Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2024 edition

Part 4A

Implementation Of Council Directive (EU) 2022/2523 of 15 December 2022 on Ensuring a Global Minimum Level of Taxation For Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union

December 2024

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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PART 4A
IMPLEMENTATION OF COUNCIL DIRECTIVE (EU) 2022/2523 OF 15 DECEMBER 2022 ON ENSURING A GLOBAL MINIMUM LEVEL OF TAXATION FOR MULTINATIONAL ENTERPRISE GROUPS AND LARGE-SCALE DOMESTIC GROUPS IN THE UNION

Overview

This Part implements the Pillar Two minimum effective tax rate for large groups and companies by transposing the EU Minimum Tax Directive (Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union) into Irish law.

CHAPTER 1
Interpretation and General (Part4A)

Overview

Chapter 1 is the interpretation chapter and contains a number of provisions relating to the general application of the Pillar Two legislation.

111A Interpretation (Part 4A)

Summary

This section is the interpretation section for the Part and contains the definitions used in the Part.

Details

Definitions

The section contains a series of definitions, including — ***(1)***

'acceptable financial accounting standard' means International Financial Reporting Standards 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.

'the Acts' means the Tax Acts and the Capital Gains Tax Acts.

'adjusted covered taxes' is defined in section 111U.

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

'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) the financial statements of a group to which paragraph (b) of the definition of 'group' applies (i.e. a main entity and a permanent establishment) prepared by an entity in accordance with an acceptable financial accounting standard,

(c) where an ultimate parent entity has financial statements described in paragraphs (a) and (b), that are not prepared in accordance with an acceptable financial accounting standard, the financial statements of the ultimate parent entity that have been subsequently adjusted to prevent any material competitive distortions, and

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

(i) an acceptable financial accounting standard, or

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

'consolidated revenue test' has the meaning given to it by section 111C.

'consolidated revenue threshold' is €750,000,000 for a fiscal year of 12 months, and where the fiscal year is greater or less than 12 months the amount of €750,000,000 will be adjusted proportionately.

'constituent entity' means an entity that is a member of an MNE group or of a large-scale domestic group, or any permanent establishment of a main entity that is a member of an MNE group, other than an excluded entity as defined in section 111C.

'**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 same large-scale domestic group.

'controlled foreign company tax regime' is a set of tax rules, other than a qualified IIR, under which an entity with a direct or indirect ownership interest in another entity which is not tax resident in the same jurisdiction of the first mentioned 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 other entity or permanent establishment, irrespective of whether that income is distributed to the first mentioned entity.

'controlling interest' means an ownership interest in an entity whereby the interest holder:

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

(b) would have been required to do so if the interest holder had prepared consolidated financial statements.

'covered taxes' is defined in section 111T.

'deferred tax expense' is the amount of the net movement in the deferred tax assets and deferred tax liabilities of a constituent entity between the beginning and end of the fiscal year.

'designated filing entity' is 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 section 111AAI on behalf of the MNE group or the large-scale domestic group.

'Directive' means Council Directive 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational groups and large-scale domestic groups in the Union.

'disqualified refundable imputation tax' is 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.

'domestic top-up tax' means a tax arising pursuant to section 111AAC.

'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by all subsequent amendments to that Agreement.

'EEA state' means a state which is a contracting party to the EEA Agreement.

'eligible distribution tax system' means a corporate income tax system that was in force on or before 1 July 2021, that imposes tax at a rate equal to, or in excess of, the minimum tax rate, and 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.

'entity' means:

(a) any legal arrangement of whatever nature or form that prepares separate financial accounts, or

(b) any legal person other than an individual,

but does not include central, state or local government, or their administration or agencies that carry out government functions.

'excluded entities' is defined in section 111C.

'financial accounting net income or loss' is the net income or loss determined for a constituent entity in preparing consolidated financial statements of the ultimate parent entity for a fiscal year before any consolidation adjustments eliminating intra-group transactions.

'filing constituent entity' is an entity filing a top-up tax information return in accordance with section 111AAI.

'fiscal year' is:

(a) the accounting period in respect of which the ultimate parent entity of an MNE group or of a large-scale domestic group prepares its consolidated financial statements, or

(b) in the absence of such consolidated financial statements, the calendar year.

'flow-through entity' is an entity to the extent that 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.

'governmental entity' is an entity that:

(a) is part of, or wholly-owned by a government (including any political subdivision or local authority thereof),

(b) 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 investment, asset management, and related investment activities for that government's jurisdiction's assets,

(c) is accountable to a government on its overall performance, and provides annual information reporting to that government, and

(d) its assets vest in a government upon dissolution and, to the extent that it distributes net earnings, such net earnings are distributed solely to that government with no portion of its net earnings inuring to the benefit of any private person.

'group' means

(a) all entities which are related through ownership or control for the purpose of the preparation of consolidated financial statements by the ultimate parent entity, including any entity that is excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on 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 the entity is not part of another group referred to in paragraph (a).

'hybrid entity' means—

(a) an entity not treated as fiscally transparent in the jurisdiction where it is located but as fiscally transparent in the jurisdiction in which its owner is located, or

(b) an entity which is located in a jurisdiction that does not have a corporate income tax and the entity:

(i) is treated as fiscally transparent in the jurisdiction where its owner is located, and

(ii) is not treated as a flow-through entity and a tax transparent entity under subsection (5)(c).

'income inclusion rule' means the rules laid down in the Directive or, as regarding third country jurisdictions, the OECD Model Rules in accordance with which the parent entity of an MNE group or of a large-scale domestic group calculates and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of that group.

'IIR' means the income inclusion rule.

'IIR top-up tax' means a tax arising pursuant to subsection (1) or (2) of section 111E, subsection (1) or (2) of section 111F, subsection (1) or (2) of section 111G or subsection (1) or (2) of section 111H, as the case may be.

'insurance investment entity' means an entity that would meet the definition of an investment fund or a real estate investment vehicle, if it had not been established in relation to liabilities under an insurance or annuity contract and if it were not wholly owned by an entity that is subject to regulation in the jurisdiction where it is located as an insurance company.

'intermediate parent entity' means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity in the same MNE group or large-scale domestic group, and is not an ultimate parent entity, a partially-owned parent entity, a permanent establishment or an investment entity.

'International Financial Reporting Standards' means International Financial Reporting Standards as adopted by the Union pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

'international organisation' means an intergovernmental organisation, including a supranational organisation, or wholly-owned agency or instrumentality thereof, that is comprised primarily of governments, has in effect a headquarters or substantially similar agreement with the jurisdiction in which it is established, such as arrangements that entitle the organisation's offices or establishments in that jurisdiction to privileges and immunities, and that law or its governing documents prevent its income inuring to the benefit of any private person.

'investment entity' is:

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

(b) an entity that is at least 95 per cent owned, directly by an investment fund or a real estate investment vehicle or through a chain of such entities, and that operates exclusively or almost exclusively to hold assets or invest funds for their benefit,

(c) an entity where a minimum of 85 per cent of its value is owned by an investment fund or a real estate investment vehicle provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the calculation of the qualifying income or loss for the purposes of this Part; or

(d) an insurance investment entity.

'investment fund' is an entity or arrangement that:

(a) is designed to pool financial or non-financial assets from a number of investors, some of which are not connected,

(b) invests in accordance with a defined investment policy,

(c) allows investors to reduce transaction, research and analytical costs or to spread risk collectively,

(d) has as its main purpose the generation of 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) is, 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) is managed by investment fund management professionals on behalf of the investors.

'**joint venture', 'joint venture affiliate' and 'joint venture group'** have the meaning assigned, respectively, to them by section 111AO.

'large-scale domestic group' is a group of which all constituent entities are located in the same Member State and 'member of a large-scale domestic group' shall be construed accordingly.

'local tangible assets' means immovable property located in the same jurisdiction as the constituent entity and that jurisdiction shall be referred to in this Part as the 'local tangible asset jurisdiction'.

'low-tax jurisdiction' means, in respect of an MNE group or of a large-scale domestic group in any fiscal year, a Member State or a third country territory in which the MNE group or the large-scale domestic group has qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate.

'low-taxed constituent entity' is:

(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.

'main entity' is an entity that includes the financial accounting net income or loss of a permanent establishment in its financial statements.

'marketable transferable tax credit' is defined in section 111V.

'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 €75,000,000 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.

'Member State' means a member state of the European Union.

'minimum tax rate' is 15 per cent.

'MNE' means multinational enterprise.

'MNE group' means a group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity and 'member of an MNE group' shall be construed accordingly.

'net book value of tangible assets' 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.

'non-marketable transferable tax credit' has the meaning assigned to it in section 111V.

'non-profit organisation' is an entity that meets all of the following criteria:

(a) it is established and operated in its jurisdiction of residence:

(i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational, or other similar purposes, or

(ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civil 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,

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

(f) it does not carry on a trade or business that is not directly related to the purposes for which it was established.

'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.

'OECD Model Rules' means the document entitled OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD OECD/G20 Base Erosion and Profit Shifting, OECD Publishing, Paris, approved on 14 December 2021 by the OECD / G20 Inclusive Framework on BEPS.

'OECD Model Tax Convention on Income and Capital' means the Model Tax Convention on Income and on Capital as published by the OECD on 21 November 2017.

'ownership interest' means any equity interest that carries rights to the profits, capital, or reserves of an entity, or of a permanent establishment.

'parent entity' is:

(a) an ultimate parent entity other than an excluded entity,

(b) an intermediate parent entity, or

(c) a partially-owned parent entity.

'**partially-owned parent entity'** is a constituent entity that is not an ultimate parent entity, a permanent establishment or an investment entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group, for which more than 20 per cent of the

ownership interest in it is held by one or several persons that are not constituent entities of that MNE group or large-scale domestic group.

'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) that entity is regulated by that jurisdiction or one of its political subdivisions or local authorities, or

(ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trustor to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the MNE group or large-scale domestic group,

or

(b) a pension services entity.

'pension services entity' means an entity that is established and operated exclusively or almost exclusively to invest funds for the benefit of an entity referred to in paragraph (a) of the definition of pension fund, or to carry out activities that are ancillary to the regulated activities referred to in paragraph (a) of the definition of pension fund, where the pension services entity forms part of the same group as the entities carrying out those regulated activities.

'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 a tax treaty provided that such jurisdiction taxes the income attributable to it, that income being attributable to it in accordance with a provision drafted in a like manner to Article 7 of the OECD Model Tax Convention on Income and Capital,

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

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

(d) a place of business or a deemed place of business, that is not described above, through which operations are conducted outside the jurisdiction where the entity is located if such jurisdiction exempts the income attributable to such operations;

'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 the Directive or, as regards third country jurisdictions, the OECD Model Rules, 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 the Directive or, as regards third country jurisdictions, the OECD Model Rules, and

(b) is administered in a way that is consistent with the rules laid down in the Directive, or OECD Model Rules as regards third countries;

'qualified domestic top-up tax payable' means the amount accrued by the constituent entities in a jurisdiction in respect of qualified domestic top-up tax for a fiscal year, except that such amount shall not include any amount of qualified domestic top-up tax that:

(a) the MNE group or large-scale domestic group directly or indirectly challenges in a judicial or administrative proceeding, or

(b) the tax authority of the jurisdiction has determined is not assessable or collectible,

based on—

(i) constitutional grounds,

(ii) other superior law, or

(iii) a specific agreement with the government of the qualified domestic top-up tax jurisdiction limiting the MNE group's or large-scale domestic group's tax liability, such as a tax stabilisation agreement, investment agreement or similar agreement

'qualified IIR' 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 is equivalent to the rules laid down in the Directive, or OECD Model Rules as regards third countries, in accordance with which the parent entity of an MNE group or of a large-scale domestic group calculates and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of that group, and is administered in a way that is consistent with the rules laid down in the Directive or OECD Model Rules.

'qualified imputation tax' shall be construed in accordance with subsection (6).

'qualified refundable tax credit' means a refundable tax credit, or portion thereof, that is designed such that it is to 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 but does not include any amount of tax creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax.

'qualified UTPR' means a set of rules implemented in the domestic law of a jurisdiction that is equivalent to the rules laid down in the Directive, or OECD Model Rules as regards third countries, provided that such jurisdiction does not provide any benefits that are related to those rules, 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, and is administered in a way that is consistent with the rules laid down in the Directive or OECD Model Rules.

'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 top-up tax information returns.

'qualifying entity' shall be construed in accordance with section 111AAB.

'qualifying income or loss' has the meaning assigned to it in section 111O(1).

'real estate investment vehicle' means a widely held entity that holds predominantly immovable property, and is subject to a tax system which is designed to achieve a single level of taxation on the income gains or profits of the entity, either at the level of the entity or at the level of its interest holders, with any deferral of taxation on such income, gains or profits being no more than one year from the end of the accounting period in which the income, profits or gains arise.

'securitisation arrangement' means an arrangement that:

(a) is implemented for the purpose of pooling and repackaging a portfolio of assets, or exposures to assets, for investors that are not constituent entities of the MNE group, which is undertaking the arrangement, in a manner that legally segregates one or more than one identified pool of assets, and

(b) seeks through contractual agreements to limit the exposure of the investors referred to in paragraph (a) to the risk of insolvency of an entity holding the legally segregated assets by controlling the ability of identified creditors of that entity, or of another entity in the arrangement, to make claims against it through legally binding documentation entered into by those creditors;

'securitisation entity' shall be construed in accordance with subsection (8);

'stateless constituent entity' is a constituent entity to which subsection (3)(b), (4)(d) or (6)(d)(i) of section 111D applies.

'substance-based income exclusion amount' is defined in section 111AE (2)(a).

'tax treaty' means an agreement for the avoidance of double taxation with respect to taxes on income and on capital.

'third country jurisdiction' means a jurisdiction that is not a Member State.

'top-up tax' means the top-up tax calculated for a jurisdiction or a constituent entity pursuant to section 111AD.

'ultimate parent entity' is:

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

(b) a main entity of a group as defined in paragraph (b) of the definition of 'group' in this section;

'undertaxed profit rule' means the rules laid down in the Directive or, as regards third country jurisdictions, the OECD Model Rules, in accordance with which a jurisdiction collects its allocable share of top-up tax of an MNE group that was not charged under the qualified IIR in respect of the low-taxed constituent entities of that MNE group.

'UTPR' means the undertaxed profit rule.

'UTPR top-up tax' means a tax arising pursuant to section 111L(1), 111M(1) or 111AZ(1), as the case may be.

Meaning of connected person

For the purposes of this Part, a person or entity is connected with another person or entity if they are "closely related" within the meaning of Article 5(8) of the OECD Model Tax Convention on Income and Capital, which provides: ***(2)***

"…a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises."

Meaning of fiscally transparent

For the purposes of this Part, an entity is fiscally transparent where its 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. ***(3)***

Controlling interest

For the purpose of the definition of 'controlling interest' a main entity is deemed to have the controlling interest of its permanent establishments. ***(4)***

Flow-through entity

This subsection details the categorisation of a "flow-through entity": ***(5)***

A flow-through entity is: ***(5)(a)***

(i) a tax transparent entity to the extent that it is fiscally transparent in the jurisdiction in which its owner it located, and

(ii) a reverse hybrid entity to the extent that it is not fiscally transparent in the jurisdiction in which its owner it located.

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. ***(5)(b)***

A constituent entity that: ***(5)(c)***

- is not tax resident in any jurisdiction, and
- is 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) its income, expenditure, profit or loss is not attributable to a permanent establishment.

(5A) For the purposes of applying subsection (5)(a) to a flow-through entity, a reference in that subsection to 'owner' means the constituent entity-owner that is closest in the ownership chain to the flow-through entity that is either:

- not a flow-through entity, or
- where there is no such constituent entity-owner, a flow-through entity that is the ultimate parent entity of the MNE group or large-scale domestic group.

Qualified imputation tax

(6)(a) This subsection provides that 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 beneficial owner 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:

- by a jurisdiction other than the jurisdiction which imposed the covered taxes,
- 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,
- 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
- to a governmental entity, an international organisation, a resident non-profit organisation, a resident pension fund, a resident investment entity that is not part of an 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.

(6)(b) For the purposes of paragraph (a):

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

(7) Subsection (7) provides that any words or expressions used in this Part, which are also used in the Directive, will have the same meaning in this Part as it has in the Directive unless the context otherwise requires.

(8)(a) Subject to paragraph (b) of subsection (8), for the purposes of Part 4A, 'securitisation entity' means an entity which is a participant in a securitisation arrangement, that:

- solely carries out activities that facilitate one or more than one securitisation arrangement,
- grants security over its assets in favour of its creditors, or the creditors of another securitisation entity, and

- pays out all cash received from its assets to its creditors, or the creditors of another securitisation entity, on an annual or more frequent basis, other than:
  - cash retained to meet an amount of profit required by the documentation of the securitisation arrangement for eventual distribution to equity holders or their equivalent, where the entity is not a company, or
  - cash reasonably required under the terms of the securitisation arrangement to:
    - make provision for future payments which are required, or will likely be required, to be made by the entity under the terms of the securitisation arrangement, or
    - maintain or enhance the creditworthiness of the entity

An entity shall not be a securitisation entity unless any profit required by the documentation of the securitisation arrangement for eventual distribution to equity holders or their equivalent, where the entity is not a company, for a given fiscal year is negligible relative to the revenues of that entity. ***(8)(b)***

111B Principles for construing rules in accordance with OECD Pillar Two guidance

Summary

This section sets out the principles for construing rules in accordance with OECD Pillar Two guidance.

Details

Definitions

The section contains a series of definitions, including — ***(1)***

'Minister' means the Minister for Finance.

'OECD Pillar Two guidance' means the following:

a) the document entitled OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS, OECD Publishing, Paris published by the OECD on 14 March 2022,

b) the document entitled OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) Examples, OECD, Paris, published by the OECD on 25 April 2024,

c) the document entitled OECD (2022), Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 20 December 2022,

d) the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 2 February 2023,

e) the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 17 July 2023,

f) the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 17 July 2023, and

g) such additional subsequent guidance published by the OECD, as may be designated by order made under subsection (3) by the Minister for the purposes of this Part.

General

For the purpose of calculating and administering, in respect of any fiscal year or accounting period, the IIR top-up tax, UTPR top-up tax or domestic top-up tax for a constituent entity or qualifying entity, as the case may be, this Part shall be construed so as to ensure, as far as practicable, consistency between the following: ***(2)***

- the effect which is to be given to this Part, and ***(2)(a)***
- the effect which would be given if the OECD Model Rules were to be applied, in accordance with the OECD Pillar Two guidance, to the calculation and administration of those taxes, ***(2)(b)***

other than where such an application of this section would be inconsistent with the Directive.

The Minister for Finance may by order designate any additional subsequent guidance referred to in paragraph (g) of subsection (1) as being comprised in the OECD Pillar Two guidance. ***(3)***

Every order made by the Minister for Finance shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. ***(4)***

To date, two Ministerial Orders have been published in accordance with subsection (3) being the Taxes Consolidation Act 1997 (Section 111B(3)) Order 2023 (S.I. No. 675/2023) and the Taxes Consolidation Act 1997 (Section 111B(3)) Order 2024 (S.I. No.551/2024).

111C Scope of Part 4A

Summary

This section sets out the scope of this Part.

Details

Application

Subject to subsection (2) of this section, the application of consolidated revenue threshold to group mergers and demergers as set out in section 111AL, and the application of the domestic top-up tax as set out in sections 111AAA and 111AAD, this Part shall apply for a fiscal year to constituent entities, located in the State, that ***(1)***

are members of an MNE group or of a large-scale domestic group, where the revenue of the group (including that of any excluded entities) recorded in the group's consolidated financial statements is no less than €750,000,000 (adjusted proportionally for periods greater or less than 12 months) for at least two of the four fiscal years immediately preceding that fiscal year.

Excluded Entities

Subject to subsection (3), this Part shall not apply to the following entities (in this Part referred to as "excluded entities"): ***(2)***

- an entity which is-
  - (i) a governmental entity, ***(2)(a)***
  - (ii) an international organisation,
  - (iii) a non-profit organisation,
  - (iv) a pension fund,
  - (v) an investment fund that is an ultimate parent entity, and
  - (vi) a real estate investment vehicle that is an ultimate parent entity,
- an entity, where at least 95% of the value of that entity is owned by an excluded entity directly or through one or more excluded entities, other than a pension services entity, and that, operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of excluded entities, or exclusively carries out activities ancillary to those performed by excluded entities, and ***(2)(b)***
- an entity, where at least 85% of the value of that entity is owned by an excluded entity directly or through one or more excluded entities, other than a pension services entity, where substantially all of the income of the entity is derived from dividends or equity gains or losses that are excluded from the calculation of qualifying income or loss to which paragraph (b) or (c) of section 111P(2) applies. ***(2)(c)***

A member of a group that would otherwise be an excluded entity, by virtue of paragraph (b) or (c) of subsection (2), shall not be an excluded entity where a filing constituent entity makes an election, in accordance with section 111AAAD, that the entity is not to be an excluded entity. ***(3)***

Provides that nothing in the Acts shall prevent an entity or permanent establishment from being chargeable to IIR top-up tax, UTPR top-up tax or domestic top-up tax, as the case may be, under this Part. ***(4)***

111D Location of constituent entity

Summary

This section provides the rules for determining the location of a constituent entity.

Details

Subject to subsections (2) to (9), an entity other than a flow-through entity shall be located in the jurisdiction in which it is considered to be resident for tax purposes, based on its place of management, its place of creation or similar criteria. ***(1)***

Where it is not possible to determine the location of an entity other than a flow-through entity based on where it is considered to be a tax resident in accordance with subsection (1), the entity shall be deemed to be located in the jurisdiction where it was created. ***(2)***

Where a constituent entity is a flow-through entity, and that constituent entity is: ***(3)(a)***

(i) an ultimate parent entity of an MNE group or a large-scale domestic group, or

(ii) required to apply an IIR,

then that constituent entity shall be located in the jurisdiction where it was created.

Where a constituent entity is a flow-through entity and paragraph (a) does not apply, the constituent entity shall be considered to be stateless. ***(3)(b)***

Where a constituent entity is a permanent establishment that: ***(4)***

- is treated as a permanent establishment in accordance with a tax treaty (provided that such jurisdiction taxes the income attributable to it), it shall be deemed to be located in the jurisdiction where it is treated as a permanent establishment and liable to tax under that tax treaty, ***(4)(a)***
- in the absence of a tax treaty, is treated as carrying on its a place of business or 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, it shall be deemed to be located in the jurisdiction where it is subject to income taxation based on its business presence, ***(4)(b)***
- in the absence of a corporate income tax system, is treated as carrying on its place of business or deemed place of business in a location 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, it shall be deemed to be located in the jurisdiction where it is situated, or ***(4)(c)***
- carries on its place of business or deemed place of business, in a location that is not described above, through which operations are conducted outside the jurisdiction where the entity is located if such jurisdiction exempts the income attributable to such operations, it shall be considered to be stateless. ***(4)(d)***

Where a constituent entity is regarded as located in more than one jurisdiction it shall be deemed to be located as follows; ***(5)***

- Where those jurisdictions have a tax treaty, the constituent entity shall be regarded as located in the jurisdiction where it is regarded to be tax resident under that treaty. ***(5)(a)***
- Where the tax treaty referred to above requires the competent authorities to reach a mutual agreement on the residence for tax purposes of the constituent entity, and no agreement is reached, subsection (6) shall apply. ***(5)(b)***
- Where no relief from double taxation is available under a tax treaty as a result of the constituent entity being a tax resident of more than one territory, subsection (6) shall apply. ***(5)(c)***

Where a constituent entity is regarded as located in more than one jurisdiction, and those jurisdictions do not have a tax treaty or where subsection 5(b) or 5(c) apply, the constituent entity shall be regarded as located in the jurisdiction which charged the higher amount of covered taxes for the fiscal year. ***(6)(a)***

For the purpose of calculating the covered taxes in paragraph (a), no account shall be taken of any tax paid in accordance with a controlled foreign company tax regime. ***(6)(b)***

Subject to paragraph (d), where the amount of covered taxes referred to in paragraph (a) is the same in both jurisdictions, or is zero, then the constituent entity shall be regarded as located in the jurisdiction in which the greater amount of the substance-based income exclusion under section 111AE is calculated on an entity basis. ***(6)(c)***

Where the amount of the substance-based income exclusion referred to in paragraph (c) is the same in both jurisdictions, or is zero, then: ***(6)(d)***

(i) the constituent entity shall be regarded to be stateless, or

(ii) where the constituent entity is an ultimate parent entity, the constituent entity will be regarded as located in the jurisdiction in which it is created.

Where, on the application of paragraphs (5) and (6), a parent entity is considered to be located in a jurisdiction where it is not subject to a qualified IIR, it shall be deemed to be subject to the qualified IIR of the other jurisdiction, unless an applicable tax treaty prohibits the application of such rule. ***(7)***

For the purpose of this Part, the location of a constituent entity, determined at the beginning of a fiscal year, shall remain the same throughout the fiscal year. ***(8)***

For the purposes of Chapter 5, a stateless constituent entity shall be deemed to be located in a jurisdiction but not a jurisdiction where any other entity is located. ***(9)***

CHAPTER 2
IIR and UTPR

Overview

Chapter 2 of ***Part 4A*** sets out the general charging provisions for the IIR and the UTPR. The IIR imposes a top-up tax on a parent entity with respect to low taxed constituent entities subject to an effective tax rate below the Minimum Rate. The UTPR serves as a backstop to the IIR. To the extent that a low taxed constituent entity is not subject to a tax under an IIR, the UTPR operates to collect the top-up tax due (with credit given for QDTT where appropriate).

111E Ultimate parent entity in the State

The section provides that an ultimate parent entity that is a constituent entity located in the State shall be subject to a top-up tax in respect of any low-taxed constituent entity it holds an ownership interest in either directly or indirectly. ***(1)(a)&(b)***

Where an ultimate parent entity located in the State is itself a low-taxed constituent entity, it shall be subject to the IIR top-up tax in respect of itself. ***(2)***

111F Intermediate parent entity in the State

Subsection (1) provides that, subject to subsection (3), an intermediate parent entity located in the State whose ownership interests are owned directly or indirectly by an ultimate parent entity located in a jurisdiction that has not applied a qualified IIR to ***(1)(a)&(b)***

the ultimate parent entity, shall be subject to the IIR top-up tax in respect of any low-taxed constituent entity it holds an ownership interest in either directly or indirectly for the fiscal year.

Where, subject to subsection (3), an intermediate parent entity located in the State is itself a low-taxed constituent entity, it shall be subject to the IIR top-up tax in respect of itself. ***(2)***

Where the ultimate parent entity of the intermediate parent entity is subject to a qualified IIR, or another intermediate parent entity is subject to a qualified IIR and owns, directly or indirectly, a controlling interest in the intermediate parent entity the above subsections shall not apply. ***(3)(a)&(b)***

111G Intermediate parent entity located in the State and held by an excluded ultimate parent entity

Subsection (1) provides that, subject to subsection (3), an intermediate parent entity located in the State whose ownership interests are owned directly or indirectly by an ultimate parent entity that is an excluded entity, shall be subject to a top-up tax in respect of any low-taxed constituent entity it holds an ownership interest in either directly or indirectly for the fiscal year. ***(1)(a)&(b)***

Where, subject to subsection (3), an intermediate parent entity is itself a low-taxed constituent entity, it shall be subject to the IIR top-up tax in respect of itself. ***(2)***

The above subsections shall not apply where another intermediate parent entity is subject to a qualified IIR and owns, directly or indirectly, a controlling interest in the intermediate parent entity. ***(3)***

111H Partially-owned parent entity in the State

Subsection (1) provides that, subject to subsection (3), a partially-owned parent entity located in the State that owns directly or indirectly an ownership interest in a low-taxed constituent entity at any time during a fiscal year shall be subject to a top-up tax in respect of a low-taxed constituent entity. ***(1)***

Where, subject to subsection (3), a partially-owned parent entity is itself a low-taxed constituent entity, it shall be subject to the IIR top-up tax in respect of itself. ***(2)***

The above subsections shall not apply where another partially-owned parent entity is subject to a qualified IIR and owns, directly or indirectly, a controlling interest in the partially-owned parent entity. ***(3)***

111I Allocation of top-up tax under IIR

Summary

The top-up tax due with regards to a low taxed constituent entity shall be allocated to a parent entity based on their ownership interest in that low taxed constituent entity.

Details

This subsection provides the calculation to determine the amount of top up tax due by a parent entity in respect of a low-taxed constituent entity. A parent entity's allocable share in the top-up tax with respect to a low-taxed constituent entity is calculated with references to the proportion of the parent entity's ownership interest in the qualifying income of the low-taxed constituent entity. The amount of top-up ***(1)***

tax due by the parent entity in respect of a low taxed constituent entity is calculated as:

A x B

where—

A is the top-up tax of the low-taxed constituent entity, as calculated in accordance with section 111AD, and

B is the parent entity's allocable share in that top-up tax for the fiscal year.

(2) This subsection provides the calculation to determine the amount of the parent's allocable share in the top-up tax of the low-taxed constituent entity.

(2)(a) A parent entity's allocable share in the top-up tax with respect to a low-taxed constituent is the proportion of the parent entity's ownership interest in the qualifying income of the low-taxed constituent entity. This is calculated as follows:

(A – B) / C

where—

A is the qualifying income of the low-taxed constituent entity for the fiscal year,

B is the amount of qualifying income attributable to ownership interests held by owners other than the parent entity as determined by paragraph (b), and

C is the qualifying income of the low-taxed constituent entity for the fiscal year,

(2)(b) The amount of qualifying income attributable to ownership interests in a low-taxed constituent entity held by owners other than the parent entity shall be 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

(i) the parent entity had prepared consolidated financial statements in accordance with that accounting standard (in subsection (2) referred to as the 'hypothetical consolidated financial statements'),

(ii) 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,

(iii) all of the low-taxed constituent entity's qualifying income were attributable to transactions with persons that are not members of an MNE group or large-scale domestic group, and

(iv) all ownership interests not directly or indirectly held by the parent entity were held by persons other than members of an MNE group or large-scale domestic group.

(3) In addition to the amount allocated to a parent entity in respect of a low-taxed constituent entity, the IIR top-up tax due by a parent entity shall include the full

amount of top-up tax calculated for that parent entity itself under section 111E, 111F, 111G and 111H.

111J IIR Offset Mechanism

This section operates to reduce the top-up tax that has been allocated to a parent entity where that parent entity located in the 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 allocable share of top-up tax due by the parent entity shall be reduced by the amount allocated to an intermediate parent entity or partially-owned parent entity.

