Explanatory Notes Relating to the Global Minimum Tax Act

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Preface

These explanatory notes describe proposed amendments to the *Global Minimum Tax Act* and other legislation. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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Deputy Prime Minister and Minister of Finance

These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Explanatory Notes Relating to the *Global Minimum Tax Act* (the "Act" or "GMTA")

Clause 1

Definitions

Global Minimum Tax Act (GMTA)
2(1)

"reverse hybrid entity"

Consequential on the proposed amendments to subsection 17(6), the term "reverse hybrid entity" is no longer referenced in the Act, and the definition of that term is therefore repealed. For more information, see the note to subsection 17(6).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

"securitization entity"

This definition implements paragraphs 148.2 to 148.4 in the Commentary to Article 10.1 of the Model Rules (as introduced by Section 6 of the June 2024 Administrative Guidance). Paragraph (a) of this definition implements the definition "Securitisation Arrangement" in paragraph 148.4 of that Commentary. Paragraph (b) implements the definition "Securitisation Entity" in paragraph 148.2 of that Commentary as well as the additional requirement in paragraph 148.3.

This definition is relevant for the exclusions from domestic top-up tax under subsections 51(1) and 52(1), UTPR tax under section 49.2 and certain liability provisions in section 66.

For clarity, the reference to "investors that are not constituent entities of the same MNE group as the entity" in subparagraph (a)(i) of this definition is not intended to cause arrangements to fail the test in paragraph (a) solely by virtue of one or more constituent entities within the MNE Group holding debt instruments issued by the securitization entity for purposes of protecting the investors from loss or satisfying certain regulatory requirements. This involvement by a constituent entity in its role as the originator (or a member of the same MNE group as the originator) of the assets in a securitization arrangement is common in a typical securitization transaction and distinct from the role of a regular investor. However, if any funding by those constituent entities is considered to be provided in their capacity as investors, this could potentially cause an entity to fail to meet the test.

Further, the expression "equity holders (or equivalent)" in clause (b)(iii)(A) includes a person who holds:

- if the entity is a corporation, a share of the capital stock of the corporation;

- if the entity is a trust, an income or capital interest in the trust; and
- if the entity is a partnership, an interest as a member of the partnership.

For more information, see the note to section 49.2 and subsection 51(1).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 2

Interpretation

GMTA
3(1)

Consequential on the introduction of the UTPR in new Part 2.1, subsection 3(1) is amended to include a reference to Part 2.1, extending to that Part the rule that requires certain Parts and provisions of the Act to be interpreted consistently with the listed OECD sources.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Clause 3

Top-up tax payable

GMTA
15(1)

Paragraph (b) of the description of B in subsection 15(1) is amended to clarify that a lower-tier relevant parent entity's allocable share of the top-up amount of a constituent entity only reduces the top-up tax payable by an upper-tier relevant parent entity (that holds an ownership interest in the constituent entity through that lower-tier parent entity) where the top-up amount of the constituent entity is subject to tax under a qualified IIR in the jurisdiction in which the lower-tier parent entity is located. This clarification is necessary because, although a constituent entity that is not located in Canada must be subject to tax under a qualified IIR in order to be a relevant parent entity (under subparagraph 14(3)(a)(ii)), a relevant parent entity is not necessarily taxable on its allocable share of a constituent entity's top-up amount (e.g., where the constituent entity is located in the same jurisdiction as the relevant parent entity) since Article 2.1.6. of the Model Rules gives an IIR jurisdiction the option to exclude entities located in that IIR jurisdiction from the scope of its IIR while maintaining qualified IIR status.

This clarifying amendment would be relevant where, for example, an ultimate parent entity (the "UPE") located in Jurisdiction A (a qualified IIR jurisdiction) holds an ownership interest in a constituent entity located in Jurisdiction B (another qualified IIR jurisdiction) through a partially-owned parent entity (the "PoPE") that is also located in Jurisdiction B, and the qualified IIR of

Jurisdiction B does not impose tax on a relevant parent entity located in Jurisdiction B in respect of its allocable share of the top-up amounts of constituent entities located in Jurisdiction B. This amendment clarifies that the top-up tax payable by the UPE would not be reduced by an amount equal to the PoPE's allocable share of the constituent entity's top-up amount, given that the PoPE is not actually taxed on that top-up amount. Thus, this amendment ensures there is no "double non-taxation" of the top-up amount.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 4

Definition of *financial accounting income*

GMTA
17(6)

Subsection 17(6) is amended, in part, to implement changes to the Commentary to Articles 3.5.3., 10.2.1. and 10.2.2., of the Model Rules as introduced by Section 5 of the June 2024 Administrative Guidance.

