File Ref: (TsyB R2 00/800/1/0 (C))

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (AMENDMENT) (MINIMUM TAX FOR MULTINATIONAL ENTERPRISE GROUPS) BILL 2024

INTRODUCTION

At the meeting of the Executive Council on 17 December 2024, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024 ("the Bill") at **Annex A** should be introduced into the Legislative Council ("LegCo") to amend the Inland Revenue Ordinance (Cap. 112) ("IRO").

A

JUSTIFICATIONS

Global minimum tax

2. In July 2021, Hong Kong joined more than 130 jurisdictions (including the Mainland[1]) in accepting a two-pillar solution announced by the Organisation for Economic Co-operation and Development ("OECD") to tackle base erosion and profit shifting ("BEPS") risks arising from the digitalisation of the economy (commonly known as "BEPS 2.0").

3. Under Pillar Two of the BEPS 2.0 package, a global minimum tax of 15% will be imposed on multinational enterprise ("MNE") groups with annual consolidated revenue of EUR 750 million or above (i.e. "in-scope MNE groups") through two interlocking rules, namely –

(a) the Income Inclusion Rule ("IIR") will impose top-up tax on the parent entity of an in-scope MNE group in respect of its

[1] The Mainland has yet to announce the implementation timetable.

constituent entities which are taxed at an effective tax rate ("ETR") below 15% (i.e. low-taxed constituent entities) outside the jurisdiction where the parent entity is located; and

(b) the Undertaxed Profits Rule ("UTPR") will serve as a backstop to ensure that all top-up tax is charged where any of such tax is not brought into charge under IIR.

The two rules are together referred to as the Global Anti-Base Erosion ("GloBE") rules. They seek to ensure that in-scope MNE groups pay a minimum tax of 15% in respect of the profits derived from every jurisdiction in which they operate, thereby reducing the incentive for large MNE groups to shift profits to low- or no-tax jurisdictions to reduce tax. It also places a floor under tax competition, where jurisdictions lower their corporate income tax rates to compete for capital and investment.

4. The GloBE rules allow jurisdictions to introduce their own qualified domestic minimum top-up tax ("QDMTT") based on the GloBE mechanics. A low-tax jurisdiction has the first priority to collect the top-up tax in respect of the low-taxed constituent entities in its own jurisdiction if it has implemented its own QDMTT; otherwise, it will be collected by another jurisdiction through the imposition of IIR or UTPR.

5. In order to fulfil Hong Kong's international obligation to tackle cross-border tax evasion and safeguard our taxing rights, we need to implement the global minimum tax in accordance with the policy framework promulgated by OECD, as well as a QDMTT, namely the Hong Kong minimum top-up tax ("HKMTT") for collecting top-up tax from in-scope MNE groups in Hong Kong. We will also introduce relevant changes to Hong Kong's tax administration regime.

Need for implementation in 2025

6. As an international financial centre and a responsible member of the international community, Hong Kong has all along been supportive of global efforts to enhance tax transparency and combat tax evasion. The Financial Secretary ("FS") announced in the 2024-25 Budget that Hong Kong would apply the global minimum tax rate of 15% to in-scope MNE groups and introduce the HKMTT from 2025 onwards (i.e. an accounting period beginning on or after 1 January 2025). Our considerations for this implementation timeline are as follows –

(a) many comparable jurisdictions have already enacted or are in the course of putting in place legislation to implement the global

minimum tax or their QDMTT from 2024 or 2025[2]. Therefore, Hong Kong needs to implement them in 2025 in order not to cede our taxing rights to others;

(b) implementing the global minimum tax and HKMTT in Hong Kong will not affect our competitiveness; rather it provides an opportunity to reinforce our position as a favourable business destination. Delaying their implementation in Hong Kong will risk losing out on business opportunities, as MNE groups may choose to relocate to jurisdictions that have already established the relevant tax framework and thereby provide tax certainty;

(c) when engaging our stakeholders, we understood that the potential in-scope MNE groups have made preparations for implementing the global minimum tax and HKMTT from 1 January 2025 after FS announced the timeline in the 2024-25 Budget. Any deferral may be criticised by them for disturbing their work plans, making them incur unnecessary expenses and creating tax uncertainty; and

(d) the implementation of HKMTT might bring to the Government an additional revenue of about $15 billion per year from 2027-28 onwards. Such taxing right will be lost to other jurisdictions if we do not legislate on it in a timely manner.

Guiding principles of implementation

7. The Government will adhere to the following guiding principles when implementing the GloBE rules and HKMTT so as to uphold our tax competitiveness –

(a) they will only be applied to in-scope MNE groups in Hong Kong. Individual taxpayers, purely domestic groups, small and medium enterprises as well as excluded entities[3] as defined under the GloBE rules will not be subject to the global minimum tax and HKMTT;

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[2] For example, Australia, Canada, the European Union, Japan, the Republic of Korea, Singapore, Switzerland and the United Kingdom have enacted or are in the course of putting in place such legislation.

[3] Excluded entities cover a government entity, an international organisation, a non-profit organisation, a pension fund, an investment fund that is an ultimate parent entity ("UPE"), and a real estate investment vehicle that is a UPE. Entities owned by excluded entities may also be excluded provided that certain conditions are met.

(b) we will continue to apply the territorial source principle of taxation outside the context of the GloBE rules[4];

(c) we will uphold Hong Kong's simple, certain and low-rate tax regime; and

(d) we will minimise the compliance burden of the in-scope MNE groups.

Proposed regime for implementing the GloBE rules and HKMTT

8. To implement the GloBE rules in Hong Kong, we propose to amend IRO by directly incorporating the GloBE Model Rules promulgated by OECD, which set out the detailed terms of global minimum tax, with limited and necessary adaptations as far as practicable. Based on the commentaries and administrative guidances ("AGs") issued by OECD, provisions on safe harbours, HKMTT and tax administration ("other GloBE-related provisions") will also be included in IRO. We propose that the commentaries and AGs be given effect to in a way that supplements, and clarifies the interpretation and operation of, the GloBE Model Rules as incorporated, and the other GloBE-related provisions ("GloBE regime"). This will ensure that the GloBE regime to be implemented in Hong Kong will be consistent with the internationally-agreed outcomes, and will be seen as qualified rules by OECD. It also helps provide tax certainty by adhering to the integral features of our tax system, including tax collection, penalty provisions, the objection and appeal mechanism, etc.

9. Our GloBE regime needs to keep abreast of such commentaries and AGs, as issued by OECD from time to time, which aim to promote a consistent and common interpretation of the GloBE rules and facilitate coordinated outcomes so as to provide certainty for MNE groups. Given their technical nature and the dynamics of the international rules, we propose that changes to such commentaries and AGs be incorporated into IRO through subsidiary legislation made by the Secretary for Financial Services and the Treasury ("SFST") in future so as to allow swift adoption.

10. The Inland Revenue Department ("IRD") has consulted the OECD Secretariat on certain technical issues and incorporated their advice into our legislative framework as far as practicable. We are reasonably confident that

[4] Under HKMTT, top-up tax may be imposed on Hong Kong constituent entities of in-scope MNE groups with respect to income derived outside Hong Kong, which is generally not chargeable to profits tax under our territorial source principle of taxation. Such a slight deviation from our traditional principle would be inevitable if we are to safeguard our taxing right on income of Hong Kong constituent entities, or else such right may be ceded to other jurisdictions under the GloBE rules.

our proposed regime can meet OECD's standards. The key elements of the legislative proposal are set out in the ensuing paragraphs.

(i) In-scope MNE groups

11. Following the GloBE Model Rules, the GloBE rules and HKMTT will only be applied to in-scope MNE groups reaching the revenue threshold of EUR 750 million in at least two of the four fiscal years immediately preceding the current fiscal year.

(ii) Top-up tax

12. The rate of top-up tax payable by an in-scope MNE group in respect of its low-taxed constituent entities in a jurisdiction will be the difference between the ETR in that jurisdiction and the minimum rate of 15%.

(iii) Location of an MNE entity

13. It is important to determine whether an entity is located in Hong Kong for the purpose of collecting top-up tax. Under the GloBE rules, an entity is located where it is a tax resident or was created. Since Hong Kong adopts the territorial source principle of taxation and does not impose tax based on an entity's residence, IRO does not contain a definition of "resident" for general purposes. In order to ensure that entities incorporated or constituted in Hong Kong as well as those managed or controlled in Hong Kong can be regarded as located in Hong Kong for the purposes of the GloBE rules and HKMTT, we will introduce a definition of "Hong Kong resident entity" for general purposes of IRO. This aligns with the approach commonly adopted by other jurisdictions. We propose to provide that an entity is a tax resident in Hong Kong if –

(a) where an entity is a company – the entity is incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong; or

(b) in any other case – the entity is constituted under the laws of Hong Kong or, if otherwise constituted, normally managed or controlled in Hong Kong.

The above definition will take retrospective effect from 1 January 2024. This allows an entity that falls within the definition to be regarded as located in Hong Kong throughout the fiscal year 2024, thereby minimising its exposure to top-up tax in other jurisdictions which have implemented the GloBE rules for an accounting period beginning on or after 1 January 2024.

(iv) Charging mechanism of GloBE rules

IIR

14. We will impose top-up tax through IIR on the ultimate parent entities ("UPEs") of in-scope Hong Kong-headquartered MNE groups, or Hong Kong intermediate parent entities of foreign-headquartered MNE groups the UPEs of which are located in jurisdictions that do not implement IIR. These parent entities will be charged top-up tax under IIR based on their ownership interests in their foreign low-taxed constituent entities. We propose to implement IIR with effect from **1 January 2025**.

UTPR

15. We propose to charge the UTPR top-up tax by way of an equivalent adjustment in the form of an additional tax[5]. The UTPR top-up tax allocated to Hong Kong will be charged on Hong Kong constituent entities of an MNE group, based on the respective proportion of the employee headcount and the value of tangible assets, unless the group designates one or more than one Hong Kong constituent entities to pay the UTPR top-up tax (see **Annex B**).

B

16. Having regard to stakeholders' feedback during the consultation and the position of other jurisdictions, we will implement UTPR on a date to be specified by SFST **at a later stage**. The Government will consider all relevant factors, including the position of in-scope MNE groups operating in Hong Kong after the implementation of IIR and HKMTT, as well as the practice of other jurisdictions before deciding on the timeline for implementing UTPR[6].

(v) Design of the HKMTT

17. IRO exempts various income, profits and gains (e.g. foreign-sourced profits, capital gains and dividends in general) from the charge to profits tax. It also provides preferential tax regimes for specified business sectors (e.g. corporate treasury centres, ship leasing managers, etc.). As a result, a number of in-scope Hong Kong-headquartered MNE groups and foreign-headquartered MNE groups may have ETRs below 15% in Hong Kong.

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[5] Apart from the equivalent adjustment approach, the GloBE rules provide that the UTPR may take the form of a denial of deduction for otherwise deductible expenses. The equivalent adjustment approach ensures that a constituent entity which is liable to pay top-up tax under UTPR for a fiscal year will have to incur a cash tax expense in the same amount as the UTPR top-up tax, regardless of its own tax position.

[6] Malaysia, Singapore and Switzerland will implement IIR and QDMTT first but defer UTPR to a later date.

18. We propose to implement HKMTT to bring Hong Kong constituent entities' ETR up to 15% with effect from **1 January 2025**. Having considered stakeholders' feedback during the consultation, we will exclude investment entities and insurance investment entities from the scope of HKMTT so as to preserve their tax neutrality.

19. The design of HKMTT will meet the requirements of a QDMTT so that the top-up tax paid under HKMTT is creditable against the top-up tax imposed under the GloBE rules. This will enable in-scope MNE groups to benefit from the QDMTT Safe Harbour, which deems the GloBE top-up tax payable by the group in Hong Kong as zero, thereby relieving the group from undertaking GloBE computation for Hong Kong and reducing its tax compliance burden[7].

(vi) Nature of top-up tax

20. We propose to deem the top-up tax imposed in Hong Kong under the GloBE rules and HKMTT as profits tax. Doing so will allow relevant tax administration mechanisms, such as tax collection, handling of objections and appeals, etc., currently under IRO to be applied to the top-up tax. In-scope MNE groups could also ride on the mutual agreement procedure mechanisms under Hong Kong's Comprehensive Avoidance of Double Taxation Agreements or Arrangements for resolving relevant cross-border disputes where applicable.

(vii) Safe Harbours

21. OECD has developed safe harbours to relieve MNE groups from performing full GloBE calculations when certain conditions are met. Hong Kong will provide for the transitional Country-by-Country Reporting ("CbCR") Safe Harbour, the transitional UTPR Safe Harbour, the QDMTT Safe Harbour and the Simplified Calculations Safe Harbour for non-material constituent entities ("NMCEs") so as to reduce compliance burden for in-scope MNE groups. Details of the safe harbour rules are at **Annex C**.

C

[7] In order to qualify for the QDMTT Safe Harbour, the QDMTT to be implemented by Hong Kong needs to meet three standards, namely: (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 for mandatory variations or optional variations; and (c) the Administration Standard which requires the QDMTT jurisdiction to meet the requirement of an ongoing monitoring process similar to the one applicable to jurisdictions implementing the GloBE rules.

(viii) Tax compliance and administration, penalties and support for MNE groups

22. To minimise the compliance burden of in-scope MNE groups, we propose to put in place a dedicated tax administration framework to consolidate the implementation of the GloBE rules and HKMTT. It will cover requirements in relation to the filing of top-up tax returns and notifications, assessment and payment of top-up tax and penalty for non-compliance, etc.

23. To ensure compliance, we propose to impose similar penalties for non-compliance with the reporting and administrative requirements having regard to the existing penal provisions for profits tax (including services provided by a service provider), including the failure to file a top-up tax return or top-up tax notification, and wrongdoings in relation to incorrect return and notification, etc. Details of the tax administration framework are at **Annex B**.

B

24. IRD has set up a dedicated team to provide technical support and answer enquiries with regard to BEPS 2.0. It will also publish its guidance note on various implementation issues that are of common interest to in-scope MNE groups on its website to help taxpayers ascertain their tax liabilities and provide greater tax transparency to facilitate compliance.

Effects on Hong Kong's competitiveness

25. While the global minimum tax will level the corporate tax playing field, it should not affect Hong Kong's competitive advantages. Hong Kong's headline profits tax rate at 16.5% remains very competitive internationally. Our simple and transparent tax regime, which has all along been well received by investors and businesses, will also be maintained. In the post-BEPS 2.0 era, different tax jurisdictions will focus on minimising the tax compliance burden on in-scope MNE groups. We will ensure that the global minimum tax and HKMTT are administered in an efficient and facilitating manner.

26. In addition, given that major economies have generally indicated acceptance of the BEPS 2.0 package, MNE groups would find it difficult to escape its effect globally. In fact, Pillar Two of BEPS 2.0 can reduce harmful competition through lowering the corporate profits tax among jurisdictions. Jurisdictions will now have to attract businesses through other means. This will be advantageous to Hong Kong as we are renowned for a number of unique edges such as the convergence of China advantage and global advantage, excellent connectivity, modern infrastructure, an independent judiciary, high government efficiency, ease of obtaining financing, quality talent pools, safe public order, the East-meets-West vibe, etc.

OTHER OPTIONS

27. We must amend IRO in order to give effect to the above proposals. There is no other viable option.

THE BILL

28. The main provisions of the Bill are as follows –

(a) Clause 8 adds a new Part 4AA (new sections 26AD to 26AH) to IRO;

(b) the new sections 26AD and 26AE introduce Schedules 60 to 63 to IRO;

(c) in Schedule 60 –

(i) Part 1 mainly reproduces the GloBE Model Rules with certain amendments made by OECD;

(ii) Part 2 contains short local provisions on UTPR; and

(iii) Part 3 provides for the transitional and permanent safe harbours;

(d) Schedule 61 contains the provisions for charging a domestic minimum top-up tax;

(e) Schedule 62 contains the provisions on the administration of the IIR and UTPR top-up taxes and HKMTT including –

(i) requirements for the filing of returns and notices and provision of information relevant to the determination of liability for any top-up taxes; and

(ii) provisions modifying provisions of IRO in their application in relation to any top-up taxes; and

(f) Schedule 63 lists out the OECD commentaries and AGs.

LEGISLATIVE TIMETABLE

29. The legislative timetable is as follows –

Publication in the Gazette	27 December 2024
First Reading and commencement of Second Reading debate	8 January 2025
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

30. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of IRO and its subsidiary legislation. The economic, financial and civil service implications of the proposal are set out in **Annex D**. It has no environmental, gender, family or productivity implications, and no sustainability implications other than the economic implications.

D

PUBLIC CONSULTATION

31. We conducted a consultation exercise from 21 December 2023 to 20 March 2024. A total of 19 engagement sessions were held with the relevant stakeholders during and after the consultation period. We received written submissions from 26 respondents who were mainly from business chambers, professional bodies, tax professionals, MNE groups, etc. There is broad support for the Government to implement the global minimum tax and HKMTT from 2025 onwards so as to safeguard Hong Kong's taxing rights. We have carefully considered the respondents' comments and largely taken on board their views on the implementation timeline of UTPR, design of HKMTT as well as issues in relation to tax administration and compliance when finalising the Bill.

32. We briefed the LegCo Panel on Financial Affairs ("the Panel") on the legislative proposal on 5 February 2024. Members were generally supportive. An information paper summarising the feedback received and the Government's follow-up was issued to the Panel in late October 2024. We also shared the paper with stakeholders whom we invited to express views during the consultation exercise.

PUBLICITY

33. We will issue a press release on 27 December 2024. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

34. The BEPS 2.0 package was announced by OECD in July 2021 to ensure a fairer distribution of taxing rights in respect of profits of large MNE groups and to set a global minimum tax rate. As of 28 May 2024, 142 jurisdictions have accepted the BEPS 2.0 package.

ENQUIRIES

35. Enquiries on this Brief can be addressed to Mr Ian Chin, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2317.

Financial Services and the Treasury Bureau
December 2024

Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024

Contents

A BILL

To

Amend the Inland Revenue Ordinance (Cap. 112) to implement the international tax reform proposals to address the base erosion and profit shifting risks arising from digitalization of economy by introducing a global minimum effective tax targeting certain large multinational enterprise groups; to implement a domestic minimum top-up tax for the purpose of safeguarding Hong Kong's taxing rights on those groups and their members; and to make minor miscellaneous amendments.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Ordinance 2024.

(2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.

(3) Section 3(3) is deemed to have come into operation on 1 January 2024.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 16.

3. Section 2 amended (interpretation)

(1) Section 2(1)—

Repeal the definition of *service provider*

Substitute

"***service provider*** (服務提供者)—

(a) except in relation to a provision of Part 9 or 9A or Schedule 62—has the meaning given by section 50A(1);

(b) in relation to a provision of Part 9—has the meaning given by section 51AAD(8);

(c) in relation to a provision of Part 9A—has the meaning given by section 58B(2); or

(d) in relation to a provision of Schedule 62—has the meaning given by section 2 of that Schedule;".

(2) Section 2(1)—

Add in alphabetical order

"***HKMTT*** (香港最低補足稅)—see section 26AE(4);

IIR top-up tax (收入納入規則補足稅)—see section 26AE(2);

profits tax (利得稅)—

(a) in this Ordinance (except in a reference to profits tax under Part 4 (however worded) or to provisional profits tax), means, subject to paragraph (b)—

(i) profits tax under Part 4 (including provisional profits tax under Part 10B); or

(ii) top-up tax under Part 4AA; or

(b) in Parts 4, 7, 8AA, 8A, 9A and 10B and Schedules relating to provisions of those Parts, means profits tax under Part 4 (including provisional profits tax under Part 10B);

top-up tax (補足稅) means—

(a) IIR top-up tax;

(b) UTPR top-up tax; or

(c) HKMTT;

UTPR top-up tax (低稅利潤規則補足稅)—see section 26AE(2);".

(3) After section 2(8)—

Add

"(9) Unless otherwise provided by this Ordinance, an entity is a tax resident in Hong Kong if—

(a) where the entity is a company—the entity is incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong; or

(b) in any other case—the entity is constituted under the laws of Hong Kong or, if otherwise constituted, normally managed or controlled in Hong Kong.".

4. Section 4 amended (official secrecy)

After section 4(6)—

Add

"(7) Despite anything contained in this section, the Commissioner, or any officer of the Inland Revenue Department authorized by the Commissioner in that behalf, may communicate to any entity or permanent establishment of an MNE group any matter that comes to his or her knowledge in connection with the implementation of the GloBE rules and HKMTT under Part 4AA, if doing so is necessary for—

(a) the determination of the amount (if any) of top-up tax payable by, or chargeable in respect of the income of, any entity or permanent establishment of the MNE group; or

(b) the performance of duties under this Ordinance involving top-up tax.".

5. Section 14IM amended (calculation of net payments of finance charges or interest for funding leases)

Section 14IM(3)—

Repeal

"A = B – C – D – E + F"

Substitute

"A = B – C – D + E + F".

6. Section 16 amended (ascertainment of chargeable profits)

(1) Section 16(1)(c) and (ca)—

Repeal

"subsection (2J)"

Substitute

"subsections (2J) and (2L)".

(2) After section 16(2K)—

Add

"(2L) Subsection (1)(c) and (ca) does not apply in relation to any top-up tax paid, in a territory outside Hong Kong, under an IIR or UTPR within the meaning of the OECD GloBE model rules (as defined by section 26AD(1)) implemented and administered in that territory (whether or not a qualified IIR or qualified UTPR).".

7. Section 25A added

After section 25—

Add

"**25A. Reimbursement for top-up tax not taken into account for purposes of Part 4**

(1) A payment made to a designated paying entity of an MNE group by another constituent entity of the MNE group in respect of, but not exceeding, the amount of UTPR top-up tax or HKMTT that the other constituent entity would have been chargeable to for the fiscal year had section 31 of Schedule 62 not applied, must not be taken into account in calculating the profits or loss of either entity for the purposes of profits tax under this Part.

(2) An expression in subsection (1) that is also used in Schedule 62 has the same meaning as in that Schedule.".

8. Part 4AA added

After Part 4—

Add

"Part 4AA

Minimum Tax for Multinational Enterprise Groups

Notes—

1. The purpose of this Part and Schedules 60 to 63 is to implement, in Hong Kong, the Global Anti-Base Erosion Model Rules (***OECD GloBE model rules***) as part of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.

2. The OECD GloBE model rules ensure a multinational enterprise group, with an annual consolidated revenue of at least EUR 750 million in at least 2 of the 4 fiscal years immediately preceding the current fiscal year (***in-scope MNE group***), pays a minimum level of tax (currently at 15%) on the income arising in each of the jurisdictions where it operates.

3. The OECD GloBE model rules consist of the income inclusion rule (***IIR***) and the undertaxed profits rule (***UTPR***). The IIR and UTPR, as applied to constituent entities located in a jurisdiction, are explained in Notes 4 to 8 respectively.

4. For the purposes of the IIR and UTPR, an in-scope MNE group must—

   (a) identify, for each jurisdiction in which the group operates (***operating jurisdiction***), the constituent entities of the group; and

   (b) for each operating jurisdiction—

      (i) determine for each constituent entity operating there—

         (A) its income (or loss) for the purposes of the OECD GloBE model rules; and

         (B) the tax attributable to the income for the purposes of the OECD GloBE model rules;

      (ii) determine—

         (A) the aggregate income (or loss) under subparagraph (i)(A) for all constituent entities in the operating jurisdiction; and

         (B) the aggregate tax under subparagraph (i)(B) for all constituent entities in the operating jurisdiction; and

      (iii) determine the effective tax rate for the operating jurisdiction by dividing the result of subparagraph (ii)(B) by the result of subparagraph (ii)(A).

5. A ***low-tax jurisdiction*** is an operating jurisdiction for which the effective tax rate is below the minimum rate.

6. The top-up tax for a low-tax jurisdiction is the product of—

   (a) the excess income (the result of Note 4(b)(ii)(A) for the jurisdiction less a substance-based income exclusion for the jurisdiction); and

   (b) the top-up tax percentage (that is, the difference between the minimum tax rate and the effective tax rate for the jurisdiction).

7. A parent entity of the MNE group located in Hong Kong is subject to the IIR implemented in Hong Kong. Under the IIR, the top-up tax is charged at the level of the parent entity, in proportion to its ownership interests in those constituent entities in the low-tax jurisdictions, other than Hong Kong.

8. The UTPR is a backstop to the IIR, as explained below—

   (a) all or part of the top-up tax computed for the constituent entities of the MNE group operating in low-tax jurisdictions may not be fully brought into charge under IIR, especially if the ultimate parent entity is not located in a jurisdiction implementing IIR;

   (b) under the UTPR, that top-up tax not brought into charge is the UTPR top-up tax amount, which—

      (i) is allocated among Hong Kong and other jurisdictions implementing the UTPR; and

      (ii) payable by constituent entities of the MNE group located in Hong Kong and those other jurisdictions.

9. Apart from its constituent entities located in a jurisdiction, joint ventures, subsidiaries of joint ventures and stateless constituent entities (collectively ***other entities***) of the MNE group located or operating in low-tax jurisdictions outside Hong Kong may render the MNE group liable to top-up tax under the IIR or UTPR in Hong Kong.

10. In addition, a domestic minimum top-up tax, intended to be a qualified domestic minimum top-up tax under the OECD GloBE model rules, is imposed under this Part. It is a domestic tax fully credited against tax liability under IIR and UTPR. In effect—

   (a) should Hong Kong be a low-tax jurisdiction for an MNE group, a domestic minimum top-up tax is payable in Hong Kong by the constituent entities and other entities of the group located or operating in Hong Kong; and

(b) the total amount of the domestic minimum top-up tax payable by the entities mentioned in paragraph (a) is equal to the top-up tax that would (in the absence of the domestic minimum top-up tax) have been payable on the income of those entities, under IIR implemented in other jurisdictions by parent entities in those other jurisdictions.

26AD. Interpretation of Part 4AA

(1) In this Part—

fiscal year (財政年度) has the meaning given by Article 10.1.1 of the GloBE rules;

GloBE rules (《全球反侵蝕稅基規則》)—

(a) subject to paragraph (b), means the rules set out in Part 1 of Schedule 60 (***adopted rules***), read together with Part 2 of that Schedule; or

(b) in—

(i) the definitions of ***agreed administrative guidance***, ***commentary***, ***GloBE implementation framework***, ***qualified domestic minimum top-up tax***, ***qualified IIR*** and ***qualified UTPR*** in Article 10.1.1 of the adopted rules;

(ii) a reference to subject to the GloBE rules in the adopted rules; and

(iii) a reference to the scope of the GloBE rules in the adopted rules,

means the OECD GloBE model rules (as implemented by any jurisdiction, if applicable);

OECD GloBE model rules (經合組織《全球反侵蝕稅基規則範本》) means the rules that are set out in the document entitled OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from the Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two) published on 20 December 2021;

OECD GloBE rules document (經合組織《全球反侵蝕稅基規則》文件) means a document with its title and other particulars specified in Part 1 of Schedule 63;

OECD GloBE rules guidance (經合組織《全球反侵蝕稅基規則》指引) means the guidance in the OECD GloBE rules documents and includes the specified OECD GloBE rules guidance;

specified OECD GloBE rules guidance (指明經合組織《全球反侵蝕稅基規則》指引) means any guidance in relation to a provision of the OECD GloBE model rules specified in column 3 of Part 2 of Schedule 63 that has effect in relation to a corresponding provision of the GloBE rules and is specified opposite to that provision in column 4 of that Part.

(2) A note located in this Part or in Schedules 60, 61, 62 and 63 is provided for information only and has no legislative effect.

26AE. Charge of top-up tax under IIR and UTPR and charge of domestic minimum top-up tax under HKMTT

(1) The GloBE rules have effect for implementing, in Hong Kong, the OECD GloBE model rules to ensure that a multinational enterprise group, with an annual consolidated revenue of at least EUR 750 million in at least 2 of the 4 fiscal years immediately preceding the current fiscal year, pays a minimum level of tax at 15%

on the income arising in each of the jurisdictions where it operates.

(2) Without limiting subsection (1), the GloBE rules have effect for charging top-up taxes under the IIR and UTPR within the meaning of the OECD GloBE model rules, to be called the ***IIR top-up tax*** and ***UTPR top-up tax*** respectively.

(3) Part 3 of Schedule 60 provides for various transitional and permanent safe harbours in relation to the implementation of the GloBE rules.

(4) Schedule 61 has effect for charging a domestic minimum top-up tax within the meaning of the OECD GloBE model rules, to be called the ***Hong Kong minimum top-up tax*** or ***HKMTT***.

(5) Schedule 62 contains the provisions on the administration of the IIR top-up tax, UTPR top-up tax and HKMTT including—

(a) requirements for the filing of returns and notices and provision of information relevant to the determination of liability for any top-up tax; and

(b) provisions that disapply provisions of this Ordinance in relation to any top-up taxes or modify them in their application in relation to any top-up tax.

(6) The IIR top-up tax is payable in relation to a fiscal year beginning on or after 1 January 2025.

(7) The UTPR top-up tax is payable in relation to a fiscal year beginning on or after a date specified by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

(8) The HKMTT is payable in relation to a fiscal year beginning on or after 1 January 2025.

26AF. Consistency with the OECD GloBE rules documents

(1) This Part and Schedules 60, 61 and 62 are to be construed in accordance with the OECD GloBE rules guidance in a way that best serves the purpose of making provision for the following, within the meaning of the OECD GloBE model rules—

(a) a qualified IIR;

(b) a qualified UTPR;

(c) a qualified domestic minimum top-up tax;

(d) safe harbours.

(2) The OECD GloBE rules guidance is to be given effect to in a way that supplements, and clarifies the interpretation and operation of, this Part and Schedules 60, 61 and 62.

26AG. Power to amend definition of *OECD GloBE model rules* and Schedules 60 to 63

(1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—

(a) the definition of ***OECD GloBE model rules*** in section 26AD(1); and

(b) Schedules 60, 61, 62 and 63.

(2) A notice published under subsection (1) may contain any incidental, supplemental, evidential, consequential, savings and transitional provisions that are expedient in consequence of the amendments made under that subsection.

26AH. Anti-avoidance of obligations under Part 4AA

If—

(a) a person enters into any arrangements; and

(b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under this Part (including Schedules 60, 61, 62 and 63),

this Part (including the Schedules) has effect as if the arrangements had not been entered into.".

9. Section 50 amended (tax credits under double taxation arrangements)

At the end of section 50—

Add

"(11) To avoid doubt, no top-up tax payable under an IIR or UTPR, within the meaning of the OECD GloBE model rules and implemented and administered in a territory outside Hong Kong (whether or not a qualified IIR or qualified UTPR) is to be allowed as a credit under this section.".

10. Section 50AAC amended (interpretation of Part 8AA)

Section 50AAC(1), definition of ***OECD rules***, paragraph (b)—

Repeal

"10 July 2017"

Substitute

"20 January 2022".

11. Section 58B amended (interpretation of Part 9A)

Section 58B(2), definition of ***CbCR documents***, paragraph (b)—

Repeal

"2018"

Substitute

"2024".

12. Section 79A added

Part 14, before section 80—

Add

"**79A. Interpretation of Part 14: offences relating to Schedule 60, 61 or 62**

(1) In this Part—

Part 4AA entity (第 4AA 部實體) means—

(a) in relation to a provision of this Part that relates to any requirement, liability or obligation imposed under Schedule 60, 61 or 62 (***GloBE-related obligation***) on a HK constituent entity (however described), the HK constituent entity;

(b) in relation to a GloBE-related obligation that also applies, under Schedule 60, 61 or 62 (as the case requires), to a HK standalone JV or HK member of a JV group (however described), the HK standalone JV or HK member (as the case requires); or

(c) in relation to a GloBE-related obligation that also applies, under Schedule 60, 61 or 62 (as the case requires), to a Part 4AA stateless constituent entity (however described), the stateless constituent entity.

(2) Unless the contrary intention appears, an expression—

(a) used in a provision of this Part that relates to any requirement, liability or obligation under Schedule 60, 61 or 62; and

(b) defined or otherwise explained in any provision of Part 4AA or of Part 1 of Schedule 60 or of Schedule 61 or 62 (***definition provisions***),

has the same meaning as in the definition provisions.".

13. Sections 80O to 80R added

After section 80N—

Add

"80O. Minimum tax for MNE groups: offences by Part 4AA entities

(1) A Part 4AA entity commits an offence if the entity, without reasonable excuse—

(a) fails to comply with—

(i) a requirement under section 3(1) of Schedule 62;

(ii) a requirement under section 5(1) of Schedule 62; or

(iii) a requirement of a notice given to it under section 12(1) of Schedule 62;

(b) in purported compliance with section 3(1) of Schedule 62, files, or causes or allows to be filed on its behalf, a top-up tax return that is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the top-up tax return;

(c) in purported compliance with section 5(1) of Schedule 62, files, or causes or allows to be filed on its behalf, a notice that is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the notice; or

(d) makes any statement or provides any information relating to any matter or thing, affecting its MNE group's top-up tax liability, that is misleading, false or inaccurate in a material particular, whether or not because anything is omitted from the statement or information.

(2) For subsection (1)(a)(i) and (ii), (b), (c) and (d), engaging a service provider under section 13 of Schedule 62 does not in itself constitute a reasonable excuse.

(3) A Part 4AA entity that commits an offence under subsection (1)(a)(i) or (ii) is liable on conviction to a fine at level 3 and a further fine of treble the top-up tax undercharged amount.

(4) A Part 4AA entity that commits an offence under subsection (1)(a)(iii) is liable on conviction to a fine at level 3.

(5) A Part 4AA entity that commits an offence under subsection (1)(b), (c) or (d) is liable on conviction to a fine at level 3 and a further fine of treble the top-up tax undercharged amount.

(6) In case of an offence under subsection (1)(a), the court may order the Part 4AA entity, within a time specified in the order, to do the act that the entity has failed to do.

(7) Any Part 4AA entity that does not comply with an order of the court under subsection (6) commits an offence and is liable on conviction to a fine at level 4.

(8) In relation to a Part 4AA entity that is not a corporation, this section applies to a person who acts for the entity or is responsible for the management of the entity as if a reference to a Part 4AA entity in this section were a reference to that person.

(9) In relation to a Part 4AA entity that is a permanent establishment of a main entity, this section also applies to the main entity as if a reference to a Part 4AA entity in this section were a reference to the main entity.

(10) In subsection (1)(d), in relation to a Part 4AA entity of an MNE group, a reference to a matter or thing affecting the MNE group's top-up tax liability is a reference to a matter or thing relevant to the determination of any top-up tax payable by a Part 4AA entity of the MNE group.

(11) In subsections (3) and (5)—

top-up tax undercharged amount (補足稅少徵稅款)—

(a) for an offence that relates to a failure to comply with a provision of Schedule 62—means the amount of top-up tax that has been undercharged as a result of the failure, or would have been so undercharged if the failure had not been detected; or

(b) for an offence that relates to any top-up tax return, notice, statement or information that is misleading, false or inaccurate in a material particular—means the amount of top-up tax that—

(i) has been undercharged as a result of the top-up tax return, notice, statement or information; or

(ii) would have been so undercharged if the top-up tax return, notice, statement or information had been accepted as correct.

80P. Minimum tax for MNE groups: offences by service provider

(1) This section applies if a service provider is engaged by a Part 4AA entity under section 13 of Schedule 62 to file, for or on behalf of a Part 4AA entity—

(a) a top-up tax return; or

(b) a notice required to be filed under a provision of that Schedule.

(2) A person who is a service provider engaged to carry out a Part 4AA entity's obligations under section 3(1) of Schedule 62 commits an offence if the person, without reasonable excuse, fails to cause a top-up tax return to be filed as required by that section.

(3) A person who is a service provider engaged to carry out a Part 4AA entity's obligations under section 5(1) of Schedule 62 commits an offence if the person, without reasonable excuse, fails to cause a notice to be filed as required by that section.

(4) A person who is a service provider commits an offence if—

(a) the person, without reasonable excuse and in purported compliance with section 3(1) of Schedule 62, files on behalf of a Part 4AA entity, or causes or allows the entity to file, a top-up tax return not in accordance with the information provided, or instructions given, by the entity to the service provider; and

(b) the top-up tax return is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the top-up tax return.

(5) A person who is a service provider commits an offence if—

(a) the person, without reasonable excuse and in purported compliance with section 5(1) of Schedule 62, files on behalf of a Part 4AA entity, or causes or allows the entity to file, a notice not in accordance with the information provided, or instructions given, by the entity to the service provider; and

(b) the notice is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the notice.