111K Effect of qualified domestic top-up tax

Notwithstanding section 111AI (which provides for the qualified domestic top-up tax safe harbour), where a Member State does not apply a qualified domestic top-up tax to collect any additional top-up tax arising in accordance with Article 29 of the Directive (which provides for additional top-up tax to be collected where there is an adjustment to covered taxes or qualifying income or loss that results in the re-computation of the effective tax rate and top-up tax of the MNE group or the large-scale domestic group for a prior fiscal year), then additional top-up tax shall be computed pursuant to section 111AF and such additional top-up tax shall be considered to be jurisdictional top-up tax for the purposes of section 111AD(3) (which provides for the calculation of top-up tax). ***(1)***

Where the amount of qualified domestic top-up tax in respect of a constituent entity 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 in respect of the jurisdiction where the constituent entity is located for the purposes of section 111AD(3). ***(2)***

Where a qualified domestic top-up tax is applied by a Member State or 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: ***(3)***

- an acceptable financial accounting standard, or ***(3)(a)***
- an authorised financial accounting standard that is different than 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. ***(3)(b)***

Where an amount of domestic top-up tax in respect of a qualifying entity for a fiscal year has not been paid to and collected by the Collector-General within 4 fiscal years following the fiscal year in which it was due, that amount of domestic top-up tax shall no longer be due and payable to the Revenue Commissioners. ***(4)***

111L Application of UTPR across MNE group

Provides that, subject to subsection (2) and section 111AL (which provides for rules regarding a UTPR Group), a constituent entity of an MNE group that is located in the State shall be subject to the UTPR top-up tax where a qualified IIR is not applied to the MNE group either because the ultimate parent entity is located in a jurisdiction that does not apply a qualified IIR or the ultimate parent entity is an excluded entity. The UTPR top-up tax is calculated in accordance with section 111N. ***(1)(a)&(b)***

Subsection (1) shall not apply to a constituent entity that is an investment entity. ***(2)***

111M Application of UTPR in jurisdiction of ultimate parent entity

This subsection provides that, subject to subsections (2) and (3) and sections 111AZ and 111AL, where the ultimate parent entity of an MNE group is located in a third country jurisdiction that is a low-tax jurisdiction, a constituent entity of that MNE group that is located in the State shall be subject to the UTPR top-up tax. The UTPR top-up tax is calculated in accordance with section 111N. ***(1)***

Subsection (1) shall not apply where the ultimate parent entity is subject to a qualified IIR in respect of itself and its low-taxed constituent entities located in that jurisdiction. ***(2)***

Subsection (1) shall not apply to a constituent entity that is an investment entity. ***(3)***

111N Calculation and allocation of UTPR top-up tax amount

The UTPR top-up tax amount of an MNE group allocated to a constituent entity for a fiscal year shall be calculated as: ***(1)(a)***

$$A \times B$$

where—

A is the UTPR top-up tax amount of an MNE group allocated to the State for a fiscal year as determined in accordance with subsection (2), and

B is the UTPR percentage in respect of the constituent entity for a fiscal year as determined in accordance with paragraph (b).

The UTPR percentage in respect of a constituent entity for a fiscal year shall be calculated as: ***(1)(b)***

$$((A / B) \times 50 \text{ per cent}) + ((C / D) \times 50 \text{ per cent})$$

where—

A is the total number of employees of the constituent entity,

B is the total number of employees of all the constituent entities of the MNE group located in the State,

C is the sum of the net book values of tangible assets of the constituent entity, and

D is the sum of the net book values of tangible assets of all constituent entities of the MNE group located in the State.

The UTPR top-up tax amount of an MNE group allocated to the State for a fiscal year shall be calculated as: ***(2)***

$$A \times B$$

where—

A is the total UTPR top-up tax of the MNE group for a fiscal year as determined in accordance with subsection (3), and

B is the UTPR percentage in respect of the MNE group located in the State for a fiscal year as determined in accordance with subsection (6).

(3) The total UTPR top-up tax of an MNE group shall be equal to the sum of the top-up tax calculated for each low-taxed constituent entity of the MNE group in accordance with section 111AD, as adjusted by subsections (4) and (5).

(4) This subsection provides that the UTPR top-up tax of a low-taxed constituent entity shall be equal to zero where 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 the fiscal year.

(5) Where subsection (4) does not apply, the top-up tax of a low-taxed constituent entity shall be reduced, for the purposes of subsection (3), by a parent entity's allocable share of the top-up tax of that low-taxed constituent entity that is brought into charge under a qualified IIR.

(6) Subject to subsection (8), the UTPR percentage in respect of an MNE group located in the State shall be calculated as 50% of the total number of employees of all the constituent entities of the MNE group located in the State as a percentage of the total number of employees of all constituent entities of the MNE group located in jurisdictions that have a qualified UTPR in force for the fiscal year, plus 50% of the sum of the net book values of tangible assets of all constituent entities of the MNE group located in the State, as a percentage of the sum of the net book value of tangible assets of all constituent entities of the MNE group located in jurisdictions that have a qualified UTPR in force for the fiscal year. It is calculated as follows:

$$((A / B) \times 50 \text{ per cent}) + ((C / D) \times 50 \text{ per cent})$$

where—

A is the total number of employees of all the constituent entities of the MNE group located in the State,

B is the total number of employees of all constituent entities of the MNE group located in jurisdictions that have a qualified UTPR in force for the fiscal year,

C is the sum of the net book value of tangible assets of all constituent entities of the MNE group located in the State, and

D is the sum of the net book value of tangible assets of all constituent entities of the MNE group located in jurisdictions that have a qualified UTPR in force for the fiscal year.

(7) This subsection provides the basis for calculating the number of employees and allocation of tangible assets for the purposes of the UTPR calculations in subsections (1)(b) and (6):

- ***(7)(a)*** The number of employees of a constituent entity in a jurisdiction shall be the number of employees employed on a full-time equivalent basis located in that jurisdiction, including independent contractors provided that they participate in the ordinary operating activities of the constituent entity.

- The tangible assets of a constituent entity in a jurisdiction shall include the tangible assets of that constituent entity located in that jurisdiction but shall not include cash or cash equivalent, intangible assets, or financial assets. ***(7)(b)***
- A constituent entity that is a permanent establishment shall be allocated the employees whose payroll costs are included in the separate financial accounts of that permanent establishment as determined by section 111R(1) adjusted in accordance with section 111R(2) (which sets out the allocation of qualifying income or loss between a main entity and permanent establishment). ***(7)(c)***
- A constituent entity that is a permanent establishment shall be allocated the tangible assets included in the separate financial accounts of the permanent establishment as determined by section 111R (1) adjusted in accordance with section 111R (2). ***(7)(d)***
- The number of employees and the tangible assets allocated to the jurisdiction of a permanent establishment shall not be taken into account for the number of employees and the tangible assets, as the case may be, of the tax jurisdiction of the main entity. ***(7)(e)***
- The number of employees and the net book value of tangible assets held by an investment entity shall be excluded from the calculation of the UTPR percentage in respect of an MNE group located in the State. ***(7)(f)***
- The number of employees and the net book value of tangible assets of a flow-through entity shall be excluded from the calculation of the UTPR percentage in respect of an MNE group located in the State, unless they are allocated to permanent establishment, or, in the absence of a permanent establishment, to a constituent entity that is located in the jurisdiction where the flow-through entity was created. ***(7)(g)***

Where the UTPR top-up tax amount allocated to a jurisdiction under a qualified UTPR in a prior fiscal year has not resulted in the constituent entities of an 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, then: ***(8)***

- the UTPR percentage for that MNE group in respect of that jurisdiction shall be deemed to be zero, and ***(8)(a)***
- the number of employees and the net book value of tangible assets of the constituent entities of that MNE group which are located in that jurisdiction shall be excluded from the calculation of the UTPR percentage in respect of an MNE group located in the State. ***(8)(b)***

Subsection (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. ***(9)***

CHAPTER 3
Calculation of the qualifying income or loss

Overview

Chapter 3 of ***Part 4A*** sets out the calculation of the qualifying income or loss for each constituent entity.

111O Determination of qualifying income or loss

(1) Introduces the definition of 'qualifying income or loss'. This is an important concept as it is the starting point for the calculation of the top-up tax. The definition provides that 'qualifying income or loss', in respect of a fiscal year, means the financial accounting net income or loss of a constituent entity for a fiscal year as adjusted in accordance with sections 111P, 111Q, 111R, 111S, 111W, 111AB, 111AM, 111AN, 111AQ, 111AR, 111AV and 111AW.

(2) This subsection applies where it is not reasonably practicable to determine the financial accounting net income or loss, 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. In such circumstances, 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 where—

- the financial accounts of the constituent entity are maintained based on that accounting standard, ***(2)(a)***
- the information contained in the financial accounts is reliable, and ***(2)b)***
- permanent differences greater than €1,000,000 that arise from the application of a particular principle or financial accounting standard to items of income or expense or transactions, which differs from the principle or financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, are adjusted to conform to the treatment required for that item under the financial accounting standard used in the preparation of the consolidated financial statements. ***(2)(c)***

(3) Where the consolidated financial statements of an ultimate parent entity are prepared using financial accounting standards other than an acceptable financial accounting standard, the consolidated financial statements of the ultimate parent entity shall be adjusted to prevent any material competitive distortion for the purpose of determining qualifying income or loss.

(4) 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 that item or transaction under International Financial Reporting Standards.

111P Adjustments to determine qualifying income or loss

Summary

In calculating the amount of top-up tax due with regards to a constituent entity, certain adjustments are required to the financial accounting net income or loss of that constituent entity.

Details

Definitions

Introduces definitions required for the purposes of determining qualifying income or loss. ***(1)***

'accounting functional currency' is the functional currency used to determine the constituent entity's financial accounting net income or loss;

'accrued pension expense' means the difference between the amount of pension liability expense (accrued expense) or income (accrued income) included in the financial accounting net income or loss in relation to a pension fund and the amount contributed by the constituent entity to a pension fund for the fiscal year. This is calculated as follows:

((Accrued Income or Accrued Expense) + (Contribution)) x (-1)

where—

Accrued Income is the pension liability income of a constituent entity accrued for the fiscal year and is expressed as a positive amount,

Accrued Expense is the pension liability expense of a constituent entity accrued for the fiscal year and is expressed as a negative amount, and

Contribution is the amount contributed by the constituent entity to a pension fund for the fiscal year and is expressed as a positive amount;

'additional tier one capital' means an instrument issued by a constituent entity pursuant to prudential regulatory requirements;

'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;

'asymmetric foreign currency gain or loss' is a foreign currency gain or loss of an entity whose accounting and tax functional currencies are different and that is:

a) included in the calculation of the taxable income or loss of a constituent entity and attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity,

b) included in the calculation of the financial accounting net income or loss of a constituent entity and attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity,

c) included in the calculation of the financial accounting net income or loss of a constituent entity and attributable to fluctuations in the exchange rate between a third foreign currency and the accounting functional currency of the constituent entity, and

d) attributable to fluctuations in the exchange rate between a third foreign currency and the tax functional currency of the constituent entity, irrespective of whether that third foreign currency gain or loss is included in the taxable income;

'excluded dividend' means, subject to subsection (14), a dividend or other distribution received or accrued in respect of an ownership interest, other than a dividend or other distribution received or accrued in respect of:

a) an ownership interest:

- that carried rights to less than 10% of the profits, capital, reserves or voting rights of that entity (hereinafter referred to as a "portfolio shareholding"), and
- is beneficially held by the constituent entity for less than one year at the date of the distribution,

or

b) an ownership interest in an investment entity that is subject to an election pursuant to section 111AV (i.e. an election to apply a taxable distribution method).

Where a dividend or other distribution is received or accrued in respect of an ownership interest which is a financial instrument that has both equity and debt components under the acceptable financial accounting standard, only the amounts received or accrued in respect of the equity component of the ownership interest shall be treated as an excluded dividend;

'excluded equity gain or loss' means a net gain or loss, included in the financial accounting net income or loss of the constituent entity, arising from:

a) changes in the fair value of an ownership interest, other than a portfolio shareholding,

b) an ownership interest that is included under the equity method of accounting, or

c) the disposal of an ownership interest, other than for the disposal of a portfolio shareholding;

'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—

a) periodically adjusts the carrying value of such property, plant or equipment to its fair value,

b) records these changes in value in other comprehensive income as gain or loss, and

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

'intra-group financing arrangement' means a financing arrangement whereby one or more constituent entities directly or indirectly provide credit to, or otherwise makes an investment in, one or more other constituent entities of the same group;

'net taxes expense' means, in respect of a constituent entity and a fiscal year, the net amount of:

a) 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 calculation,

b) deferred tax assets attributable to a loss accrued for the fiscal year,

c) qualified domestic top-up taxes accrued as an expense,

d) taxes arising pursuant to the rules of the Directive or, as regards third country jurisdictions, the OECD Model Rules, accrued as an expense,

e) disqualified refundable imputation taxes accrued as an expense, and

f) taxes accrued by an insurance company in respect of returns to policyholders to the extent that subsection (10)(a) applies in relation to those taxes (i.e. where the insurance company must exclude from the calculation of its qualifying income or loss any amount charged to policyholders for taxes paid by the insurance company in respect of returns to policyholders),

in the calculation the financial accounting net income or loss;

'policy disallowed expense' means, in respect of a fiscal year, an expense accrued by the constituent entity for all illegal payments, or fines and penalties that are equal to or greater than €50,000 or an equivalent amount in the functional currency in which the financial accounting net income or loss of the constituent entity is calculated, in the calculation of financial accounting net income or loss;

'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:

a) a correction of an error in the determination of the financial accounting net income or loss of the constituent entity in a previous fiscal year that affected the income or expenses that may be included in the calculation of the qualifying income or loss of the constituent entity in that previous fiscal year, except to the extent that section 111AB (post filing adjustments and tax rate changes) applies to such error correction, or

b) a change in accounting principles or policy that affected the income or expenses included in the calculation of the qualifying income or loss of the constituent entity.

'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;

'third foreign currency' is a currency that is not the constituent entity's tax functional currency or accounting functional currency;

Adjustments to net income or loss

(2) This section details the adjustments to be made to the financial accounting net income or loss of a constituent entity to determine the qualifying income or loss in respect of a fiscal year. The following should be adjusted for:

- net taxes expense, ***(2)(a)***
- excluded dividends, ***(2)(b)***
- excluded equity gains or losses, ***(2)(c)***
- included revaluation method gains or losses, ***(2)(d)***
- gains or losses from the disposal of assets and liabilities excluded pursuant to section 111AN (which sets out the rules regarding transfers of assets and liabilities generally), ***(2)(e)***
- asymmetric foreign currency gains or losses, ***(2)(f)***
- policy disallowed expenses, ***(2)(g)***
- prior period errors and changes in accounting principles, ***(2)(h)***
- accrued pension expenses, and ***(2)(i)***
- the net amount of the additions and reductions to qualifying income for the fiscal year as set out in section 111W (which sets out rules regarding the equity investment inclusion election and qualified flow-through tax benefits). ***(2)(j)***

Stock-based compensation expenses

This subsection sets out the treatment of expenses related to stock-based compensation when calculating qualified income or loss. ***(3)***

A constituent entity may, on the making of an election by the filing constituent entity, substitute the amount of stock-based compensation allowed as a deduction in the calculation of its taxable income in place of the amount expensed in its financial accounts with regards to a cost or expense paid with stock-based compensation. ***(3)(a)***

Where a stock-option granted by a constituent entity expires without being exercised, the amount previously included as an expense in the calculation of its qualifying income or loss for all previous fiscal years in respect of that stock-option shall be included as additional income in the fiscal year in which that option has expired. ***(3)(b)***

Where the election referred to in paragraph (a) is made in a fiscal year after a fiscal year in which part of the amount of stock-based compensation expense of a transaction has been recorded in the financial accounts but before the exercise date, an amount equal to the difference between the total amount of stock-based compensation cost or expense that has been deducted in the calculation of its qualifying income or loss in those previous fiscal years and the total amount of stock-based compensation cost or expense that would have been deducted in the calculation of its qualifying income or loss in those previous fiscal years had the election been made in respect of those fiscal years shall be included in the calculation of the qualifying income or loss of the constituent entity for that fiscal year. ***(3)(c)***

The election referred to in paragraph (a) shall be made in accordance with section 111AAAD and shall apply to all constituent entities located in the same jurisdiction for the fiscal year in which the election is made and all subsequent fiscal years. ***(3)(d)***

Where the election referred to in paragraph (a) is withdrawn, the amount of unpaid stock-based compensation cost or expense deducted pursuant to the election that exceeds the financial accounting expense accrued shall be included in the calculation ***(3)(e)***

of the qualifying income or loss of the constituent entity in respect of the fiscal year in which the election is withdrawn.

Intra-group transactions

(4) This subsection provides for an adjustment for certain transactions between constituent entities of an MNE group when calculating qualified income or loss.

(4)(a) Where the constituent entities are located in different jurisdictions, the transactions shall be adjusted for the purposes of calculating qualifying income or loss so as to be the same amount and consistent with the arm's length principle for both constituent entities.

(4)(b) Where the constituent entities are located in the same jurisdiction, any loss from a sale or transfer of an asset between them shall be adjusted in the calculation of qualifying income or loss of the constituent entities based on the arm's length principle.

Marketable transferable tax credits

(5)(a)&(b) Qualified refundable tax credits and marketable transferable tax credits shall be treated as income and non-qualified refundable tax credits shall not be treated as income in the calculation of qualifying income or loss of a constituent entity for a fiscal year.

(5)(c) Where a qualified refundable tax credit or marketable transferable tax credit is related to the acquisition, or construction, of an asset and the constituent entity which has the benefit of the tax credit:

- has an accounting policy of reducing the carrying value of the asset in respect of such a tax credit, or
- recognises the tax credit as deferred income over the productive life of that asset,

then, the constituent entity concerned may follow the same accounting policy for the purposes of determining the qualifying income or loss of the constituent entity for a fiscal year.

Gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting

(6) This subsection sets out the allowable treatment of gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting when calculating qualified income or loss.

(6)(a) On the making of an election by 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 shall be determined on the basis of the realisation principle in the calculation of qualifying income or loss of a constituent entity, i.e. gains and losses are taken into account on a realised basis.

(6)(b) 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 calculation of the qualifying income or loss of a constituent entity for a fiscal year under paragraph (a).

(6)(c) The carrying value of an asset or a liability for the purpose of determining a gain or a loss under paragraph (a) shall be the carrying value adjusted for accumulated depreciation on the later of:

- the time the asset was acquired, or the liability was incurred, or
- the first day of the fiscal year in respect of which the election is made.

This election under this subsection shall be made in accordance with section 111AAAD and shall apply to all constituent entities located in a 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. ***(6)(d)***

Where the election is withdrawn in respect of a fiscal year, an amount equal to the difference between the fair value of the asset or liability, and the carrying value adjusted for accumulated depreciation of the asset or liability on the first day of the fiscal year in respect of which the withdrawal is made, shall either be included, if the fair value exceeds the carrying value adjusted for accumulated depreciation, or deducted, if the carrying value adjusted for accumulated depreciation exceeds the fair value, in the calculation of qualifying income or loss of the constituent entities in respect of that fiscal year. ***(6)(e)***

Disposal of local tangible assets to entities, other than entities who are members of the same group

This subsection sets out the treatment of the disposal of local tangible assets (i.e. immovable property located in the same jurisdiction as the entity) to entities, other than entities who are members of the same group, when calculating qualified income or loss. ***(7)***

On the making of an election by the filing constituent entity, the qualifying income or loss arising from the disposal of local tangible assets to entities other than entities who are members of the same group shall be adjusted. ***(7)(a)***

The net gain arising from the disposal of local tangible assets 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 in the fiscal year in which the election is made and in the four fiscal years prior to that fiscal year, hereinafter referred to as 'the five-year period'. ***(7)(b)***

The net gain referred to in paragraph (b) shall be offset against the net loss that has arisen in the earliest fiscal year of the five-year period in priority to later fiscal years, with any remaining net gain being offset against the net loss, if any, in subsequent fiscal years of the five-year period. ***(7)(c)***

Any amount of net gain remaining unrelieved after the application of paragraph (b) shall be spread evenly over the five-year period for the purpose of the calculation 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 in the fiscal year in which the election is made. ***(7)(d)***

The amount of net gain which is to be allocated to each constituent entity, shall be calculated as follows: ***(7)(e)***

$$NG \times (NGCE / NGCES)$$

where—

NG is the amount of net gain referred to in paragraph (d),

NGCE is the amount of the net gain from the disposal of local tangible assets of the constituent entity for the fiscal year in respect of which the election referred to in paragraph (a) is made, and

NGCES is the amount of the net gain from the disposal of local tangible assets of all constituent entities that have a net gain from the disposal of local tangible assets for the fiscal year in respect of which the election referred to in paragraph (a) is made.

Where no constituent entity (that has made a net gain from the disposal of local tangible assets in the fiscal year for which the election referred to in paragraph (a) is made) is located in the local tangible asset jurisdiction in a fiscal year that occurs during the 5year period, the residual amount of net gain referred to in paragraph (d) shall be allocated equally to each constituent entity in that jurisdiction in that fiscal year. ***(7)(f)***

Any adjustments made pursuant to this subsection for a fiscal year preceding the fiscal year in respect of which the election is made shall be subject to adjustments in accordance with section 111AF (which provides the rules for calculating additional top-up tax when there is a prior period adjustment). ***(7)(g)***

The election referred to in this subsection is an annual election in accordance with section 111AAAD. ***(7)(h)***

Intra-group financing

This subsection provides that any expense related to an intra-group financing arrangement shall not be taken into consideration in the calculation of qualifying income or loss of a constituent entity for a fiscal year where: ***(8)***

- the constituent entity is located in a low-tax jurisdiction or in a jurisdiction that would have been low-taxed if the expenses had not accrued to the constituent entity, ***(8)(a)***
- it is reasonable to assume that, over the expected duration of the arrangement, the arrangement will increase the amount of expenses taken into account for the calculation of the qualifying income of loss of that constituent entity, without resulting in a commensurate increase in the taxable income of the constituent entity providing the credit (the 'counterparty'), and ***(8)(b)***
- 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 to the counterparty. ***(8)(c)***

Elimination of income, expense, gains or losses from certain groups

This subsection allows an ultimate parent entity to elect to apply its consolidated accounting treatment to eliminate income, expense, gains or losses from transactions between constituent entities that are located in the same jurisdiction and included in a tax consolidation group, for the purpose of calculating the net qualifying income or loss of those constituent entities. ***(9)(a)***

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 withdrawal in the fiscal year in respect of which the election is made or withdrawn. ***(9)(b)***

For the purposes of this subsection, constituent entities are included in a tax consolidation group if under the law of a jurisdiction the income, expenses, gains ***(9)(c)***

and losses of those constituent entities may for tax purposes be aggregated, surrendered to each other or otherwise shared or transferred between them as a result of a connection between those constituent entities.

The election shall be made in accordance with section 111AAAD. ***(9)(d)***

Insurance Companies

An insurance company shall exclude from the calculation 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, and include 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. ***(10)(a)&(b)***

Additional tier one capital

Any amount that is recognised as an increase or decrease, as the case may be, in the equity of a constituent entity as a result of distributions made, received or due in respect of additional tier one capital shall be treated as an expense or income, as the case may be, in the calculation of its qualifying income or loss for that fiscal year. ***(11)(a)&(b)***

Treatment of financial instruments

A financial instrument issued by one constituent entity and held by another constituent entity in the same MNE group or large-scale domestic group shall be classified as debt or equity consistently for both the issuer and holder of the financial instrument and accounted for accordingly in the calculation of their qualifying income or loss. ***(12)(a)***

Where constituent entities in the same MNE group or large-scale domestic group have classified a financial instrument differently, the classification adopted by the issuer of the financial instrument shall be applied by the issuer and the holder of the financial instrument and accounted for accordingly in the calculation of their qualifying income or loss. ***(12)(b)***

Foreign exchange gains or losses

On the making of an election by a filing constituent entity, foreign exchange gains or losses included in a constituent entity's financial accounting net income or loss shall be treated as an excluded equity gain or loss to the extent that: ***(13)***

- such foreign exchange gains or losses are attributable to hedging instruments that hedge the currency risk in ownership interests other than portfolio shareholdings, ***(13)(a)***
- such foreign exchange gains or losses are recognised in other comprehensive income in the consolidated financial statements, and ***(13)(b)***
- the hedging instrument is considered an effective hedge under the acceptable or authorised financial accounting standard used in the preparation of the consolidated financial statements. ***(13)(c)***

Dividends from a portfolio shareholding

On the making of an election by the filing constituent entity, any dividend or other distribution received by the constituent entity with respect to a portfolio shareholding shall be included in the calculation of its qualifying income or loss for a fiscal year. ***(14)***

Movements in an insurance company's reserves

Where a movement in an insurance company's reserves economically matches an excluded dividend, net of any investment management fee, from a security held by the insurance company on behalf of a policyholder, the movement in the insurance reserves shall not be allowed as an expense in the computation of the constituent entity's qualifying income or loss. ***(15)(a)***

Where a movement in an insurance company's reserves is related to an excluded dividend or an excluded equity gain or loss from a security held by the insurance company on behalf of a policyholder, it shall not be allowed as a deduction in the computation of the constituent entity's qualifying income or loss. ***(15)(b)***

Debt release

On the making of an election, the amount of a debt release included in the financial accounting net income or loss of a constituent entity shall be excluded from the calculation of the constituent entity's qualifying income or loss, where the debt release: ***(16)***

- is undertaken under statutorily provided insolvency or bankruptcy proceedings, that are supervised by a court or other judicial body in the relevant jurisdiction or where an independent insolvency administrator is appointed, ***(16)(a)***
- arises pursuant to an arrangement where one or more creditors is a person not connected with the debtor, and it is reasonable to assume that the debtor would be insolvent within 12 months but for the release of the debt under the arrangement, or ***(16)(b)***
- subject to subsection (17) and where paragraph (a) or (b) do not apply, occurs when the debtor's liabilities are in excess of the fair market value of its assets determined immediately before the debt release. ***(16)(c)***

An amount of a debt release shall only be excluded from the calculation of the constituent entity's qualifying income or loss in accordance with subsection (16)(c) with respect to debts owed to a creditor that is a person that is not connected with the debtor and only to the extent of the lesser of: ***(17)***

- the excess of the debtor's liabilities over the fair market value of its assets determined immediately before the debt release, or ***(17)(a)***
- the reduction in the debtor's attributes under the tax laws of the debtor's jurisdiction resulting from the debt release. ***(17)(b)***

111Q International shipping income exclusion

Summary

The international shipping industry has long been subject to industry-specific tax rules. On this basis there is an international shipping income exclusion contained within the GloBE Rules.

Details

Definitions

Introduces definitions required for the purposes of the exclusion of international shipping income from the scope of this Part. ***(1)***

'bareboat charter terms' has the same meaning as it has in section 697A, i.e. in relation to the charter of a ship, means the letting on charter of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;

'international shipping activities' means:

a) 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,

b) transportation of passengers or cargo by ship in international traffic under slot-chartering arrangements,

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

d) leasing of a ship used for the transportation of passengers of cargo in international traffic, on bareboat charter terms, to another constituent entity,

e) 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

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

'international shipping income' means the net income obtained by a constituent entity from international shipping activities, where the transportation is not carried out via inland waterways within the same jurisdiction;

'qualified ancillary international shipping activities' means

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

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

c) leasing and short-term storage of containers,

d) detention charges for the late return of containers, and

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

'qualified ancillary international shipping income' means:

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

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

International shipping income or qualified ancillary international shipping income

Where the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located then ***(2)***

the international shipping income and the qualified ancillary international shipping income of that constituent entity shall be excluded from the calculation of its qualifying income or loss.

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

The aggregated total qualified ancillary international shipping income of all constituent entities located in a jurisdiction shall not exceed 50 per cent of those constituent entities international shipping income. ***(4)***

Treatment of costs associated with international shipping activities and qualified ancillary international shipping activities

Costs incurred by a constituent entity that are directly attributable to its international shipping activities and qualified ancillary international shipping activities shall be allocated to such activities for the purpose of calculating the international shipping income and the qualified ancillary international shipping income of the constituent entity. ***(5)(a)***

Costs incurred by a constituent entity that indirectly result from its international shipping activities and qualified ancillary international shipping activities shall be deducted from the constituent entity's revenues from such activities to calculate the 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. ***(5)(b)***

All direct and indirect costs attributed to a constituent entity's international shipping income and qualified ancillary international shipping income in accordance with subsection (5) shall be excluded from the calculation of its qualifying income or loss. ***(6)***

111R Allocation of qualifying income or loss between main entity and permanent establishment

Summary

This section provides the rules to determine the amount of Financial Accounting Net Income or Loss that is to be allocated between the permanent establishment and Main Entity.

Details

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

This subsection sets out the method in which the qualifying income or loss should be allocated between a main entity and a permanent establishment. ***(1)***

Subject to subsection (2), where a constituent entity is a permanent establishment to which paragraph (a), (b) or (c) of the definition in section 111A(1) of permanent establishment applies, the financial accounting net income or loss of a permanent establishment shall be the net income or loss reflected in the separate financial accounts of that permanent establishment. ***(1)(a)***

Where a constituent entity is a permanent establishment that 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 ***(1)(b)***

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.

Adjustments required to the financial accounting net income or loss of a permanent establishment

(2) This subsection sets out the adjustments required to the financial accounting net income or loss of a permanent establishment:

(2)(a) The financial accounting net income or loss of a permanent establishment, to which paragraphs (a) or (b) of the definition of permanent establishment in section 111A(1) apply, 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 tax deductible expenses in that jurisdiction.

(2)(b) The financial accounting net income or loss of a permanent establishment, to which paragraph (c) of the definition of permanent establishment in section 111A(1) applies, shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with Article 7 of the OECD Model Tax Convention on Income and Capital.

(2)(c) The financial accounting net income or loss of a permanent establishment, to which in paragraph (d) of the definition of permanent establishment in section 111A(1) applies, shall be calculated based on:

- the amounts and items of income that are exempt from tax 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 that are attributable to those operations.

(3) Subject to subsection (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

Allocation of losses

(4) This subsection sets out the rules relating to the allocation of losses of a permanent establishment.

(4)(a) In so far as the main entity treats a qualifying loss of the permanent establishment as an expense in the calculation of its domestic taxable income in the jurisdiction it is located in and it 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, then that loss shall be treated as an expense of the main entity for the purposes of calculating its qualifying income or loss.

(4)(b) Qualifying income subsequently earned by the permanent establishment, after the qualifying loss of the permanent establishment was treated as an expense of the main entity for the purposes of calculating the qualifying income or loss of the main entity, shall be treated as income of the main entity (and not of the permanent establishment) up to the amount of the qualifying loss that was previously treated

as an expense of the main entity for the purposes of calculating the main entity's qualifying income or loss.

111S Allocation of the qualifying income or loss of a flow-through entity

Summary

This section determines how the qualifying income or loss of a flow-through entity is allocated.

