the same Fiscal Year as the tax credit is transferred (or if not transferred, the Origination Year). For this purpose, the tax credit is the face value of the credit or the remaining creditable

amount in relation to the tax credit. For this purpose, the cash flow projection to be factored in the NPV calculation shall be based on the maximum amount that can be used each year under the legal design of the credit. An Originator and purchaser are considered related parties if one owns, directly or indirectly, at least 50% of the beneficial interest in the other (or, in the case of a company, at least 50% of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50% of the beneficial interest (or, in the case of a company, at least 50% of the aggregate vote and value of the company's shares) in each of the Originator and purchaser. In any case, an Originator and purchaser are considered related parties if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

112.2 The marketability standard can be illustrated with the following example. Assume that a Constituent Entity satisfies the eligibility criteria for a tax credit with face value equal to EUR 100 in Year 1 and that, according to the legal design of the tax credit, the Constituent Entity can either utilize it over the subsequent 5-year period in equal installments of EUR 20 per year or transfer it beginning in Year 1. The same government granting the tax credit issued in Year 1 five-year debt instruments with a yield to maturity equal to 4%. In that case, the NPV of the tax credit is equal to EUR 89.04, and the relevant Marketable Price Floor is equal to EUR 71.23. The marketability standard is met where the tax credit is transferred to an unrelated party at a price equal to or higher than EUR 71.23 or, if retained or transferred to related parties only, where similar tax credits trade between unrelated parties at a price equal to or higher than EUR 71.23.

112.3 It is recognized that tax credits generally are not traded on public exchanges with daily quoted prices but instead are privately negotiated in over-the-counter transactions. MNE Groups can establish the price at which tax credits trade for purposes of paragraph 112.5 based on evidence of similar transactions and in accordance with the applicable fair value accounting standards used in their Consolidated Financial Statements, for example IFRS 13 or ASC 820.

112.4 Generally, the Originator of a Marketable Transferable Tax Credit shall treat the face value of the tax credit as GloBE Income in the Origination Year. However, if the Marketable Transferable Tax Credit is related to the acquisition or construction of assets and the Originator has an accounting policy of reducing the carrying value of its assets in respect of such tax credits, or recognising the credit as deferred income, such that the income from the tax credit is recognized over the productive life of the asset, the Originator shall follow this same accounting policy for GloBE purposes. If all or part of a Marketable Transferable Tax Credit expires without use, the Originator treats the face value attributable to the expired portion of the credit as a loss (or increase to the carrying value of the asset) in the computation of GloBE Income or Loss in the Fiscal Year of the expiration.

112.5 An Originator that transfers a Marketable Transferable Tax Credit within 15 months of the end of the Origination Year shall include the transfer price (in lieu of the face value of the credit) in its GloBE Income in the Origination Year. If the Originator transfers a Marketable Transferable Tax Credit after this period, any difference between the face value of the tax credit transferred that was included in GloBE Income or Loss for the Origination Year and the transfer price shall be treated as a loss in computing the Originator's GloBE Income or Loss in the Fiscal Year of the transfer. Where the Originator includes the tax credit as income ratably over the productive life of the asset, for both accounting and GloBE purposes, the difference between the transfer price and the face value of the tax credit shall be included in the GloBE Income or Loss ratably over the remaining productive life of the asset. For example, a Constituent Entity originates a tax credit with EUR 100 face value and includes it as income over a period of 5 years because it is related to an asset with 5-year productive life (either via *contra-asset* accounting or via deferred income accounting). In year 2, this tax credit is transferred at a price of 90. Assuming that the face value of the credit at

the date of transfer is still 100, the seller realizes a loss of 10 which is allocated ratably over the remaining four years of the productive life of the asset to match the income attributable to the reduction in the carrying value of the asset.

112.6 A purchaser of a Marketable Transferable Tax Credit that uses the tax credit to satisfy its liability for a Covered Tax includes the difference between the purchase price and the face value of the tax credit in its GloBE Income when and in proportion to the amount of the tax credit used by the purchaser to satisfy its liability for a Covered Tax. For example, if a purchaser acquires a tax credit with a face value of 100 for 90 and uses 70 of the credit in Year 1, it includes 7 ($= 70/100 \times (100-90)$) in its GloBE Income in Year 1. A purchaser of a Marketable Transferable Tax Credit that sells the credit must include the gain or loss on the sale in its GloBE Income or Loss in the Fiscal Year of the sale. The gain or loss on sale is equal to the sale price minus the total of the purchase price and the gain recognized from use of the credit. If all or part of a Marketable Transferable Tax Credit expires without use, the purchaser treats the loss attributable to the expired portion of the credit as a loss in the computation of GloBE Income or Loss in the Fiscal Year of the expiration. The loss attributable to the expiration is equal to the excess of the purchase price and the gain recognized on use of the credit over the amount of the credit used. Thus, in the example, the loss would be 27 ($= (90 + 7) - 70$). This treatment of a purchased Marketable Transferable Tax Credit applies to a purchased tax credit that also qualifies as a Qualified Refundable Tax Credit.

38. The existing Commentary to Article 3.2.4, paragraph 114, is removed because the relevant content is reported in paragraph 109.1. The following new text will be included in the Commentary as paragraph 114:

114. The conditions for a Marketable Transferable Tax Credit draw on the treatment in financial accounting standards (both for government grants and for income taxes), and are designed to identify tax credits that are, as a matter of substance and not merely form, transferable in a market. In order to be treated as a Marketable Transferable Tax Credit under the GloBE Rules, there must be a market such that the legal right to transfer the credit has immediate practical and economic significance for those taxpayers that will be entitled to the credit. If there is no actual market for the transferable tax credits, then the transferability element will be of no practical significance to taxpayers and the GloBE Rules will not treat the tax credit as a Marketable Transferable Tax Credit.

114.1 The provisions of Article 8.3 on Administrative Guidance will apply to ensure consistency of outcomes in respect of the application of the marketability standard. If those jurisdictions that adopt the common approach identify risks associated with the treatment of Marketable Transferable Tax Credits that lead to unintended outcomes, the relevant jurisdictions could be asked to consider developing further conditions for a Marketable Transferable Tax Credit or, if necessary, explore alternative rules for the treatment of Marketable Transferable Tax Credits. This analysis would be based on empirical and historical data with respect to the tax credit regime and market as a whole, and not on a taxpayer-specific basis.

39. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraph 5 of the Commentary to Art. 4.1.2(d):

d. Paragraph (d) adds any amount of refund or equivalent credit in respect of a Qualified Refundable Tax Credit **or Marketable Transferable Tax Credit** that has been recorded as a reduction to current tax expense. A Qualified Refundable Tax Credit is defined in Article 10.1 as a refundable tax credit designed in a way such that it ~~becomes~~is refundable within 4 years from when a Constituent Entity satisfies the conditions for receiving the credit under domestic law of a jurisdiction in which the Constituent Entity is located. **A Marketable Transferable Tax Credit is defined in paragraph 112.1 of the Commentary to Article 3.2.4.** Qualified Refundable Tax

Credits **and Marketable Transferable Tax Credits** are treated as income items in the computation of GloBE Income or Loss. Accordingly, when such credit or refund is granted, any amount that has been recorded as a reduction to current tax expense in the Constituent Entity's financial accounts is reversed-out in the same Fiscal Year the current tax expense is recorded in order to prevent the ETR for the jurisdiction being understated by such a reduction in Covered Taxes. The GloBE Rules provide for a corresponding adjustment to the Financial Accounting Net Income or Loss that treats the amount of Qualified Refundable Tax Credit **and Marketable Transferable Tax Credit** as income in the year the entitlement to such credit accrues (see the Commentary to Article 3.2.4).

Non-Marketable Transferable Tax Credits and Other Tax Credits

40. A Non-Marketable Transferable Tax Credit is a tax credit that, if held by the Originator, is transferable but is not a Marketable Transferable Tax Credit, and if held by a purchaser, is not a Marketable Transferable Tax Credit. Because their use is practically limited by the holder's tax liability, Non-Marketable Transferable Tax Credits should be treated as a tax reduction for GloBE purposes.

41. Other Tax Credits are non-refundable and non-transferable tax credits that can only be used to offset a Covered Tax liability of the Originator. Because their use is limited by the Originator's Covered Tax liability, they should be treated as a tax reduction for GloBE purposes.

42. The revisions to the Commentary set out below are intended to clarify that Non-Marketable Transferable Tax Credits and Other Tax Credits are treated as reductions to Covered Taxes under the GloBE rules, irrespective of how they are treated for financial accounting purposes. The revisions also provide guidance on the GloBE treatment of proceeds received from the transfer of a Non-Marketable Transferable Tax Credit and the timing and amount of the tax reduction when a purchaser uses a Non-Marketable Transferable Tax Credit to offset its tax liability.

43. The Commentary to Article 3.2.4, paragraph 113, is revised to read as follows:

113. A tax credit that does not meet the conditions for being a Qualified Refundable Tax Credit or a Marketable Transferable Tax Credit, but that was treated as income in the financial accounts, must be subtracted in full from the computation of GloBE Income or Loss.

44. The Commentary to Article 4.1.3(c), paragraphs 14 and 15 are revised to read as follows:

14. In general, paragraph (c) reduces Covered Taxes by the amount of tax credits (other than Qualified Refundable Tax Credits and Marketable Transferable Tax Credits) that reduce the Constituent Entity's liability for Covered Taxes as well as any amount of previously-claimed Covered Taxes that are refunded (including a refund that is applied as a credit against another Covered Tax liability) to a Constituent Entity to the extent that the tax credit or refund has not already been treated as an adjustment to current tax expense in the financial accounts.

Tax credits

14.1 Except as provided in paragraphs 14.2 and 14.3, a tax credit (other than a Qualified Refundable Tax Credit and a Marketable Transferable Tax Credit) shall be treated as a reduction to Covered Taxes to the extent it is used to reduce a Constituent Entity's liability for a Covered Tax for a taxable period that ends during the Fiscal Year.

14.2 A Non-Marketable Transferable Tax Credit is a tax credit that:

(a) if held by the Originator, is transferable but is not a Marketable Transferable Tax Credit; and

(b) if held by a purchaser, is not a Marketable Transferable Tax Credit.

14.3 In the case of a Non-Marketable Transferable Tax Credit:

(a) the Originator shall reduce its Covered Taxes for a Fiscal Year to the extent the tax credit is used to satisfy its liability for a Covered Tax for a taxable period that ends during such Fiscal Year and to the extent of any amount received in exchange for the credit during such Fiscal Year;

(b) a purchaser shall reduce its Covered Taxes for a Fiscal Year by any excess of the face value of the tax credit over its purchase price in proportion to the amount of the credit used to satisfy its liability for a Covered Tax for a taxable period that ends during such Fiscal Year; and

(c) a purchaser shall reduce its Covered Taxes by the amount of any gain on the transfer as a reduction to Covered Taxes in the event that it transfers the tax credit during the Fiscal Year and include any loss on the transfer in the computation of its GloBE Income or Loss for such Fiscal Year.

14.4 For the purposes of determining the GloBE category of a tax credit, the refundability criteria should be tested primarily, and the transferability should be tested subordinately. Accordingly, if a tax credit meets the refundability criteria and qualifies as a QRTC, it will be defined as a QRTC regardless of whether it could be also transferable at a marketable price. If the tax credit rather does not meet the refundability criteria (i.e. it is either a non-refundable or a non-QRTC), then the transferability criteria shall be tested in order to determine whether the tax credit could be considered a Marketable Transferable Tax Credit.

Refunds (and credits) of previously claimed Covered Taxes

14.5 Paragraph (c) also ensures that to the extent a Constituent Entity receives a refund of previously claimed Covered Taxes, including a refund that is applied as a credit (i.e. credited) against another Covered Tax liability, the amount of the refund (or credit) is treated as a reduction to Adjusted Covered Taxes. This is the case even where the Constituent Entity's accounting principles or policy did not treat that amount as an adjustment to the current tax expense for a Covered Tax.

14.6 Under paragraph (c), the Adjusted Covered Taxes are reduced for the Fiscal Year in which the tax refund (or credit) is accrued in the financial accounts. In the case of a refund or credit of previously claimed Covered Taxes, the application of paragraph (c) to refunds (or credits) will be limited, because Article 4.6.1 governs adjustments to the Adjusted Covered Taxes in the case of a tax refund and requires an adjustment to the Adjusted Covered Taxes for a previous Fiscal Year where the refund is EUR 1 million or more. Paragraph (c) will apply only when such a refund (or credit) is not an adjustment to a Constituent Entity's liability for Covered Taxes for a previous Fiscal Year under Article 4.6.1.

15. Paragraph (c) would also apply, for example, if a jurisdiction provided a refund (or credit) for previously claimed Covered Taxes on corporate equity where the tax and the corresponding refund (or credit) was taken into account as an ordinary expense or income for financial reporting purposes in the year of the refund (or credit). This paragraph also applies to refunds (and credits) in respect of Covered Taxes when the refund (or credit) is made to a different Constituent Entity than the entity that originally incurred the tax expense. Paragraph (c) may apply to refunds (and credits) in respect of Covered Taxes paid or accrued in a current or previous Fiscal Year (subject to the overriding operation of Article 4.6).

QFTB – timing rule under proportional amortization accounting

45. Section 2.9 of the February AG sets out the treatment of Qualified Flow Through Tax Benefits (QFTB) by the investor in a Qualified Ownership Interest (QOI). As per paragraph 57.7 of the Commentary to Article 3.2.1(c), QFTBs are first treated as a reduction to the QOI investment until it is reduced to zero, and then as a reduction to the investor's Adjusted Covered Taxes.

46. This guidance provides an alternative timing rule to the one indicated under paragraph 57.7. As an administrative simplification, an MNE Group that uses the proportional amortization method of accounting for a QOI shall apply the same methodology for purposes of determining whether and to what extent benefits flowing through a QOI are treated as a reduction to the investment or a reduction to Adjusted Covered Taxes. An MNE Group that does not use the proportional amortization method of accounting for a QOI may elect to apply this methodology for GloBE purposes.

47. Under the proportional amortization method as applied for accounting purposes, the investor adjusts its tax expense by the net benefit that flows through the QOI each year. The net benefit is determined based on the excess of the tax benefits that flow through during the year over the proportional amount of the investment. The proportional amount of the investment is determined based on the total investment multiplied by the ratio of the tax benefits that flow through the QOI during the year to the total tax benefits expected to flow through the QOI over the term of the investment.

48. Under the proportional amortization method as applied under the GloBE Rules, the QFTBs that flow through the QOI shall be treated as a reduction to the investment in proportion to the total QFTBs that are expected to flow through the QOI over the term of the investment (i.e. until the investment is completely liquidated under the agreement or until the flip-point is reached). The amount of QFTBs or income that flows through the partnership in excess of the proportional reduction to the investment shall be treated as a reduction to the Adjusted Covered Taxes.

49. Paragraphs 57.7.1 to 57.7.3 are added after paragraph 57.7 to read as follows:

57.7.1 However, an investor in a Qualified Ownership Interest that uses the proportional amortization method of accounting for the interest for financial accounting purposes must apply the proportional amortization method of determining the amount of the investment that is recovered each year. An investor in a Qualified Ownership Interest that does not use the proportional amortization method of accounting for the interest for financial accounting purposes may irrevocably elect to use this methodology for determining the amount of the investment that is recovered each year, in line with paragraph 57.7.2. The election must be made by the Filing Constituent Entity for a Qualified Ownership Interest in the first Fiscal Year in which the investor acquires the interest or is subject to the GloBE Rules.

57.7.2. Under the proportional amortization method as applied under the GloBE Rules, any of the items described in paragraphs 57.6(a) through (d) that flow through or are received in respect of the Qualified Ownership Interest shall be treated as a reduction to the investment in proportion to the Expected Tax Benefits Ratio. The Expected Tax Benefits Ratio is the ratio of the items described in paragraphs 57.6(a) and (b) that flowed through or are received in the Fiscal Year to the total of such items that are expected to flow through or be received in respect of the Qualified Ownership Interest over the term of the investment. The amount of the items described in paragraphs 57.6(a) through (d) that flow through or are received in respect of the Qualified Ownership Interest in excess of the reduction to the investment shall not be included as a positive amount in the investor's Adjusted Covered Taxes.

57.7.3 The proportional amortization method can be illustrated with the following example. Assume that the investor is subject to tax at a 20% rate and expects to receive 100 of tax benefits over a five-year period from the investment and invests 90 in a Qualified Ownership Interest. Assume further that the investor's current income tax expense with respect to the investment for financial accounting purposes each year is determined by netting the proportional amortization of the investment against the amount of the tax benefit from the investment. Assume also that the Expected Tax Benefit and the actual tax benefits are equal and the proportional amortization of the investment determined for financial accounting purposes is equal to the proportional amortization amount determined under paragraph 57.7.2. The chart below shows the proportional amortization computations for each year based on the amount of tax benefits that flow through the Qualified Ownership Interest each year.

Investment amount	90					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
tax credit	15	15	16.67	16.67	16.67	80
tax effect of depreciation	10	10				20
Expected Tax Benefit	25	25	16.67	16.67	16.67	100
Expected Tax Benefit Ratio	25%	25%	16.67%	16.67%	16.67%	100%
Proportional amortization of the investment	22.50	22.50	15.00	15.00	15.00	90.00
Gross tax expense/(benefit)	(25)	(25)	(16.67)	(16.67)	(16.67)	(100)
Proportional amortization of the investment	22.50	22.50	15	15	15	90
Current tax expense/(benefit)	(2.50)	(2.50)	(1.67)	(1.67)	(1.67)	(10)

In determining the investor's Adjusted Covered Tax expense each year, no adjustment is necessary to the investor's current tax expense for financial accounting purposes because it used the same proportional amortization amount in determining current tax expense as the amount allowed under paragraph 57.7.2.

Qualified Ownership Interests of investors that apply IFRS

50. The financial accounting treatment of interests in Flow-through Entities with Qualified Ownership Interests (tax equity partnerships) by the developer and the investor varies depending upon the financial accounting standards used by the MNE Group. US GAAP generally treats both the developer and investor as owning an equity interest in a partnership. However, IFRS generally treats the developer as owning 100% of the tax equity partnership and the investor's interest as a loan from the investor to the partnership. IFRS treats the loan as being cancelled as the tax benefits flow through and the investor's interest in the tax equity partnership declines. The investor is treated as making a loan to the entity, rather than holding an ownership interest. The tax benefits that flow through to the investor are treated as payments of principal and interest on the loan.

51. The definition of Qualified Ownership Interest in the February AG required that the investor's interest was an Ownership Interest under the GloBE Rules. The definition of an Ownership Interest in turn requires that the interest be treated as an equity interest under the financial accounting standards used by the investor in the Consolidated Financial Statements. This definition of Qualified Ownership Interest would mean that an investor that uses US GAAP could apply the guidance but an investor that uses IFRS would not be able to apply the guidance. In order to ensure the same treatment applies to the investor with a Qualified Ownership Interest irrespective of its accounting treatment of the interest, the text in bold will be inserted in, and the text in strikethrough will be removed from, paragraph 57.8:

57.8 A Qualified Ownership Interest is ~~an Ownership Interest~~:

(a) **an investment** in a Tax Transparent Entity:

(i) that is treated as an equity interest for local tax purposes;

(ii) would be treated as an equity interest under an Authorised Financial Accounting Standard in the jurisdiction in which the Tax Transparent Entity operates; and

where the assets, liabilities, income, expenses, and cash flows of the Tax Transparent Entity are not consolidated on a line-by-line basis in the Consolidated Financial Statements of the MNE Group; and

(b) the total return with respect to that investment (including distributions and benefits of tax losses and Qualified Refundable Tax Credits derived through the Tax Transparent Entity, but excluding tax credits other than Qualified Refundable Tax Credits) is expected to be less than the total amount invested by the investor in the investment such that a portion of the investment will be returned in the form of tax credits other than Qualified Refundable Tax Credits (regardless of whether such tax credits are expected to be transferred or used to reduce the investor's Covered Tax liability).

