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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 823 final
Subject:	Proposal for a COUNCIL DIRECTIVE on ensuring a global minimum level of taxation for multinational groups in the Union

Delegations will find attached document COM(2021) 823 final.

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Brussels, 22.12.2021
COM(2021) 823 final

2021/0433 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on ensuring a global minimum level of taxation for multinational groups in the Union

{SWD(2021) 580 final}

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Council Conclusions of 27 November 2020 confirmed the Council's continued support of the work at the OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) aimed at reaching a global consensus-based solution taking into account the interests of all Member States in order to ensure that all corporations pay their fair share of tax on profits generated by their activities in the EU.

This Directive lays down rules for ensuring minimum level of effective corporate taxation of large multinational groups and large-scale purely domestic groups operating in the Single Market, which are consistent with the agreement reached by the IF on 8 October 2021, and follow closely the OECD Model Rules agreed by the IF and published on 20 December 2021.

As an extension to the 2015 OECD BEPS project, the IF worked on a solution to address the tax challenges arising from the digitalisation of the economy. The discussions focused around two work streams: Pillar 1, which proposes a partial re-allocation of taxing rights towards market jurisdictions and Pillar 2, which proposes to introduce minimum effective taxation for large multinational groups. The two pillars aim to address different, but related issues linked to the increasing globalisation and digitalisation of the economy. The twin policy goals of Pillar 1 and 2 are to deal with remaining BEPS challenges and to put a floor on excessive tax competition between jurisdictions.

Pillar 2 consists of two rules intended for introduction in national domestic tax laws, and a treaty based rule. The two domestic tax rules, the Income Inclusion Rule (IIR) and its backstop, the Under Taxed Payments Rule (UTPR), together known as the Global anti-Base Erosion (GloBE) rules. The Subject to Tax Rule (STTR) is a treaty-based rule that allows source jurisdictions to impose limited source taxation on certain related party payments that are subject to tax below a minimum rate. The OECD Model Rules contain provisions in respect of the GloBE Model Rules only.

The detailed implementation plan included in the October 2021 IF statement states that national implementing provisions for the GloBE Model Rules should be operational and applicable from 1 January 2023.

As the European Union with a Single Market is a closely integrated economy, it is important to ensure that the two-Pillar agreement is implemented in a coherent and consistent way across Member States. In order to ensure this level of implementation within the EU and compatibility with EU law, the principal method for implementing Pillar 2 in the EU is by way of a Directive. The Directive implements the GloBE Model Rules only. The STTR is naturally suited to be addressed in bilateral tax treaties. The Directive reflects the global OECD agreement, with some necessary adjustments, to guarantee conformity with EU law.

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- **Consistency with existing policy provisions in the policy area**

This Directive builds on the Communication from the Commission to the European Parliament and the Council *"Business Taxation for the 21st Century"* presented by the Commission on 18 May 2021[1].

The implementation of the GloBE Model Rules in the EU could have implications for existing provisions of the Anti-tax Avoidance Directive (ATAD)[2] and specifically for the Controlled Foreign Company (CFC) rules, which could interact with the primary rule of Pillar 2 – the IIR. The Commission has explored how to best accommodate the interaction between the CFC of the ATAD and the IIR, and concluded that it is not necessary to amend the ATAD in this regard. Moreover, it is consistent with the OECD Model Rules to continue the application of the ATAD CFC rule in parallel to the GloBE Model Rules. In practice, ATAD CFC rules will apply first and any additional taxes paid by a parent company under a CFC regime in a given fiscal year will be taken into consideration in the GloBE Model Rules by attributing those to the relevant low-taxed entity for the purpose of computing its jurisdictional effective tax rate.

Secondly, the transposition of the GloBE Model Rules in the EU should pave the way for agreeing the pending proposal for recasting the Interest and Royalties Directive (IRD) [3], which has been in the Council since 2011. The aim of the recast Directive was to make the benefits of the Directive (which eliminates withholding tax obstacles to cross-border interest and royalty payments within a group of companies) conditional on the interest being subject to tax in the destination state. Some Member States held the view that the IRD should go further and set a minimum level of tax in the destination state as a condition for benefiting from the absence of withholding tax. The implementation of the GloBE Model Rules in the EU should resolve the issue under discussion for recasting the IRD.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 115 of the Treaty on the Functioning of the European Union (TFEU) is the legal base for legislative initiatives in the field of direct taxation. Although no explicit reference to direct taxation is made, Article 115 refers to directives for the approximation of national laws as those directly affect the establishment or functioning of the internal market. For this condition to be met, it is necessary that proposed EU legislation in the field of direct taxation aims to rectify existing inconsistencies in the functioning of the internal market. In the current scenario, the absence of rules ensuring minimum effective corporate taxation across the Single Market is such existing inconsistency. Article 115 stipulates that legal measures of approximation under that article shall take the legal form of a Directive.

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[1] COM(2021) 251 final.

[2] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market OJ L 193, 19.7.2016, p. 1–14.

[3] Proposal for a Council directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (recast), COM/2011/0714 final - 2011/0314 (CNS).

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- **Subsidiarity (for non-exclusive competence)**

This proposal complies with the principle of subsidiarity as set out in Article 5 Treaty on European Union (TEU). The nature of the subject requires a common initiative across the internal market.

This Directive introduces minimum effective taxation primarily for large multinationals' profits operating in the internal market and beyond. It provides a common framework for implementing the OECD Model Rules into Member States' national laws in a coordinated manner and adjusted for EU law requirements.

Action at EU level is necessary, as it is imperative to ensure a uniform implementation of the OECD Model Rules in the EU. Firstly, the OECD Model Rules are "a common approach", so it would be important to have one set of uniform rules and a common minimum level of protection in the internal market. In the EU, a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive impact of minimum effective taxation of business profits. This can only be achieved if legislation is enacted centrally and transposed in a uniform fashion.

Furthermore, as multinational groups are usually present in several EU Member States and the GloBE Model Rules have a cross-border dimension, it is essential that no disparities arise in the operation of the rules, for example, in the method for computing the effective tax rate or the top-up tax liability. Such disparities could create mismatches and distort fair competition in the internal market. It is therefore critical to adopt solutions that function for the internal market as a whole and these can only be achieved at Union level.

An EU initiative would add value, as compared to what a multitude of national implementation methods can attain. Given that the GloBE Model Rules have a strong cross-border dimension, action at EU level would balance divergent interests within the internal market and consider the full picture, to identify common objectives and solutions. Finally, the measures to implement the OECD Model Rules have to be enacted in accordance with primary law and follow a common line across the Union, to provide taxpayers with legal certainty that the new legal framework is compatible with the EU fundamental freedoms, including the freedom of establishment.

- **Proportionality**

The proposal complies with the principle of proportionality as set out in Article 5 of the TEU.

The OECD Model Rules apply to Multinational Enterprises with a combined group turnover of at least EUR 750 million based on consolidated financial statements. The envisaged measures do not go beyond ensuring minimum effective taxation of such entities operating in the internal market and they are consistent with the OECD Model Rules as well as with EU law requirements. The extension of the Income Inclusion Rule (IIR) to large-scale domestic groups (with a combined group turnover of at least EUR 750 million) is expected to involve a limited number of taxpayers and is limited to the essential minimum for securing EU law compatibility of the rules of the Directive. The Directive does not therefore go beyond what is necessary to achieve its objectives and respects the principle of proportionality.

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- **Choice of the instrument**

The proposal is for a Directive, which is the only available instrument under the legal base of Article 115 TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Most Member States are members of the OECD and have participated in detailed technical discussions on Pillar 2 work stream between 2019 and 2021. Moreover, the OECD experts gave regular updates and answered questions from the Council on the project.

The OECD organised public consultations on some elements of the Pillar 2 design in December 2019 and January 2021, culminating with online public conferences for both events. Furthermore, the Commission has debated internally, with some Member States and with OECD experts, in particular, where the Commission has had doubts about certain technical aspects of the proposed solutions.

Furthermore, on 6 November 2019, DG TAXUD organised a meeting of Working Party IV and Member States had the opportunity to debate: objectives and principles for the modernisation of international business taxation, legal aspects and the CJEU case law implications for the possible approaches for the modernisation of international business taxation and specific design options for the modernisation of international business taxation.

As the Pillar 2 Directive will implement an internationally agreed standard for ensuring minimum effective taxation of corporate profits of large multinational groups and the OECD has consulted publicly quite extensively on this subject, considering a very tight timeline for implementation of such standard, the Commission has decided to proceed with this proposal for a Directive without undertaking a public consultation.

- **Impact assessment**

No impact assessment was carried out for this proposal for the reasons explained below.

On 12 October 2020the OECD Secretariat published an Economic Impact Assessment, which was prepared to support the discussions by the Inclusive Framework around design questions associated with the Pillars 1 and 2 proposals. The Economic Impact Assessment was produced by the OECD Secretariat in consultation with Inclusive Framework members, OECD Working Party No.2, other international organisations, the academic community and other stakeholders.

In this context, the Commission did not produce an own complete impact assessment. However, the Commission Services carried out its own preliminary estimate of the impact of Pillar 2 of the proposed OECD/IF international corporate tax reforms, which was presented in the Council on 25 October 2019.

In essence, the important policy decisions have already been taken by the Inclusive Framework and at the highest political level (G20 Finance Ministers and G20 Heads of

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States). All EU Member States which are members of the Inclusive Framework[4] have already agreed on the main aspects of Pillar 2 and committed to apply the OECD Model Rules. The EU would have no policy options to choose from as key elements of the framework, such as the scope or tax rates and base, have already been prescribed and agreed on.

In addition, there is an extreme political urgency to go forward with the project – i.e. to apply the OECD Model Rules in the EU already from the beginning of 2023, as agreed by the Inclusive Framework. This means that it is essential to have a swift adaptation and implementation process of the initiative for the EU Member States.

4. BUDGETARY IMPLICATIONS

This proposal for a Directive does not have any budgetary implications for the EU.

5. OTHER ELEMENTS

• Detailed explanation of the specific provisions of the proposal

The Directive aims to provide rules to ensure minimum level of taxation for large multinational enterprises and large-scale domestic groups, in consistent terms with the global agreement reached by the IF of 8 October 2021 and further to the OECD Model Rules agreed by the IF and published on 20 December 2021, in circumstances where a Member State is required to apply the GloBE Model Rules.

General architecture of Pillar 2

Pillar 2 consists of two rules intended for introduction in national domestic tax laws, and a treaty based rule. The two domestic tax rules, the Income Inclusion Rue (IIR) and its backstop, the Undertaxed Payments Rule (UTPR), are together known as the GloBE Model Rules. The Subject to Tax Rule (STTR) is a treaty-based rule that allows source jurisdictions to impose limited source taxation on certain related party payments that are subject to tax below a minimum rate. However since this will be for jurisdictions to implement individually, there will be no EU action in relation to the STTR and this proposal does not concern the STTR.

Pillar 2 applies to groups of multinational enterprises (MNEs) and large-scale domestic groups that have a combined annual group turnover of at least EUR 750 million based on consolidated financial statements. This threshold was decided by the IF in order to ensure consistency with existing international corporate tax policies such as the rules on Country-by-Country Reporting (CbCR). Government entities, international organisations, non-profit organisations, pension funds and investment funds that are Ultimate Parent Entities (UPEs) of an MNE Group are not subject to the GloBE Model Rules.

The IIR works by imposing a top-up tax on a parent entity in respect of the low-taxed income of group entities (which are referred to as constituent entities). The IIR applies on a top-down basis, which means that it is applied by the entity that is at, or near, the top of the ownership chain in the MNE Group, which is normally the UPE. However, in case where the UPE does not apply the IIR, one or more intermediate parent entities (IPE) will have to apply the IIR to their low-taxed constituent entities. The IIR is subject to a split-ownership rule for

[4] This means all Member States except Cyprus. However, Cyprus have stated that they do not oppose to the content of the Statement by the Inclusive Framework.

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shareholdings below 80%. This means IIR will be applied by a partially-owned parent entity (POPE) to its controlled subsidiaries of a sub-set of the MNE Group in priority to the UPE when such POPE is owned by more than 20% by shareholders outside of the MNE group. In case there are several POPEs in an MNE group, the IIR will be applied by the POPE closest in the chain of ownership to the low-taxed constituent entity.

The UTPR acts as a backstop to the IIR and applies in situations where there is no qualifying IIR in the jurisdiction of the UPE or where a low level of taxation arises in the jurisdiction of the UPE. The UTPR works by allocating top-up tax to a jurisdiction to the extent the low-tax income of a constituent entity is not subject to tax under an IIR. The UTPR allocates top-up tax to jurisdictions based on a two-factor formula – carrying value of tangible assets in the jurisdiction and number of employees in the jurisdiction. While the global agreement endeavours the IIR to be operational from 1 January 2023, the UPTR is required to be implemented one year later.

The GloBE Model Rules operate by imposing the top-up tax on a jurisdictional basis utilising an Effective Tax Rate (ETR) test. If the ETR of an MNE group's constituent entities computed together as one in a jurisdiction falls below the minimum tax rate of 15%, then top-up tax is due in respect of each of the constituent entities in this jurisdiction, in order to bring the ETR of that jurisdiction up to the minimum rate. The ETR for a period is computed by dividing corporate and equivalent taxes attributable to that period for that jurisdiction (known as adjusted covered taxes) by the adjusted income of that MNE Group for this jurisdiction. The ETR test is both a trigger for the application of the Pillar 2 rules and also a measure of how much additional tax is due by the MNE Group.

The GloBE Model Rules also provide for a substance carve-out based on a formula, which aims to reduce the impact of Pillar 2 on MNE groups in a jurisdiction, where they are carrying out real economic activities.

Implementation in the EU – design options and other choices

The Directive implements the GloBE Model Rules in the EU based on the OECD Model Rules and taking into account specifics of EU law and the Single Market. As the Directive implements an internationally agreed standard for ensuring minimum effective taxation for large multinational groups, only limited options and choices were available in the design of the Directive.

While the Directive, in general, closely follows the OECD Model Rules, it extends its scope to large-scale purely domestic groups, in order to ensure compliance with the fundamental freedoms. In addition, the Directive makes use of an option offered in the Commentary to the Model Rules whereby the Member State of a constituent entity applying the IIR, which is usually the jurisdiction of the UPE, is required to ensure effective taxation at the minimum agreed level not only of foreign subsidiaries but also of all constituent entities resident in that Member State and permanent establishments (PEs) of the MNE group established in that Member State. The OECD Model Rules provide that the jurisdiction which applies the IIR takes into account the ETR of only foreign constituent entities.

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Chapter I General Provisions

Chapter I of the Directive deals with general provisions, namely the subject matter, scope, definitions, and location of a constituent entity.

The scope of the Directive is defined by reference to constituent entities located in the Union that are part of MNE groups or large-scale domestic groups (consisting of Constituent Entities as members) with a consolidated group revenue of at least EUR 750 million in at least two of the four preceding years. For various policy reasons, such as to preserve the tax neutrality principle and in line with the OECD Model Rules, the following entities are excluded from the scope of the Directive: governmental entities, international organisations, non-profit organisations, pension funds and, provided that they are at the top of the group structure, investment entities and real estate investment vehicles. Entities that are owned at least 95% by excluded entities are also excluded from the scope of the Directive.

In connection with the location of a constituent entity, including a PE, the Directive deems that a constituent entity, other than a PE or flow-through entity, is located in the jurisdiction where it is considered as resident for tax purposes. Where the location of such constituent entity cannot be ascertained based on this rule, then it is deemed to be located in the jurisdiction where it was created. The Directive also determines the location of a constituent entity that is a PE, and includes tie-breaker clauses for specific situations.

Chapter II Application of the Income Inclusion Rule and the Under Taxed Payments Rule

Chapter II sets out the rules for the application of the IIR and the UTPR by Member States.

The Income Inclusion Rule (IIR)

Under the rules of the Directive, the IIR applies in the following situations:

(1) UPE in the EU

If the UPE is located in the EU, it will be subject to the top-up tax in respect of its low-taxed constituent entities in the same and other EU Member States as well as in third country jurisdictions.

(2) IPE/POPE in the EU with UPE outside the EU;

If there is no UPE in the EU, the low-taxed constituent entities of the MNE group in the EU would effectively be taken into account by the third-country UPE of the Group if it applies the IIR. However, if there is at least one POPE or one IPE (if the jurisdiction where the UPE is located does not apply an IIR) in the EU, then the IPE/POPE will be subject to the top-up tax in respect of their low-taxed directly or indirectly owned constituent entities in the EU and third country jurisdictions.

(3) POPE in the EU with UPE in the EU

Although a UPE located in the EU is normally charged the top-up tax in respect of its low-taxed constituent entities (see 1) above), there is also a possibility that the primary taxing right lies with the Member State of a POPE. In these cases, one has to follow a ‘bottom-up’ method in identifying the POPE that is liable to tax. One will have to start from the lowest-tier wholly-owned constituent entities and move up to the first POPE, which will

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be liable to top-up tax under the IIR in respect of its low-taxed constituent entities. The other POPEs up to the UPE will also be subject to the IIR but with a right to receive a credit for top-up tax due by another POPE lower in the chain.

The Directive determines how much of a constituent entity's top-up tax a Parent Entity is entitled to collect through the IIR. This allocable share is, in general, based on the proportion of the parent entity's interest in the income of the low-taxed constituent entity.

Furthermore, in the case of large-scale domestic groups, the ultimate parent entity located in a Member State is subject to the IIR top-up tax in respect of its low-taxed constituent entities.

Domestic Top-Up Tax

In order to preserve sovereignty of Member States, the Directive provides that a Member State can opt to apply the top-up tax domestically to constituent entities located in its territory (Domestic Top-up Tax). This election allows that the top-up tax is charged and collected in a jurisdiction in which low-level of taxation occurred, instead of collecting all the additional tax at the level of the UPE. When this election is exercised, the parent entity applying the IIR will be obliged to give credit for the qualified domestic top-up tax when calculating the top-up tax in respect of the relevant jurisdiction.

The Undertaxed Payments Rule (UTPR)

The Directive provides that in circumstances where the UPE is located outside the EU in a jurisdiction that does not apply a qualifying IIR, all its constituent entities in jurisdictions with an appropriate UTPR framework will be subject to the UTPR. In this circumstance, constituent entities of such an MNE group that are located in a Member State will be apportioned, and will have to pay in their Member State, a share of the top-up tax linked to the low-taxed subsidiaries of the MNE group.