Paragraph (a) is amended, in part, to implement the changes to paragraph 231 of the Commentary to Article 3.5.3. Paragraph (a) generally reduces the net income or loss of a particular flow-through entity by amounts attributable to certain owners that are not group entities (referred to in these notes as "non-group owners"). Paragraph (a) is amended so that the reduction applies (subject to subparagraphs (i) and (ii)) if the non-group owners hold their ownership interests in the particular flow-through entity directly, or through one or more flow-through entities that are group entities in respect of the particular flow-through entity. This amendment replaces the requirement that the non-group owners hold any indirect ownership interests in the particular flow-through entity through a tax transparent structure with the new requirement that they hold the ownership interests through flow-through entities. As a result of this amendment, the entities through which a non-group owner indirectly holds its ownership interest in the particular flow-through entity need not be fiscally transparent in relation to the non-group owner.

The reduction of net income or loss under paragraph (a) is subject to subparagraphs (i) and (ii), which concern any ownership interests held by non-group owners in (i) a flow-through entity that is an ultimate parent entity, or (ii) a flow-through entity through an ultimate parent entity that holds its ownership interest in the particular flow-through entity through a tax transparent structure. A corresponding amendment is made to subparagraph (ii), such that no reduction is made to the net income or loss of the particular flow-through entity to the extent that the ownership interests held by non-group owners in the particular flow-through entity are held indirectly through an ultimate parent entity that is a flow-through entity and that holds its ownership interest in the particular flow-through entity through a chain of flow-through entities that are group entities in respect of the particular flow-through entity. This amendment ensures that the particular flow-through entity's net income or loss is not reduced where the flow-through ultimate parent entity's interest in the particular flow-through entity is held through one or more flow-through entities, regardless of whether those flow-through entities are fiscally transparent in relation to the ultimate parent entity.

Subparagraphs (b)(iii) and (iv) are amended to implement the changes to paragraphs 154 to 156 of the Commentary to Article 10.2.1. and to paragraph 214 of the Commentary to Article 10.2.2. Those subparagraphs provide for the allocation of a particular flow-through entity's net income or loss to other group entities with direct or indirect ownership interests in the particular flow-through entity. As a consequence of those amendments, the net income or loss of a flow-through entity (that is not an ultimate parent entity) is now allocated to a particular group entity if:

- the particular flow-through entity is fiscally transparent in relation to the particular group entity,
- the particular group entity is not a flow-through entity (other than an ultimate parent entity), and
- the particular group entity holds its ownership interest in the particular flow-through entity directly, or through a tax transparent structure.

The effect of this last condition is that a group entity that owns an indirect ownership interest in a particular flow-through entity will only be allocated a portion of the net income or loss of the particular flow-through entity if there is no entity between the group entity and the particular flow-through entity in the ownership structure that either (1) is not a flow-through entity, or (2) is a flow-through entity that is not fiscally transparent in relation to the group entity.

One consequence of these amendments is that this subsection no longer references a "reverse hybrid entity". Although the determination of whether a flow-through entity is fiscally transparent in relation to an owner is still integral to the allocation exercise under this subsection, the definition "reverse hybrid entity" itself is no longer necessary and is therefore repealed.

Finally, the last paragraph of this subsection is renumbered as paragraph (c), consequential on the amendments to paragraph (b) and the deletion of former paragraph (c).

These amendments apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 5

Adjusted covered taxes – additions

GMTA
22(2)(e)

Subsection 22(2) is amended to implement paragraph 12 of the Commentary to Article 4.1.3. and paragraph 63 of the Commentary to Article 4.3.3. of the Model Rules, both of which provide for the inclusion in the adjusted covered taxes of a constituent entity (referred to in these notes as the “parent entity”) of the unallocated portion of covered taxes imposed (e.g., under a controlled foreign company tax regime) on that parent entity in respect of the passive income of a second constituent entity (referred to in these notes as the “foreign subsidiary”) that is located in a different jurisdiction from the parent entity and in which the parent entity holds an ownership interest.

The allocation of covered taxes in respect of passive income from a parent entity to a foreign subsidiary under Articles 4.3.2.(c) (paragraph 24(4)(a) of the Act) and 4.3.2.(d) (paragraph 24(5)(a) of the Act) is limited by the rule in Article 4.3.3. (paragraphs 24(4)(c) and 24(5)(b) of the Act, respectively) such that any portion of those taxes that exceeds the limitation will not be allocated to the foreign subsidiary and will, instead, remain with the parent entity. However, because Article 4.1.3.(a) (subparagraph 22(3)(a)(i) of the Act) effectively excludes these unallocated taxes from the adjusted covered taxes of the parent entity – since those taxes are in respect of the income of the foreign subsidiary, which is not included in the GloBE income of the parent entity – an additional rule is required to ensure that the parent entity can include those taxes in its adjusted covered taxes in line with the Commentary.