The determination of the expected total return is made at the time the investment is entered into and is based on facts and circumstances, including the terms of the investment. **An interest will not be considered a Qualified Ownership Interest unless the investor has a bona fide economic interest in the Flow-Through Entity and is not protected from loss of its investment. Also, an interest will not be considered a Qualified Ownership Interest where a jurisdiction only permits the benefits of tax credits to be transferred through such interests when the developer or investor is subject to the GloBE Rules.**

52. To ensure consistency of outcomes between the different types of tax credits and tax credits accessed through Qualified Ownership Interests, the following paragraph will be added after paragraph 57.8:

57.9 The provisions of Article 8.3 on Administrative Guidance will apply to ensure consistency of outcomes in respect of the application of the rules related to Flow-through Entities with Qualified Ownership Interests. If those jurisdictions that adopt the common approach identify risks associated with the treatment of interests in Flow-through Entities as Qualified Ownership Interests that lead to unintended outcomes, the relevant jurisdictions could be asked to consider developing further conditions for the Flow-through Entities or Qualified Ownership Interests or, if necessary, explore alternative rules for the treatment of such interests. In this regard, the Inclusive Framework will monitor the features and availability of Flow-through Entities in jurisdictions for projects that produce tax credits. This analysis would be based on empirical and historical data with respect to the tax credit regime as a whole, and not on a taxpayer specific basis.

3 Substance-based Income Exclusion

Interjurisdictional Assets and Employees

Introduction

1. This section provides guidance on determining the Substance-based Income Exclusion referable to Eligible Employees and Eligible Tangible Assets which are used outside the jurisdiction of the Constituent Entity which employs the employee or owns the asset.

2. The Substance-based Income Exclusion for each jurisdiction is the sum of the payroll carve-out and tangible asset carve-out for each Constituent Entity (except Constituent Entities that are Investment Entities) in that jurisdiction (Article 5.3.2).

3. Article 5.3.3 states:

The payroll carve-out for a Constituent Entity located in a jurisdiction is equal to 5% of its Eligible Payroll Costs of Eligible Employees that perform activities for the MNE Group in such jurisdiction, except Eligible Payroll costs that are...

4. Similarly, Article 5.3.4 states:

The tangible asset carve-out for a Constituent Entity located in a jurisdiction is equal to 5% of the carrying value of Eligible Tangible Assets located in such jurisdiction.

5. Paragraphs 33 and 38 of the Commentary to Article 5.3 respectively recognised that there may be cases where employees may perform work outside the employer's jurisdiction and that tangible assets may be located outside the jurisdiction of the Constituent Entity that owns or leases that asset. In both cases, the Commentary stated that consideration would be given to providing further guidance on addressing these cases.

6. Paragraph 25 of the Commentary to Article 5 also provides a brief description of the policy rationale behind the Substance-based Income Exclusion. It states:

The policy rationale behind a formulaic, substance-based carve-out, based on payroll and tangible assets is to exclude a fixed return for substantive activities within a jurisdiction from the application of the GloBE Rules. The use of Payroll and Tangible Assets as indicators of substantive activities is justified because these factors are generally expected to be less mobile and less likely to lead to tax-induced distortions. Conceptually, excluding a fixed return from substantive activities focuses GloBE on "excess income", such as intangible-related income, which is most susceptible to BEPS risks.

7. The term Eligible Employees is defined in Article 10.1 to mean:

...employees, including part-time employees, of a Constituent Entity that is a member of the MNE Group and independent contractors participating in the ordinary operating activities of the MNE Group under the direction and control of the MNE Group.

8. The term Eligible Tangible Assets is defined in Article 5.3.4 (subject to further clarifications) to mean:

- a. property, plant, and equipment located in that jurisdiction;
- b. natural resources located in that jurisdiction;
- c. a lessee's right of use of tangible assets located in that jurisdiction; and
- d. a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets.

Issues to be considered

9. Administrative Guidance is required with respect to the application of Article 5.3.3 and Article 5.3.4 to Eligible Employees and Eligible Tangible Assets which are located (at least some of the time) outside the jurisdiction of the Constituent Entity employer or owner during the relevant period.

Circumstances

10. There are a variety of circumstances where an Eligible Employee would perform work activities outside the jurisdiction of their Constituent Entity employer, including where an employee:

- a. works remotely part-time (or full-time) from a jurisdiction other than that of the Constituent Entity employer – for example, an employee could 'work from home' two days per week in a different jurisdiction to their employer;
- b. is required to work outside of the jurisdiction of their Constituent Entity employer for business purposes – for example, seeing customers or suppliers in other jurisdictions, or visiting facilities in a different jurisdiction of another Constituent Entity in the same MNE Group;
- c. is seconded to another entity or organisation (either to another Constituent Entity in the MNE Group or to an entity outside of the MNE Group) in another jurisdiction;
- d. engages in interjurisdictional travel as the central component of the business – for example, an employee working in an international transportation industry; or
- e. works outside of the jurisdiction of the Constituent Entity employer without entering another jurisdiction – for example, the employee may work in international waters or in space.

11. There are also a variety of circumstances where Eligible Tangible Assets would be located outside of the jurisdiction of the Constituent Entity owner, including where the asset:

- a. is used internationally as a central component of the business function – for example, an asset used in the international transportation industry such as an airplane or ship;
- b. is used outside the jurisdiction of Constituent Entity owner without entering another jurisdiction – for example, a satellite launched from the jurisdiction of the Constituent Entity owner;
- c. is located across multiple jurisdictions (and partially outside any jurisdiction) – for example, a submarine cable through international waters; or

- d. is moved between different jurisdictions for a non-transportation reason – for example, a piece of farming equipment which is used in neighbouring states.

Structure of Article 5.3.

12. The structure of Article 5.3 calculates the payroll carve-out and tangible asset carve-out with respect to each Constituent Entity separately. The total Substance-based Income Exclusion for the jurisdiction is the aggregated sum of these amounts for each Constituent Entity in the jurisdiction. Article 5.3 requires that the Eligible Employees and Eligible Tangible Assets of each Constituent Entity are determined.

13. The definition of Eligible Employees does not itself contain any limitation based upon the location of the employee. However, Article 5.3.3 only grants payroll carve-out with respect to Eligible Employees that perform activities for the MNE Group in the jurisdiction of the Constituent Entity employer. The provision does not allow any carve-out to be provided for an Eligible Employee who does not perform their work activities in the jurisdiction of the employer.

14. The definition of Eligible Tangible Assets contains limiting language to include only assets which are located in the jurisdiction (with the exception of ‘a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets’). In addition to this limitation in the definition, Article 5.3.4 mirrors Article 5.3.3 in only granting tangible asset carve-out for Eligible Tangible Assets located in the jurisdiction.

15. Neither Article 5.3.3 nor Article 5.3.4 create an ability to allocate payroll carve-out or tangible asset carve-out to another Constituent Entity. Accordingly, any Eligible Payroll Costs of a Constituent Entity for its Eligible Employees which do not result in payroll carve-out for that Constituent Entity do not produce any Substance-based Income Exclusion for the MNE Group. Similarly, to the extent that the carrying value of Eligible Tangible Assets of a Constituent Entity does not result in tangible asset carve-out for that Constituent Entity, it does not produce any Substance-based Income Exclusion for the MNE Group.

Allocation

16. The remaining question is how to calculate the payroll carve-out and tangible asset carve-out for Eligible Employees and Eligible Tangible Assets which are sometimes located in the jurisdiction and sometimes located outside of the jurisdiction of the Constituent Entity employer/owner.

17. There would be an integrity risk to the rules if any presence within the jurisdiction of the Constituent Entity employer/owner was sufficient to allow for a full allocation of the relevant payroll carve-out or tangible asset carve-out. As articulated in the Commentary, the purpose of the rule using Eligible Employees and Eligible Tangible Assets in a jurisdiction was to capture the substantive activities occurring in that jurisdiction. This purpose would be undermined if employees could be allocated to a jurisdiction simply by being formally employed by a Constituent Entity in another jurisdiction and working in that jurisdiction for a single day in the year.

18. In considering an allocation rule, the most natural contender is the amount of working time spent within the jurisdiction of the Constituent Entity employer/owner during the Financial Year. However, substantial compliance costs would be imposed if the allocation mechanism required businesses to track the location of each Eligible Employee (and in some cases Eligible Tangible Asset) every day. Accordingly, there are substantial benefits in adopting an allocation rule which is simple whilst remaining consistent with the principle behind the Substance-based Income Exclusion – that the rule must act as a reasonable proxy for substantial activity occurring in the jurisdiction.

19. In order to prevent disproportionate compliance costs for businesses with employees that may work remotely some of the time or who may travel for business purposes upon occasion, a threshold test

above which the full payroll carve-out can be allocated to a jurisdiction is considered appropriate. For instance, if an Eligible Employee spends more than 50% of their working time within the jurisdiction of their Constituent Entity employer, the Constituent Entity employer will be entitled to claim the full payroll carve-out with respect to that Eligible Employee.

20. If an Eligible Employee spends less than 50% of their working time in the jurisdiction of the Constituent Entity employer, the Constituent Entity would still be entitled to proportionately claim the payroll carve-out with respect to the working time spent within the jurisdiction. For example, if the Eligible Employee spent 30% of their working time in the jurisdiction of the Constituent Entity, then the MNE Group would be able to claim 30% of the payroll carve-out with respect to that Eligible Employee.

21. It is expected that with suitable company policies (which are appropriately enforced), employers would be able to determine whether this test was satisfied with respect to the majority of their employees without the burden of tracking the location of every employee every day. For example, a business could have a policy which allowed employees to work from home two days per week. If these employees were otherwise required to work in the office of the Constituent Entity employer (located in that jurisdiction) and the policy was suitably enforced, then the Constituent Entity would be entitled to claim the full payroll carve-out with respect to its employees regardless of whether some worked remotely from a different jurisdiction. Similarly, the employer would not need to track the location of employees that travel for business on an occasional basis.

22. If a Constituent Entity employer could not establish that its Eligible Employees met the threshold requirement in this way, then it would need to keep an auditable record of the days in which the relevant employees were located in the jurisdiction of the Constituent Entity employer in order to establish either that the employee met the 50% threshold or to claim the proportionate payroll carve-out below the 50% threshold. The MNE Group retains the option not to claim any payroll carve-out with respect to such employees and therefore is not required to track and trace this information.

23. The Inclusive Framework will give further consideration to a simplified allocation mechanism with respect to industries with a substantial portion of their employees and assets located outside of the jurisdiction for a substantial portion of the Fiscal Year.

Permanent Establishments

24. Where an Eligible Employee or an Eligible Tangible Asset is employed or owned by a Main Entity which has a Permanent Establishment, it will be first necessary to allocate that employee or asset to the relevant Constituent Entity. In these cases, the legal entity which employs the person or owns the asset will consist of multiple Constituent Entities – the Main Entity and the Permanent Establishment(s). The Eligible Payroll Costs of Eligible Employees and carrying value of Eligible Tangible Assets must be allocated between the Main Entity and the Permanent Establishment(s) in accordance with Article 5.3.6 prior to considering whether the relevant Constituent Entity is able to claim the full payroll carve-out or tangible asset carve-out with respect to that employee or asset.

Guidance

25. A Constituent Entity's payroll carve-out is intended, in principle, to be reduced to the extent that the relevant Eligible Employees perform their activities for the MNE Group outside of the jurisdiction of the Constituent Entity. Similarly, a Constituent Entity's tangible asset carve-out is intended, in principle, to be reduced to the extent that the asset is located outside of the jurisdiction of that Constituent Entity. This is consistent with the purpose of the Substance-based Income Exclusion as outlined in paragraph 25 of the Commentary to Article 5.

26. Despite this overall approach, a simplification can be adopted by the MNE Group in performing the relevant allocation such that all of the payroll carve-out or tangible asset carve-out can be retained by the Constituent Entity where:

- a. an Eligible Employee is located within the jurisdiction of the Constituent Entity employer more than 50% of their working time; and
- b. an Eligible Tangible Asset is located within the jurisdiction of the Constituent Entity owner more than 50% of the time.

27. In circumstances where the Eligible Employee or Eligible Tangible Asset is located in the jurisdiction 50% or less of the time, the Constituent Entity will only be entitled to claim the proportionate share of the payroll carve-out and tangible asset carve-out for that Eligible Employee or Eligible Tangible Asset. Further consideration will be given to a simplified allocation mechanism with respect to industries with a substantial portion of their employees and assets located outside of the jurisdiction for a substantial portion of the Fiscal Year.

28. To clarify, paragraph 33 of the Commentary to Article 5.3.3 will be revised as follows:

33. The payroll carve-out is computed on a jurisdictional basis and is based on the Eligible Payroll Costs of Eligible Employees that perform activities in the jurisdiction where the Constituent Entity employer is located. Employees will generally perform their activity in the jurisdiction where the Constituent Entity employer is located (employer's jurisdiction). However, in certain cases the employee may also perform work for their employer outside the employer's jurisdiction. ~~Consideration will be given to the development of Agreed Administrative Guidance as part of the GloBE Implementation Framework to address those cases where the employee performs part of its activities in another jurisdiction and for those employees that perform their activity in multiple jurisdictions.~~

29. Paragraph 33.1 will be inserted to the Commentary to Article 5.3.3:

33.1. Where the employee undertakes more than 50% of their activities for the MNE Group during the relevant period within the jurisdiction of the Constituent Entity employer, the Constituent Entity will be entitled to the full payroll carve-out with respect to that employee. Where the employee undertakes 50% or less of their activities for the MNE Group during the relevant period within the jurisdiction of the Constituent Entity employer, the Constituent Entity will only be entitled to the proportion of the payroll carve-out attributable to the employee's working time spent within the jurisdiction of the Constituent Entity employer. For example, if the Eligible Employee spends only 30% of its working time in the jurisdiction of its Constituent Entity employer, then the Constituent Entity is only able to claim 30% of the payroll carve-out with respect to that Eligible Employee.

30. Paragraph 38 of the Commentary to Article 5.3.4 will be revised as follows:

38. The tangible asset carve-out requires that the tangible assets are located in the same jurisdiction as the Constituent Entity that owns them or, in the situation where the tangible asset falls into categories (c) or (d), in the same jurisdiction as the Constituent Entity that holds the right-of-use of the asset. It is expected that, in most cases, the tangible asset will be located in the same jurisdiction as the Constituent Entity that owns or leases the asset. However, under specific circumstances, the nature of the asset and the way it is used may be such that it is not located in any jurisdiction or is located in multiple jurisdictions (e.g. an aircraft of an international airline) at different times during the Fiscal Year. ~~Consideration will be given to the development of Agreed Administrative Guidance as part of the GloBE Implementation Framework to address those cases.~~

31. Paragraph 38.1 will be inserted to the Commentary to Article 5.3.4:

38.1. Where the tangible asset is located within the jurisdiction of its Constituent Entity owner (or lessee, if applicable) more than 50% of the time during the relevant period, the Constituent Entity will be entitled to the full tangible asset carve-out with respect to that asset. Where the tangible asset is located within the jurisdiction of its Constituent Entity owner (or lessee, if applicable) 50% or less of the time during the relevant period, the Constituent Entity will only be entitled to the tangible asset carve-out in proportion to the time the asset was located within the jurisdiction of the Constituent Entity owner (or lessee, if applicable).

Simplification

Introduction

32. The Substance-based Income Exclusion is an exclusion from the GloBE Income of a formulaic return on the Eligible Payroll Costs and Eligible Tangible Assets within a jurisdiction for the purposes of calculating the MNE Group's Excess Profit in that jurisdiction. Under Article 5.3.1, a Filing Constituent Entity may make an Annual Election not to apply the Substance-based Income Exclusion. Accordingly, it is, in effect, an optional amount. An amount of Substance-based Income Exclusion can only reduce the top-up tax paid with respect to a jurisdiction under the GloBE Rules. The Substance-based Income Exclusion is a function of the Eligible Payroll Costs and Eligible Tangible Assets in the jurisdiction.

33. A question arises as to whether the MNE is required to calculate the full amount of Eligible Payroll Costs and Eligible Tangible Assets in order to make any claim whatsoever, or whether the MNE is able to limit its claim for Substance-based Income Exclusion to a subset of the total amount.

34. For example, an MNE Group may easily be able to access the Eligible Payroll Costs of its regular employees but would need to engage in substantial compliance work to determine the full Eligible Payroll Costs with respect to the relatively limited number of independent contractors it engaged that met the definition of Eligible Employees. If, for example, the cost of documenting and substantiating the full Eligible Payroll Costs with respect to these independent contractors was disproportionate to the benefit of the related amount of Substance-based Income Exclusion, the MNE may prefer not to include these amounts in its Eligible Payroll Costs. Nevertheless, the MNE would want to claim the Substance-based Income Exclusion with respect to the Eligible Payroll Costs for its regular employees (for which this documentation was not a substantial administrative burden).

Issues to be considered

35. Stakeholders have asked for clarification that an MNE Group is not required to calculate the full amount of Eligible Payroll Costs and Eligible Tangible Assets in order to make any claim for Substance-based Income Exclusion whatsoever. In other words, stakeholders have sought confirmation that the MNE is able to make a claim for some, but not all, of its Eligible Payroll Costs and Eligible Tangible Assets for the jurisdiction.

Guidance

36. The intention is that MNEs could choose only to claim those Eligible Payroll Costs and Eligible Tangible Assets for which it was willing to undertake the relevant compliance work. To clarify this intention, the following paragraph is added after paragraph 29 of the Commentary to Article 5.3.1.

29.1 An MNE Group is allowed to claim only a subset of its total Eligible Payroll Costs and Eligible Tangible Assets when calculating its Substance-based Income Exclusion. The MNE Group is not required to calculate the maximum allowable amount of Eligible Payroll Costs and Eligible Tangible Assets in order to make any claim for Substance-based Income Exclusion whatsoever.

Stock-based compensation

Introduction

37. This section provides guidance on the definition of ‘Eligible Payroll Costs’ with respect to stock-based compensation. The Eligible Payroll Costs with respect to Eligible Employees are relevant in determining the size of the Substance-based Income Exclusion for a jurisdiction under Article 5.3.

38. Article 10.1 states that:

Eligible Payroll Costs means employee compensation expenditures (including salaries, wages, and other expenditures that provide a direct and separate personal benefit to the employee, such as health insurance and pension contributions), payroll and employment taxes, and employer social security contributions.

39. Paragraph 34 of the Commentary to Article 5.3.3 clarifies that this definition includes stock-based compensation. Paragraph 35 then states that ‘the payroll carve-out is based on the total amount of the payroll expenditures accrued in the financial accounts for the Fiscal Year,’ except for payroll expenses capitalized into the carrying value of certain assets. These paragraphs clarify the meaning of Eligible Payroll Costs in the context of the Substance-based Income Exclusion.

40. Stock-based compensation is also addressed by the Model Rules in a different context – the allocation of GloBE Income or Loss under Article 3.2. Under Article 3.2.2, the Model Rules allow for a Filing Constituent Entity to make an election to:

...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 stock-based compensation.

41. As noted in the Commentary, this election was included to address a common disparity between tax and accounting with respect to stock-based compensation. Many Inclusive Framework jurisdictions allow for a deduction for stock-based compensation based on the market value of the stock when the option is exercised. However, for accounting purposes companies generally account for stock-based compensation based on the present value of the stock option at the time of issuance and amortise that amount over the exercise period.

42. This disparity in treatment could depress the GloBE ETR. The election in Article 3.2.2 allows a Constituent Entity to 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 stock-based compensation. This rule operates to allow an alignment between the GloBE tax base and a domestic tax rule which exists in many Inclusive Framework jurisdictions.

Issues to be considered

43. Stakeholders have asked for clarification as to whether the amount of stock-based compensation taken into account under the definition of Eligible Payroll Costs is:

- a. the amount of stock-based compensation included in the financial accounts;
or
- b. the amount included as an expense in the Constituent Entity’s Financial Accounting Net Income or Loss under Article 3 (and therefore would be impacted by an election made under Article 3.2.2).

Guidance

44. The amount of Eligible Payroll Cost included with respect to stock-based compensation is intended to be the amount included in the financial accounts used to determine the Constituent Entity's Financial Accounting Net Income or Loss. It is not intended to be modified by an election made under Article 3.2.2.

45. To clarify, the text in bold will be inserted in paragraph 34 of the Commentary to Article 5.3.3:

34. The payroll carve-out takes a broad approach to determining Eligible Payroll Costs based on a general test of whether the expenditure of the employer gives rise to a direct and separate personal benefit to the employee. Article 10.1 defines a Constituent Entity's Eligible Payroll Costs to include expenditures for salaries and wages as well as for other employee benefits or remuneration such as medical insurance, payments to a Pension Fund or other retirement benefits, bonuses and allowances payable to Eligible Employees, and stock-based compensation. **The amount of Eligible Payroll Cost for stock-based compensation is that included in the relevant financial accounts used to determine the Constituent Entity's payroll carve-out and is not impacted by an election under Article 3.2.2.** Eligible Payroll Costs also includes payroll taxes (or other employee expense-related taxes such as fringe benefits taxes), as well as employer social security contributions.

