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NOTE

From:	Presidency
To:	Council
Subject:	Draft Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union <i>- Presidency compromise text and draft Council statement</i>

Delegations will find attached the Presidency compromise text and the draft Council statement, discussed in the Council (ECOFIN) meeting on 17 June 2022.

DRAFT

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

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.

1 OJ C , , p..

2 OJ C , , p..

- (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 report to the European Council on tax issues approved by the Council on 7 December 2021³, the Council reiterated its firm support of the global minimum tax reform and committed to a swift implementation of the 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.

3 Council report to the European Council on tax issues approved by the Council on 7 December 2021, doc. 14767/21.

- (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 Profit 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 entity 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, in order to ensure that the rules implemented by the Member States pursuant to this Directive are qualified within the meaning of the GloBE Model Rules. 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 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 rules⁴. 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 generally do not carry on a trade or business and perform activities in the general interest, such as public health care and education or building public infrastructure, and which, for these reasons, might not 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 governmental entities, international organisations, non-profit organisations, including organisations for purposes such as public health, and pension funds from the scope of this Directive. Non-profit organisations may also include health care insurers which do not seek or make any profits other than for the benefit of public health care. 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 the income earned by these entities is taxed at the level of their owners.

4 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, 3.6.2016, p. 8).

- (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 an excluded entity or it is located in a third country jurisdiction that has not implemented the GloBE Model Rules or equivalent rules and thus does not 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 first-mentioned IPE.

- (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 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 an excluded entity or it is located in a jurisdiction without a qualified IIR, the constituent entities of the 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 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). As regards covered taxes, the provisions of this Directive should be interpreted in light of any further guidance provided by the OECD, that should be taken into account by Member States in order to ensure a uniform identification of the covered taxes of all Member States and third country jurisdictions.

- (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. Member States should notify to the European Commission when they elect to apply a qualified domestic top-up tax, with the objective of providing tax authorities of other Member States and third country jurisdictions as well as MNE groups with sufficient certainty as regards the applicability of the qualified domestic top-up tax to low-taxed constituent entities in that Member State. Constituent entities of an MNE group that are located in a Member State which has elected to implement such a system in its own domestic tax system should pay the top-up tax to this Member State. Such system should ensure that the minimum effective taxation of the qualifying income or loss of the constituent entities is computed in the same way, as the calculation of the top-up tax in accordance with 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.
- (14a) What is more, in order to address the particular situation of Member States in which very few groups are headquartered and which accommodate such a low number of constituent entities that it would make it disproportionate to immediately require the application of the IIR and UTPR by the tax administrations of those Member States, and given the status of common approach of the GloBE rules, it would be adequate to enable these Member States to elect not to apply the IIR and the UTPR for a limited period of time. This election should be notified to the Commission before the transposition date of the Directive.

- (14b) Member States that elect not to apply temporarily the IIR and the UTPR should transpose this Directive in such a way as to ensure the proper functioning of the system of global minimum level of taxation for multinational groups in the Union. This concerns in particular the obligation of domestic constituent entities in these Member States to provide information to constituent entities in other Member States and third country jurisdictions, so that other Member States and third country jurisdictions are able to apply the UTPR. The administrative burden for the tax administrations of the Member States having made the election should be limited to the greatest possible extent, while preserving the effective application of this Directive throughout the Union. Therefore, these Member States should also have the possibility of entering into a discussion with the Commission, seeking its guidance and assistance with a view to a common understanding on the practical arrangements concerning the transposition of this Directive into national law.
- (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.
- (17a) Considering that MNE and large-scale domestic groups should pay tax at a minimum level in a given jurisdiction and for a given fiscal year, a top-up tax should exclusively aim to ensure that the profits of such groups be subject to tax at a minimum effective tax rate in a given fiscal year. For this reason, the rules on a top-up tax do not operate as a tax levied directly on the income of an entity but instead apply to the excess profit in accordance with a standardised base and specific tax computation mechanics in order to identify low-taxed income within the groups concerned and impose a top-up tax that would bring a group's effective tax rate on that income up to the agreed minimum level of tax. The design of the IIR and UTPR as top-up taxes, however, does not prevent a jurisdiction from applying those rules under a corporate income tax system in its domestic law.

- (17b) As it results from the political agreement reached at international level, the distribution tax systems taken into account by the GloBE rules should be those in force on or before July, 1st 2021, date of the first OECD/G20 Inclusive Framework statement on the digitalisation of the economy that agreed the special treatment of eligible distribution tax systems. This should not prevent changes to a jurisdiction's distribution tax system that are in line with its existing design.
- (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. Information filed as part of the top-up tax information return should allow the tax administrations where the constituent entities are located to evaluate the correctness of a constituent entity's liability of the top-up tax or the domestic top-up tax, as the case may be, by application of domestic procedures, including for filing of domestic tax returns. Further guidance to be developed in the OECD's GloBE Implementation Framework might be a useful source of illustration and interpretation in this respect, and Member States might choose to introduce its provisions into domestic legislation. 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.
- (19a) In implementing this Directive, Member States should use the ‘Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two)’ agreed by the OECD/G20 Inclusive Framework on BEPS and the explanations and examples in the OECD Commentary on the GloBE Rules under Pillar Two, as well as the GloBE Implementation Framework, including its safe harbours rules, as a source of illustration or interpretation in order to ensure consistency in application across Member States to the extent that they are consistent with the provisions of this Directive and with Union law. The safe harbours rules should be of relevance as regards MNE groups as well as large-scale domestic groups.

(20) The effectiveness and fairness of the global minimum tax reform heavily relies on its worldwide implementation. In order to ensure a proper enforcement of the rules under this Directive, Member States should apply adequate penalties, in particular towards entities that do not comply with their obligations to file a tax information return and pay their share of top-up tax. When determining these penalties, Member States should take particular account of the necessity to tackle the risk that an MNE group does not declare the information necessary for applying the UTPR. To address this risk, Member States should lay down dissuasive penalties. It will also be vital that all major trading partners of the Union apply either a qualified IIR or an equivalent set of rules on minimum taxation. As regards the question of whether an IIR implemented by a third country jurisdiction that adheres to the global agreement is a qualified IIR within the meaning of the global agreement, it is appropriate to refer to the assessment to be carried out at OECD level. Furthermore, 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. The objective of the assessment of the equivalence is mainly to clarify and delineate the Member State's application of the provisions of this Directive, notably as regards the UTPR. To this end, this Directive should provide for an assessment, prepared by the Commission following the OECD assessment mentioned above, of the equivalence criteria based on certain specific parameters. The determination of the third country jurisdictions applying legal frameworks considered as equivalent to a qualified IIR will directly result from the objective criteria set out in this Directive and should strictly follow the OECD assessment mentioned above. It may therefore be considered as appropriate, in such a particular context, to provide for a delegated act. In particular, the recourse to a delegated act in this specific context should not be considered as a precedent for other legislative instruments adopted under the special legislative procedure, given the decision making process proper to tax matters.

- (20a) It would be essential to ensure a consistent application of the rules of this Directive with respect to any third country jurisdiction which does not transpose the rules of the global agreement and is not granted equivalence of its domestic rules to a qualified IIR. In this context, it would be necessary to develop a common methodology for allocating amounts, which would be treated as covered taxes under the rules of the global agreement, to entities within an MNE group that would be subject to top-up tax in accordance with the rules of this Directive. For this purpose, Member States should use the OECD GloBE Implementation Framework guidance as their reference for the allocation of such covered taxes.
- (20b) In order to supplement 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 determine, following an assessment by the Commission, the jurisdictions with a domestic legal framework which can be considered equivalent to a qualified income inclusion rule. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better-Law Making.
- (21) With this Directive entering into force in 2022 and the time limit for transposition by the Member States been set at the latest for 31 December 2023, the EU will act in line with the timeline agreed in the October 2021 statement of the OECD Inclusive Framework on BEPS, according to which Pillar Two should be brought into law in 2022, to be effective in 2023, with the UTPR coming into effect in 2024.

- (21a) The October 2021 OECD/G20 Inclusive Framework on BEPS Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy provides for a two-pillar solution. The Detailed Implementation Plan thereof sets the timelines for implementation of each pillar. As this directive is aiming at implementing the Pillar Two, while the work on Pillar One awaits accomplishment, there is a need to ascertain that Pillar One is implemented as well. To this end the directive provides for a clause obliging the Commission to prepare a report reviewing the progress achieved at the OECD/G20 Inclusive Framework on BEPS. It is acknowledged that the Commission can, if they deem it appropriate, submit a legislative proposal to address the tax challenges arising from the digitalization of the economy, for consideration of the Member States.
- (21b) The Council should, before the end of each semester starting from 1 July 2022, assess the situation regarding the implementation of the Pillar One of the OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy agreed in October 2021.
- (22) The rules for the application of the UTPR should apply as of 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 Council⁵ and delivered formal comments on 10 February 2022. 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 Council⁶ applies to the processing of personal data carried out within the framework of this Directive,

HAS ADOPTED THIS DIRECTIVE:

⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

1. This Directive establishes common measures for the minimum effective taxation of MNE and large-scale domestic 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 pays its allocable share of top-up tax in respect of the low-taxed constituent entities of the group;
 - (b) an undertaxed profit rule (UTPR) in accordance with which a constituent entity of an MNE group has an additional cash tax expense equal to its share of top-up tax that was not charged under the IIR in respect of the low-taxed constituent entities of the group.

