
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*. 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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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)

“consolidated financial statements”

This definition implements the corresponding definition in Article 10.1. of the Model Rules, as clarified by paragraphs 8.1 to 8.4 in the Commentary to the definition “Consolidated Financial Statements” and paragraphs 8.6 to 8.7 in the Commentary to the definition “Controlling Interest” in Article 10.1. of the Model Rules (as introduced by Section 1.2 of the February 2023 Administrative Guidance).

Paragraph (d) before subparagraph (i) of the French definition is amended to better align the French and the English versions of this paragraph.

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

“private investment entity”

The definition “private investment entity” is introduced, together with subsection 9(2.1), to address potentially negative compliance and tax outcomes under the Act in certain cases where a private entity (i.e., a “private investment entity”) owns, directly or indirectly, a controlling interest in a publicly listed corporation.

A private investment entity is a private entity located in Canada that:

- is not controlled by a publicly listed entity;
- owns the controlling interest in a publicly listed corporation located in Canada;
- for purposes of the Act, consolidates its financial results with the publicly listed corporation(s) it controls because of paragraph (d) of the “consolidated financial statements” definition; and
- prepares (or is controlled by another private entity that prepares) its actual financial statements using the Accounting Standards for Private Enterprises (“ASPE”) established by the Accounting Standards Board (Canada) and has exercised the option not to prepare consolidated financial statements under ASPE.

In other words, the ultimate controlling private entity of the group does not prepare actual consolidated financial statements because it has chosen not to under ASPE, but it is nevertheless deemed to have consolidated financial statements (that include the public corporation(s) it controls) for the purposes of the Act because of the rule in paragraph (d) of the “consolidated financial statements” definition.

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

“recapture exception accrual”

The “recapture exception accrual” definition implements the corresponding definition from Article 4.4.5. of the Model Rules and is used to effectively exempt certain categories of deferred tax expense from the application of the recapture rule in subsection 25(6) of the Act.

A minor revision is made to the wording of paragraph (a) of this definition – replacing the word “on” with “in respect of” – primarily for the purpose of implementing new paragraph 95.1 of the Commentary to Article 4.4.5. of the Model Rules (as introduced by Section 1.3 of the June 2024 Administrative Guidance). That new paragraph in the Commentary clarifies that deferred tax expense (or benefit) associated with cost recovery allowances that are granted to the lessor of a leased-out tangible asset can qualify as a recapture exception accrual notwithstanding that the lessor may book the leased-out tangible asset as a receivable in its financial accounts. The amendment to paragraph (a) of the “recapture exception accrual” definition is intended to accommodate such indirect connections between a cost recovery allowance and the tangible asset to which it ultimately relates.

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

“substitute loss carry-forward recapture amount”

The “substitute loss carry-forward recapture amount” definition forms part of the loss-making parent entity rules, originally outlined in paragraphs 82.1 to 82.4 of the Commentary to Article 4.4.1.(e) of the Model Rules (as introduced by Section 2.8 of the February 2023 Administrative Guidance). These rules have been expanded in scope by way of revisions to paragraphs 82.1 to 82.4, and the introduction of new paragraphs 82.6 and 82.7, of the Commentary to Article 4.4.1.(e) (as revised and introduced, respectively, by Section 4.1 of the June 2024 Administrative Guidance).

As a result of the amendments made to this definition, there are three conditions that must be satisfied for an amount to constitute a substitute loss carry-forward recapture amount of a constituent entity:

- The amount is a tax loss carried forward from a prior year, or would be a domestic source tax loss of the constituent entity for the current year were it not offset against income of a foreign subsidiary or permanent establishment.

- In determining the taxable income of the constituent entity, the amount is used to offset income of a foreign subsidiary or permanent establishment that is attributed to the constituent entity (e.g., under a controlled foreign company tax regime).
- The income tax laws of the jurisdiction where the constituent entity is located allow for recapture of the amount by way of a recharacterization, in future taxation years, of domestic source income to foreign source income.

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

For more information, see the note to the definition “substitute loss carry-forward tax credit”.

“substitute loss carry-forward tax credit”

The “substitute loss carry-forward tax credit” definition forms part of the loss-making parent entity rules, originally outlined in paragraphs 82.1 to 82.4 of the Commentary to Article 4.4.1.(e) of the Model Rules (as introduced by Section 2.8 of the February 2023 Administrative Guidance). These rules have been expanded in scope by way of revisions to paragraphs 82.1 to 82.4, and the introduction of new paragraphs 82.6 and 82.7, of the Commentary to Article 4.4.1.(e) (as revised and introduced, respectively, by Section 4.1 of the June 2024 Administrative Guidance).

The scope of the rules has been expanded in the following two ways:

- First, the categories of foreign source income in respect of which displaced foreign tax credits may qualify as substitute loss carry-forward tax credits have been extended to include income of any foreign subsidiary or permanent establishment of the constituent entity (not just controlled foreign companies, as was previously the case).
- Second, in addition to current year tax losses, the revised rules also apply where domestic source tax loss carry-forwards of the constituent entity from prior years are offset against income from the relevant foreign sources, thereby displacing foreign tax credits that could otherwise have been used.

This definition is amended to accommodate those expansions of the scope of the rules. The scope of the rules is similarly expanded in respect of tax regimes that do not allow foreign tax credits carry-forwards but instead apply a recapture mechanism that recharacterizes domestic-source income in a future tax year to be from a foreign source. For more information, see the note to the definition “substitute loss carry-forward recapture amount”.

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

“unclaimed accrual”

The “unclaimed accrual” definition is amended in two ways to better reflect the “Unclaimed Accrual” concept introduced by Article 4.4.7. of the Model Rules, as clarified by new paragraphs 112.1 to 112.6 of the Commentary to Article 4.4.7. (introduced by Section 1.3 of the June 2024 Administrative Guidance).

First, the preamble and subparagraph (a)(i) of the definition are revised so that an increase in an aggregate category of deferred tax liabilities (“DTLs”) can qualify as an unclaimed accrual (if the other conditions are met), rather than requiring that MNE groups track each DTL separately and make unclaimed accrual elections on a DTL-by-DTL basis. This change ensures that the unclaimed accrual election can apply at the level of DTL aggregation permitted by the Administrative Guidance and used by an MNE group. In recognition of the accounting practices typically employed by MNE groups, the June 2024 Administrative Guidance clarifies that MNE groups may track DTLs at various levels of aggregation (e.g., general ledger account), subject to certain conditions that must be met in order to use higher levels of aggregation, and calculate their total deferred tax adjustment amounts on that basis.

An unclaimed accrual election must be made in respect of all DTLs in a given aggregate DTL category, unless the constituent entity chooses (or is required) to track certain DTLs on an item-by-item basis, in which case the unclaimed accrual election can be made in respect of a particular DTL.

Second, new paragraph (b) is added, along with a new subsection 25(7), to implement paragraphs 112.3 and 112.4 of the Commentary to Article 4.4.7., which introduce the option for a five-year unclaimed accrual election to be made “with respect to a DTL for a general ledger account or an Aggregate DTL Category irrespective of any expectations about the reversal time period of the DTLs individually or the general ledger account or Aggregate DTL Category as a whole.” This is in contrast to the existing unclaimed accrual election, which is an annual election and may only be made if the relevant DTL increase is expected to reverse (or, in the case of aggregated DTLs, considered to have reversed under the applicable methodology, such as first-in, first-out) within 5 years of its accrual. In the case of this new five-year election, all DTL accruals and reversals in respect of the relevant DTL or aggregate DTL category (whether aggregated at the general ledger or some other level) are excluded from adjusted covered taxes until the election is revoked. The term “five-year election” is defined in subsection 2(1), which contains specific rules governing the revocation of such an election.

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

Clause 2

Location of entities

GMTA

5(1)(b)

Paragraph 5(1)(b) is amended to clarify that an entity (other than a flow-through entity) that does not meet the condition in paragraph (a) – i.e., it is not tax resident in a jurisdiction based on its place of management, creation or similar criteria – is resident in the jurisdiction where it was created or continued. This ensures that, for example, an entity that is created in a jurisdiction where it is tax resident based on its place of management, but that is then continued into another jurisdiction without a domestic corporate income tax, is considered to be located in that second jurisdiction for the purposes of the Act.