Lease

Introduction

46. This section provides guidance on the computational rules in Article 5.3.4 for determining the tangible asset carve-out attributable to Eligible Tangible Assets for a jurisdiction. Article 5.3.4 provides that Eligible Tangible Assets include “a lessee’s right of use of tangible assets located in that jurisdiction” and “the tangible asset carve-out computation shall not include the carrying value of property (including land or buildings) that is held for sale, lease or investment”.

47. The Commentary clarifies that in a lease agreement, a lessee recognises a “right-of-use” asset on its balance sheet and will be treated as the owner of the tangible asset for purposes of the Substance-based Income Exclusion. The lessor of an asset is not allowed a carve-out with respect to the carrying value of the leased asset.

48. For financial accounting purposes, a lessor classifies each of its leases as either an operating lease or a finance lease. In general, a finance lease means a lease under which the lessor transfers substantially all the risks and rewards incidental to ownership of an underlying asset, while an operating lease means a lease under which the lessor does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.

49. Under a finance lease, a lessor recognizes a receivable on its balance sheet at an amount equal to the net investment in the lease, and the leased assets are not reflected in its balance sheet. However, under an operating lease, the leased assets are still present in the balance sheet of the lessor, and the lessor recognizes lease payments as income on either a straight-line basis or another systematic basis and recognizes costs, including depreciation, incurred in earning the lease income as an expense.

Issues to be considered

50. Stakeholders have asked whether a lessor is allowed a carve-out in respect of the carrying value of the leased asset subject to an operating lease.

51. If the lessee in an inter-company lease does not recognize a “right-of-use” asset on its balance sheet, stakeholders have asked whether the lessee is allowed a carve-out with respect to that asset.

52. Where a lessor leases a substantial part of an Eligible Tangible Asset to a lessee and retains the residual part of the asset for its own use, stakeholders have asked whether the carrying value of the asset should be allocated between the uses.

Guidance

53. The text below will replace paragraph 43 of the Commentary to Article 5.3.4:

Property held for lease

43. Financial accounting distinguishes between finance leases and operating leases. Under a finance lease the lessor is treated, in effect, as transferring the underlying assets, which may be tangible assets, to the lessee in exchange for a receivable, which is not a tangible asset. In such cases, the lessor no longer has the carrying value of tangible assets in its financial accounts. The lessee will in most cases create a “right-of-use” asset in its financial accounts, which reflects its right to use the tangible property during the term of the lease. The GloBE Rules treat a “right-of-use” asset as tangible asset if the underlying asset itself is tangible. Thus, the lessee will be permitted to include the accounting carrying value of its right-of-use asset in calculating its SBIE. In a finance lease, the right-of-use asset will be substantially similar in amount to what the carrying value of the asset would have been if the asset had been purchased instead of leased.

43.1.1 Under an operating lease, the lessor may have a receivable in respect of the lease but continues to account for the underlying assets in its financial accounts and on its balance sheet. Depending upon the term of the lease, the lessee may still account for its interest in the leased asset as a “right-of-use” asset, which may be included in the lessee’s Eligible Tangible Assets if the underlying property is a tangible asset and located in the same jurisdiction as the lessee. Thus, for GloBE purposes, the financial accounts of both the lessor and lessee recognise an asset that could qualify as an Eligible Tangible Asset but for the rule that excludes assets held for lease from the scope of Eligible Tangible Assets. If a lessee (including a lessee that is a Constituent Entity of the same MNE Group as the lessor) does not recognise a right-of-use asset with respect to a leased asset in its financial accounts, the lessee cannot create a fictional or hypothetical right-of-use asset for purposes of the GloBE Rules. This may happen where the lease is a short-term lease (a term of 12 months or less) or the value of the lease is not material.

43.1.2 As applied to a finance lease, this rule reflects the fact that the lessor is not actively using the underlying asset to earn income, but instead is providing financing in respect of the asset. It is therefore not a reliable measure of substantive activities of the lessor in a jurisdiction.

43.1.3 In an operating lease, however, the lease or rental period is often substantially less than the productive life of the asset. It is less clear that assets subject to consecutive operating leases over their productive life are not actively used in a business. In some cases, the assets may be used in a business that could be considered primarily a service, such as a hotel or short-term automobile rental.

43.1.4 The exclusion of property held for lease prevents two separate MNE Groups or two Constituent Entities of the same MNE Group from claiming SBIE in respect of the same item of tangible property. In a finance lease, the lessee can take the full value of the property into account based on its right-of-use asset. However, in the case of an operating lease, the lessee’s right of use asset will often be far less than the lessor’s carrying value of the asset, meaning that there would typically not be a complete duplication under an operating lease.

43.1.5 The Inclusive Framework has determined that in the case of an operating lease, the lessor will be allowed to take a portion of the carrying value of an asset subject to an operating lease into account in determining its Eligible Tangible Asset if the asset is located in the same jurisdiction as the lessor. The amount allowed is equal to the excess, if any, of the lessor’s average carrying value of the asset determined at the beginning and end of the Fiscal Year over the average amount of the lessee’s right of use asset determined at the beginning and end of the Fiscal Year. By allowing only the excess of the carrying value over the right-of-use asset, the lessor is prevented from also claiming SBIE in respect of the same asset value that is included in the lessee’s SBIE computation. If the lessee is not a Constituent Entity, the lessee’s right-of-use asset for this purpose shall be equal to the un-discounted amount of payments remaining due under the lease, including any extensions that would be taken into account in determining a right-of-use asset under the financial accounting standard used to determine the Financial Accounting Net Income or Loss of the lessor. In the case of a short-term rental asset, for example a hotel room or rental car, the lessee’s right-of-use asset shall be deemed to be nil. A short-term rental asset is an asset that is regularly leased several times to different lessees during the Fiscal Year and the average lease period, including any renewals and extensions, with respect to each lessee is 30 days or less.

43.1.6 The carrying value of Eligible Tangible Assets is determined after taking into account elimination entries for intercompany sales. The carrying value of Eligible Tangible Assets that are subject to a finance lease or an operating lease between two Constituent Entities located in the same jurisdiction is determined after taking into account elimination entries in consolidation for the intercompany lease. Consequently, the lessee in an intercompany operating lease will not have a

right-of-use asset and the lessor's carrying values for purposes of preparing the Consolidated Financial Statements are used to compute its carveout.

Dual use assets

43.1.7. When a lessor leases a substantial part of an Eligible Tangible Asset to a lessee and retains the residual part of the asset for its own use, e.g. leasing some floors or the parking lot of a headquarters building, the carrying value of the asset must be allocated between the different uses of the property. For the lessor, the carrying value of an Eligible Tangible Asset shall be allocated between the leased part and the residual part based on a reasonable allocation key in respect of the assets (e.g. surface area of the building). The lessor shall take into account the carrying value of the Eligible Tangible Assets allocated to the residual part and may apply the guidance on the treatment of property subject to an operating lease in respect of the carrying value allocated to the leased part.

Example

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

Example 5.3.4-1

1. A Co is a Constituent Entity of MNE Group A located in jurisdiction X that is subject to the GloBE Rules. B Co is a Constituent Entity of MNE Group B located in jurisdiction X that is subject to the GloBE Rules. A Co leased a machine to B Co. The machine is used by B Co in Jurisdiction X. According to the lease contract, the commencement date is on January 1, 2024, the lease term is 3 years, and the lease payment is €100,000 annually. The lessee's incremental borrowing rate is 5%. Pursuant to its financial accounting standard, A Co classifies this lease as an operating lease. At the beginning of the 2024, the carrying value of the machine is €1,200,000 and the useful life of the machine is 15 years.
2. Pursuant to its financial accounting standard, B Co classifies the lease as a right-of-use asset. On January 1, 2024, B Co measures the lease liability at the present value of the lease payments that are not paid at that date, using its incremental borrowing rate of 5%. After the commencement date, B Co measures the right-of-use asset applying a cost model. The amortization schedule of B Co at the commencement date of the lease is as follows:

Period	Lease Payment	Interest Expense	Liability Reduction	Liability	Depreciation Expense	Net Asset Balance
Beginning Balance				272,325		272,325
2024	100,000	13,616	86,384	185,941	90,775	181,500
2025	100,000	9,297	90,703	95,238	90,775	90,775
2026	100,000	4,762	95,238	0	90,775	0

3. The carrying value of the leased machine for purpose of carve-out for B Co is computed as follows:
 - a. In 2024, the carrying value for purposes of carve-out is 226,912.5 $(=(272,325+181,500)/2)$.
 - b. In 2025, the carrying value for purposes of carve-out is 136,137.5 $(=(181,500+90,775)/2)$.
 - c. In 2026, the carrying value for purposes of carve-out is 45,387.5 $(=(90,775+0)/2)$.

4. Under an operating lease, A Co recognises lease payments as income and the depreciation policy for the underlying assets is consistent with the lessor's normal depreciation policy for similar assets. The depreciation schedule of A Co is as follows:

Period	Lease payment	Remining Lease Payments	Income	Depreciation Expense	Net Asset Balance
Beginning Balance		300,000			1,200,000
2024	100,000	200,000	100,000	80,000	1,120,000
2025	100,000	100,000	100,000	80,000	1,040,000
2026	100,000	0	100,000	80,000	960,000

5. The carrying value of the leased machine for purpose of carve-out for A Co is computed as follows:
- In 2024, the carrying value for purposes of carve-out is 910,000 $(=(1,200,000+1,120,000)/2-250,000)$.
 - In 2025, the carrying value for purposes of carve-out is 930,000 $(=(1,120,000+1,040,000)/2-150,000)$.
 - In 2026, the carrying value for purposes of carve-out is 950,000 $(=(1,040,000+960,000)/2-50,000)$.

Example 5.3.4-2

- The facts are the same as in Example 5.4.3-1, except that A Co is located in Jurisdiction Y. Because the machine is used by B Co in Jurisdiction X, it is not an Eligible Tangible Asset for A Co.

Example 5.3.4-3

- The facts are the same as in Example 5.4.3-1, except that both A Co and B Co are Constituent Entities of MNE Group A.
- The carrying value of Eligible Tangible Assets is determined after taking into account elimination entries for intercompany sales and, where the lessor and the lessee are located in the same jurisdiction, intercompany leases. Accordingly, A Co is allowed a carve-out and the carrying value of Eligible Tangible Assets for purposes of the carve-out for jurisdiction A is computed as follows:
 - In 2024, the carrying value for purposes of carve-out is 1,160,000 $(=(1,200,000+1,120,000)/2)$
 - In 2025, the carrying value for purposes of carve-out is 1,080,000 $(=(1,120,000+1,040,000)/2)$
 - In 2026, the carrying value for purposes of carve-out is 1,000,000 $(=(1,040,000+960,000)/2)$

Impairment Losses

Introduction

55. This section provides guidance on determining the carrying value of Eligible Tangible Assets in the context of an impairment loss. The carrying value of Eligible Tangible Assets is relevant in determining the size of the Substance-based Income Exclusion for a jurisdiction under Article 5.3.

56. Article 5.3.5 states:

The computation of carrying value of Eligible Tangible Assets for purposes of Article 5.3.4 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.

57. Paragraph 49 of the Commentary to Article 5.3.5 makes clear that the carrying value for the purposes of the carve-out is in conformity with the carrying value of the asset recorded for the purposes of preparing the Consolidated Financial Statements. Specifically with respect to impairment losses, the Commentary to Article 5.3.5 states at paragraph 50:

After initial recognition as an asset, an item of property, plant and equipment is carried on the balance sheet at its cost less any accumulated depreciation and any accumulated impairment losses (referred to as the “cost model”). Depreciation refers to the systematic allocation of the cost of an asset, less its residual or “salvage” value, over its useful life. An impairment loss is the amount by which the carrying amount of an asset exceeds its recoverable amount.

Issues to be considered

58. Stakeholders have asked for clarification on:

- a. whether the amount of impairment losses should be taken into account in computing the carrying value of the Eligible Tangible Assets; and
- b. whether the reversal of an impairment charge with respect to an Eligible Tangible Asset should be taken into account in computing the carrying value of the Eligible Tangible Assets.

Guidance

59. The carrying value of Eligible Tangible Assets is intended to include adjustments for impairment losses. Accordingly, where an impairment loss has been recognised with respect to an Eligible Tangible Asset under the applicable financial accounting standards, the amount of the impairment loss will be taken into account in determining the carrying value of the asset at the end of the Reporting Fiscal Year.

60. If there is a reversal of the impairment charge under the applicable accounting standards, the amount of the reversal shall be taken into account in determining the carrying value of the Eligible Tangible Asset at the end of the Reporting Fiscal Year. However, an impairment charge can only be reversed to the extent that the total carrying value of the Eligible Tangible Asset does not exceed the carrying value that would have been determined (net of amortisation or depreciation) had no impairment loss been recognised for the asset.

61. To clarify, the following paragraph will be added after paragraph 50 of the Commentary to Article 5.3.5:

50.1. Where an impairment loss is recognised under the financial accounting standard used to prepare the Consolidated Financial Statements with respect to an Eligible Tangible Asset, the carrying value of that asset will be reduced at the end of the Reporting Fiscal Year to reflect that impairment loss. If a reversal of that impairment loss is recognised under that financial accounting standard, the carrying value of the Eligible Tangible Asset will be increased at the end of the Reporting Fiscal Year to reflect that reversal, but the reversal cannot increase the carrying value of the asset above the amount which would have been determined had there been no impairment loss recognised in prior years. Ordinarily, the adjustments described in this paragraph will be reflected in the carrying value of the relevant asset in the Constituent Entity's financial accounts used to determine the Constituent Entity's tangible asset carve-out. If they are not reflected in these financial accounts, the adjustments must be made to the carrying value of the relevant assets for purposes of determining the Substance-based Income Exclusion.

Reduction due to Article 7.2

Introduction

62. This section provides guidance on how Eligible Payroll Costs and Eligible Tangible Assets are allocated with respect to an Ultimate Parent Entity (UPE) which is subject to a Deductible Dividend Regime.

63. Eligible Payroll Costs and Eligible Tangible Assets are used to determine the Substance-based Income Exclusion for a jurisdiction. The Substance-based Income Exclusion is designed to exclude a formulaic return on the substance in the jurisdiction from the amount of GloBE Income which is subject to top-up tax.

64. The usual application of this rule is predicated on the assumption that all of the MNE's GloBE Income in the jurisdiction is counted towards that jurisdiction for the purpose of determining the jurisdiction's GloBE Income and Excess Profit. However, there are special circumstances in which the GloBE Income derived by a Constituent Entity is excluded from the GloBE Income of that entity due to a special rule. In these cases, an adjustment to the amount of Substance-based Income Exclusion is appropriate.

65. The GloBE Rules reflect this design with respect to cases where the UPE of the MNE Group is a Flow-Through Entity. Under Article 7.1.1, the GloBE Income of that UPE is reduced by the amount of income attributable to each Ownership Interest which meets certain criteria. Where the GloBE Income of the UPE is reduced as a result of this provision, there is a corresponding adjustment to the amount of Substance-based Income Exclusion for the jurisdiction. Under Article 5.3.7(b), Eligible Payroll Costs and Eligible Tangible Assets located in the jurisdiction of the UPE are allocated to the UPE and reduced in proportion to the income which is excluded under Article 7.1.1.

66. Under Article 7.2., where a UPE is subject to a Deductible Dividend Regime and distributes a Deductible Dividend, that entity reduces (but not below zero) its GloBE Income by the amount of the dividend (if certain criteria are met). While not operating through a Flow-Through Entity, this treatment is similar to the reduction in GloBE Income which arises under Article 7.1.1.

Issues to be considered

67. Stakeholders have asked for clarification as to whether there is also a proportionate reduction in the Eligible Payroll Costs and Eligible Tangible Assets where there has been a Deductible Dividend distributed by the UPE which reduces GloBE Income as a result of Article 7.2.1.

Guidance

68. The intention is that where income has been excluded from the GloBE Income of a UPE as a result of a Deductible Dividend Regime, there should be a corresponding adjustment to the amounts of Eligible Payroll Cost and Eligible Tangible Assets. If there were no adjustment to these amounts, then the Substance-based Income Exclusion will be disproportionately large compared to the amount of GloBE Income in the jurisdiction under the GloBE Rules.

69. In order to give effect to this intention, there are three additions to the Commentary.

70. The following paragraph will be added after paragraph 36 of the Commentary to Article 5.3.3:

36.1 The payroll carve-out computation shall not include an amount of Eligible Payroll Cost attributable to the income excluded from the GloBE Income of the UPE under Article 7.2.1. Where the UPE of an MNE Group makes a distribution which is subject to a Deductible Dividend Regime (and other conditions are met), an amount of GloBE Income can be excluded from the GloBE Income of that UPE under Article 7.2.1. To the extent such an exclusion occurs, there will be a

proportionate reduction in the Eligible Payroll Costs of the UPE. The reduction will be equal to the total Eligible Payroll Costs of the UPE multiplied by the ratio of the GloBE Income excluded under Article 7.2.1 to the total GloBE Income determined for the UPE (before the Article 7.2.1 exclusion). This adjustment will be equivalent to that made under Article 5.3.7(b). Further, the Eligible Payroll Costs of any other Constituent Entity located in the jurisdiction that is subject to the Deductible Dividend Regime shall be reduced in proportion to its GloBE Income that is excluded under Article 7.2.3 compared to its total GloBE Income.

71. The following paragraph will be added after paragraph 48 of the Commentary to Article 5.3.4:

48.1 The tangible asset carve-out computation shall not include the carrying value of Eligible Tangible Assets proportionately attributable to the income excluded from the GloBE Income of the UPE under Article 7.2.1. Where the UPE of an MNE Group makes a distribution which is subject to a Deductible Dividend Regime (and other conditions are met), an amount of GloBE Income can be excluded from the GloBE Income of that UPE under Article 7.2.1. To the extent this occurs, there will be a proportionate reduction in the carrying value of the Eligible Tangible Assets of the UPE. The reduction will be equal to the total carrying value of Eligible Tangible Assets of the UPE multiplied by the ratio of the GloBE Income excluded under Article 7.2.1 to the total GloBE Income determined for the UPE (before the Article 7.2.1 exclusion). This adjustment will be equivalent to that made under Article 5.3.7(b). Further, the Eligible Payroll Costs of any other Constituent Entity located in the jurisdiction that is subject to the Deductible Dividend Regime shall be reduced in proportion to its GloBE Income that is excluded under Article 7.2.3 compared to its total GloBE Income.

72. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraph 63 of the Commentary to Article 5.3.7:

63. The second scenario is where the Flow-through Entity is the UPE of the MNE Group. In this case, the Financial Accounting Net Income or Loss of the UPE is allocated to such Entity in accordance with Article 3.5.1(c). However, Article 7.1.1 excludes such income or loss provided that certain conditions are met. In this case, paragraph (b) allocates the Eligible Payroll Costs and Eligible Tangible Assets included in the UPE's financial statements to the extent that they are not excluded from the GloBE income or loss in accordance with Article 7.1.1. **In effect, there will be a proportionate reduction in the Eligible Payroll Costs and carrying value of the Eligible Tangible Assets of the UPE. The reduction will be equal to the total Eligible Payroll Costs and carrying value of Eligible Tangible Assets of the UPE (including any Eligible Payroll Costs and carrying value of Eligible Tangible Assets allocated to the UPE pursuant to Article 5.3.7(a)) multiplied by the ratio of the GloBE Income excluded under Article 7.1.1 to the total GloBE Income determined for the UPE (before the Article 7.1.1 exclusion).** Stated differently, the amount of Eligible Payroll Costs and Eligible Tangible Assets associated with the income excluded under Article 7.1.1 is not allocated to the UPE and is excluded from the Substance-based Income Exclusion computations in accordance with the next paragraph.

4 Qualified Domestic Minimum Top-up Tax

Introduction

1. The Administrative Guidance published in February 2023 (the “February AG”) provided some guidelines on aspects of the design and operation of a QDMTT to be used for an assessment of whether a minimum tax meets the requirements for qualified status. It set out two guiding principles for evaluating QDMTTs: (a) the minimum tax must be consistent with the design of the GloBE Rules; and (b) the minimum tax must provide for outcomes that are consistent with the GloBE Rules and Commentary (together, functional equivalence).
2. The February AG, however, did not cover certain aspects and implications of a QDMTT and anticipated some further guidance to be produced by the Inclusive Framework at a later stage. In light of the principles above, this note supplements the February AG and addresses the specific issues identified therein as well as some other aspects of a QDMTT that required tailored solutions or additional clarifications.

