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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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 144

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.

"filing constituent entity"

This definition implements the corresponding definition in Article 10.1. of the Model Rules.

Subparagraph (a)(iv) is added before paragraph (b) to expand the definition to apply to the ultimate parent entity or the designated filing entity in respect of the MNE group for the fiscal year that is located in a jurisdiction other than Canada and files a complete or substantially complete GIR for the fiscal year, in the prescribed form and manner with the Minister, on or before the GIR due date. This scenario relates to subparagraph 60(1)(c)(iii), which imposes a GIR filing obligation on each constituent entity of the MNE group that is located in Canada in the fiscal year if neither the ultimate parent entity nor the designated filing entity in respect of the MNE group for the fiscal year that is located in a jurisdiction other than Canada files a complete or substantially complete GIR for the fiscal year, in the prescribed form and manner with the Minister, on or before the GIR due date.

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

"IIR"

This definition implements the corresponding definition in Article 10.1. of the Model Rules. The French version of this definition is amended to improve legibility and grammatical coherence.

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 added to subsection 2(1) to address (together with new subsection 9(2.1)) 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, for a fiscal year, is a private entity located in Canada that:

- has filed a prescribed form with the Canada Revenue Agency in respect of the fiscal year, or any prior year, on or before the GIR due date for the fiscal year or prior year;
- does not have any of its ownership interests quoted on a securities market;
- 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.

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

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.

"reverse hybrid entity"

Consequential on the 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 of 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 minimum top-up tax under subsections 51(1) and 52(1), UTPR top-up tax under section 49.2 (through the parenthetical exclusion from the "Canadian UTPR top-up amount" in section 49.3) 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 securitization transactions and distinct from the role of a regular investor. However, if any funding by such 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 notes 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.

"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 to the scope of the rules. The scope of the rules is similarly expanded in respect of tax regimes that do not allow foreign tax credit 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.

"UTPR"

This definition implements the corresponding definition in Article 10.1. of the Model Rules. The French version of this definition is amended to improve legibility and grammatical coherence.

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

Clause 145

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 Organisation for Economic Cooperation and Development (OECD) sources.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2025.

Clause 146

Location of entities

GMTA
5(1)

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 147

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 148

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 such unconsolidated financial statements). Private investment entity status is also contingent on the filing of the requisite form with the Canada Revenue Agency. 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 (d) of this 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.

Paragraph (b) provides that the de-consolidation rule in paragraph (a) does not apply for certain purposes, in recognition that its application in those cases would lead to inappropriate consequences. First, to prevent circularity, paragraph (a) does not apply for the purposes of the definition "private investment entity".

Second, when determining the GloBE income or loss of an entity that would have been a constituent entity of the "actual group", the rules relating to intragroup transactions and financing arrangements in subsections 18(13), (14) and (18) are to be applied as if the de-consolidation had not taken place. This is intended to prevent MNE groups from taking advantage of the de-consolidation to engage in arbitrage transactions between subgroups of the actual group. However, the disapplication of the de-consolidation rule does not extend to the determination of the effective tax rate in clause 18(14)(b)(ii)(B) or of whether an entity involved in an intragroup financing arrangement is a low-tax entity or high-tax counterparty for the purposes of subsection 18(18).

Third, the de-consolidation rule is disapplied for the purposes of paragraph 32(15)(d) in order to prevent double counting of amounts in respect of leased eligible tangible assets in determining the substance-based income exclusion amount of any de-consolidated subgroup resulting from the application of the de-consolidation rule in paragraph 9(2.1)(a). As a result, if an entity that would be a constituent entity of the actual group records a right-of-use asset in its accounts in

respect of an eligible tangible asset owned by another constituent entity, the amount of the right-of-use asset will be excluded from the carrying value of the eligible tangible asset for the purposes of determining the substance-based income exclusion amount of the de-consolidated subgroup to which the asset-owning entity belongs, notwithstanding that the two entities are not part of the same group as a result of paragraph 9(2.1)(a).