The Directive provides that the UTPR will also apply to situations where the jurisdiction of the UPE operates a qualifying IIR but the UPE, together with its subsidiaries located in that same jurisdiction, are low-taxed. The top-up tax corresponding to the low-taxed UPE and its domestic subsidiaries will be charged through the UTPR to all the eligible entities across the MNE Group, including to entities that are located in a Member State. This should only happen when the UPE is located outside the EU because an EU-located UPE either applies the IIR principles to itself and to its domestic subsidiaries or acknowledges that top-up was locally charged via the Domestic Top-up tax. Therefore, there should be no top-up tax allocated under the UTPR when the UPE is located in the EU.

In line with the OECD Model Rules, the calculation and allocation of the UTPR top-up tax in the Directive is based on two factors: number of employees and carrying value of tangible assets.

Chapter III Calculation of the Qualifying Income or Loss

Chapter III contains rules for the determination of **'qualifying income'**, i.e. the adjusted income that will be taken into account for computing the effective tax rate. In order to compute this income, we start with the financial accounting net income or loss of the constituent entity for the fiscal year, as determined for the purpose of preparing consolidated financial statements. Then adjustments are made to this income or loss as defined in Article 15.

In line with the OECD Model Rules, the Directive excludes **international shipping income** and **partly ancillary international shipping income** from the application of the GloBE Model Rules. This exclusion follows the principle whereby in national tax systems, income from shipping is often taxed pursuant to a separate set of rules from those of the mainstream corporate tax system.

This Chapter also includes rules specific to constituent entities that are a PE or a flow-through entity. In these cases, special rules are needed in order to avoid double counting or no counting of the income attributable to these entities. These special rules will also limit tax avoidance opportunities.

Chapter IV Computation of Adjusted Covered Taxes

Chapter IV defines covered taxes and outlines the rules for the calculation of '**adjusted covered taxes**' of a constituent entity for a fiscal year. The prime principle in allocating covered taxes is to assign them to the jurisdiction where underlying profits subject to these taxes were earned.

To ensure this principle, the Directive also provides special rules in respect of cross-border taxes or income streams in the case of a PE, transparent entity, controlled foreign company, a hybrid entity, or taxes on dividends.

Chapter V Calculation of the Effective Tax Rate and the Top-Up Tax

Chapter V contains rules for the calculation of the effective tax rate of an MNE group in a jurisdiction for a fiscal year. The effective rate is computed by dividing the adjusted covered taxes of the group by the adjusted income earned by the group, in a specific jurisdiction for the fiscal year.

In line with the global agreement, the Directive sets the **minimum effective tax rate** for the purposes of the GloBE Model Rules at 15%.

Chapter V also deals with the calculation and allocation of the top-up tax. Firstly, the top-up tax percentage is computed for a jurisdiction as a difference between the minimum effective tax rate of 15% and the ETR of the jurisdiction. This top-up tax percentage is then multiplied by the income for the GloBE purposes of that jurisdiction for the year in question.

The **substance-based income exclusion** (if any) is also deducted from this amount to arrive at the jurisdictional top-up tax. In line with the GloBE Model Rules, the Directive provides for a substance-based income exclusion based on payroll costs and tangible assets. The filing entity of an MNE group can elect not to apply the substance-based income exclusion for a jurisdiction.

Finally, the top-up tax for each constituent entity in a jurisdiction is obtained by apportioning the jurisdictional top-up tax among constituent entities in that jurisdiction based on the income for the GloBE purposes of each constituent entity in that jurisdiction.

The Directive provides that when, as a result of an adjustment made to covered taxes or qualifying income or loss to a prior fiscal year, there is an additional top-up tax to be collected, such top-up tax should be treated as additional **top-up tax for the fiscal year under review**.

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In order to reduce compliance burdens in low risk situations, an exclusion applies to minimal amounts of profit: the ***de minimis*** **income exclusion.** This is when profits of the MNE group's constituent entities in a jurisdiction are below EUR 1 million and revenues below EUR 10 million. In such circumstances and provided that the election of the *de minimis* income exclusion is taken, the top-up tax of the constituent entities in this jurisdiction is deemed to be zero for GloBE purposes.

Chapter VI Special Rules for Mergers and Acquisitions

This chapter contains special rules in respect of mergers, acquisitions, joint ventures, and multi-parented MNE groups. It provides for the application of a consolidated revenue threshold to group members in a merger or demerger situation. When a constituent entity is acquired or sold by an MNE group within the scope of the rules, such a constituent entity should be treated as part of both groups during the year, with certain adjustments to the values of the attributes used for the operation of the GloBE Model Rules (covered taxes, eligible payroll, eligible tangible assets, GloBE deferred tax assets). There are rules for the recognition of a gain or loss, and carrying values in a transfer of assets and liabilities, including reorganisations. There is a special provision to include joint ventures, which would otherwise not be included in the definition of an MNE group for the GloBE purposes. Finally, there is a specific rule for multi-parented MNE groups in a way that group entities are treated as part of a single MNE group.

Chapter VII Tax Neutrality and Distribution Regimes

Chapter VII contains rules in respect of tax neutrality regimes and distribution tax systems.

In order to avoid unintended outcomes, such as a disproportionate UTPR top-up tax liability in an MNE Group, the Directive provides for special rules for the computation of the income of the ultimate parent entity, where such an entity is a flow-through or subject to a deductible dividend regime.

In respect of **investment entities**, there are specific rules for the determination of the ETR, the top-up tax, an election to treat them as tax transparent entities, and an election to apply taxable distribution method.

In relation to **distribution tax systems**[5], the Directive provides that, on an annual election by the filing entity with respect to constituent entities which are subject to an eligible distribution tax system, a deemed distribution tax is included in the calculation of the adjusted covered taxes of the relevant constituent entities. This involves maintaining a deemed distribution tax recapture account for each fiscal year for which the election is made. If, in a four-year period, no tax is paid at the minimum rate on such deemed distribution, and the constituent entity has not incurred an allowable loss, then the top-up tax is payable based on the outstanding balance of the recapture account for the year in question.

Chapter VIII Administrative Provisions

Chapter VIII contains administrative provisions, including filing obligations.

[5] In simple terms, distribution based corporate tax systems means that the taxation of profits is postponed until the profits are distributed by way of dividends or otherwise.

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The Directive obliges a constituent entity of an MNE group located in a Member State to file a **top-up tax information return**, unless the return is filed by the MNE group in another jurisdiction, with which the Member State has an exchange of information agreement.

The required return may be filed either by the constituent entity or by another designated local entity located in the Member State on its behalf.

If the constituent entity is relieved from filing the return it must nevertheless notify its tax administration of the identity and location of the constituent entity filing the return for the MNE group.

The returns must be filed within 15 months after the end of the fiscal year to which they relate to.

The Directive also lays down penalties for when an MNE group fails to comply with the obligations laid down in the Directive.

Chapter IX Transitional Rules

Chapter IX contains transitional rules. These rules outline how to determine some aspects of the GloBE Model Rules when a group has to apply them for the first time [in order to reduce the compliance burden]. The Chapter also covers transition rules for the substance-based income exclusion; parameters for carving domestically earned income out of the IIR and UTPR for large-scale domestic groups and MNE groups, respectively, in their initial phase of activity; a transitional relief for filing obligations and portfolio shareholdings.

Chapter X Specific application of the IIR to large-scale domestic groups

This Chapter extends the application of the IIR to purely domestic groups located in a Member State if they meet the EUR 750 million threshold. This specific aspect of the EU rules is meant to avoid any risk of discrimination in a Member State between an entity that belongs to a group with cross-border activities and a group with purely domestic activities. These large-scale domestic groups will compute their ETR and, where relevant, be charged any top-up tax due under the IIR.

In order to maintain an equal treatment with regard to MNE groups that are in the first stages of their international activities, this Chapter also grants to large-scale domestic groups a 5-years transitional period during which their low-taxed domestic activities will be excluded from the application of the rules.

Chapter XI Final Provisions

The Inclusive Framework members are expected to implement the Model Rules that integrate the agreement on *a global minimum level of taxation for MNE groups in the Union* by the end of 2022. Subsequently and in due course, the OECD Inclusive Framework is expected to peer review the national transposition rules of the participating members of the Inclusive Framework, in order to determine whether these national rules can be treated as "qualified"; namely, whether they comply with the letter and spirit of the Model Rules.

Moreover, in a separate process, the OECD Inclusive Framework will establish conditions under which the US GILTI regime will co-exist with the GloBE rules, to ensure a level playing field. This follows the expected request from the US to consider their legal framework

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which is currently in the process of being revised as equivalent to the content of the global agreement and in particular, to the primary rule, ‘Income Inclusion Rule’. The Directive sets out conditions which will enable the Commission to assess the equivalence of third country systems and include the jurisdictions who fulfil the relevant conditions in a list annexed to the Directive. The Commission will also be assigned the function of modifying the annexed list as a result of a subsequent assessment after a third country jurisdiction modifies its legal framework. The amendment of the Annex will have to be carried out in conformity with the rules on delegated acts.

This Chapter also refers to the beginning of the application of the rules of the Directive, which is set for 1 January 2023, with the exception of the UTPR for which the application will be deferred to 1 January 2024.

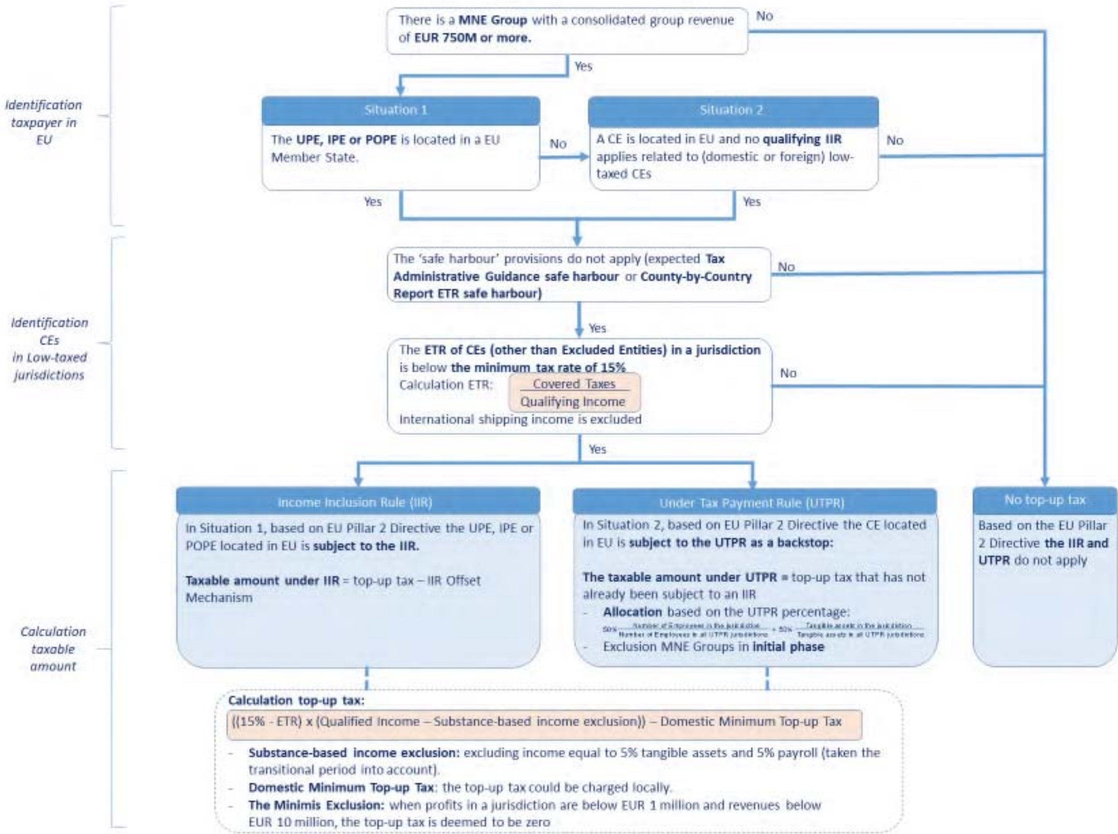

Fig 1. Flow chart of the operation of the rules in the EU

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2021/0433 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on ensuring a global minimum level of taxation for multinational groups in the Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[6],

Having regard to the opinion of the European Economic and Social Committee[7],

Acting in accordance with a special legislative procedure,

Whereas:

(1) In recent years, the Union has adopted landmark measures to reinforce the fight against aggressive tax planning within the internal market. The anti-tax avoidance directives have laid down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Those rules converted into Union law the recommendations made by the Organisation for Economic Cooperation and Development (OECD) in the context of the initiative against base erosion and profit shifting (BEPS) to ensure that profits of multinational enterprises (MNEs) are taxed where economic activities generating the profits are performed and where value is created.

(2) In a continued effort to put an end to tax practices of MNEs which allow them to shift profits to jurisdictions where they are subject to no or very low taxation, the OECD has further developed a set of international tax rules to ensure that MNEs pay a fair share of tax wherever they operate. This major reform aims to put a floor on competition over corporate income tax rates through the establishment of a global minimum level of taxation. By removing a substantial part of the advantages of shifting profits to jurisdictions with no or very low taxation, the global minimum tax reform will level the playing field for businesses worldwide and allow jurisdictions to better protect their tax bases.

(3) This political objective has been translated into the Global Anti-Base Erosion Model Rules (GloBE Model Rules) approved on 14 December 2021 by the OECD/G20 Inclusive Framework on BEPS to which Member States have committed. In the Council Conclusions of 7 December 2021[8], the Council reiterated its firm support of the global minimum tax reform and committed to a swift implementation of the

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[6] OJ C , , p. .
[7] OJ C , , p. .
[8] Council Conclusions 14767/21 of 7 December 2021

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agreement by means of Union legislation. In this context, it is essential that Member States effectively implement their commitment to achieve a global minimum level of taxation.

(4) In a Union of closely integrated economies, it is crucial that the global minimum tax reform is implemented in a sufficiently coherent and coordinated fashion. Considering the scale, detail and technicalities of those new international tax rules, only a common Union framework would prevent a fragmentation of the internal market in the implementation of them. Moreover, a common framework, designed to be compatible with the fundamental freedoms guaranteed by the Treaty, would provide taxpayers with legal certainty when implementing the rules.

(5) It is necessary to lay down rules in order to establish an efficient and coherent framework for the global minimum level of taxation at Union level. The framework creates a system of two interlocked rules, together referred to as the GloBE rules, through which an additional amount of tax called a top-up tax should be collected each time that the effective tax rate (ETR) of an MNE in a given jurisdiction is below the 15 %. In such case, the jurisdiction is considered to be low-taxed. Those two rules are called the Income Inclusion Rule (IIR) and the Undertaxed Payment Rule (UTPR). Under this system, the parent entity of an MNE located in a Member State has the obligation to apply the IIR to its share of top-up tax relating to any entity of the group that is low-taxed, whether this is located within or outside the Union. The UTPR should act as a backstop to the IIR through a reallocation of any residual amount of top-up tax in cases where not the entire amount of top-up tax relating to low-taxed entities could be collected by parent entities through the application of the IIR.

(6) It is necessary to implement the GloBE Model Rules agreed by the Member States in a way that it remains as close as possible to the global agreement. This Directive closely follows the content and structure of the GloBE Model Rules. To ensure compatibility with primary Union law, and more precisely with the freedom of establishment, the rules of this Directive should apply to entities resident in a Member State as well as non-resident entities of a parent entity located in that Member State. This Directive should also apply to very large-scale, purely domestic groups. In this way, the legal framework would be designed to avoid any risk of discrimination between cross-border and domestic situations. All entities, including the parent entity that applies the IIR, which are located in a Member State that is low-taxed, would be subject to the top-up tax. Equally, constituent entities of the same parent entity that are located in another Member State, which is low-taxed, would be subject to the top-up tax.

(7) While it is necessary to ensure that tax avoidance practices are discouraged, adverse impacts on smaller MNEs in the internal market should be avoided. For this purpose, this Directive should only apply to entities located in the Union that are members of MNE groups or large-scale domestic groups that meet the annual threshold of at least EUR 750 000 000 of consolidated revenue. This threshold would be consistent with the threshold of existing international tax rules such as the country-by-country reporting rules[9]. Entities within the scope of this Directive are referred to as constituent entities. Certain entities should be excluded from the scope based on their particular purpose and status. Excluded entities would be those that are not profit-

[9] Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 146/8 (3 Jun. 2016) [DAC 4].

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driven and perform activities in the general interest and which are, for these reasons, not likely to be subject to tax in the Member State in which they are located. In order to protect those specific interests, it is necessary to exclude from the scope of the Directive governmental entities, international organisations, non-profit organisations and pension funds from the scope of this Directive. Investment funds and real estate investment vehicles should also be excluded from the scope when they are at the top of the ownership chain, since, for those so-called flow-through entities, the income earned is taxed at the level of the owners.

(8) The ultimate parent entity (UPE) of an MNE group or a large-scale domestic group, which directly or indirectly owns a controlling interest in all the other constituent entities of the MNE group or large-scale domestic group, stands at the heart of the system. Since the UPE is normally required to consolidate the financial accounts of all the entities of the MNE group or large-scale domestic group or, if this is not the case, would be so required under an acceptable financial accounting standard, it holds critical information and would be best placed to ensure that the level of taxation per jurisdiction for the group complies with the agreed minimum rate. When the UPE is located in the Union, it should therefore incur the primary obligation under this Directive to apply the IIR to its allocable share of top-up tax relating to all low-taxed constituent entities of the MNE group whether they are located in or outside the Union. The UPE at the top of a large-scale domestic group would apply the IIR to the entire amount of top-up tax in respect of its low-taxed constituent entities.

(9) In certain circumstances, this obligation would have to move down to other constituent entities of the MNE group located in the Union. First, when the UPE is located in a third country jurisdiction that has not implemented the GloBE Model Rules or equivalent rules and thus does not to have a qualified IIR, intermediate parent entities (IPE) situated below the UPE in the ownership chain and located in the Union should have the obligation under the Directive to apply the IIR up to their allocable share of the top-up tax, unless an IPE that is required to apply the IIR owns a controlling interest in another IPE, in which case the IIR should be applied by the latter.