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

Clause 3

Currency conversion – GloBE calculations

GMTA

7(1)

Subsection 7(1) is relevant in determining amounts used in a “GloBE calculation” (essentially, any calculation made in the course of ascertaining the top-up amount of a constituent entity under the Act).

This subsection is amended to clarify its application in two ways. First, a new paragraph (a) is being added, in line with paragraph (a) of subsection 7(3), to make it clear that the amount in respect of a particular input (e.g., covered taxes) used in a GloBE calculation (e.g., the determination of adjusted covered taxes) must be the amount expressed in the reporting currency of the consolidated financial statements of the ultimate parent entity. Where the accounting currency of the constituent entity is the reporting currency, the amount will already be denominated in the reporting currency. Where this is not the case, paragraph (b) provides that the amount must be converted to the reporting currency using the foreign currency translation principles of the financial accounting standard used in preparing the consolidated financial statements of the ultimate parent entity. This conversion will either take place in the course of preparing those consolidated financial statements (if the input is factored into those statements) or pursuant to paragraph (b) of this subsection in any other case.

Second, paragraph (b) is amended to clarify that it is the amount of the input, as converted to the reporting currency using the foreign currency translation principles of the financial accounting standard used in preparing the consolidated financial statements, that is to be used in undertaking the relevant GloBE calculation.

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

If subsections (1) and (2) do not apply

GMTA
7(3)

Minor textual amendments are made to paragraph 7(3)(b), in order to maintain consistency with the revised text of the corresponding paragraph 7(1)(b).

The French version of paragraph 7(3)(a) is also amended to better align the French and the English versions of this paragraph.

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

For more information, see the note to subsection 7(1).

Clause 4

Private investment entities – de-consolidation

GMTA
9(2.1)

New subsection 9(2.1) of the Act implements a de-consolidation rule in respect of certain qualifying MNE groups that include one or more private investment entities. In general terms, a private investment entity is an entity located in Canada that is not publicly listed, that controls a Canadian-located publicly listed corporation and that produces only unconsolidated financial statements under the Canadian Accounting Standards for Private Enterprises (or is a member of a group the ultimate controlling entity of which prepares only unconsolidated financial statements). For more information, see the note to the definition “private investment entity” in subsection 2(1).

Where it is determined that a private investment entity would be a constituent entity of a qualifying MNE group in the absence of subsection (2.1), the rules in paragraphs (a) to (c) of that subsection apply. Paragraph (a) is intended to effectively de-consolidate the private and public subgroups of the MNE group for the purposes of the Act. This is achieved by deeming any private investment entity not to have a controlling interest in any Canadian-located publicly listed corporation. By severing the control link between the private entities and the publicly listed corporation(s), the MNE group is split into multiple smaller groups. The one or more private investment entities in the group (together with any private entities they control) form a new group; and each publicly listed entity, together with any entities it controls, forms a separate group with the publicly listed entity as its ultimate parent entity. To prevent circularity, paragraph (a) does not apply for the purposes of the definition “private investment entity”.

Paragraph (b) deems any new group (or standalone entity) that results from the de-consolidation under paragraph (a) to be a qualifying MNE group. This paragraph ensures that each of the new groups created by the de-consolidation are subject to the Act (and potentially liable to top-up tax) even where a new group, in and of itself, does not otherwise satisfy the revenue threshold test in subsection 9(1), the multi-jurisdictional requirement in subsection 10(1) or the group requirement in subsection 10(2). By deeming each new group (or single entity) to be a qualifying MNE group, paragraph (b) effectively deems it to be a group and an MNE group as well. Thus, as long as the “actual group” is a qualifying MNE group, all of the (de-consolidated) new groups will be as well.

Finally, paragraph (c) applies in instances where a single entity (without a permanent establishment) is separated from the rest of the “actual” MNE group as a consequence of the de-consolidation under paragraph (a). Paragraph (c) provides that the single entity is the ultimate parent entity of the deemed qualifying MNE group (consisting of that single entity) and that its financial statements (prepared in accordance with an authorized financial accounting standard) are to be used as the consolidated financial statements of the group.

In the absence of subsection (2.1), the “actual group” would be the qualifying MNE group for the purposes of the Act, with potentially significant compliance implications. In addition, all the constituent entities included in the actual group that are located in the same jurisdiction would be required to “blend” their income and taxes in determining the jurisdictional effective tax rate and top-up amounts for the actual group. Likewise, elections that are made on a jurisdictional basis under the Act would apply equally to all the public and private entities within the actual group. Subsection (2.1) is intended to address these potentially negative compliance and tax outcomes.

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

De-consolidation – avoidance transactions

GMTA
9(2.2)

New subsection 9(2.2) of the Act is intended to counteract any attempts to plan into the de-consolidation rule in subsection (2.1), by denying the application of subsection (2.1) where a transaction is undertaken with the main purpose of making that subsection applicable to an “actual group” (within the meaning of subsection (2.1)).

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

For more information, see the note to subsection 9(2.1).

Clause 5

Adjustments for impairments and reversals

GMTA
18(27)

New subsection 18(27) is added, along with subsections 25(9) and (10), to implement paragraph 68.5 of the Commentary to Article 4.4 (introduced in Section 2.1.3 of the June 2024 Administrative Guidance).

With the introduction of new subsections 25(9) and (10), modifications are required to the adjusted GloBE carrying value of an asset following certain impairments or reversals of impairments for purposes of computing the adjusted covered tax of a constituent entity. Subsection 18(27) applies these same modifications for the purpose of determining a constituent entity's GloBE income or loss in respect of the asset. For more information, see the note to subsections 25(9) and (10).

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

Clause 6

Adjusted covered taxes – no double counting

GMTA
22(5)

The preamble to subsection 22(5) is amended to remove the words “in respect of covered taxes”, thus clarifying that the “no double counting” rule applies to all amounts otherwise included in calculating adjusted covered taxes (including amounts that may not strictly qualify as “covered taxes”). The preamble to this subsection is also streamlined by the removal of its opening words “For the purpose of determining a constituent entity's adjusted covered taxes”, which were redundant.

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

Clause 7

Allocation – tax transparent entities

GMTA

24(3)

Subsection 24(3) implements Article 4.3.2.(b) of the Model Rules, allocating covered taxes of a tax transparent entity to a constituent entity-owner of the tax transparent entity, where that owner's financial accounting income includes a portion of the tax transparent entity's net income or loss because of the allocation rules in paragraph 17(6)(b).

Subsection 24(3) is amended to implement paragraphs 57.1 to 57.4 of the Commentary to Article 4.3.2.(b), as introduced by Section 5.4 of the June 2024 Administrative Guidance. This amendment ensures that covered taxes imposed under a controlled foreign company (CFC) regime on a constituent entity-owner (the “CFC owner”) in relation to a CFC that is a flow-through entity, and allocated under subsection 24(4) to that CFC, can be further allocated to another constituent entity-owner of the CFC. This further allocation will occur where the CFC owner holds its ownership interest in the CFC through the other owner; the other owner includes any portion of the CFC’s net income or loss in computing the other owner’s financial accounting income because of paragraph 17(6)(b) (i.e., the CFC is a tax transparent entity in relation to the other owner); and the CFC taxes (i.e., the covered taxes in question) are in respect of the portion of the CFC’s net income or loss that is included in the other owner’s financial accounting income.

In this context, CFC tax is considered to be “in respect of” the portion of the CFC’s net income or loss included in the other owner’s financial accounting income if it can reasonably be considered to have been paid in relation to that portion. For example, if the CFC owner holds its ownership interest in the CFC equally through two other owners, one of which views the CFC as fiscally transparent and the other of which does not, subsection 17(6) allocates half of the CFC’s income that is subject to CFC tax at the CFC owner-level to the first other owner while the other half remains in the CFC. Accordingly, only half of the CFC tax pushed down to the CFC under subsection 24(4) can be said to be in respect of the net income or loss of the CFC that is allocated to this first other owner under paragraph 17(6)(b). Consequently, the other half of the CFC tax remains with the CFC.