2. Member States may elect to apply a qualified domestic top-up tax in accordance with which top-up tax shall be computed and paid on the excess profit of all the low-taxed constituent entities located in their jurisdiction pursuant to the provisions of this Directive.

Article 2

Scope

1. This Directive shall apply to constituent entities located in a Member State of the European Union that are members of an MNE or a large-scale domestic group which has an annual revenue of EUR 750 000 000 or more, including the revenue of the excluded entities referred to in paragraph 3, in its ultimate parent entity's consolidated financial statements in at least two of the four fiscal years immediately preceding the tested fiscal year.

2. Where one or more of the four fiscal years referred to in paragraph 1 is longer or shorter than 12 months, the revenue threshold 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'):
 - (a) a governmental entity, an international organisation, a non-profit organisation, a pension fund, an investment fund that is an ultimate parent entity and a real estate investment vehicle that is an ultimate parent entity;
 - (b) an entity where at least 95 % of the value of the entity is owned by one or more entities referred to in point (a), directly or through one or several excluded 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);
 - (c) an entity where at least 85 % of the value of the entity is owned, directly or through one or several excluded entities, by one or more entities referred to in point (a), except pension services 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 or loss in accordance with points (b) and (c) of Article 15(2).

By way of derogation from the first subparagraph, the filing constituent entity may make an election, in accordance with article 43(1), not to treat an entity referred to in points (b) and (c) of that subparagraph as an excluded entity.

Article 3
Definitions

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

- (1) ‘entity’ means any legal arrangement that prepares separate financial accounts or any legal person;
- (2) ‘constituent entity’ means:
 - (a) any entity that is part of an MNE group or a large-scale domestic group; and
 - (b) any permanent establishment of a main entity that is part of an MNE group referred to in point (a);

- (3) ‘group’ means:
- (a) a collection of entities which are related through ownership or control as defined by the acceptable accounting standard for the preparation of consolidated financial statements by the ultimate parent entity, including any 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; or
 - (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 constituent 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 in which it has a controlling interest are presented as those of a single economic unit;
 - (b) for groups as defined in point 3(b), the financial statements prepared by an entity in accordance with an acceptable financial accounting standard;

- (c) the financial statements of the ultimate parent entity that are not prepared in accordance with an acceptable financial accounting standard and that have been subsequently adjusted to prevent any material competitive distortions;
- (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 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;
- (8) ‘filing constituent entity’ means an entity filing a top-up tax information return in accordance with Article 42;
- (8a) ‘governmental entity’ means an entity that meets all of the following criteria:
 - (a) it is part of or wholly-owned by a government (including any political subdivision or local authority thereof);

- (b) it does not carry on a trade or business and has the principal purpose of:
 - (i) fulfilling a government function; or
 - (ii) managing or investing that government's or jurisdiction's assets through the making and holding of investments, asset management, and related investment activities for the government's or jurisdiction's assets;
 - (c) it is accountable to the government on its overall performance, and provides annual information reporting to the government; and
 - (d) its assets vest in such government upon dissolution and to the extent it distributes net earnings, such net earnings are distributed solely to such government with no portion of its net earnings inuring to the benefit of any private person;
- (8aa) 'international organisation' means any intergovernmental organisation, including a supranational organisation, or wholly-owned agency or instrumentality thereof that meets all of the following criteria set out in points (a) to (c) below:
- (a) it is comprised primarily of governments;
 - (b) it has in effect a headquarters or substantially similar agreement, for example, arrangements that entitle the organisation's offices or establishments in the jurisdiction to privileges and immunities, with the jurisdiction in which it is established; and
 - (c) law or its governing documents prevent its income inuring to the benefit of private persons

- (8b) 'non-profit organisation' means an entity that meets all the following criteria:
- (a) it is established and operated in its jurisdiction of residence:
 - (i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational or other similar purposes; or
 - (ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
 - (b) substantially all the income from the activities mentioned in paragraph (a) is exempt from income tax in its jurisdiction of residence;
 - (c) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - (d) the income or assets of the entity may not be distributed to, or applied for the benefit of, a private person or non-charitable entity other than:
 - (i) pursuant to the conduct of the entity's charitable activities;
 - (ii) as payment of reasonable compensation for services rendered or for the use of property or capital; or
 - (iii) as payment representing the fair market value of property which the entity has purchased, and

- (e) upon termination, liquidation or dissolution of the entity, all of its assets must be distributed or revert to a non-profit organisation or to the government (including any governmental entity) of the entity's jurisdiction of residence or any political subdivision thereof;

but does not include any entity carrying on a trade or business that is not directly related to the purposes for which it was established.

- (9) 'flow-through entity' means an entity to the extent it is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it was created unless it is tax resident and subject to a covered tax on its income or profit in another jurisdiction.

A flow-through entity is deemed to be:

- (a) a tax transparent entity with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located;
- (b) a reverse hybrid entity with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which its owner is located;

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 as if it were derived or incurred by the direct owner of that entity in proportion to its interest in that entity.

An ownership interest in an entity or a permanent establishment that is a constituent entity shall be treated as held through a tax transparent structure if that ownership interest is held indirectly through a chain of tax transparent entities.

A constituent 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 shall be treated as a flow through entity and a tax transparent entity in respect of its income, expenditure, profit or loss, to the extent that:

- (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;
- (10) ‘permanent establishment’ means:
- (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 Capital⁷;
 - (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;

7 OECD Model Tax Convention on Income and on Capital, as amended.

- (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) a place of business or a deemed place of business that is not described in points (a) to (c) through which operations are conducted outside the jurisdiction where the 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) the main entity of a group as defined in point (3)(b);
- (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, other than a qualified IIR, under which a direct or indirect shareholder of a foreign entity or the main entity of a permanent establishment, is subject to taxation on its share of part or all of the income earned by that foreign constituent entity, irrespective of whether that income is distributed to the shareholder;
- (15) ‘qualified IIR’ means a set of rules that is implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that:
- (a) is equivalent to the rules laid down in this Directive or, as regards third country jurisdictions, the OECD Model Rules⁸ in accordance with which the parent entity of an MNE group or large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of the group;
 - (b) is administered in a way that is consistent with the rules laid down in this Directive or, as regards third country jurisdictions, the OECD Model Rules⁹;
- (16) ‘low-taxed constituent entity’ means:
- (a) a constituent entity of an MNE group or large-scale domestic group that is located in a low-tax jurisdiction; or
 - (b) a stateless constituent entity that, in respect of a fiscal year, has qualifying income and an effective tax rate which is lower than the minimum tax rate;

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- (17) ‘intermediate parent entity’ means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity in the same MNE or large-scale domestic 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 or large-scale domestic group, and for which more than 20 % of its ownership interest in its profits is held, directly or indirectly, by one or several persons that are not constituent entities of the MNE group or large-scale domestic group and that does not qualify as an ultimate parent entity, a permanent establishment or an investment entity;
- (20) ‘ownership interest’ means any equity interest that carries rights to the profits, capital or reserves of an entity or of 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 provided that such jurisdiction does not provide any benefits that are related to those rules, 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 or, as regards third country jurisdictions, the OECD Model Rules¹⁰ 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 or, as regards third country jurisdictions, the OECD Model Rules¹¹; and
 - (b) is administered in a way that is consistent with the rules laid down in this Directive or, as regards third country jurisdictions, the OECD Model Rules¹²;

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- (23a) 'net book value of tangible asset' means the average of the beginning and end values of tangible assets after taking into account accumulated depreciation, depletion and impairment, as recorded in the financial statements.
- (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 through a chain of such entities, by an entity referred to in point (a), and that operates exclusively or almost exclusively to hold assets or invest funds for their benefit; or
 - (c) an entity that is owned at a minimum of 85 % of its value 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 all the following conditions:
- (a) it is designed to pool financial or non-financial assets from a number of investors, some of which are non-connected;
 - (b) it invests in accordance with a defined investment policy;
 - (c) it allows investors to reduce transaction, research and analytical costs or to spread risk collectively;

- (d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;
 - (e) 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 including appropriate anti-money laundering and investor protection regulation 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 where:

- (i) this entity is regulated as such by that jurisdiction or one of its political subdivisions or local authorities; or
 - (ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trustor to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the MNE groups and large-scale domestic groups;
 - (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 point 27 (a) or to carry out activities that are ancillary to the regulated activities referred to in point 27 (a), where the pension services entity forms part of the same group as the entities carrying out these activities;
- (29) ‘low-tax jurisdiction’ means, in respect of an MNE group or large scale domestic group in any fiscal year, a Member State or a third country jurisdiction in which, the MNE group or the large-scale domestic group has a qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate;
- (30) ‘qualifying income or loss’ means the financial accounting net 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, or paid by, a constituent entity that is:
- (a) refundable to the beneficial owner of a dividend distributed by such constituent entity in respect of that dividend or creditable by the beneficial owner against a tax liability other than a tax liability in respect of such dividend; or
 - (b) refundable to the distributing company upon distribution of a dividend to a shareholder.