Joint Ventures, JV Subsidiaries and MOCES

Issue to be considered

3. According to paragraph 118.10 of the Commentary to Article 10.1, the Jurisdictional Top-up Tax that is subject to the QDMTT is based on the whole amount of the Jurisdictional Top-up Tax computed under Article 5.2.3 of the GloBE Rules, irrespective of the Ownership Interests held in the Constituent Entities located in the QDMTT jurisdiction by any Parent Entity of the MNE Group. Jurisdictions that are concerned about the possibility that the QDMTT will result in a greater tax charge than the tax charge that would arise for a Parent Entity under the GloBE Rules may design their QDMTT legislation to apply only where all the domestic Constituent Entities in the jurisdiction are 100% owned by the UPE or a POPE for the entire Fiscal Year.
4. Joint Ventures and Minority-Owned Constituent Entities are subject to separate ETR and Top-up Tax computations under the GloBE Rules even when they are located in the same jurisdiction as ordinary Constituent Entities of the MNE Group. Paragraph 118.10 is silent on the computation of Top-up Tax for Joint Ventures and Minority-Owned Constituent Entities. However, Paragraph 118.10 provides that the Jurisdictional Top-up Tax that is subject to the QDMTT is based on the whole amount computed under Article 5.2.3 of the GloBE Rules, irrespective of the Ownership Interests held in the Constituent Entities located in the QDMTT jurisdiction by any Parent Entity of the MNE Group. The same principle that applies to Constituent Entities shall apply to Joint Ventures and Minority-Owned Constituent Entities. Thus, the Top-up Tax under a QDMTT in respect of Joint Ventures and Minority-Owned Constituent Entities is the whole amount irrespective of the fact that the UPE would only be subject to tax on its share of the Top-up

Tax arising from Joint Ventures, JV subsidiaries, MOCEs. A jurisdiction seeking to ensure that the other owners of the Joint Ventures and Minority-Owned Constituent Entities bear their share of the QDMTT tax liability must impose the tax liability on the Joint Venture, JV Subsidiary or Minority-Owned Constituent Entity, itself.

5. To illustrate, assume that UPE owns 50% of JV 1 (LTCE) and JV 1 has a Top-up Tax of 100. Under Art. 6.4.1 (b) of the GloBE Rules, the UPE's Allocable Share of the Top-up Tax of JV 1 is 50 (100*50%). If the UPE were subject to an IIR, the MNE Group's Top-up Tax liability in respect of JV 1 would be only 50, similar to a partially-owned Constituent Entity. However, the Top-up Tax under a QDMTT is based on the whole amount computed for the jurisdiction. Thus, the QDMTT Top-up Tax attributable to JV 1 would be 100 and the UPE would indirectly bear 50 of that tax if it is imposed on the JV.

Guidance

6. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraph 118.8 of the Commentary to Article 10.1.

118.8 The GloBE Rules do not impose Top-up Tax on Joint Ventures and JV Subsidiaries but rather require the MNE Group to allocate such Top-up Tax to a Constituent Entity of the MNE Group under the IIR or the UTPR. **As illustrated in paragraph 118.10, jurisdictions could design their QDMTT so that it only applies to MNE Groups where all the Constituent Entities located in the jurisdictions are wholly-owned by the UPE or a POPE for the entire Fiscal Year. In that case, the QDMTT will not apply to Joint Ventures and JV subsidiaries located in the jurisdiction.** ~~Similarly, jurisdictions that have introduced a QDMTT could choose not to impose the QDMTT tax liability on Joint Ventures and JV Subsidiaries located in the jurisdiction (and any Top-up Tax computed in respect of such Joint Ventures and JV Subsidiaries will be subject to the GloBE Rules). Alternatively, a jurisdiction could impose the QDMTT tax liability computed with respect to Joint Ventures and JV Subsidiaries on another Constituent Entity of the MNE Group located in the jurisdiction.~~

7. The text in bold will be added to paragraph 118.10 of the Commentary to Article 10.1.

118.10 The Jurisdictional Top-up Tax that is subject to the QDMTT is based on the whole amount of the Jurisdictional Top-up Tax computed under Article 5.2.3 of the GloBE Rules, irrespective of the Ownership Interests held in the Constituent Entities located in the QDMTT jurisdiction by any Parent Entity of the MNE Group. **The same principle applies where the QDMTT is computed with respect to Minority-Owned Constituent Entities, Joint Ventures, and JV Subsidiaries, irrespective of the fact that those Entities are subject to separate ETR and Top-up Tax computations under the GloBE Rules and the QDMTT.** In some situations, imposing the whole amount of the Jurisdictional Top-up Tax under a QDMTT will result in a greater tax charge than the tax charge that would otherwise have been imposed under the GloBE Rules. This could arise, for example in the situation where the MNE Group is subject to a QIIR in respect of the Constituent Entities located in the QDMTT jurisdiction and the Parent Entity imposing the IIR does not own 100% of the Ownership Interests in those Constituent Entities. Jurisdictions may choose to implement rules that apply their QDMTT only to Groups where all of the Constituent Entities located in that jurisdiction are 100% owned by the UPE or a POPE for the entire Fiscal Year. **Jurisdictions that limit the application of their QDMTT to MNE Groups where all the Constituent Entities located in the jurisdiction are 100% owned by the UPE or POPE for the entire Fiscal Year shall similarly not apply their QDMTT to Joint Ventures, JV Subsidiaries and Minority-Owned Constituent Entities located in the jurisdiction.**

8. The text in bold will be added to paragraph 118.11 of the Commentary to Article 10.1.

118.11 This guidance does not require the QDMTT tax liability **arising from Low-Taxed Constituent Entities** to be allocated to or among **those** Constituent Entities in any particular manner, so long as all the tax liability is allocated to one or more Constituent Entities that are subject to tax in the jurisdiction. Tax arising under the QDMTT reduces (or eliminates) the GloBE Top-up Tax for the jurisdiction as a whole. **When the QDMTT applies to a member of the JV Group or Minority-owned Subgroup (which includes a standalone JV and Minority-owned Constituent Entity) the tax liability could be allocated directly to any member of the JV Group or Minority-owned Subgroup, or to a Constituent Entity located in the same jurisdiction. In the case of a tax liability arising from JV Groups, QDMTT jurisdictions that allocate the tax liability to Constituent Entities of the main Group should have a mechanism to avoid double taxation in cases where both joint venturers are MNE Groups subject to the GloBE Rules or a QDMTT.** If there is GloBE Top-up Tax remaining after subtracting the QDMTT, the remainder is allocated among Constituent Entities under the GloBE Rules, including Articles 5.2.4 and 5.2.5. Thus, it is not necessary to allocate both the IIR Top-up Tax and the QDMTT tax Entity-by-Entity and then subtract the QDMTT tax allocated to an Entity from the IIR Top-up Tax allocated to the Entity.

Blending of income and taxes

Issue to be considered

9. Under the jurisdictional blending rules of Chapter 5 of the GloBE Rules, the ETR is computed by reference to all the Constituent Entities of the MNE Group located in the same jurisdiction. Calculating a group-wide average ETR for the jurisdiction means that: (i) an Entity might qualify as Low-Taxed Constituent Entity even if its ETR on a stand-alone basis would equal or exceed the Minimum Rate; and (ii) an Entity might not qualify as a Low-Taxed Constituent Entity even if its ETR on a stand-alone basis would fall below the Minimum Rate.

10. In certain cases, however, domestic rules of QDMTT jurisdictions might not permit jurisdictional blending. To address these cases, the guidance set out below allows jurisdictions to blend income and taxes at a sub-national level or on a Constituent Entity-by-Constituent Entity basis.

Guidance

11. The following text will be included after paragraph 118.33 of the Commentary to Article 10.1.

118.33.1 Where domestic rules of a jurisdiction do not provide for taxation of MNE Groups at the national level and instead Covered Taxes and a QDMTT are imposed under the law of a sub-national governmental authority, such as a regional or provincial government, the sub-national governmental authority in the jurisdiction may apply the QDMTT, including the ETR and Top-up Tax computational rules, exclusively to Constituent Entities located in the sub-national jurisdiction (e.g. region or province). This will mean that the tax liability under the QDMTT will be determined based on sub-national jurisdictional blending. Similarly, a jurisdiction, or sub-national jurisdiction, may require the QDMTT to be applied on the basis of a taxable unit as determined under its domestic law (e.g. a single Constituent Entity). This will mean that the tax liability under the QDMTT will be determined based on a taxable unit blending (e.g. Constituent Entity-by-Constituent Entity blending if the taxable unit is a single Constituent Entity). Determining the ETR on a Constituent Entity-by-Constituent Entity basis will not prevent the QDMTT from being considered functionally equivalent to the GloBE Rules.

Allocation of QDMTT tax liability among Constituent Entities

Issue to be considered

12. Any tax payable pursuant to a QDMTT is taken into account under Article 5.2.3 of the GloBE Rules to offset the Top-up Tax that would have been computed for the Fiscal Year absent the QDMTT. The Jurisdictional Top-up Tax (if any) remaining after subtracting the QDMTT is allocated among Constituent Entities in the jurisdiction under Articles 5.2.4, 5.2.5 or 5.4.3. In such cases, the QDMTT is implicitly allocated for purposes of the GloBE Rules in the same manner as the remaining Jurisdictional Top-up Tax. For example, assume the Top-up Tax for a jurisdiction is 100 and 70 is allocated to CE1 and 30 to CE2. If instead there were only 10 of Top-up Tax to allocate because the MNE Group paid 90 of QDMTT, 7 of the remaining 10 would be allocated to CE1 and 3 would be allocated to CE2. The allocation of Top-up Tax among Constituent Entities is for purposes of assessing the tax liability under the QDMTT or the GloBE Rules. It is not binding on another jurisdiction for purposes of that jurisdiction's local tax rules, including CFC Tax Regimes.

13. Whilst Top-up Tax needs to be allocated under Article 5.2 of the GloBE Rules for IIR purposes, it is not generally necessary to allocate the QDMTT liability among Constituent Entities in any particular manner. The guidance below, however, provides some possible design options that QDMTT jurisdictions might want to consider to allocate the QDMTT liability on a basis that complies with their legal framework. These illustrative examples are only meant to support jurisdictions with the design of their QDMTT legislation and are not intended to limit the ability for jurisdictions to allocate the QDMTT liability in any manner that they deem appropriate.

Guidance

14. The text in bold will be inserted in, and the text in strikethrough will be removed from paragraph 118.12 of the Commentary to Article 10.1.

118.12 In designing the charging provisions of a QDMTT, jurisdictions must ensure that the legal liability for the tax is allocated on a basis that complies with their legal framework and enforceable against at least one Constituent Entity. For example, a jurisdiction could impose joint and several liability for QDMTT tax on all the domestic Constituent Entities and collect it from any of the Constituent Entities without affecting the outcome under the GloBE Rules. **In the case of a QDMTT that applies on a Constituent Entity-by-Constituent Entity basis, the QDMTT jurisdiction could allocate the QDMTT tax charge only to Constituent Entities that have an ETR lower than the Minimum Rate. If jurisdictional blending applies, on the other hand, the QDMTT tax charge could be allocated pursuant to the formula in Article 5.2.4 of the GloBE Rules or based on the ratio of the Excess Profits of the Constituent Entity to the Excess Profit of all Constituent Entities located in the jurisdiction. To avoid that minority investors bear the QDMTT tax charge, jurisdictions could also decide to allocate it exclusively to wholly-owned Constituent Entities. These examples are only intended to provide possible design options and do not limit the ability for jurisdictions to allocate the QDMTT tax charge in any manner they deem appropriate. Moreover, the allocation of the QDMTT tax charge among Constituent Entities is not binding on another jurisdiction for purposes of applying its local tax rules, including CFC Tax Regimes.** ~~The Inclusive Framework will consider providing further guidance in relation to the allocation of tax liability under a QDMTT among Constituent Entities where this is necessary for the proper functioning of the GloBE Rules~~

Treatment of Stateless Constituent Entities

Issue to be considered

15. For GloBE purposes, Stateless Constituent Entities are Constituent Entities that are not located in a jurisdiction pursuant to the location rules in Article 10.3. They are either a Flow-through Entity identified in Art. 10.3.2(b) or a Permanent Establishment identified in paragraph (d) of the definition in Art. 10.1. Low-taxed income of Stateless Constituent Entities is subject to the GloBE Rules. Stateless Constituent Entities are treated as being the only Constituent Entity in a jurisdiction and therefore they are subject to stand-alone ETR and Top-up Tax computations.

16. The question arises as to whether jurisdictions could impose a QDMTT on Stateless Constituent Entities and, if this is the case, how these Entities should be treated for GloBE purposes. The guidance set out below permits the application of a QDMTT to Flow-through Entities that are Stateless Constituent Entities as long as they are created under the domestic law of the QDMTT jurisdiction and Stateless Permanent Establishment in the jurisdiction where the place of business (or deemed place of business) is located.

Guidance

17. The following text will be included after paragraph 118.8 of the Commentary to Article 10.1.

Stateless Flow-through Entities and PEs

118.8.1 Stateless Constituent Entities are subject to a stand-alone ETR and Top-up Tax computation for GloBE purposes. A QDMTT does not need to apply to Stateless Constituent Entities to be functionally equivalent to the GloBE Rules. In the case of Flow-through Entities that are Stateless Constituent Entities, however, jurisdictions are free to impose the QDMTT on these Entities when they are created under the domestic law of the jurisdiction. In the case of Permanent Establishments that are Stateless Constituent Entities, jurisdictions are free to impose the QDMTT on these Entities provided that the place of business (or deemed place of business) is located therein and either there is no tax treaty applicable or there is an applicable tax treaty and the jurisdiction where the place of business (or deemed place of business) is located has the right to tax in accordance with such treaty. In both cases, these Entities shall be subject to separate ETR and Top-up Tax calculations and shall still be treated as Stateless Constituent Entities for GloBE and QDMTT purposes, regardless of whether they are subject to a QDMTT charge.

Treatment of Flow-through UPEs

Issue to be considered

18. Article 10.3.2 of the GloBE Rules states that a Flow-through Entity that is the UPE of the MNE Group is located in the jurisdiction where it is created. The GloBE Income or Loss of that UPE is included in the jurisdictional calculations where it was created, except to the extent of any reduction under Article 7.1. Therefore, the QDMTT calculations of the UPE jurisdiction also must include the GloBE Income or Loss and Covered Taxes of the UPE, except to the extent of any reduction under Article 7.1. Where other Constituent Entities are located in the jurisdiction, the QDMTT jurisdiction will be able to collect any Top-up Tax that arises with respect to the Flow-through UPE by allocating it to another Constituent Entity. However, where the UPE is the only Constituent Entity located in the jurisdiction, the only way to collect the Top-up Tax is by imposing the QDMTT liability directly on the Flow-through UPE or a similar mechanism, such as requiring the owners of the Flow-through UPE to pay the QDMTT liability.

19. The guidance set out below states that jurisdictions are free to determine whether to impose QDMTT tax charge directly on a Flow-through UPEs or to introduce a similar mechanism to ensure that the Top-up Tax is collected, such as requiring the owners (e.g. partners) to pay the QDMTT tax charge. Jurisdictions can also decide not to impose a QDMTT tax charge directly on the Flow-through UPE or its owners. However, in this last case, if the UPE's GloBE Income is not reduced to zero pursuant to Article 7.1 and no other Constituent Entity is located in the jurisdiction, then a UTPR may apply with respect to the UPE's GloBE Income because the tax will not be collected under a QDMTT.

Guidance

20. The following text will be included after paragraph 118.8.1 of the Commentary to Article 10.1.

118.8.2 A Flow-through Entity that is the UPE of the MNE Group is located in the jurisdiction where it is created in accordance with Article 10.3.2(a). Jurisdictions imposing a QDMTT must take into account the GloBE Income or Loss and Covered Taxes of these Entities in the jurisdictional computations to the extent that they are not reduced in accordance with Article 7.1. QDMTT jurisdictions do not need to impose a QDMTT charge on these Entities to be functionally equivalent to the GloBE Rules if these Entities are not tax residents in that jurisdiction. The QDMTT charge can be allocated to other Constituent Entities located in the jurisdiction. Alternatively, a jurisdiction can decide to impose the QDMTT charge on the Flow-through UPE or introduce a different mechanism to ensure that the tax liability that arises with respect to the UPE is enforceable. If a jurisdiction does not charge the QDMTT in cases where the Flow-through UPE is the only Constituent Entity located in the jurisdiction (to the extent Article 7.1 does not reduce its GloBE Income to zero), the Top-up Tax determined for the jurisdiction may be subject to the UTPR.

Treatment of Flow-through Entities required to apply the IIR

Issue to be considered

21. Article 10.3.2 of the GloBE Rules states that a Flow-through Entity that is required to apply the IIR is located in the jurisdiction where it is created. This means that the Financial Accounting Net Income or Loss allocated to those Entities under Article 3.5 and Covered Taxes allocated to such Entities in accordance with Chapter 4, shall be blended in the jurisdiction where they are located.

22. In the QDMTT context, Constituent Entities required to apply an IIR are also considered to be located in the jurisdiction where they are created. If those Entities were created in the QDMTT jurisdiction, then they will be located in that jurisdiction for QDMTT purposes. This means that any amount of the Financial Accounting Net Income or Loss allocated to those Entities under Article 3.5 and Covered Taxes allocated to such Entities in accordance with Chapter 4, shall be blended in the QDMTT jurisdiction. Accordingly, a jurisdiction can decide to impose or not to impose liability for a QDMTT charge on a Flow-through Entity where the Entity is created in the jurisdiction.

23. The guidance below also clarifies that a Flow-through Entity required to apply the IIR is treated as any other Flow-through Entity.

Guidance

24. The following text will be included after paragraph 118.8.3 of the Commentary to Article 10.1.

118.8.3 A Flow-through Entity that is required to apply the IIR is located in the jurisdiction where it is created for purposes of applying the IIR in accordance with Article 10.3.2(a). If a

jurisdiction is imposing a liability under the IIR on these Entities (i.e. treating it as a taxpayer only for GloBE purposes), it may do the same with respect to the QDMTT. For purposes of a QDMTT, Entities required to apply an IIR should also be considered to be located in the QDMTT jurisdiction if they are created in such jurisdiction. This means that if the Financial Accounting Net Income or Loss has been allocated to those Entities under Article 3.5 and Covered Taxes have been allocated to such Entities in accordance with Chapter 4, such income or loss, and taxes shall be blended in the QDMTT jurisdiction. However, QDMTT jurisdictions do not need to impose a QDMTT charge on these Entities to be functionally equivalent to the GloBE Rules if these Entities are not tax residents in that jurisdiction. The QDMTT charge can be allocated to other Constituent Entities located in the jurisdiction. Alternatively, a jurisdiction can decide to impose the QDMTT charge on the Flow-through Entity or introduce a different mechanism to ensure that the tax liability that arises with respect to the Entity is enforceable.

UPE that is a Flow-Through Entity and UPE subject to Deductible Dividend Regime

Issue to be considered

25. Article 7.1 generally permits a UPE that is a Flow-through Entity to reduce its GloBE Income in respect of each Ownership Interest held by: (i) UPE owners that meet certain criteria and are subject to current tax at a rate that is equal to or above the Minimum Rate; or (ii) natural persons or Excluded Entities that are resident in the UPE jurisdiction and hold 5% or less of the profits and assets of the UPE. Article 7.2 provides similar rules for a UPE that is subject to a Deductible Dividend Regime.

26. The question arises as to whether QDMTT jurisdictions shall include provisions similar to Article 7.1 and 7.2 in their QDMTT legislation.

Guidance

27. The following text will be included after paragraph 118.40 of the Commentary to Article 10.1.

Chapter 7. Tax Neutrality and Distribution Regimes

UPE that is a Flow-Through Entity and UPE subject to Deductible Dividend Regime

118.40.1 To produce outcomes that are consistent with the GloBE Rules, a QDMTT shall include provisions similar to Articles 7.1 and 7.2 of the GloBE Rules. Consequently, income attributable to the UPE cannot be subject to a QDMTT to the extent Articles 7.1 or 7.2 applies. In the case of Article 7.1, jurisdictions with Flow-through Entities need this provision otherwise it can alter the GloBE calculations. Similarly, jurisdictions that do not have Flow-through Entities should have this provision because Article 7.1.4 applies to a Permanent Establishment that could be located in those jurisdictions. In the case of Article 7.2, however, if a jurisdiction does not have a Deductible Dividend Regime, it is not required to include the corresponding provision in its QDMTT.