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

Allocation – controlled foreign companies

GMTA

24(4)

Subsection 24(4) implements Articles 4.3.2.(c) and 4.3.3. of the Model Rules. This subsection allocates certain covered taxes to a controlled foreign company (“CFC”) where they are payable

by a constituent entity-owner of the CFC under a CFC tax regime, subject to the rules and limitations set out in the subsection.

Paragraph 24(4)(a) is amended to implement the following portion of new paragraph 71.4 of the Commentary to Article 4.4.1. of the Model Rules (as introduced by Section 4.2 of the June 2024 Administrative Guidance):

“Where deferred tax expenses or benefits arise under a CFC Tax Regime other than a Blended CFC Tax Regime, the deferred tax expenses or benefits are to be allocated to the CFC Constituent Entities ... Accrual and reversal of any deferred tax expense or benefit arising under a Blended CFC Tax Regime is excluded from the MNE Group’s computation of Adjusted Covered Taxes for all jurisdictions.”

The parenthetical language added to paragraph 24(4)(a) explicitly excludes, from the scope of the CFC tax push-down rule in subsection 24(4), any deferred tax expenses (and benefits) resulting from the application of a blended CFC tax regime (whether that deferred tax expense arose because of a delay in the accrual of taxes under that blended CFC tax regime compared with the accrual of taxes for accounting purposes or for any other reason). Therefore, only current tax expense associated with a blended CFC tax regime is allocable under subsection 24(4).

Existing paragraph 24(4)(b) and the related definitions implement the special time-limited methodology for allocating taxes – incurred under an aggregated or “blended” CFC tax regime – from a constituent-entity owner to a CFC, as that methodology is described in paragraphs 58.1 to 58.7 in the Commentary to Article 4.3.2.(c) of the Model Rules (as introduced by Section 2.10 of the February 2023 Administrative Guidance).

Certain details of this special allocation methodology were further clarified in revised paragraphs 58.6 and 58.7, and new paragraphs 58.6.1 to 58.6.3, of the Commentary to Article 4.3.2.(c) of the Model Rules (as revised and introduced, respectively, by Section 4 of the December 2023 Administrative Guidance). Paragraph 24(4)(b) is amended to better reflect the methodology as clarified.

The introduction of the “specified jurisdictional effective tax rate” concept in new subsection 24(4.1) (which implements the “GloBE Jurisdictional ETRs” from paragraphs 58.6 to 58.7 in the Commentary to Article 4.3.2.(c)), obviates the need for the hypothetical effective tax rate determinations in the existing version of paragraph 24(4)(b). Accordingly, the description of G is amended to simply reference the specified jurisdictional effective tax rate of the particular CFC and subparagraphs (i) and (ii) in the description of C are deleted. As a result of that change to the description of G, to determine the value of E, the applicable specified jurisdictional effective tax rate is deducted from the blended CFC regime threshold rate (i.e., the amount determined for F), and that value determined for E is then multiplied by the constituent entity-owner’s share of the CFC’s income as determined under the blended CFC regime (i.e., the value determined for D) to determine the blended CFC allocation key of the CFC (i.e., the value determined for B). The ratio of the CFC’s allocation key to the total of the allocation keys of the constituent entity-

owner's CFCs is then used in apportioning the blended CFC regime taxes imposed on the constituent entity-owner between its CFCs.

For more information, see the note to new subsection 24(4.1).

An unrelated amendment is the introduction of the phrase “directly or indirectly” in variable C to qualify the manner in which a constituent entity-owner may hold ownership interests in its CFCs. This change is clarificatory in nature and is not intended to imply that a reference in the Act to the holding of ownership interests without this qualification is restricted to direct holdings. Each reference to the holding of ownership interests should be interpreted based on its text, context and purpose, and in light of the applicable interpretive provisions in the Act.

In the June 2024 Administrative Guidance, new paragraphs 57.1 to 57.4 of the Commentary to Article 4.3.2.(b) were introduced, clarifying the interaction between the rules allocating covered taxes of tax transparent entities (implemented in subsection 24(3) of the Act) and the rules allocating covered taxes imposed under controlled foreign company tax regimes (implemented in subsection 24(4) of the Act) in cases where a CFC is also a tax transparent entity. Of particular relevance to the interpretation of subsection 24(4), this new guidance clarifies that in such cases, the allocation of CFC taxes down to the CFC occurs first (with the passive income limitation and blended CFC regime allocation methodology applied where relevant), followed by the allocation of those taxes up to the CFC's constituent entity-owners under the relevant provisions. No amendment is made to subsection 24(4) to implement this new guidance, as subsection 3(1) of the Act requires that section 24 be interpreted consistently with this new guidance.

Paragraph 24(4)(c) is amended to implement the following portion of new paragraph 71.14 of the Commentary to Article 4.4.1. of the Model Rules (as introduced by Section 4.2 of the June 2024 Administrative Guidance), which reiterates paragraph 63 of the Commentary to Article 4.3.3.:

“Article 4.3.3. limits the total amount of current and deferred taxes which can be allocated to a Constituent Entity for a given Fiscal Year to an amount equal to the Top-up Tax Percentage for the CFC Jurisdiction calculated without regard to the current and deferred Covered Taxes to be pushed down to the subsidiary under the CFC Tax Regime or fiscal transparency rule multiplied by the amount of the subsidiary's Passive Income that is includible under the CFC Tax Regime or fiscal transparency rule (under Article 10.2.2).”

The revised wording of paragraph 24(4)(c) clarifies that only the CFC tax in respect of passive income of the particular constituent entity (and not every CFC located in its location jurisdiction) is disregarded in calculating the hypothetical top-up percentage used in determining the limitation on the amount of CFC tax on passive income that is allocated from the constituent entity-owner to the particular constituent entity. Among other things, this means that, if a determination of CFC tax for the same year that is to be pushed down to another constituent entity located in the same jurisdiction has been made prior to the determination of the amount to be pushed down for the particular constituent entity, the CFC tax allocated to that other entity is not disregarded for the purpose of determining the hypothetical top-up percentage as it pertains to the particular constituent entity. In effect, this will create a “waterfall” application of the

limitation rule, with the hypothetical top-up percentage for a given constituent entity taking into account CFC tax push-downs already made in respect of other constituent entities located in the jurisdiction up to that point.

Paragraph 24(4)(c) is also amended to remove extraneous wording.

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

Specified jurisdictional effective tax rate

GMTA
24(4.1)

New subsection 24(4.1) introduces the “specified jurisdictional effective tax rate” concept, which implements in the Act the “GloBE Jurisdictional ETR” concept from paragraphs 58.6 to 58.7 in the Commentary to Article 4.3.2.(c) of the Model Rules. This concept is relevant to the determination of the blended CFC allocation keys (i.e., variable B of the formula in paragraph 24(4)(b)) that are used to allocate taxes imposed on a constituent entity (the “parent entity”) of an MNE group, under a blended CFC tax regime, to its CFC. The blended CFC taxes allocated to any CFC that is a constituent entity or joint venture entity of the MNE group (referred to as an “in-scope entity”) are pushed down and included in its adjusted covered taxes for the purpose of determining its top-up amount under the Act.

A blended CFC allocation key (and thus a specified jurisdictional effective tax rate) must be determined for each CFC of a parent entity when allocating blended CFC taxes of that parent entity, regardless of whether that CFC is an in-scope entity. This allows a portion of the taxes to be allocated to CFCs that are not in-scope entities, in cases where the income of those CFCs can be considered to have generated the taxes. Any amount of blended CFC taxes allocated to a CFC that is not an in-scope entity are excluded from the GloBE calculations performed under the Act in respect of CFCs that are in-scope entities, reducing the shelter that those taxes would otherwise provide from top-up tax liability.