(6) A person who commits an offence under subsection (2), (3), (4) or (5) is liable on conviction to a fine at level 3.

(7) The court may order a person who commits an offence under subsection (2) or (3) to do, within the time specified in the order, the act that the person has failed to do.

(8) A person who fails to comply with an order of the court under subsection (7) commits an offence and is liable on conviction to a fine at level 6.

80Q. Minimum tax for MNE groups: offences by directors etc. of Part 4AA entities and service provider

If—

(a) any of the following persons is a corporation—

(i) a Part 4AA entity that commits an offence under section 80O;

(ii) a person who commits an offence under section 80O by virtue of section 80O(8) or (9);

(iii) a service provider that commits an offence under section 80P; and

(b) the offence was committed with the consent or connivance of a director, or other officer concerned in the management, of the corporation, or any person purporting to act as such director or officer (***specified person***),

the director or officer or specified person, as the case requires, also commits the offence and is liable on conviction to the penalty provided for that offence.

80R. Minimum tax for MNE groups: miscellaneous provisions for certain offences

(1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under section 80O, 80P or 80Q (other than an indictable offence) may be brought no later than the later of the following—

(a) the expiry of 2 years from the day on which the offence was discovered by the Commissioner;

(b) the expiry of 6 years after the day on which the offence was committed.

(2) The Commissioner may compound an offence under section 80O, 80P or 80Q, and may, before judgment, stay or compound any proceedings instituted for the offence.".

14. Section 82 amended (penal provisions relating to fraud, etc.)

(1) After section 82(1AAC)—

Add

"(1AAD) A person commits an offence if the person either—

(a) wilfully, with intent to evade top-up tax or to assist any other person to evade top-up tax, and in purported compliance with a requirement under section 3(1) or 5(1) of Schedule 62, provides information that is misleading, false or inaccurate in a material particular; or

(b) wilfully, with intent to evade top-up tax or to assist any other person to evade top-up tax, omits anything from the statement made or information provided, in relation to any matter or thing affecting an MNE group's top-up tax liability, in purported compliance with the requirement.".

(2) After section 82(1A)—

Add

"(1B) A person who commits an offence under subsection (1AAD) is liable—

(a) on summary conviction to—

(i) a fine at level 3;

(ii) a further fine of treble the top-up tax undercharged amount; and

(iii) imprisonment for 6 months; or

(b) on indictment to—

(i) a fine at level 5;

(ii) a further fine of treble the top-up tax undercharged amount; and

(iii) imprisonment for 3 years.".

(3) Section 82(3), Chinese text, definition of *少徵稅款*—

Repeal

"款。"

Substitute

"款；".

(4) Section 82(3)—

Add in alphabetical order

"***top-up tax undercharged amount*** (補足稅少徵稅款), in relation to an offence, means the amount of top-up tax that—

(a) has been undercharged as a result of the offence; or

(b) would have been so undercharged, had the offence not been detected;".

(5) After section 82(3)—

Add

"(4) Section 80O(10) applies to subsection (1AAD)(b) as it applies to section 80O(1)(d).".

15. Section 82A amended (additional tax in certain cases)

(1) After section 82A(1K)—

Add

"(1L) If—

(a) a person that is a Part 4AA entity of an MNE group—

(i) without reasonable excuse, fails to comply with section 3(1) of Schedule 62;

(ii) without reasonable excuse, fails to comply with section 5(1) of Schedule 62;

(iii) without reasonable excuse and in purported compliance with section 3(1) of Schedule 62, files, or causes or allows to be filed on its behalf, a top-up tax return that is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the top-up tax return;

(iv) without reasonable excuse and in purported compliance with section 5(1) of Schedule 62, files, or causes or allows to be filed on its behalf, a notice that is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the notice; or

(v) without reasonable excuse, makes any statement or provides any information relating to any matter or thing, affecting the MNE group's top-up tax liability, that is misleading, false or inaccurate in a material particular, whether or not because anything is omitted from the statement or information; and

(b) no prosecution for an offence under section 80O or 82 has been instituted in respect of the same facts,

the person is liable to be assessed under this section to additional tax of an amount not exceeding treble the top-up tax undercharged amount.

(1M) In relation to a Part 4AA entity that is not a corporation, subsection (1L) applies to a person who acts for the entity or is responsible for the management of the entity as if a reference to a Part 4AA entity in that subsection were a reference to that person.

(1N) In relation to a Part 4AA entity that is a permanent establishment of a main entity, subsection (1L) also applies to the main entity as if a reference to a Part 4AA entity in that subsection were a reference to the main entity.

(1O) Section 80O(10) applies to subsection (1L)(a)(v) as it applies to section 80O(1)(d).".

(2) After section 82A(4)(a)(i)(H)—

Add

"(I) for additional tax to be assessed under subsection (1L)—the alleged failure to comply with section 3(1) or 5(1) of Schedule 62 or the allegation that the top-up tax return, notice, statement or information is misleading, false or inaccurate in a material particular;".

(3) Section 82A(9), Chinese text, definition of ***少徵稅款***, paragraph (b)—

Repeal

"款。"

Substitute

"款；".

(4) Section 82A(9)—

Add in alphabetical order

"***top-up tax undercharged amount*** (補足稅少徵稅款)—

(a) for additional tax assessed because of a failure to comply with a provision of Schedule 62—means the amount of top-up tax that has been undercharged as a result of the failure, or would have been so undercharged if the failure had not been detected; or

(b) for additional tax assessed because of any top-up tax return, notice, statement or information that is misleading, false or inaccurate in a material particular—means the amount of top-up tax that—

(i) has been undercharged as a result of the top-up tax return, notice, statement or information; or

(ii) would have been so undercharged if the top-up tax return, notice, statement or information had been accepted as correct;".

16. Schedules 60 to 63 added

After Schedule 59—

Add

"Schedule 60

[ss. 26AD, 26AE, 26AF, 26AG, 26AH & 79A & Schs. 61 & 62]

GloBE Rules

Part 1

Notes—

1. This Part adopts the OECD GloBE model rules (except Articles 2.4.2, 8.1, 8.3 and 9.4 of those rules) with certain necessary changes made.
2. Notes are added, after certain Articles in this Part, to refer to the relevant specified OECD GloBE rules guidance.
3. Also, notes are added, after certain Articles in this Part, to point out modifications made to those Articles by Part 2 of this Schedule.

Chapter 1 Scope

Article 1.1. Scope of GloBE rules

1.1.1. The GloBE rules apply to constituent entities that are members of an MNE group that has annual revenue of EUR 750 million or more in the consolidated financial statements of the ultimate parent entity (UPE) in at least two of the four fiscal years immediately preceding the tested fiscal year. Further rules are set out in Article 6.1 which modify the application of the consolidated revenue threshold in certain cases.

1.1.2. If one or more of the fiscal years of the MNE group taken into account for purposes of Article 1.1.1 is of a period other than 12 months, for each of those fiscal years the EUR 750 million threshold is adjusted proportionally to correspond with the length of the relevant fiscal year.

1.1.3. Entities that are excluded entities are not subject to the GloBE rules.

Article 1.2. MNE group and group

1.2.1. An MNE group means any group that includes at least one entity or permanent establishment that is not located in the jurisdiction of the ultimate parent entity.

1.2.2. A group means a collection of entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of those entities:

(a) are included in the consolidated financial statements of the ultimate parent entity; or

(b) are excluded from the consolidated financial statements of the ultimate parent entity solely on size or materiality grounds, or on the grounds that the entity is held for sale.

1.2.3. A group also means an entity that is located in one jurisdiction and has one or more permanent establishments located in other jurisdictions provided that the entity is not a part of another group described in Article 1.2.2.

Article 1.3. Constituent entity

1.3.1. A constituent entity is:

(a) any entity that is included in a group; and

(b) any permanent establishment of a main entity that is within paragraph (a).

1.3.2. A permanent establishment that is a constituent entity under paragraph (b) above shall be treated as separate from the main entity and any other permanent establishment of that main entity.

1.3.3. A constituent entity does not include an entity that is an excluded entity.

Article 1.4. Ultimate parent entity

1.4.1. Ultimate parent entity means either:

(a) an entity that:

i. owns directly or indirectly a controlling interest in any other entity; and

ii. is not owned, with a controlling interest, directly or indirectly by another entity; or

(b) the main entity of a group that is within Article 1.2.3.

Note—

In relation to Article 1.4.1, see the specified OECD GloBE rules guidance in—

(a) paragraphs 36.1 to 36.4 of Chapter 1 of the 2023 Commentary; and

(b) section 1.4 of the Feb-2023 Administrative Guidance.

Article 1.5. Excluded entity

1.5.1. An excluded entity is an entity that is:

(a) a governmental entity;

(b) an international organisation;

(c) a non-profit organisation;

(d) a pension fund;

(e) an investment fund that is an ultimate parent entity; or

(f) a real estate investment vehicle that is an ultimate parent entity.

1.5.2. An excluded entity is also an entity:

(a) where at least 95% of the value of the entity is owned (directly or through a chain of excluded entities) by one or more excluded entities referred to in Article 1.5.1 (other than a pension services entity) and where that entity:

i. operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the excluded entity or entities; or

ii. only carries out activities that are ancillary to those carried out by the excluded entity or entities; or

(b) where at least 85% of the value of the entity is owned (directly or through a chain of excluded entities), by one or more excluded entities referred to in Article 1.5.1 (other than a pension services entity) provided that substantially all of the entity's income is excluded dividends or excluded equity gain or loss that is excluded from the computation of GloBE income or loss in accordance with Articles 3.2.1(b) or (c).

Notes—

1. In relation to Article 1.5.2, see the specified OECD GloBE rules guidance in—
   (a) paragraph 43.1 of Chapter 1 of the 2023 Commentary; and
   (b) section 1.5 of the Feb-2023 Administrative Guidance.
2. In relation to Article 1.5.2(a), see the specified OECD GloBE rules guidance in paragraph 45 of Chapter 1 of the 2023 Commentary.
3. In relation to Article 1.5.2(a)i, see the specified OECD GloBE rules guidance in—
   (a) paragraph 54.1 of Chapter 1 of the 2023 Commentary; and
   (b) section 1.5 of the Feb-2023 Administrative Guidance.
4. In relation to Article 1.5.2(a)ii, see the specified OECD GloBE rules guidance in—
   (a) paragraphs 54.2 to 54.5 of Chapter 1 of the 2023 Commentary; and
   (b) section 1.6 of the Feb-2023 Administrative Guidance.

1.5.3. A filing constituent entity may elect not to treat an entity as an excluded entity under Article 1.5.2. An election under this Article is a five-year election.

Chapter 2 Charging Provisions

Article 2.1. Application of the IIR

2.1.1. A constituent entity, that is the ultimate parent entity of an MNE group, located in Hong Kong that owns (directly or indirectly) an ownership interest in a low-taxed constituent entity at any time during the fiscal year shall pay a tax in an amount equal to its allocable share of the top-up tax of that low-taxed constituent entity for the fiscal year.

2.1.2. An intermediate parent entity of an MNE group located in Hong Kong owns (directly or indirectly) an ownership interest in a low-taxed constituent entity at any time during a fiscal year shall pay a tax in an amount equal to its allocable share of the top-up tax of that low-taxed constituent entity for the fiscal year.

2.1.3. Article 2.1.2 shall not apply if:
   (a) the ultimate parent entity of the MNE group is required to apply a qualified IIR for that fiscal year; or
   (b) another intermediate parent entity that owns (directly or indirectly) a controlling interest in the intermediate parent entity is required to apply a qualified IIR for that fiscal year.

2.1.4. Notwithstanding Articles 2.1.1 to 2.1.3, a partially-owned parent entity located in Hong Kong that owns (directly or

indirectly) an ownership interest in a low-taxed constituent entity at any time during the fiscal year shall pay a tax in an amount equal to its allocable share of the top-up tax of that low-taxed constituent entity for the fiscal year.

2.1.5. Article 2.1.4 shall not apply if the partially-owned parent entity is wholly owned (directly or indirectly) by another partially-owned parent entity that is required to apply a qualified IIR for that fiscal year.

2.1.6. A parent entity located in Hong Kong shall apply the provisions of Articles 2.1.1 to 2.1.5 with respect to a low-taxed constituent entity that is not located in Hong Kong.

Article 2.2. Allocation of top-up tax under the IIR

2.2.1. A parent entity's allocable share of the top-up tax of a low-taxed constituent entity is an amount equal to the top-up tax of the low-taxed constituent entity as calculated under Chapter 5 multiplied by the parent entity's inclusion ratio for the low-taxed constituent entity for the fiscal year.

2.2.2. A parent entity's inclusion ratio for a low-taxed constituent entity for a fiscal year is the ratio of (a) the GloBE income of the low-taxed constituent entity for the fiscal year, reduced by the amount of such income attributable to ownership interests held by other owners, to (b) the GloBE income of the low-taxed constituent entity for the fiscal year.

2.2.3. The amount of GloBE income attributable to ownership interests in a low-taxed constituent entity held by other owners is the amount that would have been treated as attributable to

such owners under the principles of the acceptable financial accounting standard used in the ultimate parent entity's consolidated financial statements if the low-taxed constituent entity's net income were equal to its GloBE income and:

(a) the parent entity had prepared consolidated financial statements in accordance with that accounting standard (the hypothetical consolidated financial statements);

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

(c) all of the low-taxed constituent entity's GloBE income were attributable to transactions with persons that are not group entities; and

(d) all ownership interests not directly or indirectly held by the parent entity were held by persons other than group entities.

2.2.4. In the case of a flow-through entity, GloBE income under this Article shall not include any income allocated, pursuant to Article 3.5.3, to an owner that is not a group entity.

Article 2.3. IIR offset mechanism

2.3.1. A parent entity that owns an ownership interest in a low-taxed constituent entity indirectly through an intermediate parent entity or a partially-owned parent entity that is not eligible for an exclusion from the IIR under Article 2.1.3 or 2.1.5 shall

reduce its allocable share of a top-up tax of the low-taxed constituent entity in accordance with Article 2.3.2.

2.3.2. The reduction in Article 2.3.1 will be an amount equal to the portion of the parent entity's allocable share of the top-up tax that is brought into charge by the intermediate parent entity or the partially-owned parent entity under a qualified IIR.

Article 2.4. Application of the UTPR

2.4.1. Constituent Entities of an MNE Group located in Hong Kong shall be denied a deduction (or required to make an equivalent adjustment under domestic law) in an amount resulting in those Constituent Entities having an additional cash tax expense equal to the UTPR Top-up Tax Amount for the Fiscal Year allocated to Hong Kong.

Note—

Article 2.4.1 is modified by Part 2 of this Schedule to suit circumstances in Hong Kong.

2.4.2. [Article 2.4.2 of the OECD GloBE model rules is omitted.]

2.4.3. Article 2.4.1 shall not apply to a constituent entity that is an investment-related entity.

Article 2.5. UTPR top-up tax amount

2.5.1. The total UTPR top-up tax amount for a fiscal year shall be equal to the sum of the top-up tax calculated for each low-taxed constituent entity of an MNE group for that fiscal year (determined in accordance with Article 5.2), subject to the adjustments set out in this Article 2.5 and Article 9.3.

2.5.2. The top-up tax calculated for a low-taxed constituent entity that is otherwise taken into account under Article 2.5.1 shall be reduced to zero if all of the ultimate parent entity's ownership interests in such low-taxed constituent entity are held directly or indirectly by one or more parent entities that are required to apply a qualified IIR in the jurisdiction where they are located with respect to that low-taxed constituent entity for the fiscal year.

2.5.3. Where Article 2.5.2 does not apply, the top-up tax calculated for a low-taxed constituent entity that is otherwise taken into account under Article 2.5.1 shall be reduced by a parent entity's allocable share of the top-up tax of that low-taxed constituent entity that is brought into charge under a qualified IIR.

Article 2.6. Allocation of top-up tax for the UTPR

2.6.1. Subject to Articles 2.6.2 and 2.6.3, the UTPR top-up tax amount allocated to Hong Kong shall be determined by multiplying the total UTPR top-up tax amount determined in Article 2.5.1 by Hong Kong's UTPR percentage. The UTPR percentage of Hong Kong shall be determined each fiscal year for each MNE group as follows:

$$50\% \times \frac{\textit{Number of employees in Hong Kong}}{\textit{Number of employees in all UTPR jurisdictions}} + 50\% \times \frac{\textit{Total value of tangible assets in Hong Kong}}{\textit{Total value of tangible assets in all UTPR jurisdictions}}$$

where, for each fiscal year:

(a) the number of employees in Hong Kong is the total number of employees of all the constituent entities of the MNE group located in Hong Kong;

(b) the number of employees in all UTPR jurisdictions is the total number of employees of all the constituent entities of the MNE group located in a jurisdiction that has a qualified UTPR in force for the fiscal year;

(c) the total value of tangible assets in Hong Kong is the sum of the net book values of tangible assets of all the constituent entities of the MNE group located in Hong Kong;

(d) the total value of tangible assets in all UTPR jurisdictions is the sum of the net book values of tangible assets of all the constituent entities of the MNE group located in a jurisdiction that has a qualified UTPR in force for the fiscal year.

2.6.2. For purposes of Article 2.6.1,

(a) the number of employees employed and the net book value of tangible assets held by an investment-related entity shall be excluded from the elements of the formula for allocating the total UTPR top-up tax amount;

(b) the number of employees employed and the net book value of tangible assets held by a flow-through entity that are not allocated to permanent establishments shall be allocated to the constituent entities (if any) that are located in the jurisdiction where the flow-through entity was created. The number of employees employed and the net book value of tangible assets held by a flow-through entity that are not allocated either to permanent establishments or under this provision shall be excluded

from the formula for allocating the total UTPR top-up tax amount.

2.6.3. Notwithstanding Article 2.6.1, the UTPR percentage of a UTPR jurisdiction for an MNE group is deemed to be zero for a fiscal year as long as the top-up tax amount allocated to the UTPR jurisdiction in a prior fiscal year has not resulted in the constituent entities of this MNE group located in the UTPR jurisdiction having an additional cash tax expense equal, in total, to the UTPR top-up tax amount for that prior fiscal year allocated to the UTPR jurisdiction. The number of employees and the tangible assets of the constituent entities of this MNE group located in a jurisdiction with a UTPR percentage of zero for a fiscal year shall be excluded from the formula provided under Article 2.6.1 for allocating the total UTPR top-up tax amount for that fiscal year.

2.6.4. Article 2.6.3 does not apply for a fiscal year if all jurisdictions with a qualified UTPR in force for the fiscal year have a UTPR percentage of zero for the MNE group for that fiscal year.

Note—

Part 2 of this Schedule provides for allocation of top-up tax for the UTPR among constituent entities of an MNE group located in Hong Kong.

Chapter 3 Computation of GloBE Income or Loss

Article 3.1. Financial accounts

3.1.1. The GloBE income or loss of each constituent entity is the financial accounting net income or loss determined for the constituent entity for the fiscal year adjusted for the items described in Article 3.2 to Article 3.5.

3.1.2. 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.

Note—

In relation to Article 3.1.2, see—

(a) the specified OECD GloBE rules guidance in paragraphs 3 and 4 of Chapter 3 of the 2023 Commentary; and

(b) the specified OECD GloBE rules guidance in—

(i) paragraphs 5 to 5.6 of Chapter 3 of the 2023 Commentary; and

(ii) section 1 of the Jul-2023 Administrative Guidance.

3.1.3. If it is not reasonably practicable to determine the financial accounting net income or loss for a constituent entity based on the accounting standard used in the preparation of consolidated financial statements of the ultimate parent entity, the financial accounting net income or loss for the constituent entity for the fiscal year may be determined using another acceptable financial accounting standard or an authorised financial accounting standard if:

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

(b) the information contained in the financial accounts is reliable; and

(c) permanent differences in excess of EUR 1 million that arise from the application of a particular principle or standard to items of income or expense or transactions that differs from the financial standard used in the preparation of the consolidated financial statements of the

ultimate parent entity are conformed to the treatment required under the accounting standard used in the consolidated financial statements of the ultimate parent entity.

Note—

In relation to Article 3.1.3, see—

(a) the specified OECD GloBE rules guidance in paragraph 13 of Chapter 3 of the 2023 Commentary; and

(b) the specified OECD GloBE rules guidance in—

(i) paragraph 16.1 of Chapter 3 of the 2023 Commentary; and

(ii) section 1 of the Jul-2023 Administrative Guidance.

Article 3.2. Adjustments to determine GloBE income or loss

3.2.1. A constituent entity's financial accounting net income or loss is adjusted for the following items to arrive at that entity's GloBE income or loss:

(a) net taxes expense;

(b) excluded dividends;

(c) excluded equity gain or loss;

(d) included revaluation method gain or loss;

(e) gain or loss from disposition of assets and liabilities excluded under Article 6.3;

(f) asymmetric foreign currency gains or losses;

(g) policy disallowed expenses;

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

(i) accrued pension expense.

Notes—

1. In relation to Article 3.2.1, see the specified OECD GloBE rules guidance in—
   (a) paragraphs 86.1 to 86.7 of Chapter 3 of the 2023 Commentary; and
   (b) section 2.4 of the Feb-2023 Administrative Guidance.
2. In relation to Article 3.2.1(b), see—
   (a) the specified OECD GloBE rules guidance (certain movements in an insurance company's reserves are not allowed as a deduction in the computation of GloBE income or loss) in—
      (i) paragraphs 36 and 45 of Chapter 3 of the 2023 Commentary; and
      (ii) sections 3.4 and 3.5 of the Feb-2023 Administrative Guidance; and
   (b) the specified OECD GloBE rules guidance (five-year election to include, in the computation of GloBE income or loss, all dividends with respect to portfolio shareholdings, whether or not short-term portfolio shareholdings) in—
      (i) paragraph 45 of Chapter 3 of the 2023 Commentary; and
      (ii) section 3.5 of the Feb-2023 Administrative Guidance.
3. In relation to Article 3.2.1(c), see—
   (a) the specified OECD GloBE rules guidance (five-year election to treat foreign exchange gains or losses as an excluded equity gain or loss) in—
      (i) paragraphs 57 to 57.3 of Chapter 3 of the 2023 Commentary; and
      (ii) section 2.2 of the Feb-2023 Administrative Guidance;
   (b) the specified OECD GloBE rules guidance (equity investment inclusion election) in—
      (i) paragraphs 57.4 and 57.5 of Chapter 3 of the 2023 Commentary; and
      (ii) section 2.9 of the Feb-2023 Administrative Guidance; and

   (c) the specified OECD GloBE rules guidance (expenses from certain movements in insurance reserves are not allowed as a deduction in the computation of GloBE income or loss) in—
      (i) paragraph 54 of Chapter 3 of the 2023 Commentary; and
      (ii) section 3.4 of the Feb-2023 Administrative Guidance.
4. In relation to Article 3.2.1(f), see the specified OECD GloBE rules guidance in—
   (a) paragraphs 66 to 74.1 of Chapter 3 of the 2023 Commentary; and
   (b) section 1 of the Jul-2023 Administrative Guidance.
5. In relation to Article 3.2.1(i), see the specified OECD GloBE rules guidance in—
   (a) paragraph 85 of Chapter 3 of the 2023 Commentary; and
   (b) section 2.5 of the Feb-2023 Administrative Guidance.
6. In relation to Article 3.2.1(i), see the specified OECD GloBE rules guidance in—
   (a) paragraph 86 of Chapter 3 of the 2023 Commentary; and
   (b) section 2.5 of the Feb-2023 Administrative Guidance.

3.2.2. At the election of the filing constituent entity, a constituent entity may substitute the amount allowed as a deduction in the computation of its taxable income in its location for the amount expensed in its financial accounts for a cost or expense of such constituent entity that was paid with stock-based compensation. If the stock-based compensation expense arises in connection with an option that expires without exercise, the constituent entity must include the total amount previously deducted in the computation of its GloBE income or loss for the fiscal year in which the option expires. The election is a five-year election and must be applied consistently to the stock-based compensation of all constituent entities located in the same jurisdiction for the year in which the election is made and all

subsequent fiscal years. If the election is made in a fiscal year after some of the stock-based compensation of a transaction has been recorded in the financial accounts, the constituent entity must include in the computation of its GloBE income or loss for that fiscal year an amount equal to the excess of the cumulative amount allowed as an expense in the computation of its GloBE income or loss in previous fiscal years over the cumulative amount that would have been allowed as an expense if the election had been in place in those fiscal years. If the election is revoked, the constituent entity must include in the computation of its GloBE income or loss for the revocation year the amount deducted pursuant to the election that exceeds financial accounting expense accrued in respect of the stock-based compensation that has not been paid.

3.2.3. Any transaction between constituent entities located in different jurisdictions that is not recorded in the same amount in the financial accounts of both constituent entities or that is not consistent with the arm's length principle must be adjusted so as to be in the same amount and consistent with the arm's length principle. A loss from a sale or other transfer of an asset between two constituent entities located in the same jurisdiction that is not recorded consistent with the arm's length principle shall be recomputed based on the arm's length principle if that loss is included in the computation of GloBE income or loss. Rules for allocating income or loss between a main entity and its permanent establishments are found in Article 3.4.

Note—

In relation to Article 3.2.3, see the specified OECD GloBE rules guidance in paragraphs 100 to 103 of Chapter 3 of the 2023 Commentary.

3.2.4. Qualified refundable tax credits and marketable transferrable tax credits shall be treated as income in the computation of GloBE income or loss of a constituent entity. Non-qualified refundable tax credits shall not be treated as income in the computation of GloBE income or loss of a constituent entity.

Note—

In relation to Article 3.2.4, see—

(a) the specified OECD GloBE rules guidance in—

(i) paragraphs 112.1 to 114.1 of Chapter 3 of the 2023 Commentary; and

(ii) section 2 of the Jul-2023 Administrative Guidance;

(b) the specified OECD GloBE rules guidance in—

(i) paragraphs 57.6 to 57.12 of Chapter 3 of the 2023 Commentary;

(ii) section 2.9 of the Feb-2023 Administrative Guidance; and

(iii) section 2 of the Jul-2023 Administrative Guidance; and

(c) the specified OECD GloBE rules guidance in—

(i) paragraphs 57.10.1 to 57.10.3 of Chapter 3 of the 2023 Commentary; and

(ii) section 2 of the Jul-2023 Administrative Guidance.

3.2.5. With respect to assets and liabilities that are subject to fair value or impairment accounting in the consolidated financial statements, a filing constituent entity may elect to determine gains and losses using the realisation principle for purposes of computing GloBE income. The election is a five-year election and applies to all constituent entities located in the jurisdiction to which the election applies. The election applies to all assets and liabilities of such constituent entities, unless the filing constituent entity chooses to limit the election to tangible assets

of such constituent entities or to constituent entities that are investment-related entities. Under this election:

(a) all gains or losses attributable to fair value or impairment accounting with respect to an asset or liability shall be excluded from the computation of GloBE income or loss;

(b) the carrying value of an asset or liability for purposes of determining gain or loss shall be its carrying value adjusted for accumulated depreciation at the later of:

(i) the first day of the election year, or

(ii) the date the asset was acquired or liability was incurred; and

(c) if the election is revoked, the GloBE income or loss of the constituent entities is adjusted by the difference at the beginning of the revocation year between the fair value of the asset or liability and the carrying value adjusted for accumulated depreciation of the asset or liability determined pursuant to the election.

3.2.6. Where there is aggregate asset gain in a jurisdiction in a fiscal year, the filing constituent entity may make, under this Article 3.2.6, an annual election for that jurisdiction to adjust GloBE income or loss with respect to each previous fiscal year in the look-back period in the manner described in paragraphs (b) and (c) and to spread any remaining adjusted asset gain over the look-back period in the manner described in paragraph (d). The effective tax rate (ETR) and top-up tax, if any, for any previous fiscal year must be re-calculated under Article 5.4.1. When an election is made under this Article:

(a) Covered taxes with respect to any net asset gain or net asset loss in the election year shall be excluded from the computation of adjusted covered taxes.

(b) The aggregate asset gain in the election year shall be carried-back to the earliest loss year and set-off rateably against any net asset loss of any constituent entity located in that jurisdiction.

(c) If, for any loss year, the adjusted asset gain exceeds the total amount of net asset loss of all constituent entities located in that jurisdiction, the adjusted asset gain shall be carried forward to the following loss year (if any) and applied rateably against any net asset loss of any constituent entity located in that jurisdiction.

(d) Any adjusted asset gain that remains after the application of paragraphs (b) and (c) shall be allocated evenly to each fiscal year in the look-back period. The allocated asset gain for the relevant year shall be included in the computation of GloBE income or loss for a constituent entity located in that jurisdiction in that year in accordance with the following formula:

$$\textit{Allocated Asset Gain for relevant year} = \textit{The specified constituent entity's net asset gain in the election year} \times \frac{\textit{The specified constituent entity's net asset gain in the election year}}{\textit{The net asset gain of all specified constituent entities in the election year}}$$

For the purposes of the above formula, a specified constituent entity is constituent entity that has net asset gain in the election year and was located in the jurisdiction in the relevant year. If there is no specified constituent entity for a relevant year the adjusted asset gain allocated to that year will be allocated equally to each constituent entity in the jurisdiction in that year.

3.2.7. The computation of a low-tax entity's GloBE income or loss shall exclude any expense attributable to an intragroup financing arrangement that can reasonably be anticipated, over the expected duration of the arrangement to:

(a) increase the amount of expenses taken into account in calculating the GloBE income or loss of the low-tax entity;

(b) without resulting in a commensurate increase in the taxable income of the high-tax counterparty.

3.2.8. An ultimate parent entity may elect to apply its consolidated accounting treatment to eliminate income, expense, gains, and losses from transactions between constituent entities that are located, and included in a tax consolidation group, in the same jurisdiction for purposes of computing each such constituent entity's net GloBE income or loss. The election under this Article is a five-year election. Upon making or revoking such election, appropriate adjustments shall be made for GloBE purposes such that there shall not be duplications or omissions of items of GloBE income or loss as a result of having made or revoked the election.

3.2.9. An insurance company shall exclude from the computation of GloBE income or loss amounts charged to policyholders for taxes paid by the insurance company in respect of returns to the policy holders. An insurance company shall include in the computation of GloBE income or loss any returns to policyholders that are not reflected in financial accounting net income or loss to the extent the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss.

3.2.10. Amounts recognised as a decrease to the equity of a constituent entity attributable to distributions paid or payable in respect of additional tier one capital or restricted tier one capital issued by the constituent entity shall be treated as an expense in the

computation of its GloBE income or loss. Amounts recognised as an increase to the equity of a constituent entity attributable to distributions received or receivable in respect of additional tier one capital or restricted tier one capital held by the constituent entity shall be included in the computation of its GloBE income or loss.

3.2.11. A constituent entity's financial accounting net income or loss must be adjusted as necessary to reflect the requirements of the relevant provisions of Chapters 6 and 7.

Article 3.3. International shipping income exclusion

3.3.1. For an MNE group that has international shipping income, each constituent entity's international shipping income and qualified ancillary international shipping income shall be excluded from the computation of its GloBE income or loss under Article 3.2 for the jurisdiction in which it is located. Where the computation of a constituent entity's international shipping income or qualified ancillary international shipping income results in a loss, the loss shall be excluded from the computation of its GloBE income or loss.

3.3.2. International shipping income means the net income obtained by a constituent entity from:

(a) the transportation of passengers or cargo by ships that it operates in international traffic, whether the ship is owned, leased or otherwise at the disposal of the constituent entity;

(b) the transportation of passengers or cargo by ships operated in international traffic under slot-chartering arrangements;

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

(d) leasing a ship on a bare boat charter basis, for the use of transportation of passengers or cargo in international traffic, to another constituent entity;

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

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

International shipping income shall not include net income obtained from the transportation of passengers or cargo by ships via inland waterways within the same jurisdiction.

3.3.3. Qualified ancillary international shipping income means net income obtained by a constituent entity from the following activities that are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic:

(a) leasing a ship on a bare boat charter basis to another shipping enterprise that is not a constituent entity, provided that the charter does not exceed three years;

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

(c) leasing and short-term storage of containers or detention charges for the late return of containers;

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

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

3.3.4. The aggregated qualified ancillary international shipping income of all constituent entities located in a jurisdiction shall not exceed 50% of those constituent entities' international shipping income.

3.3.5. The costs incurred by a constituent entity that are directly attributable to its international shipping activities listed in Article 3.3.2 and the costs directly attributable to its qualified ancillary activities listed in Article 3.3.3 shall be deducted from the constituent entity's revenues from such activities to compute its international shipping income and qualified ancillary international shipping income. Other costs incurred by a constituent entity that are indirectly attributable to a constituent entity's international shipping activities and qualified ancillary activities shall be allocated on the basis of the constituent entity's revenues from such activities in proportion to its total revenues. All direct and indirect costs attributed to a constituent entity's international shipping income and qualified ancillary international shipping income shall be excluded from the computation of its GloBE income or loss.

3.3.6. In order for a constituent entity's international shipping income and qualified ancillary international shipping income to qualify for the exclusion from its GloBE income or loss under this

Article, the constituent entity must demonstrate that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located.

Article 3.4. Allocation of income or loss between a main entity and a permanent establishment

3.4.1. The financial accounting net income or loss of a constituent entity that is a permanent establishment in accordance with paragraphs (a), (b) and (c) of the definition in Article 10.1 is the net income or loss reflected in the separate financial accounts of the permanent establishment. If the permanent establishment does not have separate financial accounts, then the financial accounting net income or loss is the amount that would have been reflected in its separate financial accounts if prepared on a standalone basis and in accordance with the accounting standard used in the preparation of the consolidated financial accounts of the ultimate parent entity.

3.4.2. The financial accounting net income or loss of a permanent establishment referred to in Article 3.4.1 shall be adjusted, if necessary:

(a) in the case of a permanent establishment as defined by paragraphs (a) and (b) of the definition in Article 10.1, to reflect only the amounts and items of income and expense that are attributable to the permanent establishment in accordance with the applicable tax treaty or domestic law of the jurisdiction where it is located regardless of the amount of income subject to tax and the amount of deductible expenses in that jurisdiction;

(b) in the case of a permanent establishment as defined by paragraph (c) of the definition in Article 10.1, to reflect only the amounts and items of income and expense that would have been attributed to it in accordance with Article 7 of the OECD Model Tax Convention.

3.4.3. In case of a constituent entity that is a permanent establishment in accordance with paragraph (d) of the definition in Article 10.1, its income used for computing financial accounting net income or loss is the income being exempted in the jurisdiction where the main entity is located and attributable to the operations conducted outside that jurisdiction. The expenses used for computing financial accounting net income or loss are those that are not deducted for taxable purposes in the jurisdiction where the main entity is located and that are attributable to such operations.

3.4.4. The financial accounting net income or loss of a permanent establishment is not taken into account in determining the GloBE income or loss of the main entity, except as provided in Article 3.4.5.

3.4.5. A GloBE loss of a permanent establishment shall be treated as an expense of the main entity (and not of the permanent establishment) for purposes of computing its GloBE income or loss to the extent that the loss of the permanent establishment is treated as an expense in the computation of the domestic taxable income of such main entity and is not set off against an item of income that is subject to tax under the laws of both the jurisdiction of the main entity and the jurisdiction of the permanent establishment. GloBE income subsequently arising in the permanent establishment shall be treated as GloBE income of the main entity (and not the permanent

establishment) up to the amount of the GloBE loss that previously was treated as an expense for purposes of computing the GloBE income or loss of the main entity.

Article 3.5. Allocation of income or loss from a flow-through entity

3.5.1. The financial accounting net income or loss of a constituent entity that is a flow-through entity is allocated as follows:

(a) in the case of a permanent establishment through which the business of the entity is wholly or partly carried out, the financial accounting net income or loss of the entity is allocated to that permanent establishment in accordance with Article 3.4;

(b) in the case of a tax transparent entity that is not the ultimate parent entity, any financial accounting net income or loss remaining after application of paragraph (a) is allocated to its constituent entity-owners in accordance with their ownership interests; and

(c) in the case of a tax transparent entity that is the ultimate parent entity or a reverse hybrid entity, any financial accounting net income or loss remaining after application of paragraph (a) is allocated to it.

3.5.2. The rules of Article 3.5.1 shall be applied separately with respect to each ownership interest in the flow-through entity.