Eligible Distribution Tax System

Issue to be considered

28. A Filing Constituent Entity may make an annual election to apply Article 7.3 to Constituent Entities that are subject to an Eligible Distribution Tax System. In general, Article 7.3 computes the ETR for the

jurisdiction each year based on deemed taxes paid and then re-computes the ETR at the end of a four-year period based on the actual taxes paid.

29. The question arises as to whether QDMTT jurisdictions shall include a provision that mirrors Art. 7.3 of the GloBE Rules in their QDMTT legislation.

Guidance

30. The following text will be included after paragraph 118.40.1 of the Commentary to Article 10.1.

Eligible Distribution Tax System

118.40.2 A Filing Constituent Entity may make an annual election to apply Article 7.3 to Constituent Entities that are subject to an Eligible Distribution Tax System. In general, Article 7.3 computes the ETR for the jurisdiction each year based on deemed taxes paid and then re-computes the ETR at the end of a four-year period based on the actual taxes paid. A jurisdiction that has an Eligible Distribution Tax System shall include a provision that mirrors Article 7.3 in its QDMTT legislation. A jurisdiction that does not have an Eligible Distribution Tax System (i.e. a distribution tax system in force on or before 1 July 2021) is not required to have Article 7.3 in its QDMTT legislation because it will not have any effect.

ETR Computation for Investment Entities

Issue to be considered

31. The mechanism in Article 7.4.5 of the GloBE Rules is intended to preserve the tax neutrality of Investment Entities and Insurance Investment Entities by ensuring that Top-up Tax is determined based on Covered Taxes, including Covered Taxes allocated pursuant to Article 4.3.2, and Substance-based Income Exclusion (SBIE) attributable to the MNE Group's Ownership Interest in Investment Entities or Insurance Investment Entities. First, the Top-up Tax Percentage for the Investment Entity or Insurance Investment Entity is computed based on the MNE Group's share of the Entity's Income and the Covered Taxes attributable to that income. Then, the MNE Group's share of the Entity's SBIE is deducted from the MNE Group's share of the Investment Entity's or Insurance Investment Entity's GloBE income. Lastly, the excess of the MNE Group's share of the Entity's GloBE income over its share of the SBIE is multiplied by the Top-up Tax Percentage to determine the Top-up Tax.

32. In applying Article 2.2 of the GloBE Rules, Parent Entities must adjust the computation of their Inclusion Ratio for the Entity to account for the fact that the Top-up Tax computed for the Entity was already reduced by the amount attributable to non-Group Entities (i.e. the Inclusion Ratio of the UPE is 100% even if some Ownership Interests in the LTCE are held by non-Group Entities).

33. The result of these computations is that the UPE is subject to Top-up Tax on its share of the Investment Entity's or Insurance Investment Entity's low-taxed income without imposing a Top-up Tax on the minority investor's share of the income. In order to preserve this same tax neutrality under a QDMTT for investors that are not Constituent Entities of the MNE Group, the same computations must be made for QDMTT purposes. While jurisdictions are free to allocate the QDMTT liability in any manner that they deem appropriate, to preserve the tax neutrality of Investment Entities and Insurance Investment Entities, the liability for the Top-up Tax under the QDMTT should generally be imposed on a Constituent Entity-owner of the Investment Entity or Insurance Investment Entity that is located in the jurisdiction rather than on the Investment Entity or Insurance Investment Entity itself.

Guidance

34. The text in bold will be added to the end of paragraph 85 of the Commentary to Article 7.4.5.

85. The rules of Article 7.4.5 generally follow the jurisdictional Top-up Tax computational rules in Article 5.2. First, the Top-up Tax Percentage for the Investment Entity or Insurance Investment Entity is computed by subtracting the ETR computed under Article 7.4.2 from the Minimum Rate. Then, the Investment Entity's or Insurance Investment Entity's Substance-based Income Exclusion (computed pursuant to Article 7.4.6) is deducted from the MNE Group's Allocable Share of the Investment Entity's or Insurance Investment Entity's GloBE income under Article 7.4.4. The excess of the MNE Group's Allocable Share of the Investment Entity's or Insurance Investment Entity's GloBE income over its Substance-based Income Exclusion is then multiplied by the Top-up Tax Percentage to determine the Top-up Tax. If there is more than one Investment Entity or Insurance Investment Entity located in the jurisdiction, their attributes determined under Articles 7.4.2 to 7.4.4 are combined to determine the Top-up Tax for all such Entities. **The Top-up Tax of Investment Entities and Insurance Investment Entities located in a jurisdiction shall be reduced by the amount of Qualified Domestic Minimum Top-up Tax paid in respect of such Entities.**

35. The text in bold will be added to paragraph 118.11 of the Commentary to Article 10.1:

118.11 This guidance does not require the QDMTT tax liability to be allocated to or among Constituent Entities in any particular manner, so long as all the tax liability is allocated to one or more Constituent Entities that are subject to tax in the jurisdiction. Tax arising under the QDMTT reduces (or eliminates) the GloBE Top-up Tax for the jurisdiction as a whole. If there is GloBE Top-up Tax remaining after subtracting the QDMTT, the remainder is allocated among Constituent Entities under the GloBE Rules, including Articles 5.2.4 and 5.2.5. Thus, it is not necessary to allocate both the IIR Top-up Tax and the QDMTT tax Entity-by-Entity and then subtract the QDMTT tax allocated to an Entity from the IIR Top-up Tax allocated to **that** Entity.

36. The following text will be included after paragraph 118.40.2 of the Commentary to Article 10.1:

ETR computation for Investment Entities

118.40.3 Article 7.4 of the GloBE Rules ensures that Top-up Tax only arises with respect to the MNE Group's Interest in the Investment Entity or Insurance Investment Entity. It does so by computing the ETR and Top-up Tax of such Entities based only on income and taxes that are attributable to the MNE Group. As their Top-up Tax was already reduced by the amount attributable to non-Group Entities, a Parent Entity's Inclusion Ratio in Investment Entities and Insurance Investment Entities is then deemed to be 100%, irrespective of the actual interest of the Parent Entity in their income.

118.40.4 Investment Entities and Insurance Investment Entities are often tax neutral and their income is subject to a single level of taxation in the hands of their shareholders. A QDMTT may exclude Investment Entities or Insurance Investment Entities from its scope (i.e. it could be limited to other Constituent Entities located in the jurisdiction). In this case, the income of such Investment Entities and Insurance Investment Entities would remain subject to Top-up Tax under the IIR or UTPR if their ETR is below the Minimum Rate.

118.40.5 A QDMTT that applies to Investment Entities and Insurance Investment Entities must compute the ETR and Top-up Tax pursuant to Article 7.4 in the same manner as the GloBE rules, except taxes that would be allocated to the Entity pursuant to Article 4.3.2(c) and (d) are not taken into account in the ETR computation. Liability for the QDMTT tax charge can be allocated to any Constituent Entity pursuant to paragraph 118.12. The liability for any QDMTT Top-up Tax determined under Article 7.4 should generally be allocated to another Constituent Entity (if any)

that is located in the jurisdiction to preserve the tax neutrality of Investment Entities or Insurance Investment Entities.

Investment Entity Tax Transparency Election

Issue to be considered

37. Article 7.5 of the GloBE Rules 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 that are subject to a mark-to-market or a similar tax regime on their investment in such Entities at a rate that equals or exceeds the Minimum Rate. It is intended to match the timing and location of the income under the GloBE Rules and the local rules of the jurisdiction where the Constituent Entity-owners are located.

38. If a jurisdiction's QDMTT does not treat the Investment Entities and Insurance Investment Entities located in the jurisdiction as Tax Transparent Entities in cases where the Entity is subject to an election under Article 7.5, the Entity's income could be subject to Top-up Tax again in the hands of the Constituent Entity-owner because the QDMTT paid by the Entity is not a Covered Tax and thus would not be credited in the Constituent Entity-owner's GloBE Top-up Tax computations. To reduce complexity, avoid coordination issues and provide outcomes that are consistent with the GloBE Rules, the QDMTT shall therefore treat the Investment Entity or Insurance Investment Entity as a Tax Transparent Entity when an Election under Article 7.5 was made by the MNE Group.

Guidance

39. The following text will be included after paragraph 118.40.5 of the Commentary to Article 10.1:

Investment Entity Tax Transparency Election

118.40.6 Article 7.5 of the GloBE Rules 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 that are subject to a mark-to-market or a similar tax regime on their investment in such Entities at a rate that equals or exceeds the Minimum Rate. It is intended to match the timing and location of the income under the GloBE Rules and the local rules of the jurisdiction where the Constituent Entity-owners are located.

118.40.7 As provided in paragraph 118.53, a QDMTT must include all elections permitted under the GloBE Rules and require the MNE Group to make the same elections for both QDMTT and GloBE purposes. To provide outcomes that are consistent with the GloBE Rules, the QDMTT must treat an Investment Entity or Insurance Investment Entity as a Tax Transparent Entity to the extent that an election under Article 7.5 was made with respect to a Constituent Entity-owner's Ownership Interest in the Entity. The QDMTT must treat the Constituent Entity-owner's share of the income and taxes of any Investment Entity or Insurance Investment Entity that is subject to an election under Article 7.5 as the income and taxes of the Constituent Entity-owner. This means that if all the Ownership Interests of an Investment Entity or Insurance Investment Entity are subject to an election under Article 7.5, then all the GloBE Income or Loss will be allocated to the Constituent Entity-owners and the Entity will not have any GloBE Income or Loss subject to the QDMTT. On the other hand, to the extent that none of the Ownership Interests in the Investment Entity or Insurance Investment Entity is subject to an election under Article 7.5, the whole income of the Investment Entity or Insurance Investment Entity is subject to Article 7.4 or, if an election was made, Article 7.6.

Taxable Distribution Method Election

Issue to be considered

40. Art. 7.6 of the GloBE Rules provides a Five-Year Election to apply the Taxable Distribution Method. The election reduces the exposure to Top-up Tax to the extent that the Investment Entity makes distributions of its income within a four-year period that are taxable in the hands of the recipients at or above the Minimum Rate. It is only available to Constituent Entity-owners that are not Investment Entities or Insurance Investment Entities and can reasonably be expected to be subject to tax on distributions from the Investment Entity or Insurance Investment Entity at a rate that equals or exceeds the Minimum Rate.

41. To produce outcomes that are consistent with the GloBE Rules, a QDMTT must have a provision similar to Article 7.6. Under this provision, the QDMTT will take into account the distributions of the Investment Entity or Insurance Investment Entity to compute the GloBE Income or Loss of Constituent Entity-owners located in the jurisdiction and impose a Top-up Tax on the Investment Entity or Insurance Investment Entity in respect of any Undistributed Net Income.

Guidance

42. The following text will be included after paragraph 118.40.7 of the Commentary to Article 10.1:

Taxable Distribution Method Election

118.40.8 Article 7.6 of the GloBE Rules provides a Five-Year Election to apply the Taxable Distribution Method. The election reduces the exposure to Top-up Tax to the extent that the Investment Entity makes distributions of its income within a four-year period. It is only available where the Constituent Entity-owners are not Investment Entities or Insurance Investment Entities, and it is reasonably expected that such owners are subject to tax on the distributions from the Investment Entity or Insurance Investment Entity at a rate that equals or exceeds the Minimum Rate.

118.40.9 To produce outcomes that are consistent with the GloBE Rules, a QDMTT shall include a provision similar to Article 7.6. Under this provision, the QDMTT will take into account the distributions of the Investment Entity or Insurance Investment Entity to compute the GloBE Income or Loss of Constituent Entity-owners located in the jurisdiction and impose a Top-up Tax on the Investment Entity or Insurance Investment Entity in respect of any Undistributed Net Income.

Taxes allocable to Hybrid Entities or Distributing Constituent Entities

Issue to be considered

43. The February AG clarified that the QDMTT shall exclude taxes paid or incurred by Constituent Entity-owners under CFC Regimes that are allocable to Constituent Entities under Art. 4.3.2 (c) of the GloBE Rules, as well as taxes paid or incurred by Main Entities and allocable to Permanent Establishments located in the jurisdiction under Art. 4.3.2 (a). The policy rationale for the guidance is that a jurisdiction should have the first right to tax income of Entities located within its territory and therefore cannot be required to give credit in its QDMTT for taxes imposed on the income of such Entities by the jurisdiction of a Constituent Entity-owner. The February AG, however, did not specifically address the treatment of taxes paid by a Constituent Entity-owners on the income of Hybrid Entities or distributions from distributing Constituent Entities, which under Article 4.3.2(d) and (e) are allocated to the Hybrid Entity and distributing Constituent Entity. Taxes paid by a foreign Constituent Entity-owner on the income of a Hybrid Entity fall

squarely within the policy rationale of the February AG. Some taxes on distributions also fall within the policy rationale of the February AG. Specifically, taxes imposed by the jurisdiction of a foreign Constituent Entity-owner on distributions from another Constituent Entity must not be included in the ETR computation of the Constituent Entity under a QDMTT. However, withholding taxes imposed by the jurisdiction of the distributing Constituent Entity can be taken into account in computing the ETR under that jurisdiction's QDMTT.

Guidance

44. The text in bold will be inserted in, and the text in strikethrough will be removed from paragraph 118.30 of the Commentary to Article 10.1.

Cross-border taxes allocable to CFC or Permanent Establishments

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 that is allocable to a Hybrid Entity located in the 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.** Excluding ~~such~~ CFC and PE taxes allows the QDMTT to operate as a simple calculation and does not require the complex calculations required in some cases to allocate CFC taxes under Article 4.3.2(c) to be reported to a jurisdiction that implements a QDMTT. Further, a specific ordering rule is aimed at attributing primary taxing rights to the jurisdiction applying the QDMTT in relation to its Constituent Entities. If the ordering rule were the opposite, so that ~~the cross-border CFC taxes above or PE taxes~~ were credited under a QDMTT, additional computations would have been required in order to avoid the QDMTT resulting in taxation that is below the Minimum Rate. Specifically, if a QDMTT is creditable against ~~either a CFC tax charge or a PE tax charge~~ imposed by the parent or main entity jurisdiction, ~~or a tax charge imposed by the jurisdiction of the Hybrid Entity or the distributing Constituent Entity,~~ any crediting of ~~those taxes_ CFC tax or PE tax~~ against a QDMTT would make the calculation of the correct amount of QDMTT problematic, due to the interaction of the two crediting mechanisms. Excluding ~~such taxes credits for CFC or PE taxes~~ from QDMTT calculations will ensure that this practical problem does not arise. The Inclusive Framework will monitor the interaction between the QDMTT and CFC Tax Regimes and taxable branch regimes to ensure this interaction results in the intended outcomes under the GloBE Rules and may, in the future, consider solutions to address issues if they arise.

Transition Years

Issue to be considered

45. Art. 9.1.1 of the GloBE Rules sets out the deferred tax accounting attributes of a Constituent Entity that may be utilized in calculating the ETR in a jurisdiction in the Transition Year and subsequent years. Art. 9.1.3 provides a limitation on intragroup asset transfers occurring after 30 November 2021 and before the commencement of a Transition Year by requiring the transferred assets to be recorded at their historic carrying value for GloBE purposes. To provide outcomes that are consistent with the GloBE Rules,

paragraphs 118.48 and 118.49 of the Commentary to Article 10.1 require a QDMTT to include Artt. 9.1.1, 9.1.2 and 9.1.3.

46. As per the definition in Art. 10.1, a Transition Year is the first Fiscal Year that the MNE Group comes within the scope of the GloBE Rules in respect of that jurisdiction. This means that a Transition Year is the first Fiscal Year for which the MNE Group has to undertake the calculations of a jurisdiction in accordance with the GloBE Rules (i.e. the IIR or the UTPR can apply with respect to a Constituent Entity of the MNE Group in the jurisdiction). The Fiscal Year for which the MNE Group is first subject to the GloBE Rules can be different for different Constituent Entities for various reasons, including the fact that Constituent Entities located in different jurisdictions may become subject to the GloBE Rules in different years due to the applicability of the Transitional CbCR Safe Harbour. In addition, the Fiscal Year for which the MNE Group is first subject to the GloBE Rules can be different from the Fiscal Year for which the MNE Group is first subject to a QDMTT and, for purposes of Article 9.1.3, the Fiscal Year that the disposing Constituent Entity comes within the scope of the GloBE Rules and/or the QDMTT can also be different from the Fiscal Year that the acquiring Constituent Entity comes within the scope of the GloBE Rules and/or the QDMTT. It is necessary to ensure some co-ordination in the application of the GloBE Rules and the QDMTT in cases where the first Fiscal Year in which each set of rules applies is different. Without such coordination, the tax attributes under each system will be different, which will produce different outcomes in many cases.

47. Article 9.1.1 and Article 9.1.2 can be coordinated with either a first-in-time rule or a refreshing rule. Under a first-in-time rule, the Transition Year would be determined based on the first set of rules (GloBE Rules or QDMTT) that the MNE Group becomes subject to in the jurisdiction. Under a refreshing rule, on the other hand, the QDMTT could provide for a new Transition Year when the GloBE Rules come into effect for the jurisdiction in a subsequent year. Another approach could be to refresh the Transition Year irrespective of which set of rules comes into effect last, but refreshing the Transition Year for the application of the GloBE Rules when the QDMTT comes into effect would be more disruptive because the GloBE Rules themselves do not contemplate multiple Transition Years for the same Constituent Entities.

48. A rule that refreshes the Transition Year for purposes of the QDMTT when the GloBE Rules come into effect after the QDMTT is the better approach for Articles 9.1.1 and 9.1.2 for several reasons. First, there is more flexibility under a QDMTT to coordinate the transition rules when the GloBE Rules come into effect before or after the QDMTT. Second, the QDMTT is meant to apply consistently with the GloBE Rules such that the MNE Group is no worse off for being subject to a QDMTT. Article 9.1.1 generally allows MNE Groups to bring tax attributes into the GloBE Rules that would not be taken into account if the GloBE Rules had applied in a previous year (e.g. deferred tax assets attributable to tax credits). Any such attributes that arose after the QDMTT came into effect would be lost if the first-in-time rule were applied to determine the Transition Year. Other deferred tax attributes arising between the effective dates should largely be unaffected because they will have already been recast at 15% under the QDMTT, meaning that they will not need to be recast again under Article 9.1.1 and Article 9.1.2. Finally, there is little effect on Article 9.1.3 because it applies to the same set of transactions prior to the effective date of the QDMTT and any transactions that fall within the scope of the Article after the effective date of the QDMTT will be accounted for consistent with Article 9.1.3 under the QDMTT.

49. When a new Transition Year is required because the GloBE Rules come into effect for Constituent Entities in the jurisdiction, certain tax attributes that arose under the QDMTT will need to be eliminated or re-stated to ensure coordination in and after the transition year, including:

- a. DTL Recapture. The Constituent Entities will not be required to recapture any deferred tax liabilities that were taken into account in the ETR computations prior to the new Transition Year. The rules of Article 4.4.4 will apply only to deferred tax liabilities that arise after the beginning of the new Transition Year.

- b. GloBE Loss Election. Any GloBE Loss Deferred Tax Asset that arose in a year preceding the Transition Year must be eliminated. The Filing Constituent Entity may make a new GloBE Loss election in the new Transition Year.
- c. Excess Negative Tax Expense Carry-forward. Any Excess Negative Tax Expense Carry-forward amount under Article 4.1.5 or Article 5.2.1 shall be eliminated at the beginning of the new Transition Year. Article 9.1.2 shall apply to transactions occurring after 30 November 2021 and before the beginning of the new Transition Year.

The Inclusive Framework will consider providing further guidance with illustrative examples to clarify the adjustments that are needed when there is a new Transition Year.

50. Article 9.1.3 applies to an acquiring Constituent Entity. However, the conditions relevant to the application of Article 9.1.3 are generally determined by reference to the disposing Constituent Entity. The Commentary to Article 9.1.3 generally precludes an MNE Group from increasing the carrying value of assets transferred among Constituent Entities where the disposing Entity was not subject to the GloBE Rules or otherwise subject to tax at a 15% rate (at least) on the transfer. Where the disposing Constituent Entity was subject to the GloBE Rules or otherwise subject to tax at a 15% rate, the concern addressed by Article 9.1.3 (i.e. an increased carrying value due to an under-taxed intra-group transfer) does not arise. Similarly, this concern does not arise where the disposing Constituent Entity was subject to a QDMTT. This is true under both the GloBE Rules and a QDMTT. Accordingly, a QDMTT must have a provision similar to Article 9.1.3 that applies to the acquiring Constituent Entity where the disposing Constituent Entity was neither subject to the GloBE Rules nor a QDMTT.