This new subsection is separated into three paragraphs that set out the method by which a CFC’s specified jurisdictional effective tax rate is determined by reference to the CFC’s treatment under the Act:

- Paragraph (a) applies where the CFC is an in-scope entity and no provision of the Act deems its top-up amount (or top-up percentage) to be nil;
- Paragraph (b) applies where the CFC is an in-scope entity and a provision of the Act deems its top-up amount (or top-up percentage) to be nil; and
- Paragraph (c) applies where the CFC is not an in-scope entity.

Where paragraph (a) applies, the specified jurisdictional effective tax rate of the CFC is simply the effective tax rate used in determining the top-up amount of the CFC under the Act (e.g., the rate determined under subsection 29(1), if the CFC is a standard constituent entity) but recalculated to take into account certain adjustments to the jurisdictional adjusted covered taxes amount used for the purpose of determining that rate. The first of these adjustments involves stripping out any CFC taxes allocated under subsection 24(4) to any constituent entity of the CFC's MNE group that is located in the same jurisdiction as the CFC.

The second adjustment increases the jurisdictional adjusted covered taxes by the amount of any creditable qualified domestic minimum top-up tax charged in respect of the subgroup (the "blending subgroup") within the MNE group that consists of the CFC and any other in-scope entities that are located in the same jurisdiction and have their income and taxes aggregated (or "blended") with those of the CFC for the purpose of determining the top-up amounts of those entities (e.g., a "standard constituent entity" subgroup or "investment entity" subgroup). The rationale behind this second adjustment is that the amount of blended CFC taxes payable by the parent entity in respect of the entities in blending subgroup was lower because of the qualified domestic minimum top-up tax paid. This adjustment is consistent with the principle that an in-scope entity should be allocated only blended CFC taxes generated by its income.

Where paragraph (b) applies, the determination of the specified jurisdictional effective tax rate applicable to the CFC is made based on the particular provision of the Act under which the top-up amount (or top-up percentage) of the CFC was deemed to be nil. If the particular provision is section 47 (the transitional country-by-country reporting safe harbour), then subparagraph (b)(i) applies and the specified jurisdictional effective tax rate is the simplified effective tax rate determined under subsection 47(5). In cases where section 47 applies because one of the other tests listed in paragraph 47(2)(e) (i.e., the *de minimis* threshold test or the routine profits test) is met, a simplified effective tax rate will not actually have been determined in applying subsection 47(4), so subparagraph (b)(i) requires the calculation and use of the rate for the CFC that would have been the simplified effective tax rate if it had been so determined.

If the particular provision under which the CFC's top-up amount is deemed to be nil was section 44 (the qualified domestic minimum top-up tax safe harbour), then subparagraph (b)(ii) applies and the specified jurisdictional effective tax rate of the CFC is the effective tax rate that was used to calculate the amount, under the qualified domestic minimum top-up tax of the CFC's location jurisdiction, that is analogous to a domestic top-up amount of the CFC under the Act, subject to one adjustment. As with the rate calculated under paragraph (a), an addition is made to the tax figure (i.e., the jurisdictional adjusted covered taxes equivalent) used in calculating the effective tax rate in an amount equal to any creditable qualified domestic minimum top-up tax in respect of the CFC and any other in-scope entities in the same blending subgroup as the CFC. The rationale behind this adjustment is the same as for the corresponding adjustment in paragraph (a) (as set out above).

If the provision under which the CFC's top-up amount is deemed to be nil is neither section 44 nor 47, or the top-up percentage that is applied in computing the CFC's top-up amount is deemed to be nil (under the *de minimis* jurisdiction exclusion in section 33), then subparagraph (b)(iii) applies and the specified jurisdictional effective tax rate is a variation of the simplified effective

tax rate that would have been determined under subsection 47(5). The variation in question is that the “profit (loss) before income tax” amounts used in the determination are taken from the qualified financial statements of the relevant entities instead of from their country-by-country reports. As a result, the rate is the aggregate qualifying income tax expense (taken from the qualified financial statements) divided by the aggregate profit (loss) before income tax amount (taken from those same statements).

Where paragraph (c) applies, because the CFC is not an in-scope entity of the parent entity’s MNE group, the specified jurisdictional effective tax rate of the CFC is generally determined by reference to an effective tax rate used to calculate the top-up amounts of in-scope entities of that MNE group located in the same jurisdiction as the CFC. If there is only one effective tax rate used (e.g., because the MNE group has in-scope entities from only one blending subgroup, such as standard constituent entities, located in that jurisdiction), then subparagraph (c)(i) applies and that effective tax rate is the specified jurisdictional effective tax rate. If there are multiple such effective tax rates, subparagraph (c)(ii) applies and the specified jurisdictional effective tax rate is the effective tax rate that applies to the blending subgroup with the greatest amount of aggregate income attributable to the parent entity under the blended CFC regime. In other words, the income of each blending subgroup that is attributable to the parent entity is determined, and whichever blending subgroup has the most attributable income is the one whose effective tax rate is used for the CFC.

Finally, if there is no effective tax rate determined for the jurisdiction (or subparagraphs (c)(i) and (ii) do not apply for some other reason), then subparagraph (c)(iii) requires the MNE group to calculate and use the rate that would have been the effective tax rate calculated under subsection 29(1) with some modifications. These modifications are the following: all the CFCs in the jurisdiction (including the subject CFC) that have any of their income attributed to the parent entity under the blended CFC tax regime are deemed to be standard constituent entities (this ensures that the income and taxes of all of those CFCs are blended in determining the rate); the aggregated income and tax figures from the financial accounts of the CFCs are used instead of net GloBE income and jurisdictional adjusted covered taxes; and the excess negative tax expense mechanism is disapplied. Such modifications are required to make the effective tax rate calculation simpler – minimizing the associated administrative burden in recognition of the likelihood that there is lower information availability in the context of non-in-scope entity CFCs.

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

Allocation – hybrid and flow-through entities

GMTA
24(5)

Subsection 24(5) is amended to implement changes to paragraph 59 of the Commentary to Article 4.3.2.(d) and to paragraph 62 of the Commentary to Article 4.3.3., both as introduced by Section 5.6 of the June 2024 Administrative Guidance. These changes expand the scope of subsection 24(5) to include allocations of covered taxes to certain flow-through entities that have

financial accounting income because paragraph 17(6)(c) applies in respect of a constituent entity-owner's ownership interest in the flow-through entity. (For clarity, paragraph 17(6)(c) applies in respect of such an ownership interest where paragraph 17(6)(b) does not apply in respect of that ownership interest.) Where a flow-through entity's net income or loss is not allocated under paragraph 17(6)(b) to a particular owner that views the flow-through entity as fiscally transparent because there is an intermediate owner (between the flow-through entity and the particular owner) that views the flow-through entity as fiscally opaque, the amendments to subsection 24(5) ensure that any covered taxes paid by the particular owner in respect of the flow-through entity's income are pushed down to the flow-through entity, thereby matching the income and taxes at the flow-through entity level.

Variable B of the formula in paragraph 24(5)(b) is also amended – in a similar manner to the amendments made to variable B of the formula in paragraph 24(4)(c) – to clarify which covered taxes are to be disregarded for the purpose of determining the hypothetical top-up percentage used in determining the limitation on the push down of covered taxes in respect of passive income. For more information, see the note to paragraph 24(4)(c).

Paragraph 24(5)(b) is also amended to remove unnecessary wording.

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

Election – deferred tax expense exclusion

GMTA
24(7)

New subsection 24(7) implements new paragraphs 71.16 and 71.17 of the Commentary to Article 4.4.1. (as introduced by Section 4.2 of the June 2024 Administrative Guidance).

This new subsection allows an MNE group to opt out of applying the covered tax allocation provisions in subsections 24(1), (4), (5) and (6) (the “tax push-down rules”) in respect of deferred tax expenses recorded in the accounts of constituent entities located in a particular jurisdiction.

Generally speaking, the tax push-down rules apply in situations where a tax expense (current or deferred) is recorded in the financial accounts of one constituent entity (e.g., a main entity or parent entity) but that expense arises in relation to the GloBE income or loss of a second constituent entity (e.g., a permanent establishment or a controlled foreign company). The tax push-down rules allow for the tax expense to be matched with the income to which it relates.