Details

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 members of the MNE or large-scale domestic group and that hold their ownership interest in that flow-through entity directly or indirectly through one or more tax transparent entities, unless ***(1)***

- the flow-through entity is an ultimate parent entity, or
- the flow-through entity is held, directly or indirectly through one or more tax transparent entities by an ultimate parent entity that is a flow-through entity.

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. ***(2)***

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 the application of subsection (1) shall be allocated to that permanent establishment in accordance with section 111R (allocation of qualifying income between a main entity and permanent establishment). ***(3)***

Subject to subsection (5), where a tax transparent entity is not an ultimate parent entity, the financial accounting net income or loss of the flow-through entity which remains after the application of subsections (1) and (3) shall be allocated to its constituent entity-owners in proportion to their ownership interests that carry rights to profits in the flow-through entity. ***(4)***

Where a flow-through entity is a tax transparent entity that is an ultimate parent entity or a reverse hybrid entity, any financial accounting net income or loss of the flow-through entity which remains after the application of subsections (1) and (3) shall be allocated to the ultimate parent entity or the reverse hybrid entity. ***(5)***

Subsections (3), (4), and (5) shall be applied separately with respect to each ownership interest that carries rights to profits in the flow-through entity. ***(6)***

CHAPTER 4
Calculation of adjusted covered taxes

Overview

Chapter 4 of ***Part 4A*** sets out the rules that determine the calculation of adjusted covered taxes.

111T Covered taxes

The covered taxes of a constituent entity shall include: ***(1)***

- 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, ***(1)(a)***
- taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an eligible distribution tax system, ***(1)(b)***
- taxes imposed in lieu of a generally applicable corporate income tax, and ***(1)(c)***
- taxes levied by reference to retained earnings and corporate equity, including taxes on multiple components based on income and equity. ***(1)(d)***

The covered taxes of a constituent entity shall not include: ***(2)***

- the top-up tax accrued by a parent entity under a qualified IIR, ***(2)(a)***
- the top-up tax accrued by a constituent entity under a qualified domestic top-up tax, ***(2)(b)***
- taxes attributable to an adjustment made by a constituent entity as a result of the application of a qualified UTPR, ***(2)(c)***
- disqualified refundable imputation tax, and ***(2)(d)***
- taxes paid by an insurance company in respect of returns to policyholders. ***(2)(e)***

Covered taxes in respect of any net gain or loss arising from the disposal of local tangible assets in the fiscal year in which the election referred to in section 111P (7)(a) (in respect of local tangible assets) is made shall be excluded from the calculation of the covered taxes. ***(3)***

111U Adjusted covered taxes

Summary

This section provides for adjustments to covered taxes. Broadly, these include a mechanism to take into account taxes of a constituent entity that are not recorded in the tax line of the profit and loss statement and to exclude taxes that are not related to qualifying income or loss.

Details

Adjustments to covered taxes

In determining the adjusted covered taxes of a constituent entity for a fiscal year, the current tax expense accrued in the financial accounting net income or loss with respect to covered taxes for the fiscal year shall be adjusted by: ***(1)***

- the net amount of the additions and reductions to covered taxes for the fiscal year as set out in subsections (2) and (3), ***(1)(a)***
- the total deferred tax adjustment amount as set out in section 111X, ***(1)(b)***
- any increase or decrease in covered taxes recorded in equity or other comprehensive income relating to amounts included in the calculation of qualifying income or loss that will be subject to tax under local tax rules, and ***(1)(c)***
- the net amount of the additions and reductions to covered taxes for the fiscal year as set out in section 111W (which sets out rules regarding the equity investment inclusion election and qualified flow-through tax benefits). ***(1)(d)***

Additions to covered taxes

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

- any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts of the constituent entity, ***(2)(a)***
- any amount of qualifying loss deferred tax asset that has been used by the constituent entity pursuant to section 111Y(2) (qualifying loss election), ***(2)(b)***
- any amount of covered taxes relating to an uncertain tax position of the constituent entity previously excluded under subsection (3)(d) that is paid in the fiscal year, and ***(2)(c)***
- any amount of credit or refund in respect of a qualified refundable tax credit or marketable transferrable tax credit, that was accrued as a reduction to the current tax expense in the financial accounts of the constituent entity. ***(2)(d)***

Reductions to covered taxes

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

- the amount of current tax expense with respect to income excluded from the calculation of qualifying income or loss of the constituent entity under Chapter 3, ***(3)(a)***
- any amount of credit or refund in respect of a non-qualified refundable tax credit, or non-marketable transferrable tax credit, that was not recorded as a reduction to the current tax expense in the financial accounts of the constituent entity, ***(3)(b)***
- any amount of covered taxes refunded or credited to a constituent entity, other than a qualified refundable tax credit or marketable transferrable tax credit, that was not treated as an adjustment to current tax expense in the financial accounts of the constituent entity, ***(3)(c)***
- the amount of current tax expense of the constituent entity which relates to an uncertain tax position, ***(3)(d)***
- any amount of current tax expense of the constituent entity that is not expected to be paid within three years after the end of the fiscal year, ***(3)(e)***
- the amount received by the originator of a non-marketable transferrable tax credit in exchange for the credit, ***(3)(f)***
- any excess received by the purchaser of the face value of a non-marketable transferrable tax credit over its purchase price in proportion to the amount of the credit used to satisfy its liability for a covered tax, and ***(3)(g)***
- the amount of any gain received by the purchaser on the transfer of a non-marketable transferrable tax credit provided the transfer occurs during the fiscal year concerned. ***(3)(h)***

Other provisions relating to calculation of adjusted covered taxes

Where an amount of covered tax is described in more than one of subsection (1), (2) or (3), the current tax expense shall only be adjusted once in the calculation of adjusted covered taxes of a constituent entity for a fiscal year. ***(4)***

Subsection (6) applies 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 less than zero, and less than an amount equal to the net qualifying loss multiplied by the minimum tax rate (in this section referred to as the "expected adjusted covered taxes"). ***(5)(a)&(b)***

Subject to subsection (9), an amount calculated as the difference between the amount of adjusted covered taxes of a jurisdiction for a fiscal year, and the amount of expected adjusted covered taxes of a jurisdiction for a fiscal year, shall be treated as an additional top-up tax for the fiscal year. ***(6)(a)&(b)***

The amount of additional top-up tax referred to in subsection (6) shall be allocated to each constituent entity in the jurisdiction in accordance with section 111AF(3) (which deals with the allocation of additional top-up tax). ***(7)***

For the purposes of subsection (9), excess negative tax expense means: ***(8)(a)&(b)***

- an amount equal to the amount calculated under subsection (6) in respect of a jurisdiction for a fiscal year in which an MNE Group or large-scale domestic group has no qualifying income, or has a qualifying loss, for that jurisdiction, or
- an amount equal to the negative adjusted covered taxes in respect of a jurisdiction for a fiscal year in which an MNE Group or large-scale domestic group has qualifying income for that jurisdiction.

On the making of an election by a filing constituent entity, or where the top-up tax percentage for a jurisdiction for a fiscal year as calculated in accordance with section 111AD(2) (calculation of top-up tax) exceeds the minimum tax rate, an MNE Group or large-scale domestic group shall exclude the excess negative tax expense from its adjusted covered taxes for a jurisdiction in respect of the fiscal year and establish an excess negative tax expense carry-forward. ***(9)***

In each fiscal year, following a fiscal year in respect of which subsection (9) applied to the calculation of adjusted cover taxes for a jurisdiction, where an MNE group or large-scale domestic group has qualifying income and adjusted covered taxes for that jurisdiction, the MNE group or large-scale domestic group shall: ***(10)***

- reduce the adjusted covered taxes for the jurisdiction by the balance of the excess negative tax expense carry-forward but the amount of adjusted covered taxes after such reduction shall not be less than zero, and ***(10)(a)***
- reduce the balance of the excess negative tax expense carry-forward by the amount used to reduce the adjusted covered tax. ***(10)(b)***

Subsection (9) shall not apply to any excess negative tax expense attributable to an amount of a loss that is carried back and applied against income for prior taxable years for domestic tax purposes. ***(11)***

Where an MNE group or large-scale domestic group disposes of one or more constituent entities located in a jurisdiction in respect of which it has made the election in accordance with subsection (9), the excess negative tax expense carry-forward shall remain an attribute of that MNE group or large-scale domestic group, as the case may be. ***(12)(a)***

Where an MNE group or large-scale domestic group disposes of all constituent entities located in a jurisdiction and re-acquires or establishes constituent entities located in that jurisdiction in a subsequent fiscal year, the balance of the excess ***(12)(b)***

negative tax expense carry-forward shall be taken into account in determining the adjusted covered taxes for the jurisdiction beginning with that fiscal year.

111V Meaning of marketable transferable tax credit

Summary

This section provides that marketable transferable tax credits should be considered qualifying refundable tax credits for the purposes of this Part.

Details

Definitions

Introduces definitions required for the purposes of identifying a marketable transferable tax credit as referred to in sections 111P and 111U for the purposes of calculating qualifying income or loss and adjusted covered taxes respectively. ***(1)***

'marketable price floor' means 80 per cent of the net present value of the tax credit, where the net present value is determined based on the yield to maturity on a debt instrument issued by the government that issued the tax credit with equal or similar maturity (up to 5-year maturity) issued in the same fiscal year as the tax credit is transferred or if not transferred, the origination year;

'marketable transferable tax credit' means a tax credit, or portion of a tax credit, that:

a) can be used by the holder of the credit to reduce its liability for a covered tax in the jurisdiction that issued the tax credit,
b) meets the legal transferability standard, and
c) meets the marketability standard;

'non-marketable transferable tax credit' means a tax credit that:

a) if held by the originator, is transferable but is not a marketable transferable tax credit, or
b) if held by the purchaser, is not a marketable transferable tax credit;

'originator' means the constituent entity that engages in the activities that generates the tax credit concerned;

'**origination year'** means the fiscal year in which the eligibility criteria for a tax credit is met by a constituent entity.

For the purposes of the definition in subsection (1) of marketable transferable tax credit, a tax credit meets the legal transferability standard: ***(2)***

- in respect of the originator of the tax credit, where the originator may, under the laws governing the tax credit, transfer the tax credit to an entity that is not connected with the originator in the origination year, or within a period of 15 months beginning on the final date of the origination year, and ***(2)(a)***
- in respect of the purchaser of the tax credit, where the purchaser may, under the laws governing the tax credit, transfer the tax credit to an entity that is not connected with the purchaser in the fiscal year in which that purchaser purchased the tax credit. ***(2)(b)***

For the purposes of the definition in subsection (1) of marketable transferable tax credit, a tax credit meets the marketability standard: ***(3)***

- in respect of the originator of the tax credit, where the tax credit is transferred to an entity that is not connected with the originator within a period of 15 months beginning on the final date of the origination year for a price equal to, or exceeding, the marketable price floor, or where the tax credit is not transferred, or is transferred between entities connected with the originator, similar tax credits trade between entities that are not connected within a period of 15 months beginning on the final date of the origination year for a price equal to, or exceeding, the marketable price floor, and ***(3)(a)***
- in respect of the purchaser of the tax credit, where that purchaser acquired the credit from an entity that is not connected with that purchaser at a price equal to or exceeding the marketable price floor ***(3)(b)***

111W Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests

Definitions

'expected tax benefit ratio' means the ratio of the amount of tax credits, and the amount of any tax-deductible losses multiplied by the statutory tax rate applicable to the owner of the qualified ownership interest, that flowed through, or are received, in respect of the qualified ownership interest in the fiscal year to the total of such items that are expected to flow-through or be received in respect of the qualified ownership interest over the term of the investment; ***(1)***

'proportional amortisation method of accounting' means an accounting method whereby an investor adjusts its tax expense by the net benefit that flows through a qualified ownership interest each year, where:

a) the net benefit is determined based on the excess of the tax benefits that flow-through the qualified ownership interest during the year, over the proportional amount of the investment, and

b) the proportional amount of the investment is determined based on the total investment multiplied by the ratio of the tax benefits that flow-through the qualified ownership interest during the year to the total tax benefits expected to flow-through the qualified ownership interest over the term of the investment;

'qualified flow-through tax benefit' means any amount of tax credits, other than qualified refundable tax credits, and tax-deductible losses multiplied by the statutory tax rate applicable to the owner of a qualified ownership interest, that flow through a qualified ownership interest in a tax transparent entity to the extent that it reduces the owner's investment in the qualified ownership interest pursuant to subsection (6);

'qualified ownership interest' means an investment in a tax transparent entity that:

a) is treated as an equity interest for local tax purposes, or

b) would be treated as an equity interest under an authorised financial accounting standard in the jurisdiction in which the tax transparent entity operates,

where the assets, liabilities, income, expenses, and cash flows of the tax transparent entity are not consolidated on a line-by-line basis in the consolidated financial statements of the MNE group, and

(i) the total return with respect to that ownership interest, excluding tax credits other than qualified refundable tax credits, is, at the time the investment is entered into, expected to be less than the total amount invested by the owner of the ownership interest such that a portion of the investment will be returned in the form of tax credits other than qualified refundable tax credits, and

(ii) the investor has a bona-fide economic interest in the flow-through entity and is not protected from loss of its investment,

but shall not include an investment in a tax transparent entity where a jurisdiction only permits the benefits of a tax credit to be transferred through such investment when the entity that originates the tax credits or investor is subject to a qualified IIR or qualified UTPR.

Elections

On the making of an election by a filing constituent entity, a constituent entity which holds an ownership interest other than a qualified ownership interest shall: ***(2)***

- include in its qualifying income or loss the accounting gain, profit, or loss, adjusted as required by section 111P other than subsection 2(c) of that section (which relates to excluded equity gains or losses), with respect to any: ***(2)(a)***

  (i) fair value gains and losses and impairments on that ownership interest, where the owner is taxable on a mark-to-market basis or on the impairment on the ownership interest, and the tax consequences of the mark-to-market movements or impairments on ownership interest are reflected in income tax expense,

  (ii) fair value gains and losses and impairments on that ownership interest, where the owner is taxable on a realisation basis and its income tax expense includes deferred tax expense on the mark-to-market movement or impairments on the ownership interest,

  (iii) profit and loss attributable to that ownership interest, where the interest is in a tax transparent entity and the owner accounts for the interest using the equity method, or

  (iv) dispositions of that ownership interest which give rise to gains or losses that are included in the owner's domestic taxable income, excluding any gain fully offset, and the proportionate share of any gain partially offset, by any deduction or other similar relief on that gain,

  and

- notwithstanding section 111U(3)(a) (relating to adjustments to current taxes for taxes on excluded income) and section 111X(5)(a) (relating to adjustments to deferred taxes for taxes on excluded income), include all current and deferred tax expenses in respect of the amounts referred to in paragraph (a) in the calculation of its adjusted covered taxes, subject to the provisions of this Part. ***(2)(b)***

The election referred to in subsection (2) shall apply to all ownership interests, other than a portfolio shareholding within the meaning of section 111P(1), owned by constituent entities located in the jurisdiction with respect to which the election is made. ***(3)***

Subsections (5) and (9) shall apply to the qualified flow-through tax benefits that flow through a qualified ownership interest to which an election under subsection (2) applies. ***(4)***

Qualified flow-through tax benefits of qualified ownership interests

Subject to subsection (8), where this subsection applies, qualified flow-through tax benefits shall be added to the adjusted covered taxes of a constituent entity that is the direct or indirect owner (held via tax transparent entities that are not constituent entities of the MNE Group) of a qualified ownership interest, to the extent that the qualified flow-through tax benefit was treated as reducing tax expense accrued in the financial accounting net income or loss of the constituent entity. ***(5)***

Subject to subsection (8), a constituent entity's investment in a qualified ownership interest shall be treated as being reduced by receipts with respect to the qualified ownership interest in respect of: ***(6)***

- the amount of tax credits that have flowed through to the constituent entity, ***(6)(a)***
- the amount of any tax-deductible losses that have flowed through to the constituent entity multiplied by the statutory tax rate applicable to the constituent entity, ***(6)(b)***
- the amount of any distributions to the constituent entity, including returns of capital, or ***(6)(c)***
- the amount of proceeds from a sale of all or part of the qualified ownership interest, ***(6)(d)***

but no amount shall be treated as reducing the investment to the extent that it would reduce the investment below zero.

Subject to paragraph (b), any amount referred to in subsection (6)(a), (b), (c), or (d) that flows through, or are received in respect of, a qualified ownership interest, after the constituent entity's investment has been reduced to zero, shall be subtracted in the calculation of that constituent entity's adjusted covered taxes. ***(7)(a)***

An amount referred to in subsection (6)(c) or (d) or a qualified refundable tax credit, shall be subtracted in the calculation of a constituent entity's adjusted covered taxes only to the extent of the amount of any qualified flow-through tax benefits that flowed through the qualified ownership interest and that were treated as an addition in the calculation of that a constituent entity's adjusted covered taxes. ***(7)(b)***

Provides that where a constituent entity uses the proportional amortisation method of accounting for its investment in a qualified ownership interest, then it shall apply that method of accounting such that any of the amounts specified in subsection (6) that flow-through or are received in respect of a qualified ownership interest shall be treated as a reduction to the investment in the qualified ownership interest in proportion to the expected tax benefits ratio. ***(8)(a)***

The amounts specified in subsection (6) that flow-through or are received in respect of the qualified ownership interest in excess of the reduction to the investment in the qualified ownership interest pursuant to paragraph (a) shall not be included as a positive amount in the constituent entity's adjusted covered taxes. ***(8)(b)***

On the making of an irrevocable election by a filing constituent entity, where the entity concerned holds a qualified ownership interest but does not use the proportional amortisation method of accounting, it may apply subsection (8) as if it ***(9)***

used the proportional amortisation method of accounting in respect of its qualified ownership interest.

111X Total deferred tax adjustment amount

Definitions

Introduces definitions required for the interpretation of the treatment of deferred tax and related amounts for the purposes of this Part. ***(1)***

'aggregate deferred tax liability category' means a category of deferred tax liabilities determined in relation to two or more general ledger accounts, consistent with the chart of accounts used for the purposes of determining the financial accounting net income or loss of an entity, that fall under the same balance sheet account or sub-balance sheet account;

'disallowed accrual' means any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to an uncertain tax position or to distributions from a constituent entity;

'FIFO methodology' means the methodology set out in paragraphs 90.22 and 90.23 of section 1.3, paragraph 59 of the June 2024 Guidance;

'June 2024 Guidance' means the document entitled OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, published by the OECD on 17 June 2024;

'LIFO methodology' means the methodology set out in paragraphs 90.22 and 90.24 of section 1.3, paragraph 59 of the June 2024 Guidance;

'recapture exception accrual' means an amount of tax expense accrued in the financial accounts of a constituent entity that is attributable to changes in associated deferred tax liabilities in respect of:

a) cost recovery allowances on tangible assets,

b) the cost of a licence or similar arrangement from 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 unrealised net gains,

f) foreign currency exchange net gains,

g) insurance reserves and insurance policy deferred acquisition costs,

h) gains from the sale of tangible property located in the same jurisdiction as the constituent entity that are reinvested in tangible property in the same jurisdiction, or

i) additional amounts accrued as a result of accounting principle changes with respect to any item listed under subparagraphs (a) to (h);

'swinging account' means a general ledger account for which variances in accounting and tax rules result in a net deferred tax asset or a net deferred tax liability

at different points over the life of the assets or liabilities encompassed within the general ledger account;

'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 referenced in subsection (9) (i.e. five years within the end of the fiscal year in which it arose), and for which the filing constituent entity elects, in accordance with section 111AAAD, not to include in total deferred tax adjustment amount for that fiscal year.

Application

Subject to subsections (3) to (8), where the tax rate applied for the purposes of calculating the deferred tax expense in the financial accounts of a constituent entity for a fiscal year is: ***(2)***

- equal to or less than 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 section 111U(1)(b) shall be the deferred tax expense accrued in its financial accounts for a fiscal year with respect to covered taxes, or ***(2)(a)***
- greater than 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 section 111U(1)(b) shall be the deferred tax expense accrued in its financial accounts for a fiscal year with respect to covered taxes recalculated at the minimum tax rate. ***(2)(b)***

The total deferred tax adjustment amount of a constituent entity for a fiscal year shall be increased by any amount of disallowed accrual, unclaimed accrual and any amount of recaptured deferred tax liability determined in a preceding fiscal year in accordance with subsection (9), which has been paid during the fiscal year. ***(3)(a)&(b)***

Where, for a fiscal year, a loss deferred tax asset is not recognised in the financial accounts of a constituent entity 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. ***(4)***

Subject to subsection (6), the total deferred tax adjustment amount of a constituent entity for a fiscal year shall not include: ***(5)***

- the amount of deferred tax expense with respect to items excluded from the calculation of qualifying income or loss of the constituent entity under Chapter 3, ***(5)(a)***
- the amount of deferred tax expense with respect to disallowed accruals and unclaimed accruals, ***(5)(b)***
- the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset, ***(5)(c)***
- the amount of deferred tax expense arising from a re-measurement with respect to a change in the applicable domestic tax rate, and ***(5)(d)***
- the amount of deferred tax expense with respect to the generation and use of tax credits. ***(5)(e)***

Subsection (5)(e) shall not apply to an amount of deferred tax expense where a substitute loss carry-forward arises in accordance with paragraph (b). ***(6)(a)***

A substitute loss carry-forward shall arise where all of the following conditions are met: ***(6)(b)***

- the tax laws of a jurisdiction requires that foreign source income offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income,
- the constituent entity has a domestic tax loss in that jurisdiction that is fully or partially offset by foreign source income, and
- the tax laws in that jurisdiction allows foreign tax credits to be used to offset a tax liability in a subsequent year in relation to income that is included in the calculation of the constituent entity's qualifying income or loss.

Where all of the conditions set out in subsection (6) are met, the deferred tax expense attributable to the substitute loss carry-forward deferred tax asset shall be included in the constituent entity's total deferred tax adjustment amount in the fiscal year that it arises and in the fiscal years it reverses, but only to the extent that the foreign tax credit that gave rise to the substitute loss carry-forward deferred tax asset is used to offset a tax liability on income included in the constituent entity's qualifying income or loss. ***(7)(a)***

Subject to paragraph (c), the amount of substitute loss carry-forward deferred tax asset is equal to the lesser of: ***(7)(b)***

- the amount of the foreign tax credit in respect of the foreign source income inclusion that, under the tax law of the jurisdiction, is allowed to be carried forward from the taxable period in which the constituent entity had a tax loss, before taking into account any foreign source income, to a subsequent fiscal year, and
- the amount of the constituent entity's tax loss for the taxable period, before taking into account any foreign source income, multiplied by the applicable domestic tax rate.

Subsection (5)(a) (which provides for the exclusion of the amount of deferred tax expense with respect to items excluded from the calculation of qualifying income or loss of the constituent entity) and section 111AW(2) (regarding transitional deferred tax attributes) shall apply to the substitute loss carry-forward deferred tax asset. ***(7)(c)***

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, provided that the constituent entity can demonstrate that the deferred tax asset is attributable to a qualifying loss, it may be recalculated at the minimum tax rate in the same fiscal year and the total deferred tax adjustment amount shall be reduced accordingly. ***(8)(a)***

For the purposes of determining the total deferred tax adjustment amount for a fiscal year, the reversal of a loss deferred tax asset shall first be attributable to a loss deferred tax asset which arose in the most recent fiscal year until the balance of the loss deferred tax asset is exhausted by such amounts, and then, if necessary, to a loss deferred tax asset which arose in the next most recent fiscal year until the balance of the loss deferred tax asset is exhausted by such amounts, and so on for preceding fiscal years, i.e. the reversal of a loss deferred tax asset is attributable to losses arising in later years in priority to earlier years. ***(8)(b)***

Subject to subsection (10), a deferred tax liability that is not reversed or has not been paid within 5 years of the end of the fiscal year in which it arose shall be recaptured ***(9)***

to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity, and for this purpose:

- 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 year preceding the current fiscal year that has not reversed by the end of the last day of the current fiscal year, and ***(9)(a)***
- 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 fiscal year and the effective tax rate and top-up tax of that fiscal year shall be recalculated in accordance with section 111AF (additional top-up tax). ***(9)(b)***

Subject to paragraph (b) where a deferred tax liability is a recapture exception accrual, it shall not be recaptured in accordance with subsection (9). ***(10)(a)***

Where a constituent entity has a general ledger account or aggregate deferred tax liability category, as the case may be, that includes one or more deferred tax liabilities that are not a recapture exception accrual, the general ledger account or the entire aggregate deferred tax liability category, as the case may be, shall not be recaptured in accordance with paragraph (a). ***(10)(b)***

For the purposes of subsection (9), subject to subsections (12) and (13), categories of deferred tax liability for an entity shall be determined: ***(11)***

- on an item-by-item basis, where deferred tax liabilities related to each single asset or liability are tracked individually,
- on a general ledger account basis, where deferred tax liabilities related to all the assets or liabilities encompassed in a general ledger account are grouped and tracked as a single deferred tax liability category, or
- on an aggregate deferred tax liability category basis.

For the purposes of subsections (9) and (11), where categories of deferred tax liability are determined on an aggregate deferred tax liabilities category basis, deferred tax liabilities related to: ***(12)***

- non-amortisable intangible assets, including goodwill,
- amortisable intangible assets with an accounting life of more than 5 years, or
- receivables from, and payables to, a connected person,

as the case may be, shall only be aggregated up to the general ledger account and cannot be aggregated with other general ledger accounts.

For the purposes of subsections (9) and (11), an aggregate deferred tax liability category shall not include: ***(13)***

- any general ledger account that on a standalone basis would always generate only deferred tax assets, or
- deferred tax liabilities relating to swinging accounts.

For the purposes of subsection (9), a constituent entity may use the FIFO methodology to determine whether a deferred tax liability has reversed where: ***(14)(a)***

- the deferred tax liability is determined in relation to a single general ledger account,

- the deferred tax liability is determined in relation to an aggregate deferred tax liability category that consists solely of deferred tax liabilities determined in relation to general ledger accounts with a similar reversal trend, or
- the deferred tax liability and other deferred tax liabilities are aggregated within an aggregate deferred tax liability category without a similar reversal trend, but the constituent entity can demonstrate that the FIFO methodology nevertheless results in appropriate recapture of deferred tax liabilities to the extent their reversal trend extends beyond 5 years.

For the purposes of paragraph (a), deferred tax liabilities related to an aggregate deferred tax liability category are considered to have a similar reversal trend if such deferred tax liabilities fully reverse within a two-year period of each other. ***(14)(b)***

For the purposes of subsection (9), for any aggregate deferred tax liability category for which a constituent entity chooses not to use, or for which it cannot use, the FIFO methodology, the LIFO methodology shall be used to determine whether a deferred tax liability has reversed. ***(15)***

Unless otherwise expressly provided for under this Part, where under this Part the qualifying income or loss of a constituent entity related to an asset or a liability, as the case may be, is calculated based on a value of the asset or the liability (in this subsection referred to as the 'GloBE carrying value') which differs from the value of the asset or liability as recorded in the financial statements used to determine the qualifying income or loss of the constituent entity, the constituent entity shall, for the purposes of this section, determine: ***(16)***

- the deferred tax assets and liabilities relating to the asset or liability by reference to the GloBE carrying value, and
- the total deferred tax adjustment amount using a deferred tax expense determined:
  - (i) by reference to the deferred tax assets and liabilities calculated in accordance with paragraph (a), and
  - (ii) in accordance with the accounting standard used to calculate the deferred tax expense recorded in the financial statements used to determine the qualifying income or loss of the constituent entity.

111Y Qualifying loss election

Summary

This provision provides for the making of a qualifying loss election.

Details

Section 111X (which provides for the total deferred tax amount) shall not apply where a filing constituent entity makes a qualifying loss election for a jurisdiction. ***(1)(a)***

Where a qualifying loss election is made for a jurisdiction, a qualifying loss deferred tax asset shall be determined for the jurisdiction each fiscal year in which there is a net qualifying loss in that jurisdiction. ***(1)(b)***

For the purposes of paragraph (b), the qualifying loss deferred tax asset for a jurisdiction in respect of a fiscal year shall be calculated as follows: ***(1)(c)***

NQL x MTR

where—

NQL is the net qualifying loss for a fiscal year for the jurisdiction, and

MTR is the minimum tax rate.

A qualifying loss election shall not be made for a jurisdiction with an eligible distribution tax system as defined in section 111AS. ***(1)(d)***

An amount of qualifying loss deferred tax asset for a jurisdiction in respect of a fiscal year, shall be used in any subsequent fiscal year in which there is a net qualifying income for the jurisdiction, calculated as the lessor of: ***(2)***

(2)(a)

NQI x MTR

where—

NQI is the net qualifying income for the fiscal year for the jurisdiction, and

MTR is the minimum tax rate,

or

the amount of the qualifying loss deferred tax asset that is available. ***(2)(b)***

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

Where a qualifying loss election is withdrawn: ***(4)***

- any remaining qualifying loss deferred tax asset for a jurisdiction 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, and ***(4)(a)***
- the deferred tax assets and deferred tax liabilities for the jurisdiction, if any, will be taken into account as if they had been calculated in accordance with section 111X (total deferred tax adjustment amount) and 111AW (tax treatment of deferred tax assets and liabilities upon transition) for the prior fiscal year. ***(4)(b)***

Subject to paragraph (b), the qualifying loss election shall be made in the top-up tax information return for the first fiscal year in which the MNE group or large-scale domestic group has a constituent entity located in the jurisdiction for which the election is made. ***(5)(a)***

Where a transitional CbCR safe harbour election has been made in respect of a jurisdiction by the MNE group or large-scale domestic group, the qualifying loss election for that jurisdiction shall be made in the first top-up tax information return delivered after the transitional CbCR safe harbour election ceases to apply. ***(5)(b)***

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 section, the qualifying loss deferred tax asset shall be calculated by reference to the qualifying loss of the flow-through entity after reduction pursuant to section 111AQ(3) (i.e. the qualifying loss of a flow-through entity that is an ultimate parent entity shall be reduced by the amount of qualifying loss that is attributable to the ownership holder in the flow-through entity). ***(6)***

111Z Specific allocation of covered taxes incurred by certain types of constituent entities

Summary

This section provides for the allocation of covered taxes incurred by certain types of constituent entities.

Details

Definitions

Introduces the following definitions required to interpret the rules that set out how covered taxes are allocated to and from certain types of entities: ***(1)***

'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 assets of a type that produces income described in subparagraph (a) to (e).