Fourth, in the context of applying the *de minimis* jurisdiction exclusion (in section 33), the determination of whether the conditions in paragraph 33(1)(b) (i.e., the jurisdictional GloBE revenue threshold) and (c) (i.e., the jurisdictional GloBE income or loss threshold) are met is undertaken on the basis of the combined revenue and income/loss from the constituent entities of the private and public subgroups located in the jurisdiction. In other words, those thresholds are applied to the actual group as if the de-consolidation had not taken place, and if the relevant revenue and income/loss figures in respect of the actual group fall below those thresholds, then the private and public subgroups may both benefit from the exclusion if the requisite election is made in respect of each subgroup.

Fifth, when determining the adjusted covered taxes of an entity that would otherwise be a constituent entity of the actual group, the anti-avoidance rules in subsections 48(4) to (9) (which pertain to pre-transition year asset carrying value step-ups and impact the amount of a constituent entity's total deferred tax adjustment amount) apply as if the de-consolidation had not taken place.

Finally, for the purposes of applying the transitional country-by-country reporting ("CbCR") safe harbour, the de-consolidation rule is disapplied in two discrete instances. In the case of the anti-hybrid arbitrage arrangements rule in subsection 47(14), the three types of hybrid arrangements that are counteracted by the rule are determined at the level of the actual group. This is intended to prevent MNE groups from taking advantage of the de-consolidation rule to undertake arbitrage transactions between the separate subgroups. In addition, the *de minimis* threshold test in the safe harbour (in subsection 47(3)) is applied at the level of the actual group to prevent the effective double counting of the threshold amount.

These exclusions from the de-consolidation rule are necessary to ensure the integrity of the transitional CbCR safe harbour because the safe harbour may be available to de-consolidated subgroups in some instances. This could be the case, for example, where a CbCR is not required to be filed in respect of a subgroup under the applicable CbCR rules and the election for the transitional CbCR safe harbour is made for the fiscal year and section 2.2.1.3(a) of the GloBE information return is completed using the data from qualified financial statements that would have been reported as "total revenues" and "profit (loss) before income tax" in a qualified CbCR (in accordance with subparagraph 47(2)(b)(ii)).

Paragraph (c) 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 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 (c) 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 (d) 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 (d) 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 all 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 or event is undertaken or occurs and one of the main purposes of that transaction or event is to make that subsection applicable to an "actual group" (within the meaning of subsection (2.1)).

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

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

Clause 149

Top-up tax payable

GMTA
15(1)

The preamble to subsection 15(1) is amended to clarify that it is only the tax payable under Part 2 (IIR) that is calculated in this provision. A taxpayer may, in addition, be liable for tax under other provisions of the Act (e.g., under subsection 51(1), for domestic minimum top-up tax).

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 for that constituent entity to be a relevant parent entity (under subparagraph 14(3)(a)(ii)), such a relevant parent entity will not necessarily be taxable on its allocable share of a particular constituent entity's top-up amount (e.g., where the particular 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). The interpretation rule in subsection 2(7) is relevant in interpreting the expression "subject to a qualified IIR".

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 150

Financial accounting income – flow-through entity

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. Additional minor amendments are made to increase clarity and readability.

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 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 flow-through entity directly, or through one or more other flow-through entities that are group entities in respect of the flow-through entity. This amendment replaces the requirement that the non-group owners hold any indirect ownership interests in the flow-through entity through a tax transparent structure with the new requirement that they hold the ownership interests through other flow-through entities. As a result of this amendment, the entities through which a non-group owner indirectly holds its ownership interest in the 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 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 flow-through entity to the extent that the ownership interests held by non-group owners in the 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 flow-through entity through a chain of flow-through entities that are group entities in respect of the flow-through entity. This amendment ensures that the flow-through entity's net income or loss is not reduced where the flow-through ultimate parent entity's interest in the flow-through entity is held through one or more other 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 flow-through entity's net income or loss to other group entities with direct or indirect ownership interests in the 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 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 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 flow-through entity will only be allocated a portion of the net income or loss of the flow-through entity if there is no entity between the group entity and the 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 151

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 152

Adjusted covered taxes – additions

GMTA
22(2)

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)

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.