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

- (a) by a jurisdiction other than the jurisdiction which imposed the covered taxes;
- (b) to a 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 resident non-profit organisation, a pension fund, a resident investment entity that is not part of the MNE group or a large-scale domestic group or a resident life insurance company to the extent that the dividend is received in connection with resident pension fund activities and is subject to tax in a similar manner as a dividend received by a pension fund.

For purposes of this point:

- i) a non-profit organisation or pension fund is resident in a jurisdiction if it is created and managed in that jurisdiction;
- ii) an investment entity is resident in a jurisdiction if it is created and regulated in that jurisdiction;
- iii) a life insurance company is resident in the jurisdiction in which it is located.

(32)(a) ‘qualified refundable tax credit’ means:

- (a) a refundable tax credit designed in such a way that it must be paid 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;

A qualified refundable tax credit shall not include any amount of tax creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax.

(32)(b) ‘non-qualified refundable tax credit’ means a tax credit that is not a qualified refundable tax credit but that is refundable in whole or in part.

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

(34) ‘constituent entity-owner’ means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group;

- (35) ‘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;
- (36) ‘qualified undertaxed profit rule’ (‘qualified UTPR’) means a set of rules implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that:
- (a) is equivalent to the rules laid down in this Directive or, as regards third country jurisdictions, the OECD Model Rules¹³, 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 that MNE group;
 - (b) is administered in a way that is consistent with the rules laid down in this Directive or, as regards third country jurisdictions, the OECD Model Rules¹⁴ ;;
- (37) ‘designated filing entity’ means the constituent entity, other than the ultimate parent entity, that has been appointed by the MNE group or large-scale domestic group to fulfil the filing obligations set out in Article 42 on behalf of the MNE group or large-scale domestic group.

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Article 4

Location of a constituent entity

1. For the purpose of this Directive, a constituent entity other than a flow-through entity is located in the jurisdiction where it is considered as a 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 a large-scale domestic 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), is located in the jurisdiction where it is treated as a permanent establishment and is liable to tax under the applicable tax treaty in force.

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

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

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

4. Where a constituent entity is located in two jurisdictions and those jurisdictions have an applicable tax treaty in force, the constituent entity is 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 in force, due to the fact that a constituent entity is resident for tax purposes of both contracting parties paragraph 5 shall apply.

5. Where a constituent entity is located in two jurisdictions and those jurisdictions do not have an applicable tax treaty, the constituent entity is 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 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 is 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 located in a jurisdiction where it is not subject to a qualified IIR, it is deemed to be subject to the qualified IIR 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 located in the jurisdiction where it was deemed to be located under this Article at the beginning of that fiscal year.

CHAPTER II

INCOME INCLUSION RULE AND UNDERTAXED PROFIT RULE

Article 5

Ultimate parent entity in the Union

1. Member States shall ensure that an ultimate parent entity that is a constituent entity located in a Member State is subject to the top-up tax for the fiscal year (the "IIR top-up tax") in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.
2. Member States shall ensure that, where a constituent entity that is the ultimate parent entity of an MNE group or of a large-scale domestic group is located in a Member State that is a low- tax jurisdiction, it is subject to the IIR top-up tax in respect of itself and of all low-taxed constituent entities of the group 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 for the fiscal year in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.
2. Member States shall ensure that, where an intermediate parent entity is located in a Member State that is a low-tax jurisdiction and held by an ultimate parent entity that is located in a third country jurisdiction it is subject to the IIR top-up tax in respect of itself and of 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 that fiscal year; or
 - (b) another intermediate parent entity is located in a jurisdiction where it is subject to a qualified IIR and owns, directly or indirectly, a controlling interest in the intermediate parent entity.

Article 6a

Intermediate parent entity located in the Union and held by an excluded ultimate parent entity

1. Member States shall ensure that, where an intermediate parent entity located in a Member State is held by an ultimate parent entity that is an excluded entity, the intermediate parent entity is subject to the IIR top-up tax for the fiscal year in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.
2. Member States shall ensure that, where an intermediate parent entity located in a Member State that is a low-tax jurisdiction is held by an ultimate parent entity that is an excluded entity, it is subject to the IIR top-up tax in respect of itself and its low-taxed constituent entities that are located in the same Member State for the fiscal year.
3. Paragraphs 1 and 2 shall not apply where another intermediate parent entity is located in a jurisdiction where it is subject to a qualified income inclusion rule for that fiscal year and owns, directly or indirectly, a controlling interest in the intermediate parent entity referred to in paragraphs 1 and 2.

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 for the fiscal year in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.
2. Member States shall ensure that, where a partially-owned parent entity is located in a Member State that is a low- tax jurisdiction, it is subject to the IIR top-up tax in respect of itself and of its low-taxed constituent entities located in the same Member State for the fiscal year.
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 subject to a qualified income inclusion rule for that 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(1), 6(1), 6a(1) and 7(1) 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 ownership interest in the qualifying income of the low-taxed constituent entity. The proportion of the parent entity's ownership interest in the qualifying income shall be equal to the qualifying income of the low-taxed constituent entity for the fiscal year, reduced by the amount of such income attributable to ownership interests held by other owners, divided by the qualifying income of the low-taxed constituent entity for the fiscal year.

The amount of qualifying income attributable to ownership interests in a low-taxed constituent entity held by other owners is the amount that would have been treated as attributable to such owners under the principles of the acceptable financial accounting standard used in the ultimate parent entity's consolidated financial statements if the low-taxed constituent entity's net income were equal to its qualifying income and:

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

- (b) the parent entity owned a controlling interest in the low-taxed constituent entity such that all of the income and expenses of the low-taxed constituent entity were consolidated on a line-by-line basis with those of the parent entity in the hypothetical consolidated financial statements;
 - (c) all of the low-taxed constituent entity's qualifying income were attributable to transactions with persons that are not group entities; and
 - (d) all ownership interests not directly or indirectly held by the parent entity were held by persons other than group entities.
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 Article 5(2), 6(2), 6a(2) and 7(2) shall include, for the fiscal year, in accordance with Article 26 :
- a) the full amount of top-up tax computed for that parent entity;
 - b) the amount of top-up tax computed for its low-taxed constituent entities located in the same Member State multiplied by the parent entity's allocable share in such top-up tax for the fiscal year.

Article 9

IIR offset mechanism

Where a parent entity located in a Member State holds an ownership interest in a low-taxed constituent entity indirectly through an intermediate parent entity or a partially-owned parent entity that is subject to a qualified IIR for the fiscal year, the top-up tax due pursuant to Articles 5 to 7 shall be reduced by an amount equal to the portion of the first-mentioned parent entity's allocable share of the top-up tax which is due by the other 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 or a large-scale domestic group are located elects to apply a qualified domestic top-up tax, all low-taxed constituent entities of the MNE group or a large-scale domestic group in that Member State shall be subject to that domestic top-up tax for the fiscal year.

Under a qualified domestic top-up tax, the domestic excess profits of the low-taxed constituent entities may be computed based on an acceptable financial accounting standard or an authorised financial accounting standard permitted by the authorised accounting body and adjusted to prevent any material competitive distortions, rather than the financial accounting standard used in the consolidated financial statements.

2. Where a parent entity of an MNE group or a large-scale domestic group is located in a Member State, and its directly or indirectly held constituent entities located, either in this Member State or in another jurisdiction, are subject to a qualified domestic top-up tax for the fiscal year in those jurisdictions, the amount of any top-up tax computed in accordance with Article 26 due by the parent entity pursuant to Articles 5 to 7 shall be reduced, up to zero, by the amount of qualified domestic top-up tax due either by itself or by those constituent entities.

Notwithstanding the first subparagraph, if the qualified domestic top-up tax has been computed for a fiscal year in accordance with the ultimate parent entity's acceptable accounting standard or with International Financial Reporting Standards (IFRS or IFRS as adopted by the EU pursuant to Regulation (EC) No 1606/2002), no top-up tax shall be computed in accordance with Article 26 for that fiscal year in respect of the constituent entities of that MNE group or large-scale domestic group located in that Member State. This subparagraph is without prejudice to the computation of any additional top-up tax pursuant to Article 28 in the case where a Member State does not apply a qualified domestic top-up tax to collect any additional top-up tax arising under Article 28.

3. Where the amount of qualified domestic top-up tax for a fiscal year has not been paid within the four fiscal years following the fiscal year in which it was due, the amount of domestic top-up tax that was not paid shall be added to the jurisdictional top-up tax computed in accordance with Article 26(3) and cannot be collected anymore by the Member State which made the election pursuant to paragraph 1.