Given the complexity of the “five step process” for allocating deferred tax expenses under the tax push-down rules (as outlined in paragraphs 71.4 to 71.15 of the Commentary to Article 4.4.1., introduced by Section 4.2 of the June 2024 Administrative Guidance), an MNE group may determine that the costs of undertaking that process outweigh the benefits. This subsection

allows such an MNE group to elect not to apply that process in respect of a particular jurisdiction.

The election under this subsection is made in respect of the parent jurisdiction, and not the jurisdiction of the constituent entity to which the taxes would otherwise be pushed down. If the election is made in respect of a particular parent jurisdiction, all deferred tax expenses recorded in the financial accounts of all constituent entities located in that jurisdiction that are of a category that would otherwise have been available for allocation to another constituent entity under the tax push-down rules are deemed to be nil. This applies whether or not the deferred tax expense would have actually been allocated under the tax push-down rules, so any portion of such expense that would have been retained in the parent jurisdiction if the tax push-down rules had been applied (under paragraph 22(2)(e)) is deemed to be nil. The effect of this rule is to disregard the deferred tax expenses for the purpose of determining the adjusted covered taxes of both the constituent entity-owner and the constituent entity to which the taxes would otherwise be allocated.

The making of an election under this subsection does not affect the application of the tax push-down rules in respect of current tax expenses.

The election made under this subsection is a “five-year election”, as defined in subsection 2(1) of the Act. That definition contains specific rules governing the revocation of the election.

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

Clause 8

Definition of *total deferred tax adjustment amount*

GMTA
25(1)

Variable A of the formula in subsection 25(1) is amended to clarify that deferred tax expenses allocated from one constituent entity to another under the covered tax allocation provisions in subsections 24(1), (4), (5) and (6) (the “tax push-down rules”) are included in the total deferred tax adjustment amount of the other constituent entity notwithstanding that those expenses are not recorded in its financial accounts. Such allocated amounts are subject to recasting at the minimum rate (where applicable) in the same way as deferred tax expenses recorded in the accounts of a constituent entity.

Paragraph (b) of variable B of the formula in subsection 25(1) includes an amount in the total deferred tax adjustment amount in respect of recaptured deferred tax liabilities that reverse (i.e., are paid) in a year after their recapture. That paragraph is amended in two ways to better reflect the intended operation of the deferred tax liability recapture rule contained in Article 4.4.4. of the Model Rules, as clarified by new paragraphs 89 to 90.33 of the Commentary to Article 4.4.4. (as introduced by Section 1.3 of the June 2024 Administrative Guidance). First, the paragraph is

amended to refer to an aggregation (i.e., aggregate category) of deferred tax liabilities instead of a single deferred tax liability. Second, the paragraph is amended to clarify that a reversal is considered to occur when the portion of the aggregation that had previously been recaptured (under subsection 25(6)) is considered to have reversed under the applicable methodology set out in the Commentary (e.g., first-in, first-out).

For more information, see the note to subsection 25(6).

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

Substitute loss carry-forward recapture amount

GMTA
25(4)

The cross-reference in paragraph 25(4)(b) to paragraph (b) of the definition “substitute loss carry-forward recapture amount” in subsection 2(1) is updated to instead reference paragraph (c), reflecting the amendments made to that definition, which resulted in the relevant content previously contained in paragraph (b) being included in a new paragraph (c).

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

Recaptured deferred tax liability

GMTA
25(6)

Subsection 25(6) is amended to better reflect the intended operation of the deferred tax liability recapture rule contained in Article 4.4.4. of the Model Rules, as clarified by new paragraphs 89 to 90.33 of the Commentary to Article 4.4.4. (as introduced by Section 1.3 of the June 2024 Administrative Guidance). This subsection contains the core of the recapture rule and feeds into the determination of an adjustment top-up amount under subsection 31(1) where there is a recapture of a deferred tax liability amount that was previously included in the total deferred tax adjustment amount of a constituent entity.

The wording of this subsection is revised in two ways. First, the preamble is revised to refer to an aggregation (i.e., aggregate category) of deferred tax liabilities instead of a single deferred tax liability. Second, paragraph (b) is revised to clarify that the test in that paragraph is satisfied when the relevant portion of the aggregation of deferred tax liabilities is not “considered to have reversed” under the applicable methodology (e.g., first-in, first-out).

For more information, see the note to subsection 25(1).

If an amount is not included in determining the total deferred tax adjustment amount of a constituent entity of an MNE group because of the MNE group's failure to satisfy the aggregation requirements described in the applicable Commentary, that amount cannot be recaptured under subsection 25(6) and will not benefit from the addition to total deferred tax adjustment amount under paragraph (b) of variable B of the formula in subsection 25(1) on its reversal.

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

Unclaimed accrual – five-year election

GMTA
25(7)

New subsection 25(7) is added, along with a new paragraph (b) in the definition “unclaimed accrual” in subsection 2(1), to implement paragraphs 112.3 and 112.4 of the Commentary to Article 4.4.7. (introduced in Section 1.3 of the June 2024 Administrative Guidance). For more information, see the note to the definition “unclaimed accrual”.

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

GloBE deferred tax asset and deferred tax liability

GMTA
25(8)

New subsection 25(8) is added, along with subsections 25(9) and (10), to implement Section 2.1.3 of the June 2024 Administrative Guidance, which introduces or amends the following paragraphs of the Commentary:

- Paragraph 86 to the Commentary to Article 3.2.1(i)
- Paragraphs 89 and 89.1 in the Commentary to Article 3.2.2
- Paragraphs 104.1 to 104.3 in the Commentary to Article 3.2.3
- Paragraph 118.1 in the Commentary to Article 3.2.5
- Paragraph 145.1 in the Commentary to Article 3.2.11
- Paragraphs 68.1 to 68.6 of the Commentary to Article 4.4
- Paragraph 90.1 of the Commentary to Article 4.4.4
- Paragraphs 51.1 and 51.2 of the Commentary to Article 6.2.1
- Paragraphs 71, 72 and 73.1 of the Commentary to Article 6.3.1
- Paragraph 75 of the Commentary to Article 6.3.2
- Paragraph 77 of the Commentary to Article 6.3.3
- Paragraphs 81 and 81.1 of the Commentary to Article 6.3.4

Where a provision results in the carrying value (referred to as the “GloBE carrying value”) of an asset or liability, for the purposes of computing GloBE income or loss, being different from the carrying value recorded in the financial accounts, subsection 25(8) generally requires that deferred tax assets and liabilities (and deferred tax expense) be determined, for the purpose of computing the total deferred tax adjustment amount, by reference to the GloBE carrying value (i.e., the difference between the GloBE carrying value and the tax basis), as adjusted in accordance with paragraphs 25(8)(a) and (b). These divergences between the GloBE carrying value and the carrying value recorded in the financial accounts can arise both in cases where a provision of the Act expressly determines the carrying value on a different basis than the financial accounts (e.g., subsection 18(22) or 38(1)), and in cases where a provision does not expressly address the carrying value but requires an adjustment that may result in a different carrying value by implication (e.g., subsection 18(12)).

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

Conditions for application of subsection (10)

GMTA
25(9)

New subsection 25(9) is added, along with subsection (10), to implement new paragraph 68.5 of the Commentary to Article 4.4 (introduced in Section 2.1.3 of the June 2024 Administrative Guidance). For more information, see the note to subsection 25(10).

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

Adjustments for impairments or reversals

GMTA
25(10)

New subsection 25(10) is added to implement new paragraph 68.5 of the Commentary to Article 4.4 (introduced in Section 2.1.3 of the June 2024 Administrative Guidance).