Application

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 the qualifying income or loss of the permanent establishment. ***(2)***

A constituent entity-owner shall be allocated the amount of any covered taxes that are included in the financial accounts of a tax transparent entity and that relate to qualifying income or loss allocated to a constituent entity-owner in accordance with section 111S(4) (allocation of qualifying income or loss of a flow-through entity). ***(3)***

Subject to subsection (7), 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 the direct or indirect constituent entity-owners' share of the constituent entity's income. ***(4)***

Subject to subsection (7), a constituent entity that is a hybrid entity or ***(5)***

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

A constituent entity that has 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 distribution. ***(6)***

A constituent entity that was allocated covered taxes pursuant to subsection (4) or (5) in respect of passive income shall include such covered taxes in its adjusted covered taxes in an amount equal to the lesser of: ***(7)(a)***

- the covered taxes allocated in respect of such passive income,

or

TUTP x PI

where—

TUTP is the top-up tax percentage for the jurisdiction determined without regard to covered taxes incurred with respect to such passive income by the constituent entity-owner, and

PI is the amount of the constituent entity's passive income that is included under a controlled foreign company tax regime or a fiscal transparency rule.

Any covered taxes of the constituent entity-owner incurred with respect to such passive income as referred to in paragraph (a) that remains after the application of this subsection shall not be allocated under subsections (4) or (5). ***(7)(b)***

Where the qualifying income of a permanent establishment is treated as qualifying income of the main entity in accordance with section 111R(4), 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 the following: ***(8)***

QIPE x HTR

where—

QIPE is the amount of qualifying income of the permanent establishment which is treated as qualifying income of the main entity in accordance with section 111R(4), and

HTR is the highest tax rate on ordinary income in the jurisdiction where the main entity is located.

On the making of an election by a filing constituent entity in respect of a jurisdiction, the deferred tax expenses which otherwise would be allocated from a constituent entity located in the jurisdiction to another constituent entity under subsections (2), (4), (5) and (6), shall be excluded from the adjusted covered taxes of all constituent entities. ***(9)(a)***

Where the election referred to in paragraph (a) is made, the deferred tax expense with respect to passive income which would have been allocated to another entity under subsection (4) or (5) if subsection (7) were not applied is also excluded from the adjusted covered taxes of all constituent entities. ***(9)(b)***

The election referred to in paragraph (a) shall be made in accordance with section 111AAAD. ***(9)(c)***

111AA Rules required for blended CFC regime

Summary

This section outlines the process of allocating CFC taxes where the CFC regime blends the income and taxes of CFCs in different jurisdictions.

Details

Definitions

'applicable rate' means the rate at which foreign taxes on controlled foreign company income generally fully offset the controlled foreign company tax through the tax credit mechanism applicable to the controlled foreign company tax regime; ***(1)***

'attributable income of the entity' means the constituent entity-owner's proportionate share of the income of the constituent entity in the jurisdiction in which the constituent entity is located as determined under the blended CFC tax regime;

'blended CFC tax regime' means a controlled foreign company tax regime that aggregates income, losses, and creditable taxes of all the controlled foreign companies of a constituent entity-owner for the purposes of calculating the constituent entity-owner's tax liability under the regime and that has an applicable rate of less than 15%, but does not include a regime that takes into account a group's domestic income except that it may allow losses incurred by the constituent entity-owner to reduce the controlled foreign company income inclusion;

'jurisdictional ETR' means the effective tax rate for entities located in a jurisdiction as calculated under section 111AC without regard to any covered taxes under a controlled foreign company tax regime, but including income tax expense attributable to a qualified domestic top-up tax of a jurisdiction where the blended CFC tax regime allows a foreign tax credit for the qualified domestic top-up tax on the same terms as any other creditable covered tax.

Application

For fiscal years that begin on or before 31 December 2025 and end no later than 30 June 2027, for the purposes of section 111Z(4) (being the allocation of CFC taxes), allocable blended CFC tax shall be allocated from a constituent entity-owner to a constituent entity. The allocation shall be calculated as: ***(2)***

$$\frac{\text{blended CFC allocation key} \times \text{allocable blended CFC tax}}{\text{sum of all blended CFC allocation keys}}$$

Where-

allocable blended CFC tax is the amount of tax charge incurred by a constituent entity-owner under a blended CFC tax regime, and

blended CFC allocation key is calculated as follows:

$$\text{attributable income of the entity} \times (\text{applicable rate} - \text{jurisdictional ETR})$$

Where the jurisdictional ETR equals or exceeds the applicable rate or the minimum tax rate, the blended CFC allocation key for the constituent entity shall be deemed to be zero. ***(3)***

111AB Post-filing adjustments and tax rate changes

Summary

This section outlines the treatment of post-filing adjustments and tax rate changes.

Details

Subject to paragraph (b), 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. ***(1)(a)***

Subject to paragraph (d), where a constituent entity records a decrease in covered taxes for a previous fiscal year in its financial accounts that were included in the constituent entity's adjusted covered taxes for a previous fiscal year, the ETR and top-up tax for that fiscal year shall be recalculated in accordance with section 111AF by reducing adjusted covered taxes by the amount of the decrease in covered taxes. ***(1)(b)***

Where there is a decrease in covered taxes in accordance with paragraph (b), the qualifying income for that fiscal year and any previous fiscal years shall be adjusted accordingly. ***(1)(c)***

On the making of an election by the filing constituent entity in accordance with section 111AAAD, where there is an aggregate reduction of less than €1,000,000 in the adjusted covered taxes determined for the jurisdiction for a fiscal year in accordance with paragraph (b), the decrease in covered taxes may be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made. ***(1)(d)***

This subsection provides that, when a domestic tax rate is reduced below the minimum tax rate resulting in a deferred tax expense, that deferred tax expense is treated as an adjustment to the constituent entity's liability for covered taxes and such adjustment is made in accordance with subsection (1). ***(2)***

This subsection provides that, where a deferred tax expense was recorded in the financial accounts of a constituent entity at a rate lower than the minimum tax rate, and the applicable tax rate is increased in a subsequent fiscal year, the amount of deferred tax expense that results from such increase shall be treated, upon payment of the related tax, as an adjustment to a constituent entity's liability for covered taxes claimed for the previous fiscal year in which the deferred tax expense was recorded in accordance subsection (1). ***(3)(a)***

The adjustment under paragraph (a) shall not exceed an amount equal to the deferred tax expense recalculated at the minimum tax rate. ***(3)(b)***

Where more than €1,000,000 of the amount accrued by a constituent entity as a current tax expense, and included in adjusted covered taxes for a fiscal year, is not paid within 3 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 included as a covered tax shall be recalculated in accordance with section 111AF, by excluding such unpaid amount from the adjusted covered taxes. ***(4)***

CHAPTER 5

Calculation of the effective tax rate and the top-up tax

Overview

Chapter 5 of ***Part 4A*** sets out the computational rules for determining the ETR of jurisdictions in which the MNE or large-scale domestic group operates and for determining the top-up tax arising in respect of a low-tax jurisdiction. The calculation of top-up tax for a low tax jurisdiction also includes rules for determining the amount of income that is excluded from the GloBE Rules by virtue of the Substance-based Income Exclusion. ***Chapter 5*** of ***Part 4A*** also includes a De Minimis Exclusion for the Constituent Entities located in the same jurisdiction when their aggregated revenue and income does not exceed certain thresholds.

111AC Determination of effective tax rate

Summary

The ETR computation is a central element of the Pillar Two Rules. It is used both to determine whether in a fiscal year, the group is subject to a minimum level of tax on its income arising in a particular jurisdiction and, if the jurisdiction's ETR is below the Minimum Rate (i.e. the jurisdiction is a low-tax jurisdiction in respect of the group in that fiscal year) the amount of top-up tax that arises.

Details

(1) The effective tax rate of an MNE group or large-scale domestic group shall be calculated for each fiscal year, and each jurisdiction, provided that there is net qualifying income in the jurisdiction, as calculated pursuant to subsection (3).

(2) For the purpose of this Part, the effective tax rate of an MNE group or large-scale domestic group for a jurisdiction for a fiscal year, shall be calculated as:

ACJ / NQI

where-

ACJ is the aggregate adjusted covered taxes of all the constituent entities located in the jurisdiction, and

NQI is the positive amount, if any, of the net qualifying income of all the constituent entities located in the jurisdiction determined in accordance with subsection (3).

(3) The net qualifying income or loss of the constituent entities located in a jurisdiction for a fiscal year shall be calculated as follows:

AQI-AQL

Where-

AQI is the positive sum, if any, of the qualifying income of all constituent entities located in the jurisdiction for a fiscal year, and

AQL is the sum of the qualifying losses of all constituent entities located in the jurisdiction for a fiscal year.

(4) For the purposes of subsections (2) and (3), the adjusted covered taxes and net qualifying income or loss of constituent entities, that are investment entities, are excluded from the calculation of the effective tax rate in accordance with subsection (2) and the calculation of the net qualifying income in accordance with subsection (3).

(5) The effective tax rate of each stateless constituent entity shall be calculated, for each fiscal year, separately from the effective tax rate of all other constituent entities.

111AD Calculation of top-up tax

Details

(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 large-scale domestic group shall calculate a top-up tax in accordance with this section separately for each of its constituent entities that has qualifying income included in the calculation of net qualifying income of that jurisdiction for the fiscal year.

(2) The top-up tax percentage for a jurisdiction for a fiscal year, shall be the positive percentage point difference, if any, calculated as:

$$MTR - ETR$$

where-

MTR is the minimum tax rate, and

ETR is the effective tax rate of the jurisdiction for the fiscal year calculated in accordance with section 111AC.

(3) The jurisdictional top-up tax for a fiscal year shall be the positive amount, if any, calculated as follows:

$$(TUTP \times EP) + ATUJ - D$$

where-

TUTP is the top-up tax percentage of the jurisdiction for a fiscal year determined in accordance with subsection (2),

EP is the excess profit determined for the jurisdiction for the fiscal year in accordance with subsection (4),

ATUJ is the additional top-up tax for the jurisdiction for a fiscal year determined in accordance with section 111AF, and

D is the amount of qualified domestic top-up tax payable for the jurisdiction for the fiscal year.

(4) The excess profit for the jurisdiction for the fiscal year is the positive amount, if any, of the net qualifying income of all the constituent entities in the jurisdiction determined in accordance with section 111AC(3), minus the substance-based

income exclusion amount for the jurisdiction for the fiscal year. This is calculated as follows:

NQI – SBIE

where-

NQI is the positive amount, if any, of the net qualifying income of all the constituent entities in the jurisdiction determined in accordance with section 111AC(3), and

SBIE is the substance-based income exclusion amount for the jurisdiction for the fiscal year determined in accordance with section 111AE.

Subject to subsection (6), the top-up tax of a constituent entity for a fiscal year is calculated as follows: ***(5)***

JTUT x (QI / AQI)

where-

JTUT is the jurisdictional top-up tax for a fiscal year as determined by subsection (3),

QI is the qualifying income of the constituent entity for a jurisdiction for a fiscal year, and

AQI is the sum, if any, of the qualifying income of all the constituent entities for a fiscal year located in the jurisdiction.

Where the jurisdictional top-up tax for a fiscal year results from a recalculation to which section 111AF applies, and there is no net qualifying income in respect of the jurisdiction for the fiscal year, the top-up tax shall be allocated to each constituent entity using the calculation provided for in subsection (5), based on the qualifying income of the constituent entities in the fiscal year, for which the recalculations pursuant to section 111AF are performed. ***(6)(a)&(b)***

The top-up tax of each stateless constituent entity shall be calculated, for each fiscal year, separately from the top-up tax of all other constituent entities. ***(7)***

111AE Substance-based income exclusion

Summary

This section provides for a substance-based carve-out, based on payroll and tangible assets, to exclude a fixed return for substantive activities within a jurisdiction from the application of the Pillar Two Rules. The Substance-based Income Exclusion only affects those groups with operations in jurisdictions that are taxed below the Minimum Rate.

Details

Definitions

Introduces definitions relating to employee related expenses and tangible assets for the purposes of calculating the substance based income exclusion. ***(1)***

'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;

'eligible payroll costs' means employee compensation expenditures, including:

a) salaries,

b) wages,

c) other expenditures that provide a direct and separate personal benefit to the employee, including health insurance, pension contributions and stock-based compensation,

d) payroll and employment taxes, and

e) employer social security contributions;

'eligible tangible assets' means:

a) property, plant and equipment located in the jurisdiction,

b) natural resources located in the jurisdiction,

c) a lessee's right of use of tangible assets located in the jurisdiction, or

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

Application

This subsection provides for a substance-based income exclusion. The net qualifying income for a jurisdiction shall be reduced by an amount equal to the sum of the payroll carve-out calculated in accordance with subsection (3), and the tangible asset carve-out calculated in accordance with subsection (4), (referred to as the 'substance-based income exclusion amount') for each constituent entity located in the jurisdiction. ***(2)(a)***

Where a constituent entity chooses not to apply the substance-based income exclusion for the fiscal year an election may be made in accordance with section 111AAAD not to apply the SBIE. ***(2)(b)***

Payroll Carve Out

The payroll carve-out, referred to in subsection (2), of a constituent entity shall be equal to 5% of its eligible payroll costs for a fiscal year, which relate to eligible employees, who perform activities for the MNE group or large-scale domestic group in the jurisdiction in which the constituent entity is located. However, please note the percentage that will apply under the transitional relief for SBIE provided for under section 111AX. ***(3)(a)***

For the purposes of paragraph (a) no account shall be taken of eligible payroll costs which are capitalised and included in the carrying value of eligible tangible assets, or attributable to income that is excluded in accordance with section 111Q (international shipping income exclusion). ***(3)(b)***

For the purposes of paragraph (a): ***(3)(c)***

- an eligible employee shall be considered to perform activities for the MNE group or large-scale domestic group, in the jurisdiction in which the constituent entity is located, where the eligible employee is located within

that jurisdiction for greater than 50 per cent of their working time in a fiscal year, and

- a constituent entity shall include only the proportionate share of the eligible payroll costs for a fiscal year for an eligible employee in the calculation of the payroll carve-out where that eligible employee is located within the jurisdiction of the constituent entity employer for 50 per cent, or less, of their working time in that fiscal year.

Tangible Asset Carve Out

The tangible asset carve-out, referred to in subsection (2), of a constituent entity shall be equal to 5% of the carrying value of its eligible tangible assets for a fiscal year located in the jurisdiction in which the constituent entity is located. However, please note the percentage that will apply under the transitional relief for SBIE provided for under section 111AX. ***(4)(a)***

For the purposes of paragraph (a): ***(4)(b)***

- no account shall be taken of:
    (i) the carrying value of property, including land and buildings, that is held for sale, lease or investment, or
    (ii) the carrying value of tangible assets used to derive income that is excluded in accordance with section 111Q,
- an eligible tangible asset shall be considered to be located in the jurisdiction in which the constituent entity is located where the eligible tangible asset is located within that jurisdiction more than 50 per cent of the time in a fiscal year, and
- a constituent entity shall include only the proportionate share of the carrying value of the eligible tangible asset for a fiscal year in the calculation of the tangible asset carve-out where the eligible tangible asset is located in the jurisdiction of the constituent entity for 50 per cent, or less, of the time in that fiscal year.

For the purpose of subsection (4), and subject to subsection (11), the carrying value of eligible tangible assets shall be the average of the carrying value of eligible tangible assets at the beginning of the fiscal year, and the carrying value of eligible tangible assets at the end of the fiscal year, reduced by any accumulated depreciation, amortisation and depletion and increased by any amount attributable to the capitalisation of payroll expenses, as recorded for the purposes of preparing the consolidated financial statements of the ultimate parent entity. ***(5)***

Permanent Establishment

For the purpose of subsections (3) and (4) with regards to a constituent entity which is a permanent establishment, the eligible payroll costs and eligible tangible assets, as the case may be, shall be those that are included in its separate financial accounts in accordance with section 111R(1), provided that the eligible payroll costs and eligible tangible assets, are located in the same jurisdiction as the permanent establishment. ***(6)(a)***

The eligible payroll costs and eligible tangible assets shall not be taken into account in the calculation of eligible payroll costs and eligible tangible assets the main entity. ***(6)(b)***

Where the income of a permanent establishment was wholly or partially reduced pursuant to section 111S(1) (in relation to a flow-through entity) or section 111AQ(5) (in relation to a UPE that is a flow through entity) as the case may be, the eligible payroll costs and eligible tangible assets of such permanent establishment shall be reduced in the same proportion from the calculation of the substance-based income exclusion amount for a jurisdiction for a fiscal year under this section for the MNE group or large-scale domestic group. ***(6)(c)***

Flow-through entity

For the purpose of subsections (3) and (4), eligible payroll costs of eligible employees paid by a flow-through entity, and eligible tangible assets owned by a flow-through entity, that are not allocated under subsection (6), shall be allocated to: ***(7)(a)***

- the constituent entity-owners of the flow-through entity, in proportion to the amount allocated to them pursuant to section 111S(4), provided that the eligible employees and eligible tangible assets, as the case may be, are located in the jurisdiction of the constituent entity-owners, and
- the flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the calculation of the qualifying income of the flow-through entity pursuant to section 111AQ (1) and (2), provided that the eligible employees and eligible tangible assets, as the case may be, are located in the jurisdiction of the flow-through entity.

All eligible payroll costs and eligible tangible assets of a flow-through entity that are not allocated for a fiscal year under subsection 6 or paragraph (a) shall be excluded from the calculation of the substance-based income exclusion amount of the MNE group or large-scale domestic group. ***(7)(b)***

Stateless constituent entity

The substance-based income exclusion amount of each stateless constituent entity shall be calculated for each fiscal year separately from the substance-based income exclusion amount of all other constituent entities. ***(8)***

Investment entity

The substance-based income exclusion amount calculated under this section shall not include the payroll or tangible asset carve-outs of constituent entities that are investment entities in that jurisdiction. ***(9)***

Leasing

Subject to subjection (11), for the purposes of subsection (4) and notwithstanding section (4)(b)(i), a constituent entity that is the lessor of property, plant or equipment leased under an operating lease may calculate a tangible asset carve-out in respect of the leased property, plant or equipment in accordance with paragraph (b) where the property, plant or equipment is located in the same jurisdiction as the constituent entity. ***(10)(a)***

The amount of tangible asset carve-out referred to in paragraph (a) is an amount equal to the excess, if any, of the constituent entity's average carrying value of the property, plant or equipment concerned determined at the beginning and end of the fiscal year over the average amount of the lessee's right-of-use asset in respect of the property, plant or equipment determined at the beginning and end of the fiscal year. ***(10)(b)***

For the purposes of paragraph (b) and subject to paragraph (d), where the lessee is not a constituent entity, the lessee's right-of-use asset shall be equal to the undiscounted amount of payments remaining due under the operating lease, including any extensions that would be taken into account in determining a right-of-use asset under the financial accounting standard used to determine the qualifying income of the constituent entity. ***(10)(c)***

For the purposes of paragraph (c), the value of the lessee's right-of-use asset shall be deemed to be nil where the property, plant or equipment subject to the operating lease is regularly leased several times to different lessees during the fiscal year and the average lease period, including any renewals and extensions, with respect to lessee is 30 days, or less. ***(10)(d)***

For the purposes of subsections (5) and (10), where a lessor leases a part of an eligible tangible asset to a lessee whilst retaining the residual part of the asset for its own use, then the carrying value of the asset shall be allocated between the different uses of the asset on a just and reasonable basis. ***(11)***

Deductible dividend regime

Where an adjustment to the computation of qualifying income or loss of a constituent entity for a fiscal year has been made in accordance with section 111AR (UPE subject to a deductible dividend regime), the payroll carve-out for that constituent entity shall be reduced by the amount calculated in ***(12)(a)***

accordance with the formula:

$$A \times (B/C)$$

where-

A is the total eligible payroll costs of the constituent entity for the fiscal year,

B is the total qualifying income of the constituent entity excluded by section 111AR for the fiscal year, and

C is the total qualifying income of the constituent entity for the fiscal year as calculated under Chapter 3.

Where an adjustment to the computation of qualifying income or loss of a constituent entity for a fiscal year has been made in accordance with section 111AR then the tangible asset carve-out for that constituent entity shall be reduced by the amount calculated in accordance with the formula: ***(12)(b)***

$$A \times (B/C)$$

where-

A is the total eligible tangible assets of the constituent entity for the fiscal year,

B is the total qualifying income of the constituent entity excluded by section 111AR for the fiscal year, and

C is the total qualifying income of the constituent entity for the fiscal year as calculated under Chapter 3.

111AF Additional top-up tax

Summary

This provision provides instruction regarding the recalculation of the ETR and top-up tax for a previous fiscal year or fiscal years taking into account an adjustment to the adjusted covered taxes or the qualifying income (or both) for the year. When these provisions result in an amount of additional top-up it will be included in the fiscal year in which the relevant adjustment is made.

Details

Where, pursuant to section: ***(1)(a)***

- 111K(1) (where a Member State does not apply a qualified domestic top-up tax to collect any additional top-up tax arising in accordance with Article 29 of the Directive),
- 111P(7)(g) (where there is an adjustment made to a prior year relating to the gain on the sale of a local tangible asset),
- 111X(9) (where there is a recaptured deferred tax liability),
- 111AB(1)(b) and (4) (where there is a decrease in covered tax in a prior year or current taxes are not paid within 3 years), and
- 111AS(5) (where there is a deemed distribution recapture),

an adjustment to covered taxes or qualifying income or loss results in the re-calculations of the effective tax rate and top-up tax of the MNE group or large-scale domestic group for a jurisdiction for a prior fiscal year, the effective tax rate and top-up tax shall be recalculated in accordance with section 111AC, 111AD and 111AE.

Any top-up tax arising from the recalculation referenced in paragraph (a) shall be treated as an additional top-up tax for the purpose of section 111AD(3) for the fiscal year in which the relevant adjustment is made. ***(1)(b)***

Where for a jurisdiction and a fiscal year there is an additional top-up tax, and no net qualifying income, the qualifying income of a constituent entity located in that jurisdiction for the purposes of section 111I(2) (to calculate a parent entity's allocable share in the top-up tax), shall be an amount calculated as: ***(2)***

$$TUTA / MTR$$

Where-

TUTA is the top-up tax allocated to the constituent entity pursuant to subsections (5) and (6) of section 111AD, and

MTR is the minimum tax rate.

Where, pursuant to section 111U (5) and (6) (in relation to expected adjusted covered taxes on losses), an additional top-up tax is due for a jurisdiction, the qualifying income of a constituent entity located in that jurisdiction for the purposes of section 111I(2), shall be an amount calculated as ***(3)(a)***

TUTACE / MTR

Where-

TUTACE is the additional top-up tax allocated to the constituent entity, and

MTR is the minimum tax rate.

For the purpose of paragraph (a), the allocation of the additional top-up tax to a constituent entity shall be made pro-rata, to each constituent entity located in the jurisdiction, and calculated as: ***(3)(b)***

(QIQL x MTR) – ACT

Where-

QIQL is the qualifying income or loss of the constituent entity for the fiscal year,

MTR is the minimum tax rate, and

ACT is the adjusted covered taxes of the constituent entity for the fiscal year.

This additional top-up tax referenced in paragraph (a) 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. ***(3)(c)***

Where a constituent entity is allocated additional top-up tax in accordance with this section, section 111AD (5) or (6), such constituent entity shall be treated as a low-taxed constituent entity for the purposes of Chapter 2. ***(4)***

111AG *De minimis* exclusion

Summary

This section provides a jurisdictional exclusion for low tax constituent entities of an MNE Group when both (i) the aggregated income and (ii) the revenue of those entities do not exceed agreed monetary thresholds.

Details

This subsection provides an exclusion for the constituent entities of an MNE group or large-scale domestic group located in a jurisdiction other than stateless constituent entities or investment entities when both (i) the aggregated income and (ii) the revenue of those entities do not exceed agreed monetary thresholds. An election can be made so that the top-up tax due for a constituent entity in a jurisdiction shall be equal to zero for a fiscal year, if for that fiscal year: ***(1)***

- the average qualifying revenue of all constituent entities of an MNE group or large-scale domestic group located in that jurisdiction is less than €10,000,000, and ***(1)(a)***
- the average qualifying income or loss of all constituent entities of an MNE group or large-scale domestic group in that jurisdiction is a loss or is less than €1,000,000. ***(1)(b)***

For the purpose of subsection (1), the average qualifying revenue, or the average qualifying income or loss, as the case may be, shall be the average of the qualifying ***(2)(a)***

revenue, or the qualifying income or loss, of the constituent entities of an MNE group or large-scale domestic group located in the jurisdiction, for the fiscal year and the two preceding fiscal years.

If there are no constituent entities of an MNE group or large-scale domestic group with qualifying revenue, or qualifying income or loss, located in the jurisdiction in the first or second preceding fiscal years, or both, that fiscal year or years shall be excluded from the calculation of the average qualifying revenue, or average qualifying income or loss, as the case may be, of that jurisdiction. ***(2)(b)***

Subject to subsection (5), for the purposes of this section, the qualifying revenue of the constituent entities of an MNE group or large-scale domestic group located in a jurisdiction for a fiscal year shall be the sum of all the revenues of the constituent entities of an MNE group or large-scale domestic group located in that jurisdiction in arriving at the financial accounting net income or loss of the constituent entities for the fiscal year reduced, or increased, by any adjustment carried out pursuant to Chapter 3. ***(3)***

Subject to subsection (5), for the purposes of this section, the qualifying income or loss of the constituent entities of an MNE group or large-scale domestic group located in a jurisdiction for a fiscal year shall be the net qualifying income or loss of that jurisdiction as calculated pursuant to section 111AC(3). ***(4)***

The qualifying revenue and qualifying income or loss of stateless constituent entities or investment entities shall be excluded from the calculations of the average qualifying revenue and average qualifying income or loss of the constituent entities of an MNE group or large-scale domestic group for the purposes of subsection (1). ***(5)***

The election referred to in this section shall be made annually in accordance with section 111AAAD and shall apply to all constituent entities located in the same jurisdiction. ***(6)***

111AH Minority owned constituent entities

Summary

Special rules are included in this section for computing the ETR and top-up tax of minority-owned constituent entities. A minority-owned constituent entity is a constituent entity of the MNE Group where the UPE holds directly or indirectly 30% or less of its ownership interests. The entities are constituent entities because the UPE holds their Controlling Interests, despite the small ownership percentage.

Special rules are needed for minority–owned constituent entities because a UPE may have several minority-owned constituent entities with operations in the same jurisdiction but with different groups of owners that are not group entities. If the income and taxes of these different constituent entities were blended in the jurisdictional ETR computations, low-tax outcomes in one entity could result in a top-up tax for the jurisdiction, some of which would be borne by non-group entity owners of a different constituent entity.

Details

Definitions

Introduces definitions relating to the calculation of the top-up tax of minority-owned constituent entities. ***(1)***

'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 of the total ownership interests of the constituent entity;

'minority-owned parent entity' means a minority-owned constituent entity that holds, directly or indirectly, the controlling interests in another minority-owned constituent entity, except where the controlling interests in the former entity are held, directly or indirectly, by another minority-owned constituent entity;

'minority-owned subgroup' means a minority-owned parent entity, and its minority-owned subsidiaries;

'minority-owned subsidiary' means a minority-owned constituent entity whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.

Application

The calculation of the effective tax rate and the top-up tax for a jurisdiction shall apply as if each minority-owned subgroup was a separate MNE group or large-scale domestic group. ***(2)(a)***

The adjusted covered taxes and qualifying income or loss of members of a minority-owned subgroup shall be excluded from: ***(2)(b)***

(i) the determination of the residual amount of the effective tax rate for the jurisdiction of the MNE group or large-scale domestic group, calculated in accordance with section 111AC(2), and

(ii) the net qualifying income or loss for the jurisdiction of the MNE group or large-scale domestic group calculated in accordance with section 111AC(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 calculated on an entity basis. ***(3)(a)***

The adjusted covered taxes and qualifying income or loss of the minority-owned constituent entity referred to in paragraph (a), shall be excluded from: ***(3)(b)***

- the determination of the residual amount of the effective tax rate for the jurisdiction of the MNE group or large-scale domestic group, calculated in accordance with section 111AC(2), and
- the net qualifying income or loss for the jurisdiction of the MNE group or large-scale domestic group calculated in accordance with section 111AC(3).

This subsection shall not apply to a minority-owned constituent entity that is an investment entity. ***(3)(c)***

111AI Qualified domestic top-up tax safe harbour

Summary

A qualified domestic top-up tax may act as a safe harbour where it increases the MNE Group's tax liability on domestic excess profits to the minimum rate. This section provides for an election to apply a qualified domestic top-up tax safe harbour where the qualified domestic top-up tax implemented under the tax law of that jurisdiction is determined to have met the QDTT Safe Harbour standards under an OECD peer review process.

Details

Definitions

Introduces definitions relating to the qualified domestic top-up tax safe harbour as follows: ***(1)***

'OECD peer review process' means the review process developed, and undertaken under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, in respect of the domestic top-up tax of a jurisdiction;

'QDTT Safe Harbour' shall be construed in accordance with subsection (2);

'QDTT Safe Harbour standards' means the standards referred to as "Standards for a QDMTT Safe Harbour" set out in the document referred to in paragraph (e) of the definition, in section 111B, of 'OECD Pillar Two guidance', i.e. the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 17 July 2023;

'QDTT subgroup' means a group, constituent entity, joint venture or joint venture affiliate that is subject to a separate qualified domestic top-up tax calculation under the tax law of the jurisdiction implementing that qualified domestic top-up tax;

'specified return date' has the meaning assigned to it in section 111AAF.

Application

Notwithstanding section 111AD(3) (calculation of top-up tax), and subject to subsections (3) to (6), on the making of an election by the filing constituent entity in respect of a QDTT subgroup for a fiscal year, jurisdictional top-up tax in respect of the QDTT subgroup for the fiscal year concerned other than such portion of the jurisdictional top-up tax as comprises additional top-up tax determined in accordance with section 111AF(1) (b), shall be deemed to be zero (referred to as the QDTT Safe Harbour') where the qualified domestic top-up tax implemented under the tax law of that jurisdiction is determined to have met the QDTT Safe Harbour standards under an OECD peer review process in respect of that fiscal year. ***(2)***

Exclusions

The QDTT Safe Harbour for a jurisdiction shall not apply where a qualified domestic top-up tax in respect of that jurisdiction: ***(3)***

- is subject, directly or indirectly, to a challenge by the MNE group in judicial or administrative proceedings, or ***(3)(a)***
- has been determined as not assessable or collectible by the tax authority of the jurisdiction implementing the qualified domestic top-up tax, based on: ***(3)(b)***

(i) constitutional grounds,

(ii) other superior law, or

(iii) a specific agreement with the government of the jurisdiction limiting the MNE group's tax liability.