4. Member States that elect to apply a qualified 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 introducing a qualified domestic top-up tax. Such election shall be valid and may not be revoked for a period of three years. At the end of each period of three years, the election shall be renewed automatically, unless the Member State revokes its election. Any revocation of the election shall be notified to the Commission no later than four months before the end of the three-year period.

Article 11

Application of a UTPR across the MNE group

1. Where the ultimate parent entity of an MNE group is located in a third country jurisdiction that does not apply a qualified IIR, or where the ultimate parent entity of an MNE group is an excluded entity, Member States shall ensure that the constituent entities located in the Union are subject, in the Member State in which they are located, to an adjustment which shall be equal to the UTPR top-up tax amount allocated to that Member State for the fiscal year in accordance with Article 13.

For that purpose, such adjustment may take the form of either a top-up tax due by those constituent entities or a denial of deduction against the taxable income of those constituent entities resulting in an amount of tax liability necessary to collect the UTPR top-up tax amount allocated to that Member State.

2. Where a Member State applies the adjustment pursuant to paragraph 1 in the form of a denial of deduction against taxable income, such adjustment shall apply to the extent possible with respect to the taxable year in which ends the fiscal year for which the UTPR top-up tax amount was calculated and allocated to a Member State in accordance with Article 13.

Any UTPR top-up tax amount that remains due with respect to a fiscal year as a result of the application of a denial of deduction against taxable income for that fiscal year shall be carried forward to the extent necessary and be subject, with respect to each following fiscal year, to the adjustment pursuant to paragraph 1 until the full UTPR top-up tax amount allocated to that Member State for that fiscal year has been paid off.

3. Constituent entities that are investment entities shall not be subject to this Article.

Article 12

Application of a UTPR in the UPE jurisdiction

1. Where the ultimate parent entity of an MNE group is located in a low-tax third country, Member States shall ensure that the constituent entities located in the Union are subject, in the Member State in which they are located, to an adjustment which shall be equal to the UTPR top-up tax amount allocated to that Member State for the fiscal year in accordance with Article 13.

For that purpose, such adjustment may take the form of either a top-up tax due by those constituent entities or a denial of deduction against the taxable income of those constituent entities resulting in an amount of tax liability necessary to collect the UTPR top-up tax amount allocated to that Member State.

The first subparagraph shall not apply when the ultimate parent entity in such low-tax third country jurisdiction is subject to a qualified IIR in respect to itself and its low taxed constituent entities located in this jurisdiction.

2. Where a Member State applies the adjustment pursuant to paragraph 1 in the form of a denial of deduction against taxable income, such adjustment shall apply to the extent possible with respect to the taxable year in which the fiscal year for which the UTPR top-up tax amount was calculated and allocated to a Member State in accordance with Article 13 ends.

Any UTPR top-up tax amount that remains due with respect to a fiscal year as a result of the application of a denial of deduction against taxable income for that fiscal year shall be carried forward to the extent necessary and be subject, with respect to each following fiscal year, to the adjustment pursuant to paragraph 1 until the full UTPR top-up tax amount allocated to that Member State for that fiscal year has been paid.

3. Constituent entities that are investment entities shall not be subject to this Article.

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 equal to the sum of the top-up tax calculated for each low-taxed constituent entity 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, all of the ultimate parent entity's ownership interests in such low-taxed constituent entity are held directly or indirectly by one or more parent entities, which are required to apply a qualified IIR in respect of that low-taxed constituent entity for that fiscal year.
4. Where paragraph 3 does not apply, the UTPR top-up tax of a low-taxed constituent entity shall be reduced by a parent entity's allocable share of the top-up tax of that low-taxed constituent entity that is brought into charge under qualified IIR.

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

$$50\% \times \frac{\textit{(number of employees of the Member State)}}{\textit{number of employees of all UTPR jurisdictions}} + 50\% \times \frac{\textit{the total value of tangible assets of the Member State}}{\textit{the total value of tangible assets of all UTPR jurisdictions}}$$

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. With regard to permanent establishments, tangible assets should be allocated provided those tangible assets are included in the separate financial accounts of that permanent establishment as determined by Article 17(1) and adjusted in accordance with Article 17(2). The tangible assets allocated to the tax jurisdiction of a permanent establishment shall not be taken into account for the tangible assets of the tax jurisdiction of the main entity.

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

The number of employees and tangible assets attributed to the jurisdiction of a permanent establishment shall not be taken into account for the number of employees and tangible assets of the tax jurisdiction of the main entity.

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

8. By way of derogation from paragraph 5, a jurisdiction's UTPR percentage for an MNE group shall be deemed to be zero for a fiscal year as long as the UTPR top-up tax amount allocated to that jurisdiction in a prior fiscal year has not resulted in the constituent entities of this MNE group located in that jurisdiction having an additional cash tax expense equal, in total, to the UTPR top-up tax amount for that prior fiscal year allocated to that jurisdiction.

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 jurisdiction 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.

9. Paragraph 8 shall not apply for a fiscal year if all jurisdictions with a qualified UTPR in force for the fiscal year have a UTPR percentage of zero for the MNE group for that fiscal year.

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 a constituent entity shall be computed by making the adjustments set out in Articles 15 to 18 to the financial accounting net income or loss of the constituent entity for the fiscal year before any consolidation adjustments for eliminating 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 practicable to determine the financial accounting net income or loss of a constituent entity based on the acceptable financial accounting standard or authorised financial 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 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 accounting standard;
 - (b) the information contained in the financial accounts is reliable; and
 - (c) permanent 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 the purpose of this definition, authorised accounting body means the body with legal authority in a jurisdiction to prescribe, establish or accept accounting standards for financial reporting purposes.

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(6)(c), the consolidated financial statements of the ultimate parent entity shall be adjusted to prevent any material competitive distortion.

4. Where an ultimate parent entity does not prepare consolidated financial statements as referred to in Articles 3(6)(a), (b) and (c), the consolidated financial statements of the ultimate parent entity referred to in Article 3(6)(d) 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) an authorised financial accounting standard provided that such consolidated financial statements are adjusted to prevent any material competitive distortion.
5. Where a qualified domestic top-up tax is applied by a Member State or a third country jurisdiction, the financial accounting net income or loss of the constituent entities located in that Member State or third country jurisdiction may be determined in accordance with an acceptable financial accounting standard or an authorised financial accounting standard that is different from the financial accounting standard used in the consolidated financial statements of the ultimate parent entity provided that such financial accounting net income or loss is adjusted to prevent any material competitive distortion.
6. 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 (IFRS or IFRS as adopted by the EU pursuant to Regulation (EC) No 1606/2002).

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 an aggregate variation of income or expense of more than EUR75 000 000 in a fiscal year as compared to the amount that would have been determined by applying the corresponding principle or procedure under International Financial Reporting Standards.

Article 15

Adjustments to determine the qualifying income or loss

1. For the purpose of this Article, the following definitions apply:
 - (a) ‘net taxes expense’ means the net amount of the following items:
 - (i) covered taxes accrued as an expense and any current and deferred covered taxes included in the income tax expense, including covered taxes on income that is excluded from the qualifying income or loss computation;
 - (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 or, as regards third country jurisdictions, the OECD Model Rules¹⁵, accrued as an expense; and
 - (v) disqualified refundable imputation taxes accrued as an expense;

15 Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two).

- (b) ‘excluded dividend’ means dividends or other distributions received or accrued in respect of an ownership interest, except dividends or other distributions received or accrued in respect of:
- (i) an ownership interest:
 - o held by the group in an entity, that carries rights to less than 10 % of the profits, capital or reserves, or voting rights of that entity at the date of the distribution or disposition (a “portfolio shareholding”); and
 - o that is economically owned by the constituent entity that receives or accrues the dividends or other distributions for less than one year at the date of the distribution;
 - (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 gain, profit or loss, included in the financial accounting net income or loss of the constituent entity, arising from:
- (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 net 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 all 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 foreign currency gains or losses of an entity whose accounting and tax functional currencies are different and that are:
 - (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, whether or not such foreign currency gain or loss is included in the taxable income;

The tax functional currency is the functional currency used to determine the constituent entity's taxable income or loss for a covered tax in the jurisdiction in which it is located. The accounting functional currency is the functional currency used to determine the constituent entity's financial accounting net income or loss. A third foreign currency is a currency that is not the constituent entity's tax functional currency or accounting functional currency.

- (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 errors and changes 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 includible in the computation of the qualifying income or loss in that previous fiscal year, except to the extent such error 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 pension liability 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 or 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, a constituent entity may substitute the amount allowed as a deduction in the computation of its taxable income in its location for the amount expensed in its financial accounts for a cost or expense of such constituent entity that was paid with stock-based compensation.

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 all previous fiscal years shall be included in the fiscal year in which the option has expired.