For the purposes of section 25, subsection 25(8) generally requires that the deferred tax asset or deferred tax liability in respect of an asset be determined based on the carrying value that is required to be used for GloBE purposes, with adjustments for capitalized expenditures, amortization and depreciation (referred to as “adjusted GloBE carrying value”). Paragraph 25(8)(b) provides that any impairment loss or reversal of an impairment is to be ignored for those purposes. However, if the conditions in subsection 25(9) are met, subsection 25(10) provides an exception to paragraph 25(8)(b). This exception applies where:

- An asset is subject to an impairment, or a prior-year impairment is reversed; and
- One of the following conditions is met:

- In the case of an impairment, the carrying value of the asset for accounting purposes is reduced to a value (referred to as the “impaired accounting carrying value”) that is less than the adjusted GloBE carrying value after the reversal, or
- In the case of a reversal of a prior-year impairment, the impaired accounting carrying value before the reversal is less than the adjusted GloBE carrying value at that time.

Under this exception, in applying section 25, paragraph (a) reduces the adjusted GloBE carrying value of the asset to equal the carrying value used for accounting purposes. Paragraph (b) increases the adjusted GloBE carrying value of the asset to equal the lesser of (1) the asset’s adjusted GloBE carrying value, and (2) the asset’s accounting carrying value after the reversal. Subsection 18(27) applies the same modifications to the adjusted GloBE carrying value for the purpose of determining a constituent entity’s GloBE income or loss. For more information, see the note to subsection 18(27).

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

Clause 9

Pre-GloBE transition year transactions

GMTA
38(1.1)

New subsection 38(1.1) is added to implement paragraph 51.2 of the Commentary to Article 6.2.1(c).

Paragraphs (a) and (b) implement the limited exception set out in paragraph 51 of the Commentary to Article 6.2.1(c).

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

Clause 10

Qualified domestic minimum top-up tax safe harbour

GMTA
44(c)

Paragraph (c) is amended to reflect that the details of the qualified domestic minimum top-up tax safe harbour, which were initially issued by the OECD in the July 2023 Administrative Guidance, are now consolidated into Annex A, Chapter 3 of the updated version of the Commentary that was issued by the OECD in April 2024. It is expected that the Commentary, including the Annexes, will be amended from time to time to incorporate further Administrative

Guidance issued by the OECD, including in regard to the application of the “Switch-off Rule” in respect of securitization entities (introduced in Section 6 of the June 2024 Administrative Guidance) and in respect of the application of Article 9.1 to deferred tax assets arising from tax benefits provided by General Government (introduced in Section 1 of the January 2025 Administrative Guidance). Paragraph (c) implements the “Switch-off Rule” by requiring that the MNE group is permitted to elect the qualified domestic minimum top-up tax safe harbour for the fiscal year in respect of the particular entity in accordance with the requirements in Annex A, Chapter 3 of the Commentary (i.e., where the Switch-off Rule applies, the MNE group is not permitted to so elect because it has not met the requirements).

Clause 11

Definitions – transitional CbCR safe harbour

GMTA
47(1)

“qualifying income tax expense”

The definition “qualifying income tax expense” is amended to implement paragraphs 13 and 19 of Chapter 1 of Annex A to the Commentary.

New paragraph (c) of the definition requires that deferred tax expense attributable to the reversal of pre-GloBE arrangement deferred tax assets (as defined in subsection 48(2.1)) be excluded in calculating qualifying income tax expense, except for any portion of that deferred tax expense that is permitted to be included after the application of the restrictions in subsections 48(2.2) and (2.3).

For more information, see the notes to subsections 48(2.1) to (2.3).

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

Clause 12

Transition – deferred tax assets and liabilities

GMTA
48(1)

Paragraph 48(1)(a) is amended to implement the change to paragraph 5 of the Commentary to Article 9.1.1. (as revised by Section 4.2 of the June 2024 Administrative Guidance), which states that “any deferred tax assets or liabilities arising under a Blended CFC Tax Regime are disregarded for all jurisdictions for the purposes of Article 9.1.1”.

Cross-references to subsections 48(2.2) and (2.3) are also being added to ensure that “pre-GloBE arrangement deferred tax assets” (as defined in subsection (2.1)) are only taken into account under subsection (1) to the extent permitted by the rules in those subsections. For more information, see the notes to subsections 48(2.1) to (2.3).

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

Excluded deferred tax assets

GMTA

48(2)

Subsection 48(2) implements Article 9.1.2. of the Model Rules, which provides an exception to the transitional rule in subsection (1) in respect of deferred tax assets of a constituent entity relating to items that would be excluded from the computation of GloBE income or loss where those deferred tax assets arise from transactions undertaken between November 30, 2021 and the beginning of an MNE group’s GloBE transition year for the location jurisdiction of the constituent entity.

The subsection is amended to implement the clarifications to Articles 9.1.1. and 9.1.2. of the Model Rules outlined in the January 2025 Administrative Guidance.

The intentionally broad scope of the term “transaction” – now contained in subparagraph (a)(i) as a result of changes to the structure of this subsection – is reaffirmed by the inclusion of parenthetical text clarifying that governmental arrangements (agreements, rulings, etc.) are transactions for the purposes of subsection (2). Any change made to a pre-existing governmental arrangement is also a transaction. This means that if a governmental arrangement occurs on or after December 1, 2021 – or a governmental arrangement that occurred before that date is changed on or after that date – it is considered to be a transaction that satisfies the condition in subparagraph (a)(i).

The qualification “and before the GloBE transition year” in former paragraph (a) (now subparagraph (a)(i)) has been deleted to reflect the following statement in paragraph 8.2 of the Commentary to Article 9.1.2. (as revised by the January 2025 Administrative Guidance): “The limitation in Article 9.1.2 ...can...apply to a deferred tax asset arising from a transaction that takes place after the Transition Year if the deferred tax asset was reflected or disclosed in the financial accounts for the Transition Year.”

The condition in former clause (b)(i)(A) has been deleted – i.e., it is not included in new clause (a)(ii)(A), which otherwise includes the contents of old subparagraph (b)(i), as a result of the restructuring of this provision. This deletion reflects paragraph 8.1 of the Commentary to Article 9.1.2. (as revised by the January 2025 Administrative Guidance). The now-deleted clause could have been interpreted as restricting the application of subsection (2) to deferred tax assets in respect of items taken into account in computing taxable income (e.g., enhanced deductions), whereas the intention is for that subsection to also apply to deferred tax assets attributable to

items not affecting taxable income, including items taken into account in computing tax expense (e.g., a tax credit, or other tax relief, described in subparagraph (b)(i)).

New paragraph (b) implements new paragraph 8.5 of the Commentary to Article 9.1.2. (as introduced by the January 2025 Administrative Guidance), by clarifying that deferred tax assets arising from the three sources described respectively in subparagraphs (b)(i) to (iii) are not to be taken into account under subsection (1). This provision applies “for greater certainty”, as it is an elaboration of the general rule set out in paragraph (a).

Subparagraph (b)(i) describes the first of the three types of denied deferred tax assets set out in paragraph (b), namely deferred tax assets in respect of certain tax credits or other tax reliefs that arise under a governmental arrangement that is concluded (or under a change to such an arrangement that is made) on or after December 1, 2021. This subparagraph applies only where the entitlement to the tax credit (or other tax relief) arises specifically as a result of a governmental arrangement. Further, it does not apply where none of the critical aspects of the tax relief in question (e.g., the amount, the entitlement) rely on the exercise of governmental discretion.

Subparagraph (b)(ii) describes the second type of denied deferred tax asset. These are deferred tax assets in respect of an election or choice (or a change to an election or choice) that retroactively changes the tax treatment of a transaction, where the transaction occurred in a taxation year for which a return was filed, or an assessment was made by the tax authority, before the election or choice (or change) was made.

The phrase “corporate income tax regime” used in subparagraph (b)(iii) includes any income tax regime that applies to corporations even if it does not apply exclusively to corporations. As such, a deferred tax asset of a constituent entity that is not a corporation may satisfy the conditions in that subparagraph.

New paragraph (c) implements new paragraph 8.7 of the Commentary to Article 9.1.2. (as introduced by the January 2025 Administrative Guidance). This paragraph clarifies that deferred tax assets attributable to tax losses generated under a newly enacted corporate income tax regime in respect of fiscal years that occurred more than 5 fiscal years before the fiscal year in which that regime was enacted are automatically excluded whether or not the conditions of Article 9.1.2. are met. The rationale behind this automatic exclusion is that older tax losses present a heightened integrity risk since it would be more difficult to assess, among other things, if those losses relate to non-economic deductions. Deferred tax assets attributable to tax losses that are less than five years old are still excluded under subsection (2) if the conditions in that subsection are met.