The QDTT Safe Harbour for a jurisdiction shall not apply in respect of an MNE group where:

- the ultimate parent entity of the MNE group is a flow-through entity and located in a jurisdiction where qualified domestic top-up tax is not charged under the laws of that jurisdiction on an ultimate patent entity that is a flow through entity, ***(4)(a)***
- the members of the MNE group include a flow-through entity that is required to apply an IIR top-up tax and it is located in the jurisdiction where qualified domestic top-up tax is not charged under the laws of that jurisdiction on that flow-through entity, ***(4)(b)***
- a transitional exclusion consistent with the rules laid down in Article 49 of the Directive (with regard to the initial phase of exclusion from the IIR and UTPR) applies to the qualified domestic top-up tax applied by that jurisdiction and that exclusion is not limited to where a qualified IIR does not apply in respect of the constituent entities located in that jurisdiction, or ***(4)(c)***
- the members of the MNE group include a securitisation entity located in the jurisdiction and qualified domestic top-up tax is not charged under the laws of that jurisdiction on the securitisation entity, except where the jurisdiction applies the qualified domestic top-up tax to a securitisation entity but includes provisions to impose any qualified domestic top-up tax liability in respect of the income of a securitisation entity on another constituent entity of the MNE group that is not a securitisation entity, or on the securitisation entity itself if the domestic top-up tax liability cannot be otherwise collected. ***(4)(d)***

The QDTT Safe Harbour for a jurisdiction shall not apply in respect of an investment entity, that is not an excluded entity, of an MNE group where qualified domestic top-up tax is not charged under the laws of that jurisdiction on that investment entity. ***(5)***

The QDTT Safe Harbour for a jurisdiction shall not apply in respect of a joint venture group where qualified domestic top-up tax is not charged under the laws of that jurisdiction on the members of the joint venture group. ***(6)***

Reporting

All relevant information concerning the application of the QDTT Safe Harbour shall be included in the top-up tax information return for the fiscal year concerned in accordance with section 111AAI. ***(7)***

111AJ Transitional CbCR safe harbour

Summary

The safe harbour described in this section is designed to provide transitional relief for MNE Groups in the initial years during which the Pillar Two Rules come into effect. This safe harbour seeks to ease the burden of the immediate compliance difficulties that MNEs will face in building systems to collect the data needed for undertaking full Pillar Two calculations by limiting the circumstances in which an MNE will be required to undertake such calculations to a smaller number of higher-risk jurisdictions. The design of the safe harbour is focused on bright-line rules that use readily available and easily verifiable data rather than seeking to achieve a high degree of precision by undertaking the full Pillar Two calculations for a jurisdiction. The transitional safe harbour operates through the use of simplified jurisdictional revenue and income information contained in an MNE's qualified CbCR report, and jurisdictional tax information contained in an MNE's qualified financial statements.

Details

Definitions

Introduces definitions relating to the transitional CbCR safe harbour.

'additional tier one capital' means an instrument issued by a constituent entity pursuant to prudential regulatory requirements;

'country-by-country report' has the same meaning as in section 891H and references in this section to 'CbC report' shall be construed accordingly;

'deduction without inclusion arrangement', 'duplicate loss arrangement' and 'duplicate tax recognition arrangement' have the meaning assigned to them, respectively, in subsection (17);

'hybrid arbitrage arrangement' means a deduction without inclusion arrangement, a duplicate loss arrangement or a duplicate tax recognition arrangement;

'investment entity jurisdiction' means the jurisdiction in which an investment entity is resident for the purposes of a CbC report;

'multi-parented MNE group' has the meaning assigned to it in section 111AP;

'net unrealised fair value loss' means the sum of all losses, as reduced by any gains, which arise from changes in fair value of ownership interests other than portfolio shareholdings included in an MNE group's profit or loss before income tax in respect of a jurisdiction for a fiscal year as reported in its qualified CbC report;

'OECD Report of 2015' has the same meaning as in section 891H;

'OECD CBCR Guidance' means the document entitled OECD (2024), Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13, OECD, Paris, published by the OECD in May 2024;

'profit or loss before income tax' means an MNE group's profit or loss before income tax in respect of a jurisdiction for a fiscal year as reported in its qualified CbC report;

'qualified CbC report' means, in respect of a jurisdiction, a CbC report prepared and provided using qualified financial statements for the jurisdiction;;

'qualified financial statements' means:

a) the accounts used to prepare the consolidated financial statements of the ultimate parent entity before any consolidation adjustments eliminating intra-group transactions,
b) separate financial statements of each constituent entity, joint venture or joint venture affiliate provided they are:
    - prepared in accordance with an acceptable financial accounting standard, or
    - prepared in accordance with an authorised financial accounting standard and the information contained in the financial statements is reliable,

    or
c) in the case of a constituent entity that is not included in an MNE group's consolidated financial statements on a line-by-line basis solely due to size or materiality grounds, the financial accounts of that constituent entity that are used for preparation of the MNE group's CbC report;

'qualified person' means:

a) in respect of an ultimate parent entity that is a flow-through entity, an ownership holder described in subsection (1) or (2) of section 111AQ, and
b) in respect of an ultimate parent entity that is subject to a deductible dividend regime, a dividend recipient described in subsection (3) of section 111AR;

'simplified covered taxes' means the aggregate income tax expense of all constituent entities, or joint venture and joint venture affiliates, as the case may be, of an MNE group in a jurisdiction for a fiscal year, as reported in the MNE group's qualified financial statements, excluding:

a) any tax that is not a covered tax in accordance with section 111T, and
b) uncertain tax positions reported in the MNE group's qualified financial statements;

'simplified ETR' has the meaning assigned to it in subsection (3);

'total revenue' means an MNE group's total revenues in respect of a jurisdiction for a fiscal year as reported in its qualified CbC report;

'transitional CbCR safe harbour' shall be construed in accordance with subsection (2);

'transition period' means any fiscal year beginning on, or before, 31 December 2026 but shall not include a fiscal year that ends after 30 June 2028;

'transition rate' means:

a) for fiscal years beginning during the calendar years 2023 and 2024, 15%;
b) for fiscal years beginning during the calendar year 2025, 16%; and
c) for fiscal years beginning during the calendar year 2026, 17%.

Application

Notwithstanding section 111AD(3) (calculation of top-up tax), and subject to subsections (4), (7) to (11), (14) and (18), on the making of an election by the filing constituent entity, the jurisdictional top-up tax for an MNE group in respect of a jurisdiction for a fiscal year during the transition period shall be deemed to be zero (referred to as the 'transitional CbCR safe harbour' where, in respect of that fiscal year; ***(2)***

- it has total revenue of less than €10,000,000, and profit or loss before income tax of less than €1,000,000, (the de minimis test), ***(2)(a)***
- it has an effective tax rate as determined under subsection (3), that equals or exceeds the transition rate for the fiscal year, or ***(2)(b)***
- subject to subsection (6), the MNE group reports profit or loss before income tax in the jurisdiction that is equal to or less than the substance-based income exclusion amount (referred to as the routine profits test) as calculated in accordance with section 111AE (SBIE) and 111AX (Transitional relief for SBIE) in respect of constituent entities that are both: ***(2)(c)***

  (i) resident in that jurisdiction for the purposes of the qualified CbC report, and

  (ii) located in that jurisdiction in accordance with section 111D.

The simplified ETR of an MNE group in respect of a jurisdiction for a fiscal year shall be equal to an amount expressed as a percentage calculated in accordance with the formula: ***(3)***

$$(A / B) \times 100$$

Where-

A is the simplified covered taxes, and

B is the profit or loss before income tax.

A net unrealised fair value loss shall be excluded from profit or loss before income tax if that loss exceeds €50,000,000 in respect of a jurisdiction for a fiscal year. ***(4)***

For the purposes of the de minimis test, where a constituent entity is held for sale, its revenue for a fiscal year shall be aggregated with the revenue of the MNE group reported in its qualified CbC report for that fiscal year in respect of the jurisdiction in which the constituent entity is resident. ***(5)***

For the purposes of subsection (2)(c), the routine profits test shall be deemed to be met in a jurisdiction where the MNE group reports profit or loss before income tax that is zero or less than zero. ***(6)***

The above tests at subsection (2) are applied to a joint venture and joint venture affiliates as if they were constituent entities of a separate MNE group. However, the profit or loss before income tax and total revenue of the joint venture or joint venture affiliates in respect of the fiscal year and the jurisdiction concerned must be those included in their qualified financial statements. ***(7)***

For the purposes of subsection (2), ***(8)***

- subject to subsection (9), where an ultimate parent entity of an MNE is a flow-through entity, e.g. a tax transparent partnership, then the profit or loss before income tax and any associated taxes of the ultimate parent entity are reduced to the extent that such amount is attributable to an ownership interest held by a qualified person. ***(8)(a)***
- where an ultimate parent entity is subject to a deductible dividend regime, then the profit or loss before income tax and any associated taxes of the ultimate parent entity are reduced to the extent that such amount is distributed in respect of an ownership interest held by a qualified person. ***(8)(b)***

Where an ultimate parent entity is a flow-through entity, the transitional CBCR safe harbour will not apply to that MNE group in respect of the jurisdiction where that ultimate parent entity is located unless all the ownership interests in the ultimate parent entity are held by qualified persons. ***(9)***

Where an MNE group has not made an election to apply the transitional CbCR safe harbour in respect of a jurisdiction for a fiscal year and there are constituent entities, joint ventures or joint venture affiliates, as the case may be, of the MNE group located in that jurisdiction for that fiscal year, then that MNE group shall not be permitted to elect to apply the transitional CbCR safe harbour in respect of that jurisdiction in any subsequent fiscal year. ***(10)***

The CbCR safe harbour shall not apply to ***(11)***

- a stateless constituent entity, ***(11)(a)***
- a multi-parented MNE group where a single qualified CbC report does not include the information of the combined groups, or ***(11)(b)***

- a jurisdiction with constituent entities that are subject to an eligible distribution tax system election made in accordance with section 111AS(1). ***(11)(c)***

Where the transitional CbCR Safe Harbour election is made in respect of a jurisdiction for a fiscal year: ***(12)***

- the transition year referred to in section 111AW(2) (regarding transitional deferred tax attributes) shall be the first fiscal year in which the CbCR safe harbour no longer applies to that jurisdiction; ***(12)(a)***
- the transition rule set out in section 111AW(3) (regarding deferred tax attributes relating to items of excluded income or expense) shall continue to apply to a constituent entity, joint venture or joint venture affiliates of an MNE group located in that jurisdiction for that fiscal year; ***(12)(b)***
- the transition year referred to in section 111AW(4) (regarding asset transfers in the transition period) for a transferring entity shall be the first fiscal year in which the CbCR safe harbour no longer applies to the transferring entity. ***(12)(c)***

For the purposes of subsection (2), an MNE group shall exclude from a jurisdiction any investment entity and top-up tax in respect of such entity shall be calculated in accordance with Chapter 7. ***(13)(a)***

However, an investment entity shall not be excluded where: ***(13)(b)***

- no election has been made to treat the investment entity as a tax transparent entity (111AU(1)) or to apply a taxable distribution method (111AV(1)), and
- all the constituent entity owners of that entity are resident in the investment entity jurisdiction.

Where paragraph (a) applies and the investment entity is excluded, an MNE group may apply the transitional CbCR safe harbour in respect of a jurisdiction having regard to constituent entities, joint venture or joint venture affiliates, as the case may be, that are not investment entities. ***(13)(c)***

Where paragraph (a) does not apply: ***(13)(d)***

- the profit or loss before income tax and total revenue of an investment entity, and any associated taxes, shall be reflected only in the jurisdiction of its direct constituent entity-owners in proportion to their ownership interest in such entity, and
- where a portion of the ownership interests of the investment entity is held by owners that are not members of the MNE group, the profit or loss before income tax attributable to such owners shall be excluded.

Reporting

All relevant information concerning the application of the transitional CbCR safe harbour shall be included in the top-up tax information return for the fiscal year in accordance with section 111AAI. ***(14)***

Purchase Price Accounting

Where purchase price accounting adjustments have been included in the financial accounts of a constituent entity that are used in the preparation of the consolidated financial statements of the ultimate parent entity before any consolidation adjustments eliminating intra-group transactions, or the separate financial ***(15)***

statements of the constituent entity, those financial accounts or separate financial statements shall not be considered qualified financial statements unless:

- the MNE group of which the constituent entity is a member has not filed a CbC report for a fiscal year beginning after 31 December 2022 that was based on financial information that excluded the purchase price accounting adjustments, except where the constituent entity was required by law or regulation to change its financial information to include purchase price accounting adjustments, and
- any reduction to the constituent entity's income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 has been added back to the profit or loss before income tax:
  - (i) for the purposes of applying the routine profits test, and
  - (ii) for the purposes of calculating the simplified ETR in accordance with subsection (3), but only if the financial accounts do not also have a reversal of deferred tax liability, or recognition or increase of a deferred tax asset, in respect of the impairment of goodwill.

Allocation of taxes

For the purpose of subsection (3): ***(16)***

- the income tax expense in respect of a permanent establishment's income in the jurisdiction in which the permanent establishment is located must be allocated solely to that jurisdiction and shall not be included in the calculation of the simplified ETR for the main entity's jurisdiction, and
- taxes paid under a controlled foreign company tax regime or paid by a main entity in relation to the qualifying income or loss of a permanent establishment and that are included in qualified financial statements of the constituent entity-owner or main entity, as the case may be, shall not be allocated for the purposes of determining the simplified ETR for the jurisdiction of the constituent entity-owner or main entity.

Anti-arbitrage provisions

A deduction without inclusion arrangement is an arrangement under which one constituent entity (in this paragraph referred to as the 'first-mentioned constituent entity') directly or indirectly provides credit or otherwise makes an investment in another constituent entity that results in an expense or loss in the financial statements of a constituent entity to the extent that: ***(17)(a)***

- (i) there is no commensurate increase in the revenue or gain in the financial statements of the first-mentioned constituent entity, or
- (ii) the first-mentioned constituent entity is not reasonably expected over the life of the arrangement to have a commensurate increase in its taxable income,

but an arrangement will not be a deduction without inclusion arrangement to the extent that the expense or loss is solely with respect to additional tier one capital.

A duplicate loss arrangement is an arrangement that results in an expense or loss being included in the financial statements of a constituent entity to the extent that: ***(17)(b)***

- I. the expense or loss is also being included as an expense or loss in the financial statements of another constituent entity, or

II. the arrangement gives rise to an amount that is deductible for the purposes of determining the taxable income of another constituent entity in another jurisdiction.

An arrangement shall not be a duplicate loss arrangement under subparagraph (i)(I) to the extent that the amount of the expense or loss is offset against revenue or income which is included in the financial statements of both constituent entities

An arrangement shall not be a duplicate loss arrangement under subparagraph (i)(II) to the extent that the amount of the expense or loss is offset against revenue or income which is included in both:

I. the financial statements of the constituent entity that is including the expense or loss in its financial statements, and

II. the taxable income of the constituent entity availing of the deduction against taxable income for the expense or loss.

A duplicate tax recognition arrangement is an arrangement that results in more than one constituent entity including part or all of the same income tax expense in its: ***(17)(c)***

I. adjusted covered taxes, or

II. simplified ETR for the purposes of applying the transitional CbCR safe harbour,

unless such arrangement also results in the income subject to the tax being included in the financial statements of each such constituent entity.

An arrangement shall not be a duplicate tax recognition arrangement if it arises solely because the simplified ETR of a constituent entity (in this subparagraph referred to as 'the first-mentioned constituent entity') does not require adjustments for income tax expenses which would be allocated to another constituent entity in determining the first-mentioned constituent entity's adjusted covered taxes.

Notwithstanding section 111A, a reference to constituent entity in this subsection and subsection (18) shall include: ***(17)(d)***

- a reference to any entity treated as a constituent entity for the purposes of this Part,
- a joint venture or joint venture affiliate, and
- any entity with qualified financial statements that has been taken into account for the purposes of the transitional CbCR safe harbour,

regardless of whether such entities are located in the same jurisdiction.

In this subsection, 'financial statements of a constituent entity' means the financial statements used to calculate that constituent entity's qualifying income or loss or the qualifying financial statements where that constituent entity is subject to the transitional CbCR safe harbour. ***(17)(e)***

For the purposes of this subsection, a constituent entity (in this paragraph referred to as 'the first-mentioned constituent entity') shall not be considered to have a commensurate increase in its taxable income to the extent that: ***(17)(f)***

- the amount included in taxable income of the first-mentioned constituent entity is offset by a tax attribute with respect to which a valuation adjustment or accounting recognition adjustment has been made or would have been made if the determination whether to make such a valuation adjustment or

accounting recognition adjustment were made without regard to the ability of the first-mentioned constituent entity to use the tax attribute with respect to any hybrid arbitrage arrangement entered into after 15 December 2022, or

- the payment that gives rise to the expense or loss also gives rise to a taxable deduction or loss of a constituent entity that is located in the same jurisdiction as the first-mentioned constituent entity without being included as an expense or loss in determining the profit or loss before income tax for that jurisdiction, including as a result of being an expense or loss in the financial statements of a flow-through entity which is owned by a constituent entity located in the jurisdiction of the first-mentioned constituent entity.

For the purposes of this subsection, an expense or loss shall not be considered to be included in the financial statements of a tax transparent entity to the extent that the expense or loss is included in the financial statements of its constituent-entity owners. ***(17)(g)***

For the purposes of determining whether the transitional CbCR safe harbour applies to an MNE group in respect of a jurisdiction for a fiscal year, in respect of any hybrid arbitrage arrangement entered into after 15 December 2022: ***(18)(a)***

(i) any expense or loss arising as a result of a deduction without inclusion arrangement or duplicate loss arrangement shall be excluded from the MNE group's profit or loss before income tax in respect of the jurisdiction, and

(ii) any income tax expense arising as a result of a duplicate tax recognition arrangement shall be excluded from the MNE group's income tax expense in respect of the jurisdiction.

For the purposes of this subsection, a constituent entity shall be considered to have entered into a hybrid arbitrage arrangement after 15 December 2022 if after that date: ***(18)(b)***

(i) the arrangement is amended or transferred,

(ii) the performance of any rights or obligations under the arrangement differs from the performance prior to 15 December 2022 including where payments are reduced or ceased with the effect of increasing the balance of a liability, or

(iii) there is a change in the accounting treatment with respect to the arrangement.

Where a duplicate loss arrangement arises under paragraph (b)(i)(I) of subsection (17), and all constituent entities that include the relevant expense or loss in their financial statements are located in the same jurisdiction, then an adjustment shall not be made under subparagraph (a)(i) with respect to the expense or loss in the financial statements of one of the constituent entities. ***(18)(c)***

Non-filing of CbC Report

An MNE group or large-scale domestic group that is not required to file a CbC report may apply the provisions of this section for a fiscal year where the top-up tax information return that is filed by the group for that fiscal year is completed using the data from qualified financial statements that would have been reported as total revenue and profit or loss before income tax in a qualified CbC report if the MNE group or large-scale domestic group were required to file a CbC report in accordance with the country-by-country reporting requirements in the jurisdiction where the ***(19)***

ultimate parent entity is located, or if that jurisdiction does not have such requirements, the amounts that would have been reported in accordance with the OECD Report of 2015 and the OECD CBCR Guidance.

111AK Transitional UTPR safe harbour

Summary

This section provides a transitional exclusion from the application of UTPR to a UPE and other group members located in the same jurisdiction as the UPE where the nominal rate of corporate income tax is at least 20%.

Details

Definitions

Introduces definitions relating to transitional UTPR safe harbour: ***(1)***

"corporate income tax rate" means the nominal rate of corporate income tax (including any sub-national corporate income taxes) generally imposed on income in a jurisdiction;

"transition period fiscal year" means a fiscal year not exceeding twelve months in duration that begins on, or before, 31 December 2025 and ends before 31 December 2026.

Application

For the purpose of section 111N(3) (calculation of the UTPR top-up tax amount), on the making of an election by the filing constituent entity, the top-up tax calculated for each low-taxed constituent entity of an MNE group or member of a joint venture group located in the jurisdiction of the ultimate parent entity of the MNE group or joint venture group concerned shall, where that jurisdiction has a corporate income tax rate that is equal to, or greater than, 20 per cent, be zero for a transition period fiscal year. ***(2)***

A filing constituent entity shall not make both a transitional CbCR safe harbour election and transitional UTPR safe harbour election in respect of the same jurisdiction for the same fiscal year. ***(3)***

111AKA Simplified calculations safe harbour

Summary

This section provides the rules for allowing a simplified income, revenue and tax calculation to be used by eligible groups for non-material constituent entities ("NMCE") to be applied under the framework of what is termed the "Simplified Calculations Safe Harbour".

Details

Definitions

Introduces definitions relating to simplified calculations safe harbour: ***(1)***

'CbC report' has the same meaning as in section 111AJ(1);

'non-material constituent entity' means a constituent entity, including its permanent establishments, that is a member of an MNE group or large-scale domestic group,

as the case may be, and that is not consolidated on a line-by-line basis in the ultimate parent entity's consolidated financial statements solely on size or materiality grounds, provided that:

a) the consolidated financial statements are consolidated financial statements to which paragraph (a) or (c), as the case may be, of the definition of that term in section 111A(1) applies,
b) the consolidated financial statements are audited by an external independent auditor and that auditor's opinion on the consolidated financial statements does not contain any objections or qualifications in relation to the entity not being consolidated on a line-by-line basis, and
c) in the case of an entity with a total revenue, as determined in accordance with the relevant CbC regulations in respect of the fiscal year, that exceeds €50,000,000, its financial accounts, that are used to complete the CbC report for the group of which the entity is a member, are prepared in accordance with an acceptable financial accounting standard or an authorised financial accounting standard;

'NMCE' means non-material constituent entity;

'NMCE simplified calculations' means the simplified income calculation, the simplified revenue calculation and the simplified tax calculation;

'OECD Report of 2015' and 'OECD CBCR Guidance' have the meaning assigned to them, respectively, in section 111AJ(1);

'relevant CbC regulations' means the Country-by-Country Reporting regulations of the jurisdiction in which the ultimate parent entity of an MNE group is located, or where the surrogate parent entity is located if a CbC report is not filed by the MNE group in the jurisdiction of the ultimate parent entity, but where an MNE group is not required to file a CbC report in any jurisdiction, it shall mean the OECD Report of 2015 and the OECD CBCR Guidance;

'simplified income calculation' means the qualifying income or loss of an NMCE is equal to the total revenue as determined in accordance with the relevant CbC regulations in respect of the fiscal year;

'simplified revenue calculation' means the qualifying revenue of an NMCE is equal to the total revenue as determined in accordance with the relevant CbC regulations in respect of the fiscal year;

'simplified tax calculation' means the adjusted covered taxes of an NMCE is equal to its current year income tax accrued as determined in accordance with the relevant CbC regulations in respect of the fiscal year;

'surrogate parent entity' means a constituent entity appointed by an MNE group as a sole substitute for the ultimate parent entity, to file a CbC report on behalf of the MNE group.

(2) Subject to subsection (3), notwithstanding section 111AD(3) (Calculation of top-up tax), on the making of an election by the filing constituent entity, the jurisdictional top-up tax calculated for a jurisdiction for a fiscal year, other than additional top-up tax for a jurisdiction for a fiscal year determined in accordance with section 111AF (Additional top-up tax), shall be deemed to be zero where the MNE group or large-scale domestic group, as the case may be, meet the requirements set out in subsection (4), (5) or (6).

An election shall not be made in respect of a jurisdiction under subsection (2) where there is no NMCE of the MNE group or largescale domestic group, as the case may be, located in the jurisdiction for the fiscal year. ***(3)***

The requirements of this subsection shall be met where there is no excess profit determined for a jurisdiction for a fiscal year in accordance with section 111AD(4) (Calculation of top-up tax). ***(4)***

The requirements of this subsection shall be met where: ***(5)***

a) the average qualifying revenue of all constituent entities of an MNE group or large-scale domestic group, as the case may be, located in a jurisdiction is less than €10,000,000, and
b) the average qualifying income or loss of all constituent entities of an MNE group or large-scale domestic group, as the case may be, in that jurisdiction is a loss or is less than €1,000,000,

where the average qualifying revenue and average qualifying income or loss of all constituent entities of an MNE group or large-scale domestic group are determined in accordance with section 111AG (De minimis exclusion).

The requirements of this subsection shall be met where the effective tax rate of a jurisdiction for a fiscal year calculated in accordance with section 111AC (Determination of effective tax rate) is equal to or greater than the minimum tax rate. ***(6)***

Notwithstanding sections 111O(1) (Determination of qualifying income or loss), 111U (Adjusted covered taxes) and 111AG(3) *(De minimis* exclusion), for the purposes of this section, a filing constituent entity may make an election to determine the qualifying income or loss, qualifying revenue and adjusted covered taxes of an NMCE for a fiscal year using the NMCE simplified calculations. ***(7)***

Where a main entity is not an NMCE then none of its permanent establishments shall be considered to be an NMCE but where a main entity is an NMCE then all of its permanent establishments shall be considered to be NMCEs. ***(8)(a)***

In the case of a permanent establishment that is an NMCE, the amount of the NMCE simplified calculations shall be determined under the relevant CbC regulations with respect to such permanent establishment. ***(8)(b)***

All relevant information concerning the application of the simplified calculations safe harbour shall be included in the top-up tax information return for the fiscal year in accordance with section 111AAI (Top-up tax information return). ***(9)***

The elections referred to in subsections (2) and (7) shall be made in accordance with section 111AAAD (Elections). ***(10)***

CHAPTER 6
Corporate restructuring and holding structures

Overview

This Chapter contains special rules dealing with corporate restructurings (including mergers, acquisitions, and demergers) as well as addressing the application of the top-up tax rules to certain holding structures such as joint ventures and multi-parented MNE Groups.

111AL Application of consolidated revenue threshold to group mergers and demergers

Summary

This section provides for the application of the consolidated revenue threshold after a merger and a demerger. In the case of a merger, this section sets out special rules for measuring the consolidated revenue of the entities or Groups involved in the merger for purposes of the four-year revenue threshold test. In the case of a demerger, the section includes an additional rule that supplements the revenue threshold test.

Details

Definitions

Introduces definitions relating to the treatment of the consolidated revenue threshold in relation to mergers and demergers: ***(1)***

'merger' means any arrangement where:

- the controlling interest in the entities of all or substantially all of two or more separate groups are brought under the ownership of a single entity or group to form a single group, or
- the controlling interest in an entity that is not a member of any group is brought under the ownership of another entity or group to form a single group;

'demerger' means any arrangement where the entities of a group are separated into two or more groups that are no longer consolidated by the same ultimate parent entity in its consolidated financial statements.

Merger

This subsection applies where two or more groups merge into a single group. For the purposes of the consolidated revenue test, where 2 or more groups merge to form a single group in any of the 4 consecutive fiscal years immediately preceding a fiscal year, the revenue of the merged group shall be deemed to be greater than the consolidated revenue threshold (€750,000,000) 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 equal to or greater than the consolidated revenue threshold. ***(2)***

This subsection applies where an entity that is not a member of a group merges with an entity or a group and either the new member entity or the acquiring entity did not have consolidated financial statements in any of the last four consecutive fiscal years immediately preceding that fiscal year. The consolidated revenue threshold is deemed to be satisfied where the sum of the revenue included in each of their financial statements or consolidated financial statements for that fiscal year is equal to or greater than the consolidated revenue threshold (i.e., €750,000,000). ***(3)***

Demerger

This subsection applies where an MNE group demerges into two or more groups during a fiscal year. The consolidated revenue test shall be deemed to be satisfied by a demerged group: ***(4)***

- with respect to the first tested fiscal year ending after the demerger, where the demerged group has revenue recorded in the group's consolidated financial statements equal to or greater than €750,000,000 in that fiscal year, and ***(4)(a)***
- with respect to the second to fourth tested fiscal years ending after the demerger, where the demerged group has revenue recorded in the group's consolidated financial statements equal to or greater than €750,000,000 in at least two of the fiscal years following the year of the demerger. ***(4)(b)***

111AM Constituent entities joining and leaving MNE group or large-scale domestic group

Summary

This section applies when an acquisition or disposition of a controlling interest in a constituent entity takes place during the fiscal year. This section includes provisions that apply in the fiscal year the entity leaves or joins the group (i.e. the acquisition year) as well as rules that apply for the purposes of determining the ongoing tax attributes of an entity that joins the group in the years following the acquisition year. In relation to a target, it addresses the question of when the target is treated as joining or leaving a group and apportions its income and expenses, including its covered taxes, between the groups for the purposes of this Part.

Details

Where during a fiscal year (referred to as the 'acquisition year'), an entity ('target entity'): ***(1)***

a) becomes or ceases to be a constituent entity of an MNE group or of a large-scale domestic group as a result of a transfer of direct or indirect ownership interests in the target entity, or

b) becomes the ultimate parent entity of a new group,

the target entity shall be treated as a member of an MNE group or large-scale domestic group for the purposes of this Part 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.

This subsection provides certain rules for the purpose of this Part, for an acquisition year. ***(2)***

- 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 entity that are included in the consolidated financial statements of the ultimate parent entity; ***(2)(a)***
- The qualifying income or loss and adjusted covered taxes of the target entity shall be based on the historical carrying value of its assets and liabilities. This also applies in each subsequent fiscal year; ***(2)(b)***
- The substance-based income exclusion is calculated by taking into account only the eligible payroll costs of the target entity that are reflected in the consolidated financial statements of the ultimate parent entity; ***(2)(c)***
- The substance-based income exclusion is calculated by taking into account the eligible tangible assets of the target entity adjusted, where applicable, in ***(2)(d)***

proportion to the period in which the target entity was a member of the MNE group or large-scale domestic group during the acquisition year.

(3) Subject to subsection (4), the deferred tax assets and deferred tax liabilities of a target entity 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 held a controlling interest in the target entity when such assets and liabilities arose.

(4) Subsection (3) shall not apply to a qualifying loss deferred tax asset as referred to in section 111Y.

(5)(a) For the purposes of section 111X(9) (deferred tax liability recapture), where a deferred tax liability of a target entity has previously been included in its total deferred tax adjustment amount, it shall be treated as reversed by the disposing MNE group or large-scale domestic group and shall be treated as arising from the acquiring MNE group or large-scale domestic group in the acquisition year.

(5)(b) Where paragraph (a) applies, any subsequent reduction of covered taxes pursuant to section 111X(9) shall have effect in the year in which the amount is recaptured.

(6) This subsection deals with the situation in which the target entity is a parent entity and a member of two or more MNE groups or large-scale domestic groups. The target entity is required to apply the provisions of this Part as a parent entity separately to its allocable share of the top-up tax of low-taxed constituent entities determined for each MNE group or large-scale domestic group.

(7) Notwithstanding subsections (1) to (6), where the jurisdiction in which the target entity is located, or in the case of a tax transparent entity the jurisdiction in which the assets are located:

- ***(7)(a)*** treats the acquisition or disposal of a controlling interest in the target entity in the same, or in a similar, manner as an acquisition or disposal of assets and liabilities; and
- ***(7)(b)*** imposes a covered tax on the seller based on the difference between:
  - (i) the tax basis, and
  - (ii) either:
    - i. the consideration paid in exchange for the controlling interest, or
    - ii. the fair value of the assets and liabilities,

then the acquisition or disposal of a controlling interest in a target entity shall be treated as an acquisition or disposal of assets and liabilities.