3.5.3. Prior to the application of Article 3.5.1, the financial accounting net income or loss of a flow-through entity shall be reduced by the amount allocable to its owners that are not group entities and that hold their ownership interest in the flow-through entity directly or through a tax transparent structure.

Note—

In relation to Article 3.5.3, see the specified OECD GloBE rules guidance in paragraph 37 of Chapter 2 of the 2023 Commentary.

3.5.4. Article 3.5.3 does not apply to:

(a) an ultimate parent entity that is a flow-through entity; or

(b) any flow-through entity owned by such an ultimate parent entity (directly or through a tax transparent structure).

The treatment of these entities is addressed in Article 7.1.

3.5.5. The financial accounting net income or loss of a flow-through entity is reduced by the amount that is allocated to another constituent entity.

Chapter 4 Computation of Adjusted Covered Taxes

Article 4.1. Adjusted covered taxes

4.1.1. The adjusted covered taxes of a constituent entity for the fiscal year shall be equal to the current tax expense accrued in its financial accounting net income or loss with respect to covered taxes for the fiscal year adjusted by:

(a) the net amount of its additions to covered taxes for the fiscal year (as determined under Article 4.1.2) and reductions to covered taxes for the fiscal year (as determined under Article 4.1.3);

(b) the total deferred tax adjustment amount (as determined under Article 4.4); and

(c) any increase or decrease in covered taxes recorded in equity or other comprehensive income relating to amounts

included in the computation of GloBE income or loss that will be subject to tax under local tax rules.

4.1.2. The additions to covered taxes of a constituent entity for the fiscal year is the sum of:

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

(b) any amount of GloBE loss deferred tax asset used under Article 4.5.3;

(c) any amount of covered taxes that is paid in the fiscal year and that relates to an uncertain tax position where that amount has been treated for a previous fiscal year as a reduction to covered taxes under Article 4.1.3(d); and

(d) any amount of credit or refund in respect of a qualified refundable tax credit or marketable transferable tax credit that is recorded as a reduction to the current tax expense.

4.1.3. The reductions to covered taxes of a constituent entity for the fiscal year is the sum of:

(a) the amount of current tax expense with respect to income excluded from the computation of GloBE income or loss under Chapter 3;

(b) any amount of credit or refund other than qualified refundable tax credit and marketable transferable tax credit that is not recorded as a reduction to the current tax expense;

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

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

(e) any amount of current tax expense that is not expected to be paid within three years of the last day of the fiscal year.

4.1.4. No amount of covered taxes may be taken into account more than once.

4.1.5. In a fiscal year in which there is no net GloBE income for a jurisdiction, if the adjusted covered taxes for a jurisdiction are less than zero and less than the expected adjusted covered taxes amount the constituent entities in that jurisdiction shall be treated as having additional current top-up tax for the jurisdiction under Article 5.4 arising in the current fiscal year equal to the difference between these amounts. The expected adjusted covered taxes amount is equal to the GloBE income or loss for a jurisdiction multiplied by the minimum rate.

Note—

In relation to Article 4.1.5, see the specified OECD GloBE rules guidance in—

(a) paragraphs 21.1 to 21.8 of Chapter 4 of the 2023 Commentary; and

(b) section 2.7 of the Feb-2023 Administrative Guidance.

Article 4.2. Definition of covered taxes

4.2.1. Covered taxes means:

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

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

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

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

4.2.2. Covered taxes does not include any amount of:

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

(b) top-up tax accrued by a constituent entity under a qualified domestic minimum top-up tax;

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

(d) a disqualified refundable imputation tax;

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

Article 4.3. Allocation of covered taxes from one constituent entity to another constituent entity

4.3.1. Article 4.3.2 applies to the allocation of covered taxes in respect of permanent establishments, tax transparent entities and hybrid entities as well as the allocation of CFC taxes and taxes on distributions from one constituent entity to another.

4.3.2. Covered taxes are allocated from one constituent entity to another constituent entity as follows:

(a) the amount of any covered taxes included in the financial accounts of a constituent entity with respect to GloBE income or loss of a permanent establishment is allocated to the permanent establishment;

(b) the amount of any covered taxes included in the financial accounts of a tax transparent entity with respect to GloBE income or loss allocated to a constituent entity-owner pursuant to Article 3.5.1(b) is allocated to that constituent entity-owner;

(c) in the case of a constituent entity whose constituent entity-owners are subject to a controlled foreign company tax regime, the amount of any covered taxes included in the financial accounts of its direct or indirect constituent entity-owners under a controlled foreign company tax regime on their share of the controlled foreign company's income are allocated to the constituent entity;

(d) in the case of a constituent entity that is a hybrid entity the amount of any covered taxes included in the financial accounts of a constituent entity-owner on income of the hybrid entity is allocated to the hybrid entity; and

(e) the amount of any covered taxes accrued in the financial accounts of a constituent entity's direct constituent entity-owners on distributions from the constituent entity during the fiscal year are allocated to the distributing constituent entity.

Notes—

1. In relation to Article 4.3.2(c), see the specified OECD GloBE rules guidance in—

(a) paragraphs 58.1 to 58.7 of Chapter 4 of the 2023 Commentary;

(b) section 2.10 of the Feb-2023 Administrative Guidance; and

(c) section 4 of the Dec-2023 Administrative Guidance.

2. In relation to Article 4.3.2(e), see the specified OECD GloBE rules guidance in—

(a) paragraph 60.1 of Chapter 4 of the 2023 Commentary; and

(b) section 2.6 of the Feb-2023 Administrative Guidance.

4.3.3. Covered taxes allocated to a constituent entity pursuant to Article 4.3.2(c) and (d) in respect of passive income are included in such constituent entity's adjusted covered taxes in an amount equal to the lesser of:

(a) the covered taxes allocated in respect of such passive income; or

(b) the top-up tax percentage for the constituent entity's jurisdiction, determined without regard to the taxes to be pushed down to the subsidiary under the controlled foreign company tax regime or fiscal transparency rule, multiplied by the amount of the constituent entity's passive income includible under any controlled foreign company tax regime or fiscal transparency rule.

Any covered taxes of the constituent entity-owner incurred with respect to such passive income that remain after the application of this Article shall not be allocated under Article 4.3.2(c) or (d).

4.3.4. Where the GloBE income of a permanent establishment is treated as GloBE income of the main entity pursuant to Article 3.4.5, any covered taxes arising in the location of the permanent establishment and associated with such income are treated as covered taxes of the main entity up to an amount not exceeding such income multiplied by the highest corporate tax rate on ordinary income in the jurisdiction where the main entity is located.

Article 4.4. Mechanism to address temporary differences

4.4.1. The total deferred tax adjustment amount for a constituent entity for the fiscal year is equal to the deferred tax expense accrued in its financial accounts if the applicable tax rate is below the minimum rate or, in any other case, such deferred tax expense recast at the minimum rate, with respect to covered taxes for the fiscal year subject to the adjustments set forth in Articles 4.4.2 and 4.4.3 and the following exclusions:

(a) the amount of deferred tax expense with respect to items excluded from the computation of GloBE income or loss under Chapter 3;

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

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

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

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

Notes—

1. In relation to Article 4.4.1, see the specified OECD GloBE rules guidance in—

(a) paragraphs 71.1 to 71.3 of Chapter 4 of the 2023 Commentary; and

(b) section 1.3 of the Feb-2023 Administrative Guidance.

2. In relation to Article 4.4.1(e), see the specified OECD GloBE rules guidance in—

(a) paragraphs 82.1 to 82.4 of Chapter 4 of the 2023 Commentary; and

(b) section 2.8 of the Feb-2023 Administrative Guidance.

4.4.2. The total deferred tax adjustment amount is adjusted as follows:

(a) increased by the amount of unclaimed accrual paid during the fiscal year;

(b) increased by the amount of any recaptured deferred tax liability determined in a preceding fiscal year which has been paid during the fiscal year; and

(c) reduced by the amount that would be a reduction to the total deferred tax adjustment amount due to recognition of a loss deferred tax asset for a current year tax loss, where a loss deferred tax asset has not been recognised because the recognition criteria are not met.

4.4.3. A deferred tax asset that has been recorded at a rate lower than the minimum rate may be recast at the minimum rate in the fiscal year such deferred tax asset becomes a GloBE loss, if the taxpayer can demonstrate that the deferred tax asset is attributable to a GloBE loss. The total deferred tax adjustment amount is reduced by the amount that a deferred tax asset is increased due to being recast under this Article.

4.4.4. To the extent a deferred tax liability, that is not a recapture exception accrual, is taken into account under this Article and such amount is not paid within the five subsequent fiscal years, the amount must be recaptured pursuant to this article. The amount of the recaptured deferred tax liability determined for the current fiscal year shall be treated as a reduction to covered taxes in the fifth preceding fiscal year and the effective tax rate and top-up tax of such fiscal year shall be recalculated under the rules of Article 5.4.1. The recaptured deferred tax liability for the current fiscal year is the amount of the increase in a

category of deferred tax liability that was included in the total deferred tax adjustment amount in the fifth preceding fiscal year that has not reversed by the end of the last day of the current fiscal year, unless such amount relates to a recapture exception accrual as set forth in Article 4.4.5.

4.4.5. Recapture exception accrual means the tax expense accrued attributable to changes in associated deferred tax liabilities, in respect of:

(a) cost recovery allowances on tangible assets;

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

(c) research and development expenses;

(d) de-commissioning and remediation expenses;

(e) fair value accounting on unrealised net gains;

(f) foreign currency exchange net gains;

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

(h) gains from the sale of tangible property located in the same jurisdiction as the constituent entity that are reinvested in tangible property in the same jurisdiction; and

(i) additional amounts accrued as a result of accounting principle changes with respect to categories (a) through (h).

4.4.6. Disallowed accrual means:

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

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

4.4.7. Unclaimed accrual means any increase in a deferred tax liability recorded in the financial accounts of a constituent entity for a fiscal year that is not expected to be paid within the time period set forth in Article 4.4.4 and for which the filing constituent entity makes an annual election not to include in total deferred tax adjustment amount for such fiscal year.

Article 4.5. The GloBE loss election

4.5.1. In lieu of applying the rules set forth in Article 4.4, a filing constituent entity may make a GloBE loss election for a jurisdiction. When a GloBE loss election is made for a jurisdiction, a GloBE loss deferred tax asset is established in each fiscal year in which there is a net GloBE loss for the jurisdiction. The GloBE loss deferred tax asset is equal to the net GloBE loss in a fiscal year for the jurisdiction multiplied by the minimum rate.

4.5.2. The balance of the GloBE loss deferred tax asset is carried forward to subsequent fiscal years, reduced by the amount of GloBE loss deferred tax asset used in a fiscal year.

4.5.3. The GloBE loss deferred tax asset must be used in any subsequent fiscal year in which there is net GloBE income for the jurisdiction in an amount equal to the lower of the net

GloBE income multiplied by the minimum rate or the amount of available GloBE loss deferred tax asset.

4.5.4. If the GloBE loss election is subsequently revoked, any remaining GloBE loss deferred tax asset is reduced to zero, effective as of the first day of the first fiscal year in which the GloBE loss election is no longer applicable. Subsequently, the deferred tax assets and liabilities for the jurisdiction, if any, will be taken into account as if they had been calculated under Articles 4.4 and 9.1 for the prior fiscal year.

4.5.5. The GloBE loss election must be filed with the first GloBE information return of the MNE group for the first fiscal year in which the MNE group has a constituent entity located in the jurisdiction for which the election is made. A GloBE loss election cannot be made for a jurisdiction with an eligible distribution tax system as defined in Article 7.3.

4.5.6. A flow-through entity that is a UPE of an MNE group may make a GloBE loss election under this Article. When such an election is made, the GloBE loss deferred tax asset shall be calculated in accordance with Articles 4.5.1 to 4.5.5, however, the GloBE loss deferred tax asset shall be calculated with reference to the GloBE loss of the flow-through entity after reduction in accordance with Article 7.1.2.

Article 4.6. Post-filing adjustments and tax rate changes

4.6.1. An adjustment to a constituent entity's liability for covered taxes for a previous fiscal year recorded in the financial accounts shall be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made, unless the adjustment relates to a fiscal year in which there is a decrease

in covered taxes for the jurisdiction. In the case of a decrease in covered taxes included in the constituent entity's adjusted covered taxes for a previous fiscal year, the effective tax rate and top-up tax for such fiscal year must be recalculated under Article 5.4.1. In the Article 5.4.1 recalculations, the adjusted covered taxes determined for the fiscal year shall be reduced by the amount of the decrease in covered taxes and GloBE income determined for the fiscal year and any intervening fiscal years shall be adjusted as necessary and appropriate. A filing constituent entity may make an annual election to treat an immaterial decrease in covered taxes as an adjustment to covered taxes in the fiscal year in which the adjustment is made. An immaterial decrease in covered taxes is an aggregate decrease of less than EUR 1 million in the adjusted covered taxes determined for the jurisdiction for a fiscal year.

Note—

In relation to Article 4.6.1, see the specified OECD GloBE rules guidance in paragraph 124 of Chapter 4 of the 2023 Commentary.

4.6.2. The amount of deferred tax expense resulting from a reduction to the applicable domestic tax rate shall be treated as an adjustment under Article 4.6.1 to a constituent entity's liability for covered taxes claimed under Article 4.1 for a previous fiscal year when such reduction results in the application of a rate that is less than the minimum rate.

4.6.3. The amount of deferred tax expense, when paid, that has resulted from an increase to the applicable domestic tax rate shall be treated as an adjustment under Article 4.6.1 to a constituent entity's liability for covered taxes claimed under Article 4.1 for a previous fiscal year when such amount was originally recorded at a rate less than the minimum rate. This adjustment is limited to an amount that is equal to an increase

of deferred tax expense up to such deferred tax expense recast at the minimum rate.

4.6.4. If more than EUR 1 million of the amount accrued by a constituent entity as current tax expense and included in adjusted covered taxes for a fiscal year is not paid within three years of the last day of such year, the effective tax rate and top-up tax for the fiscal year in which the unpaid amount was claimed as a covered tax must be recalculated in accordance with Article 5.4.1 by excluding such unpaid amount from adjusted covered taxes.

Chapter 5 Computation of Effective Tax Rate and Top-up Tax

Article 5.1. Determination of effective tax rate

5.1.1. The effective tax rate of the MNE group for a jurisdiction with net GloBE income shall be calculated for each fiscal year. The effective tax rate of the MNE group for a jurisdiction is equal to the sum of the adjusted covered taxes of each constituent entity located in the jurisdiction divided by the net GloBE income of the jurisdiction for the fiscal year. For purposes of Chapter 5, each stateless constituent entity shall be treated as a single constituent entity located in a separate jurisdiction.

Note—

In relation to Article 5.1.1, see the specified OECD GloBE rules guidance in paragraphs 6 and 7 of Chapter 5 of the 2023 Commentary.

5.1.2. The net GloBE income of a jurisdiction for a fiscal year is the positive amount, if any, computed in accordance with the following formula:

$$\textit{Net GloBE Income} = \textit{GloBE Income of all Constituent Entities} - \textit{GloBE Losses of all Constituent Entities}$$

where:

(a) the GloBE income of all constituent entities is the sum of the GloBE income of all constituent entities located in the jurisdiction determined in accordance with Chapter 3 for the fiscal year; and

(b) the GloBE losses of all constituent entities is the sum of the GloBE losses of all constituent entities located in the jurisdiction determined in accordance with Chapter 3 for the fiscal year.

5.1.3. Adjusted covered taxes and GloBE income or loss of constituent entities that are investment-related entities or minority-owned constituent entities are excluded from the determination of the effective tax rate in Article 5.1.1 and the determination of net GloBE income in Article 5.1.2.

Article 5.2. Top-up tax

5.2.1. The top-up tax percentage for a jurisdiction for a fiscal year shall be the positive percentage point difference, if any, computed in accordance with the following formula:

Top up tax percentage = minimum rate – effective tax rate

where the effective tax rate is the effective tax rate determined in accordance with Article 5.1 for the jurisdiction for the fiscal year.

Note—

In relation to Article 5.2.1, see the specified OECD GloBE rules guidance in—

(a) paragraphs 15.1 to 15.5 of Chapter 5 of the 2023 Commentary; and

(b) section 2.7 of the Feb-2023 Administrative Guidance.

5.2.2. The excess profit for the jurisdiction for the fiscal year is the positive amount, if any, computed in accordance with the following formula:

Excess Profit = Net GloBE Income – Substance Based Income Exclusion

where:

(a) the net GloBE income is the net GloBE income determined under Article 5.1.2 for the jurisdiction for the fiscal year; and

(b) the substance-based income exclusion is the substance-based income exclusion determined under Article 5.3 for the jurisdiction for the fiscal year (if any).

5.2.3. The jurisdictional top-up tax for a jurisdiction for a fiscal year is equal to the positive amount, if any, computed in accordance with the following formula:

Jurisdictional Top up Tax
= (Top up Tax Percentage x Excess Profit) + Additional Current Top up Tax – Domestic Top up Tax

where:

(a) the top-up tax percentage is percentage point difference determined in accordance with Article 5.2.1 for the jurisdiction for the fiscal year;

(b) the excess profit is the excess profit determined in accordance with Article 5.2.2 for the jurisdiction for the fiscal year;

(c) the additional current top-up tax is the amount determined, or treated as additional current top-up tax,

under Article 4.1.5 or Article 5.4.1 for the jurisdiction for the fiscal year; and

(d) the Domestic top-up tax is the amount payable under a qualified domestic minimum top-up tax of the jurisdiction for the fiscal year.

5.2.4. Except as provided in Article 5.4.3, the top-up tax of a constituent entity shall be determined for each constituent entity of a jurisdiction that has GloBE income determined in accordance with Chapter 3 for the fiscal year included in the computation of net GloBE income of that jurisdiction in accordance with the following formula:

$$\textit{Top up Tax of a CE} = \textit{Jurisdictional Top up Tax} \times \frac{\textit{GloBE Income of the CE}}{\textit{Aggregate GloBE Income of all CEs}}$$

where:

(a) the jurisdictional top-up tax is the top-up tax determined in accordance with Article 5.2.3 for the jurisdiction for the fiscal year;

(b) the GloBE income of the CE is the GloBE income of the constituent entity determined in accordance with Article 3.2 for the jurisdiction for the fiscal year;

(c) the aggregate GloBE income of all CEs is the aggregate GloBE income of all constituent entities that have GloBE income for the fiscal year included in the computation of net GloBE income in accordance with Article 5.1.2 for the jurisdiction for the fiscal year.

5.2.5. If the jurisdictional top-up tax is attributable to a recalculation under the Article 5.4.1 and the jurisdiction does not have net GloBE income for the current fiscal year, top-up tax shall be

allocated using the formula in Article 5.2.4 based on the GloBE income of the constituent entities in the fiscal years for which the recalculations under Article 5.4.1 were performed.

Article 5.3. Substance-based income exclusion

5.3.1. The net GloBE income for the jurisdiction shall be reduced by the substance-based income exclusion for the jurisdiction to determine the excess profit for purposes of computing the top-up tax under Article 5.2. A filing constituent entity of an MNE group may make an annual election not to apply the substance-based income exclusion for a jurisdiction by not computing the exclusion or claiming it in the computation of top-up tax for the jurisdiction in the GloBE information return(s) filed for the fiscal year.

Note—

In relation to Article 5.3.1, see the specified OECD GloBE rules guidance in—

(a) paragraph 29.1 of Chapter 5 of the 2023 Commentary; and

(b) section 3 of the Jul-2023 Administrative Guidance.

5.3.2. The substance-based income exclusion amount for a jurisdiction is the sum of the payroll carve-out and the tangible asset carve-out for each constituent entity, except for constituent entities that are investment-related entities, in that jurisdiction.

5.3.3. 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:

(a) capitalised and included in the carrying value of eligible tangible assets;

(b) attributable to a constituent entity's international shipping income and qualified ancillary international shipping income under Article 3.3.5 that is excluded from the computation of GloBE income or loss for the fiscal year.

Note—

In relation to Article 5.3.3, see—

(a) the specified OECD GloBE rules guidance in—

(i) paragraph 36.1 of Chapter 5 of the 2023 Commentary; and

(ii) section 3 of the Jul-2023 Administrative Guidance; and

(b) the specified OECD GloBE rules guidance in—

(i) paragraphs 33 and 33.1 of Chapter 5 of the 2023 Commentary; and

(ii) section 3 of the Jul-2023 Administrative Guidance.

5.3.4. 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. Eligible tangible assets means:

(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.

For this purpose, 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. The tangible asset carve-out computation shall not include the carrying value of tangible assets used in the generation of a constituent entity's international shipping income and qualified ancillary international shipping income (i.e. ships and other maritime equipment and infrastructure). The carrying value of tangible assets attributable to a constituent entity's excess income over the cap for qualified ancillary international shipping income under Article 3.3.4 shall be included in the tangible asset carve-out computation.

Note—

In relation to Article 5.3.4, see—

(a) the specified OECD GloBE rules guidance in—

(i) paragraph 48.1 of Chapter 5 of the 2023 Commentary; and

(ii) section 3 of the Jul-2023 Administrative Guidance;

(b) the specified OECD GloBE rules guidance in—

(i) paragraphs 38 and 38.1 of Chapter 5 of the 2023 Commentary; and

(ii) section 3 of the Jul-2023 Administrative Guidance; and

(c) the specified OECD GloBE rules guidance in—

(i) paragraphs 43 to 43.7 of Chapter 5 of the 2023 Commentary; and

(ii) section 3 of the Jul-2023 Administrative Guidance.

5.3.5. 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, impairment losses 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.

Note—

In relation to Article 5.3.5, see—

(a) the specified OECD GloBE rules guidance in paragraph 52 of Chapter 5 of the 2023 Commentary; and

(b) the specified OECD GloBE rules guidance in paragraph 49 of Chapter 5 of the 2023 Commentary.

5.3.6. For purposes of Articles 5.3.3 and 5.3.4, the eligible payroll costs and eligible tangible assets of a constituent entity that is a permanent establishment are those included in its separate financial accounts as determined by Article 3.4.1 and adjusted in accordance with Article 3.4.2, provided that the eligible employees and eligible tangible assets are located in the jurisdiction where the permanent establishment is located. The eligible payroll costs and eligible tangible assets of a permanent establishment are not taken into account for the eligible payroll costs and eligible tangible assets of the main entity. The eligible payroll costs and eligible tangible assets of a permanent establishment whose income has been wholly or partly excluded in accordance with Articles 3.5.3 and 7.1.4 are excluded from the substance-based income exclusion computations of the MNE group in the same proportion.

5.3.7. For purposes of Articles 5.3.3 and 5.3.4, eligible payroll costs and eligible tangible assets of a flow-through entity that are not allocated under Article 5.3.6 are allocated as follows:

(a) if the financial accounting net income or loss of the flow-through entity has been allocated to the constituent entity-owner under Article 3.5.1(b), then the entity's eligible payroll costs and eligible tangible assets are allocated in the same proportion to the constituent entity-owner provided it is located in the jurisdiction where the eligible employees and eligible tangible assets are located;

(b) if the flow-through entity is the ultimate parent entity, then eligible payroll costs and eligible tangible assets located in the jurisdiction where the ultimate parent entity is located are allocated to it and reduced in proportion to the income that is excluded under Article 7.1.1; and

(c) all other eligible payroll costs and eligible tangible assets of the flow-through entity are excluded from the substance-based income exclusion computations of the MNE group.

Article 5.4. Additional current top-up tax

5.4.1. If the effective tax rate and top-up tax for a prior fiscal year is required or permitted to be recalculated pursuant to an ETR adjustment article,

(a) the effective tax rate and top-up tax for the prior fiscal year shall be recalculated in accordance with the rules of Article 5.1 through Article 5.3 after taking into account the adjustments to adjusted covered taxes and GloBE income or loss required by the relevant ETR adjustment article; and

(b) any amount of incremental top-up tax resulting from such recalculation shall be treated as additional current top-up tax under Article 5.2.3 arising in the current fiscal year.

5.4.2. If there is additional current top-up tax attributable to a recalculation under Article 5.4.1 and the jurisdiction does not

have net GloBE income for the current fiscal year, the GloBE income of each constituent entity located in the jurisdiction for purposes of Article 2.2.2 shall be equal to the result of the top-up tax allocated to such entity under Articles 5.2.4 and 5.2.5 divided by the minimum rate.

5.4.3. If there is additional current top-up tax attributable to the operation of Article 4.1.5, the GloBE income of each constituent entity located in the jurisdiction for purposes of Article 2.2.2 shall be equal to the result of the top-up tax allocated to such entity under this Article divided by the minimum rate. The amount of additional current top-up tax allocated to each constituent entity for purposes of this Article shall be allocated only to constituent entities that record an adjusted covered taxes amount that is less than zero and less than the GloBE income or loss of such constituent entity multiplied by the minimum rate. The allocation shall be made pro-rata based upon the following amount for each of those constituent entities:

(GloBE Income or Loss x Minimum Rate) – Adjusted Covered Taxes

5.4.4. If a constituent entity is allocated additional current top-up tax pursuant to this Article and Article 5.2.4 such constituent entity shall be treated as a low-taxed constituent entity for the purposes of Chapter 2.

Article 5.5. De minimis exclusion

5.5.1. At the election of the filing constituent entity, and notwithstanding the requirements otherwise provided in Chapter 5, the top-up tax for the constituent entities located in

a jurisdiction shall be deemed to be zero for a fiscal year if, for such fiscal year:

(a) the average GloBE revenue of such jurisdiction is less than EUR 10 million; and

(b) the average GloBE income or loss of such jurisdiction is a loss or is less than EUR 1 million.

The election under this Article is an annual election.

Note—

In relation to Article 5.5.1(a), see the specified OECD GloBE rules guidance in—

(a) paragraph 83 of Chapter 5 of the 2023 Commentary; and

(b) section 1 of the Jul-2023 Administrative Guidance.

5.5.2. For purposes of Article 5.5.1, the average GloBE revenue (or GloBE income or loss) of a jurisdiction is the average of the GloBE revenue (or GloBE income or loss) of the jurisdiction for the current and the two preceding fiscal years. If there were no constituent entities with GloBE revenue or GloBE losses that were located in the jurisdiction in the first or second preceding fiscal year, such year or years shall be excluded from the calculation of the average GloBE revenue and the average GloBE income or loss of the relevant jurisdiction.

5.5.3. For purposes of Article 5.5.2:

(a) the GloBE revenue of a jurisdiction for a fiscal year is the sum of the revenue of all constituent entities located in the jurisdiction for such fiscal year, taking into account the adjustments calculated in accordance with Chapter 3; and

(b) the GloBE income or loss of a jurisdiction for a fiscal year is the net GloBE income of that jurisdiction, if any, or the net GloBE loss of that jurisdiction.

Note—

In relation to Article 5.5.3, see—

(a) the specified OECD GloBE rules guidance in paragraph 92 of Chapter 5 of the 2023 Commentary; and

(b) the specified OECD GloBE rules guidance in paragraph 82 of Chapter 5 of the 2023 Commentary.

5.5.4. An election under Article 5.5 shall not apply to a constituent entity that is a stateless constituent entity or an investment-related entity and the revenue and GloBE income or loss of a stateless constituent entity and an investment-related entity shall be excluded from the computations in Article 5.5.3.

Article 5.6. Minority-owned constituent entities

5.6.1. The computation of the effective tax rate and top-up tax for a jurisdiction in accordance with Chapters 3 to 7, and Article 8.2 with respect to members of a minority-owned subgroup shall apply as if they were a separate MNE group. The adjusted covered taxes and GloBE income or loss of members of a minority-owned subgroup are excluded from the determination of the remainder of the MNE group's effective tax rate in Article 5.1.1 and net GloBE income in Article 5.1.2.

5.6.2. The effective tax rate and top-up tax of a minority-owned constituent entity that is not a member of a minority-owned subgroup is computed on an entity basis in accordance with Chapters 3 to 7, and Article 8.2. The adjusted covered taxes and GloBE income or loss of the minority-owned constituent entity are excluded from the determination of the remainder of the MNE group's effective tax rate in Article 5.1.1 and net GloBE income in Article 5.1.2. This provision does not apply if the

minority-owned constituent entity is an investment-related entity.

Chapter 6 Corporate Restructurings and Holding Structures

Article 6.1. Application of consolidated revenue threshold to group mergers and demergers

6.1.1. For the purposes of Article 1.1

(a) If two or more groups merge to form a single group in any of the four fiscal years prior to the tested fiscal year, then the consolidated revenue threshold of the MNE group for any fiscal year prior to the merger is deemed to be met for that year if the sum of the revenue included in each of their consolidated financial statements for that year is equal to or greater than EUR 750 million.

(b) Where an entity that is not a member of any group (acquirer) acquires or merges with an entity or group (target) in the tested fiscal year and the target or acquirer does not have consolidated financial statements in any of the four fiscal years prior to the tested fiscal year because it was not a member of any group in that year, the consolidated revenue threshold of the MNE group is deemed to be met for that year if the sum of the revenue included in each of their Financial Statements or consolidated financial statements for that year is equal to or greater than EUR 750 million.

(c) Where a single MNE group within the scope of the GloBE rules demerges into two or more groups (each a demerged group), the consolidated revenue threshold is deemed to be met by a demerged group:

i. with respect to the first tested fiscal year ending after the demerger, if the demerged group has annual revenues of EUR 750 million or more in that year;

ii. with respect to the second to fourth tested fiscal years ending after the demerger, if the demerged group has annual revenues of EUR 750 million or more in at least two of the fiscal years following the year of the demerger.

6.1.2. For the purposes of Article 6.1.1 a merger is any arrangement where:

(a) all or substantially all of the group entities of two or more separate groups are brought under common control such that they constitute group entities of a combined group; or

(b) an entity that is not a member of any group is brought under common control with another entity or group such that they constitute group entities of a combined group.

6.1.3. For the purposes of Article 6.1.1 a demerger is any arrangement where the group entities of a single group are separated into two or more groups that are no longer consolidated by the same ultimate parent entity.

Article 6.2. Constituent entities joining and leaving an MNE group

6.2.1. Except to the extent provided in Article 6.2.2, the following provisions apply where an entity (the target) becomes or ceases to be a constituent entity of an MNE group as a result of a transfer of direct or indirect ownership interests in such entity during the fiscal year (the acquisition year):

(a) where the target joins or leaves a group or the target becomes the ultimate parent entity of a new group, the target will be treated as a member of the group for the purposes of the GloBE rules if any portion of its assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year;

(b) in the acquisition year, an MNE group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target that are taken into account in the consolidated financial statements of the ultimate parent entity for purposes of applying the GloBE rules;

(c) in the acquisition year and each succeeding year, the target shall determine its GloBE income or loss and adjusted covered taxes using its historical carrying value of the assets and liabilities;

(d) the computation of the target's eligible payroll costs under Article 5.3.3 shall take into account only those costs reflected in the consolidated financial statements of the ultimate parent entity;

(e) the computation of carrying value of the target's eligible tangible assets for purposes of Article 5.3.4 shall be adjusted proportionally to correspond with the length of the relevant fiscal year that the target was a member of the MNE group;

(f) with the exception of the GloBE loss deferred tax asset, the deferred tax assets and deferred tax liabilities of a constituent entity that are transferred between MNE groups shall be taken into account under the GloBE rules

by the acquiring MNE group in the same manner and to the same extent as if the acquiring MNE group controlled the constituent entity when such assets and liabilities arose;

(g) deferred tax liabilities of a target that have previously been included in its total deferred tax adjustment amount shall be treated as reversed for purposes of applying Article 4.4.4 by the disposing MNE group and treated as arising in the acquisition year for purposes of applying Article 4.4.4 by the acquiring MNE group, except that in such cases any subsequent reduction to covered taxes under Article 4.4.4 shall have effect in the year in which the amount is recaptured; and

(h) if the target is a parent entity and it is a group entity of two or more MNE groups during the acquisition year, it shall apply separately the provisions of the IIR to its allocable shares of the top-up tax of low-taxed constituent entities determined for each MNE group.

6.2.2. For purposes of the GloBE rules, the acquisition or disposal of a controlling interest in a constituent entity will be treated as an acquisition or disposal of the assets and liabilities if the jurisdiction in which the target constituent entity is located, or in the case of a tax transparent entity, the jurisdiction in which the assets are located, treats the acquisition or disposal of that controlling interest in the same or similar manner as an acquisition or disposition of the assets and liabilities and imposes a covered tax on the seller based on the difference between their tax basis and the consideration paid in exchange for the controlling interest or the fair value of the assets and liabilities.

Article 6.3. Transfer of assets and liabilities

6.3.1. In the case of a disposition or acquisition of assets and liabilities, a disposing constituent entity will include the gain or loss on disposition in the computation of its GloBE income or loss and an acquiring constituent entity will determine its GloBE income or loss using the acquiring constituent entity's carrying value of the acquired assets and liabilities determined under the accounting standard used in preparing consolidated financial statements of the ultimate parent entity.

Note—

In relation to Article 6.3.1, see the specified OECD GloBE rules guidance in—

(a) paragraph 73.1 of Chapter 6 of the 2023 Commentary; and

(b) section 2.1 of the Feb-2023 Administrative Guidance.

6.3.2. If the disposition or acquisition of assets and liabilities is part of a GloBE reorganisation Article 6.3.1 shall not apply and:

(a) a disposing constituent entity will exclude any gain or loss on the disposition from the computation of its GloBE income or loss; and

(b) an acquiring constituent entity will determine its GloBE income or loss after the acquisition using the disposing entity's carrying values of the acquired assets and liabilities upon disposition.

6.3.3. If a disposition or acquisition of assets and liabilities is part of a GloBE reorganisation in which a disposing constituent entity recognises non-qualifying gain or loss, Articles 6.3.1 and 6.3.2 shall not apply and:

(a) the disposing constituent entity will include gain or loss on the disposition in its GloBE income or loss computation to the extent of the non-qualifying gain or loss; and

(b) an acquiring constituent entity will determine its GloBE income or loss after the acquisition using the disposing entity's carrying value of the acquired assets and liabilities upon disposition adjusted consistent with local tax rules to account for the non-qualifying gain or loss.

6.3.4. At the election of the filing constituent entity, a constituent entity of an MNE group that is required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes in the jurisdiction in which it is located, shall:

(a) include in the computation of its GloBE income or loss an amount of gain or loss in respect of each of its assets and liabilities that is equal to:

i. the difference between the carrying value for financial accounting purposes of the asset or liability immediately before and the fair value of the asset or liability immediately after the date of the event that triggered the tax adjustment (the triggering event);

ii. decreased (or increased) by the non-qualifying gain (or loss), if any, arising in connection with the triggering event;

(b) use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to determine GloBE income or loss in fiscal years ending after the triggering event; and

(c) include the net total of the amounts determined in Article 6.3.4(a) in the constituent entity's GloBE income or loss in one of the following ways:

i. the net total of the amounts is included in the fiscal year in which the triggering event occurs; or

ii. an amount equal to the net total of the amounts divided by five is included in the fiscal year in which the triggering event occurs and in each of the immediate four subsequent fiscal years, unless the constituent entity leaves the MNE group in a fiscal year within this period, in which case the remaining amount will be wholly included in that fiscal year.

Article 6.4. Joint ventures

6.4.1. The GloBE rules shall apply to a joint venture and its JV subsidiaries as follows for each fiscal year:

(a) Chapters 3 to 7, and Article 8.2 shall apply for purposes of computing any top-up tax of the joint venture and its JV subsidiaries as if they were constituent entities of a separate MNE group and as if the joint venture was the ultimate parent entity of that group;

(b) a parent entity that holds directly or indirectly ownership interests in the joint venture or a JV subsidiary shall apply the IIR with respect to its allocable share of the top-up tax of a member of the JV group in accordance with Article 2.1 to Article 2.3; and

(c) the JV group top-up tax shall be reduced by each parent entity's allocable share of the top-up tax of each member of the JV group that is brought into charge under a qualified IIR under paragraph (b), and any remaining

amount shall be added to the total UTPR top-up tax amount taken into account under Article 2.5.1.

