DISCUSSION DRAFT 2023/12/15

OBJECTS AND REASONS

This Bill would make provision for the establishment of an effective tax rate of 15 per cent for a qualifying entity through the imposition of a top-up tax.

Arrangement of Sections

Adjustment to Determine Qualifying Income or Loss

International shipping income exclusion

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PART IV

COMPUTATION OF ADJUSTED COVERED TAXES

PART V

COMPUTATION OF THE EFFECTIVE TAX RATE AND TOP-UP TAX

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TRANSITIONAL RELIEF

BARBADOS

A Bill entitled

An Act to establish an effective tax rate of 15 per cent for a qualifying entity through the imposition of a top-up tax.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Corporation Top-up Tax Act, 2023*.

Interpretation

2. In this Act,

"acceptable financial accounting standard" means international reporting financial standards and the generally accepted accounting principles of Australia, Brazil, Canada, the member states of the European Union, member states of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom and the United States of America;

"additional tier one capital" means an instrument issued by a Constituent Entity pursuant to prudential regulatory requirements applicable to the banking sector that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.

"Authority" means the Barbados Revenue Authority established under section 3 of the *Barbados Revenue Authority Act, 2014* (Act 2014-1);

"Commissioner" means the Revenue Commissioner appointed pursuant to section 7 of the *Barbados Revenue Authority Act, 2014* (Act 2014-1);

"consolidated financial statements" means financial statements, prepared by an entity in accordance with an acceptable financial accounting standards, in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity;

"constituent entity" means

(a) any entity that is part of an MNE group; and

(b) any permanent establishment of a main entity that is part of an MNE group referred to in paragraph *(a)*;

"eligible distribution tax system" means a corporate income tax system that:

(a) imposes income tax on profits only when those profits are distributed or deemed to be distributed to shareholders, or when the company incurs certain non-business expenses;

(b) imposes tax at a rate equal to, or in excess of, the minimum tax rate; and

(c) was in force on or before 1st July, 2021;

"entity" means company, a partnership, a trust or any other arrangement, association, organization or body for which separate financial accounts are prepared, but shall not include central, or their administration or agencies that carry out government functions;

"filing constituent entity" means an entity filling a top-up tax return in accordance with section 47;

"flow-through entity" means

(a) a tax transparent entity if the domestic tax law of the owners also treat it as fiscally transparent and require the owner to recognize the income, expenditure, profit or loss of the flow-through entity as if it was income earned or expenditure borne by the owners; or

(b) a reverse hybrid entity if the domestic tax law of the owners are not treating it as fiscally transparent and therefore, it does not recognize the income, expenditure, profit or loss when earned or incurred by the entity, but until the entity distributes profits or make an equivalent payment to its owners;

"global minimum tax" means minimum rate of tax on corporate income internationally agreed upon and accepted by individual jurisdictions;

"government entity" means an entity

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

(b) that has the principal purpose of:

(i) fulfilling a government function; or

(ii) managing or investing that government's or jurisdiction's assets through the making and holding of investments, asset management, and related investment activities for the government's or jurisdiction's assets; and does not carry on a trade or business;

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

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

"group" means

(a) a collection of entities which are related through ownership or control as defined by the acceptable financial accounting standard for the preparation of consolidated financial statements by the ultimate parent entity, including any entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on materiality grounds or on the grounds that it is held for sale; or

(b) an entity that has one or more permanent establishments, provided that it is not part of another group as defined in paragraph *(a)*;

"IFRS " means the International Financial Reporting Standards;

"Income Inclusion Rule" or "IIR" means a set of rules that are implemented in the domestic law of a jurisdiction, provided that such a jurisdiction does not provide any benefits that are related to those rules, and that

(a) requires the parent entity of an MNE group to compute and pay its allocable share of top-up tax in respect of the low-taxed constituent entities of that group; and

(b) is administered in a manner that is consistent with the OECD Model Rules;

"income year" has the assigned to it by section 85 of the *Income Tax Act,* Cap. 73;

"intermediate parent entity" means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity in the same MNE group and that does not qualify as an ultimate parent entity, a partially-owned parent entity, a permanent establishment or an investment entity;

"international organisation" means any intergovernmental organisation, including a supranational organisation, or wholly-owned agency or instrumentality thereof that meets all the following criteria:

(a) it is comprised primarily of governments;

(b) it has in effect a headquarters or substantially similar agreement with the jurisdiction in which it is established; and

(c) law or its governing documents prevent its income inuring to the benefit of private persons;

"international shipping" means the operation of a ship owned or leased by an entity that is engaged primarily in transporting passengers or goods in international traffic;

"investment entity" means

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

(b) an entity that is at least 95 per cent owned directly by an entity referred to in paragraph *(a)* or through one or more of such entities and that operates exclusively or almost exclusively to hold assets or invest funds for their benefit; or

(c) an entity where a minimum of 85 per cent of the value of the entity is owned by an entity referred to in paragraph *(a)* , provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income or loss for the purposes of this Act;