111AN Transfer of assets and liabilities

Summary

This section provides rules for the recognition or non-recognition of gain or loss on the disposition of assets and liabilities and for determining the carrying values of assets and liabilities acquired in an ordinary acquisition or disposition and an acquisition or disposition in connection with a Pillar Two reorganisation where the seller is not subject to tax on the gain (or loss), in whole or part.

Details

Definitions

Introduces definitions relating to the recognition or non-recognition of gains or losses arising on the disposition of assets and liabilities for the purposes of calculating qualifying income or loss, and for determining the carrying values of assets and liabilities following an acquisition. ***(1)***

'non-qualifying gain or loss' means the lesser of:

(a) the gain or loss of the disposing constituent entity arising in connection with a reorganisation that is subject to tax in the disposing constituent entity's location, and

(b) the gain or loss arising in connection with the reorganisation recorded in the disposing constituent entity's financial accounting net income or loss;

'reorganisation' means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction where;

(a) (i) the consideration for the transfer is, in whole or in significant part, equity interests issued by the constituent entity acquiring the assets and liabilities (in this section referred to as the "acquiring constituent entity") or by a person connected with the acquiring constituent entity,

(ii) in the case of a liquidation, the consideration for the transfer is the cancellation of the holding of the equity interests of the entity being liquidated, or

(iii) no consideration is provided, and the issuance of an equity interest would have no economic significance,

(b) the disposing constituent entity's gain or loss on those assets and liabilities is not subject to tax, in whole or in part, and

(c) where the tax laws of the jurisdiction in which the acquiring constituent entity is located require the acquiring constituent entity to calculate taxable income after the disposal or acquisition using the value of the assets for tax purposes of the disposing constituent entity under the tax laws of the jurisdiction in which the disposing constituent entity is located at the date of the transfer, adjusted for any non-qualifying gain or loss on the disposal or acquisition.

Application

Subject to subsections (4) and (5), a disposing constituent entity shall include the gain or loss arising from the disposal of its assets and liabilities in the calculation of its qualifying income or loss for a fiscal year. ***(2)***

Subject to subsections (4) and (5), an acquiring constituent 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 its ultimate parent entity. ***(3)***

Non-qualifying gain or loss

Subject to subsection (5), on the happening of a reorganisation the disposing constituent entity shall exclude any gain or loss arising on the disposal of its assets ***(4)(a)&(b)***

or liabilities from the calculation of its qualifying income or loss, and the acquiring constituent entity shall determine its qualifying income or loss on the basis of the carrying value of the acquired assets and liabilities of the disposing constituent entity upon disposal.

On the happening of a reorganisation that results in a non-qualifying gain or loss for the disposing constituent entity: ***(5)***

- the disposing constituent entity shall include the gain or loss on the disposal of its assets and liabilities in the calculation of its qualifying income or loss to the extent of the non-qualifying gain or loss, and ***(5)(a)***
- the acquiring constituent entity shall determine its qualifying income or loss after the acquisition of its assets and liabilities using the disposing constituent entity's carrying value of the acquired assets and liabilities upon disposal, as adjusted consistently with the tax law in the jurisdiction where the acquiring constituent entity is located to account for the non-qualifying gain or loss. ***(5)(b)***

Elections

On the making of an election by a filing constituent entity, where a constituent entity is required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes under the tax law in the jurisdiction where it is located then such constituent entity shall: ***(6)***

- subject to subsection (7), include in the calculation of its qualifying income or loss for a fiscal year an amount of gain or loss in respect of each of its assets and liabilities, which shall be: ***(6)(a)***
  - (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 (hereinafter referred to as the 'triggering event') and the fair value of the asset or liability immediately after the triggering event as determined under the tax law in the jurisdiction where it is located, and
  - (ii) decreased or increased as the case may be, by the non-qualifying gain or loss, if any, arising in connection with the triggering event,
- use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to calculate qualifying income or loss in the fiscal years ending after the triggering event. ***(6)(b)***

Where an election is made in accordance with subsection (6), a constituent entity may include: ***(7)***

- the net total of the amounts determined in accordance with subsection (6)(a) in its qualifying income or loss in the fiscal year in which the triggering event occurs, or ***(7)(a)***
- an amount equal to the net total of the amounts determined in accordance with subsection (6)(a) divided by 5 in the fiscal year in which the triggering event occurs, and in each of the immediate 4 subsequent fiscal years, but where the constituent entity leaves the MNE group or large-scale domestic group in a fiscal year within that period, the remaining amount shall be included in that fiscal year. ***(7)(b)***

111AO Joint ventures

Summary

This Section provides for the treatment of joint ventures under the Pillar Two Rules. As a joint venture is not controlled exclusively by one person, its accounting results are generally not consolidated with any of its owners on a line-by-line basis. Instead, the financial results of joint ventures are commonly reported by MNE groups using the equity method in their consolidated financial statements. Absent a special rule, this accounting treatment would exclude them from the scope of this Part because they do not meet the definition of a constituent entity, which requires an entity to be consolidated on a line-by-line basis.

Details

Definitions

Introduces definitions relating to joint ventures: ***(1)***

'joint venture' means an entity whose ownership interests are at least 50% held directly or indirectly by its ultimate parent entity and whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity but shall not include:

(a) an ultimate parent entity of an MNE group or of a large-scale domestic group to which a qualified IIR applies,

(b) an excluded entity,

(c) an entity whose ownership interests held by the MNE group or large-scale domestic group are held directly through an excluded entity 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) has substantially all of its income excluded from the calculation of qualifying income or loss in accordance with section 111P(2)(b) and (c) (excluded dividends and equity gains or losses),

(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.

'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 an entity referred to in paragraph (a);

'joint venture group' means a joint venture and its joint venture affiliates;

Application

For the purposes of this section, a permanent establishment referred to in paragraph (b) of the definition of 'joint venture affiliate' shall be treated as a separate joint venture affiliate. ***(2)***

Section 111E to section 111J (charging provisions in respect of the IIR top-up tax) shall apply to a parent entity that holds a direct or indirect ownership interest in a joint venture or a joint venture affiliate with respect to its allocable share of the top-up tax of that joint venture or joint venture affiliate for a fiscal year. ***(3)***

This Part shall apply to the calculation of the top-up tax of a joint venture group for a fiscal year as if the joint venture and its joint venture affiliates 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 of a joint venture group for a fiscal year shall be reduced by each parent entity's allocable share of the top-up tax under subsection (3) of each member of the joint venture group that is brought into charge under subsection (4), and any remaining amount of top-up tax shall be added to the total UTPR top-up tax amount pursuant to section 111N (3). ***(5)***

111AP Multi-parented MNE and large-scale domestic groups

Summary

This section provides for a situation in which two or more Groups prepare consolidated financial statements in which the financial performance of these Groups is presented as a single economic unit in accordance with a dual-listed arrangement or a stapled structure. The rules in this section ensure that this Part applies to these structures in the same way they would apply to a Group with single UPE with an appropriate allocation of top-up tax amongst the constituent entities of the combined MNE Group.

Details

Definitions

Introduces definitions relating to multi-parented MNE and large-scale domestic groups such as stapled structures and dual-listed arrangements. ***(1)***

'consolidated financial statements of the multi-parented MNE group or large-scale domestic group' means the combined consolidated financial statements referred to in the definitions of a 'stapled structure' or a 'dual-listed arrangement', prepared under an acceptable financial accounting standard, which is deemed to be the accounting standard of the ultimate parent entity;

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

(a) the ultimate parent entities agree to combine their business by contract alone,

(b) pursuant to contractual arrangements the ultimate parent entities will make distributions, with respect to dividends and in liquidation, to their shareholders based on a fixed ratio,

(c) the ultimate parent entities' activities are managed as a single economic unit under contractual arrangements while retaining their separate legal identities,

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

(e) the ultimate parent entities prepare consolidated financial statements:

(i) 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

(ii) that are required by a regulatory regime to be audited by an external independent auditor;

'multi-parented large-scale domestic group' means 2 or more groups where the ultimate parent entities enter into an arrangement that is a stapled structure or a dual-listed arrangement that does not include an entity or permanent establishment of either group subject to the arrangement which is located in a different jurisdiction with respect to the location of the other entities of the 2 groups;

'multi-parented MNE group' means 2 or more groups where the ultimate parent entities enter into an arrangement that is a stapled structure or a dual-listed arrangement that includes at least one entity or permanent establishment of either group subject to the arrangement which is located in a different jurisdiction with respect to the location of the other entities of the 2 groups;

'stapled structure' means an arrangement entered into by two or more ultimate parent entities of separate groups under which:

(a) 50 per cent or more of the ownership interests in the ultimate parent entities of the separate groups are:

(i) if they are listed, quoted at a single price, and

(ii) 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

(b) one of the ultimate parent entities prepares consolidated financial statements:

(i) 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

(ii) that are required by a regulatory regime to be audited by an external independent auditor.

Application

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. ***(2)***

For the purposes of subsection (2) an entity, other than an excluded entity, shall be treated as a constituent entity if it is consolidated on a line-by-line basis in the consolidated financial statements of the multi-parented MNE group or large-scale ***(3)***

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

(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 and in the application of this Part 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) This subsection provides that sections 111E to 111J (charging provisions in respect of the IIR top-up tax) shall apply to the parent entities and ultimate parent entities of the multi-parented MNE group or large-scale domestic group with respect to their allocable share of the top-up tax of the low-taxed constituent entities.

(6) This subsection provides that sections 111L to 111N and section 111AZ (charging provisions in respect of the UTPR top-up tax) shall apply to constituent entities of a multi-parented MNE group or large-scale domestic group, 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) This subsection provides that the ultimate parent entities of the multi-parented MNE group or large-scale domestic group are required to file the top-up tax information return in respect of the information concerning each of the groups that compose the multi-parented MNE group or large-scale domestic group in accordance with section 111AAI. There is an exception where a designated filing entity is appointed to file this information.

CHAPTER 7
Tax neutrality and distribution regimes

Overview

Chapter 7 of ***Part 4A*** contains special rules that are applicable to certain tax neutrality and distribution tax regimes. These special rules adapt the Pillar Two Rules to the unique features of these regimes.

111AQ Ultimate parent entity that is a flow-through entity

Summary

A jurisdiction's tax system may contain rules designed to achieve a single level of taxation on business income. These approaches to single-level taxation could result in unintended outcomes under the Pillar Two Rules when they apply to the UPE. This is because the ETR of the UPE itself will be nil (or very low), potentially resulting in a significant top-up tax charge even though the burden of taxation has not been avoided but rather is borne by the entity's owners. This section addresses this issue.

Details

General

(1) This subsection provides that where a flow-through entity is an ultimate parent entity, its qualifying income shall be reduced, for a fiscal year, by the amount of

qualifying income that is attributable to the holder of an ownership interest (in this section referred to as an 'ownership holder') where:

- the ownership holder is subject to tax on such income at a nominal rate of tax that equals or exceeds the minimum tax rate, for a taxable period that ends within 12 months after the end of that fiscal year, or ***(1)(a)***
- it can be reasonably expected that the sum of the covered taxes paid by the ultimate parent entity and other entities that are part of the tax transparent structure and taxes paid by the ownership holder on such income equals or exceeds an amount equal to that income multiplied by the minimum tax rate within 12 months after the end of the fiscal year. ***(1)(b)***

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

- an individual who is tax resident in the jurisdiction where the ultimate parent entity is located, and holds ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity; or ***(2)(a)***
- governmental entities, international organisations, non-profit organisations or pension funds who are tax resident in the jurisdiction where the ultimate parent entity is located, and hold ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity. ***(2)(b)***

Subject to paragraph (b), the qualifying loss of a flow-through entity that is an ultimate parent entity shall be reduced, for a fiscal year, by the amount of qualifying loss that is attributable to the ownership holder in the flow-through entity. ***(3)(a)***

Paragraph (a) shall not be applicable to the extent the ownership holder is not permitted to use the qualifying loss for the calculation of its taxable income. ***(3)(b)***

The covered taxes of a flow-through entity that is an ultimate parent entity shall be reduced in the same proportion as the amount of qualifying income of that flow-through entity is reduced in accordance with subsections (1) and (2). ***(4)***

Subsections (1) to (4) shall apply to a permanent establishment through which: ***(5)***

(a) a flow-through entity that is an ultimate parent entity wholly or partly carries out its business, or ***(5)(a)***

(b) the business of a tax transparent entity is wholly or partly carried out, where the ultimate parent entity's ownership interest in that tax transparent entity is held directly or through one or more tax transparent entities. ***(5)(b)***

111AR Ultimate parent entity subject to a deductible dividend regime

Summary

This section contains a set of rules for UPEs that are subject to a deductible dividend regime. These rules allow a deduction in the computation of the qualifying income or loss for deductible dividends.

Details

Definitions

Introduces definitions required for interpreting the rules that apply to entities that are subject to a deductible dividend regime: ***(1)***

'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 tax neutrality in respect of goods or services that are sold or acquired by its members through the cooperative;

'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;

'deductible dividend' means, with respect to a constituent entity that is subject to a deductible dividend regime, 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 a patronage dividend to a member of a cooperative;

'patronage dividend' means a distribution by a cooperative to its members;

'supply cooperative' means a cooperative that purchases goods or services and resells them to its members and whose profits are distributed to its members.

Application

(2) Subject to subsection (3), this subsection provides that an ultimate parent entity of an MNE group or of a large-scale domestic group shall reduce its qualifying income for the fiscal year by the amount that is distributed as a deductible dividend within 12 months after the end of the fiscal year. Such a reduction shall not exceed the amount of qualifying income for the fiscal year.

(3) A reduction of the ultimate parent entities qualifying income shall apply where:

- ***(3)(a)*** the recipient of the dividend is subject to tax in respect of that dividend for a taxable period that ends within 12 months after the end of the fiscal year at a nominal rate of tax that equals or exceeds the minimum tax rate,
- ***(3)(b)*** it can be reasonably expected that the aggregate amount of covered taxes paid by the ultimate parent entity and taxes paid by the recipient on such dividend equals or exceeds that income multiplied by the minimum tax rate, or
- ***(3)(c)*** the recipient of the dividend is:
  - (i) a natural person, and the dividend received is a patronage dividend from a supply cooperative,
  - (ii) 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 per cent or less of the profits and assets of the ultimate parent entity, or
  - (iii) 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) Provides a requirement that the covered taxes of an ultimate parent entity are reduced (other than the taxes for which a dividend deduction was allowed under a deductible dividend regime) in the same proportion as the amount of qualifying

income of the ultimate parent entity is reduced in accordance with subsections (2) and (3).

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, subsections (2), (3) and (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 subsections (2) and (3). ***(5)***

For the purposes of subsection (3), the recipient of a patronage dividend distributed by a supply cooperative shall be treated as subject to tax in respect of that dividend insofar as that dividend reduces a deductible expense or cost in the calculation of the recipient's taxable income or loss. ***(6)***

111AS Eligible distribution tax systems

Summary

This section allows certain distribution tax regimes to be accommodated within the structure of the Pillar Two Rules, subject to certain safeguards and recapture rules. A distribution tax regime is a tax system that generally imposes income tax on a corporation when the corporation's income is distributed or deemed to be distributed to its shareholders, rather than when it is earned.

Details

This subsection allows a filing constituent entity to make an annual election in respect of a constituent entity that is subject to an eligible distribution tax system to include the amount of deemed distribution tax, determined in accordance with subsection (2), in the adjusted covered taxes of that constituent entity for the fiscal year. An 'eligible distribution tax system' means a corporate income tax system that was in force on or before 1 July 2021, that imposes tax at a rate equal to, or in excess of, the minimum tax rate, and 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; ***(1)***

The amount of the deemed distribution tax shall be the lesser of: ***(2)***

- the amount necessary to increase the effective tax rate as calculated in accordance with section 111AC for the jurisdiction of the constituent entity referred to in subsection (1) for the fiscal year to the minimum tax rate, and ***(2)(a)***
- the amount of distribution tax that would have been due if the constituent entities located in that jurisdiction had distributed all of their income that is subject to the eligible distribution tax system during the fiscal year. ***(2)(b)***

A deemed distribution tax recapture account shall be established for each fiscal year in which an election was made. ***(3)(a)***

The amount of deemed distribution tax for the jurisdiction shall be added to the deemed distribution tax recapture account for the fiscal year in which it was established. ***(3)(b)***

At the end of each subsequent fiscal year, the outstanding balances in the deemed distribution tax recapture accounts established for prior fiscal years shall be reduced in chronological order by the taxes paid by the constituent entities during the fiscal ***(3)(c)***

year in relation to actual or deemed distributions, but such reduction shall not exceed the amount of the outstanding balances.

Any residual amount in the deemed distribution tax recapture accounts remaining after the application of paragraph (c) shall be reduced in chronological order by an amount equal to the net qualifying loss of a jurisdiction for the fiscal year multiplied by the minimum tax rate but such reduction shall not exceed the residual amount. ***(3)(d)***

Any residual amount of net qualifying loss multiplied by the minimum tax rate after the application of subsection (3)(d), for the jurisdiction, shall be carried forward to the following fiscal years and shall reduce in chronological order any residual amount in the deemed distribution tax recapture accounts remaining but such reduction shall not exceed the residual amount. ***(4)***

This subsection provides that 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 fiscal year in respect of which the deemed distribution tax recapture account was established and the effective tax rate and top-up tax for that fiscal year shall be recalculated in accordance with section 111AF. ***(5)***

Provides that only distribution taxes paid after all deemed distribution tax recapture accounts have been reduced to zero are treated as covered taxes for the fiscal year. ***(6)***

Where a constituent entity leaves the MNE Group or large-scale domestic group, or transfers substantially all of its assets 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 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 section 111AF. ***(7)(a)***

In determining the additional top up tax amount due for the jurisdiction, any additional top up tax amount that would be due pursuant to paragraph (a) shall be multiplied by the following ratio: ***(7)(b)***

$$A / B$$

Where-

A is the qualifying income of the constituent entity for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction, and

B is the net qualifying income of the jurisdiction determined in accordance with section 111AC(3) for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction

The election referred to above shall be made in accordance with section 111AAAD and shall apply to all constituent entities located in the same jurisdiction for the fiscal year in which the election is made. ***(8)***

111AT Determination of effective tax rate and top-up tax of investment entity.

Summary

Investment Entities that are the UPE are excluded from the operation of the Pillar Two Rules. However, the income of a controlled investment entity is consolidated with the MNE Group and brought within the Pillar Two Rules. This section provides a mechanism for calculating the ETR of a controlled investment entity that is not subject to an election to treat it as a tax transparent entity. The ETR and top-up tax of these entities is calculated on a standalone basis.

This section also seeks to ensure that minority investors are not subject to top-up tax on their interest in a low-taxed investment entity controlled by an MNE Group. It does so by calculating the ETR and top-up tax of a controlled investment entity only to the extent that the income is attributable to the MNE Group.

Details

General

Where a constituent entity of an MNE group or large-scale domestic group ***(1)***

- is an investment entity, ***(1)(a)***
- is not a tax transparent entity, and ***(1)(b)***
- has not elected to be treated as a tax transparent entity under section 111AU or an election to apply a taxable distribution method under section 111AV, ***(1)(c)***

the effective tax rate of such investment entity (referred to as a relevant investment entity) shall be calculated separately from the effective tax rate of the jurisdiction in which it is located.

The effective tax rate of the investment entity shall be equal to the investment entity's 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 that investment entity. ***(2)(a)***

Where more than one investment entity is located in a jurisdiction, their effective tax rate shall be calculated 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. ***(2)(b)***

The adjusted covered taxes of an investment entity referred to in subsection (1) shall be the sum of 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 section 111Z (specific allocation of covered taxes to certain types of entities), but shall 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. ***(3)***

The top-up tax of an investment entity referred to in subsection (1) shall be an amount determined by multiplying the top-up tax percentage of the investment entity (being a positive amount equal to the difference between the minimum tax rate and effective tax rate of such investment entity), by the sum of the qualifying income of the investment entity less the substance-based income exclusion (calculated for the ***(4)(a)***

investment entity as determined in paragraph (c)), and finally, from that amount is deducted the amount of qualified domestic top-up tax payable for the investment entity for the fiscal year.

$$(A \times (B-C)) - D$$

where—

A is the top-up tax percentage of the relevant investment entity, being a positive amount equal to the difference between the minimum tax rate and effective tax rate of the relevant investment entity,

B is the qualifying income of the relevant investment entity,

C is the substance-based income exclusion calculated for the relevant investment entity as determined in accordance with paragraph (c), and

D is the amount of qualified domestic top-up tax

Where more than one relevant investment entity of an MNE group or large-scale domestic group is located in a jurisdiction, the qualifying income or loss and substance-based income exclusion amounts of each relevant investment entity shall be combined to compute the top-up tax of all of the relevant investment entities. ***(4)(b)***

The substance-based income exclusion amount of a relevant investment entity shall be determined in accordance with subsections (1) to (7) and (10) to (12) of section 111AE, taking into account only eligible tangible assets and eligible payroll costs of eligible employees of the relevant investment entity. ***(4)(c)***

For the purposes of this section, 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 by taking into account only interests that are not subject to an election to treat an investment entity as a tax transparent entity under section 111AU or to apply a taxable distribution method under section 111AV. ***(5)***

111AU Election to treat investment entity as tax transparent entity

Summary

This section provides a five-year election to treat an investment entity as a tax transparent entity. The election is available to constituent entity-owners of investment entities that are subject to a mark-to-market or similar tax regime on investments in investment entities.

Details

General

On the making of an election by a filing constituent entity, a constituent entity that is an investment entity may be treated as a tax transparent entity for the purpose of this Part if: ***(1)***

- 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 interest in such entity, and ***(1)(a)***

- the tax rate applicable to the constituent entity-owner on the annual changes in the fair value of its ownership interest referenced in paragraph (a) equals or exceeds the minimum tax rate. ***(1)(b)***

Provides that a constituent entity that indirectly owns an ownership interest in an investment entity through a direct ownership interest in another 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 if it is subject to a fair market value or similar regime with respect to its direct ownership interest in the second mentioned investment entity. ***(2)***

The election referred to in this section shall be made in accordance with section 111AAAD. ***(3)***

Where the election is withdrawn, any gain or loss from the disposal of an asset or a liability held by the investment entity shall be determined on the basis of the fair market value of the asset or liability on the first day of the fiscal year the withdrawal is made. ***(4)***

111AV Election to apply taxable distribution method

Summary

This section introduces the taxable distribution method which reduces the exposure to top-up tax to the extent that the investment entity makes distributions of its income within a four-year period that are taxable in the hands of the recipients at or above the minimum rate.

Detail

General

Provides that an election may be made to apply a taxable distribution method (as detailed below) with respect to a constituent entity's ownership interest in an investment entity where the constituent entity-owner is not an investment entity, and the constituent entity-owner can be reasonably expected to be subject to tax on distributions from that investment entity at a tax rate that equals or exceeds the minimum tax rate. ***(1)***

Under the taxable distribution method: ***(2)***

- 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; ***(2)(a)***
- 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; ***(2)(b)***
- the constituent entity owner's proportionate share of the investment entity's undistributed net qualifying income arising in the third year preceding the fiscal year (the "tested year") is treated as qualifying income of that investment entity for the fiscal year and the amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top up tax of ***(2)(c)***

a low-taxed constituent entity for the fiscal year, i.e. if the qualifying income has not been distributed within a period of four years then it is treated as qualifying income of the investment entity; and

- 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 calculation of the effective tax rate in accordance with Chapter 5 and subsections (1) to (4) of section 111AT, except for the amount of covered taxes referred to above as creditable against the tax liability of the constituent entity-owner arising from the distribution of the investment entity. ***(2)(d)***

For the purpose of subsection (2)(c), 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 a tested year reduced by the amount, if any, of — ***(3)***

- the covered taxes of the investment entity, ***(3)(a)***
- 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 current fiscal year in which the ownership interest was held (hereinafter referred to as the "testing period"), ***(3)(b)***
- qualifying losses arising during the testing period, and ***(3)(c)***
- 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, ***(3)(d)***

but such reduction shall not exceed the amount of qualifying income and the undistributed net qualifying income of that investment entity shall not be reduced by:

(i) distributions or deemed distributions that already reduced the undistributed net qualifying income of that investment entity for a previous tested year, or

(ii) the amount of qualifying losses that already reduced the undistributed net qualifying income of that investment entity for a previous tested year.

Provides that a deemed distribution shall arise when a direct or indirect ownership interest in the investment entity is transferred to an entity that is not a member of the MNE group or large-scale domestic group and is equal to the share of undistributed net qualifying income attributable to such ownership interest on the date of such transfer, determined without regard to the deemed distribution. ***(4)***

Where an election made pursuant to subsection (1) is withdrawn, the constituent entity-owner's share 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 withdrawal is made shall be treated as qualifying income of the investment entity for the fiscal year. ***(5)(a)***

The amount equal to the 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 2. ***(5)(b)***

The election referred to in this section shall be made in accordance with section 111AAAD. ***(6)***

CHAPTER 8
Transition Rules

Overview

Chapter 8 of ***Part 4A*** provides rules with regard to transitioning into the IIR, UTPR and domestic top-up tax, in particular regarding the treatment of deferred tax attributes, relief under the substance-based income exclusion, initial phase of exclusion from IIR and UTPR and delayed application of the IIR and UTPR by certain Member States.

111AW Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition

Summary

This section provides for the allowance of pre-existing deferred tax accounting attributes to be used in the calculation of the adjusted covered taxes to prevent distortions in the calculation of the ETR. The section allows the MNE group to take into account the deferred tax accounting attributes of the MNE group at the beginning of the transition year, at the lower of the minimum rate or the applicable domestic tax rate. In case of a deferred tax asset (DTA) that has been recorded at a rate lower than the minimum rate, such DTA may be taken into account at the minimum rate if the taxpayer can demonstrate that the DTA is attributable to a qualifying loss.

Details

For the purpose of this section, a transition year, for a jurisdiction, means the first fiscal year in which an MNE group or large-scale domestic group falls within the scope of a qualified IIR, qualified UTPR or qualified domestic top-up tax, in respect of that jurisdiction. ***(1)***

Provides that an 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 when determining the effective tax rate for a jurisdiction in accordance with section 111AC in a transition year, and for each subsequent fiscal year. ***(2)(a)***

Deferred tax assets and deferred tax liabilities shall be taken into account at the lower of the minimum tax rate, or the applicable domestic tax rate. ***(2)(b)***

Where a deferred tax asset is attributable to a qualifying loss, and the deferred tax asset has been recorded at a tax rate lower than the minimum tax rate, that deferred tax asset shall be taken into account at the minimum tax rate for this purpose. ***(2)(c)***

The impact of any valuation adjustment or accounting recognition adjustment, with respect to a deferred tax asset, shall be disregarded. ***(2)(d)***

For the purposes of determining the total deferred tax adjustment amount, as set out in section 111X (Total deferred tax adjustment amount), the reversal of a loss deferred tax asset, as set out in section 111X (Total deferred tax adjustment amount), shall first be attributable to a loss deferred tax asset which arose in the most recent fiscal year until the balance of the loss deferred tax asset is exhausted by such amounts, and then, if necessary, to a loss deferred tax asset which arose in the next most recent fiscal year until the balance of the loss deferred tax asset is exhausted ***(2)(e)***

by such amounts, and so on for preceding fiscal years, i.e. the reversal of a loss deferred tax asset is attributable to losses arising in later years in priority to earlier years.

For the purposes of subsection (2)(a), deferred tax assets arising from items excluded from the calculation of qualifying income or loss and generated in a transaction that takes place after 30 November 2021, shall not be taken into account when determining the effective tax rate for a jurisdiction. ***(3)***

Where after 30 November 2021, and before the commencement of a transition year in respect of the transferring entity, assets, other than inventory, are transferred between constituent entities, the acquirer's basis in the acquired assets for the purposes of this Part shall be equal to the transferring entity's carrying value of the transferred assets at the time immediately before disposal, with deferred tax assets and deferred tax liabilities determined accordingly. ***(4)***

111AX Transitional relief for substance-based income exclusion

Summary

This section provides the relevant percentages for the purpose of applying the payroll and tangible asset carve-out for substance-based income exclusion for fiscal years that begin in the transition period of ten calendar years beginning with 2023. This transition period applies regardless of when a MNE Group comes within the scope of the GloBE Rules.

Details

Payroll carve-out

Provides the relevant percentages for the purpose of applying the payroll carve-out for the substance-based income exclusion under section 111AE(3). The value of 5% shall be replaced, for each fiscal year beginning in the calendar years in column (1) of the table, with the values set out in column (2) the following table: ***(1)***

(1)	(2)
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%

Tangible asset carve-out

Provides the relevant percentages for the purpose of applying the tangible asset carve-out for the substance-based income exclusion under section 111AE(4). The ***(2)***

value of 5% shall be replaced, for each fiscal year beginning in the calendar years in column (1) of the table, with the values set out in column (2) the following table:

(1)	(2)
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%

111AY Initial phase of exclusion from IIR and UTPR of MNE groups and large-scale domestic groups

Summary

This section provides a transitional exclusion from the IIR, in certain circumstances, and UTPR for MNE Groups that are in the initial phase of their international activity or large-scale domestic groups in their first five years in scope of this Part for the first time.

Details

Application

The IIR top-up tax due by an ultimate parent entity or an intermediate parent entity (when the ultimate parent entity is an excluded entity) located in the State in respect of itself, and any other constituent entities located in the State, shall be reduced to zero where the ultimate parent entity or the intermediate parent entity are either ***(1)***

- a member of an MNE Group in the first 5 years of the initial phase of the international activity of the MNE group, or
- are a member of a large-scale domestic group in the first 5 years starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of this Part for the first time.

Where the ultimate parent entity of an MNE group is located in a third country jurisdiction, the UTPR top-up tax due by a constituent entity located in the State in accordance with section 111N(1) shall be reduced to zero in the first 5 years of the initial phase of the international activity of that MNE group. ***(2)***

An MNE group shall be considered to be in the initial phase of its international activity if: ***(3)(a)***

(i) it has constituent entities in no more than 6 jurisdictions, and

(ii) 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 €50,000,000.