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 153

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 to be 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 the 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 is located in a jurisdiction 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 is located in a jurisdiction 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 154

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 as well as 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) of that definition, 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 as well as 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 accruals – 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. (as introduced by 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 assets and deferred tax liabilities

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 of the Commentary to Article 3.2.1(i)
- Paragraphs 89 and 89.1 of the Commentary to Article 3.2.2
- Paragraphs 104.1 to 104.3 of the Commentary to Article 3.2.3
- Paragraph 118.1 of the Commentary to Article 3.2.5
- Paragraph 145.1 of 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 the "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, 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.

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 155

Definitions

GMTA
28(1)

"flow-through tax benefits"

The reference to "marketable transferable tax credits" is removed from the parenthetical exclusion in paragraph (a) of this definition, such that qualified refundable tax credits are the only type of tax credits the tax benefit of which cannot be a flow-through tax benefit. This

change is made to better align this definition with paragraph 57.8 of the Commentary to Article 3.2.1.(c).

If a tax benefit is a flow-through tax benefit (e.g., the tax benefit of a tax credit, other than a qualified refundable tax credit, received in respect of a qualified flow-through ownership interest), it may give rise to an addition to adjusted covered taxes under subsection 28(2). To the extent that it gives rise to such an addition, subsection 22(5) prevents any other addition being made to adjusted covered taxes in respect of that tax benefit as a result of the application of any provision of the Act.

"other flow-through amounts"

Any amount that is included in the "flow-through tax benefits" of an owner in respect of an ownership interest is not included in the "other flow-through amounts" of that owner in respect of that interest. Accordingly, consistent with the amendment to the definition "flow through tax benefits", the reference to "marketable transferable tax credits" is removed from paragraph (a) of this definition.

For more information, see the note to the definition "flow-through tax benefits".

"qualified flow-through ownership interest"

Paragraph (b) of the definition "qualified flow-through ownership interest" is amended to implement an aspect of paragraph 57.11 of the Commentary to Article 3.2.1.(c), which contains the 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 is expected to be returned in the form of tax credits other than qualified refundable 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 not qualified refundable tax credits are treated the same way as if the owner had received the transferred credits directly.

Paragraph (b) is also amended to remove the references to “marketable transferable tax credits” such that only qualified refundable tax credits are considered in determining the owner’s total expected return on the investment.

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

Clause 156

Adjustment top-up amount

GMTA
31(1)

The description of C in the formula in paragraph 31(1)(b) is amended to correct the reference to “adjusted covered taxes” to instead refer to “jurisdictional adjusted covered taxes”, reflecting that the adjustment made under subsection 37(5) is to the latter and not the former.

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

Clause 157

Eligible payroll costs – flow-through entity allocation

GMTA
32(5)

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 158

Joint venture top-up amount

GMTA
35(1)

Subsection 35(1) is amended to remove cross-references to Subdivision B of Division 8 of the Act (i.e., the subdivision containing the transitional safe harbours). The reason for the removal of

these cross-references is that the transitional safe harbour provisions contain rules to adapt their application to the joint venture context.

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

Clause 159

Definitions

GMTA
36(1)

"investment entity adjusted covered taxes amount"

The definition "investment entity adjusted covered taxes amount" is relevant in determining the top-up amount of an investment entity or insurance investment entity. The French version of this definition is amended to fix a typographical error.

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

Clause 160

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 161

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 (as introduced by 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 (as introduced by 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).

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

Clause 162

Side-by-side safe harbour

GMTA
46.1

New section 46.1 implements the side-by-side safe harbour in Chapter 5, Section 1 of *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package: Inclusive Framework on BEPS*, published by the OECD on January 5, 2026.

The Central Record for purposes of the Global Minimum Tax published on the OECD website indicates the fiscal years for which the side-by-side safe harbour is applicable in respect of a particular jurisdiction that has a qualified side-by-side regime.

This section applies to fiscal years of a qualifying MNE group that begin on or after January 1, 2026.

Ultimate parent entity safe harbour

GMTA
46.2

New section 46.2 implements the ultimate parent entity safe harbour in Chapter 5, Section 2 of *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion*

Model Rules (Pillar Two), Side-by-Side Package: Inclusive Framework on BEPS, published by the OECD on January 5, 2026.

The Central Record for purposes of the Global Minimum Tax published on the OECD website indicates the fiscal years for which the ultimate parent entity safe harbour is applicable in respect of a particular jurisdiction that has a qualified ultimate parent entity regime.