Guidance

51. The following text will be added after paragraph 118.49 of the Commentary to Article 10.1.

118.49.1 Under Article 10.1 of the GloBE Rules, a Transition Year is the first Fiscal Year that the MNE Group comes within the scope of the IIR and/or UTPR with respect to the jurisdiction. The application of the provisions in Articles 9.1.1 and 9.1.2 requires some coordination in cases where the first Fiscal Year that a QDMTT applies to domestic Constituent Entities located in the jurisdiction is before or after the first Fiscal Year in which the GloBE Rules apply to those Constituent Entities. For purposes of Article 9.1.3, coordination is also needed for cases where the Fiscal Year that the disposing Constituent Entity comes within the scope of the GloBE Rules and/or the QDMTT is different from the Fiscal Year that the acquiring Constituent Entity comes within the scope of the GloBE Rules and/or the QDMTT.

118.49.2 A QDMTT must have a transition rule similar to Articles 9.1.1 and 9.1.2 that applies where the QDMTT becomes applicable to Constituent Entities in the jurisdiction in a Fiscal Year that begins on or before the Fiscal Year that the GloBE Rules first become applicable to those Constituent Entities. In order to ensure coordinated outcomes where the GloBE Rules come into effect for such Constituent Entities after the QDMTT, the QDMTT also must have a supplemental rule that treats the Fiscal Year that the GloBE Rules come into effect for such Constituent Entities as a new Transition Year and re-sets the following attributes of those Constituent Entities:

(a) Article 4.1.5 and Article 5.2.1. Any Excess Negative Tax Expense Carry-forward under Article 4.1.5 or Article 5.2.1 shall be eliminated at the beginning of the new Transition Year.

(b) Article 4.4.4. The DTL recapture rule in Article 4.4.4 shall not apply to any deferred tax liability that was taken into account in computing the ETR under the QDMTT and that was not recaptured prior to the new Transition Year. Article 4.4.4 shall apply to deferred tax liabilities that are taken into account in and after the new Transition Year.

(c) Article 4.5. Any GloBE Loss Deferred Tax Asset that arose in a year preceding the new Transition Year must be eliminated. The Filing Constituent Entity may make a new GloBE Loss election in the new Transition Year.

(d) Article 9.1.1. The deferred tax items previously determined shall be eliminated and Article 9.1.1 shall be applied at the beginning of the new Transition Year.

(e) Article 9.1.2. Article 9.1.2 shall apply to transactions occurring after 30 November 2021 and before the beginning of the new Transition Year. However, if QDMTT was payable due to the application of Article 4.1.5 in respect of a deferred tax asset attributable to a tax loss, such deferred tax asset shall not be treated as arising from items excluded from the computation of GloBE Income or Loss under Chapter 3.

52. The following text will be added after paragraph 4 of the Commentary to Article 9.1.

4.1 Coordination rules for the application of Article 9.1 of the GloBE Rules and the corresponding article of a Qualified Domestic Minimum Top-up Tax are set out in paragraphs 118.49.1 and 118.49.2 of the Commentary to Article 10.1.

53. The text in bold will be added to the end of paragraph 10.2 of the Commentary to Article 9.1.3 and paragraph 10.2.1 will be added after paragraph 10.2.

10.2 As explained above, the policy intention of Article 9.1.3 is to disallow the normal accounting treatment of asset transactions after 30 November 2021 and before the commencement of a Transition Year (hereinafter referred to as the Pre-GloBE Period) where the income is taxed below the minimum rate and the corresponding deductions shield future income from potential Top-up Tax. Allowing the normal accounting treatment of such transactions would undermine the integrity of the GloBE Rules, and Article 9.1.3 addresses this integrity concern by requiring the acquiring Entity to use the disposing Entity's carrying value at the time of the asset transfer as the asset's carrying value or precluding the acquiring Entity from utilizing a deferred tax asset arising in connection with the transaction that has the same effect for GloBE purposes as an increased carrying value. **However, the integrity concern is not present where the disposing Constituent Entity is subject to the GloBE Rules or a QDMTT in the Fiscal Year in which the transaction occurs.**

10.2.1 For purposes of Article 9.1.3, the relevant Transition Year is the Transition Year of the disposing Constituent Entity and the Transition Year of the disposing Constituent Entity is the first year in which its Low-Taxed Income becomes subject to charge under the GloBE Rules or it becomes subject to a Qualified Domestic Minimum Top-up Tax irrespective of when other Constituent Entities in the jurisdiction are subject to the GloBE Rules. The Article applies to any transfer of assets between Constituent Entities after 30 November 2021, including transfers after the acquiring Constituent Entity becomes subject to the GloBE Rules, where the disposing Constituent Entity's Low-Taxed Income was not subject to charge under the GloBE Rules or a Qualified Domestic Minimum Top-up Tax either because it was not within the scope of the GloBE Rules or because it applied a safe harbour.

54. Paragraph 33.d. of the Transitional CbCR Safe Harbour guidance is revised to read as follows:

d. the Transition Year referred to in Article 9.1.3 for a disposing Constituent Entity does not include a Fiscal Year in which the Transitional CbCR Safe Harbour applies to the disposing Constituent Entity; and

Exclusion from UTPR of MNE Groups in the initial phase of their international activity

Issue to be considered

55. Article 9.3 of the GloBE Rules provides a transitional exclusion under the UTPR by reducing the Total UTPR Top-up Tax Amount to zero for MNE Groups that are in the initial phase of their international activity. The exclusion only applies for a period of five years after the MNE Group has come within the scope of the GloBE Rules and covers MNE Groups that: (i) have Constituent Entities located in no more than six jurisdictions for a Fiscal Year; and (ii) only have a limited amount of tangible assets outside the Reference Jurisdiction.

56. Article 9.3 is a charging provision of the UTPR that does not impact the application of the IIR. This means that MNE Groups in the initial phase of their international activity will still be subject to the GloBE Rules if there is an IIR applicable in a parent jurisdiction.

57. Paragraph 118.51 of the Administrative Guidance states that a jurisdiction is not required to adopt Article 9.3 under its QDMTT because it solely applies with respect to the UTPR. This leaves the option to the QDMTT jurisdiction to decide on whether it wants to adopt Article 9.3. However, if a jurisdiction decides to adopt Article 9.3 under its QDMTT, the provision shall be carefully designed to produce outcomes that are consistent with the GloBE Rules.

58. Further guidance is therefore needed to clarify how Article 9.3 applies in the context of a QDMTT, considering that the IIR could apply irrespective of the application of this provision.

59. The guidance provides jurisdictions with three options regarding Article 9.3 in relation to their QDMTT legislation. Option one allows the jurisdiction not to adopt Article 9.3. Option two allows the jurisdiction to adopt Article 9.3 but limited to cases where no Parent Entity is required to apply a Qualified Income Inclusion Rule with respect to Constituent Entities of an MNE Group located in the QDMTT jurisdiction. Option three allows the jurisdiction to adopt Article 9.3 without the limitations in option two.

Guidance

60. The following text will replace paragraph 118.51 of the Commentary to Article 10.1:

118.51 Article 9.3 reduces the UTPR Top-up Tax Amount to zero where an MNE Group is in its initial phase of international activity. While this provision effectively turns off the UTPR, the IIR can still apply to MNE Groups in the initial phase of their international activity if a Parent Entity is located in a jurisdiction that introduced the IIR. Jurisdictions have three options with respect to Article 9.3 in relation to their QDMTT legislation. Option one allows the jurisdiction not to adopt Article 9.3 in their QDMTT legislation. Option two allows the jurisdiction to introduce Article 9.3 in their QDMTT legislation but limited to the cases where none of the Ownership Interests in the Constituent Entities located in the QDMTT jurisdiction are held by a Parent Entity subject to a QIIR. Option three allows the jurisdiction to adopt Article 9.3 in their QDMTT legislation without the limitations in option two. The status of the QDMTT will not be affected where the jurisdiction adopts any of these three options.

Currency for QDMTT computations

Issue to be considered

61. In cases where the Consolidated Financial Statements of an MNE Group are prepared in a currency that is different from the one required by the QDMTT legislation, it would be necessary to translate the results of the Consolidated Financial Statements into local currency to determine whether the MNE Group is subject to a QDMTT and, if so, to make the relevant QDMTT computations.

62. MNE Groups will have a currency translation system that they use for purposes of preparing Consolidated Financial Statements. This system will translate the functional currencies of various Constituent Entities into the MNE Group's presentation currency. Where the QDMTT leverages on the accounting standards used to compute the FANIL under the GloBE Rules, i.e. Articles 3.1.2 and 3.1.3, the currency translation rules applicable under the GloBE Rules should apply for purposes of the QDMTT computations as well. That is, the QDMTT computations should be undertaken in the presentation currency of the MNE Group's Consolidated Financial Statements and, if required, any resulting liability converted from that presentation currency to local currency under the rules of the relevant jurisdiction.

63. In cases where the QDMTT requires a Local Financial Accounting Standard and all the Constituent Entities in the jurisdiction use the local currency as their functional currency, the QDMTT should require the relevant computations in the local currency.

64. However, in circumstances where not all Constituent Entities in the jurisdiction use the local currency as their functional currency, the QDMTT computations must be made in a single currency. Therefore, local Constituent Entities would need to apply the currency translation rules of the financial accounting standards used for purposes of the QDMTT computations. In such cases, the Filing Constituent Entity may make a Five-Year Election to undertake the QDMTT computations for all Constituent Entities in the jurisdiction either:

- a. in the presentation currency of the Consolidated Financial Statements; or
- b. in the local currency.

If the QDMTT liability is determined in the presentation currency, it can then be translated into the local currency for purposes of payment.

Guidance

65. The following text will be included after paragraph 118.53 of the Commentary to Article 10.1

Currency

118.54 Where the QDMTT is computed based on the financial accounting standards determined in accordance with Article 3.1.2 or Article 3.1.3, the QDMTT shall require Constituent Entities to make the QDMTT computations using the presentation currency of the Consolidated Financial Statements in accordance with the Commentary to Article 3.1.2 and 3.1.3. Where the QDMTT legislation requires the computations to be made using the Local Financial Accounting Standard and all Constituent Entities in a jurisdiction use the local currency as their functional currency, the QDMTT shall require these computations in the local currency. However, where the QDMTT legislation requires the computations to be made using the local accounting standard and one or more of the Constituent Entities in a jurisdiction use a currency other than the local currency as their functional currency, the QDMTT shall provide a Five-Year election under which the Constituent Entities may undertake the QDMTT computations using the presentation currency of the Consolidated Financial Statements or the local currency. The Constituent Entities that use a different functional currency must apply the currency translation rules under the financial

accounting standards used for purposes of the QDMTT computations. These rules apply without regard to the jurisdiction's rules for converting the QDMTT liability to local currency for purposes of payment.

Multi-Parented MNE Groups

Issue to be considered

66. A Multi-Parented MNE Group may have Constituent Entities located in a QDMTT jurisdiction. The question therefore arises as to whether QDMTT jurisdictions shall include a provision similar to Article 6.5 in their QDMTT legislation.

Guidance

67. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraph 118.40 of the Commentary to Article 10.1.

118.40 Chapter 6 provides rules related to corporate reorganisations. These rules are intended to harmonize the GloBE Rules with common tax reorganisation rules. To be functionally equivalent, a QDMTT needs to include rules akin to those in Chapter 6 to the extent necessary to conform to the tax reorganization rules in the jurisdiction. For example, if the jurisdiction does not have tax-deferred reorganization rules in its ordinary CIT, the jurisdiction does not need the rules applicable to GloBE Reorganisations. Similarly, if the jurisdiction does not have a rule that would allow for an election under Article 6.3.4 ~~or does not allow for multi-parented MNE Groups~~, the jurisdiction need not adopt rules that correspond to Articles 6.3.4 ~~or 6.5~~. On the other hand, the jurisdiction will need a rule similar to Article 6.2.1 that requires GloBE income of the target be determined using historical carrying value of assets and liabilities. Further, the jurisdiction will need a rule similar to Article 6.3.1 that requires gain or loss to be recognized upon transfer of assets among Constituent Entities in the jurisdiction. **Finally, the jurisdiction will need a rule similar to Articles 6.5.1(a) through (d) to ensure that same ETR and Top-up Tax computational rules apply to Constituent Entities of Multi-Parented MNE Groups located in the jurisdiction as they apply under the GloBE Rules.**

Filing obligations

Issue to be considered

68. The GloBE Information Return (GIR) to be released does not require QDMTT jurisdictions to use the GIR for purposes of QDMTT information collection. The Commentary agreed in the February AG indicated that the Inclusive Framework would consider further guidance on the filing obligations under a QDMTT. The guidance set out below provides an update and clarifies the fact that QDMTT information return may follow a different format from the GloBE Information Return.

Guidance

69. The text in bold will be inserted in, and the text in strikethrough will be removed from, paragraph 118.42 of the Commentary to Article 10.1.

118.42 As previously discussed, a QDMTT must deliver outcomes similar to those achieved under the GloBE Rules, but it is not required to follow the GloBE Rules verbatim to

achieve this result. Nevertheless, to ensure coordination and preserve transparency, the design of the QDMTT needs to be functionally equivalent to the GloBE Rules such that the QDMTT computations can be made with the data points that are required to compute the GloBE tax liability. Using equivalent data points for purposes of the QDMTT and the GloBE Rules will facilitate compliance for MNE Groups, as well as coordination and mutual trust between jurisdictions. **The information return collected by the QDMTT jurisdiction may follow a different format from the GloBE Information Return. However, as the QDMTT would use equivalent datapoints to those provided in the GloBE Information Return, the QDMTT jurisdiction could choose to use the GIR or rely on the information included on the GIR.** The Inclusive Framework will consider providing further guidance on the information collection and reporting requirements under the QDMTT in the context of the development of the GloBE Information Return.

Definitions

Issue to be considered

70. Chapter 10 contains the defined terms that are used in the GloBE Rules, as well as the provisions that shall be applied to determine the location of an Entity or a PE for GloBE purposes. Allowing QDMTT jurisdictions to rely on domestic rules for the definition of terms that are defined under the GloBE Rules and to depart from the provisions in Chapter 10 for determining the location of an Entity or a PE might give rise to unintended outcomes in the interaction between the QDMTT and the GloBE Rules.

71. To avoid coordination issues and provide outcomes that are consistent with the GloBE Rules, jurisdictions shall include in their QDMTT legislation all the definitions and the location rules in Chapter 10 of the GloBE Rules, except as modified by the Commentary and Administrative Guidance on the QDMTT.

Guidance

72. The following text will be included after paragraph 118.52 of the Commentary to Article 10.1.

Chapter 10. Definitions

118.52.1 To avoid coordination issues and provide outcomes that are consistent with the GloBE Rules, except as modified or provided otherwise in the Commentary to Article 10.1 on the definition of a QDMTT, a jurisdiction shall make sure that its QDMTT legislation incorporates the outcomes provided by all the definitions and the rules determining the location of an Entity or Permanent Establishment in Chapter 10 of the GloBE Rules.

QDMTT payable

Issue to be considered

73. There may be cases where a QDMTT jurisdiction is prevented or restricted from applying the QDMTT to a Constituent Entity located in the jurisdiction due to constitutional provisions or tax stabilization agreements (or similar agreements between the QDMTT jurisdiction and the MNE Group). This will generally mean that the Top-up Tax payable under the QDMTT will not reduce the GloBE Top-up Tax to zero and thus will be collected by another jurisdiction under the GloBE Rules, either the IIR or the UTPR.

74. In cases where the jurisdiction disputes an MNE Group's claim to a constitutional or other limitation on the application of its QDMTT, the MNE Group's financial accounts may include an expense for the QDMTT, notwithstanding that the MNE Group is challenging the applicability of the QDMTT. In those

cases, the MNE Group would not have any Top-up Tax under the GloBE Rules if the QDMTT is considered payable under Article 5.2.3. This could create an integrity risk under the GloBE Rules because the dispute in the QDMTT jurisdiction may not be resolved before the period of limitations runs in the relevant GloBE jurisdiction. If the MNE Group's claim prevails in the QDMTT jurisdiction after the Top-up Tax is no longer assessable or collectible in other GloBE jurisdictions, the MNE Group will have avoided application of both the QDMTT and the GloBE Rules.

75. In order to mitigate this integrity risk, any amount of QDMTT that the MNE Group directly or indirectly challenges in a judicial or administrative proceeding shall not be treated as QDMTT payable under Article 5.2.3 where the challenge is based on constitutional or other legal grounds or a specific agreement with the government of the QDMTT jurisdiction limiting its tax liability, such as a tax stabilization agreement, investment agreement, or similar agreement. This rule also applies where a taxpayer indirectly challenges its liability for the QDMTT by simply claiming that it is not liable for any tax in the jurisdiction or that it is entitled to compensation or reimbursement for any tax paid in the jurisdiction.

76. This rule applies only where the MNE Group claims that it is not liable for QDMTT in whole or in part based on a legal grounds outside the QDMTT or the GloBE Rules, such as a constitutional challenge. It does not apply to interpretive or factual issues arising under the QDMTT, such as where the MNE Group claims that they meet an exception to the scope of the QDMTT, a particular provision of the QDMTT does not apply based on their facts, or a rule should be interpreted in its favour. For example, this rule does not apply where an Entity claims that it meets the definition of an Excluded Entity under the GloBE Rules or that certain shareholdings are not Portfolio Shareholdings.

77. If the MNE Group challenges the QDMTT before filing its GloBE Information Return (GIR), it should apply the credit mechanism in Article 5.2.3 on its original GIR. The QDMTT payable should not exceed the amount, if any, of the QDMTT that is not subject to the challenge. For example, if the MNE Group computes a QDMTT top-up tax of EUR 120x for the jurisdiction, but claims that under its stabilization agreement its Top-up tax liability cannot exceed EUR 100x and therefore it is not liable for EUR 20x of Top-up Tax under the QDMTT. The 20x is not considered QDMTT payable under Article 5.2.3.

78. As explained in the QDMTT Safe Harbour rules, where the QDMTT is not payable, the Safe Harbour will not apply. Accordingly, an MNE Group that contests the validity or applicability of a QDMTT based on a constitutional grounds or a tax stabilization agreement will not be able to claim the QDMTT Safe Harbour, but instead will be subject to the credit mechanism in Article 5.2.3 and the rules in paragraph 20.1 below will apply to that MNE Group.

79. In some circumstances, the tax authority of the jurisdiction may determine that it is unable to assess or collect QDMTT from certain taxpayers based on constitutional restrictions or tax stabilization agreements. In such cases, the QDMTT will not be payable under Article 5.2.3. Although this does not affect the ability of the jurisdiction's QDMTT to satisfy the Consistency Standard under the QDMTT Safe Harbour, the jurisdiction should provide notification of these circumstances in the peer review process.

80. There are other circumstances in which the QDMTT should not be considered payable for purposes of Article 5.2.3. In those cases, a mechanism that requires a re-computation of the Top-up Tax for the relevant Fiscal Year in accordance with Article 5.4 may be appropriate. The Inclusive Framework will consider further Administrative Guidance to address other cases where the QDMTT is not considered payable under the GloBE Rules and a mechanism of recomputing top-up tax with the purpose of avoiding double taxation and double non-taxation under the GloBE Rules. Article 11, paragraph 3 of the European Council Directive on Ensuring a Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-scale Domestic Groups provides:

“Where the amount of qualified domestic top-up tax for a fiscal year has not been paid within the four fiscal years following the fiscal year in which it was due, the amount of qualified domestic top-up tax that was not paid shall be added to the jurisdictional top-up tax computed in accordance

with Article 27(3) and shall not be collected by the Member State which made the election pursuant to paragraph 1 of this Article.”

The Inclusive Framework will provide further Administrative Guidance in relation to the interaction between this provision and the GloBE Rules in order to provide for consistent and coordinated outcomes.

Guidance

81. The following guidance will be added after paragraph 20 of the Commentary to Article 5.2.3.

20.1 For purposes of Article 5.2.3, the amount of the “Qualified Domestic Minimum Top-up Tax payable” shall be equal to the amount accrued by the Constituent Entities in the jurisdiction in respect of the QDMTT for the Fiscal Year, except that such amount shall not include any amount of QDMTT that:

- (a) the MNE Group directly or indirectly challenges in a judicial or administrative proceeding; or
- (b) the tax authority of the jurisdiction has determined is not assessable or collectible based on constitutional grounds or other superior law or based on a specific agreement with the government of the QDMTT jurisdiction limiting the MNE Group’s tax liability, such as a tax stabilization agreement, investment agreement, or similar agreement.

Any QDMTT that was not included in QDMTT payable pursuant to this paragraph shall be included in QDMTT payable for the Fiscal Year to which it relates when such amount is paid and no longer contested by the MNE Group.