For the purpose of paragraph (a)(ii), the 'reference jurisdiction' is the jurisdiction in which the constituent entities of the MNE group have the highest total value of tangible assets in the fiscal year in which the MNE group originally falls within the scope of this Part, and the total value of the 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. ***(3)(b)***

The period of 5 years as it relates to MNE groups, shall start from the beginning of the fiscal year in which the MNE group first comes within the scope of this Part. ***(4)(a)***

For MNE groups that are within the scope of this Part when it comes into operation, the 5-year period as it relates to IIR top-up tax shall start on 31 December 2023. ***(4)(b)***

For MNE groups that are within the scope of this Part when it comes into operation, the 5-year period as it relates to UTPR top-up tax shall start on 31 December 2024. ***(4)(c)***

For large-scale domestic groups that are within the scope of this Part when it comes into operation, the 5-year period as it relates to IIR top-up tax shall start on 31 December 2023. ***(4)(d)***

Where subsections (1) or (2) apply for a fiscal year and the filing constituent entity is located in the State for the fiscal year, the filing constituent entity shall inform the Revenue Commissioners of the start date of the initial phase of the international activity of the MNE group. ***(5)***

111AZ Delayed application of the IIR and UTPR by Member States

Summary

This section provides that a constituent entity of an MNE group located in the State whose ultimate parent entity is located in a Member State that has elected to defer implementation of a qualified IIR in that Member State shall be subject to UTPR top-up tax.

Details

Where the ultimate parent entity of an MNE group is located in a Member State that has made an election pursuant to Article 50.1 of the Directive (to defer implementation of a qualified IIR in that Member State), subject to section 111AAL (in relation to a UTPR group), a constituent entity of that MNE group located in the State shall be subject to UTPR top-up tax for the fiscal years beginning on or after 31 December 2023 in accordance with section 111N. ***(1)***

The ultimate parent entity referred to in subsection (1) 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 MNE group has no constituent entity in another Member State, in a 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. ***(2)(a)***

The designated filing entity shall file a top-up tax information return in accordance with the requirements set out in section 111AAI and the constituent entities located in the Member State that has made an election pursuant to Article 50.1 of the ***(2)(b)***

Directive shall provide the designated filing entity with information necessary to comply with section 111AAI(3).

CHAPTER 9
Domestic Top-up Tax

Overview

Chapter 9 of ***Part 4A*** sets out the rules to determine what entities are in scope of domestic top-up tax and the calculation of the liability to domestic top-up tax.

111AAA Interpretation

Summary

This section provides definitions required for the operation of the domestic top-up tax.

Details

Definitions

Introduces definitions relating to the operation of the domestic top-up tax: ***(1)***

'foreign IIR election' means an election made in respect of an MNE group in connection with a tax equivalent to IIR top-up tax or UTPR top-up tax in another jurisdiction that is contained in a top-up tax information return submitted to:

(a) a tax authority in that jurisdiction, and in relation to which information in the return about the election has been provided to the Revenue Commissioners under a qualifying competent authority agreement, or

(b) the Revenue Commissioners;

'local accounting standard' means a financial accounting standard permitted or required to be used in the preparation of financial accounts under the law of the State that is an:

(a) acceptable financial accounting standard; or

(b) authorised financial accounting standard adjusted to prevent material competitive distortions;

'qualifying entity' shall be construed in accordance with section 111AAB;

'standalone financial statements' means:

(a) financial statements of an entity prepared in accordance with a local accounting standard, or

(b) where no such statements were prepared, the statements that would have been prepared (whether or not the entity was required to prepare such statements) in accordance with a local accounting standard.

Chapter 10 shall apply for the purpose of administering the charge to domestic top-up tax of a qualifying entity. ***(2)***

111AAB Qualifying entities

Details

An entity or permanent establishment, other than an investment entity, shall be a qualifying entity for a fiscal year (or an accounting period where paragraph (c) applies) if it is located in the State in accordance with section 111D, or would be if it was a constituent entity, and it is: ***(1)***

- a constituent entity to which this Part applies in accordance with section 111C (scope of Part 4A), ***(1)(a)***
- a joint venture or a joint venture affiliate in respect of which sections 111E to 111J apply (the IIR charging provisions) to an entity with respect to its allocable share of the top-up tax of that joint venture or joint venture affiliate for a fiscal year in accordance with section 111AO(3) (joint ventures), or would apply if that entity was located in the State, or ***(1)(b)***
- an entity not referred to in paragraph (a) or (b), that: ***(1)(c)***

  (i) has revenue that exceeds the entity revenue threshold, as determined in accordance with subsection (2), for an accounting period in at least 2 previous accounting periods of the immediately previous 4 accounting periods determined by reference to its standalone financial statements,

  (ii) is not an excluded entity by virtue of section 111C(2), and

  (iii) is not an investment undertaking (within the meaning of section 246).

The entity revenue threshold is calculated as €750,000,000 multiplied by the number of days in the accounting period concerned divided 365. ***(2)***

111AAC Chargeable entities

Details

Subject to section 111AAO (in relation to a qualified domestic top-up tax group), a qualifying entity within the meaning of paragraphs (a) and (b) of section 111AAB(1) shall be chargeable to domestic top-up tax in respect of a fiscal year. ***(1)***

A qualifying entity within the meaning of section 111AAB(1)(c) shall be chargeable to domestic top-up tax in respect of an accounting period. ***(2)***

Where a flow-through entity that is not a body corporate is chargeable to domestic top-up tax by virtue of subsection (1) or (2), the persons who hold an ownership interest in the flow-through entity at any time during the fiscal year or accounting period, as the case may be, are jointly and severally liable to pay the domestic top-up tax. ***(3)***

Subject to paragraph (b), where a securitisation entity is a member of an MNE group or large-scale domestic group, then no domestic top-up tax shall be charged on that securitisation entity for a fiscal year and for the purposes of determining the domestic top-up tax of all the other qualifying entities, excluding securitisation entities, of that MNE group or large-scale domestic group for the fiscal year, section 111AD(5) (calculation of top-up tax) shall apply as if the sum, if any, of the qualifying income of all the qualifying entities of that MNE group or largescale domestic group for a fiscal year located in the State excluded the qualifying income, ***(4)(a)***

if any, of the securitisation entity, i.e., any domestic top-up tax arising in respect of a securitisation entity is allocated to other non-securitisation entity members of the group located in Ireland based on their proportionate share of qualifying income.

Paragraph (a) shall not apply where there are no entities of an MNE group or large-scale domestic group located in the State in a fiscal year other than a securitisation entity. ***(4)(b)***

111AAD Determining top-up amounts of qualifying entity

Summary

This section provides for the determination of the domestic top-up tax of a qualifying entity.

Details

Application

Subject to subsections (2) to (8), Chapters 3 to 8 shall apply for the purposes of determining the domestic top-up tax of a qualifying entity (in this section referred to as 'domestic purposes'), as those Chapters apply for the purpose of determining the top-up tax of a constituent entity for the purposes of this Part. ***(1)***

For the purposes of subsection (1), this Part has effect for domestic purposes as if: ***(2)***

- references to a constituent entity were to a qualifying entity, ***(2)(a)***
- the formula in section 111AD(3) (which calculates the amount of top-up tax) took no account of qualified domestic top-up tax payable, i.e. a credit against domestic top-up tax is not available for domestic top-up tax payable, ***(2)(b)***
- sections 111T(1)(b), 111AI and 111AS (provisions relating to the qualified domestic top-up tax and eligible distribution tax systems) were omitted, ***(2)(c)***
- references to financial accounting net income or loss for the fiscal year, where it is determined in accordance with a local accounting standard pursuant to paragraph (e), were to the financial accounting net income or loss determined for a constituent entity, joint venture or joint venture affiliate, as the case may be, in preparing financial statements in accordance with that local accounting standard for an accounting period, ***(2)(d)***
- there were inserted in section 111O (determination of qualifying income or loss) the below subsections after subsection (3). These subsections provide that qualifying income or loss may, in certain circumstances, be calculated based on a local accounting standard. The subsections also provide for a tie-breaker test where a qualifying entity prepares more than one set of accounts under a local accounting standard. ***(2)(e)***

  '(3A) Notwithstanding subsections (2) and (3) and subject to subsection (3B), the financial accounting net income or loss of a qualifying entity for the fiscal year shall be determined in accordance with a local accounting standard where:

  a) the qualifying entity is an entity within the meaning of section 111AAB(1)(c) (i.e. a standalone entity), or

  b) all of the qualifying entities of the MNE group, large-scale domestic group or joint venture group, as the case may be, located

in the State have financial accounts prepared in accordance with a local accounting standard and the accounting period of all such accounts is the same as the fiscal year of the consolidated financial statements of the MNE group, large-scale domestic group or joint venture group as the case may be, and:

(i) all such constituent entities are required to prepare or use such accounts for the purposes of determining their liability to tax in the State or to comply with any other law of the State, or

(ii) such financial accounts are subject to an external financial audit.

(3B) (a) Subject to paragraph (b), where any of the qualifying entities of an MNE group, large-scale domestic group or joint venture group, as the case may be, located in the State prepare financial accounts under more than one local accounting standard then, for the purposes of subsection (3A), the financial accounting net income or loss of a constituent entity for the fiscal year shall be determined in accordance with:

(i) the local accounting standard used for the purposes of determining the profits, losses or gains of the qualifying entity for the purposes of Case I or II of Schedule D, or

(ii) where no such profits, losses or gains exist, the local accounting standard used for the preparation of the financial accounts that are annexed to the annual return to be filed with the Registrar in accordance with the Companies Act 2014, for the accounting period which corresponds to the fiscal year.

b) Where a qualifying entity does not prepare financial accounts:

(i) for the purposes of determining the profits, losses or gains of the qualifying entity for the purposes of Case I or II of Schedule D, or

(ii) that are annexed to the annual return to be filed with the Registrar in accordance with the Companies Act 2014, for the accounting period which corresponds to the fiscal year,

the financial accounting net income or loss of a constituent entity for the fiscal year shall be determined in accordance with subsections (2) and (3).',

- subject to subsection (8), subsections (4), (5) and (7) of section 111Z (in relation to the allocation of certain covered taxes) did not apply, ***(2)(f)***
- any covered tax of a main entity that is allocable to a permanent establishment located in the State under subsection (2) of 111Z was not allocated to that permanent establishment, ***(2)(g)***
- a reference to covered taxes in section 111Z(6) (in relation to the allocation of covered taxes on distributions) is construed as only including withholding taxes imposed on the distribution of a qualifying entity in the State, ***(2)(h)***
- subsections (3) and (5) of section 111AO (regarding the charging provisions for joint ventures) did not apply, and ***(2)(i)***
- subsections (5) to (7) of section 111AP (regarding the charging provisions for multi-parented MNE and large-scale domestic groups) did not apply. ***(2)(j)***

Where the financial accounting net income or loss for a fiscal year is determined in accordance with a local accounting standard in accordance with section 111O (determination of qualifying income or loss) (as modified by subsection (2)(e)), then, for the purposes of subsection (1), this Part shall have effect for domestic purposes as if: ***(2A)***

- the reference in section 111P(6)(a) (adjustments to determine qualifying income or loss) to consolidated financial statements were to financial statements prepared in accordance with the local accounting standard, ***(2A)(a)***
- the reference in section 111AE(5) (substance-based income exclusion) to consolidated financial statements of the ultimate parent entity were to financial statements prepared in accordance with the local accounting standard, and ***(2A)(b)***
- the reference in section 111AN(3) (transfer of assets and liabilities) to consolidated financial statements of its ultimate parent entity were to financial statements prepared in accordance with the local accounting standard. ***(2A)(c)***

For the purposes of subsection (1), this Part has effect for domestic purposes in respect of a qualifying entity within the meaning of section 111AAB(1)(c), i.e. a standalone entity, as if: ***(3)***

- references in this Part to member of a group, member of an MNE group and member of a large-scale domestic group were to qualifying entity, ***(3)(a)***
- references in this Part to the consolidated financial statements of the ultimate parent were to the standalone financial statements of the qualifying entity, and ***(3)(b)***
- the following sections of this Part were omitted (on the basis that they are not relevant to the calculation of top-up tax for a standalone entity): ***(3)(c)***
  - (i) section 111R;
  - (ii) section 111S;
  - (iii) section 111Z;
  - (iv) section 111AA;
  - (v) section 111AH;
  - (vi) section 111AO;
  - (vii) section 111AP;
  - (viii) section 111AQ;
  - (ix) section 111AR;
  - (x) section 111AU;
  - (xi) section 111AV.

Provides that section 111AY (in relation to the initial phase of exclusion) shall apply for domestic purposes (i.e. replicating the exclusion for the purposes of the domestic top-up tax): ***(4)***

- where none of the ownership interests in a qualifying entity are held by a parent entity other than a partially-owned parent entity, subject to a qualified IIR, or ***(4)(a)***

- the ownership interests in a qualifying entity are held by a parent entity located outside the State that is subject to a qualified IIR and the ownership interests in the parent entity are directly or indirectly held by an ultimate parent entity located in the State, or an intermediate parent entity located in the State (when the ultimate parent entity is an excluded entity), and

- as if the following were substituted for subsection (1) of that section: ***(4)(b)***

  '(1) The domestic top-up tax due by a qualifying entity in accordance with section 111AAC(1) shall be reduced to zero where:

  a) the qualifying entity is a member of an MNE group, in the first 5 years of the initial phase of the international activity of the MNE group starting from the first day of the fiscal year in which the MNE group falls within the scope of this Part for the first time, notwithstanding the requirements laid down in Chapter 5,

  b) the qualifying entity is a member of a large-scale domestic group, in the first 5 years, starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of this Part for the first time, or,

  c) the qualifying entity is an entity within the meaning of section 111AAB (1)(c), in the first 5 years, starting from the first day of the accounting period in which entity falls within the scope of this Part for the first time.'.

For the purposes of this subsection, 'new transition year' means the first fiscal year that a qualifying entity is subject to a qualified IIR or a qualified UTPR in a jurisdiction, where that fiscal year begins on a date later than the beginning of the first fiscal year that a qualifying entity falls within the scope of domestic top-up tax. ***(5)(a)***

For the purposes of determining the domestic top-up tax of a qualifying entity in respect of a new transition year: ***(5)(b)***

(i) any excess negative tax expense carry-forward shall be eliminated at the beginning of the new transition year;

(ii) section 111X(9) (deferred tax liability recapture) shall not apply to any deferred tax liability that was taken into account in calculating the effective tax rate for the purposes of determining the domestic top-up tax of the qualifying entity for a fiscal year prior to the new transition year, that was not recaptured prior to the new transition year;

(iii) section 111X(9) shall apply to deferred tax liabilities that are taken into account in, and subsequent to, the new transition year;

(iv) any qualifying loss deferred tax asset in respect of a fiscal year preceding the new transition year shall be eliminated and the filing constituent entity may make a new election in accordance with section 111Y(1)(a) and, notwithstanding section 111Y(5), the filing constituent entity may make a new election in the top-up tax information return of the MNE group for the new transition year in accordance with section 111Y(1)(a);

(v) the deferred tax assets and deferred tax liabilities taken into account in determining the effective tax rate for a jurisdiction in accordance with section 111AW(2) (transition period deferred tax attributes)

shall be eliminated and that subsection shall be applied at the beginning of the new transition year;

(vi) section 111AW(3) shall apply to transactions occurring after 30 November 2021 and before the beginning of the new transition year but where domestic top-up tax was payable due to the application of section 111U(6) in respect of a deferred tax asset attributable to a tax loss, such deferred tax asset shall not be treated as arising from items excluded from the calculation of qualifying income or loss under Chapter 3.

This subsection provides that where an election may be made with regards to the Part, then that election may be made for domestic purposes to the extent that such an election would affect the calculation of domestic top-up tax for a qualifying entity. ***(6)***

For the purposes of subsection (6), a foreign IIR election is to be treated as an election made under this Part. ***(7)***

Notwithstanding subsection (2)(f), for the purposes of this section, a qualifying entity that is a hybrid entity or reverse hybrid entity shall be allocated the amount of any covered taxes included in the financial accounts of its constituent entity-owner where the taxes: ***(8)***

- are allocated to the qualifying entity under section 111Z(5) (Specific allocation of covered taxes incurred by certain types of constituent entities),
- are imposed by the jurisdiction in which the constituent entity is located, and
- relate to the income of the qualifying entity.

111AAE Scope of application of qualifying domestic top-up tax

Details

This Chapter shall apply to a qualifying entity: ***(1)***

- within the meaning of paragraph (a) or (b), as the case may be, of section 111AAB(1) for fiscal years beginning on or after 31 December 2023; and ***(1)(a)***
- within the meaning of paragraph (c) of section 111AAB(1) for accounting periods beginning on or after 31 December 2023. ***(1)(b)***

CHAPTER 10
Administration

Overview

Chapter 10 of ***Part 4A*** sets out the administrative requirements with regards to this Part.

111AAF Interpretation

Details

Definitions

Introduces definitions relating to the administration of this Part. ***(1)***

‘assessment’ means an assessment to GloBE tax made under this Part. It includes a Revenue assessment or self-assessment, unless the context otherwise requires;

‘designated local entity’ means the constituent entity of an MNE group or large-scale domestic group that is located in Ireland that has been appointed by the other constituent entities of the group to file the top-up tax information return or submit the notification of filer on their behalf;

‘electronic means” is defined in section 917EA, i.e. includes electrical, digital, magnetic, optical, electromagnetic, biometric, photonic means of transmission of data and other forms of related technology by means of which data is transmitted;

‘GloBE return’ means an IIR return, a UTPR return or QDTT return;

‘GloBE tax’ means IIR top-up tax, UTPR top-up tax or domestic top-up tax;

‘IIR return’ has the meaning assigned to it in section 111AAJ;

‘IIR self-assessment’ means an assessment by a relevant parent entity, or a person acting under the authority of a relevant parent entity, of the amount of IIR top-up tax payable by the relevant parent entity for the fiscal year;

‘notification of filer’ is defined in section 111AAI;

‘prescribed form’ means a form prescribed by the Revenue Commissioners for the purpose of this Part;

‘QDTT group’ has the meaning assigned to it in section 111AAO;

‘QDTT group filer’ has the meaning assigned to it in section 111AAO;

‘QDTT return’ has the meaning assigned to it in section 111AAN;

‘QDTT self-assessment’ means an assessment by a qualifying entity, or a person acting under the authority of a qualifying entity, of the amount of domestic top-up tax payable by the qualifying entity for the fiscal year;

‘qualifying entity’ is defined in section 111AAB;

‘relevant parent entity’ is defined in section 111AAH;

‘relevant UTPR entity’ is defined in section 111AAH;

‘Revenue assessment’ has the meaning assigned to it in section 111AAU;

‘specified return date’ in respect of a fiscal year, means, subject to subsection (5):

(a) the last day of the period of 15 months beginning on the day immediately following the end of the fiscal year, or

(b) where the fiscal year is a transition year, the last day of the period of 18 months beginning on the day immediately following the end of the fiscal year;

‘TIN’ is the tax identification number assigned by the Revenue Commissioners to a constituent entity, or where a constituent entity is not located in Ireland, the equivalent number assigned in the jurisdiction in which it is located;

‘top-up tax information return’ is defined in section 111AAI;

‘transition year’ is the first fiscal year that a qualifying entity, a relevant UTPR entity or a relevant parent entity, as the case may be comes within scope of this Part;

‘UTPR group’ has the meaning assigned to it in section 111AAL;

'UTPR group filer' has the meaning assigned to it section 111AAL;

'UTPR return' has the meaning assigned to it in section 111AAK;

'UTPR self-assessment' means a relevant UTPR entity's assessment, or a person acting under the authority of a relevant UTPR entity, to an amount of domestic top-up tax payable by the relevant UTPR entity for the fiscal year.

This provision provides that all notifications, notices, returns or other such documentation required under this Part must be delivered by electronic means and the relevant provisions of Chapter 6 of Part 38 apply. ***(2)***

For the purposes of this Chapter a reference to 'entity' shall be construed as including a reference to a permanent establishment. ***(3)***

For the purposes of this Chapter a reference to 'fiscal year' shall be construed as including a reference to an accounting period in respect of an entity to which section 111AAB(1)(c) applies. ***(4)***

For the purpose of the definition of 'specified return date' in subsection (1), where the specified return date of an entity or group would otherwise arise before 30 June 2026, the specified return date of that entity or group shall instead be 30 June 2026. ***(5)***

111AAG Care and management

Details

This subsection provides that the three GloBE taxes (IIR top-up tax, UTPR top-up tax and domestic top-up tax) are all under the care and management of Revenue. ***(1)***

Subsection (2) provides that Part 37 TCA 1997 (administration) shall apply with the necessary modifications detailed below. Part 37 provides the administrative mechanisms necessary to operate the taxation system. ***(2)***

Paragraph (a) contains references to a number of sections in the TCA that are necessary for the operation of the GloBE taxes. To bring these sections into operation for Pillar Two purposes, a modification is necessary to the effect that "corporation tax" shall be read as including a reference to "IIR top-up tax, UTPR top-up tax and domestic top-up tax". ***(2)(a)***

Paragraph (b) contains references to a number of sections in the TCA that are necessary for the operation of the GloBE taxes. To bring these sections into operation for Pillar Two purposes, a modification is necessary to the effect that "the Tax Acts" shall be read as a reference to this Part. ***(2)(b)***

Paragraph (c) contains a reference to one section in the TCA that is necessary for the operation of the GloBE taxes. To bring this section into operation for Part 4A purposes, a modification is necessary to the effect that "accounting period" shall be read as "fiscal year". ***(2)(c)***

Paragraph (d) contains a reference to section 865. There are references to chargeable person in section 865 which are referencing the provisions of Part 41A relating to Income Tax, Corporation Tax and Capital Gains Tax. This modification is necessary to ensure the reference to "chargeable person" is read as a reference to 'qualifying entity', 'relevant UTPR entity' and 'relevant parent entity'. ***(2)(d)***

Paragraph (e) contains a reference to section 865(1)(a), and in particular the reference to the definition of "chargeable period" which is defined as having the meaning assigned to it in section 321. For the purposes of the operation of Part 4A, ***(2)(e)***

the definition of chargeable period in section 865(1)(a) shall be construed as having the same meaning as fiscal year in section 111A.

Paragraph (f) contains a reference to section 870 which is necessary for the operation of the Pillar Two taxes. To bring this section into operation for Pillar Two purposes, a number of modifications are necessary. ***(2)(f)***

111AAH Obligation to register

Summary

This section sets out the obligation on constituent entities within scope of the GloBE taxes to notify Revenue.

Details

Registration

An entity that is subject to IIR top-up tax for a fiscal year (in this Chapter referred to as a 'relevant parent entity'), shall give notice to the Revenue Commissioners, in the form and manner specified by the Revenue Commissioners, that it is such an entity, not later than: ***(1)(a)***

(i) the last day of the period of 12 months starting on the day immediately following the last day of the first fiscal year during which it is a relevant parent entity, immediately following a fiscal year for which it was not a relevant parent entity (in this paragraph referred to as the 'IIR registration date'), or

(ii) 31 December 2025, where the IIR registration date is earlier than 31 December 2025.

An entity that is subject to UTPR top-up tax for a fiscal year (in this Chapter referred to as a 'relevant UTPR entity') shall give notice to the Revenue Commissioners in the form and manner specified by the Revenue Commissioners, that it is such an entity, not later than: ***(1)(b)***

(i) the last day of the period of 12 months starting on the day immediately following the last day of the first fiscal year during which it is a relevant UTPR entity, immediately following a fiscal year for which it was not a relevant UTPR entity (in this paragraph referred to as the 'UTPR registration date'), or

(ii) 31 December 2025, where the UTPR registration date is earlier than 31 December 2025.

A qualifying entity shall give notice to the Revenue Commissioners, in the form and manner specified by the Revenue Commissioners, that it is such an entity, not later than: ***(1)(c)***

(i) the last day of the period of 12 months starting on the day immediately following the last day of the first fiscal year that it is a qualifying entity, immediately following a fiscal year for which it was not a qualifying entity (in this paragraph referred to as the 'QDTT registration date'), or

(ii) 31 December 2025, where the QDTT registration date is earlier than 31 December 2025.

Notice Information

This subsection lists the information that is required on a notice under subsection (1). The notice shall contain: ***(2)***

- the name of the entity, ***(2)(a)***
- the TIN of the entity, ***(2)(b)***
- the tax or taxes in respect of which the entity in registering, ***(2)(c)***
- where the entity is a member of an MNE group or a large-scale domestic group: ***(2)(d)***
  - (i) the name of the ultimate parent entity,
  - (ii) the location of the ultimate parent entity, and
  - (iii) the TIN of the ultimate parent entity,
- the details of the first fiscal year that the entity is a relevant parent entity, relevant UTPR entity or qualifying entity, as the case may be, ***(2)(e)***
- where an entity has been appointed as the designated filing entity on behalf of the MNE group or the large-scale domestic group of which the entity is a member: ***(2)(f)***
  - (i) the name of the designated filing entity,
  - (ii) the location of the designated filing entity; and
  - (iii) the TIN of the designated filing entity,
- where the entity is a member of an MNE group or a large-scale domestic group and an entity has been appointed by the entity and other constituent entities of the group located in the State as the designated local entity: ***(2)(g)***
  - (i) the name of the designated local entity, and
  - (ii) the TIN of the designated local entity,
- where the entity is a member of an MNE group or a large-scale domestic group and the entity has been appointed by other constituent entities of the group located in the State as the designated local entity: ***(2)(h)***
  - (i) the names of the other constituent entities, and
  - (ii) the TINs of the other constituent entities,
- where the entity is a member of an MNE group, large-scale domestic group or joint venture group and the entity and all of the relevant QDTT members of the group elect to be members of a QDTT group: ***(2)(i)***
  - (i) notice in writing of the election to become a member of the QDTT group,
  - (ii) the name of the QDTT group filer,
  - (iii) the TIN of the QDTT group filer, and
  - (iv) where the entity is the QDTT group filer, notification that it is the QDTT group filer,

- where the entity is a member of an MNE group and the entity and all of the relevant UTPR members of the group elect to be members of a UTPR group : ***(2)(j)***

  (i) notice in writing of the election to become a member of the UTPR group,

  (ii) the name of the UTPR group filer,

  (iii) the TIN of the UTPR group filer, and

  (iv) where the entity is the UTPR group filer, notification that it is the UTPR group filer,

  and

- such other information as the Revenue Commissioners may reasonably require for the purpose of Part 4A. ***(2)(k)***

Change of Registration

This subsection provides that an entity shall notify the Revenue Commissioners of any change to the information provided in accordance with subsection (2) within 12 months of the end of the fiscal year in which the change occurred. ***(3)***

Cessation of registration

The subsection provides for the cessation of a registration where an entity is no longer a qualifying entity, a relevant UTPR entity or a relevant parent entity. The entity shall notify Revenue within 12 months of the end of the first fiscal year is not such an entity immediately following a fiscal year in which the entity was such an entity. ***(4)***

Penalties

This subsection provides a penalty for failure to submit the notice required under this section. The penalty is €10,000. ***(5)***

This subsection provides a penalty for failure to comply with requirements under subsection (3) or (4). The penalty is €10,000. ***(6)***

111AAI Top-up tax information return

Details

Application

This subsection places an obligation on a constituent entity to prepare and deliver to the Revenue Commissioners a top-up tax information return. The return must contain complete and correct details and be delivered on or before the specified return date. That return must be in accordance with the standardised GloBE information return published by the OECD and contain the information in subsection (3). ***(1)***

Group filing

Paragraph (a) provides that a constituent entity may appoint another constituent entity located in the State to prepare and deliver to the top-up tax information return to the Revenue Commissioners on behalf of that entity. This appointment must be ***(2)(a)***

notified to the Revenue Commissioners. Only one entity in an MNE group or joint venture group as the case may be, may be appointed as a designated local entity.

Paragraph (b) provides that a constituent entity may dispose of its obligation to file a top-up tax information return where the return is delivered to a tax authority in another jurisdiction by the ultimate parent entity or designated filing entity located in a jurisdiction that has a qualifying competent authority agreement in effect with the State for the relevant fiscal year. ***(2)(b)***

Paragraph (c) provides that where the return is filed by an entity under paragraph (b), the constituent entity must deliver a notification of filer, which contains the information set out in subsection (7), to Revenue on or before the specified return date. ***(2)(c)***

Top-up tax return

This subsection specifies the information to be included in the top-up tax information return. A top-up tax information return shall include: ***(3)***

- the name, TIN, location and status for the purposes of the Directive of each entity; ***(3)(a)***
- information on the overall corporate structure of the MNE group or large-scale domestic group, including controlling interests in the constituent entities held by other constituent entities; ***(3)(b)***
- such information that is necessary to calculate: ***(3)(c)***
  - (i) the effective tax rate for each jurisdiction,
  - (ii) the top-up tax for each constituent entity,
  - (iii) the top-up tax of a member of a joint venture group, and
  - (iv) the allocation of the top-up tax amount under the qualified IIR and the qualified UTPR for each jurisdiction,
- a record of the elections made or withdrawn, ***(3)(d)***
- such further particulars in relation to this Part as the Revenue Commissioners may reasonably require. ***(3)(e)***

Where the constituent entity does not have the required information to prepare and deliver a return, that entity shall request the required information from the ultimate parent entity. Where the ultimate parent entity fails to provide such information, the constituent entity shall notify Revenue of that failure. ***(4)***

Where the ultimate parent entity is located in a third-country jurisdiction that applies rules that have been assessed as equivalent to the rules of the Directive, pursuant to Article 52 of the Directive, the constituent entity or designated local entity must prepare and deliver a top-up tax information return with the information provided for in this subsection. That return must contain all information necessary for the application of section 111H (partially-owned parent entity in the State), all information necessary for the application of section 111M (application of UTPR in territory of ultimate parent entity) and all information necessary for the application of a qualified domestic top-up tax of a Member State. ***(5)(a)&(b)***

A return delivered under this section may be amended where that amendment is necessary to correct either an error or mistake or to comply with any provision of this Part. ***(6)***

Notification of filer

This subsection provides the details to be contained on the notification of filer such as: ***(7)***

- the name of that constituent entity, ***(7)(a)***
- the TIN of that constituent entity, ***(7)(b)***
- the name of the entity filing the top-up tax information return, ***(7)(c)***
- the location of the entity filing the top-up tax information return, ***(7)(d)***
- the TIN of the entity filing the top-up tax information return, and ***(7)(e)***
- such other information in relation to this Part as the Revenue Commissioners may reasonably require. ***(7)(f)***

This subsection places an obligation on a qualifying entity (within the meaning of section 111AAB(1)(c)) to prepare and deliver to the Revenue Commissioners a top-up tax information return for an accounting period on or before the specified return date. ***(8)***

111AAJ IIR return and self-assessment

Details

This section provides that a relevant parent entity shall prepare and deliver to the Revenue Commissioners a full and true return for the fiscal year, in the prescribed form, on or before the specified return date. This form is referred to as the "IIR return". ***(1)***

The IIR return shall include an IIR self-assessment, a declaration that the return is full and true and any further information as the Revenue Commissioners may reasonably require for the purpose of this Part as provided for by the prescribed form. ***(2)***

An IIR return and IIR self-assessment may be amended in accordance with section 959V as applied by this Part. ***(3)***

111AAK UTPR return and self-assessment

Summary

This section sets out the administrative requirements with regards to UTPR filings.