Where part of the amount of stock-based compensation expense has been recorded 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 deducted pursuant to the election that exceeds the financial accounting expense accrued shall be included for the computation of the qualifying income or loss of the constituent entity.

4. Any transaction between constituent entities located in different jurisdictions that is not recorded in the same amount in the financial accounts of both constituent entities or that is not consistent with the arm's length principle must be adjusted so as to be in the same amount and consistent with the arm's length principle.

A loss from a sale or other transfer of an asset between two constituent entities located in the same jurisdiction that is not recorded consistently with the arm's length principle shall be adjusted based on the arm's length principle if that loss is included in the computation of the qualifying income or loss.

For the purpose of this paragraph, arm's length principle means the principle under which transactions between constituent entities must be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.

5. Qualified refundable tax credits as referred to in Article 3(32) shall be treated as income for the computation of the qualifying income or loss of a constituent entity. Non-qualified refundable tax credits 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 for a fiscal year may be determined on the basis of the realisation principle for the computation of the qualifying income or loss.

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 all constituent entities located in the jurisdiction to which the election is made, 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 both the fair value of the asset or liability and the carrying value of the asset or liability on the first day of the fiscal year in which the revocation is made determined pursuant to the election shall be included (if the fair value exceeds the carrying value) or deducted (if the carrying value exceeds the fair value) 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 local tangible assets located in that jurisdiction by such constituent entity to third parties (other than a member of the group) for a fiscal year may be adjusted in the following manner. For the purpose of this paragraph, the local tangible assets are immovable property located in the same jurisdiction as the constituent entity.

The net gain arising from the disposal of local tangible assets as referred to in the first subparagraph in the fiscal year in which the election is made shall be offset against any net loss of a constituent entity located in that jurisdiction arising from the disposal of local tangible assets 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 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 located in that jurisdiction that has made a net gain from the disposal of local tangible assets 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 proportionate 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 local tangible assets 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 adjustment under this paragraph 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 constituent entities provide credit to one or more other constituent entities 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 been accrued by the constituent entity;
 - (b) it can reasonably be anticipated that, over the expected duration of the intra-group financing arrangement, the intra-group financing arrangement increases the amount of expenses taken into account for the computation of the qualifying income or loss of that constituent entity, without resulting in a commensurate increase in the taxable income of the constituent entity providing the credit (the 'counterparty');
 - (c) the counterparty is located in a jurisdiction that is not a low-tax jurisdiction or in a jurisdiction that would not have been low-taxed if the income related to the expense had not been accrued by the counterparty;
9. An ultimate parent entity may elect to apply its consolidated accounting treatment to eliminate income, expense, gains and losses from transactions between constituent entities that are located 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 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. Any amount that is recognised 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, where the transportation is not carried out via inland waterways within the same jurisdiction:
 - (i) transportation of passengers or cargo by ship in international traffic whether the ship is owned, leased or otherwise at the disposal of the constituent entity;
 - (ii) transportation of passengers or cargo by ship in international traffic under slot-chartering arrangements;
 - (iii) leasing of a ship to be used for the transportation of passengers or cargo in international traffic on charter fully equipped, crewed and supplied;
 - (iv) leasing of a ship used for the transportation of passengers or cargo in international traffic, on a bareboat charter basis, to another constituent entity;
 - (v) 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
 - (vi) sale of a ship used for the transportation of passengers or cargo in international traffic provided that the ship has been held for use by the constituent entity for a minimum of one year;

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

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

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

(v) 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. The aggregated qualified ancillary international shipping income of all constituent entities located in a jurisdiction shall not exceed 50 % of those constituent entities' international shipping income.
5. The costs incurred by a constituent entity that are directly attributable to 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 deducted from the constituent entity's revenues from such activities to compute its international shipping income and 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 attributed to a constituent entity's international shipping income and qualified ancillary international shipping income in accordance with paragraph 5 shall be excluded from 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 the separate financial accounts of the permanent establishment.

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 statements 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 amounts and 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 amounts and items of income and expense that would have been attributable to it in accordance with Article 7 of the OECD Model Tax Convention¹⁶.

16 OECD Model Tax Convention on Income and on Capital, as amended

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 amounts and 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 amounts and items of expense that are not deducted 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, except as provided in paragraph 5.
5. A qualifying loss of a permanent establishment shall be treated as an expense of the main entity for the computation of its qualifying income or loss to the extent that the loss of the permanent establishment is treated as an expense in the computation of domestic taxable income of such main entity and is not set off against an item of the domestic taxable income that is subject to tax under the laws of both the jurisdiction of the main entity and the jurisdiction of the permanent establishment.

Qualifying income that is subsequently earned by the permanent establishment shall 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 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 group entities and that hold their ownership interest in such flow-through entity directly or through a chain of 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 a chain of tax transparent entities, by such 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.
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 paragraphs 1 and 3 shall be allocated to its constituent entity-owners in accordance with their ownership interests in the flow-through entity.

5. Where a flow-through entity is a tax transparent entity that is the ultimate parent entity or a reverse hybrid entity, any financial accounting net income or loss of the flow-through entity which remains after applying paragraphs 1 and 3 shall be allocated to the ultimate parent entity or the reverse hybrid entity.
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 recorded in the financial accounts of a constituent entity with respect to its income or profits, or its share of the income or profits of a constituent entity in which it owns an ownership interest;
 - (b) taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an eligible distribution tax system;
 - (c) taxes imposed in lieu of a generally applicable corporate income tax; and
 - (d) taxes levied by reference to retained earnings and corporate equity, including 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 IIR;
 - (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 local tangible assets as referred to in the first subparagraph of Article 15(7) in the fiscal year in which the election is made shall be excluded from the computation of the 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 current 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 recorded in equity or other comprehensive income relating to amounts included in the computation of qualifying income or loss that will be subject to tax under local tax rules.
2. The additions to the covered taxes of a constituent entity for the fiscal year shall include:
- (a) any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts;
 - (b) any amount of qualifying loss deferred tax asset that has been used pursuant to Article 22(2);
 - (c) any amount of covered taxes relating to an uncertain tax position previously excluded under point (d) of paragraph 3 that are paid in the fiscal year; and
 - (d) any amount of credit or refund in respect of a qualified refundable tax credit that was accrued as a reduction to the current tax expense.
3. The reductions to the covered taxes of a constituent entity for the fiscal year shall include:
- (a) the amount of current tax expense with respect to income excluded from the computation of qualifying income or loss under Chapter III;
 - (b) any amount of credit or refund in respect of a non-qualified refundable tax credit that was not recorded as a reduction to the current tax expense;
 - (c) any amount of covered taxes refunded or credited to a constituent entity that was not treated as an adjustment to current tax expense in the financial accounts, unless it relates to a qualified refundable tax credit;

- (d) the amount of current tax expense, which relates to an uncertain tax position; and
 - (e) any amount of current tax expense that is not expected to be paid within three years 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 no net qualifying income 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 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:
 - i) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to an uncertain tax position and;
 - ii) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to distributions from a constituent entity.

(b) ‘unclaimed accrual’ means any increase in a deferred tax liability recorded in the financial accounts of a constituent entity for a fiscal year that is not expected to be paid within the time period set forth in paragraph 7 and for which the filing constituent entity annually elects, in accordance with Article 43(2), not to include in total deferred tax adjustment amount for such fiscal year.

2. Where the tax rate applied for purposes of computing the deferred tax expense is equal or below 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, subject to the adjustments under paragraphs 3 to 6.

Where the tax rate applied for purposes of computing the deferred tax expense 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) any amount of disallowed accrual or unclaimed accrual paid during the fiscal year;
and
- (b) any 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 recognized 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 impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset;
 - (d) the amount of deferred tax expense arising from a re-measurement with respect to a change in the applicable domestic tax rate; and
 - (e) the amount of deferred tax expense with respect to the generation and use of tax credits.
6. Where a deferred tax asset, which is attributable to a qualifying loss of a constituent entity, has been recorded for a fiscal year at a rate lower than the minimum tax rate, it may be recast at the minimum tax rate in the same fiscal year, if the taxpayer can demonstrate that a deferred tax asset is attributable to a qualifying loss.

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 reversed and whose amount is not paid 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 current fiscal year shall be treated as a reduction to the covered taxes in the fifth preceding the current fiscal year and the effective tax rate and top-up tax of such fiscal year shall be recomputed in accordance with Article 28(1). The recaptured deferred tax liability for the current fiscal year is the amount of the increase in the category of deferred tax liability that was included in the total deferred tax adjustment amount in the fifth preceding fiscal year that has not reversed by the end of the last day of the current fiscal year.

8. By way of derogation from paragraph 7, where a deferred tax liability is a recapture exception accrual, it shall not be recaptured even if it is not reversed or paid within the five subsequent years. 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) 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 asset shall be equal to the net qualifying loss for a fiscal year for the jurisdiction multiplied by the minimum tax 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 tax 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 or large scale domestic 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 or large-scale domestic 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 that 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, on their share of the controlled foreign company's income.
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 included in qualifying income to the extent a constituent entity-owner has been subject to tax under a controlled foreign company tax regime or as a result of an ownership interest in 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 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 for a previous fiscal year in its financial accounts, 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 were 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 previous fiscal years shall be adjusted accordingly.