Article 6.5. Multi-parented MNE groups

6.5.1. The following provisions apply to multi-parented MNE groups:

(a) the entities and constituent entities of each group are treated as members of a single MNE group for purposes of the GloBE rules (the multi-parented MNE group);

(b) an entity (other than an excluded entity) shall be treated as a constituent entity if it is consolidated on a line-by-line basis by the multi-parented MNE group or its controlling interests are held by entities in the multi-parented MNE group;

(c) the consolidated financial statements of the multi-parented MNE group shall be the consolidated financial statements referred to in the definition of stapled structure or dual-listed arrangement (as relevant) prepared under an acceptable financial accounting standard, which is deemed to be the accounting standard of the ultimate parent entity;

(d) the ultimate parent entities of the separate groups that comprise the multi-parented MNE group shall be the ultimate parent entities of the multi-parented MNE group (when applying the GloBE rules in respect of a multi-parented MNE group, a reference to an ultimate parent entity shall apply, as required, as if they were a reference to multiple ultimate parent entities);

(e) the parent entities of the multi-parented MNE group (including each ultimate parent entity) located in Hong Kong shall apply the IIR in accordance with Article 2.1 to

Article 2.3 with respect to their allocable share of the top-up tax of the low-taxed constituent entity;

(f) all of the constituent entities of the multi-parented MNE group located in Hong Kong shall apply the UTPR in accordance with Article 2.4 to Article 2.6, taking into account the top-up tax of each low-taxed constituent entity of the multi-parented MNE group; and

(g) the ultimate parent entities are required to submit the GloBE information return in accordance with Article 8.1 unless they appoint a single designated filing entity and that return shall include the information concerning each of the groups that comprise the multi-parented MNE group.

Notes—

1. The reference in Article 6.5.1(f) to "Article 2.4 to Article 2.6" is to be read as "Article 2.4 to Article 2.6, read with Part 2 of this Schedule", because of Part 2 of this Schedule.

2. Similarly, the reference in Article 6.5.1(g) to "Article 8.1" is to be read as "Part 2 of Schedule 62", because of Part 2 of this Schedule.

Chapter 7 Tax Neutrality and Distribution Regimes

Article 7.1. Ultimate parent entity that is a flow-through entity

7.1.1. The GloBE income for a fiscal year of a flow-through entity that is the ultimate parent entity of an MNE group shall be reduced by the amount of GloBE income attributable to each ownership interest if:

(a) the holder of the ownership interest is subject to tax on such income for a taxable period that ends within 12 months of the end of the MNE group's fiscal year and:

(i) the holder of the ownership interest is subject to tax on the full amount of such income at a nominal rate that equals or exceeds the minimum rate; or

(ii) it can be reasonably expected that the aggregate amount of covered taxes paid by the ultimate parent entity and other entities that are part of the tax transparent structure and taxes of the holder of the ownership interest on such income equals or exceeds the amount that results from multiplying the full amount of such income by the minimum rate; or

(b) the holder is a natural person that:

(i) is a tax resident in the UPE jurisdiction; and

(ii) holds ownership interests that, in the aggregate, are a right to 5% or less of the profits and assets of the ultimate parent entity; or

(c) the holder is a governmental entity, an international organisation, a non-profit organisation, or a pension fund that:

(i) is resident in the UPE jurisdiction; and

(ii) holds ownership interests that, in the aggregate, are a right to 5% or less of the profits and assets of the ultimate parent entity.

Notes—

1. In relation to Article 7.1.1(a)(i), see the specified OECD GloBE rules guidance in paragraph 12 of Chapter 7 of the 2023 Commentary.

2. In relation to Article 7.1.1(b)(ii), see the specified OECD GloBE rules guidance in paragraph 18 of Chapter 7 of the 2023 Commentary.

7.1.2. In computing its GloBE loss for a fiscal year, a flow-through entity that is the ultimate parent entity of an MNE group shall reduce its GloBE loss for such fiscal year by the amount of

GloBE loss attributable to each ownership interest, except to the extent that the holders of ownership interests are not allowed to use the loss in computing their separate taxable income.

7.1.3. A flow-through entity that reduces its GloBE income pursuant to Article 7.1.1 shall reduce its covered taxes proportionally.

7.1.4. Articles 7.1.1 through 7.1.3 shall apply to a permanent establishment:

(a) through which a flow-through entity that is the ultimate parent entity of an MNE group wholly or partly carries out its business; or

(b) through which the business of a tax transparent entity is wholly or partly carried out if the ultimate parent entity's ownership interest in that tax transparent entity is held directly or through a tax transparent structure.

Article 7.2. Ultimate parent entity subject to deductible dividend regime

7.2.1. For purposes of computing its GloBE income or loss for a fiscal year, an ultimate parent entity that is subject to a deductible dividend regime shall reduce (but not below zero) its GloBE income for such fiscal year by the amount that is distributed as a deductible dividend within 12 months of the end of the fiscal year if:

(a) the dividend is subject to tax in the hands of the dividend recipient for a taxable period that ends within 12 months of the end of the ultimate parent entity's fiscal year, and:

(i) the dividend recipient is subject to tax on such dividend at a nominal rate that equals or exceeds the minimum rate;

(ii) it can be reasonably expected that the aggregate amount of covered taxes paid by the ultimate parent entity and taxes paid by the dividend recipient on the dividend income equals or exceeds the amount that results from multiplying the full amount of such income by the minimum rate; or

(iii) the dividend recipient is a natural person and the dividend is a patronage dividend from a supply cooperative; or

(b) the dividend recipient is a natural person that:

(i) is a tax resident in the UPE jurisdiction; and

(ii) holds ownership interests that, in the aggregate, are a right to 5% or less of the profits and assets of the ultimate parent entity.

(c) the dividend recipient is resident in the UPE jurisdiction and is:

(i) a governmental entity,

(ii) an international organisation,

(iii) a non-profit organisation or

(iv) a pension fund that is not a pension services entity.

7.2.2. An ultimate parent entity that reduces its GloBE income pursuant to Article 7.2.1 shall reduce its covered taxes (other than the taxes for which the dividend deduction was allowed) proportionally and shall reduce its GloBE income by the same amount.

Note—

In relation to Article 7.2.2, see the specified OECD GloBE rules guidance in paragraph 46 of Chapter 7 of the 2023 Commentary.

7.2.3. If the ultimate parent entity holds an ownership interest in another constituent entity subject to the deductible dividend regime (directly or through a chain of such constituent entities), Articles 7.2.1 and 7.2.2 shall apply to each other constituent entity in the UPE jurisdiction that is subject to the deductible dividend regime to the extent that its GloBE income is further distributed by the ultimate parent entity to recipients that meet the requirements of Article 7.2.1.

7.2.4. Patronage dividends from a supply cooperative are subject to tax to the extent they reduce an expense or cost that is deductible in the computation of the recipient's taxable income.

Note—

In relation to Article 7.2.4, see the specified OECD GloBE rules guidance in paragraph 50 of Chapter 7 of the 2023 Commentary.

Article 7.3. Eligible distribution tax systems

7.3.1. A filing constituent entity may make an annual election with respect to a constituent entity that is subject to an eligible distribution tax system to add the amount of deemed distribution tax determined under Article 7.3.2 to adjusted covered taxes for the fiscal year. An election under this Article shall apply to all constituent entities located in the jurisdiction.

7.3.2. The amount of deemed distribution tax is the lesser of:

(a) the amount necessary to increase the effective tax rate computed under Article 5.2.1 for the jurisdiction for the fiscal year to the minimum rate; or

(b) the amount of distribution tax that would have been due if the constituent entities located in the jurisdiction had distributed all of their income that is subject to the eligible distribution tax regime during such year.

7.3.3. An annual deemed distribution tax recapture account is established for each fiscal year in which the election in Article 7.3.1 applies. A deemed distribution tax recapture account is increased by the amount of the deemed distribution tax determined under Article 7.3.2 for the jurisdiction for the fiscal year for which it was established. At the end of each succeeding fiscal year, the outstanding balances of deemed distribution tax recapture accounts established for prior fiscal years are reduced in chronological order and to the extent thereof, but not below zero:

(a) first by taxes paid by the constituent entities during the fiscal year in relation to actual or deemed distributions;

(b) then by the amount of any net GloBE loss of the jurisdiction multiplied by the minimum rate; and

(c) then by any amount of recapture account loss carry-forward applied to the current fiscal year pursuant to Article 7.3.4.

7.3.4. A recapture account loss carry-forward shall be established for the jurisdiction when the amount described in Article 7.3.3(b) exceeds the outstanding balance of the deemed distribution tax recapture accounts. The recapture account loss carry-forward shall be in an amount equal to such excess and shall be taken into account in subsequent fiscal years as a reduction to deemed

distribution tax recapture accounts in such fiscal years. When such amount is taken into account in a subsequent fiscal year, the recapture account loss carry-forward must be reduced by that amount.

7.3.5. If there is an outstanding balance of a deemed distribution tax recapture account (maintained in accordance with Article 7.3.3) on the last day of the fourth fiscal year after the fiscal year for which such account was established, the effective tax rate and top-up tax for the fiscal year for which the account was established must be recalculated under Article 5.4.1 by treating the balance of the deemed distribution tax recapture account as a reduction to the adjusted covered taxes previously determined for such year.

7.3.6. Taxes paid during the fiscal year in relation to actual or deemed distributions are not included in adjusted covered taxes to the extent they reduce a deemed distribution tax recapture account under Article 7.3.3.

7.3.7. In the fiscal year that a departing constituent entity leaves the MNE group or transfers substantially all of its assets outside the MNE group or outside the jurisdiction,

(a) the effective tax rate and top-up tax for each preceding year for which a deemed distribution tax recapture account is outstanding is re-calculated in accordance with the principles of Article 5.4.1. by treating the balance of the deemed distribution tax recapture account as a reduction to the adjusted covered taxes previously determined for such year; and

(b) any amount of incremental top-up tax resulting from such recalculation shall be multiplied by the disposition

recapture ratio to determine the additional current top-up tax for purposes of Article 5.2.3.

Note—

In relation to Article 7.3.7(b), see the specified OECD GloBE rules guidance in paragraph 71 of Chapter 7 of the 2023 Commentary.

7.3.8. The disposition recapture ratio is determined for each departing constituent entity using the following formula:

$$\frac{\textit{GloBE income of the CE}}{\textit{Net income of the jurisdiction}}$$

where:

(a) GloBE income of the CE is the sum of GloBE income of the departing constituent entity determined in accordance with Chapter 3 for each fiscal year corresponding to the deemed distribution tax recapture accounts for the jurisdiction; and

(b) net Income of the jurisdiction is the sum of the net GloBE income of the jurisdiction determined in accordance with Article 5.1.2 for each fiscal year corresponding to the deemed distribution tax recapture accounts for the jurisdiction.

Article 7.4. Effective tax rate computation for investment—related entities

7.4.1. The rules of Article 7.4 apply to constituent entities that meet the definition of an investment-related entity, except investment-related entities that are tax transparent entities or subject to an election under Article 7.5 or Article 7.6.

7.4.2. The effective tax rate for an investment-related entity that is a constituent entity shall be calculated separately from the effective tax rate of the jurisdiction in which it is located. The effective tax rate for each such investment-related entity is equal to the investment-related entity's adjusted covered taxes divided by the MNE group's allocable share of the investment-related entity's GloBE income determined under Chapter 3. If there is more than one investment-related entity located in the jurisdiction, the adjusted covered taxes and the MNE group's allocable share of each investment-related entity's GloBE income or loss determined for each such investment-related entity are combined to compute the effective tax rate of all such investment-related entities.

7.4.3. An investment-related entity's adjusted covered taxes is the sum of the adjusted covered taxes determined for the investment-related entity under Article 4.1 attributable to the MNE group's allocable share of the investment-related entity's GloBE income and the covered taxes allocated to the investment-related entity under Article 4.3. The investment-related entity's adjusted covered taxes does not include any covered taxes accrued by the investment-related entity attributable to income that is not part of the MNE group's allocable share of the investment-related entity's GloBE income.

7.4.4. The MNE group's allocable share of the investment-related entity's GloBE income is equal to the allocable share of the investment-related entity's GloBE income or loss that would be determined for the ultimate parent entity in accordance with the rules of Article 2.2.2 taking into account only interests that are not subject to an election under Article 7.5 or Article 7.6.

7.4.5. The top-up tax of a constituent entity that is an investment-related entity shall be an amount equal to the top-up tax percentage for the investment-related entity multiplied by the investment-related entity's GloBE income over the substance-based income exclusion for the investment-related entity. The top-up tax percentage for an investment-related entity shall be the percentage point excess, if any, of the minimum rate over the effective tax rate of the investment-related entity. If there is more than one investment-related entity located in the jurisdiction, the investment-related entity's GloBE income and the substance-based income exclusion determined for each such investment-related entity are combined to compute the top-up tax percentage of all such investment-related entities.

7.4.6. The substance-based income exclusion for an investment-related entity shall be determined in accordance with the principles in Article 5.3 without regard to the exception in Article 5.3.2, and by taking into account only eligible tangible assets and eligible payroll costs of eligible employees of the investment-related entities.

Article 7.5. Investment-related entity tax transparency election

7.5.1. A filing constituent entity may elect to treat a constituent entity that is an investment-related entity as a tax transparent entity if the constituent entity-owner is subject to tax in its location under a mark-to-market or similar regime based on the annual changes in the fair value of its ownership interest in the entity and the tax rate applicable to the constituent entity-owner with respect to such income equals or exceeds the minimum rate. For this purpose, a constituent entity that indirectly owns an ownership interest in an investment-related entity through a direct ownership interest in another investment-related entity is

considered to be subject to tax under a mark-to-market or similar regime with respect to the indirect ownership interest in the first-mentioned entity if it is subject to a mark-to-market or similar regime with respect to the direct ownership interest in the second-mentioned entity.

Note—

In relation to Article 7.5.1, see the specified OECD GloBE rules guidance in—

(a) paragraphs 91 and 91.1 of Chapter 7 of the 2023 Commentary; and

(b) section 3.6 of the Feb-2023 Administrative Guidance.

7.5.2. The election under this Article is a five-year election. If the election is revoked, gain or loss from the disposition of an asset or liability held by the investment-related entity shall be determined based on the fair value of the assets or liabilities on the first day of the revocation year.

Article 7.6. Taxable distribution method election

7.6.1. At the election of the filing constituent entity, a constituent entity-owner that is not an investment-related entity may apply the taxable distribution method with respect to its ownership interest in a constituent entity that is an investment-related entity if the constituent entity-owner can be reasonably expected to be subject to tax on distributions from the investment-related entity at a tax rate that equals or exceeds the minimum rate.

7.6.2. Under the taxable distribution method:

(a) distributions and deemed distributions of the investment-related entity's GloBE income are included in the GloBE

income of the constituent entity-owner (other than an investment-related entity) that received the distribution;

(b) the local creditable tax gross-up is included in the GloBE income and adjusted covered taxes of the constituent entity-owner (other than an investment-related entity) that received the distribution;

(c) the constituent entity-owner's proportionate share of the investment-related entity's undistributed net GloBE income for the tested year is treated as GloBE income of the investment-related entity for the reporting fiscal year and the result of multiplying the minimum rate by such GloBE income is treated as top-up tax of a low-tax constituent entity in the fiscal year for purposes of Chapter 2; and

(d) the investment-related entity's GloBE income or loss for the fiscal year and any adjusted covered taxes attributable to such income are excluded from all effective tax rate computations under Chapter 5 and Articles 7.4.2 to 7.4.5, except as provided in paragraph (b).

7.6.3. The undistributed net GloBE income for a fiscal year is the amount of the investment-related entity's GloBE income, if any, for the tested year reduced (but not below zero) by:

(a) any covered taxes of the investment-related entity;

(b) distributions and deemed distributions to shareholders other than constituent entities that are investment-related entities in the testing period;

(c) GloBE losses arising in the testing period; and

(d) investment loss carry-forwards.

7.6.4. Undistributed net GloBE income for the tested year cannot be reduced by distributions or deemed distributions to the extent that such distributions were treated as a reduction to undistributed net GloBE income of a previous tested year. For purposes of computing undistributed net GloBE income, a GloBE loss is reduced to the extent it reduced undistributed net GloBE income at the end of a previous fiscal year. If a GloBE loss for a fiscal year is not reduced to zero before the end of the last tested period that includes such fiscal year, the remainder becomes an investment loss carry-forward and is reduced in the same manner as a GloBE loss in subsequent fiscal years.

7.6.5. For purposes of Article 7.6,

(a) the tested year is the third year preceding the reporting fiscal year;

(b) the testing period is the period beginning with the first day of the tested year and ending with the last day of the reporting fiscal year that the ownership interest was held by a group entity;

(c) a deemed distribution arises when a direct or indirect ownership interest in the investment-related entity is transferred to a non-group entity and is equal to the proportionate share of the undistributed net GloBE income attributable to such ownership interest on the date of such transfer (determined without regard to the deemed distribution); and

(d) the local creditable tax gross-up is the amount of covered taxes incurred by the investment-related entity that is allowed as a credit against the constituent entity-owner's tax liability arising in connection with a distribution from the investment-related entity.

7.6.6. The election under this Article is a five-year election. If the election is revoked, constituent entity-owner's proportionate share of the investment-related entity's undistributed net GloBE income for the tested year at the end of the fiscal year preceding the revocation year is treated as GloBE income of the investment-related entity for the revocation year and the result of multiplying the minimum rate by such GloBE income is treated as top-up tax of a low-tax constituent entity in the revocation year for purposes of Chapter 2.

Chapter 8 Administration

Article 8.1. Filing obligation

[Article 8.1 of the OECD GloBE model rules is omitted. See, instead, Part 2 of Schedule 62 for provisions on filing obligations.]

Article 8.2. Safe harbours

Note—

Article 8.2 is to be read together with Part 3 of this Schedule.

8.2.1. At the election of the filing constituent entity, and notwithstanding Chapter 5, the top-up tax for a jurisdiction (the safe harbour jurisdiction) shall be deemed to be zero for a fiscal year when the constituent entities located in this jurisdiction are eligible for a GloBE safe harbour, pursuant to the conditions provided under the GloBE implementation framework and applicable for that fiscal year.

8.2.2. An election made for a jurisdiction under Article 8.2.1 shall not apply in circumstances where:

(a) Hong Kong could be allocated top-up tax under the GloBE rules if the effective tax rate for the safe harbour jurisdiction computed in accordance with Chapter 5 was below the minimum rate; and

(b) the tax administration of Hong Kong notifies the liable constituent entity (or entities) within 36 months after the filing of the GloBE information return of specific facts and circumstances that may have materially affected the eligibility of the constituent entities located in the safe harbour jurisdiction for the relevant safe harbour and invites the liable constituent entity (or entities) to clarify within six months the effect of those facts and circumstances on the eligibility of those constituent entities for that safe harbour; and

(c) the liable constituent entity (or entities) fail(s) to demonstrate within the response period that those facts and circumstances did not materially affect the eligibility of the constituent entities for the relevant safe harbour.

Article 8.3. Administrative guidance

[Article 8.3 of the OECD GloBE model rules is omitted. See, instead, section 26AF for provisions on administrative guidance.]

Chapter 9 Transition Rules

Article 9.1. Tax attributes upon transition

9.1.1. When determining the effective tax rate for a jurisdiction in a transition year, and for each subsequent year, the MNE group shall take into account all of the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial accounts of

all of the constituent entities in a jurisdiction for the transition year. Such deferred tax assets and liabilities must be taken into account at the lower of the minimum rate or the applicable domestic tax rate. A deferred tax asset that has been recorded at a rate lower than the minimum rate may be taken into account at the minimum rate if the taxpayer can demonstrate that the deferred tax asset is attributable to a GloBE loss. For purposes of applying this Article, the impact of any valuation adjustment, or accounting recognition adjustment with respect to a deferred tax asset is disregarded.

Note—

In relation to Article 9.1.1, see—

(a) the specified OECD GloBE rules guidance in—

(i) paragraph 6.4 of Chapter 9 of the 2023 Commentary; and

(ii) section 4.1 of the Feb-2023 Administrative Guidance; and

(b) the specified OECD GloBE rules guidance in—

(i) paragraph 6.1 of Chapter 9 of the 2023 Commentary; and

(ii) section 4.1 of the Feb-2023 Administrative Guidance.

9.1.2. Deferred tax assets arising from items excluded from the computation of GloBE income or loss under Chapter 3 must be excluded from the Article 9.1.1 computation when such deferred tax assets are generated in a transaction that takes place after 30 November 2021.

Note—

In relation to Article 9.1.2, see the specified OECD GloBE rules guidance in paragraphs 8 and 9 of Chapter 9 of the 2023 Commentary.

9.1.3. In the case of a transfer of assets between constituent entities after 30 November 2021 and before the commencement of a transition year, the basis in the acquired assets (other than

inventory) shall be based upon the disposing entity's carrying value of the transferred assets upon disposition with the deferred tax assets and liabilities brought into GloBE determined on that basis.

Note—

In relation to Article 9.1.3, see—

(a) the specified OECD GloBE rules guidance in—

(i) paragraphs 10.2 to 10.6 of Chapter 9 of the 2023 Commentary; and

(ii) sections 4.2 and 4.3 of the Feb-2023 Administrative Guidance;

(b) the specified OECD GloBE rules guidance in—

(i) paragraph 10.1.1 of Chapter 9 of the 2023 Commentary; and

(ii) section 4 of the Jul-2023 Administrative Guidance;

(c) the specified OECD GloBE rules guidance in—

(i) paragraph 10 of Chapter 9 of the 2023 Commentary; and

(ii) section 4.3 of the Feb-2023 Administrative Guidance;

(d) the specified OECD GloBE rules guidance in—

(i) paragraph 10.9 of Chapter 9 of the 2023 Commentary; and

(ii) section 4.3 of the Feb-2023 Administrative Guidance; and

(e) the specified OECD GloBE rules guidance in—

(i) paragraph 10.8 of Chapter 9 of the 2023 Commentary; and

(ii) section 4.3 of the Feb-2023 Administrative Guidance.

Article 9.2. Transitional relief for the substance-based income exclusion

9.2.1. For the purposes of applying Article 5.3.3, the value of 5% shall be replaced with the value set out in the table set out below for each fiscal year beginning in each of the following calendar years:

Fiscal Year Beginning In	Article 5.3.3 Rate
2023	10%
2024	9.8%
2025	9.6%
2026	9.4%
2027	9.2%
2028	9.0%
2029	8.2%
2030	7.4%
2031	6.6%
2032	5.8%

9.2.2. For the purposes of applying Article 5.3.4, the value of 5% shall be replaced with the value set out in the table set out below for each fiscal year beginning in each of the following calendar years:

Fiscal Year Beginning In	Article 5.3.4 Rate
2023	8.0%
2024	7.8%
2025	7.6%
2026	7.4%
2027	7.2%
2028	7.0%

Fiscal Year Beginning In	Article 5.3.4 Rate
2029	6.6%
2030	6.2%
2031	5.8%
2032	5.4%

Article 9.3. Exclusion from the UTPR of MNE groups in the initial phase of their international activity

9.3.1. Subject to Article 9.3.4 the top-up tax that would otherwise be taken into account under Article 2.5.1 shall be reduced to zero during the initial phase of an MNE group's international activity, notwithstanding the requirements otherwise provided in Chapter 5.

9.3.2. For the purposes of Article 9.3, an MNE group is in its initial phase of its international activity if, for a fiscal year:

(a) it has constituent entities in no more than six jurisdictions; and

(b) 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.

9.3.3. For the purposes of Article 9.3.2, the reference jurisdiction of an MNE group is the jurisdiction where the MNE group has the highest total value of tangible assets for the fiscal year in which the MNE group originally comes within the scope of the GloBE rules. The total value of tangible assets in a jurisdiction is the sum of the net book values of all tangible assets of all the constituent entities of the MNE group that are located in that jurisdiction.

9.3.4. This Article 9.3 shall not apply for any fiscal year that starts later than five years after the first day of the first fiscal year when the MNE group originally came within the scope of the GloBE rules. For MNE groups that are in scope of the GloBE rules when they come into effect, the period of five years will start at the time the UTPR rules come into effect.

9.3.5. If Hong Kong is the reference jurisdiction of the MNE group pursuant to Article 9.3.3, then Article 9.3.1 shall not apply during the initial phase of that MNE group's international activity and, during that initial phase:

(a) the top-up tax calculated for a low-taxed constituent entity that would be taken into account under Article 2.5.1 shall be reduced to zero if that low-taxed constituent entity is located in the reference jurisdiction, notwithstanding the requirements otherwise provided in Chapter 5; and

(b) the UTPR percentage of the jurisdictions other than the reference jurisdiction is deemed to be zero.

Article 9.4. Transitional relief for filing obligations

[Article 9.4 of the OECD GloBE model rules is omitted. See, instead, Part 2 of Schedule 62 for provisions on transitional relief for filing obligations.]

Chapter 10 Definitions

Article 10.1. Defined terms

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

Acceptable financial accounting standard (可接受的財務會計準則) means International Financial Reporting Standards (IFRS) and the generally accepted accounting principles of Australia, Brazil, Canada, Member States of the European Union, Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom, and the United States of America.

Accrued pension expense (累算退休金開支) means the difference between the amount of pension liability expense included in the financial accounting net income or loss and the amount contributed to a pension fund for the fiscal year.

Additional current top-up tax (額外當期補足稅) is the amount of tax determined in Article 5.4 and any amount treated as additional current top-up tax determined under Article 5.4, such as the amount determined under Article 4.1.5 or Article 7.3.

Additional tier one capital (額外一級資本) means an instrument issued by a constituent entity pursuant to prudential regulatory requirements applicable to the banking sector that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.

Additions to covered taxes (涵蓋稅增加額) is defined in Article 4.1.2.

Adjusted asset gain (經調整資產收益) in respect of aggregate asset gain that is subject to an election under Article 3.2.6

means an amount equal to the aggregate asset gain in the election year, reduced by any amount of such gain that has been applied against the net asset loss in a prior loss year under Article 3.2.6(b) or (c).

Adjusted covered taxes (經調整涵蓋稅) is defined in Article 4.1.1.

Aggregate asset gain (總資產收益) in respect of an election under Article 3.2.6, means the net gain in the election year from the disposition of local tangible assets by all constituent entities located in the jurisdiction excluding the gain or loss on a transfer of assets between group members.

Agreed administrative guidance (《協定行政指引》) means guidance on the interpretation or administration of the GloBE rules issued by the Inclusive Framework.

Allocable share of the top-up tax (補足稅中的可分配份額) is defined in Article 2.2.1.

Annual election (年度選擇) means an election made by a filing constituent entity and that applies only for the fiscal year for which the election is made.

Allocated asset gain (獲分配資產收益) in respect of an election under Article 3.2.6, means the adjusted asset gain that is allocated to a fiscal year in the lookback period under Article 3.2.6(d).

Arm's length principle (獨立交易原則) means the principle under which transactions between constituent entities must be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.

Asymmetric foreign currency gains or losses (非對稱匯兌損益) means foreign currency gains or losses of an entity whose accounting and tax functional currencies are different and that are:

(a) included in the computation of a constituent entity's taxable income or loss and attributable to fluctuations in the exchange rate between its accounting functional currency and its tax functional currency;

(b) included in the computation of a constituent entity's financial accounting net income or loss and attributable to fluctuations in the exchange rate between its tax functional currency and its accounting functional currency;

(c) included in the computation of a constituent entity's financial accounting net income or loss and attributable to fluctuations in the exchange rate between a third foreign currency and its accounting functional currency; and

(d) attributable to fluctuations in the exchange rate between a third foreign currency and its tax functional currency, whether or not such foreign currency gain or loss is included in taxable income.

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 the constituent entity's financial accounting net income or loss. A third foreign currency is a currency that is not the constituent

entity's tax functional currency or accounting functional currency.

Authorised accounting body (獲認可會計團體) is the body with legal authority in a jurisdiction to prescribe, establish, or accept accounting standards for financial reporting purposes.

Authorised financial accounting standard (獲認可財務會計準則), in respect of any entity, means a set of generally acceptable accounting principles permitted by an authorised accounting body in the jurisdiction where that entity is located.

Average GloBE income or loss (全球反侵蝕稅基平均收入或虧損) is defined in Article 5.5.2.

Average GloBE revenue (全球反侵蝕稅基平均總收入) is defined in Article 5.5.2.

Commentary (《評註》) means the Commentary to the GloBE rules as developed by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.

Consolidated financial statements (綜合財務報表) means:

(a) the financial statements prepared by an entity in accordance with an acceptable financial accounting standard, in which the assets, liabilities, income, expenses and cash flows of that entity and the entities in which it has a controlling interest are presented as those of a single economic unit;

(b) where an entity meets the definition of a group under Article 1.2.3, the financial statements of the entity that are prepared in accordance with an acceptable financial accounting standard;

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

(d) where the ultimate parent entity does not prepare financial statements described in the paragraphs above, the consolidated financial statements of the ultimate parent entity are those that would have been prepared if such entity were required to prepare such statements in accordance with an authorised financial accounting standard that is either an acceptable financial accounting standard or another financial accounting standard that is adjusted to prevent any material competitive distortions.

Note—

In relation to Article 10.1.1 (definition of ***consolidated financial statement***), see the specified OECD GloBE rules guidance in—

(a) paragraphs 8.1 to 8.4 of Chapter 10 of the 2023 Commentary; and

(b) section 1.2 of the Feb-2023 Administrative Guidance.

Constituent entity (CE) (成員實體) is defined in Article 1.3.1.

Constituent entity-owner (成員實體暨擁有人) means a constituent entity that directly or indirectly owns an ownership interest in another constituent entity of the same MNE group.

Controlled foreign company tax regime (受控外國公司稅制) means a set of tax rules (other than an IIR) under which a direct or indirect shareholder of a foreign entity (the

controlled foreign company or CFC) is subject to current taxation on its share of part or all of the income earned by the CFC, irrespective of whether that income is distributed currently to the shareholder.

Controlling interest (控制權益) means an ownership interest in an entity such that the interest holder:

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

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

A main entity is deemed to have the controlling interests of its permanent establishments.

Note—

In relation to Article 10.1.1 (definition of ***controlling interest***), see the specified OECD GloBE rules guidance in—

(a) paragraph 8.5 of Chapter 10 of the 2023 Commentary;

(b) Example 10.1-4 of the Apr-2024 Illustrative Examples; and

(c) section 1.2 of the Feb-2023 Administrative Guidance.

Cooperative (合作社) means an entity that collectively markets or acquires goods or services on behalf of its members and that is subject to a tax regime in the jurisdiction in which it is located that is designed to ensure tax neutrality in respect of members' property or services sold through the cooperative and property or services acquired by members through the cooperative.

Covered taxes (涵蓋稅) is defined in Article 4.2.

Deductible dividend (可扣除股息) means, with respect to a constituent entity that is subject to a deductible dividend regime,

(a) a distribution of profits to the holder of an ownership interest that is deductible from taxable income of the constituent entity under the laws of the jurisdiction in which it is located; or

(b) a patronage dividend to a member of a cooperative.

Deductible dividend regime (可扣除股息制度) means a tax regime designed to yield a single level of taxation on the owners of an entity through a deduction from the income of the entity for distributions of profits to the owners. For this purpose, patronage dividends of a cooperative are treated as distributions to owners. A deductible dividend regime also includes a regime applicable to cooperatives that exempts the cooperative from taxation.

Deemed distribution tax (視同分派稅) is defined in Article 7.3.2.

Deemed distribution tax recapture account (視同分派稅轉回帳目) means an account maintained in accordance with Article 7.3.3.

Departing constituent entity (退出成員實體) means a constituent entity that is subject to an election under Article 7.3.1 and that leaves the MNE group or transfers substantially all of its assets to a person that is not a constituent entity of the same MNE group located in the same jurisdiction.

Designated filing entity (指定交表實體) means the constituent entity, other the ultimate parent entity, that has been appointed by the MNE Group to file the GloBE information return on behalf of the MNE Group.

Note—

As provided in Part 2 of this Schedule, the definition of ***designated filing entity*** is to be read to the effect that the expression has the meaning given by section 2 of Schedule 62.

Designated local entity (指定本地實體) means the constituent entity of an MNE Group that is located in Hong Kong and that has been appointed by the other constituent entities located in Hong Kong of the MNE Group to file the GloBE information return, or to submit the notifications under Article 8.1.3.

Note—

As provided in Part 2 of this Schedule, the definition of ***designated local entity*** is to be read to the effect that the expression has the meaning given by section 2 of Schedule 62.

Disallowed accrual (不容許的累算) is defined in Article 4.4.6.

Disposition recapture ratio (處置轉回比率) is defined in Article 7.3.8.

Disqualified refundable imputation tax (不合資格可退還歸集稅) means any amount of tax, other than a qualified imputation tax, accrued or paid by a constituent entity that is:

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

(b) refundable to the distributing corporation upon distribution of a dividend.

Note—

In relation to Article 10.1.1 (definition of ***disqualified refundable imputation tax***), see the specified OECD GloBE rules guidance in paragraph 11 of Chapter 10 of the 2023 Commentary.

Dual-listed arrangement (雙重上市安排) means an arrangement entered into by two or more ultimate parent entities of separate groups, under which:

(a) the ultimate parent entities agree to combine their business by contract alone;

(b) pursuant to contractual arrangements the ultimate parent entities will make distributions (with respect to dividends and in liquidation) to their shareholders based on a fixed ratio;

(c) their activities are managed as a single economic entity under contractual arrangements while retaining their separate legal identities;

(d) the ownership interests in the ultimate parent entities comprising the agreement are quoted, traded or transferred independently in different capital markets; and

(e) the ultimate parent entities prepare consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups are presented together as those of a single economic unit and that are required by a regulatory regime to be externally audited.

Effective tax rate (ETR) (有效稅率) is defined in Article 5.1.1.

Election year (選擇年度) in respect of an annual election means the year for which the election is made.

Eligible distribution tax system (具資格分派稅制度) means a corporate income tax system that:

(a) imposes an income tax on the corporation with the tax generally payable only when the corporation distributes profits to shareholders, is deemed to distribute profits to shareholders, or incurs certain non-business expenses;

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

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

Note—

In relation to Article 10.1.1 (definition of ***eligible distribution tax system***), see—

(a) the specified OECD GloBE rules guidance in paragraph 14 of Chapter 10 of the 2023 Commentary; and

(b) the specified OECD GloBE rules guidance in paragraph 16 of Chapter 10 of the 2023 Commentary.

Eligible employees (具資格僱員) means 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.

Eligible payroll costs (具資格薪金成本) 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.

Eligible tangible assets (具資格有形資產) is defined in Article 5.3.4.

Entity (實體) means:

(a) any legal person (other than a natural person); or

(b) an arrangement that prepares separate financial accounts, such as a partnership or trust.

Note—

In relation to Article 10.1.1 (definition of ***entity***), see the specified OECD GloBE rules guidance in—

(a) paragraph 17.1 of Chapter 10 of the 2023 Commentary; and

(b) section 1.2 of the Feb-2023 Administrative Guidance.

ETR adjustment article (有效稅率調整條文) means Article 3.2.6, Article 4.4.4, Article 4.6.1, Article 4.6.4, and Article 7.3.

Excess profit (超額利潤) is defined in Article 5.2.2.

Excluded dividends (被豁除股息) means dividends or other distributions received or accrued in respect of an ownership interest, except for:

(a) a short-term portfolio shareholding, and

(b) an ownership interest in an investment-related entity that is subject to an election under Article 7.6.

Excluded entity (被豁除實體) is defined in Article 1.5.1 and Article 1.5.2.

Excluded equity gain or loss (被豁除股權損益) means the gain, profit or loss included in the financial accounting net income or loss of the constituent entity arising from:

(a) gains and losses from changes in fair value of an ownership interest, except for a portfolio shareholding;

(b) profit or loss in respect of an ownership interest included under the equity method of accounting; and

(c) gains and losses from disposition of an ownership interest, except for a disposition of a portfolio shareholding.

Filing constituent entity (交表成員實體) is an entity filing the GloBE information return in accordance with Article 8.1.

Note—

The reference in the definition of ***filing constituent entity*** to "Article 8.1" is to be read as "Part 2 of Schedule 62", because of Part 2 of this Schedule.

Financial accounting net income or loss (財務會計淨收入或虧損) is defined in Article 3.1.2.

Fiscal year (財政年度) means an accounting period with respect to which the ultimate parent entity of the MNE group prepares its consolidated financial statements. In the case of consolidated financial statements as defined in paragraph (d) of its definition, fiscal year means the calendar year.

Five-year election (五年度選擇) means an election made by a filing constituent entity with respect to a fiscal year (the election year) that cannot be revoked with respect to the election year or the four succeeding fiscal years. If a five-year election is revoked with respect to a fiscal year (the revocation year), a new election cannot be made with respect to the four fiscal years succeeding the revocation year.