This section applies to fiscal years of a qualifying MNE group that begin on or after January 1, 2026.

Clause 163

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.

Election — transitional CbCR safe harbour

GMTA
47(2)

Subsection 47(2) is the main operative rule for the transitional country-by-country reporting safe harbour.

Subsection 47(2) is amended to clarify that it applies with respect to the transitional country-by-country reporting safe harbour, rather than another transitional safe harbour under the GMTA.

The preamble to subsection 47(2) and its paragraph (c) are amended to clarify that the election for the transitional country-by-country reporting safe harbour is made separately in respect of the standard constituent entities of, and the joint venture entities in respect of, the MNE group located in the jurisdiction.

Paragraph (a) is amended to extend the applicability of the transitional country-by-country reporting safe harbour by one year to fiscal year 2027, as set out in Chapter 3 of *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package: Inclusive Framework on BEPS*, published by the OECD on January 5, 2026.

Paragraph (g) is amended to clarify that the payment received or receivable by a particular standard constituent entity must be treated as income in the qualified financial statements of the particular constituent entity for the fiscal year in order for the provision to apply. This change is in accordance with the rules regarding the treatment of intragroup payments as set out in paragraphs 82 and 83 of Annex A, Chapter 1 of the Commentary. For example, where a reimbursement for an expense is not treated as income in the qualified financial statements of the recipient (e.g., it is treated as a reduction of an expense of the recipient), it would not be in scope of this rule.

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

Clause 164

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 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, 2025.

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 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, 2025.

Clause 165

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).

Cross-references to subsections 48(2.2) and (2.3) are also being added to the preamble 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).

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".

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)

Subparagraph 48(5)(b)(ii) is 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 (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 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 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 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 (other than a pre-GloBE arrangement deferred tax asset) of the transferor is reversed, or never arose, 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, offset 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 the transferee is allowed under this subparagraph. As noted, pre-GloBE arrangement deferred tax assets are explicitly carved out of clause (C). Without this carve out, clause (C) could be 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 would be contrary to paragraph 10.8 of the Commentary to Article 9.1.3., as revised.

Because of new subclause (C)(I), the amount of a transferor's deferred tax asset (e.g., a loss deferred tax asset) that reverses (or is forgone) because the gain from a transfer to which this subsection applies is 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 48(1) if it had been reflected in the financial accounts at the beginning of the transferor transition year. In other words, only deferred tax assets that would have met the conditions to be taken into account under subsection 48(1) constitute "other tax effects" that are included in the deemed deferred tax asset under paragraph 48(5)(b) . This ensures that, for instance, deferred tax assets of the transferor that would have been excluded under subsection 48(2) are not taken into account.

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.

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 48(1) (including that it not be excluded under subsection 48(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 166

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, 2025.

Definitions

GMTA
49.1

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

"Canadian share of the total UTPR top-up amount"

"Canadian share of the total UTPR top-up amount" is defined, for the purposes of this Part, as having the same meaning as in section 49.4.

"Canadian UTPR percentage"

"Canadian UTPR percentage" is defined, for the purposes of this Part, as having the same meaning as in subsection 49.7(1).

"Canadian UTPR top-up amount"

"Canadian UTPR top-up amount" is defined, for the purposes of this Part, as having the same meaning as in section 49.3.

"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 assets"

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

"total UTPR top-up amount"

"total UTPR top-up amount" is defined, for the purposes of this Part, as having the same meaning as in section 49.5.

"UTPR top-up amount"

"UTPR top-up amount" is defined, for the purposes of this Part, as having the same meaning as in section 49.6.

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 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 Canadian UTPR top-up amount (as defined in section 49.3) for the fiscal year, or
- a constituent entity of the MNE group has a Canadian 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 "Canadian 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, 49.8 and 49.9 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 *Canadian UTPR top-up amount*

GMTA
49.3

This section determines a Canadian-located constituent entity's "Canadian 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 Canadian UTPR top-up amount is the portion of the MNE group's "Canadian share of the total 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 49.7(1) of the Act) to determine Canada's proportionate share of the total UTPR top-up amount (defined as the "Canadian UTPR percentage"). In general terms, Article 2.6.1. determines a UTPR-implementing jurisdiction's proportionate 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 49.7(1).