As in subparagraph (b)(iii), a “corporate income tax regime” includes any income tax regime that applies to corporations.

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

Definition of *pre-GloBE arrangement deferred tax asset*

GMTA
48(2.1)

This definition delineates the categories of deferred tax assets to which the grace period rules in subsections 48(2.2) and (2.3) apply.

These categories are based on the three categories of denied deferred tax assets described in subparagraphs 48(2)(b)(i) to (iii), but with the additional requirement that the governmental arrangement (in the case of paragraph (2.2)(a)), the election or choice (in the case of paragraph (2.2)(b)) or the new corporate income tax regime (in the case of paragraph (2.2)(c)) giving rise to the deferred tax asset must have been concluded, made or enacted, respectively, before November 19, 2024. In the case of paragraph (2.2)(c), a further time limitation is applied. Where the first day of the GloBE transition year of an MNE group for a jurisdiction is earlier than November 18, 2024, and the corporate income tax regime of that jurisdiction is enacted after that first day but before November 19, 2024, the deferred tax assets described in subparagraph (2)(b)(iii), of a constituent entity located in that jurisdiction, do not benefit from the grace period treatment.

The word “amended”, as used in paragraph (2.1)(a) in respect of governmental arrangements, means that the arrangement has changed in some material respect such that the change can be said to give rise to the tax credit or other tax relief (or a portion thereof).

A deferred tax asset need not be reflected in a constituent entity’s financial accounts at the beginning of the GloBE transition year of its MNE group in respect of its location jurisdiction in order to be a pre-GloBE arrangement deferred tax asset, since the references in subsection (2.1) to subparagraphs (2)(b)(i) to (iii) are not intended to incorporate the conditions from paragraph (2)(a) into subsection (2.1). Rather, the grace period rules (and other rules that use the defined term “pre-GloBE arrangement deferred tax asset”) themselves contain explicit or implicit conditions regarding the time at which a deferred tax asset must be reflected in the financial accounts of the constituent entity. This allows the grace period rules to limit the deferred tax expense amounts that are taken into account under the transitional CbCR safe harbour, which necessarily applies prior to the GloBE transition year.

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

Grace period rules – pre-GloBE arrangements

GMTA
48(2.2)

New subsection 48(2.2) contains the main elements of the grace period rules, implementing new paragraphs 8.8 to 8.10 of the Commentary to Article 9.1.2. (as introduced by the January 2025 Administrative Guidance).

This subsection is structured into three paragraphs, legislating the three key elements of the grace period rules. Paragraph (a) contains an override to ensure that, notwithstanding that subsection (2) excludes pre-GloBE arrangement deferred tax assets from the scope of subsection (1), such deferred tax assets are not excluded by subsection (2) to the extent they benefit from the grace period treatment provided in paragraphs (2.2)(b) and (c). However, paragraph (a) does not override the limitations within subsection (1) itself. For instance, the requirement to recast a deferred tax asset (under paragraph (1)(a)) remains intact. This means that the amount of deferred tax expense in respect of the reversal of a pre-GloBE arrangement deferred tax asset that may be taken into account under subsection (1) is first subject to the effects, if any, of recasting under paragraph (1)(a), and then subject to the limitations on inclusion of deferred tax expense contained in paragraphs (2.2)(b) and (c). This rule priority is illustrated in the example below.

Note that the override rule in paragraph (a) is not needed for the purposes of determining qualifying income tax expense because there is no equivalent of the exclusion under subsection 48(2) in the transitional CbCR safe harbour context.

Paragraph (b) contains a limitation on the amount of deferred tax expense in respect of the reversal of a pre-GloBE arrangement deferred tax asset that may be taken into account in determining the total deferred tax adjustment amount or the qualifying income tax expense (under subsection 47(1)). This limitation is a cap on the amount of such deferred tax expense that may be included in a fiscal year; thus, a constituent entity may include the lesser of the cap amount and the deferred tax expense amount it would be permitted to include in the absence of the cap in paragraph (b).

The cap amount for a particular fiscal year is essentially 20% of the pre-GloBE arrangement deferred tax asset (recast at the 15% minimum rate), minus the total amount of deferred tax expense in respect of that deferred tax asset included in prior fiscal years. Thus, the total deferred tax expense that may be included in respect of a pre-GloBE arrangement deferred tax asset, over the life of that asset, is equal to 20% of the recast pre-GloBE deferred tax asset.

In applying variable D in the formula in paragraph (b), an amount of deferred tax expense is considered to be “taken into account” (and thus included under variable D) in determining qualifying income tax expense in a fiscal year where the simplified effective tax rate test in subsection 47(4) is satisfied (and thus the transitional CbCR safe harbour applies) in respect of a jurisdiction, even if that deferred tax expense amount is not needed to satisfy that test because the requisite simplified effective tax rate would have been attained without regard to all or a portion of that deferred tax expense. However, if the safe harbour applies because the *de minimis* threshold test (in subsection 47(3)) or the routine profits test (in subsection 47(6)) is met, no deferred tax expense is considered to be taken into account in determining the qualifying income tax expense for the fiscal year even if the simplified effective tax rate test is also met.

Variable A of the formula in paragraph (b) provides that the cap amount is calculated by reference to the pre-GloBE deferred tax asset as reflected in the financial accounts at the later of the date it is first recorded and the date the MNE group first becomes a qualifying MNE group.

This is necessary to ensure that any portion of the deferred tax asset that reverses before the Act applies to the MNE group is not included in computing the cap amount.

Paragraph (c) contains a limitation on the fiscal years in which deferred tax expense in respect of the reversal of a pre-GloBE arrangement deferred tax asset may be taken into account in determining the total deferred tax adjustment amount or qualifying income tax expense of a constituent entity. This limitation differs depending on the type of pre-GloBE arrangement deferred tax asset. In the case of deferred tax assets described in paragraph (2.1)(a) or (b), only deferred tax expense arising in fiscal years that begin on or before December 31, 2025, and end on or before June 30, 2027, may benefit from the grace period treatment. Deferred tax expense arising in any other fiscal year is entirely excluded under subsection (2). In the case of deferred tax assets described in paragraph (2.1)(c), only deferred tax expense arising in fiscal years that begin between December 31, 2024 and December 30, 2025, and end on or before June 30, 2028, may benefit from the grace period treatment.

Example

This example illustrates how the grace period rules are intended to apply where an MNE group qualifies for the transitional CbCR safe harbour in one fiscal year but does not qualify the next fiscal year, and both years are included in the grace period (i.e., the period described in paragraph 48(2.2)(c)). In particular, the example demonstrates how the cap in paragraph 48(2.2)(b) interacts with the rules relating to deferred taxes.

Assumptions

- *Constituent Entity A – a standard constituent entity of an MNE group that is a qualifying MNE group for all relevant fiscal years – is located in Jurisdiction X and has a pre-GloBE arrangement deferred tax asset of \$3,000 first reflected in its financial accounts at the beginning of its 2024 fiscal year. The tax rate applicable in determining the amount of that deferred tax asset is 20%. Constituent Entity A is the only constituent entity of the MNE group that is located in Jurisdiction X, and the MNE group has a calendar fiscal year.*
- *The pre-GloBE arrangement deferred tax asset reverses at the rate of 10% of its original value per fiscal year on a straight-line basis, starting in 2024, as follows:*

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Opening	3,000	2,700	2,400	2,100	1,800	1,500	1,200	900	600	300
Reversal	-300	-300	-300	-300	-300	-300	-300	-300	-300	-300
Closing	2,700	2,400	2,100	1,800	1,500	1,200	900	600	300	0

- *Constituent Entity A has the following income and tax attributes relevant to the transitional CbCR safe harbour for its 2024 and 2025 fiscal years (before excluding any of the deferred tax expense attributable to the reversal of the pre-GloBE arrangement deferred tax asset):*

	2024	2025
Profit (Loss) before income tax	\$100,000	\$200,000
Qualifying income tax expense	\$16,000	\$32,000
Simplified effective tax rate	16%	16%

Analysis

The maximum total amount of deferred tax expense that Constituent Entity A may take into account in its grace period fiscal years in respect of the reversal of the pre-GloBE arrangement deferred tax asset is \$450 (the result obtained from the formula in paragraph 48(2.2)(b), ignoring variable D).