Accordingly, subsection 22(2) is amended to add a new paragraph (e), which adds an amount to the parent entity’s adjusted covered taxes (offsetting the reduction under subparagraph 22(3)(a)(i)) equal to the portion of any covered taxes on passive income of the foreign subsidiary that are not allocated to that foreign subsidiary under paragraph 24(4)(a) because of paragraph 24(4)(c), or under paragraph 24(5)(a) because of paragraph 24(5)(b).

Subparagraph 22(3)(a)(ii) is also amended to add a reference to new paragraph 22(2)(e), ensuring that the addition to adjusted covered taxes under paragraph 22(2)(e) is not itself offset by another reduction under that subparagraph on the basis that the addition to adjusted covered taxes relates to an amount of income that is not included in computing the parent entity’s GloBE income.

To the extent that any double counting of taxes would otherwise occur as a result of the application of new paragraph 22(2)(e) (e.g., because the passive income is included in the income of the parent entity for financial accounting purposes, and thus the GloBE income of the parent entity, such that no reduction is made under subparagraph 22(3)(a)(i)), subsection 22(5) applies to counteract the addition under paragraph 22(2)(e).

These amendments apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Adjusted covered taxes – reductions

GMTA
22(3)(a)(ii)

Subparagraph 22(3)(a)(ii) is amended consequential on the introduction of new paragraph 22(2)(e).

For more information, see the note to subsection 22(2).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 6

Allocation – tax transparent entities

GMTA
24(3)(b)(ii)

Subparagraph 24(3)(b)(ii) is amended to replace the references to paragraphs 17(6)(b) and (c) with a reference to paragraph 17(6)(b) only, consequential on the amendments to subsection 17(6). For more information, see the note to that subsection.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 7

Qualified flow-through tax benefits - definitions

GMTA
28(1)

"qualified flow-through ownership interest"

Paragraph (b) of the definition "qualified flow-through ownership interest" is being amended to implement an aspect of the Commentary to Article 3.2.1.(c), which contains the Model Rules definition of the parallel term "Qualified Ownership Interest".

One condition that must be satisfied for an ownership interest in a tax transparent entity to be a qualified flow-through ownership interest is that a portion of the owner's investment in the ownership interest will be returned in the form of tax credits other than qualified refundable tax credits or marketable transferable tax credits. Parenthetical text in paragraph 57.11 of the Commentary to Article 3.2.1.(c) provides that this condition can be met "regardless of whether such tax credits are expected to be transferred or used to reduce the investor's Covered Tax liability", which is intended to reference situations where the tax transparent entity monetizes such tax credits itself (by transferring the credits) and then distributes the proceeds to its owners, thereby allowing the owners to indirectly benefit from the tax credits.

Paragraph (b) is amended to explicitly implement this aspect of the Commentary and ensure that, for the purpose of determining if an ownership interest is a qualified flow-through ownership interest, distributions made by the tax transparent entity to an owner out of the tax transparent entity's proceeds from transferring tax credits that are neither qualifying refundable tax credits nor marketable transferable tax credits are treated the same way as if the owner had received the transferred credits directly.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 8

Eligible payroll costs – flow-through entity allocation

GMTA
32(5)(b)(ii)

Subparagraph 32(5)(b)(ii) is amended to replace the references to paragraphs 17(6)(b) and (c) with a reference to paragraph 17(6)(b) only, consequential on the amendments to subsection 17(6). For more information, see the note to that subsection.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 9

Election – transitional UTPR safe harbour

GMTA
47.1(1)

Subsection 47.1(1), in conjunction with subsection 47.1(2), implements the transitional UTPR safe harbour election in Annex A, Chapter 4 of the Commentary (as introduced by section 5.2 of the July 2023 Administrative Guidance).

This subsection applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Corporate income tax rate test

GMTA
47.1(2)

Subsection 47.1(2), in conjunction with subsection 47.1(1), implements the transitional UTPR safe harbour election in Annex A, Chapter 4 of the Commentary (as introduced by section 5.2 of the July 2023 Administrative Guidance).

This subsection applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Clause 10

Transition – deferred tax assets and liabilities

GMTA
48(1)

The preamble to subsection 48(1) is amended to add new subsection (5.1) to the list of provisions to which subsection 48(1) is subject.