General government (一般政府) means the central administration, agencies whose operations are under its effective control, state and local governments and their administrations.

GloBE implementation framework (全球反侵蝕稅基實施框架) means the procedures to be developed by the Inclusive Framework on BEPS in order to develop administrative rules, guidance, and procedures that will facilitate the co-ordinated implementation of the GloBE rules.

GloBE income of all constituent entities (所有成員實體的全球反侵蝕稅基收入) is defined in Article 5.1.2(a).

GloBE income or loss of a constituent entity (成員實體的全球反侵蝕稅基收入或虧損) is defined in Article 3.1.1.

GloBE information return (全球反侵蝕稅基資料報表) means that standardized return to be developed in accordance with the GloBE implementation framework that contains the information described in Article 8.1.4.

Note—

The reference in the definition of ***GloBE information return*** to "Article 8.1.4" is to be read as "section 10 of Schedule 62", because of Part 2 of this Schedule.

GloBE loss deferred tax asset (全球反侵蝕稅基虧損遞延稅項資產) is defined in Article 4.5.

GloBE loss election (全球反侵蝕稅基虧損選擇) is defined in Article 4.5.1.

GloBE losses of all constituent entities (所有成員實體的全球反侵蝕稅基虧損) is defined in Article 5.1.2(b).

GloBE reorganisation (全球反侵蝕稅基重組) means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation, or similar transaction where:

(a) the consideration for the transfer is, in whole or in significant part, equity interests issued by the acquiring constituent entity or by a person

connected with the acquiring constituent entity, or, in the case of a liquidation, equity interests of the target (or, when no consideration is provided, where the issuance of an equity interest would have no economic significance);

(b) the disposing constituent entity's gain or loss on those assets is not subject to tax, in whole or in part; and

(c) the tax laws of the jurisdiction in which the acquiring constituent entity is located require the acquiring constituent entity to compute taxable income after the disposition or acquisition using the disposing constituent entity's tax basis in the assets, adjusted for any non-qualifying gain or loss on the disposition or acquisition.

Note—

In relation to Article 10.1.1 (definition of ***GloBE reorganisation***), see the specified OECD GloBE rules guidance in paragraph 22 of Chapter 10 of the 2023 Commentary.

GloBE revenue (全球反侵蝕稅基總收入) is defined in Article 5.5.3(a) for the purposes of Article 5.5.2.

GloBE rules (《全球反侵蝕稅基規則》) means this set of rules as developed by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.

GloBE safe harbour (全球反侵蝕稅基安全港) means the exception provided in Article 8.2.1 to facilitate compliance by MNEs and administration by tax authorities. The conditions under which the constituent entities of an MNE group located in a jurisdiction are eligible to the GloBE safe harbour will be established in accordance with a common and agreed process to be

defined as part of the work undertaken by the Inclusive Framework on BEPS to develop the GloBE implementation framework.

Governmental entity (政府實體) means an entity that meets all of the following criteria set out in paragraphs (a) to (d) below:

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

(b) it has the principal purpose of:

(i) fulfilling a government function; or

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

and does not carry on a trade or business;

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

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

Group (集團) is defined in Article 1.2.2 and 1.2.3.

Group entity (集團實體), in respect of any entity or group, means an entity that is a member of the same group.

High-tax counterparty (高稅對手方) means a constituent entity that is located in a jurisdiction that is not a low-tax

jurisdiction or that is located in a jurisdiction that would not be a low-tax jurisdiction if its ETR were determined without regard to any income or expense accrued by that entity in respect of an intragroup financing arrangement.

IFRS means the International Financial Reporting Standards.

IIR (收入納入規則) means the rules set out in Article 2.1 to Article 2.3.

Included revaluation method gain or loss (列入重估方法的損益) means the net gain or loss, increased or decreased by any associated covered taxes, for the fiscal year in respect of all property, plant and equipment that arises under an accounting method or practice that:

(a) periodically adjusts the carrying value of such property to its fair value;

(b) records the changes in value in other comprehensive income; and

(c) does not subsequently report the gains or losses recorded in other comprehensive income through profit and loss.

Insurance investment entity (保險投資實體) means an entity that would meet the definition of an investment fund or a real estate investment vehicle except that it is established in relation to liabilities under an insurance or annuity contract and is wholly-owned by an entity that is subject to regulation in its location as an insurance company.

Note—

In relation to Article 10.1.1 (definition of ***insurance investment entity***), see the specified OECD GloBE rules guidance in paragraph 90 of Chapter 7 of the 2023 Commentary.

Intermediate parent entity (中間母實體) means a constituent entity (other than a ultimate parent entity, partially-owned parent entity, permanent establishment or investment-related entity) that owns (directly or indirectly) an ownership interest in another constituent entity in the same MNE group.

International organisation (國際組織) means any intergovernmental organisation (including a supranational organisation) or wholly-owned agency or instrumentality thereof that meets all of the criteria set out in paragraphs (a) to (c) below:

(a) it is comprised primarily of governments;

(b) it has in effect a headquarters or substantially similar agreement (for example, arrangements that entitle the organisation's offices or establishments in the jurisdiction (e.g. a subdivision, or a local, or regional office) to privileges and immunities) with the jurisdiction in which it is established; and

(c) law or its governing documents prevent its income inuring to the benefit of private persons.

International shipping income (國際海運收入) is defined in Article 3.3.2.

Intragroup financing arrangement (集團內部融資安排) means any arrangement entered into between two or more members of the MNE group whereby a high tax counterparty directly or indirectly provides credit or otherwise makes an investment in a Low tax entity.

Investment entity (投資實體) means:

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

(b) an entity that is at least 95% owned directly by an entity described in paragraph (a) or through a chain of such entities and that operates exclusively or almost exclusively to hold assets or invest funds for the benefit of such investment entities; and

(c) an entity where at least 85% of the value of the entity is owned by an entity referred to in paragraph (a) provided that substantially all of the entity's income is excluded dividends or excluded equity gain or loss that is excluded from the computation of GloBE income or loss in accordance with Articles 3.2.1 (b) or (c).

Investment fund (投資基金) means an entity that meets all of the criteria set out in paragraphs (a) to (g) below:

(a) it is designed to pool assets (which may be financial and non-financial) from a number of investors (some of which are not connected);

(b) it invests in accordance with a defined investment policy;

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

(d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;

(e) investors have a right to return from the assets of the fund or income earned on those assets, based on the contributions made by those investors;

(f) the entity or its management is subject to a regulatory regime in the jurisdiction in which it is established or managed (including appropriate anti-

money laundering and investor protection regulation); and

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

Investment-related entity (投資相關實體) means an investment entity or an insurance investment entity.

Joint venture (JV) (合資企業) means an entity whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity provided that the ultimate parent entity holds directly or indirectly at least 50% of its ownership interests. A joint venture does not include:

(a) an ultimate parent entity of an MNE group that is subject to the GloBE rules;

(b) an excluded entity as defined by Article 1.5.1;

(c) an entity whose ownership interest held by the MNE group are held directly through an excluded entity referred in Article 1.5.1 and the entity:

(i) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors;

(ii) carries out activities that are ancillary to those carried out by the excluded entity; or

(iii) substantially all of its income is excluded from the computation of GloBE income or loss in accordance with Articles 3.2.1(b) and (c).

(d) an entity that is held by an MNE group composed exclusively of excluded entities; or

(e) a JV subsidiary.

JV group (合資企業集團) means a joint venture and its JV subsidiaries.

JV group top-up tax (合資企業集團補足稅) means the ultimate parent entity's allocable share of the top-up tax of all members of the JV group.

JV subsidiary (合資企業附屬公司) means an entity whose assets, liabilities, income, expenses and cash flows are consolidated by a joint venture under an acceptable financial accounting standard (or would have been consolidated had it been required to consolidate such items in accordance with an acceptable financial accounting standard). A permanent establishment whose main entity is the joint venture or a JV subsidiary shall be treated as a separate JV subsidiary.

Liable constituent entity (or entities) (應課稅成員實體) means one or several constituent entities located in Hong Kong that could be liable for top-up tax or subject to an adjustment under Chapter 2 if the GloBE safe harbour in Article 8.2.1 did not apply.

Local tangible asset (本地有形資產) means immovable property located in the same jurisdiction as the constituent entity.

Look-back period (回溯期) in respect of an election under Article 3.2.6, means the election year and the four prior fiscal years.

Loss year (虧損年度) in respect of jurisdiction for which the filing constituent entity has made an election under Article 3.2.6, means a fiscal year in the Lookback Period for which there is a net asset loss for a constituent entity located in that jurisdiction and the total amount of net

asset loss of all such constituent entities exceeds the total amount of their net asset gain.

Low-taxed constituent entity (低稅成員實體) means a constituent entity of the MNE group that is located in a low- tax jurisdiction or a stateless constituent entity that, in respect of a fiscal year, has GloBE income and is subject to an effective tax rate (as determined under Chapter 5) in that fiscal year is lower than the minimum rate.

Low-tax entity (低稅實體) means a constituent entity located in a Low tax jurisdiction or a jurisdiction that would be a low-tax jurisdiction if the effective tax rate for the jurisdiction were determined without regard to any income or expense accrued by that entity in respect of an intragroup financing arrangement.

Low-tax jurisdiction (低稅轄區), in respect of an MNE group in any fiscal year, means a jurisdiction where the MNE group has net GloBE income and is subject to an effective tax rate (as determined under Chapter 5) in that period that is lower than the minimum rate.

Main entity (主實體), in respect of a permanent establishment, is the entity that includes the financial accounting net income or loss of the permanent establishment in its financial statements.

Marketable transferable tax credit (可出售和轉讓的稅收抵免) 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 (a) the legal transferability standard and (b) the marketability standard in the hands of the holder.

(a) 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) 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.

Material competitive distortion (重大競爭扭曲) in respect of the application of a specific principle or procedure under a set of generally accepted accounting principles means an application that results in an 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. Where the application of a specific principle or procedure results in a material competitive distortion, the accounting treatment of any item or transaction subject to that

principle or procedure must be adjusted to conform to the treatment required for the item or transaction under IFRS in accordance with any agreed administrative guidance.

Minimum rate (最低稅率) means fifteen percent (15%).

Minority-owned constituent entity (被少數持股成員實體) means a constituent entity where the ultimate parent entity has a direct or indirect ownership interest in that entity of 30% or less.

Minority-owned parent entity (被少數持股母實體) means a minority-owned constituent entity that holds, directly or indirectly, the controlling interests of another minority-owned constituent entity, except where the controlling interests of the first-mentioned entity are held, directly or indirectly, by another minority-owned constituent entity.

Minority-owned subgroup (被少數持股子集團) means a minority-owned parent entity and its minority-owned subsidiaries.

Minority-owned subsidiary (被少數持股附屬公司) means a minority-owned constituent entity whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.

MNE group (跨國企業集團) is defined in Articles 1.2.1.

MNE group's allocable share of the investment-related entity's GloBE income (跨國企業集團在投資相關實體的全球反侵蝕稅基收入中的可分配份額) is defined in Article 7.4.4.

Multi-parented MNE group (多母實體跨國企業集團) means two or more groups where:

(a) the ultimate parent entities of those groups enter into an arrangement that is a stapled structure or a dual-listed arrangement; and

(b) at least one entity or permanent establishment of the combined group is located in a different jurisdiction with respect to the location of the other entities of the combined group.

Net asset gain (淨資產收益) in respect of an election under Article 3.2.6, means the net gain from the disposition of local tangible assets by a constituent entity located in the jurisdiction for which the election was made excluding the gain or loss on a transfer of assets to another group member.

Net asset loss (淨資產虧損) in respect of a constituent entity and a fiscal year, means the net loss from the disposition of local tangible assets by that constituent entity in that year excluding the gain or loss on a transfer of assets to another group member. The amount of net asset loss shall be reduced by the amount of net asset gain or adjusted asset gain which is set-off against such loss pursuant to the application of Article 3.2.6(b) or (c) as a result of a previous election made under Article 3.2.6.

Net book value of tangible assets (有形資產帳面淨值) means the average of the beginning and end values of tangible assets after taking into account accumulated depreciation, depletion, and impairment, as recorded in the financial statements.

Net GloBE income of a jurisdiction (司法管轄區的全球反侵蝕稅基淨收入) is defined in Article 5.1.2.

Net GloBE loss of a jurisdiction (司法管轄區的全球反侵蝕稅基淨虧損) is the nil or negative amount, if any, computed in accordance with the following formula:

$$\textit{Net GloBE Loss} = \textit{GloBE Income of all Constituent Entities} - \textit{GloBE Losses of all Constituent Entities}$$

where:

(a) the GloBE income of all constituent entities is the sum of the GloBE income of all constituent entities located in the jurisdiction determined in accordance with Chapter 3 for the fiscal year; and

(b) the GloBE losses of all constituent entities is the sum of the GloBE losses of all constituent entities located in the jurisdiction determined in accordance with Chapter 3 for the fiscal year.

Net taxes expense (淨稅項開支) means the net amount of:

(a) any covered taxes accrued as an expense and any current and deferred covered taxes included in the income tax expense, including covered taxes on income that is excluded from the GloBE income or loss computation;

(b) any deferred tax asset attributable to a loss for the fiscal year;

(c) any qualified domestic minimum top-up tax accrued as an expense;

(d) any taxes arising pursuant to the GloBE rules accrued as an expense;

(e) any disqualified refundable imputation tax accrued as an expense; and

(f) taxes accrued by an insurance company in respect of returns to policyholders to the extent that Article 3.2.9 applies in relation to those taxes.

Non-profit organisation (非牟利組織) means an entity that meets all of the following criteria:

(a) it is established and operated in its jurisdiction of residence:

(i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational, or other similar purposes; or

(ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

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

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

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

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

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

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

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

but does not include any entity carrying on a trade or business that is not directly related to the purposes for which it was established.

Non-qualified refundable tax credit (不合資格可退還稅收抵免) means a tax credit that is not a qualified refundable tax credit but that is refundable in whole or in part.

Non-qualifying gain or loss (不合資格的損益) means the lesser of the gain or loss of the disposing constituent entity arising in connection with a GloBE reorganisation that is subject to tax in the disposing constituent entity's location and the financial accounting gain or loss arising in connection with the GloBE reorganisation.

Number of employees (僱員人數), for the purposes of the UTPR percentage, means the total number of employees on a full-time equivalent (FTE) basis of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. For this purpose, independent contractors participating in the ordinary operating activities of the constituent entity are reported as employees. With regard to permanent establishments, employees should be allocated to the tax jurisdiction in which the permanent establishment is located when the payroll costs of such

employees are included in the separate financial accounts of that permanent establishment as determined by Article 3.4.1 and adjusted in accordance with 3.4.2. The number of employees attributed to the tax jurisdiction of a permanent establishment shall not be taken into account for the number of employees of the tax jurisdiction of the main entity.

OECD Model Tax Convention (《經合組織稅收協定範本》) means the 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.

Other comprehensive income (其他綜合收入) means items of income and expense that are not recognised in profit or loss as required or permitted by the authorised financial accounting standard used in the consolidated financial statements. other comprehensive income is usually reported as an adjustment to equity in the statement of financial position (balance sheet).

Ownership interest (擁有權權益) means any equity interest that carries rights to the profits, capital or reserves of an entity, including the profits, capital or reserves of a main entity's permanent establishment(s).

Note—

In relation to Article 10.1.1 (definition of ***ownership interest***), see—

(a) the specified OECD GloBE rules guidance in paragraph 85 of Chapter 10 of the 2023 Commentary;

(b) the specified OECD GloBE rules guidance in paragraph 81 of Chapter 10 of the 2023 Commentary; and

(c) the specified OECD GloBE rules guidance in paragraph 83 of Chapter 10 of the 2023 Commentary.

Parent entity (母實體) means an ultimate parent entity that is not an excluded entity, an intermediate parent entity, or a partially-owned parent entity.

Parent entity's inclusion ratio (母實體的納入比率) is defined in Article 2.2.2.

Partially-owned parent entity (被局部持股母實體) means a constituent entity (other than a ultimate parent entity, permanent establishment or investment-related entity) that:

(a) owns (directly or indirectly) an ownership interest in another constituent entity of the same MNE group; and

(b) has more than 20% of the ownership interests in its profits held directly or indirectly by persons that are not constituent entities of the MNE group.

Passive income (被動收入) means income included in GloBE income that is:

(a) a dividend or dividend equivalents;

(b) interest or interest equivalent;

(c) rent;

(d) royalty;

(e) annuity; or

(f) net gains from property of a type that produces income described in paragraphs (a) to (e),

but only to the extent a constituent entity-owner is subject to tax on such income under a controlled foreign company tax regime or as a result of an ownership interest in a hybrid entity.

Pension fund (退休基金) means:

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

i. regulated as such by that jurisdiction or one of its political subdivisions or local authorities; or

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

(b) a pension services entity.

Pension services entity (退休金服務實體) means an entity that is established and operated exclusively or almost exclusively:

(a) to invest funds for the benefit of entities referred to in paragraph (a) of the definition of pension fund; or

(b) to carry out activities that are ancillary to those regulated activities carried out by the entities referred to in paragraph (a) of the definition of pension fund provided that they are members of the same group.

Permanent establishment (常設機構) means:

(a) a place of business (including a deemed place of business) situated in a jurisdiction and treated as a permanent establishment in accordance with an applicable tax treaty in force provided that such jurisdiction taxes the income attributable to it in

accordance with a provision similar to Article 7 of the OECD Model Tax Convention on Income and on Capital;

(b) if there is no applicable tax treaty in force, a place of business (including a deemed place of business) in respect of which a jurisdiction taxes under its domestic law the income attributable to such place of business on a net basis similar to the manner in which it taxes its own tax residents;

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

(d) a place of business (or a deemed place of business) that is not already described in paragraphs (a) to (c) through which operations are conducted outside the jurisdiction where the entity is located provided that such jurisdiction exempts the income attributable to such operations.

Policy disallowed expenses (政策不容許的開支) means:

(a) expenses accrued by the constituent entity for illegal payments, including bribes and kickbacks; and

(b) expenses accrued by the constituent entity for fines and penalties that equal or exceed EUR 50 000 (or an equivalent in the functional currency in which the constituent entity's financial accounting net income or loss was calculated).

Portfolio shareholding (投資組合股權) means ownership interests in an entity that are held by the MNE group and that carry rights to less than 10% of the profits, capital, reserves, or voting rights of that entity at the vesting date of the distribution or the date of disposition. In the case of an excluded equity gain or loss as defined by paragraph (a) of the definition in Article 10.1.1, the 10% threshold is tested at the end of the fiscal year. The vesting date of a distribution is the earlier of—

(a) the date of distribution; and

(b) the date on which the constituent entity becomes entitled to the distribution.

Prior period errors and changes in accounting principles (前期錯誤及會計原則的變動) means all changes in the opening equity at the beginning of the fiscal year of a constituent entity attributable to:

(a) a correction of an error in the determination of financial accounting net income in a previous fiscal year that affected the income or expenses includible in the computation of GloBE income or loss for such fiscal year, except to the extent such error correction resulted in a material decrease to a liability for covered taxes subject to Article 4.6; or

(b) a change in accounting principle or policy that affects income or expenses includible in the computation of GloBE income or loss.

Qualified ancillary international shipping income (合資格附帶國際海運收入) is defined in Article 3.3.3.

Qualified domestic minimum top-up tax (合資格當地最低補足稅) means a minimum tax that is included in the domestic law of a jurisdiction and that:

(a) determines the excess profits of the constituent entities located in the jurisdiction (domestic excess profits) in a manner that is equivalent to the GloBE rules;

(b) operates to increase domestic tax liability with respect to domestic excess profits to the minimum rate for the jurisdiction and constituent entities for a fiscal year;

(c) is implemented and administered in a way that is consistent with the outcomes provided for under the GloBE rules and the Commentary, provided that such jurisdiction does not provide any benefits that are related to such rules; and

(d) has the status of a qualified domestic minimum top-up tax (including transitional qualified status) for the fiscal year as determined by the Inclusive framework.

A qualified domestic minimum top-up tax may compute domestic excess profits based on an acceptable financial accounting standard permitted by the authorised accounting body or an authorised financial accounting standard adjusted to prevent any material competitive distortions, rather than the financial accounting standard used in the consolidated financial statements.

Qualified IIR (合資格收入納入規則) means a set of rules equivalent to Article 2.1 to Article 2.3 of the GloBE rules (including any provisions of the GloBE rules associated with those articles) that are included in the domestic law of a jurisdiction and that are implemented and administered in a way that is consistent with the outcomes provided for under the GloBE rules and the Commentary

provided that such jurisdiction does not provide any benefits that are related to such rules, and the rules have qualified status (including transitional qualified status) for the fiscal year as determined by the Inclusive Framework.

Qualified imputation tax (合資格歸集稅) means a covered tax accrued or paid by a constituent entity that is refundable or creditable to the beneficial owner of a dividend distributed by such constituent entity (or, in the case of a covered tax accrued or paid by a permanent establishment, a dividend distributed by the main entity) to the extent that the refund is payable, or the credit is provided:

(a) by a jurisdiction other than the jurisdiction which imposed the covered taxes under a foreign tax credit regime;

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

(c) to an individual beneficial owner of the dividend who is tax resident in the jurisdiction which imposed the covered taxes on the constituent entity and who is subject to tax on the dividends as ordinary income; or

(d) to a governmental entity, an international organisation, a resident non-profit organisation, a resident pension fund, a resident investment entity that is not a group entity, or a resident life insurance company to the extent that the dividends are received in connection with a pension fund business

and subject to tax in a similar manner as a dividend received by pension fund.

For purposes of paragraph (d), a non-profit organisation or pension fund is resident in a jurisdiction if it is created and managed in that jurisdiction, and an investment entity is resident in a jurisdiction if it is created and regulated in the jurisdiction. A life insurance company is resident in the jurisdiction in which it is located.

Qualified refundable tax credit (合資格可退還稅收抵免) means a refundable tax credit designed in a way such that it must be paid as cash or available as cash equivalents within four years from when a constituent entity satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit. A tax credit that is refundable in part is a qualified refundable tax credit to the extent it must be paid as cash or available as cash equivalents within four years from when a constituent entity satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit. A qualified refundable tax credit does not include any amount of tax creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax.

Qualified UTPR (合資格低稅利潤規則) means a set of rules equivalent to Article 2.4 to Article 2.6 of the GloBE rules (including any provisions of the GloBE rules associated with those articles) that are included in the domestic law of a jurisdiction and that are implemented and administered in a way that is consistent with the outcomes provided for under the GloBE rules and the Commentary provided that such jurisdiction does not provide any benefits that are related to such rules, and the rules have

qualified status (including transitional qualified status) for the fiscal year as determined by the Inclusive Framework.

Qualifying competent authority agreement (合資格主管當局協議) means a bilateral or multilateral agreement or arrangement between competent authorities that provides for the automatic exchange of annual GloBE information returns.

Real estate investment vehicle (房地產投資工具) means an entity the taxation of which achieves a single level of taxation either in its hands or the hands of its interest holders (with at most one year of deferral), provided that that person holds predominantly immovable property and is itself widely held.

Note—

In relation to Article 10.1.1 (definition of ***real estate investment vehicle***), see the specified OECD GloBE rules guidance in paragraph 147 of Chapter 10 of the 2023 Commentary.

Recaptured deferred tax liability (轉回遞延稅項負債) is defined in Article 4.4.4.

Recapture exception accrual (轉回例外累算) is defined in Article 4.4.5.

Reductions to covered taxes (涵蓋稅扣減額) is defined in Article 4.1.3.

Reference jurisdiction (參照轄區) is defined in Article 9.3.3.

Reporting fiscal year (申報財政年度) means the fiscal year that is the subject of the GloBE information return.

Restricted Tier One Capital (受限制一級資本) means an instrument issued by a constituent entity pursuant to prudential regulatory requirements applicable to the insurance sector that is convertible to equity or written

down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.

Short-term portfolio shareholding (短期投資組合股權) means a portfolio shareholding that has been economically held by the constituent entity that receives or accrues the dividends or other distributions for less than one year at the vesting date of the distribution.

Stapled structure (合訂結構) means an arrangement entered into by two or more ultimate parent entities of separate groups, under which:

(a) 50% or more of the ownership interests in the ultimate parent entities of the separate groups are by reason of form of ownership, restrictions on transfer, or other terms or conditions combined with each other, and cannot be transferred or traded independently. If the combined ownership interests are listed, they are quoted at a single price; and

(b) one of those ultimate parent entities prepares consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups are presented together as those of a single economic unit and that are required by a regulatory regime to be externally audited.

Stateless constituent entity (無國籍成員實體) means a constituent entity described in Article 10.3.2(b) and Article 10.3.3(d).

Substance-based income exclusion (實質收入豁除額) is defined in Article 5.3.

Tangible assets (有形資產), for the purposes of the UTPR percentage and for Article 9.3, means the tangible assets of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. Tangible assets do not include cash or cash equivalents, intangibles, or financial assets. With regard to permanent establishments, tangible assets should be allocated to the tax jurisdiction in which the permanent establishment is located provided those tangible assets are included in the separate financial accounts of that permanent establishment as determined by Article 3.4.1 and adjusted in accordance with Article 3.4.2. The tangible assets allocated to the tax jurisdiction of a permanent establishment shall not be taken into account for the tangible assets of the tax jurisdiction of the main entity.

Tax (稅收) means a compulsory unrequited payment to general government.

Taxable distribution method (應課稅分派方法) is defined in Article 7.6.2.

Tax treaty (稅收協定) means an agreement for the avoidance of double taxation with respect to taxes on income and on capital.

Tested year (測試年度) is defined in Article 7.6.5.

Testing period (測試期) is defined in Article 7.6.5.

Top-up tax (補足稅) means the top-up tax computed for the jurisdiction or constituent entity pursuant to Article 5.2.

Top-up tax percentage (補足稅百分率) is defined in Article 5.2.1.

Total deferred tax adjustment amount (遞延稅項調整總額) is defined in Article 4.4.1.

Total UTPR top-up tax amount (低稅利潤規則補足稅總額) means the total amount of top-up tax that is allocable under the UTPR as defined in Article 2.4.1.

Transition year (過渡年度), for a jurisdiction, means the first fiscal year that the MNE group comes within the scope of the GloBE rules in respect of that jurisdiction.

Ultimate parent entity (UPE) (最終母實體) is defined in Article 1.4.

Undistributed net GloBE income (未分派全球反侵蝕稅基淨收入) is defined in Article 7.6.3.

UPE jurisdiction (最終母實體轄區) means the jurisdiction where the ultimate parent entity is located.

UTPR (低稅利潤規則) means the rules set out in Article 2.4 to Article 2.6.

Note—

The reference in the definition of ***UTPR*** to "Article 2.4 to Article 2.6" is to be read as "Article 2.4 to Article 2.6, read with Part 2 of this Schedule", because of Part 2 of this Schedule.

UTPR jurisdiction (低稅利潤規則轄區) means a jurisdiction that has a qualified UTPR in force.

UTPR percentage (低稅利潤規則百分率) means the percentage of total UTPR top-up tax amount that is allocated to a UTPR jurisdiction in accordance with the formula provided in 2.6.1.

UTPR top-up tax amount (低稅利潤規則補足稅額) means the amount of top-up tax allocated to a UTPR jurisdiction under the UTPR.

Article 10.2. Definitions of flow-through entity, tax transparent entity, reverse hybrid entity, and hybrid entity

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

(a) A flow-through entity is a ***tax transparent entity*** with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located.

(b) A flow-through entity is a ***reverse hybrid entity*** with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which the owner is located.

10.2.2. An entity is treated as fiscally transparent under the laws of a jurisdiction, if that jurisdiction treats the income, expenditure, profit or loss of that entity as if it were derived or incurred by the direct owner of that entity in proportion to its interest in that entity.

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

10.2.4. A constituent entity that is not a tax resident and not subject to a covered tax or a qualified domestic minimum top-up tax based on its place of management, place of creation, or similar criteria shall be treated as a flow-through entity and a tax transparent entity in respect of its income, expenditure, profit or loss to the extent that:

(a) its owners are located in a jurisdiction that treats the entity as fiscally transparent;

(b) it does not have a place of business in the jurisdiction where it was created; and

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

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

Article 10.3. Location of an entity and a permanent establishment

10.3.1. The location of an entity that is not a flow-through entity is determined as follows:

(a) if it is a tax resident in a jurisdiction based on its place of management, place of creation or similar criteria, it is located in that jurisdiction; and

(b) in other cases, it is located in the jurisdiction in which it was created.

Note—

Section 2(9) is relevant in determining whether an entity is a tax resident in Hong Kong.

10.3.2. The location of an entity that is a flow-through entity is determined as follows:

(a) if it is the ultimate parent entity of the MNE group or it is required to apply an IIR in accordance with Article 2.1, it is located in the jurisdiction where it was created; and

(b) in other cases, it shall be treated as a stateless entity.

10.3.3. The location of a permanent establishment is determined as follows:

(a) if it is described in paragraph (a) of the definition in Article 10.1, is located in the jurisdiction where it is treated as a permanent establishment and is taxed under the applicable tax treaty in force;

(b) if it is described in paragraph (b) of the definition in Article 10.1, is located in the jurisdiction where it is subject to net basis taxation based on its business presence;

(c) if it is described in paragraph (c) of the definition in Article 10.1, is located in the jurisdiction where it is situated; and

(d) if it is described in paragraph (d) of the definition in Article 10.1, is considered as a stateless permanent establishment.

10.3.4. Where by reason of Article 10.3.1, a constituent entity is located in more than one jurisdiction (a dual-located entity), then its status for purposes of the GloBE rules shall be determined as follows:

(a) if it is located in two jurisdictions that have an applicable tax treaty in force:

(i) it shall be located in the jurisdiction where it is considered as a deemed resident for purposes of the tax treaty;

(ii) if the tax treaty requires the competent authorities to reach a mutual agreement on the deemed residence of the constituent entity for purposes of the tax treaty and no agreement exists, then paragraph (b) shall apply;

(iii) if the tax treaty does not provide relief or exemption from tax because the constituent entity is a tax resident of both contracting parties, then paragraph (b) shall apply;

(b) if no tax treaty applies, then its location shall be determined as follows:

(i) it shall be located in the jurisdiction where it paid the greater amount of covered taxes for the fiscal year, without considering the ones paid in accordance with a controlled foreign company tax regime;

(ii) if the amount of covered taxes paid in both jurisdiction is the same or zero, it shall be located in the jurisdiction where it has the greater amount of substance-based income exclusion computed on an entity basis in accordance with Article 5.3;

(iii) if the amount of the substance-based income exclusion in both jurisdictions is the same or zero, then it is considered a stateless constituent entity unless it is the ultimate parent entity of the MNE group in which case it shall be located in the jurisdiction where it was created.

Note—

In relation to Article 10.3.4, see the specified OECD GloBE rules guidance in paragraphs 198 and 207 of Chapter 10 of the 2023 Commentary.

10.3.5. Where, under Article 10.3.4, a dual-located entity that is a parent entity is located in a jurisdiction where it is not subject to a qualified IIR, then the other jurisdiction can require such entity to apply its qualified IIR unless it is restricted by an applicable tax treaty in force.

10.3.6. Where an entity has changed its location during the fiscal year, it shall be located in the jurisdiction where it was located at the beginning of that year.

Part 2

Modifications to Rules in Part 1 of this Schedule

1. The rules in Part 1 of this Schedule are modified as specified in this Part.

2. Article 2.4.1 in Part 1 of this Schedule is to be read as—

"2.4.1. Constituent entities of an MNE Group located in Hong Kong (***HK constituent entities***) are subject to an adjustment that is equivalent to a denial of a deduction in an amount resulting in those constituent entities having an additional cash tax expense equal to the UTPR top-up tax amount allocated to Hong Kong for the fiscal year.

The adjustment must be made in the form of an additional tax imposed for the fiscal year directly on the HK constituent entities of the MNE group in an amount equal to the UTPR top-up tax amount allocated to Hong Kong for the fiscal year.".

3. The UTPR top-up tax amount for an MNE group allocated to a HK constituent entity of the MNE group must be determined for a fiscal year by multiplying—

(a) the UTPR top-up tax amount for the MNE group allocated to Hong Kong, under Article 2.6.1 in Part 1 of this Schedule, for the fiscal year; by

(b) the HK constituent entity's UTPR percentage for the group for the fiscal year.

The UTPR percentage of a HK constituent entity (***CE1***) for an MNE group must be determined for each fiscal year as follows—

$$50\% \times \frac{\textit{Number of employees of CE1}}{\textit{Number of employees of all HK constituent entities of the MNE group}} + 50\% \times \frac{\textit{Total value of tangible assets of CE1}}{\textit{Total value of tangible assets of all HK constituent entities of the MNE group}}$$

4. In Article 6.5.1(f) in Part 1 of this Schedule, "Article 2.4 to Article 2.6" is to be read as "Article 2.4 to Article 2.6, read with Part 2 of this Schedule".

5. In Article 6.5.1(g) in Part 1 of this Schedule, "Article 8.1" is to be read as "Part 2 of Schedule 62".

6. In Article 10.1.1 in Part 1 of this Schedule, the definitions of ***designated filing entity*** and ***designated local entity*** are to be read as—

"***Designated filing entity*** (指定交表實體) has the meaning given by section 2 of Schedule 62.

Designated local entity (指定本地實體) has the meaning given by section 2 of Schedule 62.".

7. In Article 10.1.1 in Part 1 of this Schedule, in the definition of ***filing constituent entity***, "Article 8.1" is to be read as "Part 2 of Schedule 62".

8. In Article 10.1.1 in Part 1 of this Schedule, in the definition of ***GloBE information return***, "Article 8.1.4" is to be read as "section 10 of Schedule 62".

9. In Article 10.1.1 in Part 1 of this Schedule, in the definition of ***UTPR***, "Article 2.4 to Article 2.6" is to be read as "Article 2.4 to Article 2.6, read with Part 2 of this Schedule".

Part 3

Safe Harbours for Top-up Taxes under GloBE Rules

Division 1—Preliminary

1. Interpretation of Part 3 of Schedule 60

(1) In this Part—

country-by-country report (國別報告) has the meaning given by section 58B(2);

standalone JV (獨立合資企業) means a joint venture that has no JV subsidiary.

(2) Unless the contrary intention appears, an expression used in this Part, and defined or otherwise explained in any provision of Part 4AA or Part 1 of this Schedule (***definition provisions***), has the same meaning as in the definition provisions.

(3) In this Part—

(a) a reference to a joint venture of an MNE group is a reference to an entity that falls within the definition of ***joint venture*** in Article 10.1.1 of the GloBE rules,

with the UPE of the MNE group as the UPE referred to in the definition;

(b) if a joint venture of an MNE group has no JV subsidiary, the joint venture is a standalone JV of the MNE group; and

(c) if a joint venture of an MNE group has one or more JV subsidiaries, the joint venture and the JV subsidiaries are collectively a JV group of the MNE group and are members of the JV group.

Division 2—Transitional CbCR Safe Harbour

Subdivision 1—Preliminary

2. Interpretation of Division 2 of Part 3 of Schedule 60

(1) In this Division—

profit or loss before income tax (扣除入息稅前利潤或虧損), in relation to an MNE group for a jurisdiction for a fiscal year, means the profit or loss of the MNE group before income tax for the jurisdiction for the fiscal year as reported in the group's qualified CbC report for the fiscal year;

qualified CbC report (合資格國別報告) means, subject to subsection (3), a country-by-country report prepared and filed using qualified financial statements;

qualified financial statements (合資格財務報表)—see section 3 of this Part;

simplified ETR (簡化有效稅率)—see section 7(2) of this Part;

total revenue (總收入), in relation to an MNE group in a jurisdiction for a fiscal year, means the MNE group's total revenue for the jurisdiction as reported in the group's qualified CbC report for the fiscal year;

transition period (過渡期) means a period that covers all the fiscal years beginning on or before 31 December 2026 but does not include a fiscal year ending after 30 June 2028;

transitional CbCR safe harbour (過渡性國別報告安全港) means the treatment of an MNE group for a jurisdiction for a fiscal year in accordance with section 4 of this Part.

(2) Subsection (3) applies if—

(a) an MNE group is in the scope of the GloBE rules but is not required to file a country-by-country report; and

(b) the MNE group completes section 2.2.1.3(a) of the GloBE information return, using the data from qualified financial statements that would have been reported as total revenue, and profit or loss before income tax, in a qualified CbC report had the MNE group been required to file a country-by-country report.