(10) Second, regardless of whether the UPE is located in a jurisdiction that has a qualified IIR or not, partially-owned parent entities (POPE) located in the Union that are more than 20 % owned by interest holders outside the MNE group should have the obligation under this Directive to apply the IIR up to their allocable share of the top-up tax. Such POPE should however not apply the IIR when they are wholly-owned by another POPE which is required to apply the IIR. Third, when the UPE is located in a jurisdiction without a qualified IIR, the constituent entities of the MNE group should apply the UTPR to any residual amount of top-up tax that has not been subject to the IIR in proportion to an allocation formula based on their number of employees and tangible assets. Fourth, where the UPE is located in a third country jurisdiction with a qualified IIR, the constituent entities of the MNE group should apply the UTPR to the constituent entities located in that third country jurisdiction, in cases where that third country jurisdiction is low-taxed based on the ETR of all constituent entities in that jurisdiction, including that of the UPE.

(11) In accordance with the policy objectives of the global minimum tax reform regarding fair tax competition amongst jurisdictions, the calculation of the ETR should take place at a jurisdictional level. For the purpose of calculating the ETR, this Directive should provide for a common set of specific rules for the computation of the tax base, referred to as qualifying income or loss, and for the taxes paid, referred to as covered taxes. The starting point are the financial accounts used for consolidation purposes that

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are then subject to a series of adjustments, including accommodating timing differences, in order to avoid any distortions between jurisdictions. Furthermore, the qualifying income or loss and the covered taxes of certain entities may be allocated to other, relevant entities within the MNE group to ensure neutrality in the tax treatment of qualifying income or loss that may be subject to covered taxes in several jurisdictions, either because of the nature of the entities (flow-through entities, hybrid entities or permanent establishment) or because of the specific tax treatment of the income (dividend payment or controlled foreign company tax regime).

(12) The ETR of an MNE group in each jurisdiction where it carries out activities or of a large-scale domestic group should be compared to the agreed minimum tax rate of 15 % in order to determine whether the MNE group or large-scale domestic group is liable to pay a top-up tax and consequently should apply the IIR or the UTPR. The minimum tax rate of 15 % agreed by the OECD/G20 Inclusive Framework on BEPS reflects a balance amongst corporate tax rates worldwide. In cases where the ETR of an MNE group falls below the minimum tax rate in a given jurisdiction, the top-up tax should be allocated to the entities in the MNE group that are liable to pay the tax in accordance with the application of the IIR and the UTPR, in order to comply with the globally agreed minimum effective rate of 15 %. In cases where the ETR of a large-scale domestic group falls below the minimum tax rate, the UPE at the top of the large-scale domestic group should apply the IIR in respect of its low-taxed constituent entities, in order to ensure that such group is liable to pay tax at an effective minimum rate of 15 %.

(13) In order to allow Member States to benefit from the top-up tax revenues collected on their low-taxed constituent entities located in their territory, Member States should be able to elect to apply a domestic top-up tax system. Constituent entities of an MNE group that are located in a Member State which has elected to implement rules equivalent to the IIR and the UTPR in their own domestic tax system should pay the top-up tax to this Member State. While leaving Member States some flexibility in the technical implementation of the domestic top-up tax system, such system should ensure the minimum effective taxation of the qualifying income or loss of the constituent entities in the same, or in an equivalent manner, to the IIR and UTPR of this Directive.

(14) To ensure a proportionate approach, this exercise should take into consideration certain specific situations in which BEPS risks are reduced. Therefore, the Directive should include a substance carve-out based on the costs associated with employees and the value of tangible assets in a given jurisdiction. This would allow to address, to a certain extent, situations where an MNE group or a large-scale domestic group carries out economic activities which require material presence in a low-taxed jurisdiction as in such case BEPS practices would be unlikely to flourish. The specific case of MNE groups that are at the first stages of their international activity should also be considered in order not to discourage the development of cross-border activities for MNE groups that benefit from low taxation in their domestic jurisdiction where they are predominantly operating. Thus, the low-taxed domestic activities of such groups should be excluded from the application of the rules for a transitional period of five years, and provided that the MNE group does not have constituent entities in more than six other jurisdictions. In order to ensure equal treatment for large-scale domestic groups, the income from the activities of such groups should also be excluded for a transitional period of five years.

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(15) Due to its highly volatile nature and the long economic cycle of this industry, the shipping sector is traditionally subject to alternative or supplementary taxation regimes in Member States. To avoid undermining that policy rationale and allow Member States to continue applying a specific tax treatment to the shipping sector in line with international practice and State aid rules, shipping income should be excluded from the system.

(16) In order to achieve a balance between the objectives of the global minimum tax reform and the administrative burden for tax administrations and taxpayers, this Directive should provide for a *de minimis* exclusion for MNE groups or large-scale domestic groups that have an average revenue of less than EUR 10 000 000 and an average qualifying income or loss of less than EUR 1 000 000 in a jurisdiction. Such MNE groups or large-scale domestic groups should not pay a top-up tax even if their ETR is below the minimum tax rate in that jurisdiction.

(17) The application of the rules of this Directive to MNE groups and large-scale domestic groups that fall within its scope for the first time could give rise to distortions resulting from the existence of tax attributes, including losses from prior fiscal years, or from timing differences, and require transitional rules to eliminate such distortions. A gradual decrease of the rates for the payroll and the tangible assets carve-outs over ten years should also apply to allow a smooth transition to the new tax system.

(18) For an efficient application of the system, it is crucial that procedures are coordinated at a group level. It will be necessary to operate a system ensuring the unobstructed flow of information within the MNE group and towards tax administrations where constituent entities are located. The primary responsibility of filing the information return should lie on the constituent entity itself. A waiver of such responsibility should however apply where the MNE group has designated another entity to file and share the information return. It could be either a local entity or an entity from another jurisdiction that has a competent authority agreement in place with the Member State of the constituent entity. In the first twelve-months after its entry into force, the Commission should review this Directive in line with the agreement reached by the Inclusive Framework on filing requirements under the GloBE implementation framework. Considering the compliance adjustments that this system requires, groups that fall within the scope of this Directive for the first time should be granted a period of 18 months to comply with the information requirements.

(19) Considering the benefits of transparency in the field of tax, it is encouraging that a significant amount of information will be filed with the tax authorities in all the participating jurisdictions. MNE groups within the scope of this Directive should be obliged to provide comprehensive and detailed information on their profits and effective tax rate in every jurisdiction where they have constituent entities. Such extensive reporting could be expected to increase transparency.

(20) The effectiveness and fairness of the global minimum tax reform heavily relies on its worldwide implementation. It will thus be vital that all major trading partners of the Union apply either a qualified IIR or an equivalent set of rules on minimum taxation. In this context, and in support of legal certainty and efficiency of the global minimum tax rules, it is important to further delineate the conditions under which the rules implemented in a third country jurisdiction which will not transpose the rules of the global agreement can be granted equivalence to a qualified IIR. To this end, this Directive should provide for an assessment, by the Commission, of the equivalence criteria based on certain parameters together with a listing of third country

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jurisdictions that meet the equivalence criteria. This list would be modified, through a delegated act, following any subsequent assessment of the legal framework implemented by a third country jurisdiction in its domestic law.

(21) In order to amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. The aim should be to enable, following an assessment by the Commission, modifications of the Annex that lists jurisdictions with a domestic legal framework which can be considered equivalent to a qualified income inclusion rule.

(22) The rules for the application of the UTPR should apply as of 1 January 2024 to allow third country jurisdictions to apply the IIR in the first phase of the implementation of the GloBE Model Rules.

(23) The objective of this Directive, to create a common framework for a global minimum level of taxation within the Union on the basis of the common approach contained in the GloBE Model Rules, cannot sufficiently be achieved by each Member State acting alone. Independent action by Member States would further risk creating a fragmentation of the internal market. As it is critical to adopt solutions that function for the internal market as a whole, this objective can, by reason of the scale of the global minimum tax reform, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

(24) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council.[10] The right to protection of personal data according to Article 8 of the EU Charter of Fundamental Rights as well as Regulation 2016/679 of the European Parliament and of the Council[11] applies to the processing of personal data carried out within the framework of this Directive,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject-matter

This Directive establishes common measures for the minimum effective taxation of MNE groups in the form of:

(a) an income inclusion rule (IIR) in accordance with which a parent entity of an MNE group or a large-scale domestic group computes and collects its allocable share of top-up tax in respect of the low-taxed constituent entities of the group; and

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[10] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

[11] Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

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(b) an undertaxed payments rule (UTPR) in accordance with which a constituent entity of an MNE group collects an allocable share of top-up tax computed by the ultimate parent entity of the group that was not charged under the IIR in respect of the low-taxed constituent entities of the group.

Article 2
Scope

1. This Directive shall apply to constituent entities located in the Union that are members of an MNE group or a large-scale domestic group which has an annual revenue of EUR 750 000 000 or more in its consolidated financial statements in at least two of the last four consecutive fiscal years.

2. Where one or more of the four fiscal years referred to in paragraph 1 is longer or shorter than 12 months, the annual revenue referred to in that paragraph shall be adjusted proportionally for each of those fiscal years.

3. This Directive shall not apply to the following entities ('excluded entities') unless the filing constituent entity has made an election not to treat such entities as excluded in accordance with Article 43(1):

   (a) a governmental entity, an international organisation, a non-profit organisation, a pension fund, an investment entity that is an ultimate parent entity and a real estate investment vehicle that is an ultimate parent entity; or

   (b) an entity that is owned at a minimum of 95 % by one or more entities referred to in point (a), directly or through several such entities, except pension services entities, and that:

      (i) operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the entity or entities referred to in point (a); or

      (ii) exclusively carries out activities ancillary to those performed by the entity or entities referred to in point (a); or

   (c) an entity that is owned at a minimum of 85 % by one or more entities referred to in point (a), directly or through one or several such entities, provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income in accordance with point (b) of Article 15(2).

Article 3
Definitions

For the purpose of this Directive, the following definitions apply:

(1) 'entity' means any legal person or legal arrangement that prepares separate financial accounts;

(2) 'constituent entity' means an entity or permanent establishment that is part of an MNE group or a large-scale domestic group;

(3) 'group' means:

   (a) a collection of entities which are related through ownership or control as defined by the acceptable accounting framework for the preparation of consolidated financial statements by the ultimate parent entity, including any

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entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, materiality grounds or on the grounds that it is held for sale; and

(b) an entity that has one or more permanent establishments, provided that it is not part of another group as defined in point (a);

(4) 'MNE group' means any group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity;

(5) 'large-scale domestic group' means any group of which all entities are located in the same Member State;

(6) 'consolidated financial statements' 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 of any entities which it controls are presented as those of a single economic unit;

(b) for groups as defined in point 3(b), the financial statements prepared by a main entity in accordance with an acceptable financial accounting standard;

(c) the financial statements that are not prepared by an ultimate parent entity in accordance with an acceptable financial accounting standard and that have been subsequently adjusted to prevent any material competitive distortions; or

(d) where the ultimate parent entity does not prepare financial statements as described in points (a), (b) or (c), the financial statements that would have been prepared if the ultimate parent entity was required to prepare such financial statements in accordance with:

(i) an acceptable financial accounting standard; or

(ii) another financial accounting standard and provided such financial statements have been adjusted to prevent any material competitive distortions;

(7) 'fiscal year' means the accounting period with respect to which:

(a) the ultimate parent entity of an MNE group or a large-scale domestic group prepares its consolidated financial statements or, if the ultimate parent entity does not prepare consolidated financial statements, the calendar year; and

(b) the effective tax rate and top-up tax is computed;

(8) 'filing constituent entity' means an entity filing a top-up tax information return in accordance with Article 42 this Directive;

(9) 'flow-through entity' means an entity that is considered as a fiscally transparent entity with respect to its income, expenditure, profit or loss in the jurisdiction where it was created and which is not tax resident and subject to a covered tax on its income or profit in another jurisdiction;

For the purpose of this definition, a fiscally transparent entity means an entity whose income, expenditure, profit or loss is treated by the laws of a jurisdiction in the same manner as if it were derived or incurred directly by the owner of that entity;

(10) 'permanent establishment' means:

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(a) a place of business or a deemed place of business located in a jurisdiction where it is 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 Capital[12];

(b) if there is no applicable tax treaty in force, a place of business or a deemed place of business located in a jurisdiction which taxes the income attributable to such place of business on a net basis in a manner similar to which it taxes its own tax residents;

(c) if a jurisdiction has no corporate income tax system, a place of business or a deemed place of business located therein that would be treated as a permanent establishment in accordance with the OECD Model Tax Convention on Income and Capital, provided that such jurisdiction would have had the right to tax the income that would have been attributable to the place of business in accordance with Article 7 of that convention; or

(d) another place of business or a deemed place of business through which operations are conducted outside the jurisdiction where the main entity is located if such jurisdiction exempts the income attributable to such operations;

(11) 'ultimate parent entity' means:

(a) an entity that owns, directly or indirectly, a controlling interest in any other entity and that is not owned, directly or indirectly, by another entity with a controlling interest in it; or

(b) a main entity;

(12) 'minimum tax rate' means fifteen percent (15 %);

(13) 'top-up tax' means the top-up tax computed for a jurisdiction or a constituent entity pursuant to Article 26;

(14) 'controlled foreign company tax regime' means a set of tax rules under which a direct or indirect shareholder of a foreign entity is subject to taxation on its share of part or all of the income earned by that foreign entity, irrespective of whether that income is distributed to the shareholder;

(15) 'qualified income inclusion rule' ('qualified IIR') means a set of rules that is implemented in the domestic law of a jurisdiction and that:

(a) is equivalent to the rules laid down in this Directive in accordance with which the parent entity of an MNE Group computes and collects its allocable share of top-up tax in respect of the low-taxed constituent entities of the group;

(b) is implemented and administered in a way that is consistent with the rules laid down in this Directive and does not allow the jurisdiction to provide any benefits that are related to those rules;

(16) 'low-taxed constituent entity' means:

(a) a constituent entity of an MNE group that is located in a low-tax jurisdiction; or

[12] OECD Model Tax Convention on Income and on Capital, as amended

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(b) a stateless constituent entity that, in respect of a fiscal year, has an effective tax rate which is lower than the minimum effective tax rate;

(17) ‘intermediate parent entity’ means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity in the same MNE group and that does not qualify as an ultimate parent entity, a partially-owned parent entity, a permanent establishment or an investment entity;

(18) ‘controlling interest’ means an ownership interest in an entity whereby the interest holder is required, or would have been 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;

A main entity is deemed to have the controlling interests of its permanent establishments.

(19) ‘partially-owned parent entity’ means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group, more than 20 % of its ownership interest in its profits is held, directly or indirectly, by persons that are not constituent entities of the MNE group and that does not qualify as an ultimate parent entity, a permanent establishment or an investment entity;

(20) ‘ownership interest’ means any rights to the profits, capital or reserves of an entity, or a permanent establishment;

(21) ‘parent entity’ means an ultimate parent entity, which is not an excluded entity, an intermediate parent entity, or a partially-owned parent entity;

(22) ‘acceptable financial accounting standard’ means international financial reporting standards (IFRS and IFRS as adopted by the EU pursuant to Regulation (EC) No 1606/2002) and the generally accepted accounting principles of Australia, Brazil, Canada, the Member States of the European Union, the members 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;

(23) ‘qualified domestic top-up tax’ means a top-up tax that is implemented in the domestic law of a jurisdiction and that:

(a) provides for the determination of the excess profits of the constituent entities located in that jurisdiction in accordance with the rules laid down in this Directive and the application of the minimum tax rate to those excess profits for the jurisdiction and the constituent entities in accordance with the rules laid down in this Directive; and

(b) is implemented and administered in a way that is consistent with the rules laid down in this Directive and does not allow the jurisdiction to provide any benefits that are related to those rules;

(24) ‘investment entity’ means:

(a) an investment fund or a real estate investment vehicle;

(b) an entity that is at least 95 % owned, directly or indirectly, by an entity referred to in point (a) or through one or more such entities, and that operates exclusively or almost exclusively to hold assets or invest funds for their benefit;

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(c) an entity that is owned at a minimum of 85 % by an entity referred to in point (a) provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income for the purpose of this Directive;

(25) ‘investment fund’ means an entity or arrangement that meets the following conditions:

(a) it is designed to pool financial or non-financial assets from a number of mostly non-related investors;

(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) its investors have a right to return from the assets of the fund or income earned on those assets, based on the contribution they made;

(f) it, or its management, is subject to the regulatory regime for investment funds in the jurisdiction in which it is established or managed; and

(g) it is managed by investment fund management professionals on behalf of the investors;

(26) ‘real estate investment vehicle’ means a widely held entity that holds predominantly immovable property and that is subject to a single level of taxation, either in its hands or in the hands of its interest holders, with at most one year of deferral;

(27) ‘pension fund’ 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 and that is:

(i) regulated in that jurisdiction; or

(ii) held by a fiduciary arrangement or a trustor and that provide those benefits in accordance with national legislation;

(b) a pension services entity;

(28) ‘pension services entity’ means an entity that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities referred to in paragraph 27 or to carry out regulated activities that are ancillary to the activities referred to in paragraph 27, where the pension services entity forms part of the same group as the entities carrying out these activities;

(29) ‘low-tax jurisdiction’ means a Member State or a third country jurisdiction in which, in a given fiscal year, an MNE group has an effective tax rate which is lower than the minimum tax rate;

(30) ‘qualifying income or loss’ means the financial accounting income or loss of a constituent entity adjusted in accordance with the rules defined in Chapter III and in Chapters VI and VII of this Directive;

(31) ‘disqualified refundable imputation tax’ means any tax, other than a qualified imputation tax, accrued to, or paid by, a constituent entity that is:

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(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 company upon distribution of a dividend to a shareholder.