For more information, see the note on subsection 48(5.1).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Asset transfers before transferor transition year – consequences

GMTA
48(5)(b)(ii)

Subparagraph 48(5)(b)(ii) is being amended to more comprehensively implement paragraph 10.8 of the Commentary to Article 9.1.3 of the Model Rules.

In very general terms, Article 9.1.3. is aimed at counteracting transactions, undertaken by MNE groups in the period after November 30, 2021 and prior to when the transferor entity becomes subject to the GloBE rules (the "pre-GloBE period"), that step up the accounting carrying values of assets – triggering a gain for accounting purposes without realizing a corresponding taxable gain. In the absence of Article 9.1.3., these stepped-up carrying values would allow for subsequent dispositions of the assets without the realization of GloBE income.

Subsection 48(5) sets out the consequences where one of these targeted transactions occurs in the pre-GloBE period. Paragraph (a) imputes the pre-transaction carrying value of the transferred assets to the transferee for the purposes of the Act, such that any gain on the subsequent disposition of the assets will be included in GloBE income. Subparagraph (5)(b)(i) denies any deferred tax assets or liabilities relating to the transaction, to ensure the transaction does not produce deferred tax effects that would have similar consequences under the rules to a step-up in carrying value.

To the extent that tax is paid, or a valuable tax attribute is used, in respect of the gain realized from the pre-GloBE period transaction, however, the targeted mischief does not arise. Therefore, in line with the Commentary to Article 9.1.3., existing subparagraph 48(5)(b)(ii) overrides subparagraph (b)(i) and allows a deferred tax asset to be factored into the adjusted covered taxes of the transferee to the extent of tax paid by the transferor.

Subparagraph 48(5)(b)(ii) is being amended to better align with the Model Rules and Commentary in three respects. First, the existing subparagraph caps the amount of the deferred tax asset allowed for purposes of computing adjusted covered taxes at the amount of the deferred tax asset that is actually recorded in the transferee’s financial accounts in respect of the transaction. This subparagraph is being amended to better reflect the Commentary and related administrative guidance, which make clear that no such cap should apply and, indeed, a deferred tax asset may be created under this provision even in cases where no deferred tax asset is actually recorded in the transferee’s financial accounts.

Second, consistent with the Commentary, this subparagraph is being amended to more explicitly provide that, where a group taxation regime applies to the transferor, the taxes paid by a group entity other than the transferor in respect of the transferor’s income from the transaction may be taken into account in determining the amount of the deferred tax asset allowed.

Third, consistent with the Model Rules and Commentary, a new clause (C) is added to this subparagraph to provide that, where a deferred tax asset of the transferor is reversed, or never arises, as a result of the inclusion of a gain from the pre-GloBE period transaction in the taxable income of the transferor (e.g., because a loss carry-forward, or a loss arising in the same year as the gain, offsets the gain for tax purposes), then the amount of that deferred tax asset is also taken into account in determining the amount of the deferred tax asset allowed under this subparagraph.

These amendments apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

No adjusted covered taxes reduction

GMTA
48(5.1)

This new subsection is being added to implement the following guidance from paragraph 10.8 of the Commentary to Article 9.1.3. of the Model Rules: “The creation of a deferred tax asset under this paragraph shall not reduce the Adjusted Covered Taxes of a Constituent Entity.”

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 11

New Part 2.1 implements the UTPR, in Articles 2.4. to 2.6. of the Model Rules, as well as the related rules in Article 9.3.1.

These provisions apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Definitions

GMTA
49.1

New section 49.1 sets out a number of definitions that apply for the purposes of new Part 2.1.

“initial phase of international activity year”

This definition implements Article 9.3.2. of the Model Rules and paragraphs 19 to 21 of the Commentary to that Article. Under those paragraphs of the Commentary, a stateless flow-through entity (which is located in a notional jurisdiction under subsection 5(4)) is not taken into account in determining the number of jurisdictions in which the MNE group operates. However, any assets of a flow-through entity that are not physically located in the reference jurisdiction are taken into account in determining the total net book value of tangible assets of the MNE group located outside of the reference jurisdiction.

“net book value”

This definition implements the definition “Net Book Value of Tangible Assets” in Article 10.1. of the Model Rules.

“number of employees”

This definition implements the definition “Number of Employees” in Article 10.1. of the Model Rules.

“reference jurisdiction”

This definition implements Article 9.3.3. of the Model Rules.

“tangible asset”

This definition implements the definition “Tangible Assets” in Article 10.1. of the Model Rules.