(3) In relation to an MNE group referred to in subsection (2)—

(a) a reference in this Division to an amount as reported in a qualified CbC report is to be read as including—

(i) the amounts that would have been reported in a qualified CbC report if the MNE group were required to file a country-by-country report in accordance with the CbC requirements in the UPE jurisdiction; or

(ii) if the UPE jurisdiction does not have CbC requirements, the amounts that would have

been reported in accordance with the CbCR documents (as defined by section 58B(2));

(b) a reference in this Division to having submitted a qualified CbC report is to be read as a reference to having prepared qualified financial statements containing the data that would have been reported as mentioned in subsection (2)(b); and

(c) a reference in this Division to a qualified CbC report is to be read as a reference to the qualified financial statements referred to in paragraph (b).

3. Meaning of *qualified financial statements*

(1) In this Division—

qualified financial statements (合資格財務報表), in relation to an MNE group, means—

(a) the accounts used to prepare the consolidated financial statements of the UPE of the MNE group (***reporting package***);

(b) separate financial statements of each constituent entity of the MNE group if—

(i) they are prepared in accordance with either an acceptable financial accounting standard or an authorised financial accounting standard; and

(ii) the information contained in such statements is maintained based on that accounting standard and is reliable;

(c) in the case of a constituent entity of the MNE group that is not included in the MNE group's consolidated financial statements on a line-by-line basis solely due to size or materiality grounds—the financial

accounts of the constituent entity that are used for preparation of the MNE group's country-by-country report; or

(d) in the case of a constituent entity of the MNE group that is a permanent establishment having neither separate financial accounts described in paragraph (a), nor separate financial statements described in paragraph (b)—the separate financial statements prepared by the main entity of the permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes.

(2) However, a constituent entity's reporting package, or any separate financial statements described in paragraph (b) of the definition of ***qualified financial statements*** in subsection (1), incorporating the purchase price accounting adjustment allocated by the MNE group, are not qualified financial statements, unless the consistent reporting condition is met, and the goodwill impairment adjustment is made.

(3) The consistent reporting condition is met where the qualified CbC report was based on the constituent entity's reporting package, or separate financial statements, incorporating the purchase price accounting adjustment if—

(a) the MNE group has not submitted a qualified CbC report, for a fiscal year beginning after 31 December 2022, that was based on the constituent entity's reporting package, or separate financial statements, without the purchase price accounting adjustment; or

(b) the constituent entity was required by law or regulation to change its reporting package, or separate financial statements, to incorporate the purchase price accounting adjustment.

(4) The goodwill impairment adjustment is made if any reduction to the constituent entity's income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 is added back to the MNE group's profit or loss before income tax for the jurisdiction for the fiscal year—

(a) for applying the routine profit test under section 8 of this Part; and

(b) for applying the simplified ETR test under section 7 of this Part, but only if the financial accounts do not also have a reversal of deferred tax liability, or recognition or increase of deferred tax asset, in respect of the impairment of goodwill.

Subdivision 2—Application to Constituent Entities

4. Transitional CbCR safe harbour

Subject to sections 9, 10, 11, 12 and 13 of this Part, an MNE group's jurisdictional top-up tax under the GloBE rules for a jurisdiction for a fiscal year in the transition period, for constituent entities located in the jurisdiction, is taken to be zero if—

(a) either—

(i) a qualified CbC report for the MNE group has been filed for the jurisdiction for the fiscal year; or

(ii) if the MNE group is not required to file a country-by-country report, the filing constituent entity—

(A) has filed a GloBE information return for the MNE group for the fiscal year, and has completed section 2.2.1.3(a) of the return for the jurisdiction for the fiscal year; and

(B) for the purposes of sub-subparagraph (A), has used the data from qualified financial statements that would have been reported as total revenue, and profit or loss before income tax, in a qualified CbC report had the MNE group been required to file a country-by-country report;

(b) the filing constituent entity has made an election under section 5 of this Part for the jurisdiction and the fiscal year;

(c) the MNE group meets one of the following tests for the jurisdiction for the fiscal year—

(i) the de minimis test under section 6 of this Part;

(ii) the simplified ETR test under section 7 of this Part;

(iii) the routine profits test under section 8 of this Part; and

(d) all of the data used to perform the computations under sections 6, 7 and 8 of this Part for all of the constituent entities of the MNE group that are located in the jurisdiction for the particular fiscal

year (other than any non-material constituent entities (as defined by section 35 of this Schedule) or permanent establishments) comes from either of the following only—

(i) qualified financial statements described in paragraph (a) of the definition of ***qualified financial statements*** in section 3(1) of this Part;

(ii) qualified financial statements described in paragraph (b) of that definition.

5. Election for transitional CbCR safe harbour

(1) A filing constituent entity of an MNE group may make an election for transitional CbCR safe harbour for the MNE group for a jurisdiction for a fiscal year.

(2) An election under subsection (1) is an annual election.

(3) A filing constituent entity may not make an election for transitional CbCR safe harbour for a jurisdiction for a fiscal year if it has made an election for transitional UTPR safe harbour, under section 18 of this Part, for the jurisdiction for the fiscal year.

6. De minimis test

(1) An MNE group meets the de minimis test for a jurisdiction for a fiscal year if—

(a) the MNE group's total revenue for the jurisdiction for the fiscal year is less than EUR 10 million; and

(b) the MNE group's profit or loss before income tax for the jurisdiction for the fiscal year is less than EUR 1 million.

(2) For the purposes of subsection (1)(a), if a constituent entity of the MNE group is held for sale and its revenue are not already included in the total revenue, the revenue of the entity must be added back to the total revenue.

7. Simplified ETR test

(1) An MNE group meets the simplified ETR test for a jurisdiction for a fiscal year if the MNE group's simplified ETR for the jurisdiction for the fiscal year is equal to or greater than—

(a) if the fiscal year starts in the 2025 calendar year—16%; or

(b) if the fiscal year starts in the 2026 calendar year—17%.

(2) In this section—

simplified ETR (簡化有效稅率), for a jurisdiction for a fiscal year, is the amount equal to—

$$A/B \times 100\%$$

where: A means the MNE group's simplified covered taxes for the jurisdiction for the fiscal year;

B means the MNE group's profit or loss before income tax for the jurisdiction for the fiscal year.

(3) In this section—

simplified covered taxes (簡化涵蓋稅), in relation to an MNE group for a jurisdiction for a fiscal year, means the income tax expense for the jurisdiction for the fiscal year as reported in its qualified financial statements for the fiscal year, excluding—

(a) any tax that is not a covered tax because of Article 4.2.2 of the GloBE rules; and

(b) uncertain tax positions reported in the MNE group's qualified financial statements.

8. Routine profits test

(1) An MNE group meets the routine profits test for a jurisdiction for a fiscal year if the MNE group's profit or loss before income tax for the jurisdiction for the fiscal year is equal to or less than the MNE group's substance-based income exclusion amount for the jurisdiction for the fiscal year computed in accordance with the GloBE rules, as read with subsections (2) and (3).

(2) In computing the substance-based income exclusion amount of an MNE group, the payroll costs and tangible assets of a constituent entity of the MNE group may only be taken into account if the constituent entity—

(a) is recorded as a resident of the jurisdiction in the qualified CbC report of the MNE group; and

(b) is located in the jurisdiction under Article 10.3 of the GloBE rules.

(3) To avoid doubt, in computing the substance-based income exclusion amount of an MNE group, the transitional relief for the substance-based income exclusion amount provided in Article 9.2 of the GloBE rules applies.

(4) For the purposes of subsection (1), an MNE group is taken to have met the routine profits test for a jurisdiction for a fiscal year if the MNE group's profit or loss before income tax for the jurisdiction for the fiscal year is zero or less than zero.

9. Special rule for UPE jurisdiction if UPE is flow-through entity

(1) Subject to subsection (2), section 4 of this Part (transitional CbCR safe harbour) does not apply in relation to an FT-UPE group for the FT-UPE jurisdiction.

(2) If, for a fiscal year, all ownership interests in the FT-UPE of an FT-UPE group are held by qualified holders—

(a) section 4 of this Part applies in relation to the group for the FT-UPE jurisdiction for the fiscal year; but

(b) in computing for the purposes of section 4 of this Part the group's profit or loss before income tax (and any associated tax) for the FT-UPE jurisdiction for the fiscal year, an amount to the extent to which it is attributable to, or distributed as a result of, an ownership interest in the FT-UPE held by a qualified holder is to be excluded.

(3) For the purposes of this section—

(a) an MNE group is an ***FT-UPE group*** if the UPE of the group is a flow-through entity;

(b) the UPE of an FT-UPE group, and the jurisdiction in which the entity is located, are ***FT-UPE*** and ***FT-UPE jurisdiction*** respectively; and

(c) a ***qualified holder*** means a holder described in Article 7.1.1(a), (b) or (c) of the GloBE rules.

10. Special rules for UPE jurisdiction subject to deductible dividend regime

(1) This section applies, subject to section 9 of this Part, in relation to a DD-UPE group if the DD-UPE is also a flow-through entity.

(2) Section 4 of this Part (transitional CbCR safe harbour) applies, in relation to a DD-UPE group for the DD-UPE jurisdiction for a fiscal year.

(3) However, in computing for the purposes of section 4 of this Part the DD-UPE group's profit or loss before income tax (and any associated tax) for the DD-UPE jurisdiction for the fiscal year, an amount to the extent to which it is attributable to, or distributed as a result of, an ownership interest in the DD-UPE held by a recipient described in Article 7.2.1(a), (b) or (c) of the GloBE rules is to be excluded.

(4) For the purposes of this section—

(a) an MNE group is a ***DD-UPE group*** if the UPE of the group is located in a jurisdiction where it is subject to a deductible dividend regime; and

(b) the UPE of a DD-UPE group, and the jurisdiction in which the entity is located, are ***DD-UPE*** and ***DD-UPE jurisdiction*** respectively.

11. Special rules for investment-related entities and their constituent entity-owners

(1) Unless subsection (3) applies to an MNE group for a fiscal year for a jurisdiction in which an investment-related entity of the group is located (***investment-related entity jurisdiction***)—

(a) the investment-related entity's top-up tax amount for the fiscal year is to be computed separately under Articles 7.4, 7.5 and 7.6 of the GloBE rules, without regard to section 4 of this Part; and

(b) in computing for the purposes of section 4 of this Part the MNE group's profit or loss before income tax (and any associated taxes) for the investment-related entity jurisdiction for the fiscal year, an amount to the extent to which it is attributable to the investment-related entity is to be excluded.

(2) Subsection (3) applies to an MNE group for an investment-related entity jurisdiction for a fiscal year if—

(a) all constituent entities of the MNE group that hold direct ownership interests in the investment-related entity (***direct constituent entity-owners***) are located in the investment-related entity jurisdiction (***common jurisdiction***); and

(b) no election has been made under Article 7.5 or 7.6 of the GloBE rules for the investment-related entity for the fiscal year.

(3) For the purposes of section 4 of this Part—

(a) the profit or loss before income tax and total revenue of the investment-related entity (and any associated taxes) are to be reflected only in the common jurisdiction in proportion to its direct constituent entity-owners' ownership interest in the investment-related entity; and

(b) if a portion of the ownership interest in the investment-related entity is held by owners that are not members of the MNE group, the profit or loss before income tax attributable to such owners is to be excluded.

(4) For the purposes of this section, a constituent entity of an MNE group is to be regarded as being located in the jurisdiction where it is resident for the purposes of the MNE group's qualified CbC report.

12. Special rule for net unrealised fair value loss

(1) For the purposes of section 4 of this Part, in computing an MNE group's profit or loss before income tax for a jurisdiction for a fiscal year, the MNE group's net unrealised fair value loss for the jurisdiction for the fiscal year is to be disregarded if that net unrealised fair value loss exceeds EUR 50 million.

(2) In subsection (1), a reference to a net unrealised fair value loss for a jurisdiction for a fiscal year, in relation to an MNE group, means the sum of all losses, as reduced by any gains, that—

(a) arise from changes in fair value of ownership interest (except for portfolio shareholdings); and

(b) are included in the MNE group's profit or loss before income tax for the jurisdiction for the fiscal year as reported in its qualified CbC report.

13. Special rules for hybrid arbitrage arrangements

(1) This section provides for the treatment of the following (each a ***hybrid arbitrage arrangement***)—

(a) a deduction/non-inclusion arrangement;

(b) a duplicate loss arrangement;

(c) a duplicate tax recognition arrangement.

(2) For the purpose of applying sections 6, 7 and 8 of this Part to an MNE group for a jurisdiction for a fiscal year—

(a) the profit or loss before income tax of the MNE group for the jurisdiction for the fiscal year is to exclude any expense or loss as a result of—

(i) a deduction/non-inclusion arrangement; or

(ii) a duplicate loss arrangement; and

(b) the simplified covered taxes of a constituent entity of the MNE group that is located in the jurisdiction for the fiscal year are to exclude any income tax expense arising as a result of a duplicate tax recognition arrangement.

(3) An adjustment under subsection (2)(a) does not need to be made with respect to the expense or loss in the financial statements of one of the constituent entities if—

(a) the duplicate loss arrangement is such arrangement because of paragraph (a) of the definition of ***duplicate loss arrangement*** in subsection (6); and

(b) all constituent entities including the relevant expense or loss in their financial statements are located in the same jurisdiction.

(4) In this section—

(a) ***deduction/non-inclusion arrangement*** (扣除/不計入安排) means an arrangement entered into after 15 December 2022 under which one constituent entity of an MNE group directly or indirectly provides credit to, or otherwise makes an investment in, another constituent entity of the MNE group that results in an expense or loss in the financial statements of any constituent entity of the MNE group to the extent that—

(i) there is no commensurate increase in the revenue or gain in the financial statements of the constituent entity counterparty; or

(ii) the constituent entity counterparty is not reasonably expected over the life of the

arrangement to have a commensurate increase in its taxable income; but

(b) an arrangement is not a deduction/non-inclusion arrangement to the extent that the expenses or loss results from the arrangement solely with respect to additional tier one capital.

(5) For the purposes of subsection (4), a constituent entity is not to be regarded to have a commensurate increase in its taxable income to the extent that—

(a) the amount included in taxable income is offset by a tax attribute (such as a loss carryforward or an unused interest carryforward) and, with respect to the tax attribute, a valuation adjustment or accounting recognition adjustment—

(i) has been made; or

(ii) would have been made, had the adjustment determination been made without regard to the ability of a constituent entity to use the tax attribute,

with respect to any hybrid arbitrage arrangement entered into after 15 December 2022; or

(b) the payment that gives rise to the expense or loss—

(i) also gives rise to a taxable deduction or loss of a constituent entity that is located in the same jurisdiction as the constituent entity counterparty (***counterparty jurisdiction***); but

(ii) is not included as an expense or loss in determining the profit or loss before income tax for the counterparty jurisdiction (including as a result of being an expense or loss in the

financial statements of a flow-through entity that is owned by a constituent entity in the counterparty jurisdiction).

(6) In this section—

duplicate loss arrangement (重複虧損安排) means an arrangement entered into after 15 December 2022 that results in an expense or loss being included in the financial statements of a constituent entity of an MNE group—

(a) subject to subsection (7)(a), to the extent that the expense or loss is also being included as an expense or loss in the financial statements of another constituent entity of the MNE group; or

(b) subject to subsection (7)(b), to the extent that the arrangement also gives rise to a duplicate amount that is deductible for determining the taxable income of another constituent entity of the MNE group in another jurisdiction.

(7) However, an arrangement is not to be regarded as a duplicate loss arrangement under subsection (6) to the extent that—

(a) in the case of paragraph (a) of the definition of ***duplicate loss arrangement*** in that subsection—the amount of the relevant expense or loss is offset against the revenue that is included in the financial statements of both constituent entities; or

(b) in the case of paragraph (b) of the definition of ***duplicate loss arrangement*** in that subsection—the amount of the relevant expense or loss is offset against the revenue or income that is included in both—

(i) the financial statements of the constituent entity including the relevant expense or loss in the financial statements; and

(ii) the taxable income of the constituent entity claiming the deduction for the relevant expense or loss.

(8) In this section—

duplicate tax recognition arrangement (重複稅項確認安排) means an arrangement entered into after 15 December 2022 that results in each of 2 or more constituent entities of an MNE group including all (or any portion of) the same income tax expense in its adjusted covered taxes or in applying the simplified ETR test under section 7 of this Part, but excludes an arrangement—

(a) that also results in the income subject to tax being included in the relevant financial statements of each such constituent entity; or

(b) that would, in the absence of this paragraph, be a duplicate tax recognition arrangement solely because, in computing the simplified ETR of a constituent entity of the MNE group (***first constituent entity***), no adjustments are required for income tax expenses that would otherwise be allocated to another constituent entity of the MNE group in determining the first constituent entity's adjusted covered taxes.

(9) For the purposes of this section—

(a) a reference to a constituent entity of an MNE group includes—

(i) any entity treated as a constituent entity of the group under the GloBE rules, such as a joint venture of the group; and

(ii) any entity with its qualified financial statements taken into account for the purposes of section 6, 7 or 8 of this Part,

regardless of whether such entities are in the same jurisdiction;

(b) a reference to financial statements of a constituent entity means the financial statements used to calculate that constituent entity's GloBE income or the qualified financial statements taken into account for the purposes of section 6, 7 or 8 of this Part;

(c) a constituent entity is to be regarded as having entered into a hybrid arbitrage arrangement after 15 December 2022 if after that date—

(i) the arrangement is amended or transferred;

(ii) the performance of any rights or obligations under the arrangement differs from the performance of such rights or obligations prior to 15 December 2022 (including where payments are reduced or cease with the effect of increasing the balance of a liability); or

(iii) there is a change in the accounting treatment with respect to the arrangement; and

(d) an expense or loss is not to be regarded as being in the financial statement of a tax transparent entity to the extent that the expense or loss is included in the financial statements of its constituent entity-owners.

14. Exclusions

(1) The transitional CbCR safe harbour does not apply to a stateless constituent entity.

(2) The transitional CbCR safe harbour does not apply to a multi-parented MNE group if there is no single qualified CbC report that includes the information of the combined groups.

(3) The transitional CbCR safe harbour does not apply to an MNE group for a jurisdiction for a fiscal year if an election under Article 7.3.1 of the GloBE rules has been made by the filing constituent entity of the MNE group for the jurisdiction for the fiscal year.

(4) The transitional CbCR safe harbour does not apply to an MNE group for a jurisdiction for a fiscal year if—

(a) the filing constituent entity of the MNE group has not made an election to apply the transitional CbCR safe harbour in respect of the jurisdiction for a previous fiscal year; and

(b) there was a constituent entity of the MNE group located in that jurisdiction in the previous fiscal year.

Subdivision 3—Application to Standalone JV and JV Group Member

15. Application to standalone JV and JV group member

(1) Subdivision 2 applies to a standalone JV of an MNE group in the same way as it applies to a constituent entity of an MNE group, subject to subsections (2) and (5).

(2) For the purposes of subsection (1), tests under sections 6, 7 and 8 of this Part are to be applied to each standalone JV of an MNE group separately.

(3) Subdivision 2 applies to a member of a JV group of an MNE group in the same way as it applies to constituent entities of an MNE group, subject to subsections (4) and (5).

(4) For the purposes of subsection (3), tests under sections 6, 7 and 8 of this Part are to be applied to each JV group of an MNE group separately.

(5) For the purposes of subsections (1) and (3)—

(a) section 4 of this Part is to be read as if its paragraph (a) were omitted; and

(b) a reference to the MNE group's qualified CbC report is a reference to the qualified financial statements of the standalone JV or the JV group concerned (as the case requires).

Division 3—Transitional UTPR Safe Harbour

16. Interpretation of Division 3 of Part 3 of Schedule 60

In this Division—

corporate income tax rate (公司入息稅稅率), in relation to a jurisdiction, means the nominal rate of corporate income tax (including any sub-national corporate income taxes) generally imposed on income in the jurisdiction;

transition period fiscal year (過渡期財政年度) means a fiscal year not exceeding 12 months that begins on or before 31 December 2025 and ends before 31 December 2026;

transitional UTPR safe harbour (過渡性低稅利潤規則安全港) means the treatment of an MNE group for a jurisdiction for a fiscal year in accordance with section 17 of this Part.

17. Transitional UTPR safe harbour for UPE jurisdiction

For a transition period fiscal year, an MNE group's UTPR top-up tax amount calculated for the purposes of Article 2.5 of the GloBE rules for the UPE jurisdiction is taken to be zero if—

(a) the jurisdiction has a corporate income tax rate that is equal to, or greater than, 20%; and

(b) the filing constituent entity of the MNE group has made an election under section 18 of this Part for the jurisdiction for the fiscal year.

18. Election for transitional UTPR safe harbour

(1) A filing constituent entity of an MNE group may make an election for transitional UTPR safe harbour for the MNE group—

(a) for a transition period fiscal year; and

(b) for a jurisdiction.

(2) An election under subsection (1) is an annual election.

(3) A filing constituent entity may not make an election for transitional UTPR safe harbour for a jurisdiction for a transition period fiscal year if it has made an election for transitional CbCR safe harbour under section 5 of this Part for the jurisdiction for the fiscal year.

Division 4—QDMTT Safe Harbour

Subdivision 1—Preliminary

19. Interpretation of Division 4 of Part 3 of Schedule 60

In this Division—

OECD peer review process (經合組織成員互評程序) means the review process developed, and undertaken, under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, in respect of the domestic minimum top-up tax of a jurisdiction;

QDMTT safe harbour (合資格當地最低補足稅安全港) means the treatment of an MNE group for a jurisdiction for a fiscal year in accordance with section 20 of this Part;

QDMTT safe harbour standards (合資格當地最低補足稅安全港準則) means the standards referred to as "standards for a QDMTT safe harbour" set out in the document referred to in item 3 of Part 1 of Schedule 63.

Subdivision 2—Application to Constituent Entities

20. QDMTT safe harbour

An MNE group's jurisdictional top-up tax under the GloBE rules for a jurisdiction for a fiscal year, for constituent entities located in the jurisdiction, is taken to be zero if—

(a) the MNE group is subject to a qualified domestic minimum top-up tax of the jurisdiction for the fiscal year;

(b) that jurisdiction is determined to have met the QDMTT safe harbour standards under an OECD peer review process for that fiscal year;

(c) a filing constituent entity of the MNE group has made an election under section 21 of this Part for the jurisdiction for the fiscal year; and

(d) none of the disqualifying conditions provided in section 22, 23 or 24 of this Part applies.

21. Election for QDMTT safe harbour

(1) A filing constituent entity of an MNE group may make an election for QDMTT safe harbour for the MNE group for a jurisdiction for a fiscal year.

(2) An election under subsection (1) is an annual election.

(3) This section applies subject to section 28 of this Part.

22. Disqualifying conditions—jurisdiction where flow-through entity parent not subject to QDMTT

(1) The QDMTT safe harbour does not apply to an MNE group's jurisdictional top-up tax under the GloBE rules for a fiscal year, for constituent entities of the group located in the UPE jurisdiction, if—

(a) the UPE of the group is a flow-through entity; and

(b) the qualified domestic minimum top-up tax of the jurisdiction does not impose a charge in any circumstances on a UPE that is a flow-through entity.

(2) The QDMTT safe harbour does not apply to an MNE group's jurisdictional top-up tax under the GloBE rules for a fiscal year, for constituent entities of the group located in a jurisdiction in which an IIR applying entity of the group is located, if—

(a) the IIR applying entity is a flow-through entity; and

(b) the qualified domestic minimum top-up tax of the jurisdiction does not impose a charge in any circumstances on an IIR applying entity that is a flow-through entity.

(3) In subsection (2)—

IIR applying entity (應用收入納入規則實體), in relation to an MNE group, means a parent entity of the group that is required under the GloBE rules to apply a qualified IIR to any constituent entity of the group.

23. Disqualifying condition—jurisdiction adopting Article 9.3 of GloBE rules without limitation

The QDMTT safe harbour does not apply to an MNE group's jurisdictional top-up tax under the GloBE rules for a fiscal year, for constituent entities of the group located in a jurisdiction, if—

(a) a qualified domestic minimum top-up tax of the jurisdiction adopts a transitional exclusion that is consistent with Article 9.3 of the GloBE rules; and

(b) that exclusion is not limited to the case where a qualified IIR does not apply in respect of the constituent entities located in the jurisdiction.

24. Disqualifying condition—qualified domestic minimum top-up tax challenged

The QDMTT safe harbour does not apply to an MNE group's jurisdictional top-up tax under the GloBE rules for a fiscal year, for constituent entities of the group located in a jurisdiction, if a qualified domestic minimum top-up tax—

(a) is subject, directly or indirectly, to a challenge by the MNE group in judicial or administrative proceedings; or

(b) has been determined as not assessable or collectible by the tax authority of the jurisdiction administering the qualified domestic minimum top-up tax, based on—

(i) constitutional law;

(ii) other superior law; or

(iii) a specific agreement with the government of the jurisdiction limiting the MNE group's tax liability.

Subdivision 3—Application to Other Entities and Permanent Establishments

25. Application to standalone JV and members of JV group

(1) Sections 20, 21, 23 and 24 of this Part apply to a standalone JV of an MNE group, or a member of a JV group of an MNE group, that is located in a jurisdiction or otherwise subject to a qualified domestic minimum top-up tax of the jurisdiction as those sections apply to a constituent entity of the MNE group located in the jurisdiction.

(2) The QDMTT safe harbour does not apply to an MNE group's jurisdictional top-up tax under the GloBE rules for a fiscal year for—

(a) a standalone JV of an MNE group; or

(b) a member of a JV group of an MNE group,

if the qualified domestic minimum top-up tax of the jurisdiction does not impose a charge in any circumstances on a standalone JV or a member referred to in paragraph (a) or (b) (as the case requires).

26. Application to investment-related entities

(1) Sections 20, 21, 22(1), 23 and 24 of this Part apply to an investment-related entity of an MNE group located in a jurisdiction as those sections apply to a constituent entity of the MNE group located in the jurisdiction.

(2) The QDMTT safe harbour does not apply to an MNE group's jurisdictional top-up tax under the GloBE rules for a fiscal year, for an investment-related entity, if the qualified domestic minimum top-up tax of the jurisdiction does not impose a charge in any circumstances on an investment-related entity.

27. Application to stateless constituent entities

Sections 20, 21, 22(1), 23 and 24 of this Part apply to a stateless constituent entity of an MNE group that is subject to a qualified domestic minimum top-up tax of a jurisdiction as those sections apply to a constituent entity of the MNE group located in the jurisdiction.

Subdivision 4—Miscellaneous

28. Separate elections to be made

An election made under section 21 of this Part may relate to entities or permanent establishments of an MNE group referred to in one of the following paragraphs only—

(a) the constituent entities (other than those that are investment-related entities, minority-owned

constituent entities or stateless constituent entities) of the MNE group;

(b) a single standalone JV of the MNE group;

(c) members of a single JV group of the MNE group;

(d) the investment-related entities of the MNE group;

(e) a single minority-owned constituent entity (not of a minority-owned subgroup) of the MNE group;

(f) minority-owned constituent entities of a single minority-owned subgroup of the MNE group;

(g) a single stateless constituent entity of the MNE group.

Division 5—Simplified Calculations Safe Harbour

Subdivision 1—Preliminary

29. Interpretation of Division 5 of Part 3 of Schedule 60

In this Division—

simplified calculations safe harbour (簡化計算安全港) means the treatment of an MNE group for a jurisdiction for a fiscal year in accordance with section 30 of this Part.

Subdivision 2—Framework

30. Simplified calculations safe harbour

An MNE group's top-up tax (other than additional current top-up tax) under the GloBE rules for a jurisdiction for a fiscal year is taken to be zero if—

(a) an election is made under section 31 of this Part for the jurisdiction for the fiscal year; and

(b) the MNE group meets any of the following tests for the jurisdiction for the fiscal year—

(i) the SC de minimis test under section 32 of this Part;

(ii) the SC ETR test under section 33 of this Part;

(iii) the SC routine profit test under section 34 of this Part.

31. Election for simplified calculations safe harbour

(1) A filing constituent entity of an MNE group may make an election for simplified calculations safe harbour for the MNE group for a jurisdiction for a fiscal year.

(2) An election under subsection (1) is an annual election.

32. SC de minimis test

An MNE group meets the SC de minimis test for a jurisdiction for a fiscal year if—

(a) the MNE group's average GloBE revenue for the jurisdiction, as determined under the simplified income calculation, is less than EUR 10 million; and

(b) the MNE group's average GloBE income for the jurisdiction, as determined under the simplified income calculation, is less than EUR 1 million or the MNE group has a loss determined in accordance with Article 5.5 of the GloBE rules.

33. SC ETR test

An MNE group meets the SC ETR test for a jurisdiction for a fiscal year if the MNE group's effective tax rate for the jurisdiction for the fiscal year, as determined under the

simplified income calculation and the simplified tax calculation, is at least 15% as determined in accordance with Article 5.1.1 of the GloBE rules.

34. SC routine profit test

An MNE group meets the SC routine profit test for a jurisdiction for a fiscal year if the MNE group's GloBE income for the jurisdiction for the fiscal year, as determined under the simplified income calculation, is equal to or less than the MNE group's substance-based income exclusion amount for the jurisdiction for the fiscal year determined in accordance with Article 5.3 of the GloBE rules.

Subdivision 3—Non-material Constituent Entity

35. Interpretation of Subdivision 3 of Division 5 of Part 3 of Schedule 60

In this Subdivision—

NMCE means a non-material constituent entity;

non-material constituent entity (非重大成員實體) means a constituent entity of an MNE group for a fiscal year if—

(a) where it is not a permanent establishment—

(i) the constituent entity is not consolidated on a line-by-line basis in the consolidated financial statements of the UPE of the MNE group for the fiscal year solely on size or materiality grounds;

(ii) those consolidated financial statements falls within paragraphs (a) or (c) of the definition of ***consolidated financial statements*** in Article 10.1.1 of the GloBE rules and those

consolidated financial statements are externally audited; and

(iii) if the constituent entity's total revenue for the fiscal year exceeds EUR 50 million—its financial accounts that are used to complete the country-by-country report are prepared in accordance with an acceptable financial accounting standard or an authorised financial accounting standard;

(b) where it is a permanent establishment—the main entity of the permanent establishment is an NMCE for the fiscal year under paragraph (a);

relevant CbC regulations (相關國別規例) means—

(a) the country-by-country reporting regulations—

(i) of the UPE jurisdiction; or

(ii) of the surrogate parent entity jurisdiction if a country-by-country report is not filed in the UPE jurisdiction; or

(b) if the UPE jurisdiction does not have country-by-country reporting requirements, and an MNE group is not required to file a country-by-country report in any jurisdiction—the CbCR documents as defined by section 58B(2);

total revenue (總收入), in relation to a fiscal year, means the constituent entity's total revenue for the fiscal year as determined in accordance with the MNE group's relevant CbC regulations.

36. NMCE simplified calculations

(1) This section applies to any NMCEs (***SC NMCEs***) of an MNE group located in a jurisdiction (***jurisdiction***) for a fiscal year (***year***) if an election under section 37 of this Part is made for the NMCEs for the jurisdiction for the year.

(2) For the purpose of determining whether an MNE group meets the tests under sections 32, 33 and 34 of this Part for the SC NMCEs for the jurisdiction for the year, the simplified income calculation, the simplified revenue calculation and the simplified tax calculation, as described in subsections (3), (4) and (5) respectively, apply.

(3) Under the simplified income calculation, the GloBE income or loss of the SC NMCEs of the MNE group for the jurisdiction for the year is equal to the portion of the total revenue of the MNE group for the jurisdiction, as determined in accordance with the relevant CbC regulations, that is attributable to the SC NMCEs for the year.

(4) Under the simplified revenue calculation, the GloBE revenue of the SC NMCEs of the MNE group for the jurisdiction for the year is equal to the portion of the total revenue of the MNE group for the jurisdiction, as determined in accordance with the relevant CbC regulations, that is attributable to the SC NMCEs for the year.

(5) Under the simplified tax calculation, the adjusted covered taxes of the SC NMCEs of the MNE group for the jurisdiction for the year is equal to the portion of the income tax accrued (current year) of the MNE group for the jurisdiction, as determined in accordance with the relevant CbC regulations, that is attributable to the SC NMCEs for the year.

37. Election for NMCE simplified calculations

(1) A filing constituent entity of an MNE group that makes an election for simplified calculations safe harbour for a jurisdiction for a fiscal year, may make an election for NMCE simplified calculations—

(a) for any NMCE or NMCEs for the fiscal year that is or are located in that jurisdiction; and

(b) for the jurisdiction for the fiscal year.

(2) An election under this section is an annual election.

Schedule 61

[ss. 26AD, 26AE, 26AF, 26AG, 26AH & 79A & Sch. 62]

HKMTT

Part 1

Preliminary

1. Purpose of Schedule 61

(1) The purpose of this Schedule is to make provision for a qualified domestic minimum top-up tax that has qualified domestic minimum top-up tax safe harbour status (including transitional qualified status).

(2) The tax is to be known as the Hong Kong minimum top-up tax (HKMTT).

2. Interpretation, and application, of Schedule 61

(1) In this Schedule—

HK constituent entity (香港成員實體), in relation to an MNE group, means a constituent entity of the MNE group that is located in Hong Kong;

HK member (香港成員), in relation to a JV group of an MNE group, means the joint venture or another member of the JV group that—

(a) is located in Hong Kong; or

(b) would have been a Part 4AA stateless constituent entity, had it been a constituent entity;

HK standalone JV (香港獨立合資企業) means a standalone JV that—

(a) is located in Hong Kong; or

(b) would have been a Part 4AA stateless constituent entity, had it been a constituent entity;

in-scope MNE group (受涵蓋跨國企業集團), in relation to a fiscal year, means an MNE group that meets the consolidated revenue threshold in at least 2 of the 4 fiscal years immediately preceding the fiscal year under Article 1.1 of the GloBE rules (as modified by Article 6.1 of those rules, if applicable);

Part 4AA stateless constituent entity (第 4AA 部無國籍成員實體), in relation to an MNE group, means a stateless constituent entity of the MNE group—

(a) that is created in Hong Kong; or

(b) that is a place of business in Hong Kong, and is a permanent establishment in accordance with paragraph (d) of the definition of ***permanent establishment*** in Article 10.1.1 of the GloBE rules;

specified GloBE rules provisions (指明《全球反侵蝕稅基規則》條文)—see section 4(1) of this Schedule;

standalone JV (獨立合資企業) means a joint venture that has no JV subsidiary.

(2) Unless the contrary intention appears, an expression used in this Schedule, and defined or otherwise explained in any provision of Part 4AA or Part 1 of Schedule 60 (***definition provisions***), has the same meaning as in the definition provisions.

(3) In this Schedule—

(a) a reference to a joint venture of an MNE group is a reference to an entity that falls within the definition of ***joint venture*** in Article 10.1.1 of the GloBE rules,

with the UPE of the MNE group as the UPE referred to in the definition;

(b) if a joint venture of an MNE group has no JV subsidiary, the joint venture is a standalone JV of the MNE group; and

(c) if a joint venture of an MNE group has one or more JV subsidiaries, the joint venture and the JV subsidiaries are collectively a JV group of the MNE group and are members of the JV group.

(4) This Schedule applies to an MNE group that is an in-scope MNE group.

Part 2

HKMTT on HK Constituent Entity

3. Charge on HK constituent entity of MNE group

(1) A HK constituent entity of an MNE group is chargeable to HKMTT for a fiscal year in an amount determined in accordance with section 4 of this Schedule for the fiscal year.

(2) Subsection (1) does not apply to a HK constituent entity that is an investment-related entity subject to Articles 7.4, 7.5 and 7.6 of the GloBE rules.

4. Specified GloBE rules provisions apply for determining HKMTT

(1) The HKMTT to which a HK constituent entity of an MNE group is chargeable for a fiscal year is in the amount that would, by applying the GloBE rules (Chapter 2 excepted) (***specified GloBE rules provisions***) as modified by

subsection (2), be determined as the top-up tax chargeable for the fiscal year on the HK constituent entity as a low-taxed constituent entity under Article 5.2.4 of the GloBE rules.