20.2 For example, if the MNE Group computes a QDMTT of EUR 120x for the jurisdiction, but claims that under its stabilization agreement with the government of the jurisdiction its total tax liability in the jurisdiction cannot exceed EUR 100x and therefore it is not liable for EUR 20x of Top-up Tax under the QDMTT. The 20x is not considered QDMTT payable under Article 5.2.3 because that is the amount challenged based on the stabilization agreement. If instead, the MNE Group challenges the full EUR 120x liability based on its stabilization agreement, the amount of QDMTT payable is zero under Article 5.2.3.

20.3 The Inclusive Framework will consider further Administrative Guidance to clarify the meaning of paid or payable in the context of this guidance and to address cases where the QDMTT is not paid within four Fiscal Years or not payable under the GloBE Rules and develop a mechanism of re-computation with the purpose of providing guidance that minimizes the potential for double taxation and double non-taxation under the GloBE Rules.

5 Safe Harbours

5.1 QDMTT Safe Harbour

Introduction

1. A Qualified Domestic Minimum Top-up Tax (QDMTT) is a domestic minimum tax imposed by a jurisdiction on those Constituent Entities of an MNE Group that are resident, or constitute a permanent establishment in, that jurisdiction. The QDMTT operates as a Top-up Tax that is calculated in line with the jurisdictional ETR calculation under Chapter 5 of the GloBE Rules. Although some features of the QDMTT may vary from those provided for under the Model Rules the overall design and outcomes under the QDMTT must be consistent with those provided for under the GloBE rules.

2. The possibility of variations between the QDMTT and the GloBE Rules (such as the ability to apply a local financial accounting standard under a QDMTT) means that there may be particular fact patterns where the Top-up Tax imposed under the QDMTT is less than the amount that would have been due under the GloBE Rules. This possibility of an MNE Group paying less Top-up Tax under a QDMTT than it would have incurred under the GloBE Rules, does not, however, give rise to any integrity risks because the credit mechanism in Article 5.2 ensures that any shortfall in domestic Top-up Tax payable under the QDMTT will simply result in additional tax being payable under the GloBE Rules.

3. The application of the credit mechanism does require, however, at least two separate Top-up Tax calculations in respect of the same jurisdiction: the first calculation, based on the QDMTT legislation in the jurisdiction and further calculations based on the GloBE Rules (e.g. under the legislation of the UPE Jurisdiction). Inclusive Framework members have observed that the requirement to undertake separate Top-up Tax calculations in respect of the same Constituent Entities under parallel rules will result in increased compliance costs for MNE Groups and administrative burdens for tax authorities.

4. The QDMTT Safe Harbour is intended to provide a practical solution to address this issue. Where an MNE Group qualifies for a QDMTT Safe Harbour, Article 8.2 excludes the application of the GloBE Rules in other jurisdictions by deeming the Top-up Tax payable under the GloBE Rules to be zero. A QDMTT Safe Harbour will therefore allow the MNE Group to undertake one computation under the QDMTT and then rely on Article 8.2 of the Model Rules to automatically reduce the Top-up Tax to zero in a jurisdiction applying the GloBE Rules, thereby avoiding the need to undertake a further calculation under those rules. However, the fact that an MNE Group is not required to make the second calculation under the safe harbour may give rise to integrity risks because any potential shortfall in the domestic Top-up Tax payable under the QDMTT will not result in additional tax being payable under the GloBE Rules.

5. To address this risk, a QDMTT must meet an additional set of standards to qualify for the safe harbour. In particular, and given the ability of a QDMTT to depart from the design of the GloBE Rules, a QDMTT that qualifies for a safe harbour must meet following three standards:

- a. the **QDMTT Accounting Standard** which requires a QDMTT to be computed based on the UPE's Financial Accounting Standard or a Local Financial Accounting Standard subject to certain conditions;

- b. the **Consistency Standard** which requires the QDMTT computations to be the same as the computations required under the GloBE Rules except where the Commentary to the QDMTT definition in Article 10.1 as modified by the Administrative Guidance (hereafter the QDMTT Commentary) explicitly requires a QDMTT to depart from the GloBE Rules or where the Inclusive Framework decides that an optional variation that departs from the GloBE Rules still meets the standard; and
- c. the **Administration Standard** which requires the QDMTT jurisdiction to meet the requirements of an on-going monitoring process similar to the one applicable to jurisdictions implementing the GloBE Rules.

6. The Inclusive Framework will rely on the peer review process to determine whether a QDMTT meets these additional standards and thereby qualifies for the safe harbour. Qualification for the safe harbour may be determined at the same time the Inclusive Framework undertakes a review of the rules' "qualified" status. These standards will be tested based on the jurisdiction's QDMTT legislation and how it administers the QDMTT and not based on how the QDMTT legislation may apply to particular Groups. This ensures that the QDMTT Safe Harbour is simple to apply and maximizes taxpayer certainty.

7. These standards applicable to the safe harbour should not be confused with the requirements for qualified status for a QDMTT. The requirements for a minimum tax to be considered a QDMTT are set out in the QDMTT Commentary developed by the Inclusive Framework. The standards set out in this note are based on the premise that the minimum tax is already considered a QDMTT. Thus, the minimum tax has to be considered first a QDMTT and then tested under these standards to qualify for the safe harbour. For example, a minimum tax that takes into account the allocation of cross-border taxes, such that it is not in accordance with paragraphs 118.28 to 118.30 of the QDMTT Commentary is not considered a QDMTT, and therefore, cannot benefit from the QDMTT Safe Harbour. The standards set out in this note, however, do not prejudge whether particular elements of such standards should be required to obtain a QDMTT status. Where the Inclusive Framework determines that the same standard should be required for a minimum tax to be considered a QDMTT, then this would be reviewed as part of the first stage of the QDMTT peer review process that deals with the general QDMTT status rather than the second stage that determines whether such QDMTT obtains a safe harbour status.

Operation of the QDMTT Safe Harbour

8. Article 8.2.1 of the GloBE Rules states that, at the election of the Filing Constituent Entity, the Top-up Tax for a jurisdiction shall be deemed to be zero where the Constituent Entities located in this jurisdiction, or otherwise subject to that jurisdiction's QDMTT, are eligible for a GloBE Safe Harbour. The Inclusive Framework has agreed to provide for a GloBE Safe Harbour with respect to jurisdictions that have implemented a QDMTT that meets the standards described in paragraphs 1 to 5 in the box below. Whether a QDMTT meets these standards would be determined by the Inclusive Framework as part of the peer review process of the QDMTT.

9. Jurisdictions implementing the GloBE Rules (i.e. GloBE jurisdictions) shall include mechanisms in their law that reduces another jurisdiction's Top-up Tax to zero where the QDMTT of that jurisdiction (i.e. QDMTT jurisdiction) meets the standards described in the box below. The way in which the QDMTT Safe Harbour is legislated or introduced in the GloBE jurisdiction depends on the legal structure of the GloBE jurisdiction. GloBE jurisdictions must recognize the decision taken by the Inclusive Framework, as part of the peer review process, on whether a QDMTT meets the requirements of the QDMTT Safe Harbour.

10. The QDMTT Safe Harbour operates by allowing an MNE Group to make an election to apply the QDMTT Safe Harbour for each subgroup or standalone Entity subject to a separate QDMTT calculation. For example, three Constituent Entities of the main group, two members of the same JV Group, and one

Investment Entity subject to Article 7.4 of the GloBE Rules are located in a jurisdiction with a QDMTT that meets the standards of the safe harbour. In this case, the Filing Constituent Entity would need to make a separate election for the three Constituent Entities, the two members of the JV Group, and for the Investment Entity.

11. A Filing Constituent Entity can only elect to apply the QDMTT Safe Harbour where the Top-up Tax computed under the QDMTT would be treated as “Qualified Domestic Minimum Top-up Tax payable” under Article 5.2.3 if the safe harbour did not apply. Therefore, an MNE Group cannot elect to apply the safe harbour if its liability under a QDMTT is subject to a challenge or deemed not assessable as described in paragraph 20.1 of the Commentary to Article 5.2.3. Such an MNE Group cannot elect to apply the QDMTT Safe Harbour for that jurisdiction irrespective of whether such QDMTT meets the standards set out below.

12. Paragraph 20.1 of the Commentary to Article 5.2.3 provides guidance on the meaning of the term “Qualified Domestic Minimum Top-up Tax payable” and identifies cases in which an amount of the QDMTT is not payable. If an amount of QDMTT is not payable because it is subject to a challenge or deemed not assessable in accordance with paragraph 20.1, then the MNE Group cannot apply the QDMTT Safe Harbour for that jurisdiction. For instance, a QDMTT jurisdiction may be prevented or restricted from imposing some or all of the Top-up Tax computed under the QDMTT in the circumstances described in paragraph 20.1. Although this does not affect the ability of the jurisdiction’s QDMTT to satisfy the Consistency Standard, in these cases, the QDMTT Safe Harbour election that relates to such Entities is not available for the MNE Group because the QDMTT is not a “Qualified Domestic Minimum Top-up Tax payable” with respect to such Entities.

13. In some cases, the QDMTT of a jurisdiction will meet the standards set out below but the MNE Group will not be able to apply the safe harbour with respect to the QDMTT of that jurisdiction because such QDMTT might be subject to the Switch-off Rule. The section of this document on Consistency Standards explains in detail the operation of the Switch-off Rule.

Standards for a QDMTT Safe Harbour

Standards for a QDMTT Safe Harbour

1. A QDMTT complies with the requirements of the **QDMTT Safe Harbour** if it meets the **QDMTT Accounting Standard**, the **Consistency Standard**, and the **Administration Standard**.
2. A QDMTT meets the **QDMTT Accounting Standard** if the QDMTT legislation adopts one of the following:
 - (a) provisions that are equivalent to Articles 3.1.2 and 3.1.3 of the GloBE Model Rules; or
 - (b) the **Local Financial Accounting Standard Rule**.
3. Under the **Local Financial Accounting Standard Rule**:
 - (a) the QDMTT shall be computed based on the **Local Financial Accounting Standard** of the QDMTT jurisdiction where all of the Constituent Entities located in that jurisdiction have financial accounts based on that standard and:
 - i. are required to keep or use such accounts under a domestic corporate or tax law; or
 - ii. such financial accounts are subject to an external financial audit;
 - (b) the **Local Financial Accounting Standard** is a financial accounting standard permitted or required in the QDMTT jurisdiction by the Authorised Accounting Body or pursuant to the relevant domestic legislation that is an:
 - i. Acceptable Financial Accounting Standard; or
 - ii. Authorised Financial Accounting Standard adjusted to prevent Material Competitive Distortions; and
 - (c) in case where not all Constituent Entities located in the jurisdiction meet the requirements of subparagraph (a) or the Fiscal Year of such accounts is different to the Fiscal Year of the Consolidated Financial Statements of the MNE Group, the QDMTT shall be computed based on the provisions that are equivalent to Articles 3.1.2 and 3.1.3 of the GloBE Model Rules.
4. A QDMTT meets the **Consistency Standard** if the computations under the QDMTT are the same as the computations required under the GloBE Rules, except where the QDMTT Commentary explicitly requires the QDMTT to depart from the GloBE Rules. The Consistency Standard is met notwithstanding that the QDMTT:
 - (a) does not include or has a more limited Substance-based Income Exclusion;
 - (b) does not include or has a more limited De Minimis Exclusion; or
 - (c) has a minimum tax rate above 15% for purposes of applying the Top-up Tax Percentage to the Profits or Excess Profits for the jurisdiction.
5. A QDMTT meets the **Administration Standard** if it meets the requirements provided under the ongoing monitoring process applicable to the GloBE Rules.

The QDMTT Accounting Standard

14. The GloBE Rules generally require the MNE Group to base its GloBE calculations on the accounts used for preparing the Consolidated Financial Statements of the UPE for purposes of computing the GloBE

Income or Loss of each Constituent Entity (UPE's Financial Accounting Standard). The definition of a QDMTT under the Model Rules expressly permits, however, that the calculations may be based on a Local Financial Accounting Standard. While recognizing that the option of using a Local Financial Accounting Standard is available for purposes of the QDMTT, Inclusive Framework members have noted that this creates an additional administrative burden for MNE Groups if they were required to apply the QDMTT based on the local standard in cases in which they do not prepare accounts based on such standards.

15. In these cases, requiring the use of a local accounting standard has the potential to undermine the main objective of the QDMTT Safe Harbour which is to reduce the administrative burden of MNE Groups. It also creates an integrity risk because if the accounts are prepared solely for purposes of computing the income or loss under the QDMTT, such accounts may not be consistent with the accounting standards applied by the MNE Group as a whole and may not be subject to an external audit.

16. To address this concern, the QDMTT Accounting Standard limits the application of the Local Financial Accounting Standard by replicating the requirement of Articles 3.1.2 and 3.1.3 of the GloBE Rules. This means that the QDMTT calculations would need to be based on the accounts and the financial accounting standard used for purposes of the Consolidated Financial Statements of the UPE, except where it is not reasonably practicable to use such accounts.

17. However, the QDMTT Accounting Standard allows for a variation for jurisdictions that want to introduce a QDMTT computed in accordance with a Local Financial Accounting Standard. In accordance with paragraph 2(b) of the box above, a QDMTT jurisdiction can substitute Articles 3.1.2 and 3.1.3 for a special provision referred as the Local Financial Accounting Standard Rule.

18. The Local Financial Accounting Standard Rule is described in paragraph 3 of the box above. This rule requires the QDMTT computations to be based on the Local Financial Accounting Standard of the QDMTT jurisdiction where all the Constituent Entities located in that QDMTT jurisdiction are already preparing financial accounts based on the local standard. This condition is also met by a Constituent Entity if that Constituent Entity's financial accounting net income or loss is included in a consolidated financial statement based on the local standard and has been prepared by another entity in the MNE Group. This prevents a QDMTT jurisdiction from requiring the use of the Local Financial Accounting Standard where the MNE Group does not prepare financial accounts based on that standard. The objective of this restriction is to avoid increasing the compliance costs of MNE Groups by requiring them to create local accounts solely for purposes of the QDMTT. Therefore, the QDMTT jurisdiction must require the QDMTT to be computed based on the financial accounting standards required under provisions equivalent to Articles 3.1.2 and 3.1.3 of the GloBE Rules where the Constituent Entities do not prepare financial accounts based on the Local Financial Accounting Standard.

19. The QDMTT jurisdiction's legislation must only allow the use of the Local Financial Accounting Standard where all the Constituent Entities in the MNE Group located in the QDMTT Jurisdiction meet the requirements of paragraph 3(a). This requirement is applied separately for JV Groups (which includes a standalone Joint Venture). Accordingly, the JV Group can itself satisfy the requirements of paragraph 3(a) and therefore be subject to the Local Financial Accounting Standard. For example, if all the Constituent Entities of an MNE Group located in the jurisdiction meet the requirements of paragraph 3(a) but the MNE Group holds an interest in a JV Group in the same jurisdiction which is subject to a different accounting standard, the Local Financial Accounting Standard can be used to calculate the QDMTT for the Constituent Entities of the MNE Group but equivalent provisions to Articles 3.1.2 and 3.1.3 will apply to the JV Group. Where the conditions of paragraph 3(a) are not met with respect to all the Constituent Entities of the MNE Group, or the members of the JV Group, the legislation must require the QDMTT to be computed based on provisions equivalent to Articles 3.1.2 and 3.1.3.

20. In the case of Constituent Entities that are Permanent Establishments, a QDMTT jurisdiction can apply the Local Financial Accounting Standard Rule only where the nonresident prepares separate financial accounts based on the local standard for a Permanent Establishment located in that jurisdiction.

This condition is still met where the nonresident produces the relevant financial accounting information based on the local standard for local tax purposes and not a complete set of separate financial accounting statements, provided that the information needed for GloBE is available. This is consistent with paragraphs 186 and 189 of the Commentary to Article 3.4 that states that the starting point to compute the Financial Accounting Net Income or Loss of a Permanent Establishment is its financial accounts (if they exist) prepared for tax or management purposes. As part of the future work on the allocation of Financial Accounting Net Income or Loss between Main Entities and Permanent Establishments, the Inclusive Framework will consider the case where the source jurisdiction has a QDMTT that applies the Local Financial Accounting Standard Rule in order to determine whether a special allocation rule is needed.

21. In some cases, the Fiscal Year of the local accounts can be different to the one of the Consolidated Financial Statements which could create a mismatch between the QDMTT computations and the computations that would have been required under GloBE. In these situations, the QDMTT jurisdiction must require the use of the UPE's Financial Accounting Standard to ensure consistency between the GloBE Rules and the QDMTT.

22. Where a QDMTT jurisdiction adopts the Local Financial Accounting Standard Rule, it shall require the MNE to apply the standard consistently which means that it must require the use of the Local Financial Accounting Standard where the conditions are met. The QDMTT legislation must not give the option to MNE Groups to choose which standard to use. This addresses the risk of tax planning where an MNE Group can choose which Financial Accounting Standard provides a better outcome under the QDMTT.

23. In order to meet the requirements of the Safe Harbour, the Local Financial Accounting Standard must be either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard as defined by the GloBE Rules. In the case of local accounts based on an Authorised Financial Accounting Standard, these must be adjusted to prevent Material Competitive Distortions in accordance with Agreed Administrative Guidance to be developed by the Inclusive Framework.

24. The definition of Local Financial Accounting Standard of paragraph 3(b) above includes any financial accounting standard that meets the terms of that paragraph. Therefore, a QDMTT jurisdiction can have more than one Local Financial Accounting Standard where it is permitted or required in the QDMTT jurisdiction by the Authorised Accounting Body or pursuant to the relevant domestic legislation. For example, the domestic law of a QDMTT jurisdiction may require Entities to prepare separate financial statements based on local GAAP and have accounts used in the preparation of Consolidated Financial Statements in accordance with IFRS for Entities of large MNE Groups or MNE Groups whose ownership interests are traded in a stock exchange. In this situation, in addition to local GAAP, IFRS is considered as a Local Financial Accounting Standard in accordance with paragraph 3(b) of the box above. Where an Entity is required to keep or use such accounts under a domestic corporate or tax law but has the choice between multiple Local Financial Accounting Standards, paragraph 3(a)(i) will be satisfied.

25. Where the Constituent Entities located in the jurisdiction prepare financial accounts using more than one financial accounting standard, the QDMTT jurisdiction should determine in its QDMTT legislation which accounts and financial accounting standards should be used for purposes of the QDMTT computations without giving the optionality to the MNE Group (that is, the QDMTT jurisdiction must provide a tie-breaker rule to determine which financial accounting standard must be used for the purposes of applying the QDMTT).

26. While this guidance does not include any adjustments for differences between the Constituent Entities' Financial Accounting Net Income or Loss as determined under the Local Financial Accounting Standard and as calculated under the UPE's Financial Accounting Standard, the Inclusive Framework will consider providing further guidance on asymmetrical treatment of items of income, expense or transactions between different accounting standards and tax rules including those used with respect to the transitional and permanent GloBE Safe Harbours.

Consistency Standard

27. In accordance with the QDMTT Commentary a domestic minimum top-up tax is considered as a QDMTT when it is computed in accordance with the Model Rules and Commentary and produces the same outcomes as those under the GloBE Rules. However, the Commentary goes on to allow or require some degree of customization to the QDMTT provided that any variation between QDMTT and the GloBE Rules produces equivalent or greater tax liabilities, or does not produce lower tax liabilities on a systematic basis. This ability of a jurisdiction to customize a QDMTT means that a QDMTT might not be fully aligned with the GloBE Rules.

28. The objective of the Consistency Standard is to ensure QDMTTs are only eligible for the safe harbour when they are aligned with the GloBE Rules, except as explicitly allowed under the safe harbour. This ensures that the QDMTT Safe Harbour does not undermine the objective of the GloBE Rules to require a minimum level of taxation in each jurisdiction by reference to a common measure.

29. As a general principle, in order for a QDMTT to be eligible for the safe harbour, it must first meet the conditions to be a QDMTT and must comply with the elements of the QDMTT Commentary which require the QDMTT to adhere to the Model Rules and Commentary for the IIR and UTPR.⁶ The fact that a QDMTT is subject to a challenge or deemed not assessable as described in paragraph 20.1 of the Commentary to Article 5.2.3 does not affect the Consistency Standard. However, in some cases, the QDMTT Commentary either requires or allows for certain variations from the GloBE Rules. As described in the following paragraphs, these variations can be classified into **Mandatory variations** and **Optional variations**, and their treatment under the Consistency Standard depends on the type of variation.