At the annual election of the filing constituent entity, made in accordance with Article 43(2), an immaterial decrease in covered taxes 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 an aggregate 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 the resulting 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 Article 20 for a previous fiscal year.
3. Where a deferred tax expense was taken into account at a rate lower than the minimum tax rate and the applicable tax rate is later 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 20.

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

4. Where more than EUR 1 000 000 of the amount accrued by a constituent entity as current tax expense and included in adjusted covered taxes for a fiscal year is not paid within three years 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 or large-scale domestic group shall be computed, for each fiscal year and for each jurisdiction provided that there is net qualifying income in the jurisdiction, in accordance with the following formula:

Effective tax rate

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

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 or loss of the constituent entities in the jurisdiction for a fiscal year shall be determined in accordance with the following formula:

$$\begin{aligned} & \textit{Net qualifying income or loss} \\ & = \textit{qualifying income of the constituent entities} \\ & - \textit{qualifying losses of the constituent entities} \end{aligned}$$

where:

- (a) the qualifying income of the constituent entities is the positive sum, if any, of the qualifying income of all constituent entities located in the jurisdiction determined in accordance with Chapter III;
- (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 each stateless constituent entity shall be computed, for each fiscal year, separately from the effective tax rate of all other constituent entities.

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 or a large-scale domestic group shall compute the top-up tax separately for each of its constituent entities that has qualifying income included in the computation of net qualifying income of that jurisdiction. 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 the positive percentage point difference, if any, computed in accordance with the following formula:

$$\textit{Top – up tax percentage} = \textit{minimum tax rate} – \textit{effective tax rate}$$

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 the positive amount, if any, computed in accordance with the following formula:

$$\begin{aligned} \textit{Jurisdictional top – up tax} \\ = (\textit{top up tax percentage} \times \textit{excess profit}) + \textit{additional top – up tax} \\ - \textit{domestic top – up tax} \end{aligned}$$

where:

- (a) the additional top-up tax is the amount of tax as determined in accordance with Article 28 for the fiscal year;
- (b) the domestic top-up tax is the amount of tax for the fiscal year as determined in accordance with Article 10 or under a qualified domestic minimum top-up tax of a third country jurisdiction.

4. The excess profit for the jurisdiction for the fiscal year referred to in paragraph 3 is the positive amount, if any, computed in accordance with the following formula:

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

where:

- (a) the net qualifying income is the income determined in accordance with Article 25(2) for the jurisdiction;
- (b) the substance-based income exclusion is the amount determined in accordance with Article 27 for the jurisdiction.

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

$$\textit{Top - up tax of a constituent entity} = \textit{jurisdictional top - up tax} \\ \times \frac{\textit{qualifying income of the constituent entity}}{\textit{aggregate qualifying income of the constituent entities}}$$

where:

- (a) the qualifying income of the constituent entity for a jurisdiction for a fiscal year is the income determined in accordance with Chapter III;
- (b) the aggregate qualifying income of all constituent entities for a jurisdiction for a fiscal year is the sum of the qualifying income of all the constituent entities located in the jurisdiction for the fiscal year.

6. If the jurisdictional top-up tax results from a recalculation pursuant to Article 28(1) and there is no net qualifying income 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 each stateless constituent entity shall be computed, for each fiscal year, separately from the top-up tax of all other constituent entities.

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 or large-scale domestic group under the direction and control of the MNE group or large-scale domestic 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 contributions, payroll and employment taxes, and employer social security contributions;

- (c) ‘eligible tangible assets’ means:
- (i) property, plant and equipment located in the jurisdiction;
 - (ii) natural resources located in the jurisdiction;
 - (iii) a lessee’s right of use of tangible assets located in the jurisdiction; and
 - (iv) a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets.
2. Unless a filing constituent entity of an MNE group or a large-scale domestic group elects, in accordance with Article 43(2), not to apply the substance-based income exclusion for the fiscal year, 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 or large-scale domestic group in such jurisdiction, with the exception of eligible payroll costs that are:
- (a) capitalised and included in the carrying value of eligible tangible assets;
 - (b) attributable to income that is excluded in accordance with Article 16.

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 recorded for the purpose of preparing the consolidated 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 the eligible payroll costs and eligible tangible assets 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 for the eligible payroll costs and eligible assets of the main entity.

Where the income of a permanent establishment was wholly or partially 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 or large-scale domestic 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 entity owners of the flow-through entity, in proportion to the amount allocated to them pursuant to Article 18(4), provided that the eligible 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 or large-scale domestic group.

8. The substance-based income exclusion of each stateless constituent entity shall be computed, for each fiscal year, separately from the substance-based income exclusion of all other constituent entities.
9. The substance-based income exclusion computed under this Article shall not include the payroll carve-out and the tangible asset carve-out of constituent entities that are investment entities in that jurisdiction.

Article 28

Additional top-up tax

1. Where, pursuant to Articles 10(3), 15(7), 21(6), 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 26(3) for the fiscal year during which the recalculation is made.
2. Where there is an additional top-up tax and no net qualifying income for the jurisdiction for the fiscal year, 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:

$$(Qualifying\ income\ \vee\ loss \times\ minimum\ tax\ rate) - adjusted\ covered\ taxes$$

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 and Article 26(5) and 26(6), such constituent entity shall be treated as a low-taxed constituent entity for the purpose of Chapter II.

Article 29

De minimis exclusion

1. By way of derogation from Chapter V, 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 all constituent entities located in such jurisdiction is less than EUR 10 000 000; and
 - (b) the average qualifying income or loss of all constituent entities in such 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 all 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 the constituent entities 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 constituent entities and investment entities. The revenue and qualifying income or loss 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.

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 members of a minority-owned subgroup shall apply as if each minority-owned subgroup was a separate MNE group or large-scale domestic 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 or large-scale domestic 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 or large-scale domestic group computed in accordance with Article 25(1) and from the net qualifying income computed in accordance with Article 25(2).

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

Article 30a

Safe harbours

By way of derogation from Articles 25 to 30, Member States shall ensure that, at the election of the filing constituent entity, the top-up tax due by a group in a jurisdiction shall be deemed to be zero for a fiscal year if the effective level of taxation of the constituent entities located in that jurisdiction fulfils the conditions of a qualifying international agreement on safe harbours.

For the purpose of the preceding paragraph, qualifying international agreement on safe harbours means an international set of rules and conditions which all Member States have consented to and which grants groups in the scope of this Directive the possibility of electing to benefit from one or more safe harbours for a jurisdiction.

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 group entities of two or more 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 any 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 group 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 immediately preceding the tested fiscal year, the consolidated revenue threshold of the MNE group or large-scale domestic group as referred to in Article 2 shall be deemed to be met for any fiscal year prior to the merger 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 “acquiring entity”) in the tested fiscal year, and either the target or the acquiring entity did not have consolidated financial statements in any of the last four consecutive fiscal years immediately preceding the tested fiscal year, the consolidated revenue threshold of the MNE group or large-scale domestic group shall be deemed to be met for that year if the sum of the revenue included in each of their financial statements or consolidated financial statements for that year is EUR 750 000 000 or more.
4. Where a single MNE group or large-scale domestic group within the scope of this Directive demerges into two or more groups (each a “demerged group”), the consolidated revenue threshold shall be deemed to be met by a demerged group :
 - (a) with respect to the first tested fiscal year ending after the demerger, if the demerged group has an annual revenue of EUR 750 000 000 or more in that year;
 - (b) with respect to the second to fourth tested fiscal years ending after the demerger, if the demerged group has an annual revenue of EUR 750 000 000 or more in at least two of those fiscal years.

Article 32

Constituent entities joining and leaving an MNE group or large-scale domestic group

1. Where an entity (the “target”) becomes or ceases to be a constituent entity of an MNE group or large-scale domestic group as a result of a transfer of direct or indirect ownership interests in the target or the target becomes the ultimate parent entity of a new group during a fiscal year (the “acquisition year”), the target shall be treated as a member of the MNE group or large-scale domestic 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 shall be computed in accordance with paragraphs 2 to 8.