For the purpose of this definition, a qualified imputation tax means a covered tax accrued to, or paid by, a constituent entity or a permanent establishment, that is refundable or creditable to, respectively, the recipient of the dividend distributed by the constituent entity or by the main entity, provided that the refund is payable, or the credit is provided:

(a) by a jurisdiction other than the jurisdiction which imposed the covered taxes;

(b) to a corporate beneficial owner of the dividend that is subject to tax at a nominal rate that equals or exceeds the minimum tax rate on the dividend received under the domestic law of the jurisdiction which imposed the covered taxes on the constituent entity;

(c) to an individual who is the beneficial owner of the dividend and tax resident in the jurisdiction which imposed the covered taxes on the constituent entity and who is subject to tax at a nominal rate that equals or exceeds the standard tax rate applicable to ordinary income; or

(d) to a governmental entity, an international organisation, a non-profit organisation, a pension fund, an investment entity that is not part of the MNE group or a life insurance company to the extent that the dividend is received in connection with pension fund activities that is subject to tax in the same manner as a pension fund;

(32) ‘qualified refundable tax credit’ means:

(a) a refundable tax credit designed in such a way that it is payable as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit; or

(b) if the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the partial refundable tax credit;

(33) ‘main entity’ means an entity that includes the financial accounting net income or loss of a permanent establishment in its financial statements;

(34) ‘tax transparent entity’ means:

(a) a flow-through entity that is considered as fiscally transparent in the jurisdiction in which its owner is located.

(b) an entity that is not tax resident and not subject to a covered tax or a qualified domestic top-up tax based on its place of management, place of creation or similar criteria to the extent that, in respect of its income, expenditure, profit or loss:

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(i) its owners are located in a jurisdiction that treats the entity as fiscally transparent;

(ii) it does not have a place of business in the jurisdiction where it was created; and

(iii) the income, expenditure, profit or loss is not attributable to a permanent establishment;

(35) 'constituent entity-owner' means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group;

(36) 'eligible distribution tax system' means a corporate income tax system that:

(a) imposes income tax on profits only when those profits are distributed or deemed to be distributed to shareholders, or when the company incurs certain non-business expenses;

(b) imposes tax at a rate equal to, or in excess of, the minimum tax rate; and

(c) was in force on or before 1 July 2021;

(37) 'qualified undertaxed payment rule' ('qualified UTPR') means a set of rules implemented in the domestic law of a jurisdiction that:

(a) is equivalent to the rules laid down in this Directive in accordance with which a jurisdiction collects its allocable share of top-up tax of an MNE group that was not charged under the IIR in respect of the low-taxed constituent entities of such group;

(b) is implemented and administered in a way that is consistent with the rules laid down in this Directive and does not allow the jurisdiction to provide any benefits that are related to those rules;

(38) 'designated filing entity' means the constituent entity, other than the ultimate parent entity, that has been appointed by the MNE group to fulfil the filing obligations set out in Article 42 on behalf of the MNE group.

Article 4

Location of a constituent entity

1. A constituent entity other than a flow-through entity shall be deemed to be located in the jurisdiction where it is considered as resident for tax purposes based on its place of management, place of creation or similar criteria.

Where the location of a constituent entity other than a flow-through entity cannot be determined based on the first subparagraph, it shall be deemed to be located in the jurisdiction where it was created.

2. A flow-through entity shall be considered as stateless, unless it is the ultimate parent entity of an MNE group or it is required to apply an income inclusion rule in accordance with Articles 5, 6 and 7, in which case the flow-through entity shall be deemed to be located in the jurisdiction where it was created.

3. A permanent establishment as defined in Article 3, point (10)(a), shall be deemed to be located in the jurisdiction where it is treated as a permanent establishment and liable to tax under the applicable tax treaty in force.

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A permanent establishment as defined in Article 3, point (10)(b), shall be deemed to be located in the jurisdiction where it is subject to income taxation based on its business presence.

A permanent establishment as defined in Article 3, point (10)(c), shall be deemed to be located in the jurisdiction where it is situated.

A permanent establishment as defined in Article 3, point (10)(d), shall be considered as stateless.

4. Where a constituent entity can be deemed to be located in two jurisdictions and those jurisdictions have an applicable tax treaty, the constituent entity shall be deemed to be located in the jurisdiction where it is considered as resident for tax purposes under that tax treaty.

Where the applicable tax treaty requires that the competent authorities reach a mutual agreement on the deemed residence for tax purposes of the constituent entity, and no agreement is reached, paragraph 5 shall apply.

Where there is no relief for double taxation under the applicable tax treaty, due to the fact that a constituent entity is resident for tax purposes in both jurisdictions that are contracting parties thereto, paragraph 5 shall apply.

5. Where a constituent entity can be deemed to be located in two jurisdictions and those jurisdictions do not have an applicable tax treaty, the constituent entity shall be deemed to be located in the jurisdiction which charged the higher amount of covered taxes for the fiscal year.

For the purpose of calculating the amount of covered taxes referred to in the first in subparagraph, the amount of tax paid in accordance with a controlled foreign company tax regime shall not be taken into consideration.

If the amount of covered taxes due in the two jurisdictions is the same or zero, the constituent entity shall be deemed to be located in the jurisdiction where it has the higher amount of substance-based income exclusion computed on an entity basis in accordance with Article 27.

If the amount of the substance-based income exclusion in the two jurisdictions is the same or zero, the constituent entity shall be considered as stateless, unless it is an ultimate parent entity, in which case it shall be deemed to be located in the jurisdiction where it was created.

6. Where, as a result of applying paragraphs 4 and 5, a parent entity is deemed to be located in a jurisdiction where it is not subject to a qualified income inclusion rule, it shall be deemed to be subject to the qualified income inclusion rule of the other jurisdiction, unless an applicable tax treaty in force prohibits the application of such rule.

7. Where a constituent entity changes its location in the course of a fiscal year, it shall be deemed to be located in the jurisdiction where it was deemed to be located under this Article at the beginning of that fiscal year.

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CHAPTER II
INCOME INCLUSION RULE AND UNDERTAXED PAYMENTS RULE

Article 5
Ultimate parent entity in the Union

1. Member States shall ensure that an ultimate parent entity located in a Member State is subject to the top-up tax (the "IIR top-up tax”) in respect of its low-taxed constituent entities located either in another Member State or in a third country jurisdiction for the fiscal year.

2. Member States shall ensure that, where an ultimate parent entity located in a Member State is a low-taxed constituent entity, it is subject to the IIR top-up tax together with its low-taxed constituent entities located in the same Member State for the fiscal year.

Article 6
Intermediate parent entity in the Union

1. Member States shall ensure that an intermediate parent entity located in a Member State and held by an ultimate parent entity that is located in a third country jurisdiction is subject to the IIR top-up tax in respect of its low-taxed constituent entities located in another Member State or a third country jurisdiction for the fiscal year.

2. Member States shall ensure that, where an intermediate parent entity located in a Member State and held by an ultimate parent entity that is located in a third country jurisdiction is a low-taxed constituent entity, it is subject to the IIR top-up tax together with its low-taxed constituent entities located in the same Member State for the fiscal year.

3. Paragraphs 1 and 2 shall not apply where:

   (a) the ultimate parent entity is subject to a qualified income inclusion rule for the fiscal year in the jurisdiction where it is located; or

   (b) another intermediate parent entity located in a Member State or a third country jurisdiction where it is subject to a qualified income inclusion rule for the fiscal year owns, directly or indirectly, a controlling interest in the intermediate parent entity.

Article 7
Partially-owned parent entity in the Union

1. Member States shall ensure that a partially-owned parent entity located in a Member State is subject to the IIR top-up tax in respect of its low-taxed constituent entities for the fiscal year.

2. Member States shall ensure that, where a partially-owned parent entity located in a Member State is a low-taxed constituent entity, it is subject to the IIR top-up tax together with its low-taxed constituent entities located in the same Member State for the fiscal year.

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3. Paragraphs 1 and 2 shall not apply where the ownership interests of the partially-owned parent entity are wholly held, directly or indirectly, by another partially-owned parent entity that is located either in a Member State or in a third-country jurisdiction and is subject to a qualified income inclusion rule for the fiscal year.

Article 8

Allocation of the top-up tax under the income inclusion rule

1. The IIR top-up tax due by a parent entity in respect of a low-taxed constituent entity pursuant to Articles 5, 6 and 7 shall be equal to the top-up tax of the low-taxed constituent entity, as computed in accordance with Article 26, multiplied by the parent entity's allocable share in such top-up tax for the fiscal year.

2. A parent entity's allocable share in the top-up tax with respect to a low-taxed constituent entity shall be the proportion of the parent entity's interest in the income of the low-taxed constituent entity.

3. In addition to the amount allocated to a parent entity in accordance with paragraph 1, the IIR top-up tax due by a parent entity pursuant to Articles 5(2), 6(2) and 7(2) shall include the full amount of top-up tax computed for that parent entity in accordance with Article 26.

Article 9

Income inclusion rule offset mechanism

1. Where an intermediate parent entity located in a Member State holds an ownership interest in a low-taxed constituent entity through another intermediate parent entity located in a Member State or in a third country jurisdiction where it is subject to a qualified income inclusion rule for the fiscal year, the top-up tax due pursuant to Article 6(1) shall be reduced by an amount equal to the portion of the intermediate parent entity's allocable share in the top-up tax due by the other intermediate parent entity.

2. Where a parent entity located in a Member State holds an ownership interest in a low-taxed constituent entity through a partially-owned parent entity located in a Member State or in a third country jurisdiction where it is subject to a qualified income inclusion rule for the fiscal year, the top-up tax due pursuant to Article 5(1), Article 6(1) or Article 7(1) shall be reduced by an amount equal to the portion of the parent entity's allocable share in the top-up tax due by the partially-owned parent entity.

Article 10

Election to apply a qualified domestic top-up tax

1. Member States may elect to apply a qualified domestic top-up tax.

   If a Member State where constituent entities of an MNE Group are located elects to apply a qualified domestic top-up tax, any low-taxed constituent entities of the MNE Group in that Member State shall be subject to that domestic top-up tax for the fiscal year.

2. Where a parent entity of an MNE Group is located in a Member State, and its directly or indirectly held low-taxed constituent entities located in another Member State or in a third country jurisdiction are subject to a qualified domestic top-up tax

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for the fiscal year in that jurisdiction, the amount of any top-up tax computed in accordance with Article 26 due by the parent entity pursuant to Articles 5, 6 and 7 shall be reduced, up to zero, by the amount of top-up tax due by those constituent entities.

3. Where the amount of qualified domestic top-up tax taken into consideration in the computation of the jurisdictional top-up tax in accordance with Article 26 for a fiscal year has not been fully paid within the three following fiscal years, the amount of domestic top-up tax that was not paid shall be added to the jurisdictional top-up tax computed in accordance with Article 26(3).

4. Member States that elect to apply a domestic top-up tax shall notify the Commission of this election within four months following the adoption of their national laws, regulations and administrative provisions necessary to comply with this Directive.

Article 11

Application of a UTPR across the MNE group

Where the ultimate parent entity of an MNE group is located in a third country jurisdiction that does not apply a qualified income inclusion rule, Member States shall ensure that its constituent entities located in the Union are subject, in the Member State in which they are located, to a top-up tax for the fiscal year (a 'UTPR top-up tax') for the amount allocated to that Member State in accordance with Article 13.

Constituent entities that are investment entities and pension funds shall not be subject to the UTPR top-up tax.

Article 12

Application of a UTPR in the UPE jurisdiction

Where the ultimate parent entity of an MNE group is located in a low-tax jurisdiction, Member States shall ensure that its constituent entities located in a Member State are subject to UTPR top-up tax for the fiscal year and for the amount allocated to that Member State in accordance with Article 13 in respect of the low-taxed constituent entities that are located in the jurisdiction of the ultimate parent entity, irrespective of whether that jurisdiction applies a qualified income inclusion rule.

Constituent entities that are investment entities and pension funds shall not be subject to the UTPR top-up tax.

Article 13

Computation and allocation of the UTPR top-up tax amount

1. The UTPR top-up tax amount allocated to a Member State shall be computed by multiplying the total UTPR top-up tax, as determined in accordance with paragraph 2, by the Member State's UTPR percentage as determined in accordance with paragraph 5.

2. The total UTPR top-up tax for a fiscal year shall be the sum of the top-up tax of all the low-taxed constituent entities of the MNE group for that fiscal year, as determined in accordance with Article 26, subject to the adjustments set out in paragraphs 3 and 4.

3. The UTPR top-up tax of a low-taxed constituent entity shall be equal to zero where, for the fiscal year, such low-taxed constituent entity is wholly held directly by the

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ultimate parent entity, or indirectly through one or more parent entities, which are located either:

(a) in a Member State; or

(b) in a third country jurisdiction where it is required to apply a qualified income inclusion rule in respect of its low-taxed constituent entity for the fiscal year.

4. Where paragraph 3 does not apply, the UTPR top-up tax of a low-taxed constituent entity shall be reduced by the amount of top-up tax allocated to a parent entity located in a third country jurisdiction which is required to apply a qualified income inclusion rule in respect of the constituent entity.

5. A Member State's UTPR percentage shall be computed, for each fiscal year and for each MNE group, according to the following formula:

$$50\%\ x \frac{(number\ of\ employees\ in\ the\ Member\ State)}{number\ of\ employees\ in\ all\ UTPR\ jurisdictions} + 50\%\ x \frac{tangible\ assets\ in\ the\ Member\ State}{tangible\ assets\ in\ all\ UTPR\ jurisdictions}$$

where:

(a) the number of employees in the Member State is the total number of employees of all the constituent entities of the MNE group located in that Member State;

(b) the number of employees in all jurisdictions with a qualified UTPR 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 the Member State is the sum of the net book value of tangible assets of all the constituent entities of the MNE group located in that Member State;

(d) The total value of tangible assets in all jurisdictions with a qualified UTPR is the sum of the net book value 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.

6. The number of employees shall be the number of employees on a full-time equivalent basis of all constituent entities located in the relevant jurisdiction, including independent contractors provided that they participate in the ordinary operating activities of the constituent entity.

The tangible assets shall include the tangible assets of all constituent entities located in the relevant jurisdiction but shall not include cash or cash equivalent, intangible or financial assets.

7. A permanent establishment shall be allocated the employees whose payroll costs are included, and tangible assets that are included, in its separate financial accounts pursuant to Article 17(1) adjusted in accordance with Article 17(2).

The number of employees and the net book value of tangible assets held by an investment entity shall be excluded from the elements of the formula.

The number of employees and the net book value of tangible assets of a flow-through entity shall be excluded from the elements of the formula, unless they are allocated to a permanent establishment or, in the absence of a permanent establishment, to the

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constituent entities that are located in the jurisdiction where the flow-through entity was created.

8. By way of derogation from paragraph 5, a Member State's UTPR percentage for an MNE group shall be deemed to be zero for a fiscal year where that Member State has not collected from the relevant constituent entities the UTPR top-up tax amount which it was allocated in a prior fiscal year.

The number of employees and the net book value of tangible assets of the constituent entities of an MNE group which is located in a Member State with a UTPR percentage of zero for a fiscal year shall be excluded from the elements of the formula for allocating the total UTPR top-up tax to the MNE group for that fiscal year.

CHAPTER III
COMPUTATION OF THE QUALIFYING INCOME OR LOSS

Article 14
Determination of the qualifying income or loss

1. The qualifying income or loss of each constituent entity shall be computed by making the adjustments set out in Articles 15, 16, 17 and 18 to the financial accounting net income or loss of the constituent entity for the fiscal year before any consolidation adjustments for intra-group transactions, as determined under the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity.

2. Where it is not reasonably feasible to determine the financial accounting net income or loss of a constituent entity based on the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, the financial accounting net income or loss of the constituent entity for the fiscal year may, by derogation from paragraph 1, be determined using another acceptable financial accounting standard or an authorised financial accounting standard provided that:

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

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

(c) long-term differences in excess of EUR 1 000 000 that arise from the application of a particular principle or standard to items of income or expense or transactions, which differs from the financial standard used in the preparation of the consolidated financial statements of the ultimate parent entity, shall be adjusted to conform to the treatment required for that item under the accounting standard used in the preparation of the consolidated financial statements.

An authorised financial accounting standard means, in respect of an entity, a set of generally acceptable accounting principles permitted by an authorised accounting body in the jurisdiction where that entity is located. For this purpose, authorised accounting body means the body with legal authority in a jurisdiction to prescribe, establish or accept accounting standards for financial reporting purposes.

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3. Where an ultimate parent entity has not prepared its consolidated financial statements in accordance with an acceptable financial accounting standard referred to in Article 3, point (6), the consolidated financial statements of the ultimate parent entity shall be adjusted to prevent any material competitive distortion.

Where an ultimate parent entity does not prepare consolidated financial statements, the consolidated financial statements of the ultimate parent entity shall be those that would have been prepared if the ultimate parent entity was required to prepare such consolidated financial statements in accordance with:

(a) an acceptable financial accounting standard; or

(b) another financial accounting standard provided that such consolidated financial statements are adjusted to prevent any material competitive distortion.

Where the application of a specific principle or procedure under a set of generally accepted accounting principles results in a material competitive distortion, the accounting treatment of any item or transaction subject to that principle or procedure shall be adjusted to conform to the treatment required for the item or transaction under International Financial Reporting Standards.

A material competitive distortion means, in respect of the application of a specific principle or procedure under a set of generally acceptable accounting principles, an application that results in a variation of more than 10 % of revenue or EUR 75 000 000 as compared to the amount that would have been determined by applying the corresponding principle or procedure.