Details

This subsection provides that a relevant UTPR entity shall prepare and deliver to the Revenue Commissioners a full and true return for the fiscal year, in the prescribed form, on or before the specified return date. This form is referred to as the "UTPR return". ***(1)***

This subsection provides that the UTPR return shall include a UTPR self-assessment, a declaration that the return is full and true and any further information as the Revenue Commissioners may reasonably require for the purpose of this Part as provided for by the prescribed form. ***(2)***

This subsection provides that a UTPR return and UTPR self-assessment maybe amended in accordance with section 959V as applied by this Part. ***(3)***

111AAL UTPR group

A member of a UTPR group may prepare and deliver a single UTPR return to the Revenue Commissioners for the fiscal year. All the relevant members of each group must elect to become members of the UTPR group and must have appointed one such member to be designated as the UTPR group filer.

The group filer then prepares and delivers a UTPR group return in respect of all relevant members for the fiscal year on or before the specified return date.

Where a Group return is filed, the relevant members will not be required to submit a return or self-assessment, the relevant members will not be chargeable to the UTPR top-up tax in respect of that fiscal year and the group filer shall effectively be chargeable to the entire amount of UTPR top-up tax due and payable in the State in respect of the relevant members. .

Where a payment is made by a relevant member to the group filer in respect of, but not exceeding, any amount of UTPR top-up tax that the relevant member would have been liable to, it shall not be taken into account in calculating profits or losses of either company for the purposes of corporation tax, nor shall it be regarded as a distribution or a charge on income for any purpose of the Corporation Tax Acts.

Any group member may withdraw an election to be part of the group.

Details

(1) This subsection provides that a "UTPR group" in relation to a fiscal year shall comprise of all members of an MNE group that would, in the absence of subsection (2), be required to prepare and deliver a UTPR return to the Revenue Commissioners for the fiscal year. The members of the group are referred to as "the relevant UTPR members". All the relevant members must have elected to become members of the UTPR group and must have appointed one such member to be designated as the "UTPR group filer".

(2) This subsection provides that the UTPR group filer shall prepare and deliver a UTPR group return in respect of all relevant UTPR members for the fiscal year on or before the specified return date.

(3) This subsection provides that where a UTPR group filer prepares and delivers a UTPR group return in respect of the relevant UTPR members, the other relevant UTPR members will not be required to submit a UTPR return or self-assessment, and the other relevant UTPR members will not be chargeable to the UTPR top-up tax in respect of that fiscal year. The UTPR group filer shall be chargeable to an amount equal to the UTPR top-up tax amount of the MNE group allocated to the State, as determined in accordance with section 111N(2)..

(4) This subsection provides that a payment made by a relevant UTPR member to the UTPR Group filer in respect of, but not exceeding any amount that the relevant UTPR member would have been liable to if it were not part of a UTPR group, shall not be taken into account in calculating corporation tax profits or losses of either company, nor shall it be regarded as a distribution or a charge on income for any purpose of the Corporation Tax Acts.

(5) This subsection provides that a relevant UTPR member may withdraw an election to be part of the group. Where this happens, the provisions of subsections (2) to (4) no longer apply to the MNE group for subsequent UTPR return filing and payments.

111AAM UTPR group recovery

Summary

This section provides that where UTPR top-up tax payable is not paid within 12 months of the date on which the UTPR liability was due and payable an authorised officer may serve on a relevant member of a UTPR group for the fiscal year a notice for that unpaid UTPR liability.

Details

Definitions

This subsection provides for definitions necessary for the operation of this section. ***(1)***

"authorised officer" means an officer of the Revenue Commissioners authorised in writing to exercise the powers conferred by this section.

For the purposes of this section any reference to an amount of UTPR top-up tax shall be construed as including a reference to any interest, surcharge or penalty relating to such an amount.

Application

This subsection provides that this section shall apply where UTPR top-up tax payable by a UTPR group filer in respect of a fiscal year is not paid within 12 months of the date on which the UTPR liability was due and payable. ***(2)***

Where a UTPR group filer defaults for 12 months in respect of an amount of UTPR top-up tax due, an authorised officer may serve on a relevant member of a UTPR group for the fiscal year (known as a specified relevant UTPR member), a notice for the amount of the tax that remains outstanding. The payment must be received within 30 days. The authorised officer has 3 years after the date which is 12 months after the UTPR top-up tax is due and payable to make such a notice. ***(3)(a)***

The payment can be recovered from the specified relevant UTPR member as if it was a tax due by the specified relevant UTPR member. ***(3)(b)***

The authorised officer may revoke the notice and serve a separate notice on another member of the group to secure payment. ***(3)(c)***

111AAN QDTT return and self-assessment

Summary

This section sets out the administrative requirements with regards to QDTT filings.

Details

This subsection provides that a qualifying entity shall prepare and deliver to the Revenue Commissioners a full and true return for the fiscal year, in the prescribed form, on or before the specified return date. This form is referred to as the "QDTT return". ***(1)***

This subsection provides that the QDTT return shall include a QDTT self-assessment, a declaration that the return is full and true and any further information as the Revenue Commissioners may reasonably require for the purpose of this Part as provided for by the prescribed form. ***(2)***

(3) This subsection provides that a QDTT return and QDTT self-assessment may be amended in accordance with section 959V as applied by this Part.

111AAO QDTT group

Summary

A member of QDTT group may prepare and deliver a single QDTT return to the Revenue Commissioners for the fiscal year. All the members of each group must elect to become members of the QDTT group and must have appointed one such member to be designated as the QDTT group filer.

The group filer then prepares and delivers QDTT group return in respect of all relevant members for the fiscal year on or before the specified return date.

Where a group return is filed, the relevant members will not be required to submit a return or self-assessment, the relevant members will not be chargeable to QDTT top-up tax in respect of that fiscal year and the group filer shall effectively be chargeable to the entire amount of QDTT top-up tax due and payable in the State in respect of the relevant members.

Where a payment is made by a relevant member to the group filer in respect of, but not exceeding, any amount of QDTT top-up tax that the relevant member would have been liable to, it shall not be taken into account in calculating profits or losses of either company for the purposes of corporation tax, nor shall it be regarded as a distribution or a charge on income for any purpose of the Corporation Tax Acts.

Any group member may withdraw an election to be part of the group.

Details

(1) This subsection provides that a "QDTT group" in relation to a fiscal year shall comprise of all members of an MNE group, large-scale domestic group or joint venture group that would, in the absence of subsection (2), prepare and deliver a QDTT return to the Revenue Commissioners for the fiscal year on or before the specified return date. The members of the group are referred to as "the relevant QDTT members". All the relevant QDTT members must have elected to become members of the QDTT group and must have appointed one such member to be designated as the "QDTT group filer".

(2) This subsection provides that the QDTT group filer shall prepare and deliver a QDTT group return in respect of all relevant QDTT members for the fiscal year on or before the specified return date.

(3) This subsection provides that where a QDTT group filer prepares and delivers a QDTT group return in respect of the relevant QDTT members, the other relevant QDTT members will not be required to submit a QDTT return or self-assessment and the relevant QDTT members will not be chargeable to domestic top-up tax in respect of that fiscal year. The QDTT group filer shall be chargeable to the amount of domestic top-up tax equal to the jurisdictional top-up tax for the QDTT group for the fiscal year, as would be determined in accordance with section 111AAD for domestic purposes when alculating the domestic top-up tax of the relevant QDTT members.

(4) This subsection provides that a payment made by a relevant QDTT member to the QDTT Group filer in respect of, but not exceeding any amount that the relevant QDTT member would have been chargeable to if subsection (3) did not apply, shall

not be taken into account in calculating corporation tax profits or losses of either company, nor shall it be regarded as a distribution or a charge on income for any purpose of the Corporation Tax Acts.

(5) This subsection provides that a relevant QDTT member may withdraw an election to be part of the group. Where this happens, the provisions of subsections (2) to (4) no longer apply to the QDTT group for subsequent domestic top-up tax return filing and payments.

111AAP QDTT group recovery

Summary

This section provides that where QDTT top-up tax payable is not paid within 12 months of the date on which the QDTT liability was due and payable an authorised officer may serve on a relevant member of a QDTT group for the fiscal year a notice for that unpaid QDTT liability.

Details

Definitions

(1) This subsection provides for definitions necessary for the operation of this section.

"authorised officer" means an officer of the Revenue Commissioners authorised in writing to exercise the powers conferred by this section.

For the purposes of this section any reference to an amount of domestic top-up tax shall be construed as including a reference to any interest, surcharge or penalty relating to such an amount.

Application

(2) This subsection provides that this section shall apply where domestic top-up tax payable by a QDTT group filer in respect of a fiscal year is not paid within 12 months after the date on or before which the liability was due and payable.

(3) Where the QDTT group filer defaults for 12 months in respect of an amount of domestic top-up tax, an authorised officer may serve on a relevant member of a QDTT group for the fiscal year (known as a specified relevant QDTT member), a notice for the amount of the tax that remains outstanding. The authorised officer has 3 years after the date which is 12 months after the QDTT top-up tax is due and payable to make such a notice. The payment must be received within 30 days and payment can be recovered from the specified relevant QDTT member as if it was a liability of the specified relevant QDTT member. The authorised officer may revoke the notice and serve a separate notice on another member of the group to secure payment.

111AAQ Expression of doubt

Summary

This section provides that a person may express doubt when submitting a GloBE return provided that the return is submitted on time (i.e. by the return filing date for the fiscal year or accounting period involved) and that the doubt is genuine. The section provides that a Revenue officer may refuse to accept an expression of doubt in certain circumstances. However, the section provides a right of appeal against such a decision.

Details

Definitions

This subsection provides for definitions necessary for the operation of this section ***(1)***

"law" means one or more provisions of this Part;

"letter of expression of doubt", in relation to a matter, means a communication by electronic means which:

(a) sets out full details of the facts and circumstances of the matter,

(b) specifies the doubt, the basis for the doubt and the law giving rise to the doubt,

(c) identifies the amount of GloBE tax in doubt in respect of the fiscal year to which the expression of doubt relates,

(d) lists or identifies the supporting documentation that is being submitted in relation to the matter, and

(e) is clearly identified as a letter of expression of doubt for the purposes of this section,

and a reference to "an expression of doubt" shall be construed accordingly.

General

This section provides that an entity may file an expression of doubt with the GloBE return where they are in doubt as to the correct application of the law relating to the application of this Part, or where applicable, doubt relating to the application of guidance. ***(2)***

This section applies only if the GloBE return is delivered to the Revenue Commissioners, along with supporting documentation, on or before the specified return date for the fiscal year involved. ***(3)***

A self-assessment shall also be included in the GloBE return. ***(4)***

This subsection provides that subject to subsection (6), where a letter of expression of doubt is included with a return, that person shall be treated as making a full and true disclosure with regard to the matter involved, and any additional GloBE tax arising from the amendment of an assessment for the fiscal year by a Revenue officer to give effect to the correct application of the law to that matter shall be due and payable in accordance with section 959AU(2) (date of payment with regards to amended assessments) i.e. any additional tax due by reason of the amendment of the assessment shall be deemed to have been due and payable not later than one month from the date of the amendment. ***(5)***

This subsection provides that where a Revenue officer does not accept as genuine an expression of doubt because the Revenue officer either views the matter is sufficiently free from doubt as not to warrant an expression of doubt, or the officer is of the opinion that the constituent entity was acting with a view to the evasion or avoidance of GloBE tax then subsection (5) does not apply and the person shall not be treated as making a full and true disclosure with regard to the matter involved. ***(6)***

Where a Revenue officer does not accept an expression of doubt as genuine, he or she shall notify the entity accordingly and any additional GloBE tax arising from the amendment of an assessment for the fiscal year by a Revenue officer to give effect ***(7)***

to the correct application of the law to the matter involved shall be due and payable on the same day as the original liability was due.

(8) This subsection provides that an entity aggrieved by a Revenue officer's decision that the entity's expression of doubt is not genuine may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.

111AAR Actions by person acting under authority

(1) A person other than an entity can act on behalf of the entity. This is a distinctly separate authority to that of the designated local entity. This authorisation allows the person to prepare and return required by this Part on behalf of the entity with the obligation to do so.

(2) Where a return is prepared and delivered by a person acting under authority, this Part shall apply as if the return was prepared and delivered by the entity.

(3) This subsection extends the power to act under authority to any other actions required or allowed to be done under Part 4A.

111AAS Date for payment

This section provides that GloBE tax is due and payable on the specified return date (being the day 15 months after the end of the fiscal year, or where the fiscal year is a transition year, 18 months after the end of the fiscal year).

111AAT Assessments and enquiries

This subsection provides that certain sections of Part 41A (assessing rules including rules for self-assessment) will apply to GloBE tax, with necessary modifications, namely sections 959V, 959Y, 959Z, 959AA, 959AC, 959AD, 959AE, 959AU, 959AV and 959AW.

111AAU Revenue Assessment

Summary

This section provides for the information that must form the basis for a Revenue assessment.

Details

(1) This subsection provides that an assessment to GloBE tax which is made by a Revenue officer is referred to in this Chapter as a Revenue assessment.

(2) This subsection provides for the information that must form the basis for a Revenue assessment. The assessment must include the amount of GloBE tax payable for the fiscal year, and the balance of GloBE tax, taking account of any amount of GloBE tax paid directly by the entity to the Collector General for the fiscal year, which is due and payable by the entity, or is overpaid and is available for offset or repayment by the Revenue Commissioners.

(3) This subsection provides that where a surcharge applies, that surcharge will be included in the Revenue assessment.

(4) Where a Revenue assessment is made under this Part, any self-assessment made prior to the Revenue Assessment shall be void.

111AAV Notice of Revenue assessment

Summary

This section provides the method by which a notice shall be provided by a Revenue officer.

Details

Where a Revenue assessment is made, the Revenue officer will give notice to the constituent entity of that assessment which may be given by electronic means. ***(1)***

This subsection provides that a copy of the notice of assessment shall be given to a person acting under authority who has prepared and delivered a GloBE return. ***(2)***

This subsection provides the details that must be included on the notice of Revenue assessment. The notice of Revenue assessment shall include details of: ***(3)***

- the calculation and amount of GloBE tax for the fiscal year ***(3)(a)***
- the balance of GloBE tax, taking account of any amount of GloBE tax paid directly by the entity to the Collector General for the fiscal year, which under this Part: ***(3)(b)***
    - is due and payable by the entity to the Revenue Commissioners for the fiscal year, or
    - is overpaid by the entity for the fiscal year and which, subject to this Part, is available for offset or repayment by the Revenue Commissioners.
- the amount of any surcharge which, under section 111AAX , is due for the fiscal year, ***(3)(c)***
- the name of the Revenue officer who is giving the notice and the address of the Revenue office at which that officer is based, and ***(3)(d)***
- the time allowed for giving notice of appeal against the assessment to which the notice relates. ***(3)(e)***

111AAW Appeal to Appeal Commissioners

Summary

A person who is dissatisfied with an assessment under this Part made by an inspector is entitled to appeal that assessment to the Appeal Commissioners by giving written notice to the inspector within 30 days of the date of the assessment.

Details

This subsection provides a right of appeal where a constituent entity is aggrieved by a Revenue assessment, in accordance with section 949I which must be made within 30 days after the date of the notice of assessment. ***(1)***

This subsection provides that no appeal may be made against: ***(2)***

- a surcharge imposed under this Part where that is the entity's sole grounds for appeal, or ***(2)(a)***
- a self-assessment. ***(2)(b)***

111AAX Surcharge for late return

Summary

This section imposes a surcharge for the late filing of a GloBE tax return.

The surcharge is based on a percentage of the total top-up tax payable for the fiscal year for which the return is late by reference to the length of the delay in filing, but subject to an overall cap on the level of the surcharge.

Details

This subsection provides that where a return is submitted after the specified return date, the amount of GloBE tax payable is increased by a surcharge calculated under this section. ***(1)***

Where a surcharge is applied, the amount of the surcharge shall not exceed ***(2)***

- €50,000, where the surcharge applied is 5%, or ***(2)(a)***
- €200,000, where the surcharge applied is 10%. ***(2)(b)***

This subsection provides that interest shall apply to any surcharge applied under this section as if that surcharge was GloBE tax. ***(3)***

This subsection contains provisions relating to circumstances where a return may be deemed to be late for the purpose of applying the surcharge. ***(4)***

- where an entity deliberately or carelessly delivers an incorrect GloBE return on or before the specified return date, that return is deemed to be late unless the error in the return is remedied by the delivery of a correct return on or before that date, ***(4)(a)***
- where an entity delivers an incorrect GloBE return on or before the specified return date, but does so neither deliberately nor carelessly and it comes to the entity's notice that it is incorrect, the entity shall be deemed to have failed to have delivered the return on or before the specified return date unless the error in the return is remedied by the delivery of a correct return without unreasonable delay, and ***(4)(b)***
- where an entity delivers a GloBE return on or before the specified return date, but the Revenue Commissioners, by notice in writing, request further information and the constituent entity fails to deliver such information within the specified timeframe, the constituent entity shall be deemed to have failed to have delivered the return on or before the specified return date. ***(4)(c)***

This subsection provides for the definition of "carelessly" which is contained in section 1077F. ***(5)***

Table

The Table to the section provides the percentage of surcharge applicable based on the length of time between when the return is delivered and the specified return date.

Timing of delivery of return relative to specified return date (1)	Surcharge (2)
Return delivered between 0 and 2 months from the specified return date	5 per cent

Return not delivered 2 months from the specified return date	10 per cent

111AAY Interest on overdue amounts

Summary

This section provides the mechanism for the calculation of the interest payable on outstanding amounts relating to this Part in respect of a given period of default.

Details

(1) This subsection provides that any of amount of tax that remains unpaid shall be liable to statutory interest calculated in accordance with subsection (2).

(2) This subsection provides the formula used to calculate the amount of interest due as follows. The amount of tax unpaid is multiplied by the number of days that amount remains unpaid at the rate specified in section 1080(2)(c).

T x D x R

Where-

T is the GloBE tax which remains unpaid,

D is the number of days (including part of a day) in the period during which the tax remains unpaid, and

R is the rate, represented by P in the formula T x D x P in section 1080(2)(c)(i), that would apply under that formula if the GloBE tax due under this Part was tax within the meaning of that section, and the period during which the tax remains unpaid was the period of delay, within the meaning of that section.

(3) This subsection applies the provisions of subsections (3) to (5) of section 1080 to interest payable under subsection (1).

111AAZ Obligation to keep certain records

Summary

The books and records to be kept by a liable person for the purposes of this Part are set out in this section.

Details

(1) This subsection provides that an entity shall retain or cause to be retained on their behalf, all records to enable a full and true GloBE return to be made under this Part.

(2) This subsection provides that that the records to be retained shall include books, accounts, documents and any other data related to a GloBE return and the calculation of GloBE tax.

(3) This subsection provides that the records shall be kept in an official language of the State and in either written form or electronic means.

(4) This subsection provides that any records required to be retained under this section shall be retained for the longer of:

- ***(4)(a)*** the completion of enquiries by a Revenue officer relating to a return submitted, or

- the period of 6 years commencing from the end of the fiscal year to which the records relate. ***(4)(b)***

This subsection provides that in the case of a company which is: ***(5)***

- wound up, the liquidator, or ***(5)(a)***
- is dissolved without the appointment of a liquidator, any person occupying the role of director of the company, ***(5)(b)***

shall retain the records required to be retained for a period of 5 years from the date the company is wound up or dissolved.

This subsection provides for a penalty of €10,000 for failure to retain the records relating to a GloBE return and the calculation of GloBE tax. ***(6)***

111AAAA Use of currency

Summary

This section provides the rules in relation to the currency used for the purpose of determining the GloBE taxes.

Details

Definitions

This subsection provides for definitions used in this section: ***(1)***

"rate of exchange' has the same meaning as in section 79, i.e. a rate at which 2 currencies might reasonably be expected to be exchanged for each other by persons dealing at arm's length or, where the context so requires, an average of such rates;

'representative rate of exchange' has the same meaning as section 402, i.e. a rate of exchange of a currency for another currency equal to the mid-market rate at close of business recorded by the Central Bank of Ireland, or by a similar institution of another State, for those 2 currencies;

General

Paragraph (a) of this subsection provides that any amount to be calculated by a group in determining the IIR top-up tax or UTPR top-up tax shall be calculated using the presentation currency of the consolidated financial statements of the ultimate parent entity of the group. ***(2)(a)***

Paragraph (b) of this subsection provides that where an amount used in the calculation of the IIR top-up tax or the UTPR top-up tax is denominated in a currency other than the presentation currency and it is not converted to the presentation currency during consolidation, then that amount is to be converted using the foreign currency translation principles that would have applied if the amount was converted during consolidation. ***(2)(b)***

This subsection provides the rules relating to the exchange rate to be applied in determining if any materiality or other threshold in this Part, denominated in Euro, is satisfied. The amount is to be converted to euro using the average daily rates of exchange for the month of December in the fiscal year immediately preceding the fiscal year in respect of which the conversion is required. ***(3)***

Paragraph (a) provides the rules in relating to the currency used for the purpose of determining domestic top-up tax. Where the financial accounting net income or loss ***(4)(a)***

of the qualifying entity is determined in accordance with a local accounting standard, then if:

- all of the qualifying entities of the MNE group, large-scale domestic group or joint venture group, as the case may be, located in the State have financial statements prepared in accordance with a local accounting standard with a euro functional currency, then for the purposes of determining the domestic top-up tax of that qualifying entity, all calculations shall be made using the euro, and
- subparagraph (i) does not apply, then for the purposes of determining the domestic top-up tax of that qualifying entity, the filing constituent entity may elect, in accordance with section 111AAAD, that all calculations of the qualifying entities in the group are made using either:

  (i) the presentation currency of the consolidated financial statements of the ultimate parent entity, or

  (ii) the euro,

Paragraph (b) provides that where the financial accounting net income or loss of a constituent entity is not calculated in accordance with a local accounting standard, for the purpose of determining the domestic top-up tax of a qualifying entity, all calculations shall be made using the presentation currency of the ultimate parent entity, using the currency translation rules under that financial accounting standard. ***(4)(b)***

Paragraph (c) provides that where a qualifying entity is not a member of a group, all calculations made in determining the domestic top-up tax shall be made using the presentation currency of its qualifying financial statements. ***(4)(c)***

Paragraph (a) provides that any payments required under this Part shall be paid in the currency of the State. ***(5)(a)***

Paragraph (b) provides that an amount payable under this Part shall be converted to the currency of the State using the average representative rates of exchange of that other currency of the fiscal year or accounting period. ***(5)(b)***

111AAAB Penalties

Summary

Where a constituent entity fails to deliver a top-up tax information return or a GloBE return pursuant this Part, the company is liable to a penalty as detailed below.

This section provides for transitional penalty relief where the constituent entity has taken reasonable care to ensure the correct application of this Part.

Details

This subsection provides that the failure to deliver a top-up tax information return or a notification of filer by the constituent entity, or the designated local entity acting on behalf of the constituent entity, on or before the specified return date, will result in the imposition of a penalty. The penalty is calculated as: ***(1)***

$$P \times M$$

Where-

P is €10,000, and

M is the number of complete months from the specified return date to the day on which the top-up tax information return or notification, as the case may be, subject to a maximum of 48 months.

(2) This subsection provides that the failure to deliver a GloBE return, or a failure to comply with a notice to provide requested particulars or documents shall render the constituent entity liable to a penalty. The penalty shall be €10,000.

(3) This subsection provides that a certificate signed by a Revenue officer for the purpose of imposing a penalty shall be accepted as evidence that a penalty shall apply.

(4) Where a person assists in the delivery of any incorrect return, account, statement or declaration, that person shall be liable to a penalty of €10,000.

(5) This subsection provides for transitional penalty relief where a penalty is applied under this section or under section 1077F. The transitional period relates to a fiscal year beginning on or before 31 December 2026 and ending on or before 30 June 2028. To be entitled to the relief, the constituent entity must take reasonable care to ensure the correct application of this Part.

111AAAC Transitional simplified jurisdictional reporting

Summary

This section provides that during a transitional period, an election to apply a simplified jurisdictional reporting framework may be made. Provided certain conditions are satisfied, this section allows groups to provide information in the GIR at a jurisdictional level as opposed to a constituent entity by constituent entity level.

Details

Definitions

(1) This subsection provides for the definition of 'simplified jurisdictional reporting framework' which is a method of reporting for the purposes of the top-up tax information return, as referenced in the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 17 July 2023.

General

(2) This section provides that a filing constituent entity can elect to apply simplified jurisdictional reporting framework in respect of the top-up tax information return for a fiscal year in respect of QDTT group members or there is a single qualifying entity, beginning on or before 31 December 2028 and ending on or before 30 June 2030, where

- ***(2)(a)*** all the relevant QDTT members of the MNE group, large-scale domestic group or joint venture group are members of a QDTT group, and the QDTT return for the group has been delivered to Revenue on or before the specified return date, or
- ***(2)(b)*** there is no more than one member of an MNE group or joint venture group, as the case may be, that is a qualifying entity for the fiscal year.

This subsection provides that a filing constituent entity can elect to apply simplified jurisdictional reporting framework in respect of the top-up tax information return for a fiscal year in respect of members of a group located outside the State, beginning on or before 31 December 2028 and ending on or before 30 June 2030 where ***(3)***

- members of the MNE group, joint venture group are located in a jurisdiction outside the State "other jurisdiction members"), ***(3)(a)***
- either no charge to IIR top-up tax or UTPR top-up tax arises under this Part in respect of other jurisdiction members, or where a charge arises, that charge is not allocated on an entity-by-entity basis, and ***(3)(b)***
- under the laws of all jurisdictions in which qualified domestic top-up tax, qualified UTPR or qualified IIR may arise for the fiscal year, the filing constituent entity may complete, in accordance with the simplified jurisdictional reporting framework, the top-up tax information return for the fiscal year, in respect of the other jurisdiction members. ***(3)(c)***

Subsection (2) shall not apply in respect of an investment entity that is not an excluded entity. ***(4)***

111AAAD Elections

Summary

Theis section provides instruction with regard to many of the elections which may be made under this Part.

Details

An election, and a withdrawal of an election, referred to in this Part shall be made on a top-up tax information return prepared and delivered in accordance with section 111AAI on or before the specified return date for the fiscal year in respect of which the election or the withdrawal relates. ***(1)***

The elections referred to in column 1 of the Table to this section shall have effect for a period of five fiscal years, (‘the effective period'), commencing on the first day of the fiscal year in respect of which the election is made, and remain in effect for subsequent effective periods, other than where the filing constituent entity withdraws the election on the top-up tax information return in respect of the fiscal year commencing immediately after the end of an effective period. ***(2)(a)***

The withdrawal of an election shall be in effect for an effective period commencing on the first day of the fiscal year (the “withdrawal year”) falling immediately after the last day of the fiscal year in respect of which a previous election was in effect, and a constituent entity shall not make a new election of the type withdrawn in respect of any of the four fiscal years immediately succeeding the withdrawal year. ***(2)(b)***

The elections referred to in column 2 of the Table to this section shall be in effect for the fiscal year in respect of which that election was made and shall remain in effect for subsequent fiscal years, other than where the filing constituent entity withdraws the election in respect of a fiscal year subsequent to the fiscal year in respect of which the election is made. ***(3)***

The election referred to in section 111P(16) in determining the qualifying income or loss shall be made in respect of each debt release which is included in the financial accounting net income or loss of a constituent entity in a fiscal year. ***(4)***

The election referred to in section 111W(2), shall not be withdrawn with respect to an ownership interest, other than a qualified ownership interest as referred to in that section, where a loss in respect of an ownership interest was included in the calculation of the qualifying income or loss of the constituent entity in the five-year period beginning on the first day of the fiscal year in in respect of which the election was made. ***(5)***

An election under section 111AN(6) with regards to the transfer of assets or liabilities shall: ***(6)***

- be in effect for the fiscal year in respect of which the election relates, ***(6)(a)***
- remain in effect for all subsequent fiscal years, and ***(6)(b)***
- not be withdrawn at any time following the fiscal year in respect of which the election is made. ***(6)(c)***

An election under section 111AJ(2) with regards to the transitional CbCR safe harbour shall apply to the fiscal year in respect of which the election is made. ***(7)***

An election under section 111AK(2) with regards to the transitional UTPR Safe Harbour shall apply to the transition period fiscal year in respect of which the election is made. ***(8)***

The election referred to in section 111AKA(7) (Simplified calculations safe harbour) shall be made in respect of each entity to which it relates. ***(8)(A)***

An election under section 111AI(2) with regards to the qualified domestic top-up tax safe harbour shall apply to the fiscal year in respect of which the election is made. ***(9)***

Where a filing constituent entity makes an election referred to in subsection (7), (8), (8A) or (9), such election shall not apply where: ***(10)***

- the constituent entity, joint venture or joint venture affiliate is located in the State, and could be allocated a top-up tax if the effective tax rate for the jurisdiction concerned calculated in accordance with Chapter 5 was below the minimum rate, and ***(10)(a)***
- the constituent entity, joint venture or joint venture affiliate, fails to clarify and demonstrate, within the permitted 6-month period mentioned in subparagraph (II), that the facts and circumstances, mentioned in subparagraph (I), did not materially affect its eligibility to make the election, where a Revenue Officer in writing: ***(10)(b)***

  (i) notified the constituent entity, joint venture or joint venture affiliate not later than 36 months after the date of the filing of the top-up tax information return in which the relevant election was made of specific facts and circumstances that may have materially affected the eligibility to make the relevant election, and

  (ii) requested the constituent entity, joint venture or joint venture affiliate to, not later than 6 months after the date of notification under this paragraph, clarify and demonstrate, in writing, the effect of those facts and circumstances on the eligibility to make the relevant election.

Table

Column 1	Column 2
Section 111C(3)	Section 111P(7)(a)
Section 111P(3)(a)	Section 111U(9)
Section 111P (6)(a)	Section 111X(1), in the definition of 'unclaimed accrual'
Section 111P (9)(a)	Section 111AB(1)(d)
Section 111P (13)	Section 111AE(2)(b)
Section 111P (14)	Section 111AG(1)
Section 111W(2)	Section 111AKA(2) and (7)
Section 111Z(9)	Section 111AS(1)
Section 111AU(1)	Section 111AAAC(2)
Section 111AV(1)	Section 111AAAC(3)
Section 111AAAA(4)(a)(ii)(iii)	

CHAPTER 11
Application

Overview

Chapter 11 of ***Part 4A*** provides the scope and order of application of the Part.

111AAAE Application (Part 4A)

(1) Subject to subsection (2) and section 111AAE (in relation to domestic top-up tax), this Part applies to fiscal years commencing on or after 31 December 2023.

(2) Except for MNE groups to which section 111AZ(1) applies, sections 111L, 111M and 111N (in relation to UTPR top-up tax) shall apply to fiscal years commencing on or after 31 December 2024.