2. In the acquisition year, an MNE group or large-scale domestic group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target that are included in the consolidated financial statements of the ultimate parent entity for purposes of this Directive.
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 only 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 or large-scale domestic 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 or large-scale domestic groups shall be taken into account by the acquiring MNE group or large-scale domestic group in the same manner and to the same extent as if the acquiring MNE group or large-scale domestic group controlled the target when such assets and liabilities arose;
7. Deferred tax liabilities of the target that have previously been included in its total deferred tax adjustment amount shall be treated as reversed, for the purpose of Article 21(7), by the disposing MNE group or large-scale domestic group and as arising from the acquiring MNE group or large-scale domestic group in the acquisition year, except that in such case any subsequent reduction of covered taxes pursuant to Article 21(7) shall have effect in the year in which the amount is recaptured.
8. Where the target is a parent entity and is a group entity in two or more MNE groups or large-scale domestic 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 or large-scale domestic group.
9. By way of derogation from paragraphs 1 to 8, the acquisition or disposal of a controlling interest in a target shall be treated as an acquisition or disposal of assets and liabilities if 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 their 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, the following definitions apply:
 - (a) ‘reorganisation’ means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation, or similar transaction where:
 - (i) the consideration for the transfer is, in whole or in significant part, equity interests issued by the acquiring constituent entity or by a person connected with the acquiring constituent entity, or, in the case of a liquidation, equity interests of the target or, when no consideration is provided, where the issuance of an equity interest would have no economic significance;
 - (ii) the disposing constituent entity’s gain or loss on those assets is not subject to tax, in whole or in part; and
 - (iii) the tax laws of the jurisdiction in which the acquiring constituent entity is located require the acquiring constituent entity to compute taxable income after the disposal or acquisition using the disposing constituent entity’s tax basis in the assets, adjusted for any non-qualifying gain or loss on the disposal or acquisition.
 - (b) ‘non-qualifying gain or loss’ means the lesser of the gain or loss of the transferring entity arising in connection with a reorganisation that is subject to tax in the transferring entity’s location and the financial accounting gain or loss arising in connection with the reorganisation.

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 financial accounting standard used in preparing consolidated financial statements 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 of the transferring entity upon transfer.

4. By way of derogation from paragraphs 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 non-qualifying gain or loss:

- (a) the transferring entity shall include the gain or loss on the disposal in its qualifying income or loss computation to the extent of the non-qualifying gain or loss; and

- (b) the acquiring entity shall determine its qualifying income or loss after the acquisition using the transferring entity's carrying value of the acquired assets and liabilities upon disposal, as adjusted consistently with local tax rules of the acquiring entity to account for the non-qualifying gain or loss.
- 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:
 - (i) 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; and
 - (ii) decreased (or increased) by the non-qualifying gain or loss, if any, arising in connection with the triggering event;
 - (b) use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to compute qualifying income or loss in the fiscal years ending after the triggering event;

- (c) include the net total of the amounts determined in point (a) in the constituent entity's qualifying income or loss in one of the following ways:
 - (i) the net total of the amounts is included in the fiscal year in which the triggering event occurs; or
 - (ii) an amount equal to the net total of the amounts divided by five is included in the fiscal year in which the triggering event occurs and in each of the immediate four subsequent fiscal years, unless the constituent entity leaves the MNE group or large-scale domestic group in a fiscal year within this period, in which case the remaining amount will be wholly included in that fiscal year.

Article 34

Joint ventures

1. For the purpose of this Article, 'joint venture' means an entity whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity provided that the ultimate parent entity holds, directly or indirectly, at least 50 % of its ownership interest.

A joint venture does not include:

- (a) an ultimate parent entity of an MNE group or large-scale domestic group that has to apply the IIR;
- (b) an excluded entity as defined by Article 2;

- (c) an entity whose ownership interests held by the MNE group or large-scale domestic group are held directly through an excluded entity referred in Article 2 and which:
 - (i) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors;
 - (ii) carries out activities that are ancillary to those carried out by the excluded entity; or
 - (iii) substantially all of its income is excluded from the computation of qualifying income or loss in accordance with Article 15 (2) (b) and (c).
- (d) an entity that is held by an MNE group or large-scale domestic group composed exclusively of excluded entities; or
- (e) a joint venture affiliate.

1a. For the purpose of this Article, ‘joint venture affiliate’ means:

- (a) an entity whose assets, liabilities, income, expenses and cash flows are consolidated by a joint venture under an acceptable financial accounting standard or would have been consolidated had the joint venture been required to consolidate such assets, liabilities, income, expenses and cash flows under an acceptable financial accounting standard; or
- (b) a permanent establishment whose main entity is a joint venture or a joint venture affiliate. In these cases the permanent establishment shall be treated as a separate joint venture affiliate.

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 IIR 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 were constituent entities of a separate MNE group or large-scale domestic 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 under paragraph 2 of each member of the joint venture group that is brought into charge under paragraph 3. Any remaining amount of top-up tax shall be added to the total UTPR top-up tax amount pursuant to Article 13 (2).

For the purpose of this paragraph, 'top-up tax due by the joint venture group' means the parent entity's allocable share of the top-up tax of the joint venture and its joint venture affiliates, together referred to as a joint venture group.

Article 35

Multi-parented MNE groups

1. For the purpose of this Article, the following definitions apply:
 - (a) ‘multi-parented MNE or large-scale domestic 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 of the combined group which is located in a different jurisdiction with respect to the location of the other entities of the combined group;
 - (b) ‘stapled structure’ means an arrangement entered into by two or more ultimate parent entities of separate groups 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 all the entities of the groups concerned are presented together as those of a single economic unit and that are required by a regulatory regime to be externally audited.

- (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) pursuant to contractual arrangements the ultimate parent entities will make distributions, with respect to dividends and in liquidation, to their shareholders based on a fixed ratio;
 - (iii) 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;
 - (iv) the ownership interests of the ultimate parent entities that comprise the agreement are quoted, traded or transferred independently in different capital markets; and
 - (v) the ultimate parent entities 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 and that are required by a regulatory regime to be externally audited.

2. Where entities and constituent entities of two or more groups form part of a multi-parented MNE group or large-scale domestic group, the entities and constituent entities of each group shall be treated as members of one multi-parented MNE group or large-scale domestic 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 large-scale domestic group or if its controlling interests are held by entities in the multi-parented MNE group or large-scale domestic group.

3. The consolidated financial statements of the multi-parented MNE group or large-scale domestic 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 or large-scale domestic group shall be the ultimate parent entities of the multi-parented MNE group or large-scale domestic group.

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

5. The parent entities of the multi-parented MNE group or large-scale domestic 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 or large-scale domestic 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 or large-scale domestic group.

7. The ultimate parent entities of the multi-parented MNE group or large-scale domestic group shall submit the top-up tax information return in accordance with Article 42(2) unless they appoint a single designated filing entity within the meaning of Article 42(3). That return shall include information concerning each of the groups that composes the multi-parented MNE group or large-scale domestic 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 attributable to the holder of an ownership interest (the “ownership holder”) in the flow-through entity, provided that:
 - (a) the holder is subject to tax on the income for a taxable period that ends 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 aggregated amount of adjusted covered taxes of the ultimate parent entity and taxes paid by the ownership holder on such income within 12 months after the end of the fiscal year 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 also be reduced, for the fiscal year, by the amount of qualifying income that is allocated to the ownership holder 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 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 also be reduced, for the fiscal year, by the amount of qualifying loss that is attributable to the ownership holder in the flow-through entity.

The first subparagraph shall not apply to the extent the ownership holder is not allowed to use such loss for the computation of its taxable income.

4. The covered taxes of a flow-through entity that is an ultimate parent entity shall also be reduced proportionally to the amount of qualifying income reduced in accordance with paragraphs 1 and 2.
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 a chain of 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 of an entity by deducting or excluding from the income of the entity the profits distributed to the owners 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 goods or services that are sold or acquired by the members through the cooperative.

2. An ultimate parent entity of an MNE group or large-scale domestic 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 is distributed 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 aggregate amount of adjusted covered taxes and taxes of the ultimate parent entity paid by the recipient on such dividend equals or exceeds that income multiplied by the minimum tax rate.

3. An ultimate parent entity of an MNE group or large-scale domestic 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.

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 paragraphs 2 and 3.
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 a chain of such constituent entities, that are subject to the deductible dividend regime, paragraphs 2 to 4 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 paragraphs 2 and 3.
6. For the purpose of paragraph 2, a patronage dividend distributed by a supply cooperative 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 for itself or with respect to another constituent entity that is subject to an eligible distribution tax system to include the amount determined 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 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 due if the constituent entities located in the jurisdiction had distributed all of their income that is subject to the eligible distribution tax system during such 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 determined in accordance with paragraph 2 for 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 outstanding balances in the deemed distribution tax recapture accounts established for prior fiscal years shall be reduced in chronological order, 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 second subparagraph shall be reduced, up to zero, by an amount equal to the net qualifying loss of a jurisdiction multiplied by the minimum tax rate.

4. Any residual amount of net qualifying loss multiplied by the minimum tax rate remaining after the application of the last subparagraph of paragraph 3 for the jurisdiction, 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 on the last day of the fourth fiscal year after the fiscal year for which such account was established, shall be treated as a reduction to the adjusted covered taxes previously determined for such year. The effective tax rate and top-up tax for such fiscal year must be recalculated accordingly, in accordance with Article 28 (1).

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 paragraphs 3 and 4.
7. Where a constituent entity that is subject to an election under paragraph 1 leaves the MNE group or large-scale domestic group or substantially all of its assets are transferred to a person that is not a constituent entity of the same MNE group or large-scale domestic 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:

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

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 or large-scale domestic 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 or large-scale domestic group in the qualifying income or loss of the investment entity.