UTPR

GMTA
49.2(1)

Subsection 49.2(1) is the charging provision for the UTPR, implementing Article 2.4.1. of the Model Rules. The UTPR acts as a backstop to the IIR, as implemented in Part 2, and generally ensures that the liability for top-up amounts of constituent entities of an MNE group that are not chargeable under the IIR – because one or more relevant parent entities of the MNE group are not located in a jurisdiction with a qualified IIR – is allocated to constituent entities of the MNE group that are located in UTPR-implementing jurisdictions.

Subsection 49.2(1) imposes liability for tax under this Part on a person if

- the person is a constituent entity, of an MNE group, that has a UTPR top-up amount (as defined in section 49.3) for the fiscal year, or
- a constituent entity of the MNE group has a UTPR top-up amount for the fiscal year but is not itself a "person" (as defined under subsection 2(1)), and the person would, under the relevant assumptions set out in subsection 49.2(2), include that constituent entity's income in computing the person's income under Part I of the *Income Tax Act*.

Unlike the IIR charging rules contained in Article 2.1. of the Model Rules, the UTPR charging rules in Article 2.4.1. do not prescribe how top-up tax imposed under an implementing jurisdiction's UTPR must be allocated among an MNE group's constituent entities located in the jurisdiction. Under the new section 49.3, the UTPR top-up tax liability is, in effect, allocated among an MNE group's constituent entities located in Canada by determining each such entity's "UTPR top-up amount" using a substance-based allocation key. For more information, see the note to that section.

Certain other provisions in this Part and in Part 5 ensure that securitization entities and investment entities are effectively excluded from the application of the charging provisions under this Part. Further, a joint venture entity in respect of an MNE group is only chargeable under this Part if the MNE group does not have any constituent entities located in Canada for the fiscal year that are not joint venture entities. For more information, see the notes to sections 49.3, 49.7 and 49.8 and subsections 66(1), (3) and (4).

Relevant assumptions

GMTA
49.2(2)

This subsection sets out the relevant assumptions for the purposes of clause 49.2(1)(c)(ii)(B). This subsection operates analogously to how subsection 14(2) operates for the purposes of the IIR charging rule in subsection 14(1).

Definition of *UTPR top-up amount*

GMTA
49.3

This section determines a Canadian-located constituent entity's "UTPR top-up amount" for a fiscal year, which the constituent entity (or, in some cases, certain persons in respect of that constituent entity) is liable to pay as tax under subsection 49.2(1). A constituent entity's UTPR top-up amount is the portion of the MNE group's "Canadian UTPR top-up amount" (as defined in section 49.4) that is allocated to the constituent entity in accordance with the formula in this section.

This section has no equivalent article under the Model Rules, which allow an implementing jurisdiction to choose how to allocate that jurisdiction's share of the MNE group's UTPR tax among the constituent entities located in that jurisdiction. Section 49.3 performs this allocation using a modified version of the substance-based allocation key that is used in Article 2.6.1. (subsection 49.6(1) of the Act) to determine Canada's share of the total UTPR top-up amount. In general terms, Article 2.6.1. determines a UTPR-implementing jurisdiction's share of the total UTPR top-up amount as the proportion of the total UTPR top-up amount that the number of employees and net book value of tangible assets (weighted equally) of constituent entities of the MNE group located in that jurisdiction is of the total number of employees and net book value of tangible assets of all the constituent entities of the MNE group that are located in qualified UTPR jurisdictions. For more information, see the note to subsection 49.6(1).

Under section 49.3, a particular constituent entity's UTPR top-up amount is the Canadian UTPR top-up amount for the MNE group for the fiscal year – i.e., the portion of the total UTPR top-up amount allocated to Canada under section 49.4 – multiplied by the proportion that the particular entity's number of employees and net book value of tangible assets (weighted equally) is of the number of employees and net book value of tangible assets of all the Canadian-located constituent entities of the MNE group. In other words, the allocation key is the same as the allocation key under Article 2.6.1., except that it only includes the substance factors that are attributable to Canadian constituent entities. As MNE groups will already need to determine their constituent entities' number of employees and net book value of tangible assets for purposes of the UTPR allocation under subsection 49.6(1), this approach is not expected to result in additional compliance costs.

Securitization entities are explicitly excluded from section 49.3 and will therefore never be allocated a UTPR top-up amount, implementing, in part, paragraph 20 of Section 6 of the June 2024 Administrative Guidance. This is also the case for investment entities, since paragraph 49.7(a) deems an investment entity to have no employees or tangible assets. Joint venture entities are also generally excluded from an allocation under this section because of subsection 49.8(1), unless the exception in subsection 49.8(2) applies. For more information, see the notes to those provisions.

Finally, despite the allocation under section 49.3, an MNE group has the option, under subsection 66(2.2), to appoint one person (that is liable to pay a UTPR top-up amount under this Part) to pay the top-up tax liabilities of all the constituent entities of the group under this Part. For more information, see the note to that subsection.