In the 2024 fiscal year, the full \$300 of deferred tax expense resulting from the reversal of the pre-GloBE arrangement deferred tax asset is allowed in computing Constituent Entity A's qualifying income tax expense (because it is less than the \$450 cap amount determined under paragraph (2.2)(b)). Accordingly, the simplified effective tax rate is 16% and the MNE group qualifies for the transitional CbCR safe harbour in respect of Jurisdiction X for 2024.

In the 2025 fiscal year, a maximum of \$150 of deferred tax expense would be allowed in computing Constituent Entity A's qualifying income tax expense. This is because amounts of deferred tax expense in respect of the pre-GloBE arrangement deferred tax asset that were taken into account in determining the qualifying income tax expense (or total deferred tax adjustment amount) for prior years are deducted (by virtue of variable D of the formula in paragraph 48(2.2)(b)) from the maximum total amount in determining how much deferred tax expense may be taken into account in the current fiscal year. (Notably, the entire \$300 of deferred tax expense is considered to have been "taken into account" in determining the qualifying income tax expense in 2024 for the purposes of variable D, notwithstanding that it was not needed in order to attain the 15% safe harbour rate (in paragraph 47(4)(a)). There is no ability for an MNE group to choose to instead use, in a future year, the portion of deferred tax expense that is not needed in the current year, to attain the 15% rate in that future year.)

Thus, for 2025, \$150 of the deferred tax expense in respect of the pre-GloBE arrangement deferred tax asset is excluded in computing qualifying income tax expense under the grace period rules. As a result, the MNE group does not qualify for the transitional CbCR safe harbour in respect of Jurisdiction X, since its simplified effective tax rate for 2025 is approximately 15.9% (i.e., less than the 16% safe harbour rate for 2025) once the \$150 is excluded from its qualifying income tax expense.

Accordingly, 2025 is the GloBE transition year of the MNE group in respect of Jurisdiction X, and Constituent Entity A is permitted to include a maximum of \$150 of deferred tax expense relating to the pre-GloBE arrangement deferred tax asset in its total deferred tax adjustment amount for that year (as a result of applying the cap in paragraph 48(2.2)(b)). (Since the transitional CbCR safe harbour does not apply in 2025, no portion of the deferred tax expense in respect of the pre-GloBE arrangement deferred tax asset is considered to have been taken into account in determining the qualifying income tax expense of Constituent Entity A for that year.)

Because subsection 48(1) requires that deferred tax assets and liabilities be taken into account at the lower of the 15% minimum rate and the applicable domestic tax rate (which, in this case, is 20%), the pre-GloBE arrangement deferred tax asset must first be recast to the minimum rate. This means that the deferred tax expense in respect of the reversal of the deferred tax asset for 2025 is \$225, which exceeds the \$150 amount Constituent Entity A is permitted to take into account under paragraph 48(2.2)(b). Thus, the entire \$150 of permitted deferred tax expense is included in computing Constituent Entity A's total deferred tax adjustment amount for 2025 (with the remaining \$75 being excluded).

As the \$450 maximum total amount of deferred tax expense permitted in respect of the reversal of the pre-GloBE arrangement deferred tax asset has been fully exhausted over Constituent Entity A's 2024 and 2025 fiscal years, any deferred tax expense in 2026 (and each subsequent fiscal year) in respect of the pre-GloBE arrangement deferred tax asset is excluded from Constituent Entity A's total deferred tax adjustment amount under subsection 48(2).

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

Grace period rules – anti-acceleration

GMTA
48(2.3)

Subsection 48(2.3) implements new paragraph 8.11 of the Commentary to Article 9.1.2. (as introduced by the January 2025 Administrative Guidance) and contains an “anti-acceleration” rule applicable for the purposes of subsection (2.2).

Any deferred tax expense (or portion of such expense), in respect of the reversal of a pre-GloBE arrangement deferred tax asset, that arises as a result of one or more of the post-November 18, 2024, events listed in subsection (2.3) is denied. This ensures that such events cannot be used to accelerate the reversal of the deferred tax asset in order to create additional deferred tax expense in the fiscal years to which the beneficial grace period treatment applies. The accelerated deferred tax expense is denied notwithstanding that the grace period rules in subsection (2.2) may otherwise have allowed it to be taken into account in determining the total deferred tax adjustment amount or qualifying income tax expense of a constituent entity.

The events in question are changes in the law, in the accounting methodology that is used in respect of the deferred tax asset or in a governmental arrangement that gave rise to the deferred tax asset, or the making of an election or choice (or change to a pre-existing election or choice). For clarity, the relevant changes in accounting methodology can be either a variation in the methodology the MNE group employs under the existing (i.e., unchanged) accounting standard or a change in the accounting standard itself that results in a change to the methodology used by the MNE group.

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)

Clause 48(5)(b)(ii)(C) is amended in two ways to implement paragraph 10.8 of the Commentary to Article 9.1.3. (as revised by the January 2025 Administrative Guidance).

First, a new subclause (I) is added to clarify that the amount of a transferor’s deferred tax asset (e.g., a loss deferred tax asset) that reversed (or was forgone) because the gain from a transfer to which this subsection applies was included in its taxable income will only be added to the deemed deferred tax asset under subparagraph (b)(ii) if the reversed (or forgone) deferred tax asset would have been taken into account under subsection (1) if it had existed in the transferor transition year. In other words, only deferred tax assets that would have met the conditions to be taken into account under subsection (1) if they arose in the transferor transition year constitute “other tax effects” that are included in the paragraph (5)(b) deemed deferred tax asset. This ensures that, for instance, deferred tax assets of the transferor that would have been excluded under subsection (2) are not taken into account.

Second, pre-GloBE arrangement deferred tax assets are explicitly carved out of clause (C). Without this carve out, clause (C) could have been interpreted as allowing for the inclusion of deferred tax expense from the reversal of a pre-GloBE arrangement deferred tax asset in the “other tax effects” to the extent permitted by the grace period rules in subsection (2.2), which is a result that would be contrary to paragraph 10.8 of the Commentary to Article 9.1.3., as revised.

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

Election — non-application of paragraph (5)(a) and subparagraph (5)(b)(ii)

GMTA
48(9)

Variable B of the formula in subsection (9) is being amended in a similar manner to clause 48(5)(b)(ii)(C) to implement paragraph 10.8 of the Commentary to Article 9.1.3. (as revised by the January 2025 Administrative Guidance).

In line with the clarification to clause 48(5)(b)(ii)(C), a new subparagraph (i) is added to variable B to make explicit that a deferred tax asset must have satisfied the conditions for inclusion under subsection (1) (including that it not be excluded under subsection (2)) to be included in the amount determined under the formula. In applying this hypothetical test, it is assumed that the deferred tax asset in question existed in the transferor transition year since that is the year for which subsection (1) is relevant.

Further, just as pre-GloBE arrangement deferred tax assets are excluded from the “other tax effects” component of the deemed deferred tax asset in paragraph (5)(b), such deferred tax assets are excluded from the “other tax effects” component of the condition in paragraph (9)(b). For more information, see the note to subsection 48(5).

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

Clause 13

Definitions

GMTA
55(1)

“designated filing entity”

Paragraph (b) of the definition “designated filing entity” is amended to allow a constituent entity of an MNE group that is located in a jurisdiction that has a qualified domestic minimum top-up tax that has qualified domestic minimum top-up tax safe harbour status in effect for the fiscal year, to be appointed by the MNE group (in substitution for the ultimate parent entity) to file a GIR on behalf of the MNE group for the fiscal year.