Where more than one investment entity is 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 or large-scale domestic 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 or large-scale domestic group in the qualifying income of the investment entity and the covered taxes allocated to the investment entity in accordance with Article 23. The investment entity's adjusted covered taxes do not include any covered taxes accrued by the investment entity attributable to income that is not part of the MNE group or large-scale domestic group's allocable share of the investment entity's income.

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 or large-scale domestic group in the qualifying income of the investment entity and the substance-based income exclusion computed for the investment entity.

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

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

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 investment entity shall be reduced in proportion to the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity divided by the total qualifying income of such investment entity.
6. For the purpose of this Article, the allocable share of the MNE group or large-scale domestic group in the qualifying income or loss of an investment entity shall be determined in accordance with Article 8 taking into account only interests that are not subject to an election in accordance with Articles 40 and 41.

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 is 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, a constituent entity that is 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 through a direct ownership interest in 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 under paragraph 2 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 the 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, provided that it is not an investment entity.

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 of the investment entity shall be included in the qualifying income and adjusted covered taxes of the constituent entity-owner that received the distribution.

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 the tested 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 with the first day of the third year preceding the fiscal year and ending with the last day of the reporting fiscal year in which the ownership interest was held (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 under paragraph 1 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 at the end of the fiscal year preceding the fiscal year the revocation is made 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.

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 or large-scale domestic group that is located in a Member State and has been appointed by the other constituent entities of the MNE group or large-scale domestic group located in the same Member State to file the top-up tax information return or 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 competent authorities that provides for the automatic exchange of annual top-up tax 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 have the obligation 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, for the reporting fiscal year, 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, for the reporting fiscal year, 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 located in a Member State, 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 be filed in a standard template and include the following information with respect to the MNE group or large-scale domestic 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 or large-scale domestic 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
 - (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 ownership interests in 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 its 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.

- (c) all information that is necessary for the application of a qualified domestic top-up tax by any Member State that has made the election to apply such a top-up tax, in accordance with Article 10.
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 reporting fiscal year.

Article 43

Elections

1. The election referred to in Articles 2(3), 15(3), 15(9), 40 and 41 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 pursuant to article 42 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 end of the year in which the revocation is made.
2. The election referred to in Articles 15 (6), 15(7), 21 (1)(b), 24(1), 27(2), 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.

Article 44

Penalties

Member States shall lay down the rules on penalties applicable for infringement of national provisions adopted pursuant to this Directive, including those pertaining to the obligation of a constituent entity to file and pay its share of top-up tax or to have an additional cash tax expense, and shall take all necessary measures to ensure that they are effectively applied. The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER IX

TRANSITION RULES

Article 45

Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition

1. For the purpose of this Article, a transition year, for a jurisdiction, means the first fiscal year in which an MNE group or a large-scale domestic group falls within the scope of this Directive in respect of that jurisdiction.
2. When determining the effective tax rate for a jurisdiction in a transition year, and for each subsequent fiscal year, the MNE group or a large-scale domestic group shall take into account all the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial accounts of all 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 recorded 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.

3. 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 2 when such deferred tax assets are generated in a transaction that takes place after 30 November 2021.
4. In the case of a transfer of assets between constituent entities after 30 November 2021 and before the commencement of a transition year, the basis in the acquired assets, other than inventory, shall be based upon the transferring entity's carrying value of the transferred assets upon disposal with a deferred tax assets and liabilities determined on that basis.

Article 46

Transitional relief for the substance-based income exclusion

1. For the purpose of applying Article 27(3), the value of 5 % shall be replaced, for each fiscal year beginning as from 31 December of the following calendar years, 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, for each fiscal year beginning as from 31 December of the following calendar years, with the values set out in the following table:

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

Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups

1. The top-up tax due by an ultimate parent entity located in a Member State in accordance with Article 5(2), or by an intermediate parent entity located in a Member State in accordance with Article 6a(2) when the ultimate parent entity is an excluded entity, shall be reduced to zero :
 - a) 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;
 - b) in the first five 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. 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 located in all jurisdictions other than 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 originally falls within the scope of this Directive. The total value of tangible assets in a jurisdiction is the sum of the net book values of all tangible assets of all the constituent entities of the MNE group that are located in that jurisdiction.

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

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(a) shall start on 31 December 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 31 December 2024.

For large-scale domestic groups that are in scope of this Directive when it enters into force, the five-year period referred to in paragraph 1(b) shall start on 31 December 2023.

5. The designated filing entity referred to in Article 42 shall inform the tax administration of the Member State in which it is located of the start of the initial phase of the group's international activity.

Article 47a

Election for a delayed application of the IIR and UTPR

1. By way of derogation from Articles 5 to 13, Member States in which no more than twelve ultimate parent entities of groups in scope of this directive are located may elect not to apply the IIR and the UTPR for six consecutive fiscal years beginning as from 31 December 2023. Member States that make such election shall notify the Commission by the transposition date laid down in the first paragraph of Article 55.
2. Where the ultimate parent entity of an MNE group is located in a Member State that has made an election pursuant to paragraph 1, the Member States, other than the one in which the ultimate parent entity is located, shall ensure that the constituent entities of this group are subject, in the Member State in which they are located, to the UTPR top-up tax amount allocated to that Member State for the fiscal years beginning as from 31 December 2023 in accordance with Article 13.

The ultimate parent entity mentioned in the first subparagraph shall nominate a designated filing entity in a Member State other than the Member State in which the ultimate parent entity is located or, if the group has no constituent entity in another EU Member State, in a third country jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the ultimate parent entity is located.

In such cases, the designated filing entity shall file a top-up tax information return in accordance with the requirements set out in paragraph 5 of Article 42 and the constituent entities located in the Member State that has made an election pursuant to paragraph 1 shall provide the designated filing entity with information necessary to comply with paragraph 5 of Article 42 and shall be exempted from the filing obligation referred to in paragraph 2 of Article 42.

3. The UTPR percentage determined for a Member State that has made an election pursuant to paragraph 1 shall be deemed to be zero for the fiscal year.

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 reporting fiscal year that is the transition year referred to in Article 45.

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 IIR set out in Chapter II, and shall not be treated as a controlled foreign company tax regime, if it fulfils the following conditions:
 - (a) it enforces a set of rules in accordance with which the parent entity of an MNE group shall compute and pay 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) for the purpose of computing a top-up tax under the equivalent qualified IIR, it provides for relief for any top-up tax that was paid in a Member State in application of the IIR and for any qualified domestic top up tax set out in this Directive.

2. The Commission is empowered to adopt delegated acts in accordance with Article 52, in order to determine the list of third country jurisdictions that have implemented a legal framework in their domestic law, which can be considered equivalent to a qualified IIR in conformity with the conditions laid down in paragraph 1, and to update that list as a result of a subsequent assessment of the legal framework implemented by a third country jurisdiction in its domestic law.

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 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 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 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.

Article 54
Bilateral agreement on simplified reporting obligations

The Union may conclude agreements with third country jurisdictions whose legal frameworks have been assessed as equivalent to a qualified IIR in accordance with Article 51, 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 2023.

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

They shall apply those provisions in respect of the fiscal years beginning as from 31 December 2023.

However, with the exception of the arrangement provided for in Article 47a(2), they shall apply the provisions necessary to comply with Articles 11, 12 and 13 in respect of the fiscal years beginning as from 31 December 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 55a

Reviewing by the Commission of the Implementation of the Pillar One

The Commission shall, by 30 June 2023, submit a report to the Council assessing the situation regarding the implementation of the Pillar One of the OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy agreed in October 2021 and, if appropriate, submit a legislative proposal to address these tax challenges in the absence of the implementation of the Pillar One solution.

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

DRAFT COUNCIL STATEMENT

The Council:

REAFFIRMS the commitment of the EU to the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy as well as to the implementation plan thereof agreed in October 2021 and INVITES all members of the OECD/G20 Inclusive Framework on BEPS to live up to their commitment on both pillars;

NOTES that since 2017 the EU has addressed the tax challenges arising from the digitalization of the economy and its continuous work has contributed to the global agreement on the Two-Pillar Solution;

CONFIRMS its continued support of the work at the OECD Inclusive Framework on BEPS and fully commits to the successful accomplishment of the ongoing work on the elements of Pillar 1, including the multilateral convention;

RECALLS our determination to have both Pillar 1 and Pillar 2 implemented as agreed in October 2021; to that end, WILL MONITOR closely the ongoing negotiations of the multilateral convention (MLC) on Pillar 1 and STRESSES that it will as necessary and regularly reassess the situation accordingly with a view to ensuring a swift solution on the tax challenges arising from the digitalization of the economy;

WELCOMES the swift agreement on the file; HIGHLIGHTS that the recourse to the delegated act in this specific file should not be interpreted as a precedent for other legislative instruments adopted under the special legislative procedure applied to tax matters.