Under section 49.3, a particular constituent entity's Canadian UTPR top-up amount is the Canadian share of the total 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 49.7(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 Canadian 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 and

insurance investment entities, since paragraph 49.8(a) deems these entities to have no employees or tangible assets. Joint venture entities are also generally excluded from an allocation under this section because of subsection 49.9(1), unless the exception in subsection 49.9(2) applies. For more information, see the notes to those provisions.
Finally, despite the allocation under section 49.3, nothing prevents any particular constituent entity of an MNE group from paying all or a portion of the top-up tax liability of another constituent entity of the group, for example because the allocation under this section does not align with cash resources. For more information, see the notes to the joint and several, or solidary, liability provisions in section 66.

Definition of *Canadian share of the total 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 share of the total 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 share of the total 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 49.7(1)). For more information, see the notes to those provisions.

Definition of *total UTPR top-up amount*

GMTA
49.5

This section 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. of the Model Rules. An MNE group's total UTPR top-up amount is the total of all its constituent entities' UTPR top-up amounts, as defined in section 49.6. For more information, see the note to that section.

Definition of *UTPR top-up amount*

GMTA
49.6

This section implements Articles 2.5.2, 2.5.3. and 6.4.1.(c) of the Model Rules. It defines the "UTPR top-up amount" of a constituent entity of an MNE group for a fiscal year. A constituent entity's UTPR top-up amount is either nil or else its top-up amount, less any portion of that top-up amount that is already subject to a qualified IIR.

A constituent entity's UTPR top-up amount will be nil if either of the scenarios in paragraph 49.6(a) (implementing Article 2.5.2.) applies. 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 (which may include, for greater certainty, the ultimate parent entity itself) 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 49.6(b) implements Article 2.5.3. and, in respect of joint venture entities, Article 6.4.1.(c). It applies in respect of a constituent entity whose top-up amount is not effectively excluded from the total UTPR top-up amount because of paragraph 49.6(a). If paragraph 49.6(b) applies to a constituent entity that is not a joint venture entity, the constituent entity's UTPR top-up amount is its entire top-up amount, less any amounts taxed under a qualified IIR applicable to a relevant parent entity of the MNE group. As a consequence, where paragraph 49.6(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 49.6(b) applies to a joint venture entity, however, the joint venture entity's UTPR top-up amount only includes 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).

Definition of *Canadian UTPR percentage*

GMTA
49.7(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 share of the total 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 49.8. For more information, see the notes to those sections.

Qualified UTPR – special rule

GMTA
49.7(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 49.7(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
49.8

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").

Paragraph (a) implements Article 2.6.2.(a), by deeming an investment entity or insurance investment entity to have no employees or tangible assets. As a consequence, these entities are not taken into account in the substance-based allocation keys in the definitions "Canadian UTPR top-up amount" in section 49.3 and "Canadian UTPR percentage" in subsection 49.7(1). By excluding these 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 49.8 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 49.91(1). Thus, the tangible assets of investment entities, insurance 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
49.9(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 49.7(1). However, joint venture entities are not (subject to subsection 49.9(2)) constituent entities for the purposes of computing the Canadian UTPR top-up amount of a constituent entity or for the purposes of the definition "initial phase of international activity year". These exclusions mean that a joint venture entity will not typically have a Canadian 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
49.9(2)

This subsection provides an exception to the general rule, set out in subsection 49.9(1), that a joint venture entity will not have a Canadian 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 49.7(2), cannot apply to exclude Canada from the UTPR top-up amount allocation by virtue of an MNE group having a Canadian share of the total 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
49.91(1)

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

Reference jurisdiction — special rule

GMTA
49.91(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, 2025.

Clause 167

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 168

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).

Paragraph 52(1)(e) requires that section 44 (qualified domestic minimum top-up tax safe harbour) be disregarded in determining the domestic top-up amount of a constituent entity, to prevent that domestic top-up amount from being deemed to be nil when the safe harbour is elected in respect of Canada. This paragraph is amended to clarify that the application of section 44 is disregarded (and not just the election under that section). Paragraph (e) is also amended to provide that the application of section 46.1 (side-by-side safe harbour) is likewise disregarded in determining the domestic top-up amount of a constituent entity.