Article 15

Adjustments to determine the qualifying income or loss

1. For the purpose of this Article, the following definitions apply:

(a) ‘net tax expense’ means the net amount of the following items:

(i) covered taxes accrued as an expense;

(ii) deferred tax assets attributable to a loss for the fiscal year;

(iii) qualified domestic top-up taxes accrued as an expense;

(iv) taxes arising pursuant to the rules of this Directive; and

(v) disqualified refundable imputation taxes accrued as an expense;

(b) ‘excluded dividend’ means a dividend or another distribution received or accrued in respect of an ownership interest, except a dividend or another distribution received or accrued in respect of:

(i) an ownership interest in an entity of less than 10% (a “portfolio shareholding”) in respect of which a constituent entity is entitled to all or substantially all of the rights to profits, capital or reserves, irrespective of whether the constituent entity owns the legal ownership of such portfolio, for less than one year at the date of the distribution; and

(ii) an ownership interest in an investment entity that is subject to an election pursuant to Article 41;

(c) ‘excluded equity gain or loss’ means a net gain or loss, included in the financial accounting net income or loss of the constituent entity, arising from:

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(i) gains and losses arising from changes in the fair value of an ownership interest, except for a portfolio shareholding;

(ii) profits or losses in respect of an ownership interest that is included under the equity method of accounting; and

(iii) gains and losses from the disposal of an ownership interest, except for the disposal of a portfolio shareholding;

(d) 'included revaluation method gain or loss' means a gain or loss, increased or decreased by any associated covered taxes for the fiscal year, arising from the application of an accounting method or practice that, in respect of property, plant and equipment:

(i) periodically adjusts the carrying value of such property to its fair value;

(ii) records the changes in value in other comprehensive income; and

(iii) does not subsequently report the gain or loss accrued in other comprehensive income through profit and loss;

(e) 'asymmetric foreign currency gain or loss' means a foreign currency gain or loss that is:

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

(ii) included in the computation of the financial accounting net income or loss of a constituent entity and that are attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity;

(iii) included in the computation of the financial accounting net income or loss of a constituent entity and that are attributable to fluctuations in the exchange rate between a foreign currency and the accounting functional currency of the constituent entity; and

(iv) attributable to fluctuations in the exchange rate between a foreign currency and the tax functional currency of the constituent entity;

(f) 'policy disallowed expense' means:

(i) an expense accrued by the constituent entity for illegal payments, including bribes and kickbacks; and

(ii) an expense accrued by the constituent entity for fines and penalties that equal or exceed EUR 50 000 or an equivalent amount in the functional currency in which the financial accounting net income or loss of the constituent entity is computed;

(g) 'prior period error or change in accounting principles' means a change in the opening equity of a constituent entity at the beginning of a fiscal year that is attributable to:

(i) a correction of an error in the determination of the financial accounting net income or loss in a previous fiscal year that affected the income or expenses included in the computation of the qualifying income or loss in

that previous fiscal year, except if such correction resulted in a material decrease to a liability for covered taxes subject to Article 24; and

(ii) a change in accounting principles or policy that affected the income or expenses included in the computation of the qualifying income or loss;

(h) 'accrued pension expense' means the difference between the amount of expense included in the financial accounting net income or loss and the amount contributed to a pension fund for the fiscal year.

2. The financial accounting net income or loss of a constituent entity shall be adjusted by the amount of the following items to determine its qualifying income or loss:

(a) net taxes expenses;

(b) excluded dividends;

(c) excluded equity gains or losses;

(d) included revaluation method gains or losses;

(e) gains or losses from the disposal of assets and liabilities excluded pursuant to Article 33;

(f) asymmetric foreign currency gains and losses;

(g) policy disallowed expenses;

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

(i) accrued pension expenses.

3. At the election of the filing constituent entity, the amount of stock-based compensation expense that has been allowed as a deduction for tax purposes by a constituent entity for a fiscal year may be deducted from the financial accounting net income or loss of that constituent entity for the computation of its qualifying income or loss for the same fiscal year.

Where the option to use the stock-options has not been exercised, the amount of stock-based compensation expense that has been deducted from the financial accounting net income or loss of the constituent entity for the computation of its qualifying income or loss for a fiscal year shall be added back in the fiscal year in which the option has expired.

Where part of the amount of stock-based compensation expense has been accrued in the financial accounts of the constituent entity in fiscal years prior to the fiscal year in which the election is made, an amount equal to the difference between the total amount of stock-based compensation expense that has been deducted for the computation of its qualifying income or loss in those previous fiscal years and the total amount of stock-based compensation expense that would have been deducted for the computation of its qualifying income or loss in those previous fiscal years if the election had been made in such fiscal years, shall be included in the computation of the qualifying income or loss of the constituent entity for that fiscal year.

The election shall be made in accordance with Article 43(1) and shall apply consistently to all constituent entities located in the same jurisdiction for the year in which the election is made and all subsequent fiscal years.

In the fiscal year in which the election is revoked, the amount of unpaid stock-based compensation expense that exceeds the financial accounting expense accrued shall be

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included for the computation of the qualifying income or loss of the constituent entity.

4. Transactions between constituent entities located in different jurisdictions shall be accrued for the same amount in the financial accounts of the constituent entities and for an amount consistent with the arm's length principle.

   A loss from a sale or other transfer of asset between constituent entities located in the same jurisdiction shall be accrued at an amount consistent with the arm's length principle.

5. Qualified refundable tax credits shall be treated as income for the computation of the qualifying income or loss of a constituent entity. Refundable tax credits that do not meet the definition of a qualified refundable tax credit as set out in Article 3, point (32) shall not be treated as income for the computation of the qualifying income or loss of a constituent entity.

6. At the election of the filing constituent entity, gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting in the consolidated financial statements of a constituent entity for a fiscal year may be determined on the basis of the realisation principle for the computation of the qualifying income or loss of that constituent entity for the same fiscal year.

   Gains or losses which result from applying fair value or impairment accounting in respect of an asset or a liability shall be excluded from the computation of the qualifying income or loss of a constituent entity under the first subparagraph.

   The carrying value of an asset or a liability for the purpose of determining a gain or a loss under the first subparagraph shall be the carrying value at the time the asset was acquired or the liability was incurred, or on the first day of the fiscal year in which the election is made, whichever date is the latest.

   The election shall be made in accordance with Article 43(1) and shall apply to the assets and liabilities of all the constituent entities located in a jurisdiction, unless the filing constituent entity chooses to limit the election to the tangible assets of the constituent entities or to investment entities.

   In the fiscal year in which the election is revoked, an amount equal to the difference between the fair value of the asset or liability on the first day of the fiscal year in which the revocation is made and the carrying value of the asset or liability determined pursuant to the election shall be included for the computation of the qualifying income or loss of the constituent entities.

7. At the election of the filing constituent entity, the qualifying income or loss of a constituent entity located in a jurisdiction arising from the disposal of immovable property located in that jurisdiction by such constituent entity to third parties for a fiscal year may be adjusted in the following manner.

   The net gain arising from the disposal of immovable property as referred to in the first subparagraph in the fiscal year in which the election is made shall be offset against any net loss arising from the disposal of immovable property as referred to in the first subparagraph in the fiscal year in which the election is made and in the four fiscal years prior to that fiscal year (the "five-year period"). The net gain shall be offset first against the net loss, if any, that has arisen in the earliest fiscal year of the five-year period. Any residual amount of net gain shall be carried forward and offset

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against any net losses that have arisen in subsequent fiscal years of the five-year period.

Any residual amount of net gain that remains after applying the second subparagraph shall be spread evenly over the five-year period for the computation of the qualifying income or loss of each constituent entity in that jurisdiction that has made a net gain from the disposal of immovable property as referred to in the first subparagraph in the fiscal year in which the election is made. The residual amount of net gain allocated to a constituent entity shall be an amount equal to the net gain of that constituent entity divided by the net gain of all constituent entities.

Where no constituent entity in a jurisdiction has made a net gain from the disposal of immovable property as referred to in the first subparagraph in the fiscal year in which the election is made, the residual amount of net gain as referred to in the third subparagraph shall be allocated equally to each constituent entity in that jurisdiction and spread evenly over the five-year period for the computation of the qualifying income or loss of each of those constituent entities.

Any gain or loss for the fiscal years preceding the election year shall be subject to adjustments in accordance with Article 28(1).The election shall be made annually in accordance with Article 43(2).

8. Any expense related to a financing arrangement whereby one or more members of an MNE group provide credit to one or more other members of the same group (the "intra-group financing arrangement") shall not be taken into consideration in the computation of the qualifying income or loss of a constituent entity if the following conditions occur:

(a) the constituent entity is located in a low-tax jurisdiction or in a jurisdiction that would have been low-taxed if the expense had not accrued to the constituent entity;

(b) it can reasonably be expected that, over the duration of the intra-group financing arrangement, the amount of expenses that would have to be taken into account for the computation of the qualifying income or loss would increase, without resulting in a significant increase in the taxable income of the constituent entity;

(c) the constituent entity is counterpart to an intra-group financing arrangement that is located in a high-tax jurisdiction or in a jurisdiction that would not have been low-taxed if the expense had not accrued to the constituent entity.

9. An ultimate parent entity may elect to apply its consolidated accounting treatment to income, expense, gains and losses from transactions between constituent entities that are located in the same jurisdiction and included in a tax consolidation group for the purpose of computing the net qualifying income or loss of those constituent entities.

The election shall be made in accordance with Article 43(1).

In the fiscal year in which the election is made or revoked, appropriate adjustments shall be made so that items of qualifying income or loss are not taken into consideration more than once or omitted as a result of such election or the revocation.

10. An insurance company shall exclude from the computation of its qualifying income or loss any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders. An insurance company shall include in the

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computation of its qualifying income or loss any returns to policyholders that are not reflected in its financial accounting net income or loss to the extent that the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss.

11. An amount that is accrued as a decrease in the equity of a constituent entity and is the result of distributions made or due in respect of an instrument issued by that constituent entity pursuant to prudential regulatory requirements (the "additional tier one capital") shall be treated as an expense in the computation of its qualifying income or loss.

Any amount that is recognised as an increase in the equity of a constituent entity and is the result of distributions received or due to be received in respect of an additional tier one capital held by the constituent entity shall be included in the computation of its qualifying income or loss.

Article 16
International shipping income exclusion

1. For the purpose of this Article, the following definitions apply:

(a) 'international shipping income' means net income obtained by a constituent entity from the following activities:

(i) transportation of passengers or cargo by ship in international traffic, where such transportation is not carried out via inland waterways within the same jurisdiction, whether the ship is owned, leased or otherwise at the disposal of the constituent entity;

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

(iii) leasing of a ship used for the transportation of passengers or cargo in international traffic, on a bareboat charter basis, to another constituent entity;

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

(v) sale of a ship referred to in point (a) provided that the ship has been held for use by the constituent entity for a minimum of one year;

(b) 'qualified ancillary international shipping income' means net income obtained by a constituent entity from the following activities, provided that such activities are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic:

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

(ii) slot chartering arrangements;

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

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

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

(vi) 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.

2. The international shipping income and qualified ancillary international shipping income of a constituent entity shall be excluded from the computation of its qualifying income or loss, provided that the constituent entity demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located.

3. Where the computation of a constituent entity's international shipping income and qualified ancillary international shipping income results in a loss, such loss shall be excluded from the computation of the constituent entity's qualifying income or loss.

4. To the extent that the total qualified ancillary international shipping income of the constituent entities located in a jurisdiction exceeds 50% of their total international shipping income, the excess income shall be included in the computation of their qualifying income or loss.

5. The costs incurred by a constituent entity that directly result from its international shipping activities and qualified ancillary international shipping activities referred to in paragraph 1 shall be allocated to such activities for the purpose of computing the net international shipping income and the net qualified ancillary international shipping income of the constituent entity.

The costs incurred by a constituent entity that indirectly result from its international shipping activities and qualified ancillary international shipping activities referred to in paragraph 1 shall be allocated to such activities for the purpose of computing the net international shipping income and the net qualified ancillary international shipping income of the constituent entity on the basis of its revenues from such activities in proportion to its total revenues.

6. All direct and indirect costs incurred by a constituent entity that are allocated to its international shipping income or qualified ancillary international shipping income in accordance with paragraph 5 shall not be taken into consideration in the computation of its qualifying income or loss.

Article 17

Allocation of the qualifying income or loss between a main entity and a permanent establishment

1. Where a constituent entity is a permanent establishment as defined in Article 3, point (10)(a), (b) or (c), its financial accounting net income or loss shall be the net income or loss reflected in its separate financial accounts.

Where a permanent establishment does not have separate financial accounts, its financial accounting net income or loss shall be the amount that would have been reflected in its separate financial accounts if they had been 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.

2. Where a constituent entity meets the definition of a permanent establishment in Article 3, point (10)(a) or (b), its financial accounting net income or loss shall be adjusted to reflect only the items of income and expense that are attributable to it 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.

   Where a constituent entity meets the definition of a permanent establishment in Article 3, point (10)(c), its financial accounting net income or loss shall be adjusted to reflect only the items of income and expense that would have been attributable to it in accordance with Article 7 of the OECD Model Tax Convention[13].

3. Where a constituent entity meets the definition of a permanent establishment in Article 3, point (10)(d), its financial accounting net income or loss shall be computed based on the items of income that are exempt in the jurisdiction where the main entity is located and attributable to the operations conducted outside of that jurisdiction and the items of expense that are not deductible for tax purposes in the jurisdiction where the main entity is located and that are attributable to such operations outside of that jurisdiction.

4. The financial accounting net income or loss of a permanent establishment shall not be taken into account in determining the qualifying income or loss of the main entity.

5. Where a qualifying loss of a permanent establishment is treated as an expense of the main entity in the computation of its domestic taxable income and is not set off against the domestic taxable income of the permanent establishment and the main entity, such qualifying loss shall be treated as an expense of the main entity for the computation of its qualifying income or loss.

   Qualifying income that is subsequently earned by the permanent establishment shall, by way of derogation from paragraph 4, be treated as qualifying income of the main entity up to the amount of the qualifying loss that was previously treated as an expense of the main entity under the first subparagraph.

Article 18
Allocation and computation of the qualifying income or loss of a flow-through entity

1. The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the amount allocable to its owners that are not part of the MNE group and that hold their ownership interest in such flow-through entity directly or through one or more tax transparent entities, unless:

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

   (b) the flow-through entity is held, directly or through one or more tax transparent entities, by an ultimate parent entity.

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

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[13] OECD Model Tax Convention on Income and on Capital, as amended

3. Where a flow-through entity wholly or partially carries out business through a permanent establishment, its financial accounting net income or loss which remains after applying paragraph 1 shall be allocated to that permanent establishment in accordance with Article 17.

4. Where a tax transparent entity is not the ultimate parent entity, the financial accounting net income or loss of the flow-through entity which remains after applying paragraph 3 shall be allocated to its constituent entity-owners in accordance with their ownership interests in the flow-through entity.

5. Where a reverse hybrid entity or a tax transparent entity is the ultimate parent entity, the financial accounting net income or loss of the flow-through entity which remains after applying paragraph 3 shall be allocated to the reverse hybrid entity or the tax transparent entity.

A reverse hybrid entity means a flow-through entity that is not considered as fiscally transparent in the jurisdiction in which its owner is located.

6. Paragraphs 3, 4 and 5 shall be applied separately with respect to each ownership interest in the flow-through entity.

CHAPTER IV
COMPUTATION OF ADJUSTED COVERED TAXES

Article 19
Covered taxes

1. The covered taxes of a constituent entity shall include:

(a) taxes accrued 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 taxes on multiple components based on income and equity.

2. The covered taxes of a constituent entity shall not include:

(a) the top-up tax accrued by a parent entity under a qualified income inclusion rule;

(b) the top-up tax accrued by a constituent entity under a qualified domestic 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) disqualified refundable imputation tax; and

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

3. Covered taxes in respect of any net gain or loss arising from the disposal of immovable property as referred to in the first subparagraph of Article 15(7) in the

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fiscal year in which the election is made shall be excluded from the computation of the adjusted covered taxes.

Article 20

Adjusted covered taxes

1. The adjusted covered taxes of a constituent entity for a fiscal year shall be determined by adjusting the sum of the tax expense accrued in its financial accounting net income or loss with respect to covered taxes for the fiscal year, by:

   (a) the net amount of its additions and reductions to covered taxes for the fiscal year as set out in paragraphs 2 and 3;

   (b) the total deferred tax adjustment amount as set out in Article 21; and

   (c) any increase or decrease in covered taxes accrued in equity or other comprehensive income relating to amounts included in the computation of qualifying income or loss that will be subject to tax.

2. The additions to the covered taxes of a constituent entity for the fiscal year shall include:

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

   (b) the amount of qualifying loss deferred tax asset that has been used pursuant to Article 22(3);

   (c) the amount of covered taxes relating to an uncertain tax position previously excluded under point (d) of paragraph 3 that are paid for the fiscal year; and

   (d) the amount of credit or refund in respect of a qualified refundable tax credit that was accrued as a reduction to the tax expense.

3. The reductions to the covered taxes of a constituent entity for the fiscal year shall include:

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

   (b) the amount of credit or refund in respect of a refundable tax credit that is not a qualified refundable tax credit that was not accrued as a reduction to the tax expense;

   (c) the amount of covered taxes refunded or credited to a constituent entity that was not treated as an adjustment to tax expense, unless it relates to a qualified refundable tax credit;

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

   (e) the amount of tax expense that is not expected to be paid within three years after the end of the fiscal year.

4. For the purpose of computing adjusted covered taxes, where an amount of covered tax is described in more than one point in paragraphs 1 to 3, it shall only be taken into account once.

5. Where, for a fiscal year, there is a net qualifying loss in a jurisdiction and the amount of adjusted covered taxes for that jurisdiction is negative and less than an amount equal to the net qualifying loss multiplied by the minimum tax rate (the “expected

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adjusted covered taxes”), the amount equal to the difference between the amount of adjusted covered taxes and the amount of expected adjusted covered taxes shall be treated as an additional top-up tax for that fiscal year. The amount of additional top-up tax shall be allocated to each constituent entity in the jurisdiction in accordance with Article 28(3).

Article 21

Total deferred tax adjustment amount

1. For the purpose of this Article, the following definitions apply:

   (a) ‘disallowed accrual’ means the movement in deferred tax expense accrued in the financial accounts of a constituent entity that relates to an uncertain tax position and distributions from a constituent entity;

   (b) ‘unclaimed accrual’ means the increase in a deferred tax liability accrued 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 paragraph 7 that the filing constituent entity elects not to include in total deferred tax adjustment amount for such fiscal year.

2. Where the domestic tax rate in a jurisdiction is below the minimum effective tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year pursuant to point (b) of Article 20(1) shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes, subject to the adjustments under paragraphs 3 to 6.

   Where the domestic tax rate in a jurisdiction is above the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year pursuant to point (b) of Article 20(1) shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes recast at the minimum tax rate, subject to the adjustments under paragraphs 3 to 6.