Mandatory variations

30. In some cases, the QDMTT Commentary explicitly requires the QDMTT to depart from the GloBE Rules and requires a different rule (e.g. different computations). These variations need to be included in the design of the domestic minimum top-up tax to be considered a QDMTT in the general peer review process.

31. The QDMTT Commentary currently identifies two mandatory variations. The first variation is included in paragraphs 118.28 to 118.30 of the QDMTT Commentary and requires the QDMTT not to take into account the allocation of cross-border taxes, such as CFC taxes incurred by a Parent Entity or taxes incurred by the Main Entity with respect to profits attributable to a PE. The second variation is included in paragraph 118.54 of the QDMTT Commentary and requires the QDMTT to be computed using local currency where the QDMTT is based on financial statements prepared in accordance with the Local Financial Accounting Standard and the local financial statements of all Constituent Entities in that jurisdiction are using the local currency.

32. Given that these variations are a pre-requisite for a domestic minimum top-up tax to be considered a QDMTT, the Consistency Standard equally requires such variations as part of the general design of the QDMTT. A domestic minimum top-up tax without these variations would not be considered a QDMTT and thus, would not meet the minimum requirements of the QDMTT Safe Harbour.

⁶ The application of the QDMTT Safe Harbour to a QDMTT that uses a Financial Accounting Standard other than the one required under the Model Rules and Commentary for the IIR and UTPR is addressed in the QDMTT Accounting Standard and not in the Consistency Standard.

Optional variations

33. The QDMTT Commentary allows a QDMTT to depart from the GloBE Rules where the variation produces functionally equivalent or greater tax liabilities, or does not produce lower tax liabilities on a systematic basis. These variations have to be analysed on a case-by-case basis, however the QDMTT Commentary also identifies a number of specific cases where the QDMTT jurisdiction has the option to depart from the GloBE Rules.

34. In the case of optional variations, the general principle is that the Consistency Standard will only be met where the QDMTT jurisdiction chooses the option that aligns with the outcomes provided for under the Model Rules and Commentary for the IIR and UTPR. If the QDMTT jurisdiction chooses an option that departs from the Model Rules and Commentary for the IIR and UTPR, the QDMTT will not meet the Consistency Standard, unless the Inclusive Framework has agreed that this variation is acceptable and that the variation will not prevent the QDMTT from qualifying for the safe harbour.

35. The Inclusive Framework has agreed that the following list of optional variations that depart from the GloBE Rules are acceptable because they will always produce equivalent or greater outcomes:

- a. no, or a more limited, Substance-based Income Exclusion;
- b. no, or a more limited, De Minimis Exclusion; and
- c. a minimum tax rate above 15% for purposes of computing the Top-up Tax Percentage for the jurisdiction.

36. The Inclusive Framework will monitor whether other variations that depart from the GloBE Rules can be included in the future on the list above as part of the Consistency Standard. A variation will only be considered where it will produce equivalent or greater liabilities in all circumstances, or where an omitted rule is not relevant in the jurisdiction implementing the QDMTT and therefore cannot alter the outcomes. For example, if the implementing jurisdiction designs a QDMTT that computes its ETR and Top-up Tax on an Entity-by-Entity basis and it can demonstrate that this design ensures that such a QDMTT will always produce equivalent or greater tax outcomes on a jurisdictional basis then the Inclusive Framework could agree to include the design of the QDMTT in the list above. A QDMTT that met these design requirements would qualify for the safe harbour provided it met the other requirements set out in this guidance.

Switch-off Rule

37. The QDMTT legislation and administrative practice of the QDMTT jurisdiction will be evaluated in the peer review process based on the three standards set out in this document. Thus, whether a QDMTT meets the requirements of the safe harbour is a jurisdictional evaluation that takes place in the peer review process and is not specific to any MNE Group. However, it is recognized that, in some cases, a QDMTT jurisdiction could be subject to certain restrictions on imposing the QDMTT with respect to a particular Constituent Entity or corporate structure. These limitations could affect the QDMTT jurisdiction's ability to satisfy the Consistency Standard which seems disproportionate because they impact on a small number of Entities or particular corporate structures.

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.

39. Where a QDMTT jurisdiction adopts one of the approaches above, it will need to notify the Inclusive Framework of the restriction during the peer review process and any such restrictions would be determined as part of the agreement that a QDMTT meets the standards of the safe harbour.

40. In these specific scenarios, the MNE Group will be subject to a *Switch-off Rule* which prevents the MNE Group from applying the safe harbour in relation to either all or, as in examples 5 and 7, a subset of 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 of the GloBE Rules. The following examples provide further guidance on the application of the Consistency Standard and the Switch-off Rule.

Example 1 – Stateless Flow-through Entities

41. Certain QDMTT jurisdictions may not bring Flow-through Entities within the scope of a QDMTT because they are not tax residents in accordance with their Corporate Income Tax Law. Such Entities are Stateless Entities under the GloBE Rules unless they are the UPE of the MNE Group or required to apply an IIR in accordance with Article 2.1. However, paragraph 118.8.1 of the QDMTT Commentary provides QDMTT jurisdictions with the option of imposing a QDMTT, computed on a standalone basis, on these Stateless Entities provided that they are created in the QDMTT jurisdiction. Thus, while the general rule is that QDMTT jurisdictions are not required to impose a QDMTT on Flow-through Entities that are Stateless Entities, the Consistency Standard will remain unaffected regardless of whether a QDMTT jurisdiction imposes a QDMTT on such Flow-through Entities. Where the QDMTT does not apply to such Stateless Flow-through Entities, the MNE Group will apply the GloBE Rules with respect to all of those Flow-through Entities created in a QDMTT jurisdiction.

Example 2 – Flow through UPEs

42. As discussed in Example 1, many QDMTT jurisdictions might not impose a QDMTT on Flow-through Entities because they are not tax residents in accordance with their Corporate Income Tax Law. However, in the case of the GloBE Rules, a Flow-through UPE is considered to be located in the jurisdiction where it is created and paragraph 118.8.2 of the QDMTT Commentary states that the QDMTT must take into account these Entities in the jurisdictional computations even if the QDMTT jurisdiction decides not to impose a QDMTT charge directly on these Entities. A QDMTT will meet the Consistency Standard irrespective of whether the QDMTT jurisdiction decides to impose the QDMTT charge on these Entities as long as these Entities are included in the jurisdictional computations of the QDMTT. In this case, the MNE Group will apply the Switch-off Rule with respect to a QDMTT jurisdiction where the UPE Flow-through Entity is located if such jurisdiction does not impose a QDMTT charge on these Flow-through Entities. Where the QDMTT jurisdiction does not impose a QDMTT charge on Flow-through UPEs, the Switch-off Rule must be applied with respect to the jurisdiction where the UPE is located notwithstanding that the QDMTT jurisdiction reallocates the Top-up Tax attributable to the Flow-through UPE to other Constituent Entities located in the jurisdiction.

Example 3 – Flow Through Entities that apply the IIR

43. A Flow-through Entity that is required to apply the IIR is located in the jurisdiction where it is created for purposes of Articles 2.1 to 2.3 and related provisions. Following the same rationale as in Example 2, paragraph 118.8.3 of the QDMTT Commentary allows a QDMTT jurisdiction to elect whether to impose a QDMTT charge on such Entities. The Consistency Standard will remain unaffected irrespective of whether

a QDMTT jurisdiction decides to impose a QDMTT charge on these Entities as long as these Entities are included in the jurisdictional computations of the QDMTT, in the jurisdiction where they are created. In this case, the MNE Group will apply the Switch-off Rule with respect to the QDMTT jurisdiction where the Flow-through Entity is located if that jurisdiction does not impose a QDMTT charge on these Flow-through Entities. Where the QDMTT jurisdiction does not impose a QDMTT charge on Flow-through Entities required to apply the IIR, the Switch-off Rule must be applied with respect to the jurisdiction where such Flow-through Entity is located notwithstanding that the QDMTT jurisdiction allocates the Top-up Tax attributable to these Flow-through Entities to other Constituent Entities located in the jurisdiction.

Example 4 – MNE Groups in the initial phase of their international activity

44. Article 9.3 provides a transitional exclusion under the UTPR where MNE Groups are in their initial phase of their international activity. This provision is part of the UTPR and does not affect the operation of the IIR. Paragraph 118.51 of the QDMTT Commentary provides three options to jurisdictions in relation to the adoption of Article 9.3 in their QDMTT legislation. Option one allows the jurisdiction not to adopt Article 9.3 in their QDMTT legislation. Option two allows the jurisdiction to adopt Article 9.3 limited to cases where a Qualified IIR does not apply. Option three allows the jurisdiction to adopt Article 9.3 without the limitations in Option two. The Consistency Standard will be met regardless of which of these three options the QDMTT jurisdiction chooses. In this case, the MNE Group that applies Article 9.3 to a QDMTT will apply the Switch-off Rule with respect to all of its Constituent Entities located in a QDMTT jurisdiction where that jurisdiction has adopted option three. However, the Switch-off Rule will not apply if the QDMTT jurisdiction has adopted options one or two.

Example 5 – Investment Entities

45. A QDMTT jurisdiction may decide not to impose a QDMTT on Investment Entities subject to Article 7.4, 7.5 or 7.6 located in their jurisdiction because its tax system is designed to preserve the tax neutrality of these Entities. In these cases, the QDMTT will still meet the Consistency Standard notwithstanding it is not imposed on these Investment Entities. The MNE Group will apply the Switch-off Rule with respect to these Investment Entities because the QDMTT does not apply to these Investment Entities.

Example 6 – Constituent Entities that are not wholly owned

46. Paragraph 118.10 of the QDMTT Commentary states that a QDMTT should be imposed on 100% of the Jurisdictional Top-up, Tax which will allow that jurisdiction's Top-up Tax to be reduced to zero under the GloBE Rules. Alternatively, paragraph 118.10 gives the option to QDMTT jurisdictions to turn off their QDMTT where not all the Constituent Entities of the jurisdiction are 100% owned by the UPE or a POPE for the entire Fiscal Year. In this case, a QDMTT will meet the Consistency Standard only where the QDMTT is imposed on 100% of the Jurisdictional Top-up Tax notwithstanding the UPE or POPE's ownership interests in the Constituent Entities. In other words, jurisdictions that take advantage of the option to exclude partially-owned Entities from their QDMTT will not meet the Consistency Standard and will therefore not qualify for the Safe Harbour. In this last case, the Switch-off Rule is not relevant because the QDMTT did not qualify for the Safe Harbour.

Example 7 – Joint Ventures

47. Paragraphs 118.8 and 118.10 of the QDMTT Commentary state that a QDMTT jurisdiction has the option not to apply the QDMTT to MNE Groups that have a member of a JV Group (which includes a Joint Venture) located in the jurisdiction. The Consistency Standard will only be met in cases where the QDMTT jurisdiction decides to apply the QDMTT to MNE Groups that have a member of a JV Group located in such jurisdiction. The Consistency Standard will remain unaffected regardless of whether the liability for the QDMTT charge is imposed on the members of a JV Group or a Constituent Entity of the main group located in the same jurisdiction as permitted by paragraph 118.11 of the QDMTT Commentary. However, the MNE Group is subject to the Switch-off Rule with respect to the members of the JV Group where a QDMTT jurisdiction includes members of a JV Group 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. Note that the Switch-off Rule is not relevant where a QDMTT jurisdiction decides not to include Joint Ventures and JV Subsidiaries within the scope of the QDMTT because the QDMTT will not meet the Consistency Standard and therefore will not qualify for the safe harbour.

Example 8 – Adjustments to GloBE Income

48. Paragraph 118.21 of the QDMTT Commentary states that jurisdictions have the option not to include all the adjustments in Chapter 3 where those adjustments are not relevant for their domestic tax system. As an example, this paragraph says that a QDMTT jurisdiction that follows the accounting treatment of stock-based compensation has the option not to include in its QDMTT the adjustment required by Article 3.2.2 of the Model Rules. A QDMTT will not meet the Consistency Standard where the QDMTT legislation does not include all the adjustments required in Chapter 3. However, many of these adjustments could be included in the list in paragraph 35 above in the future if the Inclusive Framework determines that they produce equivalent or greater outcomes. In the case where the Consistency Standard is not met and the QDMTT does not qualify for the Safe Harbour, the Switch-off Rule is not relevant.

Example 9 - Eligible Distribution Tax Systems

49. Eligible Distribution Tax Systems are subject to special rules in accordance with Article 7.3 of the GloBE Rules. These tax systems are those that were in force on or before 1 July 2021. Paragraph 118.40.2 of the QDMTT Commentary says that a jurisdiction with an Eligible Distribution Tax System shall include Article 7.3 in their QDMTT legislation. It further states that a QDMTT jurisdiction that does not have an Eligible Distribution Tax System by 1 July 2021 is not required to have this provision in their QDMTT legislation because it will not have any effect. In the case of a jurisdiction without an Eligible Distribution Tax System, the Consistency Standard will remain unaffected regardless of whether a QDMTT jurisdiction incorporates this provision into their QDMTT legislation. The Switch-off Rule is not applicable in this case because it is not included in the list of cases where such rule applies.

The Administration Standard

50. The QDMTT Safe Harbour eliminates the need to make the calculations in the GloBE jurisdiction and the GloBE jurisdiction will instead rely on the calculations in the QDMTT jurisdiction to ensure that the MNE Group is subject to the minimum level of taxation in the QDMTT jurisdiction. In this context, the Administration Standard ensures that the administration of the QDMTT is the same as the one that would have applied under qualified GloBE Rules of another jurisdiction.

51. The Administration Standard requires a QDMTT jurisdiction that benefits from a Safe Harbour to be subject to the same ongoing monitoring process as the GloBE Rules. This is because all implementing jurisdictions will be reducing the QDMTT jurisdiction's Top-up Tax to zero and therefore, relying on the effective application of the rules in the QDMTT jurisdiction. The ongoing monitoring process will include a review of the information collection and reporting requirements under the QDMTT to ensure that they are consistent with the equivalent requirements under the GloBE Rules and the approach set out in the GloBE Information Return. As an exception, a jurisdiction that has introduced a QDMTT which qualifies for the QDMTT Safe Harbour may choose not to apply the simplified jurisdictional reporting framework provided in the GloBE Information Return:

- a. when Top-up Tax arises under the QDMTT (even if that Top-up Tax does not need to be allocated among Constituent Entities); or
- b. where the financial information used for the purposes of the QDMTT Safe Harbour is already reported at the Constituent Entity level and the compliance rules in the jurisdiction require taxable entities to file information returns or tax returns for each entity for local tax purposes.

In this case the jurisdiction applying the QDMTT may require the MNE Group to report adjustments to GloBE Income or Loss and Adjusted Covered Taxes for each local Constituent Entity on a separate entity basis (including separate reporting of the additions and reductions for each adjustment) in accordance with the accounting standard used under the QDMTT.

Peer Review Process for a QDMTT Safe Harbour

52. A Peer Review Process will determine whether a minimum tax can be considered a QDMTT. The Peer Review Process is still to be developed under the GloBE Implementation Framework. However, this Peer Review Process will also incorporate a transitional and permanent review processes to determine whether a QDMTT meets the standards of the QDMTT Safe Harbour.

53. The first question to be answered by the Peer Review Process is whether a minimum tax meets the criteria to be considered a QDMTT. This determination would be based on the Agreed Administrative Guidance on the QDMTT published in February 2023 and further guidance to be developed by the Inclusive Framework.

54. If the minimum tax meets the criteria of the QDMTT, then the next step in the Peer Review Process would be to determine whether such QDMTT meets the standards of the QDMTT Safe Harbour. This analysis would be based on the criteria set out by this document. Thus, a QDMTT would need to meet the Accounting Standard, the Consistency Standard, and the Administration Standard in order to benefit from the safe harbour.

55. Finally, the QDMTT should meet the general requirements of the QDMTT and the standards of the QDMTT Safe Harbour where a jurisdiction computes its QDMTT in accordance with the legislation applicable to its Qualified IIR or Qualified UTPR subject to the mandatory variations identified in paragraph 31 above. This will reduce the complexity and length of the legislation which will also facilitate the peer review process. Further guidance on how this review will be undertaken would be provided by the Inclusive Framework as part of the work on the peer review process.

5.2 Transitional UTPR Safe Harbour

Transitional UTPR Safe Harbour

1. The UTPR Top-up Tax Amount calculated for the UPE Jurisdiction shall be deemed to be zero for each Fiscal Year during the Transition Period if the UPE Jurisdiction has a corporate income tax that applies at a rate of at least 20%.
2. Transition Period means the Fiscal Years which run no longer than 12 months that begin on or before 31 December 2025 and end before 31 December 2026.

1. The UTPR is designed to operate as a backstop to the IIR by encouraging jurisdictions to adopt the GloBE rules and MNEs to structure their group holdings in a way that brings their operations within the charge of the IIR. However, the operation of the rule order under GloBE rules means that the UTPR effectively operates as the primary mechanism for imposing top-up tax in the UPE jurisdiction where that jurisdiction has not introduced a Qualified Domestic Minimum Top-up Tax (QDMTT). MNE Groups that are exposed to the potential application of the UTPR in the UPE jurisdiction have limited ability to change their ownership structure to bring the UPE's profits within the scope of an IIR. The UTPR can also be expected to apply with more frequency in the first years of operation of the GloBE Rules as jurisdictions complete the process of introducing qualified rules, including QDMTTs.

2. Applying the UTPR to the UPE Jurisdiction before jurisdictions have sufficient time to get their QDMTT in place is undesirable for several reasons. First, the Top-up Tax allocated to jurisdictions under the UTPR will often be disproportionate to the profit arising in those jurisdictions. Many MNE Groups will have a significant portion of their operations and profits in the UPE Jurisdiction and smaller operations in other jurisdictions. Second, there are more possibilities for disputes to arise under the UTPR because it relies on more information and a higher degree of co-ordination than the IIR. Implementation and coordination of the UTPR will benefit from a proven dispute prevention and resolution mechanism and possibly an advance certainty mechanism.

3. An MNE Group can avoid application of the UTPR in jurisdictions other than the UPE Jurisdiction by transferring ownership of those operations into a foreign holding company that is subject to a qualified IIR. However, as a practical matter, many MNEs will not be able to invert their holding structure to avoid application of the UTPR in the UPE Jurisdiction. The inability of the UPE to structure out of the UTPR means that low-taxed profits in the UPE Jurisdiction will be subject to the UTPR unless the UPE Jurisdiction makes changes to its existing corporate income tax or adopts a Domestic IIR or a QDMTT. This Transitional UTPR Safe Harbour therefore provides additional time for jurisdictions to assess the impact of the GloBE rules and reform their existing corporate income tax so that it will routinely produce GloBE ETRs at or above the Minimum Rate or to adopt a qualified domestic minimum tax such as a Domestic IIR or a QDMTT.

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 before 31 December 2026.

5. The corporate income tax rate for each jurisdiction is the nominal statutory tax rate generally imposed on in-scope MNE Groups on a comprehensive measure of income. This rate may take into account sub-national 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%. The nominal 20% rate test ensures that only MNE Groups whose UPEs are located in a jurisdiction with a corporate income tax system and sufficiently high corporate income tax rate benefit from this safe harbour. Each implementing jurisdiction may take into account the OECD's Statutory Corporate Income Tax Rates table for the relevant Fiscal Year in making its determination as to which jurisdictions are eligible for the Transitional UTPR Safe Harbour. The Inclusive Framework shall provide, upon request, further Administrative Guidance identifying whether a jurisdiction has met the 20% rate test for the relevant Fiscal Year.

6. The short transition period is designed to ensure that the safe harbour does not serve as a disincentive for jurisdictions to adopt the GloBE Rules or as an incentive for MNE Groups to invert into a jurisdiction that has not yet adopted a QDMTT or to shift profits into UPE jurisdictions that have lower effective tax rates. Accordingly, the transition period cannot be extended.

7. An MNE Group that qualifies for more than one transitional safe harbour may choose which safe harbour to apply for that jurisdiction. When an MNE qualifies for both a transitional CbCR and UTPR safe harbour in a jurisdiction in a Fiscal Year, the MNE may elect to apply the Transitional CbCR Safe Harbour, rather than the UTPR safe harbour, in order to avoid losing the benefit of the Transitional CbCR Safe Harbour in a subsequent Fiscal Year under the "once out, always out" approach.

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>. [2]
- 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. [4]
- UN (2021), “UN Model Double Tax Convention”, *United Nations Model Double Taxation*, United Nations, https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2022-03/UN%20Model_2021.pdf. [3]