(2) For the purpose of their application under subsection (1), the specified GloBE rules provisions are modified as specified in—

(a) section 5 of this Schedule (which provides for the use of local accounting standard);

(b) section 6 of this Schedule (which provides for miscellaneous modifications);

(c) section 7 of this Schedule (which relates to Article 9.3 of the GloBE rules);

(d) section 8 of this Schedule (which requires tax attributes to be re-set for HKMTT if the MNE group becomes subject to qualified IIR or qualified UTPR);

(e) section 9 of this Schedule (which relates to elections); and

(f) section 10 of this Schedule (which relates to the currency for computations if a local accounting standard is required to be used).

5. Modifications—use of local accounting standard

(1) For determining, under section 4 of this Schedule, the HKMTT to which a HK constituent entity of an MNE group is chargeable for a fiscal year—

(a) Articles 3.1.2 and 3.1.3 of the GloBE rules are to be read subject to subsections (2), (3) and (4); and

(b) the definition of ***financial accounting net income or loss*** in Article 10.1.1 of the GloBE rules is to be construed in accordance with Article 3.1.2 of those rules so read.

(2) The financial accounting net income or loss of a HK constituent entity of an MNE group for a fiscal year must be determined in accordance with a local accounting standard if—

(a) each HK constituent entity of the MNE group has financial accounts (***each entity's accounts***) prepared in accordance with the local accounting standard;

(b) the accounting period of each entity's accounts is the same as the fiscal year of the consolidated financial statements of the UPE of the MNE group; and

(c) for the fiscal year—

(i) each HK constituent entity of the MNE group is required to prepare or use the entity's accounts for determining its liability to tax in Hong Kong or to comply with any other law of Hong Kong; or

(ii) each entity's accounts are subject to external financial audit.

(3) For the purposes of subsection (2), a permanent establishment of a main entity is to be treated as having the financial accounts of the main entity for a fiscal year if—

(a) the financial accounts for the fiscal year contain the information required for computing the HKMTT to which the permanent establishment is chargeable for the fiscal year; and

(b) the permanent establishment does not have separate financial accounts for the fiscal year.

(4) In relation to a HK constituent entity of an MNE group to which subsection (2) applies for a fiscal year, a reference to the financial accounting net income or loss for the fiscal year means the financial accounting net income or loss determined for the HK constituent entity, in preparing accounts for the fiscal year in accordance with a local accounting standard used under subsection (2).

(5) In this section—

local accounting standard (本地會計準則) means the International Financial Reporting Standards or the Hong Kong Financial Reporting Standards.

6. Modifications—specified GloBE rules provisions

For determining, under section 4 of this Schedule, the HKMTT to which a HK constituent entity of an MNE group is chargeable—

(a) Articles 4.2.1(b) and 7.3 of the GloBE rules are to be disregarded;

(b) any covered tax of a main entity that is allocable to a permanent establishment under Article 4.3.2(a) of the GloBE rules is not to be allocated to the permanent establishment if it is such a HK constituent entity;

(c) Articles 4.3.2(c) and (d) and 4.3.3 of the GloBE rules are to be disregarded;

(d) a reference in Article 4.3.2(e) of the GloBE rules to covered taxes is to be read as including only withholding taxes imposed in Hong Kong;

(e) the references in the formula in Article 5.2.3 of the GloBE rules to domestic top-up tax is to be disregarded;

(f) Article 6.4.1(b) and (c) of the GloBE rules is to be disregarded; and

(g) Article 6.5.1(e), (f) and (g) of the GloBE rules is to be disregarded.

7. Modification—Article 9.3 of the GloBE rules

For determining, under section 4 of this Schedule, the HKMTT to which a HK constituent entity of an MNE group is chargeable for a fiscal year, Article 9.3 of the GloBE rules only applies to the MNE group if none of the ownership interests in a HK constituent entity of the group is held, directly or indirectly, by a parent entity subject to a qualified IIR for the fiscal year.

8. Modifications—tax attributes to be re-set for HKMTT if MNE group becomes subject to qualified IIR or qualified UTPR

(1) This section applies in relation to a HK constituent entity of an MNE group for a fiscal year if—

(a) the fiscal year is the earliest one for which a qualified IIR or qualified UTPR administered by a jurisdiction outside Hong Kong becomes applicable to the HK constituent entity (***GloBE transition year***); and

(b) for a fiscal year prior to the GloBE transition year, HKMTT became applicable to the HK constituent entity.

(2) For determining, under section 4 of this Schedule, the HKMTT to which the HK constituent entity is chargeable for the fiscal year—

(a) any excess negative tax expense carry-forward under Article 4.1.5 or 5.2.1 of the GloBE rules must be eliminated at the beginning of the GloBE transition year;

(b) Article 4.4.4 of the GloBE rules does not apply to any deferred tax liability if the liability—

(i) was taken into account in calculating the effective tax rate for determining the HKMTT to which the HK constituent entity is chargeable for a fiscal year prior to the GloBE transition year; but

(ii) was not recaptured prior to the GloBE transition year;

(c) Article 4.4.4 of the GloBE rules applies to a deferred tax liability that is taken into account in, or after, the GloBE transition year;

(d) any GloBE loss deferred tax asset under Article 4.5 of the GloBE rules in respect of a fiscal year prior to the GloBE transition year must be eliminated, and the filing constituent entity may make a new election in accordance with Article 4.5 of the GloBE rules in the GloBE transition year;

(e) the deferred tax assets and deferred tax liabilities taken into account in determining the effective tax rate for a jurisdiction in accordance with Article 9.1.1 of the GloBE rules must be eliminated, and that Article must be applied at the beginning of the GloBE transition year;

(f) subject to paragraph (g), Article 9.1.2 of the GloBE rules applies to transactions occurring after 30 November 2021 and before the beginning of the GloBE transition year; and

(g) for the purposes of paragraph (f), if HKMTT was chargeable due to the application of Article 4.1.5 of the GloBE rules in respect of a deferred tax asset attributable to a tax loss, such deferred tax asset must not be treated as arising from items excluded from the computation of GloBE income or loss under Chapter 3 of the GloBE rules.

9. Modifications—elections

(1) This section applies for the purpose of determining, under section 4 of this Schedule, the HKMTT to which a HK constituent entity of an MNE group is chargeable.

(2) Where the GloBE rules provides that an election may be made, that election may be made for a HK constituent entity of an MNE group for HKMTT purposes to the extent that such an election would affect the calculation of HKMTT to which the HK constituent entity is chargeable.

(3) For the purposes of subsection (2), an election made for a HK constituent entity of an MNE group, for the purposes of a qualified IIR or qualified UTPR of a jurisdiction outside Hong Kong (***non-HK jurisdiction***), is taken to have been made in respect of that entity for HKMTT purposes if—

(a) the election is contained in a GloBE information return submitted to a tax authority in the non-HK jurisdiction (***non-HK return***); and

(b) any of the following applies—

(i) information in the non-HK return about the election has been provided to the Commissioner under a qualifying competent authority agreement;

(ii) the non-HK return has been provided to the Commissioner.

10. Modifications—currency for computations if local accounting standard required to be used

(1) This section applies for the purpose of determining, under section 4 of this Schedule, the HKMTT to which a HK constituent entity of an MNE group is chargeable if the financial accounting net income or loss of the entity for the fiscal year is required under section 5 of this Schedule to be determined in accordance with a local accounting standard.

(2) An amount relevant to the computation of the HKMTT to which the HK constituent entity is chargeable for the fiscal year must be computed using the following currency—

(a) unless paragraph (b) applies—Hong Kong currency;

(b) if an election under subsection (3) applies to the MNE group and the fiscal year—the currency specified in the election.

(3) If there are one or more HK constituent entities of the MNE group that do not use Hong Kong currency as their functional currency, a filing constituent entity of the MNE group may make an election that applies to—

(a) a specified fiscal year; and

(b) the following 4 fiscal years.

(4) The election must specify either—

(a) Hong Kong currency; or

(b) the presentation currency of the consolidated financial statements of the UPE of the MNE group.

(5) An election under subsection (3) is a five-year election.

Part 3

HKMTT on HK Standalone JV, HK Member of JV Group, etc.

11. Application to HK standalone JV and HK member of JV group

(1) This Schedule applies to a HK standalone JV of an MNE group in the same way as it applies to a HK constituent entity of an MNE group.

(2) This Schedule applies to a HK member of a JV group of an MNE group in the same way as it applies to HK constituent entities of an MNE group.

(3) The HKMTT chargeable under subsection (1) or (2) on an entity (***entity A***) that is a HK standalone JV of an MNE group or a HK member of a JV group of an MNE group may—

(a) be charged on entity A directly; or

(b) on entity A's election and with the consent of a HK constituent entity of the MNE group, be charged on the HK constituent entity.

(4) The HKMTT charged on the HK constituent entity under subsection (3)(b) is to be recoverable by all means provided in this Ordinance from entity A or the HK constituent entity.

12. Relief against double HKMTT for joint venture

(1) Subsection (2) applies if for a fiscal year—

(a) an entity (***entity A***) is a HK standalone JV of an MNE group or a HK member of a JV group of an MNE group;

(b) entity A is also—

(i) a HK standalone JV of another MNE group; or

(ii) a HK member of a JV group of another MNE group; and

(c) HKMTT is chargeable on entity A in respect of both MNE groups.

(2) To avoid double taxation, the HKMTT chargeable for the fiscal year on entity A, in respect of each of the MNE groups, is to be reduced by 50%.

(3) Subsection (4) applies if for a fiscal year—

(a) an entity (***entity B***) is a HK standalone JV of an MNE group or a HK member of a JV group of an MNE group;

(b) entity B is also a HK constituent entity of another MNE group; and

(c) HKMTT is chargeable on entity B in respect of both MNE groups.

(4) To avoid double taxation, the Commissioner may provide a relief for the HKMTT chargeable for the fiscal year on

entity B in respect of each of the MNE groups in a manner that is reasonable in the circumstances.

13. Application to Part 4AA stateless constituent entity

This Schedule applies to a Part 4AA stateless constituent entity of an MNE group in the same way as it applies to a HK constituent entity of an MNE group.

Schedule 62

[ss. 2, 25A, 26AD, 26AE, 26AF, 26AG, 26AH, 79A, 80O, 80P, 82 & 82A & Sch. 60]

Administration of Top-up Taxes

Part 1

Preliminary

1. Interpretation, and application, of Schedule 62

(1) In this Schedule—

HK constituent entity (香港成員實體), in relation to an MNE group, means a constituent entity of the MNE group that is located in Hong Kong;

HK member (香港成員), in relation to a JV group of an MNE group, means the joint venture or another member of the JV group that—

(a) is located in Hong Kong; or

(b) would have been a Part 4AA stateless constituent entity, had it been a constituent entity;

HK standalone JV (香港獨立合資企業) means a standalone JV that—

(a) is located in Hong Kong; or

(b) would have been a Part 4AA stateless constituent entity, had it been a constituent entity;

in-scope MNE group (受涵蓋跨國企業集團), in relation to a fiscal year, means an MNE group that meets the consolidated revenue threshold in at least 2 of the 4 fiscal years immediately preceding the fiscal year under Article 1.1 of the GloBE rules (as modified by Article 6.1 of those rules, if applicable);

Part 4AA entity (第 4AA 部實體), in relation to an MNE group, means—

(a) a HK constituent entity of the MNE group;

(b) a HK standalone JV of the MNE group;

(c) a HK member of a JV group of the MNE group; or

(d) a Part 4AA stateless constituent entity of the MNE group;

Part 4AA stateless constituent entity (第 4AA 部無國籍成員實體), in relation to an MNE group, means a stateless constituent entity of the MNE group—

(a) that is created in Hong Kong; or

(b) that is a place of business in Hong Kong, and is a permanent establishment in accordance with paragraph (d) of the definition of ***permanent establishment*** in Article 10.1.1 of the GloBE rules;

standalone JV (獨立合資企業) means a joint venture that has no JV subsidiary;

top-up tax return (補足稅報稅表), in relation to a Part 4AA entity of an MNE group, means a return for top-up taxes for the Part 4AA entity for a fiscal year.

(2) Unless the contrary intention appears, an expression used in this Schedule, and defined or otherwise explained in any provision of Part 4AA or Part 1 of Schedule 60 (***definition provisions***), has the same meaning as in the definition provisions.

(3) In this Schedule—

(a) a reference to a joint venture of an MNE group is a reference to an entity that falls within the definition of ***joint venture*** in Article 10.1.1 of the GloBE rules, with the UPE of the MNE group as the UPE referred to in the definition;

(b) if a joint venture of an MNE group has no JV subsidiary, the joint venture is a standalone JV of the MNE group; and

(c) if a joint venture of an MNE group has one or more JV subsidiaries, the joint venture and the JV subsidiaries are collectively a JV group of the MNE group and are members of the JV group.

(4) Subject to section 4(3) of this Schedule, this Schedule applies to an MNE group that is an in-scope MNE group.

Part 2

HK Constituent Entity's Obligations to File Top-up Tax Return and Notice

2. Interpretation of Part 2 of Schedule 62

In this Part—

designated filing entity (指定交表實體)—see section 6(4) of this Schedule;

designated local entity (指定本地實體)—see section 8(3) of this Schedule;

filing deadline (提交期限) has the meaning given by section 9 of this Schedule;

GloBE jurisdiction (全球反侵蝕稅基轄區) means—

(a) Hong Kong; or

(b) another jurisdiction with a qualified IIR, qualified UTPR or qualified domestic minimum top-up tax;

service provider (服務提供者) means a service provider engaged for or on behalf of a HK constituent entity of an MNE group as referred to in section 13(1) of this Schedule.

3. HK constituent entity must file top-up tax return for fiscal year

(1) Each HK constituent entity of an MNE group must file a top-up tax return for each fiscal year with the Commissioner by the filing deadline where the top-up tax return—

(a) must contain a GloBE information return that complies with section 10 of this Schedule; and

(b) must comply with section 11 of this Schedule.

(2) Subsection (1) does not apply to a HK constituent entity of an MNE group for a fiscal year if—

(a) group GloBE filing has been effected in Hong Kong within the meaning of section 6 of this Schedule for the MNE group for the fiscal year; or

(b) group local filing has been effected within the meaning of section 8 of this Schedule for the MNE group for the fiscal year.

(3) Subsection (1)(a) does not apply to a HK constituent entity of an MNE group in respect of a fiscal year if group GloBE filing has been effected outside Hong Kong within the meaning of section 6 of this Schedule for the MNE group for the fiscal year.

4. Assessor may require constituent entity to file top-up tax return

(1) An assessor may, by a notice in writing to any entity or permanent establishment (***subject entity***) that forms part of an MNE group, require the subject entity to file with the Commissioner a top-up tax return for a fiscal year specified in the notice (***specified year***) by the filing deadline where the top-up tax return—

(a) must contain a GloBE information return that complies with section 10 of this Schedule; and

(b) must comply with section 11 of this Schedule.

(2) The subject entity is not required to comply with the notice if the subject entity satisfies the assessor that any of the following conditions is met—

(a) the subject entity is not a HK constituent entity of an in-scope MNE group, whether or not because—

(i) the subject entity is an excluded entity; or

(ii) the subject entity is a HK constituent entity of an MNE group that is not an in-scope MNE group for the specified year;

(b) by the filing deadline—

(i) group GloBE filing has been effected in Hong Kong within the meaning of section 6 of this Schedule for the MNE group for the specified year; or

(ii) group local filing has been effected within the meaning of section 8 of this Schedule for the MNE group for the specified year.

(3) This section applies in relation to an MNE group, regardless of whether it is an in-scope MNE group.

5. HK constituent entity must file notice

(1) Each HK constituent entity of an MNE group must file a written notice with the Commissioner by the notification deadline, informing the Commissioner of the following in respect of a fiscal year—

(a) the name, address and business registration number of each of the group's HK constituent entities, identifying among them (as applicable)—

(i) the group's UPE;

(ii) the group's designated filing entity;

(iii) the group's designated local entity; and

(iv) a HK constituent entity that does not fall within subparagraph (i), (ii) or (iii);

(b) if the group's UPE is located in a jurisdiction other than Hong Kong—

(i) the jurisdiction in which the UPE is located; and

(ii) the name, address and business registration number (or equivalent particulars) of the UPE;

(c) whether group GloBE filing is intended to be effected in Hong Kong, within the meaning of section 6 of this Schedule, for the fiscal year and, if so, the name, address and business registration number (or equivalent particulars) of the designated filing entity located in Hong Kong;

(d) whether group GloBE filing is intended to be effected outside Hong Kong, within the meaning of section 6 of this Schedule, for the fiscal year and, if so—

(i) the GloBE jurisdiction in which the GloBE information return is to be filed (***non-HK jurisdiction***); and

(ii) the name, address and business registration number (or equivalent particulars) of the designated filing entity located in the non-HK jurisdiction;

(e) unless group GloBE filing is intended to be effected in Hong Kong—whether group local filing is intended to be effected within the meaning of section 8 of this Schedule for the fiscal year and, if

so, the name, address and business registration number (or equivalent particulars) of the designated local entity;

(f) any other information relevant for determining a HK constituent entity's obligation to file a top-up tax return under this Part.

(2) A HK constituent entity of an MNE group (***subject entity***) is not required to comply with subsection (1) if, by the notification deadline, another HK constituent entity of the group (***notifying entity***) has filed a notice in accordance with subsection (1) which—

(a) identifies the notifying entity as—

(i) the UPE of the group;

(ii) the designated filing entity of the group; or

(iii) the designated local entity of the group; and

(b) states that the notifying entity is to file the top-up tax return, with the Commissioner, on behalf of the subject entity and all other HK constituent entities of the group.

(3) In this section—

notification deadline (通知期限), in relation to a notice for a fiscal year, means the time of expiry of 6 months after the end of the fiscal year.

6. Group GloBE filing

(1) In relation to a requirement under section 3(1) of this Schedule for a HK constituent entity (***subject entity***) of an MNE group to file a top-up tax return for a fiscal year—

(a) group GloBE filing is effected in Hong Kong for the MNE group for the fiscal year if the top-up tax

return is filed within the meaning of subsection (2); or

(b) group GloBE filing is effected outside Hong Kong for the MNE group for the fiscal year if—

(i) the GloBE information return for the group for the fiscal year is filed within the meaning of subsection (3); and

(ii) exchange mechanisms are in place within the meaning of subsection (5).

A reference to group GloBE filing to be, intended to be or having been effected in Hong Kong, or outside Hong Kong, for an MNE group for a fiscal year is to be construed accordingly.

(2) For the purposes of subsection (1)(a), a top-up tax return for a fiscal year is filed if the UPE, or designated filing entity, located in Hong Kong has filed, for the MNE group for the fiscal year, a top-up tax return in accordance with subsection (1) of section 3 of this Schedule, without relying on subsection (3) of that section.

(3) For the purposes of subsection (1)(b), the GloBE information return for the MNE group for a fiscal year is filed if the UPE, or designated filing entity, located in a GloBE jurisdiction other than Hong Kong (***non-HK jurisdiction***)—

(a) has filed with the tax authority of that jurisdiction a GloBE information return for the MNE group for the fiscal year that complies with section 10 of this Schedule; and

(b) has done so by the filing deadline of the top-up tax return for the fiscal year and in accordance with the laws or regulations of that jurisdiction.

(4) In relation to an MNE group and a fiscal year, a constituent entity (***entity A***) of the group (other than the UPE) is the designated filing entity of the group if—

(a) entity A—

(i) is appointed by the group to file, on behalf of the group, the top-up tax return in accordance with subsection (2) for the fiscal year; and

(ii) is located in Hong Kong; or

(b) entity A—

(i) is appointed by the group to file the GloBE information return on behalf of the group in accordance with subsection (3) for the fiscal year; and

(ii) is located in a non-HK jurisdiction.

(5) For the purposes of subsection (1)(b)(ii), exchange mechanisms are in place if—

(a) the non-HK jurisdiction has entered into an international agreement;

(b) by the filing deadline of the top-up tax return for the fiscal year concerned, the non-HK jurisdiction has exchange arrangements in effect with Hong Kong; and

(c) the Commissioner has not notified the subject entity that the non-HK jurisdiction—

(i) has suspended automatic exchange of GloBE information returns (for reasons other than

those that are in accordance with the terms of those arrangements); or

(ii) has otherwise persistently failed to automatically provide, to Hong Kong, GloBE information returns of MNE groups having HK constituent entities that are in the possession of the competent authority of the non-HK jurisdiction.

(6) In this section and section 7 of this Schedule—

competent authority (主管當局) has the meaning given by the international agreement concerned;

exchange arrangements (交換安排) means arrangements that—

(a) are between the authorized representatives or competent authorities of the jurisdictions to which an international agreement applies; and

(b) require the automatic exchange of GloBE information returns between the jurisdictions;

international agreement (國際協議) means—

(a) the Convention on Mutual Administrative Assistance in Tax Matters; or

(b) any other arrangement or arrangements that—

(i) has or have effect under section 49(1) or (1A); and

(ii) by its or their terms, provides or provide legal authority for the exchange of tax information between Hong Kong and the other jurisdiction or jurisdictions to which the arrangement or arrangements applies or apply, including automatic exchange of the information.

7. Requirement for filing GloBE information return if exchange mechanisms fail

(1) If—

(a) notice has been filed under section 5 of this Schedule for an MNE group for a fiscal year that—

(i) group GloBE filing is intended to be effected outside Hong Kong within the meaning of section 6 of this Schedule; and

(ii) a GloBE information return is to be filed in a GloBE jurisdiction other than Hong Kong (***non-HK jurisdiction***); but

(b) by the return exchange date for the fiscal year, the competent authority of the non-HK jurisdiction has failed to provide to the Commissioner the GloBE information return,

the Commissioner may, by notice (***Commissioner's notice***) to one or more than one HK constituent entity of the MNE group, require each of them to file with the Commissioner, within 30 days after the date of the Commissioner's notice, a GloBE information return for the MNE group for the fiscal year that complies with section 10 of this Schedule.

(2) Each HK constituent entity of an MNE group to whom a Commissioner's notice is sent must comply with the notice.

(3) In this section—

return exchange date (報表交換日期), in relation to a fiscal year, means the date on which exchanges of GloBE information returns for the fiscal year are due to occur under the exchange arrangements requiring the automatic

exchange of GloBE information returns between Hong Kong and the non-HK jurisdiction concerned.

8. Group local filing

(1) In relation to a requirement under section 3(1) of this Schedule for a HK constituent entity of an MNE group to file a top-up tax return for a fiscal year, group local filing is effected for the MNE group for the fiscal year if the top-up tax return is filed within the meaning of subsection (2). A reference to group local filing to be, intended to be or having been effected for an MNE group for a fiscal year is to be construed accordingly.

(2) For the purposes of subsection (1), a top-up tax return for a fiscal year is filed if, by the filing deadline of a top-up tax return for the fiscal year, the designated local entity has filed a top-up tax return in accordance with section 3 of this Schedule for the group for the fiscal year.

(3) In relation to an MNE group and a fiscal year, a constituent entity of the group is the designated local entity of the group if—

(a) it is located in Hong Kong; and

(b) it is appointed by all the HK constituent entities of the group—

(i) to file a notice for the purposes of section 5 of this Schedule; and

(ii) to file a top-up tax return in accordance with section 3 of this Schedule,

with the Commissioner on behalf of those constituent entities for the fiscal year.

9. Filing deadline

(1) In this Part—

filing deadline (提交期限), in relation to a top-up tax return for a fiscal year, means, subject to subsection (2), the earlier of the following dates—

(a) the date of expiry of 15 months after the end of the last day of the fiscal year;

(b) if the return is required by a notice given under section 4 of this Schedule—the date specified in the notice.

(2) For the transition year for filing purpose of an MNE group, the definition of ***filing deadline*** in subsection (1) has effect as if the reference to "15 months" in paragraph (a) of that definition were a reference to "18 months".

(3) A reference in subsection (2) to the transition year for filing purpose, in relation to an MNE group, means the earliest fiscal year for which a constituent entity, joint venture or JV subsidiary of the MNE group is subject to a qualified IIR or qualified UTPR in Hong Kong or another jurisdiction or is subject to the HKMTT.

10. Requirements of GloBE information return

(1) A GloBE information return must be filed in a standard template that is developed in accordance with the GloBE implementation framework and must include the following information concerning the MNE group (as specified, expanded or restricted in accordance with the GloBE implementation framework, including through the development of simplified reporting procedures)—

(a) identification of the constituent entities, joint ventures or JV subsidiaries, including their tax

identification numbers (if they exist), the jurisdiction in which they are located and their status under the GloBE rules;

(b) information on the overall corporate structure of the MNE group, including the controlling interests in the constituent entities held by other constituent entities;

(c) the information necessary to compute—

(i) the effective tax rate for each jurisdiction and the top-up tax of each constituent entity under Chapter 5 of the GloBE rules;

(ii) the top-up tax of each standalone JV and each member of each JV group under Chapter 6 of the GloBE rules; and

(iii) the allocation of IIR top-up tax, and the UTPR top-up tax amount, to each jurisdiction under Chapter 2 of the GloBE rules;

(d) a record of the elections made in accordance with the relevant provisions of the GloBE rules;

(e) other information that is agreed as part of the GloBE implementation framework and is necessary to carry out the administration of the GloBE rules.

(2) The GloBE information return must apply the definitions and instructions contained in the standard template that is developed in accordance with the GloBE implementation framework.

11. Further requirements concerning top-up tax return and notice

(1) Without affecting section 3(1)(a) of this Schedule, a top-up tax return for an MNE group must contain any information specified by the Board of Inland Revenue.

(2) A top-up tax return filed for the purposes of this Part for an MNE group—

(a) must be filed in the form of an electronic record that—

(i) is sent by using a system designated by the Commissioner; and

(ii) contains the required information arranged in a form specified by the Commissioner; and

(b) if the return is filed because of a notice given under section 4 of this Schedule—must be filed in the way specified in the notice.

(3) A notice for the purposes of section 5 of this Schedule for an MNE group must be filed—

(a) in the form of an electronic record that is sent by using a system designated by the Commissioner; and

(b) in the way that the Commissioner specifies.

(4) The Commissioner may designate a system for communication with the Commissioner for the purposes of subsections (2) and (3).

(5) The Commissioner may, by notice published in the Gazette, specify requirement as to—

(a) the way of generating or sending an electronic record for the purposes of this section or any

attachment required to be given with such electronic record;

(b) how a digital signature is to be affixed to a top-up tax return or to a notice filed under section 5 of this Schedule; and

(c) the software and communication in relation to any attachment required to be given with an electronic record.

(6) The Commissioner may, either generally or in a particular case, accept a top-up tax return for the purposes of this Part, despite a requirement under subsection (2) or (5) not being complied with in respect of the return.

(7) The Commissioner may, either generally or in a particular case, accept a notice for the purposes of section 5 of this Schedule, despite a requirement under subsection (3) or (5) not being complied with in respect of the notice.

(8) The Commissioner may, by a means that the Commissioner considers appropriate, specify the circumstances or conditions in or under which a top-up tax return or a notice for the purposes of section 5 of this Schedule is to be accepted under subsection (6) or (7).

(9) Any notice or other thing that specifies any matter for the purposes of this section is not subsidiary legislation.

12. Other obligations

(1) An assessor may, by notice to a HK constituent entity, require it to provide information for determining whether the information furnished by the entity in a top-up tax return is accurate and complete.

(2) The UPE of an MNE group must provide the HK constituent entities of the group with everything the HK

constituent entities may reasonably require in order to comply with the filing obligations under this Part.

(3) A HK constituent entity of an MNE group must provide the UPE, designated filing entity or designated local entity (***the latter***) with everything the latter may reasonably require in order to comply with the filing obligations under this Part.

13. Engagement of service provider

(1) A service provider may be engaged for or on behalf of a HK constituent entity—

(a) for filing a specified document on behalf of the HK constituent entity; or

(b) if the HK constituent entity is the UPE, designated filing entity or designated local entity of an MNE group—for filing a specified document on behalf of the group.

(2) To avoid doubt, even if a service provider has been engaged under subsection (1), none of the following is relieved from its obligation to file the specified document concerned—

(a) if subsection (1)(a) applies, the HK constituent entity for or on behalf of whom the service provider has been engaged;

(b) if subsection (1)(b) applies, each HK constituent entity of the MNE group for or on behalf of whose UPE, designated filing entity or designated local entity the service provider has been engaged.

(3) In this section—

specified document (指明文件) means—

(a) a top-up tax return; or

(b) a notice for the purposes of section 5 of this Schedule.

Part 3

Modifications to Ordinance for Administration of Top-up Taxes in relation to HK Constituent Entity

Division 1—General Provisions

14. Part 6C, sections 51B, 51C, 57 and 58, and Parts 10 to 13 apply subject to modifications by Part 3 of Schedule 62

For the purpose of administering top-up taxes—

(a) the modifications specified in this Part to Part 6C, sections 51B, 51C, 57 and 58, Part 10 (except sections 61, 61A and 61B) and Parts 11, 12 and 13 apply in relation to a HK constituent entity of an MNE group;

(b) Part 9 (except sections 51B, 51C, 57 and 58) does not apply; and

(c) sections 61, 61A and 61B do not apply.

15. Modifications—references to person, year of assessment and returns in Part 6C, sections 51B, 51C, 57 and 58, and Parts 10 to 13

(1) This section applies for the purposes of section 14 of this Schedule.

(2) In a provision of Part 6C, section 51B, 51C, 57 or 58, or Part 10, 11, 12 or 13, unless otherwise modified by this Part—

(a) a reference to a person is to be read as including a reference to a HK constituent entity of an MNE group;

(b) a reference to a year of assessment is to be read as a reference to a fiscal year;

(c) a reference to a case where a person is chargeable to tax is to be read as including a reference to a case where top-up tax is payable by a HK constituent entity of an MNE group;

(d) a reference (however worded) to a return, or a return under section 51 or 51(1) or a return required under section 51, is to be read as a reference to a top-up tax return; and

(e) a reference to assess is to be read as a reference to any one or more of the following—

(i) assess for IIR top-up tax;

(ii) assess for UTPR top-up tax;

(iii) assess for HKMTT,

and a reference to assessed, assessment or additional assessment is to be read accordingly.

Division 2—Modifications to Sections

16. Modifications to section 51B (power to issue search warrant)

(1) For the purposes of section 14 of this Schedule, paragraphs (a) and (b) of section 51B(1) are to be read as—

"(a) that there are reasonable grounds for suspecting that a HK constituent entity of an MNE group—

(i) has made an incorrect top-up tax return or supplied false information that, if accepted as correct, would result in the HK constituent entity being assessed at an amount of top-up tax less than the proper amount; and

(ii) has done so without reasonable excuse and not through an innocent oversight or omission; or

(b) that a HK constituent entity of an MNE group has failed to comply with an order of a court made under section 80O(6) directing it to comply with section 3(1) or 5(1) of Schedule 62 or the requirements of a notice given to it under section 12(1) of Schedule 62,".

(2) For the purposes of section 14 of this Schedule, section 51B(1AAAA) is to be read as—

"(1AAAA) For the purposes of subsection (1)(a), engaging a service provider under section 13 of Schedule 62 does not in itself constitute a reasonable excuse.".

17. Modifications to section 51C (business records to be kept)

(1) For the purposes of section 14 of this Schedule, section 51C(1) is to be read as requiring that a HK constituent entity of an MNE group must—

(a) keep sufficient records of transactions, acts or operations relevant to the computation of top-up tax liability of the MNE group to enable the correctness and accuracy of the top-up tax return filed under this Schedule to be readily ascertained; and

(b) retain the records at least until the expiry of 12 years after the completion of the transactions, acts or operations to which they relate.

(2) For the purposes of section 14 of this Schedule, records required to be kept and retained, under section 51C(1) read with subsection (1), by a HK constituent entity of an MNE group (***subject entity***) include records in respect of any trade, profession or business carried on by any Part 4AA entity of the MNE group that are relevant to the ETR computations on the basis of which the top-up tax of the subject entity is to be computed.

(3) Section 80 applies to a failure to comply with section 51C as modified by subsections (1) and (2) in the same way as section 80 applies to a failure to comply with section 51C.

18. Modification to section 57 (principal officer to act on behalf of a corporation or body of persons)

For the purposes of section 14 of this Schedule, a reference in section 57 to a corporation or body of persons is to be read as a reference to a HK constituent entity of an MNE group that is a corporation or body of persons.

19. Modifications to section 59 (assessor to make assessments)

(1) This section applies for the purposes of section 14 of this Schedule.

(2) The reference in section 59(1) to "the notice requiring him to furnish a return under section 51(1)" is to be read as a reference to "the notice requiring the HK constituent entity to furnish a top-up tax return under section 3 of Schedule 62".

(3) A reference in section 59(2)(b) or (3) to "estimate the sum in respect of which such person is chargeable to tax" is to be read as a reference to "estimate the amount of top-up tax payable by the HK constituent entity".

20. Modifications to section 60 (additional assessments)

(1) This section applies for the purposes of section 14 of this Schedule.

(2) Section 60 applies subject to this Schedule and Schedules 60 and 61.

(3) Section 60(1) is to be read as—

"(1) Where it appears to an assessor that, for any fiscal year, a HK constituent entity chargeable with any top-up tax has not been assessed for that top-up tax or has been assessed for that top-up tax at less than the proper amount, the assessor—

(a) may assess the entity at the amount or additional amount of top-up tax at which, according to the assessor's judgment, the entity ought to have been assessed; but

(b) may only do so within 6 years after the later of the following—

(i) the end of the fiscal year;

(ii) the time when the non-assessment or under-assessment of the HK constituent entity for the fiscal year has come to the assessor's knowledge,

and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings apply to the assessment or additional assessment and to the top-up tax charged under it.".

(4) In relation to a HK constituent entity to which the whole or part of any top-up tax repaid has been repaid by mistake, the reference to "6 years after the expiration thereof" in section 60(2) is to be read as a reference to the period of 6 years after the later of the following—

(a) the end of the fiscal year to which the repayment relates;

(b) the time when the repayment by mistake has come to the assessor's knowledge.

21. Modification to section 62 (notice to be issued by Commissioner)

For the purposes of section 14 of this Schedule, section 62(1) has effect as if the reference to "the amount assessed," were omitted.

22. Modification to section 64 (objections)

(1) This section applies for the purposes of section 14 of this Schedule.

(2) The reference to "1 month" in section 64(1) is to be read as a reference to "2 months".

23. Modification to section 68 (hearing and disposal of appeals to the Board of Review)

For the purposes of section 14 of this Schedule, the reference in section 68(1C) to "the amount of relevant assessable income or profits or net assessable value" is to be read as a reference to "the amount of top-up tax".

24. Modification to section 70 (assessments or amended assessments to be final)

For the purposes of section 14 of this Schedule, a reference in section 70 to "assessable income or profits or net assessable value" is to be read as a reference to "top-up tax".

25. Modifications to section 70A (powers of assessor to correct errors)

For the purposes of section 14 of this Schedule—

(a) section 70A applies subject to this Schedule and Schedules 60 and 61; and

(b) the reference in section 70A(1) to "in the calculation of the amount of the net assessable value (within the meaning of section 5(1A)), assessable income or profits assessed or in the amount of the tax charged" is to be read as "in the calculation of the amount of top-up tax charged".

26. Modification to section 79 (tax paid in excess to be refunded)

For the purposes of section 14 of this Schedule, section 79 applies subject to this Schedule and Schedules 60 and 61.

Division 3—Modifications to Parts

27. Interpretation of Division 3 of Part 3 of Schedule 62

In this Division—

assessed group (被評稅集團), in relation to an MNE group—

(a) for UTPR top-up tax, means HK constituent entities of the MNE group;

(b) for HKMTT, means—

(i) HK constituent entities of the MNE group, other than those that are minority-owned constituent entities;

(ii) HK constituent entities that are minority-owned constituent entities of a minority-owned subgroup of the MNE group; or

(iii) a HK constituent entity that is a minority-owned constituent entity but not of a minority-owned subgroup of the MNE group;

specified assessment (指明評稅) means an assessment, additional assessment or re-assessment made in respect of any top-up tax.

28. Parts 10 to 13 apply subject to Division 3 of Schedule 62

For the purpose of administering top-up taxes, Parts 10, 11, 12 and 13 apply in relation to a HK constituent entity of an MNE group, subject to the provisions of this Division.

29. Combined specified assessment in relation to 2 or more HK constituent entities etc.

(1) A combined specified assessment may be made in respect of the UTPR top-up tax allocated to Hong Kong and

payable by HK constituent entities of an assessed group of an MNE group.