3. The total deferred tax adjustment amount shall be increased by:

   (a) the amount of disallowed accrual or unclaimed accrual paid during the fiscal year; and

   (b) the amount of recaptured deferred tax liability determined in a preceding fiscal year, which has been paid during the fiscal year.

4. Where, for a fiscal year, a loss deferred tax asset is not accrued in the financial accounts because the recognition criteria are not met, the total deferred tax adjustment amount shall be reduced by the amount that would have reduced the total deferred tax adjustment amount if a loss deferred tax asset for the fiscal year had been accrued.

5. The total deferred tax adjustment amount shall not include:

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

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

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

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(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.

6. Where a deferred tax asset, which is attributable to a qualifying loss of a constituent entity, has been accrued for a fiscal year at a rate lower than the minimum rate, it may be recast at the minimum rate in the same fiscal year.

Where a deferred tax asset is increased pursuant to the first subparagraph, the total deferred tax adjustment amount shall be reduced accordingly.

7. A deferred tax liability that is not paid or reversed within the five subsequent fiscal years shall be recaptured to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity.

The amount of the recaptured deferred tax liability determined for the fiscal year shall be treated as a reduction to the covered tax of the fifth preceding fiscal year and the effective tax rate and top-up tax of such fiscal year shall be recomputed in accordance with Article 28(1).

8. By way of derogation from paragraph 7, where a deferred tax liability that is not paid within the five subsequent year is a recapture exception accrual, it shall not be recaptured. A recapture exception accrual shall be an amount of tax expense accrued that is attributable to changes in associated deferred tax liabilities, in respect of the following items:

(a) cost recovery allowances on tangible assets;

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

(c) research and development expenses;

(d) de-commissioning and remediation expenses;

(e) fair value accounting on unrealized 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 items listed under points (a) through (h).

Article 22
Qualifying loss election

1. By way of derogation from Article 21, a filing constituent entity may make a qualifying loss election for a jurisdiction according to which a qualifying loss deferred tax asset shall be determined for each fiscal year in which there is a net qualifying loss in the jurisdiction. For that purpose, the qualifying loss deferred tax

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asset shall be equal to the net qualifying loss for a fiscal year for the jurisdiction multiplied by the minimum rate.

A qualifying loss election cannot be made for a jurisdiction with an eligible distribution tax system as defined in Article 38.

2. The qualifying loss deferred tax asset determined pursuant to paragraph 1 shall be used in any subsequent fiscal year in which there is net qualifying income for the jurisdiction in an amount equal to the net qualifying income multiplied by the minimum rate or, if lower, the amount of qualifying loss deferred tax asset that is available.

3. The qualifying loss deferred tax asset shall be reduced by the amount that is used for a fiscal year and the balance shall be carried forward to subsequent fiscal years.

4. Where a qualifying loss election is revoked, any remaining qualifying loss deferred tax asset shall be reduced to zero as of the first day of the first fiscal year in which the qualifying loss election is no longer applicable.

5. The qualifying loss election shall be filed with the first top-up tax information return of the MNE group that includes the jurisdiction for which the election is made.

6. Where a flow-through entity which is the ultimate parent entity of an MNE group makes a qualifying loss election under this Article, the qualifying loss deferred tax asset shall be computed by reference to the qualifying loss of the flow-through entity after reduction pursuant to Article 36(3).

Article 23

Specific allocation of covered taxes incurred by certain types of constituent entities

1. A permanent establishment shall be allocated the amount of any covered taxes that are included in the financial accounts of a constituent entity and that relate to qualifying income or loss of the permanent establishment.

2. A constituent entity-owner shall be allocated the amount of any covered taxes that are included in the financial accounts of a tax transparent entity and that relate to qualifying income or loss allocated to a constituent entity-owner in accordance with Article 18(4).

3. A constituent entity shall be allocated 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, to the extent that those covered taxes relate to qualifying income or loss of the constituent entity.

4. A constituent entity that is a hybrid entity shall be allocated the amount of any covered taxes included in the financial accounts of its constituent entity-owner and which relates to qualifying income of the hybrid entity.

A hybrid entity means an entity treated as a separate person for income tax purposes in the jurisdiction where it is located but as fiscally transparent in the jurisdiction in which its owner is located;

5. A constituent entity that made a distribution during the fiscal year shall be allocated the amount of any covered taxes accrued in the financial accounts of its direct constituent entity-owners on such distributions.

6. A constituent entity, which was allocated covered taxes pursuant to paragraphs 3 and 4 in respect of passive income, shall include such covered taxes in an amount equal to the covered taxes allocated in respect of such passive income.

By way of derogation from the first subparagraph, the constituent entity shall include the amount resulting from the multiplication of the top-up tax percentage for the jurisdiction by the amount of the constituent entity's passive income that is included under a controlled foreign company tax regime or a fiscal transparency rule where the result is lower than the amount determined under the first subparagraph. For the purpose of this subparagraph, the top-up tax percentage for the jurisdiction shall be determined without regard to covered taxes incurred with respect to such passive income by the constituent entity-owner.

Any covered taxes of the constituent entity-owner incurred with respect to such passive income that remains after the application of this paragraph shall not be allocated under paragraph 3 and 4.

For the purpose of this paragraph, passive income means the following items of income to the extent that they have been subject to tax under a controlled foreign company tax regime or because the entity paying such income is treated as a hybrid entity:

(a) a dividend or dividend equivalents;

(b) interest or interest equivalents;

(c) rent;

(d) royalty;

(e) annuity; or

(f) net gains from property of a type that produces income described in points (a) to (e).

7. Where the qualifying income of a permanent establishment is treated as qualifying income of the main entity in accordance with Article 17(5), any covered taxes arising in the jurisdiction where the permanent establishment is located and associated with such income shall be treated as covered taxes of the main entity for an amount not exceeding such income multiplied by the highest domestic tax rate on ordinary income in the jurisdiction where the main entity is located.

Article 24
Post-filing adjustments and tax rate changes

1. Where a constituent entity records an adjustment to its covered taxes in its financial accounts for a previous fiscal year, such adjustment 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.

Where there is a decrease in covered taxes that are 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 shall be recomputed in accordance with Article 28(1) by reducing adjusted covered taxes by the amount of the decrease in covered taxes. The qualifying income for the fiscal year and any relevant fiscal years shall be adjusted accordingly.

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At the election of the filing constituent entity, a decrease in covered taxes which is immaterial may be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made. An immaterial decrease in covered taxes shall be a decrease of less than EUR 1 000 000 in the adjusted covered taxes determined for the jurisdiction for the fiscal year.

2. Where the applicable domestic tax rate is reduced below the minimum tax rate and such reduction results in a deferred tax expense, the amount of that deferred tax expense shall be treated as an adjustment to the constituent entity's liability for covered taxes that are taken into consideration pursuant to Articles 19 and 20 for a previous fiscal year.

3. Where a deferred tax expense was taken into account at a rate lower than the minimum effective tax rate and the applicable tax rate is subsequently increased, the amount of deferred tax expense that results from such increase shall be treated upon payment as an adjustment to a constituent entity's liability for covered taxes claimed for a previous fiscal year in accordance with Article 19 and 20.

The adjustment under the first subparagraph shall not exceed an amount equal to the deferred tax expense recast at the minimum rate.

4. Where more than EUR 1 000 000 of the amount accrued by a constituent entity as tax expense and included in adjusted covered taxes for a fiscal year is not paid within three years after the end of that fiscal year, the effective tax rate and top-up tax for the fiscal year in which the unpaid amount was claimed as a covered tax shall be recomputed in accordance with Article 28(1) by excluding such unpaid amount from the adjusted covered taxes.

CHAPTER V
COMPUTATION OF THE EFFECTIVE TAX RATE AND THE TOP-UP TAX

Article 25
Determination of the effective tax rate

1. The effective tax rate of an MNE group shall be computed, for each fiscal year and for each jurisdiction provided that there is net qualifying income, in accordance with the following formula:

$$Effective\ tax\ rate = \frac{adjusted\ covered\ taxes\ of\ the\ constituent\ entities\ in\ the\ jurisdiction}{net\ qualifying\ income\ of\ the\ constituent\ entities\ in\ the\ jurisdiction}$$

where the adjusted covered taxes of the constituent entities is the sum of the adjusted covered taxes of all the constituent entities located in the jurisdiction determined in accordance with Chapter IV.

2. The net qualifying income of the constituent entities in the jurisdiction for a fiscal year shall be determined in accordance with the following formula:

$$Net\ qualifying\ income\ or\ loss = qualifying\ income\ of\ the\ constituent\ entities - qualyfing\ losses\ of\ the\ constituent\ entities$$

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where:

(a) the qualifying income of the constituent entities is the sum of the qualifying income of all constituent entities located in the jurisdiction determined in accordance with Chapter III, taking into account, where applicable, the international shipping income exclusion in accordance with Article 16;

(b) the qualifying losses of the constituent entities is the sum of the qualifying losses of all constituent entities located in the jurisdiction determined in accordance with Chapter III.

3. Adjusted covered taxes and qualifying income or loss of constituent entities that are investment entities are excluded from the calculation of the effective tax rate in accordance with paragraph 1 and the calculation of the net qualifying income in accordance with paragraph 2.

4. The effective tax rate of the stateless constituent entities located in a jurisdiction shall be computed, for each fiscal year, separately from the effective tax rate of the constituent entities located in the same jurisdiction.

Article 26

Computation of the top-up tax

1. Where the effective tax rate of a jurisdiction in which constituent entities are located is below the minimum tax rate for a fiscal year, the MNE group shall compute the top-up tax for each of its constituent entities that has qualifying income included in the computation of net qualifying income of that jurisdiction separately. The top-up tax shall be computed on a jurisdictional basis.

2. The top-up tax percentage for a jurisdiction for a fiscal year shall be computed in accordance with the following formula:

$$Top - up\ tax\ percentage = minimum\ tax\ rate - effective\ tax\ rate$$

where the effective tax rate is the rate computed in accordance with Article 25.

3. The jurisdictional top-up tax for a fiscal year shall be computed in accordance with the following formula:

$$Jurisdictional\ top - up\ tax = (top\ up\ tax\ percentage\ x\ excess\ profit) + additional\ top - up\ tax - domestic\ top - up\ tax$$

where:

(a) the additional top-up tax is the amount of tax as determined in accordance with Article 28;

(b) the domestic top-up tax is the amount of tax as determined in accordance with Article 10.

4. The excess profit for the jurisdiction for the fiscal year referred to in paragraph 3 shall be computed in accordance with the following formula:

$$Excess\ profit = net\ qualifying\ income - substance - based\ income\ exclusion$$

where:

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(a) the net qualifying income is the income determined in accordance with Article 25(2);

(b) the substance-based income exclusion is the amount determined in accordance with Article 27.

For the purpose of this paragraph, excess profit means an amount equal to the difference between the net qualifying income of the constituent entities computed at the level of the jurisdiction in which the constituent entities are located and the substance-based income exclusion of such constituent entities in that jurisdiction.

5. The top-up tax of a constituent entity for a fiscal year shall be computed in accordance with the following formula:

$$Top-up\ tax\ of\ a\ constituent\ entity = jurisdictional\ top-up\ tax$$
$$x\,\frac{qualifying\ income\ of\ the\ constituent\ entity}{total\ qualifying\ income\ of the\ constituent\ entities}$$

where:

(a) the qualifying income of a constituent entity is the income determined in accordance with Chapter III;

(b) the total qualifying income of all constituent entities is the sum of the qualifying income of the constituent entities.

6. If the jurisdictional top-up tax results from a recalculation pursuant to Article 28(1) and there is a net qualifying loss in the jurisdiction for the fiscal year, the top-up tax shall be allocated to each constituent entity using the formula set out in paragraph 5, based on the qualifying income of the constituent entities in the fiscal years for which the recalculations pursuant to Article 28(1) are performed.

7. The top-up tax of the stateless constituent entities located in a jurisdiction shall be computed, for each fiscal year, separately from the top-up tax of all other constituent entities located in the same jurisdiction.

Article 27
Substance-based income exclusion

1. For the purpose of this Article, the following definitions apply:

(a) ‘eligible employees’ means full-time or part-time employees of a constituent entity and independent contractors participating in the ordinary operating activities of the MNE group under the direction and control of the MNE Group;

(b) ‘eligible payroll costs’ means employee compensation expenditures, including salaries, wages and other expenditures that provide a direct and separate personal benefit to the employee, such as health insurance and pension contribution, payroll and employment taxes, and employer social security contributions;

(c) ‘eligible tangible assets’ means:

(i) property, plant and equipment located in that jurisdiction;

(ii) natural resources located in that jurisdiction;

(iii) a lessee’s right of use of tangible assets located in that jurisdiction; and

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

2. Unless a filing entity of an MNE group elects not to apply the substance-based income exclusion, the net qualifying income for a jurisdiction shall be reduced, for the purpose of calculating the top-up tax, by an amount equal to the sum of the payroll carve-out and the tangible asset carve-out for each constituent entity located in the jurisdiction.

3. The payroll carve-out of a constituent entity located in a jurisdiction shall be equal to 5 % of its eligible payroll costs of eligible employees who perform activities for the MNE group in such jurisdiction, with the exception of eligible payroll costs that are:

(a) capitalised and included in the eligible tangible asset carve-out base; and

(b) attributable to income that is excluded in accordance with Article 16.

Eligible employees shall be deemed to be located in the jurisdiction where they perform activities for the MNE group.

4. The tangible asset carve-out of a constituent entity located in a jurisdiction shall be equal to 5 % of the carrying value of the eligible tangible assets located in the jurisdiction, with the exception of:

(a) the carrying value of property, including land and buildings, that is held for sale, for lease or for investment;

(b) the carrying value of tangible assets used to derive income that is excluded in accordance with Article 16.

5. For the purpose of paragraph 4, the carrying value of eligible tangible assets shall be the average of the carrying value of eligible tangible assets at the beginning and ending of the fiscal year, as accrued in the financial statements of the ultimate parent entity, reduced by any accumulated depreciation, amortisation and depletion and increased by any amount attributable to the capitalisation of payroll expenses.

6. For the purpose of paragraphs 3 and 4, the eligible payroll costs and eligible tangible assets of a constituent entity which is a permanent establishment shall be those that are included in its separate financial accounts in accordance with Article 17(1) and 17(2) provided that they are located in the same jurisdiction as the permanent establishment.

The eligible payroll costs and eligible tangible assets of a permanent establishment shall not be taken into account by the main entity.

Where the income of a permanent establishment was excluded pursuant to Article 18(1) and Article 36(5), the eligible payroll costs and eligible tangible assets of such permanent establishment shall be excluded in the same proportion from the computation under this Article for the MNE group.

7. Eligible payroll costs of eligible employees paid by, and eligible tangible assets owned by, a flow-through entity that are not allocated under paragraph 6 shall be allocated to:

(a) the constituent owners of the flow-through entity, in proportion to the amount allocated to them pursuant to Article 18(4), provided that the eligible

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employees and eligible tangible assets are located in the jurisdiction of the constituent entity-owners; and

(b) the flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the computation of the qualifying income of the flow-through entity pursuant to Article 36(1) and 36(2), provided that the eligible employees and eligible tangible assets are located in the jurisdiction of the flow-through entity.

All other eligible payroll costs and eligible tangible assets of the flow-through entity shall be excluded from the substance-based income exclusion computations of the MNE Group.

8. The substance-based income exclusion of the stateless constituent entities located in a jurisdiction shall be computed, for each fiscal year, separately from the substance-based income exclusion of all other constituent entities located in the same jurisdiction.

9. The substance-based income exclusion computed under this Article shall not include the payroll carve-out and the tangible asset carve-out of investment entities.

Article 28

Additional top-up tax

1. Where, pursuant to Articles 15(7), 21(7), 24(1), 24(4) and 38(5), an adjustment to covered taxes or qualifying income or loss results in the recalculation of the effective tax rate and top-up tax of the MNE group for a prior fiscal year, the effective tax rate and top-up tax shall be recomputed in accordance with the rules set out in Articles 25 to 27. Any amount of incremental top-up tax arising from such recalculation shall be treated as an additional top-up tax for the purpose of Article 25(3) for the fiscal year during which the recalculation is made.

2. Where the recalculation made under paragraph 1 results in an additional top-up tax, and there is a net qualifying loss for the jurisdiction, the qualifying income of each constituent entity located in the jurisdiction shall be an amount equal to the top-up tax allocated to such constituent entities pursuant to Articles 26(5) and 26(6) divided by the minimum tax rate.

3. Where, pursuant to Article 20(5), additional top-up tax is due, the qualifying income of each constituent entity located in the jurisdiction shall be an amount equal to the top-up tax allocated to such constituent entity divided by the minimum tax rate. The allocation shall be made pro-rata, to each constituent entity, based on the following formula:

$$(Qualifying\ income\ or\ loss\ x\ minimum\ tax\ rate) - adjusted\ covered\ taxes$$

The additional top-up tax shall only be allocated to constituent entities that record an amount of adjusted covered tax that is less than zero and less than the qualifying income or loss of such constituent entities multiplied by the minimum tax rate.

4. Where a constituent entity is allocated additional top-up tax in accordance with this Article, it shall be treated as a low-taxed constituent entity for the purpose of Chapter II.

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Article 29
De minimis exclusion

1. By way of derogation from Articles 25 to 28, at the election of the filing constituent entity, the top-up tax due for the constituent entities located in a jurisdiction shall be equal to zero for a fiscal year if, for such fiscal year:

   (a) the average qualifying revenue of the constituent entities located in that jurisdiction is less than EUR 10 000 000; and

   (b) the average qualifying income or loss of that jurisdiction is a loss or is less than EUR 1 000 000.

   The election shall be made annually in accordance with Article 43(2).

2. The average qualifying revenue or average qualifying income or loss referred to in paragraph 1 shall be the average of the qualifying revenue or qualifying income or loss of the constituent entities located in the jurisdiction for the fiscal year and the two preceding fiscal years.

   If there are no constituent entities with qualifying revenue or qualifying loss located in the jurisdiction in the first or second preceding fiscal years, such fiscal years shall be excluded from the calculation of the average qualifying revenue or qualifying income or loss of that jurisdiction.

3. The qualifying revenue of the constituent entities located in a jurisdiction for a fiscal year shall be the sum of the revenues of the constituent entities located in that jurisdiction, reduced or increased by any adjustment carried out in accordance with Chapter III.