Definition of *Canadian UTPR top-up amount*

GMTA
49.4

This section implements aspects of Article 2.6.1. of the Model Rules. It defines an MNE group's "Canadian UTPR top-up amount" for a fiscal year, which is the portion of the MNE group's total UTPR top-up amount for the fiscal year that is allocated to Canada. The Canadian UTPR top-up amount is the product of the MNE group's total UTPR top-up amount for the fiscal year (as defined in section 49.5) and the MNE group's Canadian UTPR percentage for the fiscal year (as defined in subsection 49.6(1)). For more information, see the notes to those provisions.

Definition of *total UTPR top-up amount*

GMTA
49.5

This section implements Articles 2.5. and 6.4.1.(c) of the Model Rules. It defines an MNE group's "total UTPR top-up amount" for a fiscal year, equivalent to the "Total UTPR Top-up Tax Amount" as defined in Article 2.5.1. An MNE group's total UTPR top-up amount is essentially the total of all the top-up amounts of its constituent entities (other than any constituent entities whose top-up amounts are deemed to be nil under paragraph 49.5(a)), less amounts that are already subject to a qualified IIR.

Paragraph 49.5(a), implementing Article 2.5.2., deems a constituent entity's top-up amount to be nil in computing the total UTPR top-up tax amount of an MNE group for a fiscal year in two scenarios. The first scenario (under subparagraph (i)) is where the constituent entity is the ultimate parent entity and is subject to a qualified IIR in the jurisdiction where it is located. The second scenario (under subparagraph (ii)) is where the constituent entity is not the ultimate parent entity and the ultimate parent entity holds, directly or indirectly, all of its ownership interests in the constituent entity through relevant parent entities that are located in jurisdictions where the constituent entity is subject to a qualified IIR (the meaning of the expression "subject to a qualified IIR" is provided in subsection 2(7)).

Paragraph 49.5(b) implements Article 2.5.3. and, in respect of joint venture entities, Article 6.4.1.(c), and applies in respect of a constituent entity whose top-up amount is not effectively excluded from the total UTPR top-up amount under paragraph 49.5(a). If paragraph 49.5(b) applies to a constituent entity that is not a joint venture entity, the constituent entity's entire top-up amount – less any amounts taxed under a qualified IIR applicable to a relevant parent entity of the MNE group – is included in the computation of the MNE group's total UTPR top-up amount. As a consequence, where paragraph 49.5(b) applies in respect of a constituent entity that is not a joint venture entity, the resulting UTPR tax liability applies in respect of the constituent entity's entire top-up amount, including any portion attributable to minority owners. Where paragraph 49.5(b) applies to a joint venture entity, however, only the portion of the joint venture entity's top-up amount that is attributable to the MNE group's ownership interests in the joint venture entity (determined as the ultimate parent entity's allocable share of the joint venture entity's top-up amount), is included in the total UTPR top-up amount computation.

Definition of *Canadian UTPR percentage*

GMTA
49.6(1)

This subsection implements aspects of Article 2.6.1. of the Model Rules. It defines the "Canadian UTPR percentage" of an MNE group for a fiscal year, equivalent to the "UTPR Percentage" as defined in that article. The Canadian UTPR percentage is used to determine the "Canadian UTPR top-up amount" under section 49.4, which is the portion of the total UTPR top-up amount (as determined under section 49.5) that is allocated to Canada.

The terms "number of employees", "net book value" and "tangible assets" are defined under section 49.1, with additional special rules applicable under section 49.7. For more information, see the notes to those sections.

Qualified UTPR – special rule

GMTA
49.6(2)

This subsection implements Articles 2.6.3. and 2.6.4. of the Model Rules, by modifying the allocation of an MNE group's total UTPR top-up amount to exclude a jurisdiction in which a qualified UTPR is in force if that jurisdiction was allocated a portion of the MNE group's total UTPR top-up amount for a prior fiscal year and the allocation has not yet resulted in an additional cash tax expense for the MNE group in that jurisdiction equal to the portion of the total UTPR top-up amount of the MNE group allocated to that jurisdiction.

Where this subsection applies in respect of a jurisdiction for the purpose of computing an MNE group's Canadian UTPR percentage under subsection 49.6(1), the jurisdiction is deemed not to have a qualified UTPR in force in respect of the MNE group for the current fiscal year, with the result that any employees or tangible assets in that jurisdiction are excluded in computing the MNE group's Canadian UTPR percentage. However, if this subsection would otherwise apply to all the qualified UTPR jurisdictions in which constituent entities of the MNE group are located for the fiscal year, then this subsection does not apply to any of them.