(2) Subject to section 31 of this Schedule, a combined specified assessment under subsection (1) for an assessed group of an MNE group must state the UTPR top-up tax payable by each HK constituent entity of the assessed group.

(3) A combined specified assessment may be made in respect of the HKMTT payable by HK constituent entities of an assessed group of an MNE group.

(4) Subject to section 31 of this Schedule, a combined specified assessment under subsection (3) for an assessed group of an MNE group must state the HKMTT payable by each HK constituent entity of the assessed group.

(5) This section applies—

(a) whether or not group local filing is effected within the meaning of section 8 of this Schedule; and

(b) whether or not an election is made for the payment by designated paying entities under section 31 of this Schedule.

30. Allocation of UTPR top-up tax or HKMTT in special circumstances

(1) Subsection (2) applies if—

(a) a HK constituent entity of an assessed group of an MNE group is chargeable to UTPR top-up tax or HKMTT (***top-up tax***) under the GloBE rules or Schedule 61 for a fiscal year; and

(b) the HK constituent entity no longer exists on the date of filing of the top-up tax return for the fiscal year (***return-filing date***).

(2) The top-up tax chargeable on the HK constituent entity is to be allocated among the remaining HK constituent entities of the assessed group, as at the return-filing date—

(a) in the case of UTPR top-up tax, in proportion to the remaining HK constituent entities' number of employees and value of tangible assets in Hong Kong for the fiscal year; or

(b) in the case of HKMTT, in proportion to the remaining HK constituent entities' GloBE income for the fiscal year.

(3) If the Commissioner is satisfied that it is impracticable to apply the GloBE rules or Schedule 61 with respect to the allocation of top-up tax in a particular case, the Commissioner may allocate the top-up tax in a manner that the Commissioner considers reasonable in the circumstances.

(4) This section does not apply to the HK constituent entities of an assessed group of an MNE group for a fiscal year if the filing constituent entity has made an election for the assessed group for payment by designated paying entities under section 31 of this Schedule in the top-up tax return.

31. UTPR top-up tax or HKMTT of assessed group may be paid by designated paying entities

(1) If—

(a) either—

(i) group GloBE filing is effected in Hong Kong (within the meaning of section 6 of this Schedule) for an MNE group for a fiscal year, and the UPE or the designated filing entity (within the meaning of section 6(4) of this Schedule) of the MNE group makes an election in writing; or

(ii) group local filing is effected within the meaning of section 8 of this Schedule for an MNE group for a fiscal year, and the designated local entity (within the meaning of section 8(3) of this Schedule) of the MNE group makes an election in writing;

(b) one or more than one HK constituent entity is designated for payment of any UTPR top-up tax or HKMTT (***top-up tax***) of an assessed group of the MNE group (each a ***designated paying entity***); and

(c) if there are 2 or more designated paying entities—the amount of top-up tax that each designated paying entity is to pay is specified in the election,

an assessor may make an assessment or assessments on the designated paying entity or entities, instead of making assessments on all HK constituent entities of the assessed group on whom the top-up tax would have been chargeable had this section not been enacted.

(2) If any assessment or assessments is or are made under subsection (1) on the designated paying entity or entities, top-up tax of the assessed group of the MNE group for the fiscal year is payable by the designated paying entity or entities as directed in the assessment or assessments.

(3) A HK constituent entity (***entity P***) of an MNE group may be a designated paying entity in an election under subsection (1) for a fiscal year, if—

(a) entity P was a HK constituent entity of the assessed group of the MNE group for the fiscal year, and remains a HK constituent entity of the assessed group as at the date of filing of the top-up tax return for the fiscal year;

(b) entity P has consented to its being the designated paying entity for the amount of the UTPR top-up tax or HKMTT (as the case requires) specified, in relation to it, in the election; and

(c) all the HK constituent entities of the assessed group have consented to the designated payment arrangements specified in the election.

(4) However, a HK constituent entity of an assessed group of an MNE group may not be a designated paying entity, for any top-up tax of an assessed group of an MNE group for a fiscal year, in an election under subsection (1) if—

(a) where it is a partnership—

(i) the constituent entity has been dissolved; or

(ii) any of its partners has become bankrupt, or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his or her creditors; or

(b) where it is a corporation—winding up proceedings have been commenced in relation to the constituent entity or the constituent entity has been dissolved.

(5) An election under subsection (1)(a)(i) or (ii) is an annual election and is irrevocable.

(6) A consent given for the purposes of subsection (3)(b) or (c) is irrevocable.

32. Objection to combined specified assessment

(1) A specified assessment of any top-up tax payable by a HK constituent entity (***assessed entity***) of an MNE group may only be objected to under section 64 by—

(a) the HK constituent entity that has filed a top-up tax return required under this Schedule; or

(b) the assessed entity.

(2) No objection may be made under section 64 to a combined specified assessment, with respect to the allocation of any UTPR top-up tax or HKMTT (***top-up tax***) among the HK constituent entities of an assessed group of an MNE group if—

(a) the top-up tax of the assessed group under the combined specified assessment is payable by designated paying entities under section 31 of this Schedule; and

(b) the acceptance of the objection would not result in a change in the total amount of top-up tax payable under the combined specified assessment.

(3) An objection made to a combined specified assessment by any of the HK constituent entities of an assessed group of an MNE group under section 64, as modified by this Part—

(a) is to be regarded as made, under that section as so modified, by all the other HK constituent entities of the assessed group; and

(b) may be disposed of accordingly.

(4) In this section—

combined specified assessment (合併指明評稅) means a combined specified assessment made under section 29(1) or (3) of this Schedule on HK constituent entities of an assessed group of an MNE group.

33. Joint and several liability if designated paying entity defaults

(1) If any amount of the UTPR top-up tax or HKMTT (***top-up tax***) of an assessed group of an MNE group for a fiscal year is payable by a designated paying entity under section 31 of this Schedule, but the amount is not paid in the manner directed in the notice of assessment concerned by the date specified in the notice—

(a) the amount of the top-up tax is taken to be in default;

(b) the designated paying entity is taken to be a defaulter of the amount of the top-up tax for the purposes of this Ordinance; and

(c) without affecting paragraphs (a) and (b)—

(i) all linked entities become jointly and severally liable for the total amount of the top-up tax of the assessed group that is not paid; and

(ii) the Commissioner may issue a notice to any linked entity (***recipient***) requiring the recipient to pay, by a date and to an extent specified in the notice, the amount of the top-up tax not paid, referred to in subparagraph (i).

(2) In relation to a notice under subsection (1)(c)(ii) in respect of the top-up tax of an assessed group of an MNE group for a fiscal year (***taxable year***), a linked entity is each entity or permanent establishment that—

(a) is a HK constituent entity of the assessed group when the notice is issued; and

(b) was at any time in the taxable year a HK constituent entity of the assessed group.

(3) If the total amount of the top-up tax not paid referred to in subsection (1)(c) is not fully recovered by payment in the manner directed in the notice under subsection (1)(c)(ii) by the date specified in the notice, the recipient of the notice (or, if 2 or more notices are issued under subsection (1)(c)(ii), the recipient of each notice) is taken to be a defaulter of the top-up tax for the purposes of this Ordinance.

(4) For a notice under subsection (1)(c)(ii) in respect of any liability for top-up tax based on any assessment, determination or other decision—

(a) the recipient of the notice has no right to object to, or appeal against, the assessment, determination or decision; and

(b) the notice is not a specified assessment on the recipient and is not to be objected to, or appealed against, as such.

(5) Subsection (4)—

(a) does not affect any right to appeal against any assessment, determination or decision that the recipient may have without regard to the notice under subsection (1)(c)(ii); and

(b) does not prevent the recipient from disputing liability under the notice on the ground that—

(i) the recipient is not a linked entity within the meaning of subsection (2); or

(ii) the amount specified in the notice exceeds the extent to which the recipient is jointly and severally liable under subsection (1)(c).

(6) The top-up tax payable under a notice under subsection (1)(c)(ii) by its recipient is recoverable by all means provided in this Ordinance against the recipient as tax payable under an assessment made against a person is recoverable against the person.

Division 4—Miscellaneous

34. Application of obligations if HK constituent entity is not corporation or is permanent establishment

(1) In relation to a HK constituent entity of an MNE group that is not a corporation, Parts 6C, 9, 10, 11, 12 and 13, as modified by this Part, apply to a person who acts for the HK constituent entity or is responsible for the management of the HK constituent entity as if the obligations imposed on the HK constituent entity by those Parts, as so modified, were imposed on the person.

(2) In relation to a HK constituent entity of an MNE group that is a permanent establishment of a main entity, Parts 6C, 9, 10, 11, 12 and 13, as modified by this Part, apply to the main entity as if the obligations imposed on the HK constituent entity by those Parts, as so modified, were imposed on the main entity.

Part 4

Application of this Schedule to MNE Group Entities other than HK Constituent Entities

35. Application to HK standalone JV and HK member of JV group

(1) This Schedule applies to a HK standalone JV of an MNE group in the same way as it applies to a HK constituent entity of an MNE group.

(2) This Schedule applies to HK members of a JV group of an MNE group in the same way as it applies to constituent entities of an MNE group.

(3) For the purposes of Division 3 of Part 3 of this Schedule as applied under this section, the definition of ***assessed group*** in section 27 of this Schedule is to read as—

"***assessed group*** (被評稅集團), in relation to HKMTT, means—

(a) HK members of a JV group of an MNE group; or

(b) a HK standalone JV;".

36. Application to Part 4AA stateless constituent entity

(1) This Schedule applies to a Part 4AA stateless constituent entity of an MNE group in the same way as it applies to a HK constituent entity of an MNE group.

(2) For the purposes of Division 3 of Part 3 of this Schedule as applied under this section, the definition of ***assessed group*** in section 27 of this Schedule is to read as—

"***assessed group*** (被評稅集團), in relation to HKMTT, means a Part 4AA stateless constituent entity;".

Schedule 63

[ss. 26AD, 26AG & 26AH & Sch. 60]

OECD GloBE Rules Guidance

Part 1

OECD GloBE Rules Documents

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Title of the document	Date of publication	Abbreviation used in this Ordinance	The document applies to the fiscal year that begins on or after
1.	OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from the Digitalisation of the Economy—Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)	25 April 2024	2023 Commentary	1 January 2025
2.	OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from the Digitalisation of the Economy—Administrative Guidance on the Global Anti-Base	2 February 2023	Feb-2023 Administrative Guidance	1 January 2025

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Title of the document	Date of publication	Abbreviation used in this Ordinance	The document applies to the fiscal year that begins on or after
	Erosion Model Rules (Pillar Two)			
3.	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)	17 July 2023	Jul-2023 Administrative Guidance	1 January 2025
4.	OECD/G20 Base Erosion and Profit Shifting Project:	18 December 2023	Dec-2023 Administrative Guidance	1 January 2025

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Title of the document	Date of publication	Abbreviation used in this Ordinance	The document applies to the fiscal year that begins on or after
	Tax Challenges Arising from the Digitalisation of the Economy—Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)			
5.	OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from the Digitalisation of the Economy—Administrative Guidance on the	17 June 2024	Jun-2024 Administrative Guidance	1 January 2025

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Title of the document	Date of publication	Abbreviation used in this Ordinance	The document applies to the fiscal year that begins on or after
	Global Anti-Base Erosion Model Rules (Pillar Two)			
6.	OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from the Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two) Examples	25 April 2024	Apr-2024 Illustrative Examples	1 January 2025

Part 2

Specified OECD GloBE Rules Guidance

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
1.	Article 1.4.1	Article 1.4.1	(1) Paragraphs 36.1 to 36.4 of Chapter 1 of the 2023 Commentary (2) Section 1.4 of the Feb-2023 Administrative Guidance
2.	Article 1.5.2	Article 1.5.2	(1) Paragraph 43.1 of Chapter 1 of the 2023 Commentary (2) Section 1.5 of the Feb-2023 Administrative Guidance

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
3.	Article 1.5.2(a)	Article 1.5.2(a)	Paragraph 45 of Chapter 1 of the 2023 Commentary
4.	Article 1.5.2(a)i	Article 1.5.2(a)i	(1) Paragraph 54.1 of Chapter 1 of the 2023 Commentary (2) Section 1.5 of the Feb-2023 Administrative Guidance
5.	Article 1.5.2(a)ii	Article 1.5.2(a)ii	(1) Paragraphs 54.2 to 54.5 of Chapter 1 of the 2023 Commentary (2) Section 1.6 of the Feb-2023 Administrative Guidance
6.	Article 3.1.2	Article 3.1.2	Paragraphs 3 and 4 of Chapter 3 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
7.	Article 3.1.2	Article 3.1.2	(1) Paragraphs 5 to 5.6 of Chapter 3 of the 2023 Commentary (2) Section 1 of the Jul-2023 Administrative Guidance
8.	Article 3.1.3	Article 3.1.3	Paragraph 13 of Chapter 3 of the 2023 Commentary
9.	Article 3.1.3	Article 3.1.3	(1) Paragraph 16.1 of Chapter 3 of the 2023 Commentary (2) Section 1 of the Jul-2023 Administrative Guidance
10.	Article 3.2.1	Article 3.2.1	(1) Paragraphs 86.1 to 86.7 of Chapter 3 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 2.4 of the Feb-2023 Administrative Guidance
11.	Article 3.2.1(b)	Article 3.2.1(b)	(1) Paragraphs 36 and 45 of Chapter 3 of the 2023 Commentary (2) Sections 3.4 and 3.5 of the Feb-2023 Administrative Guidance
12.	Article 3.2.1(b)	Article 3.2.1(b)	(1) Paragraph 45 of Chapter 3 of the 2023 Commentary (2) Section 3.5 of the Feb-2023 Administrative Guidance

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
13.	Article 3.2.1(c)	Article 3.2.1(c)	(1) Paragraphs 57 to 57.3 of Chapter 3 of the 2023 Commentary (2) Section 2.2 of the Feb-2023 Administrative Guidance
14.	Article 3.2.1(c)	Article 3.2.1(c)	(1) Paragraphs 57.4 and 57.5 of Chapter 3 of the 2023 Commentary (2) Section 2.9 of the Feb-2023 Administrative Guidance
15.	Article 3.2.1(c)	Article 3.2.1(c)	(1) Paragraph 54 of Chapter 3 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 3.4 of the Feb-2023 Administrative Guidance
16.	Article 3.2.1(f)	Article 3.2.1(f)	(1) Paragraphs 66 to 74.1 of Chapter 3 of the 2023 Commentary (2) Section 1 of the Jul-2023 Administrative Guidance
17.	Article 3.2.1(i)	Article 3.2.1(i)	(1) Paragraph 85 of Chapter 3 of the 2023 Commentary (2) Section 2.5 of the Feb-2023 Administrative Guidance
18.	Article 3.2.1(i)	Article 3.2.1(i)	(1) Paragraph 86 of Chapter 3 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 2.5 of the Feb-2023 Administrative Guidance
19.	Article 3.2.3	Article 3.2.3	Paragraphs 100 to 103 of Chapter 3 of the 2023 Commentary
20.	Article 3.2.4	Article 3.2.4	(1) Paragraphs 112.1 to 114.1 of Chapter 3 of the 2023 Commentary (2) Section 2 of the Jul-2023 Administrative Guidance
21.	Article 3.2.4	Article 3.2.4	(1) Paragraphs 57.6 to 57.12 of Chapter 3 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 2.9 of the Feb-2023 Administrative Guidance (3) Section 2 of the Jul-2023 Administrative Guidance
22.	Article 3.2.4	Article 3.2.4	(1) Paragraphs 57.10.1 to 57.10.3 of Chapter 3 of the 2023 Commentary (2) Section 2 of the Jul-2023 Administrative Guidance
23.	Article 3.5.3	Article 3.5.3	Paragraph 37 of Chapter 2 of the 2023 Commentary
24.	Article 4.1.5	Article 4.1.5	(1) Paragraphs 21.1 to 21.8 of Chapter 4 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 2.7 of the Feb-2023 Administrative Guidance
25.	Article 4.3.2(c)	Article 4.3.2(c)	(1) Paragraphs 58.1 to 58.7 of Chapter 4 of the 2023 Commentary (2) Section 2.10 of the Feb-2023 Administrative Guidance (3) Section 4 of the Dec-2023 Administrative Guidance
26.	Article 4.3.2(e)	Article 4.3.2(e)	(1) Paragraph 60.1 of Chapter 4 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 2.6 of the Feb-2023 Administrative Guidance
27.	Article 4.4.1	Article 4.4.1	(1) Paragraphs 71.1 to 71.3 of Chapter 4 of the 2023 Commentary (2) Section 1.3 of the Feb-2023 Administrative Guidance
28.	Article 4.4.1(e)	Article 4.4.1(e)	(1) Paragraphs 82.1 to 82.4 of Chapter 4 of the 2023 Commentary (2) Section 2.8 of the Feb-2023 Administrative Guidance

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
29.	Article 4.6.1	Article 4.6.1	Paragraph 124 of Chapter 4 of the 2023 Commentary
30.	Article 5.1.1	Article 5.1.1	Paragraphs 6 and 7 of Chapter 5 of the 2023 Commentary
31.	Article 5.2.1	Article 5.2.1	(1) Paragraphs 15.1 to 15.5 of Chapter 5 of the 2023 Commentary (2) Section 2.7 of the Feb-2023 Administrative Guidance
32.	Article 5.3.1	Article 5.3.1	(1) Paragraph 29.1 of Chapter 5 of the 2023 Commentary (2) Section 3 of the Jul-2023 Administrative Guidance

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
33.	Article 5.3.3	Article 5.3.3	(1) Paragraph 36.1 of Chapter 5 of the 2023 Commentary (2) Section 3 of the Jul-2023 Administrative Guidance
34.	Article 5.3.3	Article 5.3.3	(1) Paragraphs 33 and 33.1 of Chapter 5 of the 2023 Commentary (2) Section 3 of the Jul-2023 Administrative Guidance
35.	Article 5.3.4	Article 5.3.4	(1) Paragraph 48.1 of Chapter 5 of the 2023 Commentary (2) Section 3 of the Jul-2023 Administrative Guidance

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
36.	Article 5.3.4	Article 5.3.4	(1) Paragraphs 38 and 38.1 of Chapter 5 of the 2023 Commentary (2) Section 3 of the Jul-2023 Administrative Guidance
37.	Article 5.3.4	Article 5.3.4	(1) Paragraphs 43 to 43.7 of Chapter 5 of the 2023 Commentary (2) Section 3 of the Jul-2023 Administrative Guidance
38.	Article 5.3.5	Article 5.3.5	Paragraph 52 of Chapter 5 of the 2023 Commentary
39.	Article 5.3.5	Article 5.3.5	Paragraph 49 of Chapter 5 of the 2023 Commentary
40.	Article 5.5.1(a)	Article 5.5.1(a)	(1) Paragraph 83 of Chapter 5 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 1 of the Jul-2023 Administrative Guidance
41.	Article 5.5.3	Article 5.5.3	Paragraph 92 of Chapter 5 of the 2023 Commentary
42.	Article 5.5.3	Article 5.5.3	Paragraph 82 of Chapter 5 of the 2023 Commentary
43.	Article 6.3.1	Article 6.3.1	(1) Paragraph 73.1 of Chapter 6 of the 2023 Commentary (2) Section 2.1 of the Feb-2023 Administrative Guidance
44.	Article 7.1.1(a)(i)	Article 7.1.1(a)(i)	Paragraph 12 of Chapter 7 of the 2023 Commentary
45.	Article 7.1.1(b)(ii)	Article 7.1.1(b)(ii)	Paragraph 18 of Chapter 7 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
46.	Article 7.2.2	Article 7.2.2	Paragraph 46 of Chapter 7 of the 2023 Commentary
47.	Article 7.2.4	Article 7.2.4	Paragraph 50 of Chapter 7 of the 2023 Commentary
48.	Article 7.3.7(b)	Article 7.3.7(b)	Paragraph 71 of Chapter 7 of the 2023 Commentary
49.	Article 7.5.1	Article 7.5.1	(1) Paragraphs 91 and 91.1 of Chapter 7 of the 2023 Commentary (2) Section 3.6 of the Feb-2023 Administrative Guidance
50.	Article 9.1.1	Article 9.1.1	(1) Paragraph 6.4 of Chapter 9 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 4.1 of the Feb-2023 Administrative Guidance
51.	Article 9.1.1	Article 9.1.1	(1) Paragraph 6.1 of Chapter 9 of the 2023 Commentary (2) Section 4.1 of the Feb-2023 Administrative Guidance
52.	Article 9.1.2	Article 9.1.2	Paragraphs 8 and 9 of Chapter 9 of the 2023 Commentary
53.	Article 9.1.3	Article 9.1.3	(1) Paragraphs 10.2 to 10.6 of Chapter 9 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Sections 4.2 and 4.3 of the Feb-2023 Administrative Guidance
54.	Article 9.1.3	Article 9.1.3	(1) Paragraph 10.1.1 of Chapter 9 of the 2023 Commentary (2) Section 4 of the Jul-2023 Administrative Guidance
55.	Article 9.1.3	Article 9.1.3	(1) Paragraph 10 of Chapter 9 of the 2023 Commentary (2) Section 4.3 of the Feb-2023 Administrative Guidance
56.	Article 9.1.3	Article 9.1.3	(1) Paragraph 10.9 of Chapter 9 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
			(2) Section 4.3 of the Feb-2023 Administrative Guidance
57.	Article 9.1.3	Article 9.1.3	(1) Paragraph 10.8 of Chapter 9 of the 2023 Commentary (2) Section 4.3 of the Feb-2023 Administrative Guidance
58.	Article 10.1.1 (definition of ***consolidated financial statement***)	Article 10.1.1 (definition of ***consolidated financial statement***)	(1) Paragraphs 8.1 to 8.4 of Chapter 10 of the 2023 Commentary (2) Section 1.2 of the Feb-2023 Administrative Guidance

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
59.	Article 10.1.1 (definition of ***controlling interest***)	Article 10.1.1 (definition of ***controlling interest***)	(1) Paragraph 8.5 of Chapter 10 of the 2023 Commentary (2) Example 10.1-4 of the Apr-2024 Illustrative Examples (3) Section 1.2 of the Feb-2023 Administrative Guidance
60.	Article 10.1.1 (definition of ***disqualified refundable imputation tax***)	Article 10.1.1 (definition of ***disqualified refundable imputation tax***)	Paragraph 11 of Chapter 10 of the 2023 Commentary
61.	Article 10.1.1 (definition of ***eligible***	Article 10.1.1 (definition of ***eligible***	Paragraph 14 of Chapter 10 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
	distribution tax system)	***distribution tax system***)	
62.	Article 10.1.1 (definition of ***eligible distribution tax system***)	Article 10.1.1 (definition of ***eligible distribution tax system***)	Paragraph 16 of Chapter 10 of the 2023 Commentary
63.	Article 10.1.1 (definition of ***entity***)	Article 10.1.1 (definition of ***entity***)	(1) Paragraph 17.1 of Chapter 10 of the 2023 Commentary (2) Section 1.2 of the Feb-2023 Administrative Guidance
64.	Article 10.1.1 (definition of	Article 10.1.1 (definition of	Paragraph 22 of Chapter 10 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
	GloBE reorganisation)	***GloBE reorganisation***)	
65.	Article 10.1.1 (definition of ***insurance investment entity***)	Article 10.1.1 (definition of ***insurance investment entity***)	Paragraph 90 of Chapter 7 of the 2023 Commentary
66.	Article 10.1.1 (definition of ***ownership interest***)	Article 10.1.1 (definition of ***ownership interest***)	Paragraph 85 of Chapter 10 of the 2023 Commentary
67.	Article 10.1.1 (definition of ***ownership interest***)	Article 10.1.1 (definition of ***ownership interest***)	Paragraph 81 of Chapter 10 of the 2023 Commentary

Column 1	Column 2	Column 3	Column 4
Item	Corresponding provision of the GloBE rules	Corresponding provision of the OECD GloBE model rules	Guidance in the OECD GloBE rules document
68.	Article 10.1.1 (definition of ***ownership interest***)	Article 10.1.1 (definition of ***ownership interest***)	Paragraph 83 of Chapter 10 of the 2023 Commentary
69.	Article 10.1.1 (definition of ***real estate investment vehicle***)	Article 10.1.1 (definition of ***real estate investment vehicle***)	Paragraph 147 of Chapter 10 of the 2023 Commentary
70.	Article 10.3.4	Article 10.3.4	Paragraphs 198 and 207 of Chapter 10 of the 2023 Commentary

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Explanatory Memorandum

The objects of this Bill are to amend the Inland Revenue Ordinance (Cap. 112) (***IRO***)—

(a) to implement the international tax reform proposals to address the base erosion and profit shifting risks arising from digitalization of economy by introducing a global minimum effective tax targeting certain large multinational enterprise groups (***MNE groups***); and

(b) to implement a domestic minimum top-up tax for the purpose of safeguarding Hong Kong's taxing rights on those groups and their members.

2. The main provisions of the Bill are as follows—

(a) clause 8 adds a new Part 4AA (new sections 26AD to 26AH) to the IRO;

(b) the new sections 26AD and 26AE introduce new Schedules 60 to 63;

(c) in the new Schedule 60—

(i) Part 1 reproduces most provisions of the OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from the Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two) published on 20 December 2021. They consist of the income inclusion rule (***IIR***) and the undertaxed profits rule (***UTPR***) under which an MNE group meeting the annual consolidated revenue threshold must pay a top-up tax on its income arising in a jurisdiction where it operates if the effective tax rate falls below a minimum level (currently, 15%);

(ii) Part 2 makes minor modifications to those rules in that Part 1; and

(iii) Part 3 provides for the transitional and permanent safe harbours to reduce compliance burden;

(d) the new Schedule 61 contains provisions for charging a domestic minimum top-up tax, known as the Hong Kong minimum top-up tax (***HKMTT***) to safeguard Hong Kong's taxing right. The HKMTT is fully creditable against the top-up tax imposed under the IIR;

(e) the new Schedule 62 contains provisions on the administration of the IIR and UTPR top-up taxes and HKMTT, including—

(i) requirements for the filing of returns and notices and provision of information relevant to the determination of liability for any top-up taxes; and

(ii) provisions modifying provisions of the IRO in their application in relation to top-up taxes; and

(f) the new Schedule 63 lists out the commentaries, administrative guidances and related documents published by the Organisation for Economic Co-operation and Development which are to be given effect to in a way that supplements, and clarifies the interpretation and operation of, the new Part 4AA and Schedules 60 to 62.

3. Clause 13 adds new sections 80O to 80R to, and clauses 14 and 15 amend existing sections in, the IRO to create offences for non-compliance with obligations under the new Schedules.

4. The Bill also makes minor textual amendments to the IRO (clauses 5, 10 and 11).

Annex B

Tax Administration Framework

To ease compliance burden, the reporting and administrative requirements of the GloBE rules and HKMTT will be aligned as far as practicable. The key elements of the tax administration framework are set out below. We will also ride on certain administrative provisions of IRO, with necessary modifications, to deal with objection and appeal procedures, collection and recovery of tax, etc., for the purposes of the GloBE rules and HKMTT.

Filing of top-up tax return

2. We propose that each Hong Kong constituent entity of an in-scope MNE group be required to furnish a single top-up tax return for the purposes of the GloBE rules and HKMTT ("top-up tax return") in a prescribed manner and form no later than 15 months after the last day of the reporting fiscal year. The filing deadline for the first transition year of any constituent entities of the MNE group is extended to 18 months. The top-up tax return will include information required in the standardised GloBE Information Return ("GIR")[1]. Hong Kong constituent entities of an in-scope MNE group will be relieved from the obligation to file the GIR information if such information is filed in a jurisdiction that will be able to exchange GIR information with Hong Kong under a qualifying competent authority agreement.

3. To provide flexibility for filing of returns, we propose to allow an in-scope MNE group to designate one Hong Kong constituent entity ("designated local entity")[2] to file the top-up tax return to IRD such that all other Hong Kong constituent entities of the group will be relieved from their filing obligation. The designated local entity will need to be appointed annually and remain valid in respect of the reporting fiscal year concerned.

Filing of top-up tax notification

4. We propose that each Hong Kong constituent entity of an in-scope MNE group will be required to file an annual notification ("top-up tax notification") relating to its obligations of filing top-up tax return in a prescribed form and

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[1] Under the GloBE rules, each constituent entity of an in-scope MNE group is required to file a standardised GIR containing the group's general information, corporate structure, safe harbour election, ETR computation on a jurisdictional basis, top-up tax calculation and attribution, etc., in the jurisdiction where the entity is located.

[2] The designated local entity should be UPE or a Hong Kong constituent entity to which UPE undertakes to provide essential information for complying with the filing obligation.

manner. The top-up tax notification is required for notifying IRD that an MNE group has come within the scope of the global minimum tax and HKMTT, as well as identifying the entity and jurisdiction from which Hong Kong will receive the GIR and the local entities for which the obligation to file the top-up tax return will be lifted when certain conditions are met. We will require a top-up tax notification to be filed within six months after the last day of the reporting fiscal year. Similar to the arrangement provided in paragraph 3 above, we will allow an in-scope MNE group to appoint one designated local entity to file a top-up tax notification so as to relieve other Hong Kong constituent entities from the filing obligation.

Assessment and demand for top-up tax

5. We propose that a notice of assessment and demand for top-up tax will be issued based on the information declared upon the filing of the top-up tax return. No provisional top-up tax will be charged. Having considered the feedbacks from stakeholders, the payment due date will be one month after the expiry of the return filing deadline or the date of the notice of assessment, whichever is the later.

6. In accordance with the GloBE rules, the top-up tax under IIR will generally be charged on UPE[3]. In respect of UTPR or HKMTT[4], under the default allocation mechanism for top-up tax, each constituent entity will only be liable for its share of top-up tax. To provide flexibility for payment of top-up tax, we propose to allow the group to designate one paying entity or more. However, if any of the designated paying entity does not pay the top-up tax payable, all Hong Kong constituent entities will be jointly and severally liable for the whole amount of top-up tax payable of the group.

7. Having regard to the possible need for re-calculating an in-scope MNE group's top-up tax payable for a previous fiscal year, we will provide for a limitation period for raising assessment under the GloBE rules different from the normal six-year time limit under section 60 of IRO. We propose that the time limit for issuing top-up tax assessment be set as six years from (a) the end of the fiscal year or (b) the time when the non-assessment or under-assessment has come

[3] Under IIR, top-up tax is paid at the level of an entity's parent entity, in proportion to its ownership interests in the low-taxed constituent entities. IIR is applied at the top and works its way down the ownership chain. Generally, UPE will be chargeable to the top-up tax if it is located in a jurisdiction that has introduced IIR. IIR will only apply at an intermediate parent level if UPE is not subject to IIR or if the low-taxed constituent entity has a significant minority interest holder of more than 20% outside the MNE group.

[4] The relevant OECD AG does not require a jurisdiction implementing QDMTT to allocate the QDMTT top-up tax among constituent entities in any particular manner, so long as the tax liability is allocated to one or more than one constituent entity that is subject to tax in that jurisdiction.

to the assessor's knowledge, whichever is the later.

8. Having considered the feedbacks from stakeholders, we propose that the objection period to a top-up tax assessment be extended from the normal one-month period to two months after the date of the notice of assessment.

Penalty for non-compliance

9. We propose to impose a comparable level of penalty for non-compliance with the reporting and administrative requirements, including the failure to file a top-up tax return or top-up tax notification, and wrongdoings in relation to incorrect return and notification, etc., as currently imposed under the existing penal provisions in relation to profits tax under sections 80, 82 and 82A of IRO. We propose that a service provider who is engaged to file a top-up tax return or top-up tax notification for a filing entity be also subject to similar penalties as currently imposed for service providers in relation to filing of a profits tax return under section 80K of IRO.

Anti-avoidance provision

10. To maintain the integrity of the GloBE and HKMTT regimes, we will introduce the main purpose test as a general anti-avoidance rule for the regimes. If a person enters into any arrangements for the main purpose of avoiding the relevant obligations such as filing and payment of top-up tax, the law will treat those arrangements as if they had never been entered into.

Annex C

Safe Harbours

OECD has agreed to provide two transitional safe harbours (i.e. CbCR Safe Harbour and UTPR Safe Harbour), and one permanent safe harbour (i.e. QDMTT Safe Harbour). There is also a Simplified Calculations Safe Harbour for NMCEs – the qualification of which as a permanent safe harbour is pending evaluation by OECD. We propose to provide these four Safe Harbours to in-scope MNE groups.

Transitional CbCR Safe Harbour

2. Under the transitional CbCR Safe Harbour, an in-scope MNE group's top-up tax for a particular jurisdiction will be deemed to be zero if any of the three specified criteria in relation to total revenue, ETR or routine profits is met. It operates through the use of jurisdictional total revenue and profit or loss before income tax information contained in the MNE group's qualified Country-by-Country ("CbC") report[1] and jurisdictional tax information contained in its qualified financial statements. It only applies to a transition period covering all the fiscal years beginning on or before 31 December 2026 and ending on or before 30 June 2028. This Safe Harbour adopts a "once out, always out" approach, meaning that if an in-scope MNE group has not applied this Safe Harbour in respect of a jurisdiction in a previous fiscal year, the group cannot qualify for this Safe Harbour for that jurisdiction in a subsequent fiscal year.

Transitional UTPR Safe Harbour

3. The UTPR Safe Harbour provides relief to the UPE jurisdiction from the application of UTPR during the transition period, which means fiscal years which run no longer than 12 months that begin on or before 31 December 2025 and end before 31 December 2026. This Safe Harbour is only available for UPE jurisdictions with a corporate income tax rate of at least 20%. Where this Safe

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[1] CbCR is a minimum standard formulated by OECD under Action 13 of the BEPS package in 2015. Under this standard, an MNE group is required to file a CbC report in relation to an accounting period where the consolidated group revenue for the preceding accounting period is at least EUR 750 million; and the group has constituent entities or operations in two or more jurisdictions. A CbC report requires aggregate tax jurisdiction-wide information relating to the global allocation of the MNE group's income and taxes paid, as well as certain indicators of the location of economic activity among tax jurisdictions in which the group operates. The report also requires a listing of all the constituent entities of the group for which financial information is reported. CbC reports are to be exchanged automatically between tax administrations under relevant exchange arrangements.

Harbour applies, at the election by an in-scope MNE group, the UTPR top-up tax amount calculated for the UPE jurisdiction will be deemed to be zero for each fiscal year that falls within the transition period.

QDMTT Safe Harbour

4. Under the QDMTT Safe Harbour, an in-scope MNE group will only need to undertake one QDMTT calculation in respect of its constituent entities in the QDMTT jurisdiction and be relieved from the need to perform an additional GloBE calculation in the same jurisdiction. Where this Safe Harbour applies, the top-up tax payable in respect of the QDMTT jurisdiction under the GloBE rules will be deemed to be zero.

Simplified Calculations Safe Harbour

5. Under the Simplified Calculations Safe Harbour for NMCEs, a filing constituent entity may make an annual election to use simplified calculation methods to determine the GloBE income or loss, GloBE revenue and adjusted covered taxes of an NMCE provided that specified conditions are met.

Annex D

Economic, Financial and Civil Service Implications of the Proposal

Economic Implications

The proposal will demonstrate Hong Kong's firm commitment to combating cross-border tax evasion. This is particularly crucial for Hong Kong to preserve its reputation as an international financial and business centre.

2. The implementation of the global minimum tax and HKMTT will have tax implications on in-scope MNE groups operating in Hong Kong. Nevertheless, since the mechanics of the global minimum tax seek to ensure that in-scope MNE groups pay a minimum level of tax in every jurisdiction in which they operate, the proposal will not result in additional tax burden in overall terms for these MNE groups. While the proposal will also incur additional compliance costs on in-scope MNE groups, the provision of safe harbours and business facilitating measures, as well as the introduction of HKMTT will help streamline compliance processes and reinforce our tax competitiveness relative to other jurisdictions.

Financial Implications

3. Based on our rough estimates, the implementation of HKMTT will bring in an additional tax revenue of about $15 billion per year starting from 2027-28.

Civil Service Implications

4. Additional resources have been provided to IRD to cope with the work arising from reinforced international tax cooperation and tax matters of large MNE groups in Hong Kong. IRD will closely monitor the workload arising from the global minimum tax and HKMTT and may seek further resources for implementation of the initiatives in accordance with the established mechanism if necessary.