4. The qualifying income or loss of a jurisdiction located in a jurisdiction for a fiscal year shall be the net qualifying income or loss of that jurisdiction as computed in accordance with Article 25(2).

5. The de minimis exclusion shall not be applicable to stateless entities and investment entities. The revenue and qualifying income of such entities shall be excluded from the computation of the de minimis exclusion.

Article 30
Minority-owned constituent entities

1. For the purpose of this Article, the following definitions apply:

   (a) ‘minority-owned constituent entity’ means a constituent entity in which the ultimate parent entity has a direct or indirect ownership interest of 30 % or less;

   (b) ‘minority-owned parent entity’ 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 former entity are held, directly or indirectly, by another minority-owned constituent entity;

   (c) ‘minority-owned subgroup’ means a minority-owned parent entity and its minority-owned subsidiaries; and

   (d) ‘minority-owned subsidiary’ means a minority-owned constituent entity whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.

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2. The computation of the effective tax rate and the top-up tax for a jurisdiction in accordance with Chapters III to VII with respect to a minority-owned subgroup shall apply as if each minority-owned subgroup was a separate MNE group.

The adjusted covered taxes and qualifying income or loss of members of a minority-owned subgroup shall be excluded from the determination of the residual amount of the effective tax rate of the MNE group computed in accordance with Article 25(1) and from the net qualifying income computed in accordance with Article 25(2).

3. The effective tax rate and top-up tax of a minority-owned constituent entity that is not a member of a minority-owned subgroup shall be computed on an entity basis in accordance with Chapters III to VII.

The adjusted covered taxes and qualifying income or loss of the minority-owned constituent entity shall be excluded from the determination of the residual amount of the effective tax rate of the MNE group computed in accordance with Article 25(1) and from the net qualifying income computed in accordance with Article 25(2).

This Article shall not apply to a minority-owned constituent entity that is an investment entity.

CHAPTER VI
SPECIAL RULES FOR CORPORATE RESTRUCTURING AND HOLDING STRUCTURES

Article 31

Application of the consolidated revenue threshold to group mergers and demergers

1. For the purpose of this article, the following definitions apply:

   (a) ‘merger’ means any arrangement where:

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

      (ii) an entity that is not a member of a group is brought under common control with another entity or group in a way that they constitute entities of a combined group;

   (b) ‘demerger’ means any arrangement where the entities of a single group are separated into two or more different groups that are no longer consolidated by the same ultimate parent entity.

2. Where two or more groups merge to form a single group in any of the last four consecutive fiscal years, the consolidated revenue threshold of the MNE group as referred to in Article 2(1) shall be deemed to be met for that year if the sum of the revenue included in each of their consolidated financial statements for that fiscal year is EUR 750 000 000 or more.

3. Where an entity that is not a member of a group (the “target”) merges with an entity or a group (the “acquirer”) in the fiscal year, and neither the target nor the acquirer has consolidated financial statements in any of the last four consecutive fiscal years, the consolidated revenue threshold of the MNE group shall be deemed to be met for

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that year if the sum of the revenue included in each of their financial statements or consolidated financial statements for that year is EUR 750 000 000 or more.

4. Where a single MNE group demerges into two or more groups (each a “demerged group”), the consolidated revenue threshold shall be deemed to be met by each demerged group if it reports:

   (a) an annual revenue of EUR 750 000 000 or more in the first fiscal year after the demerger; and

   (b) an annual revenue of EUR 750 000 000 or more in at least two of the second to fourth consecutive fiscal years after the demerger.

Article 32

Constituent entities joining and leaving an MNE group

1. Where an entity (the “target”) becomes or ceases to be a constituent entity of an MNE group as a result of a transfer of a direct or indirect ownership interests in the target during a fiscal year (the “acquisition year”), the target entity shall be treated as a member of the MNE group for the purpose of this Directive provided that a portion of its assets, liabilities, income, expenses and cash flows is included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year.

   The effective tax rate and top-up tax of the target entity shall be computed in accordance with paragraphs 2 to 8.

2. In the acquisition year, the financial accounting net income or loss and adjusted covered taxes of the target shall be included in the consolidated financial statements of the ultimate parent entity.

3. In the acquisition year, and in each succeeding fiscal year, the qualifying income or loss and adjusted covered taxes of the target shall be based on the historical carrying value of its assets and liabilities.

4. In the acquisition year, the computation of the eligible payroll costs of the target pursuant to Article 27(3) shall take into account the costs that are reflected in the consolidated financial statements of the ultimate parent entity.

5. The computation of the carrying value of the eligible tangible assets of the target pursuant to Article 27(4) shall be adjusted, where applicable, in proportion to the period of time in which the target was a member of the MNE group during the acquisition year.

6. With the exception of the qualifying loss deferred tax asset, the deferred tax assets and deferred tax liabilities of a target that are transferred between MNE groups shall be taken into account 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;

7. Deferred tax liabilities of the target that have previously been included in the total deferred tax adjustment amount shall be treated pursuant to Article 21(7) as deducted by the disposing MNE group and as added by the acquiring MNE group in the acquisition year, except that any subsequent reduction of covered taxes shall have effect in the year in which the amount is recaptured.

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8. Where the target is a parent entity in two or more MNE groups during the acquisition year, it shall apply separately the income inclusion rule to its allocable shares of the top-up tax of low-taxed constituent entities determined for each MNE group.

9. The acquisition or disposal of a controlling interest in a target shall be treated as an acquisition or disposal of assets and liabilities provided that the jurisdiction in which the target 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 in a similar manner, as an acquisition or disposal of assets and liabilities, and imposes a covered tax on the seller based on the difference between the tax basis and the consideration paid in exchange for the controlling interest or the fair value of the assets and liabilities.

Article 33
Transfer of assets and liabilities

1. For the purpose of this Article, 'reorganisation' means a transformation or transfer of assets and liabilities in exchange for the issue of shares or, if applicable, another method of payment not exceeding 10 % of the nominal value of those shares, by the acquiring constituent entity or a person related with the acquiring constituent entity, where the gain or loss arising from the transfer is not taxed, in whole or in part, and where the acquiring constituent entity is required to use the historical value of the assets transferred, adjusted by any taxable gain or loss from the transfer to compute the taxable income after the transfer under local rules.

2. A constituent entity that disposes of assets and liabilities (the "transferring entity") shall include the gain or loss arising from such disposal in the computation of its qualifying income or loss.

   A constituent entity that acquires assets and liabilities (the "acquiring entity") shall determine its qualifying income or loss on the basis of its carrying value of the acquired assets and liabilities determined under the acceptable financial accounting standard of the ultimate parent entity.

3. By way of derogation from paragraph 2, where a disposal or acquisition of assets and liabilities is performed in the context of a reorganisation:

   (a) the transferring entity shall exclude any gain or loss arising from such disposal from the computation of its qualifying income or loss; and

   (b) the acquiring entity shall determine its qualifying income or loss on the basis of the carrying value of the acquired assets and liabilities upon transfer.

4. By way of derogation from paragraph 2 and 3, where the transfer of assets and liabilities is performed in the context of a reorganisation which results, for the transferring entity, in a taxable gain or loss:

   (a) the transferring entity shall include gain or loss arising from such disposal in the computation of its qualifying income or loss up to the portion of the gain that is subject to tax or up to the portion of the loss that reduces the taxable basis in the jurisdiction of the transferring entity; and

   (b) the acquiring entity shall determine its qualifying income or loss on the basis of the carrying value of the acquired assets and liabilities upon transfer reduced by the portion of the gain that is subject to tax or increased by the portion of

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the loss that reduces the taxable basis in the jurisdiction of the transferring entity.

5. At the election of the filing constituent entity, where a constituent entity 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 where it is located, such constituent entity may:

(a) include, in the computation of its qualifying income or loss, an amount of gain or loss in respect of each of its assets and liabilities, which shall be equal to the difference between the carrying value for financial accounting purposes of the asset or liability immediately before the date of the event that triggered the tax adjustment (the "triggering event") and the fair value of the asset or liability immediately after the triggering event;

(b) use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to compute qualifying income or loss in the fiscal years following the triggering event;

(c) include the net total of the amounts determined under (a) in the computation of the qualifying income or loss either by including the net total amounts in the fiscal year of the triggering event or by including one fifth of the net total of these amounts in the fiscal year of the triggering event and in the four following fiscal years.

The amount determined pursuant to point (a) shall be adjusted by any taxable gain or loss from the transfer to compute the taxable income after the transfer under local rules, if any, arising in connection with the triggering event.

If the constituent entity leaves the MNE group in a fiscal year before the full amount determined pursuant to point (a) has been included in the computation of its qualifying income or loss, the remaining amount shall be included in that fiscal year.

Article 34

Joint ventures

1. For the purpose of this Article, the following definitions apply:

(a) 'joint venture' means an entity other than an ultimate parent entity of an MNE Group 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 interest;

(b) 'joint venture affiliate' means:

(i) an entity whose assets, liabilities, income, expenses and cash flows are consolidated in the financial statements of a joint venture under an acceptable financial accounting standard or would have been consolidated had the joint venture been required to consolidate such assets, liabilities, income, expenses and cash flows under an acceptable financial accounting standard; or

(ii) a permanent establishment whose main entity is a joint venture or an entity referred to in point (a).

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2. A parent entity that holds a direct or indirect ownership interest in a joint venture or a joint venture affiliate (together referred to as a joint venture group) shall apply the income inclusion rule with respect to its allocable share of the top-up tax of each member of the joint venture group in accordance with Articles 5 to 9.

3. The computation of the top-up tax of the joint venture and its joint venture affiliates, shall be made in accordance with Chapters III to VII, as if they are constituent entities of a separate MNE group and the joint venture was the ultimate parent entity of that group.

4. The top-up tax due by the joint venture group shall be reduced by each parent entity's allocable share of the top-up tax of each member of the joint venture group that is brought into charge under paragraph 2 and 3. Any remaining amount of top-up tax shall be added to the total UTPR top-up tax amount pursuant to Article 13.

Article 35

Multi-parented MNE groups

1. For the purpose of this Article, the following definitions apply:

   (a) 'multi-parented MNE group' means two or more groups where the ultimate parent entities of those groups enter into an arrangement that is a stapled structure or a dual-listed arrangement that includes at least one entity or permanent establishment which is located in a different jurisdiction;

   (b) 'stapled structure' means an arrangement under which:

      (i) 50 % or more of the ownership interests in the ultimate parent entities of separate groups which, if they are listed, are quoted at a single price, and 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; and

      (ii) one of the ultimate parent entities prepares consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of entities in all of the groups concerned are presented together as those of a single economic unit; and

   (c) 'dual-listed arrangement' means an arrangement entered into by two or more ultimate parent entities of separate groups under which:

      (i) the ultimate parent entities agree to combine their business by contract alone;

      (ii) the ultimate parent entities' activities are managed as a single economic unit under contractual arrangements while retaining the separate legal entities of each ultimate parent entities;

      (iii) the ownership interests of the ultimate parent entities that comprise the agreement are quoted, traded or transferred independently in different capital markets; and

      (iv) the ultimate parent entities are required to prepare consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of entities in all of the groups are presented together as those of a single economic unit.

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2. Where constituent entities form part of a multi-parented MNE group, the entities and constituent entities of each group shall be treated as members of one multi-parented MNE group.

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 if its controlling interests are held by entities in the multi-parented MNE group.

3. The consolidated financial statements of the multi-parented MNE group shall be the combined consolidated financial statements referred to in the definitions of a stapled structure or a dual-listed arrangement in paragraph 1, prepared under an acceptable financial accounting standard, which is deemed to be the accounting standard of the ultimate parent entity.

4. The ultimate parent entities of the separate groups that compose the multi-parented MNE group shall be the ultimate parent entities of the multi-parented MNE group.

When applying this Directive in respect of a multi-parented MNE group, any references to an ultimate parent entity shall apply, as required, as if they are references to multiple parent entities.

5. The parent entities of the multi-parented MNE group located in a Member State, including each ultimate parent entity, shall apply the income inclusion rule in accordance with Articles 5 to 9 with respect to their allocable share of the top-up tax of the low-taxed constituent entities.

6. The constituent entities of the multi-parented MNE group that are located in a Member State shall apply the UTPR in accordance with Articles 11, 12 and 13, taking into account the top-up tax of each low-taxed constituent entity that is a member of the multi-parented MNE group.

7. The ultimate parent entities of the multi-parented MNE group shall submit the top-up tax information return in accordance with Article 42(2) unless they appoint a single designated filing entity. That return shall include information concerning each of the groups that composes the multi-parented MNE group.

CHAPTER VII
TAX NEUTRALITY AND DISTRIBUTION REGIMES

Article 36
Ultimate parent entity that is a flow-through entity

1. The qualifying income of a flow-through entity that is an ultimate parent entity shall be reduced, for the fiscal year, by the amount of qualifying income that is allocated to the holder of an ownership interest (the “ownership holder”) in the flow-through entity, provided that:

(a) the income is subject to tax within 12 months after the end of this fiscal year at a nominal rate that equals or exceeds the minimum tax rate; or

(b) it can be reasonably expected that the total amount of covered taxes and taxes paid by the ownership holder on the income equals or exceeds an amount equal to that income multiplied by the minimum tax rate.

2. The qualifying income of a flow-through entity that is an ultimate parent entity shall be reduced, for the fiscal year, by the amount of qualifying income that is allocated to the holder of an ownership interest in the flow-through entity provided that the ownership holder is:

(a) a natural person that is tax resident in the jurisdiction where the ultimate parent entity is located and holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity; or

(b) a governmental entity, an international organisation, a non-profit organisation or a pension fund other than a pension services entity that is tax resident in the jurisdiction where the ultimate parent entity is located and holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.

3. The qualifying loss of a flow-through entity that is an ultimate parent entity shall be reduced, for the fiscal year, by the amount of qualifying loss that is allocated to the ownership holder of an interest in the flow-through entity.

The first subparagraph shall not apply where the ownership holder is not allowed to use such loss for the computation of its taxable income in the jurisdiction where it is tax resident.

4. The covered taxes of a flow-through entity that is an ultimate parent entity shall be reduced proportionally to the amount of qualifying income reduced in accordance with paragraph 1.

5. Paragraphs 1, 2, 3 and 4 shall apply to a permanent establishment through which a flow-through entity that is an ultimate parent entity wholly or partly carries out its business or through which the business of a tax transparent entity is wholly or partly carried out provided that the ultimate parent entity's ownership interest in that tax transparent entity is held directly or through one or more tax transparent entities.

Article 37

Ultimate parent entity subject to a deductible dividend regime

1. For the purpose of this Article, the following definitions apply:

(a) 'deductible dividend regime' means a tax regime that applies a single level of taxation on the income of the owners or beneficiaries of an entity by deducting or excluding from the income of the entity the profits distributed to the owners or beneficiaries or by exempting a cooperative from taxation;

(b) 'deductible dividend' means, with respect to a constituent entity that is subject to a deductible dividend regime:

(i) a distribution of profits to the holder of an ownership interest in the constituent entity that is deductible from the taxable income of the constituent entity under the laws of the jurisdiction in which it is located; or

(ii) a patronage dividend to a member of a cooperative; and

(c) 'cooperative' 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 where it is located that ensures the tax neutrality in respect of

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goods or services that are sold or acquired by the members through the cooperative.

2. An ultimate parent entity of an MNE group that is subject to a deductible dividend regime shall reduce, up to zero, for the fiscal year, its qualifying income by the amount that it distributes as deductible dividend within 12 months after the end of the fiscal year, provided that:

   (a) the dividend is subject to tax in the hands of the recipient for a taxable period that ends within 12 months after the end of the fiscal year at a nominal rate that equals or exceeds the minimum tax rate; or

   (b) it can be reasonably expected that the total amount of covered taxes and taxes paid by the recipient on such dividend equals or exceeds the amount equal to that income multiplied by the minimum tax rate.

3. An ultimate parent entity of an MNE group that is subject to a deductible dividend regime shall also reduce, up to zero, for the fiscal year, its qualifying income by the amount that it distributes as deductible dividend within 12 months after the end of the fiscal year, provided that the recipient is:

   (a) a natural person, and the dividend received is a patronage dividend from a supply cooperative;

   (b) a natural person that is tax resident in the same jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity; or

   (c) a governmental entity, an international organisation, a non-profit organisation or a pension fund other than a pension services entity that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.

4. The covered taxes of an ultimate parent entity, other than the taxes for which the dividend deduction was allowed, shall be reduced proportionally to the amount of qualifying income reduced in accordance with paragraph 2.

5. Where the ultimate parent entity holds an ownership interest in another constituent entity that is subject to a deductible dividend regime, directly or through one or more constituent entities, paragraphs 2 and 3 shall apply to any other constituent entity located in the jurisdiction of the ultimate parent entity that is subject to the deductible dividend regime, to the extent that its qualifying income is further distributed by the ultimate parent entity to recipients that meet the requirements set out in paragraph 2.

6. For the purpose of paragraph 4, a dividend distributed by a supply cooperative distribute patronage shall be treated as subject to tax in the hands of the recipient insofar as such dividend reduces a deductible expense or cost in the computation of the recipient's taxable income or loss.

Article 38

Eligible distribution tax systems

1. A filing constituent entity may make an election with respect to a constituent entity that is subject to an eligible distribution tax system to include the amount determined

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as a deemed distribution tax in accordance with paragraph 2 of this Article in the adjusted covered taxes of the constituent entity for the fiscal year.

The election shall be made annually in accordance with Article 43(2) and shall apply to all the constituent entities that are located in a jurisdiction.

2. The amount of deemed distribution tax shall be the lesser of:

(a) the amount of adjusted covered taxes necessary to increase the effective tax rate as computed in accordance with of Article 26(2) for the jurisdiction for the fiscal year to the minimum tax rate; or

(b) the amount of tax that would have been paid if the constituent entities had distributed their total income under the eligible distribution tax system during the fiscal year.

3. Where an election is made under paragraph 1, a deemed distribution tax recapture account shall be established for each fiscal year in which such election applies. The amount of deemed distribution tax paid in the jurisdiction shall be added to the deemed distribution tax recapture account for the fiscal year in which it was established.