These amendments apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2023, except that the amendment adding a reference to section 46.1 in paragraph (e) applies to fiscal years of a qualifying MNE group that begin on or after January 1, 2026.

Clause 169

Definitions — initial phase of international activity

GMTA
53(1)

Consequential on the introduction of new definitions of "initial phase of international activity year", "net book value", "reference jurisdiction" and "tangible assets" in new section 49.1 of Part 2.1, the definitions of "net book value" and "reference jurisdiction" in subsection 53(1) are repealed and the definition of "initial phase of international activity year" is replaced with a reference to the definition of that term in section 49.1. 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, 2025.

Tangible assets — permanent establishments

GMTA
53(2)

Consequential on the addition of the new definition "tangible assets" in section 49.1 subsection 53(2) is repealed.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2025.

Clause 170

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.

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

Clause 171

Part 2.1 return

GMTA
61(1.1)

New subsection 61(1.1) provides that a person with a liability for Part 2.1 tax for a fiscal year must file a return (separate and distinct from the GIR) with the Minister on or before the GIR due date for that year. This return must be in prescribed form and include the person's estimate (i.e., the result of the person's own calculations) of the person's liability for Part 2.1 tax for the fiscal year.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2025.

Canadian filing entity

GMTA
61(3)

Consequential on the introduction of new Part 2.1, subsection 61(3) is amended to ensure that a Canadian filing entity may be appointed in respect of the Part 2.1 filing obligations of an MNE group. Further minor changes to the provision are made to improve clarity.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2025.

Consequences — Canadian filing entity

GMTA
61(4)

Consequential on the introduction of new Part 2.1, paragraph 61(4)(a) is amended to add a reference to new subsection 61(1.1), ensuring that a Canadian filing entity may fulfill the filing obligations of the MNE group's constituent entities.

This amendment applies to fiscal years of a qualifying MNE group that begin on or after December 31, 2025.

Clause 172

Parts 2 and 2.1 — joint and several, or solidary, liability

GMTA
66(1)

Subsection 66(1) is amended in several ways. First, to harmonize the liability provisions of the Act, it is amended to follow the structure of subsection 66(3), which provides for joint and several, or solidary, liability of constituent entities under Part 3. This change is not expected to have substantive effects.

Second, similar to the amendment to subsection 66(3), this subsection is amended to 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 Parts 2, 2.1 and 5.

Finally, it is amended, consequential on the introduction of new Part 2.1, by adding a reference to amounts payable under that new Part. In other words, this subsection now governs the application of joint and several, or solidary, liability of constituent entities of an MNE group for amounts payable under Parts 2, 2.1 and 5.

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

The amendments to exclude securitization entities from the scope of this subsection and to harmonize this subsection with subsection 66(3) apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2023. The amendment to extend this application of this subsection to joint and several, or solidary, liability under Part 2.1 applies to fiscal years beginning on or after December 31, 2025.

Limitation

GMTA
66(2)

Consequential on the amendments to subsection 66(1), in particular the harmonization of its structure with that of subsection 66(3), subsection 66(2) is no longer necessary and is therefore repealed.

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

Part 3 — joint and several, or solidary, liability

GMTA
66(3)

Subsection 66(3) is amended, similar to subsections 52(1) and 66(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, 2025.

Clause 173

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 given 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.

CONSEQUENTIAL AMENDMENTS

ACCESS TO INFORMATION ACT

Clause 174

AIA
Schedule II

The reference to "section 121" opposite the reference to "Global Minimum Tax Act" in the column labelled "Act" in Schedule II of the Access to Information Act is replaced with a reference to "section 123".

INCOME TAX CONVENTIONS INTERPRETATION ACT

Clause 175

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.

TAX COURT OF CANADA ACT

Clause 176

TCCA
18.29

Subparagraph 18.29(3)(a)(vi.01) of the Tax Court of Canada Act provides for certain applications for extensions of time under the GMTA to apply in accordance with the informal procedural rules referred to in subsection 18.29(1). This subparagraph is amended to replace the references to sections 88 and 90 of the GMTA with references to sections 89 and 91 of the GMTA.