Employees and tangible assets – special rule

GMTA
49.7

This section implements Article 2.6.2. and, indirectly, Article 2.4.3. of the Model Rules, providing interpretive rules applicable in determining a constituent entity's number of employees and tangible assets for the purposes of Part 2.1 (other than the definition "initial phase of international activity year" in section 49.1).

Paragraph (a) implements Article 2.6.2.(a), by deeming an investment entity to have no employees or tangible assets. As a consequence, investment entities are not taken into account in the substance-based allocation keys in the definitions "UTPR top-up amount" in section 49.3 and "Canadian UTPR percentage" in subsection 49.6(1). By excluding investment entities from the latter, paragraph (a) implements Article 2.4.3., ensuring that an investment entity cannot be allocated a UTPR top-up amount and is thus excluded from tax under Part 2.1.

Paragraph (b) implements Article 2.6.2.(b), providing certain rules applicable to stateless flow-through entities. As these entities, by virtue of being stateless, will never be located in a jurisdiction with a qualified UTPR in force, paragraph (b) allocates their employees and tangible assets (that are not already attributable to a permanent establishment of the flow-through entity) to any constituent entities of the MNE group that are located in the jurisdiction where the flow-through entity was created. If there are no such constituent entities, then the stateless flow-through entity's employees and tangible assets are disregarded for these purposes.

In accordance with paragraphs 19 to 21 of the Commentary to Article 9.3.2., these rules in section 49.7 do not apply for purposes of the definition "initial phase of international activity year" in section 49.1, which is relevant in applying the initial phase of international activity exclusion from the UTPR, in subsection 49.9(1). Thus, the tangible assets of investment entities and stateless flow-through entities are taken into account, under paragraph (b) of that definition, in determining whether a fiscal year qualifies as an "initial phase of international activity year".

Application – joint ventures

GMTA
49.8(1)

This subsection implements, in part, Article 6.4.1.(c) as well as one aspect of paragraph 21 of the Commentary to Article 9.3.2. of the Model Rules. This subsection provides that any reference to a "constituent entity" of an MNE group generally includes a joint venture entity in respect of the MNE group. As a consequence, for example, the employees and tangible assets of joint venture entities in respect of an MNE group are included in determining the Canadian UTPR percentage under subsection 49.6(1). However, joint venture entities are not (subject to subsection 49.8(2)) constituent entities for the purposes of computing the UTPR top-up amount of a constituent entity or for the purposes of the definition "initial phase of international activity year" in section 49.1. These exclusions mean that a joint venture entity will not typically have a UTPR top-up amount, and that the tangible assets of a joint venture entity are not taken into account in determining whether a fiscal year qualifies as an initial phase of international activity year.

Joint ventures – exception

GMTA
49.8(2)

This subsection provides an exception to the general rule, set out in subsection 49.8(1), that a joint venture entity will not have a UTPR top-up amount under section 49.3. Under this subsection, a reference to a constituent entity of an MNE group includes a joint venture entity in respect of the MNE group if there are no constituent entities of the MNE group that are located in Canada other than joint venture entities. This ensures that Article 2.6.3., as implemented by subsection 49.6(2), cannot apply to exclude Canada from the UTPR top-up amount allocation by virtue of an MNE group having a Canadian UTPR top-up amount that is not imposed under Part 2.1 because the only constituent entities located in Canada are joint venture entities.

Initial phase of international activity – exclusion

GMTA
49.9(1)

This subsection implements Articles 9.3.1. and 9.3.4. of the Model Rules.

Reference jurisdiction – special rule

GMTA
49.9(2)

This subsection implements Article 9.3.5. of the Model Rules.

These amendments apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Clause 12

Domestic minimum top-up tax

GMTA
51(1)

Subsection 51(1) is amended consequential to the amendment to subsection 52(1), which excludes securitization entities from having a domestic top-up amount. For more information, see the notes on the definition “securitization entity” in subsection 2(1) and on subsection 52(1).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 13

Definition of *domestic top-up amount*

GMTA
52(1)

The definition “domestic top-up amount” is amended by adding a parenthetical that excludes securitization entities (as newly defined in subsection 2(1)) from having a domestic top-up amount. This amendment implements, in part, paragraph 118.40.10 in the Commentary to the definition “Qualified Domestic Minimum Top-up Tax” in Article 10.1. of the Model Rules (as introduced by Section 6 of the June 2024 Administrative Guidance), concerning the exclusion of a securitization entity from the scope of the QDMTT and liability to top-up tax under a QDMTT and a UTPR.