At the end of each succeeding fiscal year, the amount in the deemed distribution tax recapture accounts established for prior fiscal years shall be reduced, up to zero, by the taxes paid by the constituent entities during the fiscal year in relation to actual or deemed distributions.

Any residual amount in the deemed distribution tax recapture accounts remaining after the application of the first subparagraph shall be reduced, up to zero, by an amount equal to the net qualifying loss for a jurisdiction multiplied by the minimum tax rate.

4. Any residual amount of net qualifying loss remaining after the application of the last subparagraph of paragraph 3 shall be carried forward to the following fiscal years and reduce any residual amount in the deemed distribution tax recapture accounts remaining after the application of paragraph 3.

5. The outstanding balance, if any, of the deemed distribution tax recapture account at the end of the fourth fiscal year after such account was established, shall be treated as a reduction to the adjusted covered taxes in accordance with Article 28(1) for the fiscal year in which such account was established.

6. Taxes that are paid during the fiscal year in relation to actual or deemed distributions shall not be included in adjusted covered taxes to the extent they reduce a deemed distribution tax recapture account in accordance with paragraph 3.

7. Where a constituent entity that is subject to an election under paragraph 1 leaves the MNE group or substantially all of its assets are transferred to a person that is not a constituent entity of the same MNE group located in the same jurisdiction, any outstanding balance of the deemed distribution tax recapture accounts in previous fiscal years in which such account was established shall be treated as a reduction to the adjusted covered taxes for each of those fiscal years in accordance with Article 28(1).

Any additional top-up tax amount due shall be multiplied by the following ratio to determine the additional top-up tax due for the jurisdiction:

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$$\frac{Qualifying\ income\ of\ the\ constituent\ entity}{Net\ qualifying\ income\ of\ the\ jurisdiction}$$

where:

(a) the qualifying income of the constituent entity shall be determined in accordance with Chapter III for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction; and

(b) the net qualifying income for the jurisdiction shall be determined in accordance with Article 25(2) for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction.

Article 39

Determination of the effective tax rate and top-up tax of an investment entity

1. Where a constituent entity of an MNE group is an investment entity that is not a tax transparent entity and that has not made an election in accordance with Articles 40 and 41, the effective tax rate of such investment entity shall be computed separately from the effective tax rate of the jurisdiction in which it is located.

2. The effective tax rate of the investment entity as referred to in paragraph 1 shall be equal to its adjusted covered taxes divided by an amount equal to the allocable share of the MNE group in the qualifying income or loss of the investment entity.

   Where more than one investment entity are located in a jurisdiction, their effective tax rate shall be computed by combining their adjusted covered taxes as well as the allocable share of the MNE group in their qualifying income or loss.

3. The adjusted covered taxes of an investment entity as referred to in paragraph 1 shall be the adjusted covered taxes that are attributable to the allocable share of the MNE group in the qualifying income of the investment entity and the covered taxes allocated to the investment entity in accordance with Article 23.

4. The top-up tax of an investment entity as referred to in paragraph 1 shall be an amount equal to the top-up tax percentage of the investment entity multiplied by amount equal to the difference between the allocable share of the MNE Group in the qualifying income of the investment entity's and the substance-based income exclusion computed for the investment entity.

   Where more than one investment entity are located in a jurisdiction, their top-up tax shall be computed by combining their substance-based income exclusion amounts as well as the allocable share of the MNE group in their qualifying income or loss allocable share of the MNE group in the qualifying income or loss.

   The top-up tax percentage of an investment entity shall be an amount equal to the difference between the minimum tax rate and the effective tax rate of such investment entity.

5. The substance-based income exclusion of an investment entity shall be determined in accordance with Articles 27(1) to 27(7). The eligible tangible assets and eligible payroll costs of eligible employees taken into account for such entity shall be reduced in proportion to the allocable share of the MNE group in the qualifying income of the investment entity divided by the total qualifying income of such investment entity.

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6. For the purpose of this Article, the allocable share of the MNE group in the qualifying income or loss of an investment entity shall be determined in accordance with Article 8.

Article 40

Election to treat an investment entity as a tax transparent entity

1. For the purpose of this Article, an insurance investment entity means an entity that would meet the definitions of an investment fund set out in Article 3, point (25) or a real estate investment vehicle set out in Article 3, point (26) if it had not been established in relation to liabilities under an insurance or annuity contract and owned wholly by an entity that is subject to regulation in the jurisdiction where it is located as an insurance company.

2. At the election of the filing constituent entity, an investment entity or an insurance investment entity may be treated as a tax transparent entity if the constituent entity-owner is subject to tax in the jurisdiction in which it is located under a fair market value or a similar regime based on the annual changes in the fair value of its ownership interests in such entity and the tax rate applicable to the constituent entity-owner on such income equals or exceeds the minimum tax rate.

3. A constituent entity that indirectly owns an ownership interest in an investment entity or an insurance investment entity directly through another investment entity or an insurance investment entity shall be considered to be subject to tax under a fair market value or similar regime with respect to its indirect ownership interest in the first-mentioned entity or insurance investment entity if it is subject to a fair market value or similar regime with respect to its direct ownership interest in the second-mentioned entity or insurance investment entity.

4. The election shall be made in accordance with Article 43(1).

   If the election is revoked, any gain or loss from the disposal of an asset or a liability held by the investment entity or an insurance investment entity shall be determined on the basis of the fair market value of the asset or liability on the first day of the year the revocation is made.

Article 41

Election to apply a taxable distribution method

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

2. Under a taxable distribution method, distributions and deemed distributions of the qualifying income of an investment entity shall be included in the qualifying income of the constituent entity-owner that received the distribution.

   The amount of covered taxes incurred by the investment entity that is creditable against the tax liability of the constituent entity-owner arising from the distribution shall be included in the qualifying income and adjusted covered taxes of the constituent entity-owner that received the distribution.

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The share of the constituent entity-owner in the undistributed net qualifying income of the investment entity arising in the third year preceding the fiscal year (the "tested year") shall be treated as qualifying income of that investment entity for the fiscal year. The amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of a low-taxed constituent entity for the fiscal year for the purpose of Chapter II.

The qualifying income or loss of an investment entity and the adjusted covered taxes attributable to such income for the fiscal year shall be excluded from the computation of the effective tax rate in accordance with Chapter V and with Articles 39(1) to 39(4), except for the amount of covered taxes as referred to in the second subparagraph.

3. The undistributed net qualifying income of an investment entity for a fiscal year shall be the amount of qualifying income of that investment entity for the tested year reduced, up to zero, by:

(a) the covered taxes of the investment entity;

(b) distributions and deemed distributions to shareholders that are not investment entities during the period starting from the beginning of the third year preceding the fiscal year and the end of the fiscal year (the "testing period");

(c) qualifying losses arising during the testing period; and

(d) any residual amount of qualifying losses that has not already reduced the undistributed net qualifying income of that investment entity for a previous tested year (the "investment loss carry-forward").

The undistributed net qualifying income of an investment entity shall not be reduced by distributions or deemed distributions that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in application of point (b) of the first subparagraph.

The undistributed net qualifying income of an investment entity shall not be reduced by the amount of qualifying losses that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in application of point (c) of the first subparagraph.

4. For the purpose of this article, a deemed distribution shall be deemed to arise when a direct or indirect ownership interest in the investment entity is transferred to an entity that does not belong to the MNE group and which is equal to the share of the undistributed net qualifying income attributable to such ownership interest on the date of such transfer, determined without regard to the deemed distribution.

5. The election shall be made in accordance with Article 43(1).

If the election is revoked, the share of the constituent entity-owner in the undistributed net qualifying income of the investment entity for the tested year preceding the revocation shall be treated as qualifying income of the investment entity for the fiscal year. The amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of a low-taxed constituent entity for the fiscal year for the purpose of Chapter II.

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CHAPTER VIII
ADMINISTRATIVE PROVISIONS

Article 42
Filing obligations

1. For the purpose of this Article, the following definitions apply:

   (a) 'designated local entity' means the constituent entity of an MNE group that is located in a Member State and has been appointed by the other constituent entities of the MNE group located in the same Member State to file the top-up tax information return and submit the notifications in accordance with this Article on their behalf;

   (b) 'qualifying competent authority agreement' means a bilateral or multilateral agreement or arrangement between two or more jurisdictions that provides for the automatic exchange of annual information returns.

2. A constituent entity located in a Member State shall file a top-up tax information return with its tax administration in accordance with paragraph 5.

   Such return may be filed by a designated local entity on behalf of the constituent entity.

3. By way of derogation from paragraph 2, a constituent entity shall not be required to file a top-up tax information return with its tax administration if such a return has been filed, in accordance with the requirements set out in paragraph 5, by:

   (a) the ultimate parent entity located in a jurisdiction that has a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located; or

   (b) the designated filing entity located in a jurisdiction that has a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located.

4. Where paragraph 3 applies, the constituent entity, or the designated local entity on its behalf, shall notify its tax administration of the identity of the entity that is filing the top-up tax information return as well as the jurisdiction in which it is located.

5. The top-up tax information return shall include the following information with respect to the MNE group:

   (a) identification of the constituent entities, including their tax identification numbers, if any, the jurisdiction in which they are located and their status under the rules of this Directive;

   (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 that is necessary in order to compute:

      (i) the effective tax rate for each jurisdiction and the top-up tax of each constituent entity;

      (ii) the top-up tax of a member of a joint-venture group;

      (iii) the allocation of top-up tax under the income inclusion rule and the UTPR top-up tax amount to each jurisdiction; and

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(d) a record of the elections made in accordance with the relevant provisions of this Directive.

6. By way of derogation from paragraph 5, where a constituent entity is located in a Member State with an ultimate parent entity located in a third country jurisdiction that applies rules which have been assessed as equivalent to the rules of this Directive pursuant to Article 51, the constituent entity or the designated local entity shall file a top-up tax information return containing the following information:

(a) all information that is necessary for the application of Article 7, including:

(i) identification of all the constituent entities in which a partially-owned parent entity located in a Member State holds, directly or indirectly, an ownership interest at any time during the fiscal year and the structure of such ownership interests;

(ii) all information that is necessary to compute the effective tax rate of the jurisdictions in which a partially-owned parent entity located in a Member State holds constituent entities identified under (i) and the top-up tax due; and

(iii) all information that is relevant for that purpose in accordance with Articles 8, 9 or 10;

(b) all information that is necessary for the application of Article 12, including:

(i) identification of all the constituent entities located in the ultimate parent entity jurisdiction and the structure of such ownership interests;

(ii) all information that is necessary in order to compute the effective tax rate of the ultimate parent entity's jurisdiction and of the top-up tax due; and

(iii) all information necessary for the allocation of such top-up tax based on the UTPR allocation formula set out in Article 13.

7. The top-up tax information return referred to in paragraphs 5 and 6 and any relevant notifications shall be filed with the tax administration of the Member State in which the constituent entity is located no later than 15 months after the last day of the fiscal year.

Article 43
Elections

1. The election referred to in Articles 2(3), 15(3), 15(6), 15(9), 40(4) and 41(5) shall be valid for a period of five years, starting from the year in which the election is made. The election shall be renewed automatically unless the filing constituent entity revokes the election at the end of the five-year period. A revocation of the election shall be valid for a period of five years, starting from the year in which the revocation is made.

2. The election referred to in Articles 15(7), 29(1) and 38(1) shall be valid for a period of one year. The election shall be renewed automatically unless the filing constituent entity revokes the election at the end of the year.

3. The election shall be made to the tax administration of the Member State in which the filing constituent entity is located.

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Article 44
Penalties

1. Member States shall lay down rules on penalties applicable to breaches of national rules adopted pursuant to this Directive, and shall take all necessary measures to ensure that they are effectively applied. The penalties provided for shall be effective, proportionate and dissuasive.

2. A constituent entity that does not comply with the requirement to file a top-up tax information return pursuant to Article 42 for a tax year within the prescribed deadline or makes a false declaration shall be charged an administrative pecuniary penalty amounting to 5 % of its turnover in the relevant fiscal year. This penalty shall only apply after the constituent entity has not provided the top-up tax information return pursuant to Article 42, following any reminder issued, within a period of 6 months.

CHAPTER IX
TRANSITION RULES

Article 45
Tax attributes upon transition

1. For the purpose of this Article, a transition year means the first fiscal year in which an MNE group falls within the scope of this Directive.

2. For the purpose of this Article, tax attributes shall be:

   (a) deferred tax assets;

   (b) deferred tax liabilities; and

   (c) transferred assets.

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

   Deferred tax assets and deferred tax liabilities shall be taken into account at the lower of the minimum tax rate and the applicable domestic tax rate. However, a deferred tax asset that has been accrued at a tax rate lower than the minimum tax rate may be taken into account at the minimum tax rate if the taxpayer can demonstrate that the deferred tax asset is attributable to a qualifying loss.

   The impact of any valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset shall be disregarded.

4. Deferred tax assets arising from items excluded from the computation of qualifying income or loss in accordance with Chapter III shall be excluded from the calculation referred to in paragraph 3 when such deferred tax assets are generated in a transaction that takes place after 15 December 2021.

5. In the case of a transfer of assets between constituent entities after 15 December 2021 and before the start of a transition year, the value of the acquired assets shall be based upon the transferring entity's carrying value of the transferred assets at the time of the transfer.

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Article 46
Transitional relief for the substance-based income exclusion

1. For the purpose of Article 27(3), the value of 5 % shall be replaced with the values set out in the following table:

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 %

2. For the purpose of applying Article 27(4), the value of 5 % shall be replaced the values set out in the following table:

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2023	8 %
2024	7,8 %
2025	7,6 %
2026	7,4 %
2027	7,2 %
2028	7,0 %
2029	6,6 %
2030	6,2 %
2031	5,8 %
2032	5,4 %

Article 47

Exclusion from the IIR and UTPR of MNE groups in the initial phase of their international activity

1. The top-up tax due by an ultimate parent entity located in a Member State in accordance with Article 5(2) shall be reduced to zero in the first five years of the initial phase of the international activity of the MNE group notwithstanding the requirements laid down in Chapter V.

2. Where the ultimate parent entity of an MNE group is located in a third country jurisdiction, the top-up tax due by a constituent entity located in a Member State in accordance with Article 13(2) shall be reduced to zero in the first five years of the initial phase of the international activity of that MNE group notwithstanding the requirements laid down in Chapter V.

3. An MNE group shall be considered to be in the initial phase of its international activity if:

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

   (b) the sum of the net book value of the tangible assets of all the constituent entities of the MNE group other than the constituent entities located in the reference jurisdiction does not exceed EUR 50 000 000.

   For the purpose of point (b), reference jurisdiction means the jurisdiction in which the constituent entities of the MNE group have the highest sum of the net book value of tangible assets in the fiscal year in which the MNE group falls within the scope of this Directive for the first time.

4. The period of five fiscal years referred to in paragraphs 1 and 2 shall start from the beginning of the fiscal year in which the MNE group falls within the scope of this Directive for the first time.

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For MNE groups that are within the scope of this Directive when it enters into force, the five-year period referred to in paragraph 1 shall start on 1 January 2023.

For MNE groups that are within the scope of this Directive when it enters into force, the five-year period referred to in paragraph 2 shall start on 1 January 2024.

5. The ultimate parent entity shall inform the tax administration of the Member State in which it is located of the start of the initial phase of its international activity.

Article 48

Transitional relief for filing obligations

Notwithstanding Article 42(7), the top-up tax information return and the notifications referred to in Article 42 shall be filed with the tax administration of the Member States no later than 18 months after the last day of the fiscal year that is the transitional year.

CHAPTER X
SPECIFIC APPLICATION OF THE IIR TO LARGE -SCALE DOMESTIC GROUPS

Article 49

Large-scale domestic groups

Member States shall ensure that the ultimate parent entity of a large-scale domestic group located in a Member State is subject to the IIR top-up tax under Article 5(2), as computed in accordance with Chapters III, IV and V, in respect of its low-taxed constituent entities for the fiscal year.

Article 50

Transitional rules

1. The top-up tax due by an ultimate parent entity located in a Member State in accordance with Article 49 shall be reduced to zero in the first five fiscal years, starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of this Directive for the first time.

2. For large-scale domestic groups that are in scope of this Directive when it enters into force, the five-year period abovementioned shall start on 1 January 2023.

CHAPTER XI
FINAL PROVISIONS

Article 51

Assessment of equivalence

1. The legal framework implemented in the domestic law of a third country jurisdiction shall be considered as equivalent to a qualified income inclusion rule set out in Chapter II if it fulfils the following conditions:

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(a) it enforces a set of rules in accordance with which the parent entity of an MNE group shall compute and collect its allocable share of top-up tax in respect of the low-taxed constituent entities of the MNE group;

(b) it establishes a minimum effective tax rate of at least 15 % below which a constituent entity is considered as low-taxed;

(c) for the purpose of computing the minimum effective tax rate, it only allows the blending of income of entities located within the same jurisdiction; and

(d) it provides for relief for any top-up tax that was paid in a Member State in application of the income inclusion rule set out in this Directive.

2. The third country jurisdictions that have implemented a legal framework in their domestic law, which can be considered equivalent to a qualified income inclusion rule in accordance with paragraph 1, are included in a list set out in the Annex.

3. This list may be modified as a result of a subsequent assessment of the legal framework implemented by a third country jurisdiction in its domestic law. The assessment shall be carried out by the Commission and in conformity with the conditions laid down in paragraph 1. Following such assessment, the Commission is empowered to adopt delegated acts in accordance with Article 52 in order to amend the Annex.

Article 52

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 51(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

3. The delegation of power referred to in Article 51(3) may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

5. A delegated act adopted pursuant to Article 51(3) shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

Article 53

Informing the European Parliament

The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, and of the revocation of a delegation of powers by the Council.

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Article 54
Bilateral agreement on simplified reporting obligations

The Union may conclude agreements with third country jurisdictions listed in the Annex, with a view to arrange a framework for simplifying the reporting procedures laid down in Article 42(6).

Article 55
Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2022.

Member States shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2023.

However, they shall apply the provisions necessary to comply with Articles 11, 12 and 13 from 1 January 2024.

These laws, regulations and administrative provisions shall include a reference to this Directive or such a reference shall be mentioned in their official publication. Member States shall determine how such reference is to be made.

Article 56
Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 57
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

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