The consequential amendments to subsections 51(1) and 66(3) further ensure that no domestic minimum top-up tax and no joint and several, or solidary, liability for such taxes can be imposed on a securitization entity.

For more information, see the note on the definition “securitization entity” in subsection 2(1).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Clause 14

Definitions – initial phase of international activity

GMTA
53(1)

Consequential on the introduction of new Part 2.1, the definitions of “initial phase of international activity year”, “net book value” and “reference jurisdiction” are replaced with references to the definitions of those terms in new section 49.1 of that Part. In addition, a new definition “tangible assets” is added, with reference to that section. For more information, see the notes to those definitions in section 49.1.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Tangible assets – permanent establishments

GMTA
53(2)

Consequential on the addition of the new definition “tangible assets” in section 49.1, referenced in subsection 53(1), subsection 53(2) is repealed.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Clause 15

Part 2 or Part 2.1 return

GMTA
61(1)

Subsection 61(1) is amended to require that any person liable to pay tax under new Part 2.1 must file a return in prescribed form with the Minister by the GIR due date.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Clause 16

Part 2 — assessment of another constituent entity

GMTA
66(1)

Subsection 66(1) is amended, similar to subsection 66(3) and new subsection 66(2.1), to exclude securitization entities from assessments under Part 2 or 5 of the Act and ensure that a securitization entity of an MNE group is not jointly and severally, or solidarily, liable for the liabilities of another constituent entity (or joint venture entity) of that MNE group under Part 2 or Part 5.

For more information, see the notes on the definition "securitization entity" in subsection 2(1) and on subsection 66(3).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Part 2.1 — joint and several, or solidary, liability

GMTA
66(2.1)

New subsection 66(2.1) provides that a constituent entity, other than a securitization entity, of an MNE group that is located in Canada is jointly and severally, or solidarily, liable for the liabilities that another constituent entity of that MNE group has under Part 2.1 or 5, and that the provisions of Part 5 apply to the constituent entity in respect of those amounts with any modifications that the circumstances require.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Part 2.1 — appointment of paying entity

GMTA
66(2.2)

New subsection 66(2.2) provides that, if multiple persons in respect of an MNE group are required to pay amounts under Part 2.1 for a fiscal year, they may appoint in the Part 2.1 return one of those persons that is resident in Canada to pay those amounts on behalf of all persons that are otherwise required to pay the Part 2.1 amounts. In effect, this allows an MNE group to appoint one person to pay tax in respect of the UTPR top-up amounts (as defined in section 49.3) of all the constituent entities of the MNE group.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Part 3 — joint and several, or solidary, liability

GMTA
66(3)

Subsection 66(3) is amended, similar to subsections 52(1), 66(1) and 66(2.1), to ensure that a securitization entity of an MNE group is not jointly and severally, or solidarily, liable for the liabilities another constituent entity (or joint venture entity) of that MNE group has under Part 3 or 5.

For more information, see the notes on the definition “securitization entity” in subsection 2(1) and on subsection 52(1).

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

Part 2.1 and Part 3 — joint and several, or solidary, liability of joint venture entities

GMTA
66(4)

Subsection 66(4) is amended to include a reference to new Part 2.1. This ensures that a joint venture entity located in Canada is jointly and severally, or solidarily, liable for the liabilities that another joint venture entity of the same joint venture group has under Part 2.1, and that the provisions of Part 5 apply to the joint venture entity with respect to such amounts with any modifications that the circumstances require.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2024.

Clause 17

Exception – objection or appeal

GMTA
85(2)

Subsection 85(2) is an administrative provision which provides certain exceptions to the general limitation period for assessments. Paragraph 85(2)(b) is amended to coordinate with an amendment to a similar administrative provision located in subsection 169(3) of the *Income Tax Act*.

This amendment provides the Minister with the ability to assess a person at any time in order to dispose of an appeal, regardless of whether that person is the appellant, provided that the person being assessed has provided written consent. This amendment ensures that assessments can be made on multiple taxpayers based on the result of an appeal in order to achieve appropriate final tax results.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2023.

INCOME TAX CONVENTIONS INTERPRETATION ACT

Clause 18

Application of the *Global Minimum Tax Act*

ITCIA
4.4

New section 4.4 is added consequential on the introduction of the *Global Minimum Tax Act*, which implements in Canada *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*, published by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. This section clarifies, for the avoidance of doubt, that Canada's tax treaties do not prevent the taxation of income in accordance with the *Global Minimum Tax Act*, nor do they require Canada to provide relief, such as tax credits, for tax imposed under another state's Pillar Two implementing legislation.

This section is deemed to have come into force on January 1, 2024.