"investment fund" means an entity or arrangement

(a) that is designed to pool financial or non-financial assets from a number of investors, some of which are non- connected;

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

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

(d) that is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;

(e) the investors of which have a right to return from the assets of the fund or income earned on those assets, based on the contribution they made;

(f) that is or the management thereof, is subject to the regulatory regime, including appropriate anti-money laundering and investor protection regulation, for investment funds in the jurisdiction in which it is established or managed; and

(g) that is managed by investment fund management professionals on behalf of the investors;

"[joint venture" means an entity whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent

entity, provided that the ultimate parent entity holds, directly or indirectly, at least 50 per cent of its ownership interest and shall not include

(a) an ultimate parent entity of an MNE group that is to apply the IIR;

(b) an excluded entity referred to in section 6(4);

(c) an entity whose ownership interests held by the MNE group are held directly through an excluded entity, referred to in section 6(4), and which meets one of the following conditions:

(i) it operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors;

(ii) it carries out activities that are ancillary to those carried out by the excluded entity; or

(iii) substantially all of its income is excluded from the computation of qualifying income or loss in accordance with section 10(1), paragraphs *(b)* and *(c)*.

(d) an entity that is held by an MNE group composed exclusively of excluded entities referred to in section 6(4); or

(e) a joint venture affiliate;]

"[joint venture affiliate" means

(a) an entity whose assets, liabilities, income, expenses and cash flows are consolidated by a joint venture under an acceptable financial accounting standard or would have been consolidated had the joint venture been required to consolidate such assets, liabilities, income, expenses and cash flows under an acceptable financial accounting standard; or

(b) a permanent establishment whose main entity is a joint venture or an entity referred to in paragraph *(a)* and in such cases the permanent establishment shall be treated as a separate joint venture affiliate;]

"low-taxed constituent entity" means

(a) a constituent entity of an MNE group that is located in a low-tax jurisdiction; or

(b) a stateless constituent entity that, in respect of a fiscal year, has qualifying income and an effective tax rate which is lower than the minimum tax rate;

"low-tax jurisdiction" means, in respect of an MNE group in any income year, has a qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate;

"material competitive distortion" means, in respect of the application of a specific principle or procedure under a set of generally acceptable accounting principles, an application that results in an aggregate variation of income or expense of more than EUR 75 000 000 in an income year as compared to the amount that would have been determined by applying the corresponding principle or procedure under IFRS;

"main entity" means an entity that includes the financial accounting net income or loss of a permanent establishment in its financial statements;

"minimum tax rate" means 15 per cent;

"MNE" means Multinational Enterprise;

"MNE group" means any group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity;

"net book value of tangible assets" means the average of the beginning and end values of tangible assets after taking into account accumulated depreciation, depletion and impairment, as recorded in the financial statements;

"non-qualified refundable tax credit" means a tax credit that is a not a qualified refundable tax credit but that is refundable in whole or in part;

"OECD" means Organisation for Economic Cooperation and Development;

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

"parent entity" means an ultimate parent entity which is not an excluded entity, an intermediate parent entity [or a partially-owned parent entity];

"permanent establishment" means

(a) a place of business or a deemed place of business located in a jurisdiction where it is treated as a permanent establishment in accordance with an applicable tax treaty, provided that such jurisdiction taxes the income attributable to it in accordance with a provision similar to Article 7 of the OECD Model Tax Convention on Income and Capital, as amended;

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

(c) if a jurisdiction has no corporate income tax system, a place of business or a deemed place of business located in such jurisdiction that would be treated as a permanent establishment in accordance with the OECD Model Tax Convention on Income and Capital, as amended, provided that such jurisdiction would have had the right to tax the income that would have been attributable to the place of business in accordance with Article 7 of that Convention; or

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

"Qualified Domestic Minimum Top-up Tax" or "QDMTT" means a minimum top-up tax or a top-up tax implemented in the domestic law of a jurisdiction by way of a set of rules, provided that such a jurisdiction does not provide

any benefits related to those rules and those rules are implemented and administered in a manner that is consistent the OECD Model Rules;

"QDTT group" means for an income year shall comprise

(a) all of the qualifying entities of an MNE group;

(b) the joint venture and all the joint venture affiliates of a joint venture group.

"qualifying entity" means an entity referred to in section 6 that is subject to the imposition of top-up tax under section 5;

"qualifying income or loss" means the financial accounting net income or loss of a constituent entity adjusted in accordance with the rules set out in Parts III, VI and VII;

" qualified refundable tax credit" means

(a) a refundable tax credit designed in such a way that it is to be paid as a cash payment or a cash equivalent to a constituent entity within 4 years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit; or

(b) if the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent to a constituent entity within 4 years from the date when the constituent entity is entitled to receive the partial refundable tax credit,

but a qualified refundable tax credit does not include any amount of tax creditable or refundable pursuant to a [qualified imputation tax or a disqualified refundable imputation tax];

"real estate investment vehicle" means a widely held entity that holds predominantly immovable property and that is subject to a single level of taxation, either in its hands or in the hands of its interest holders, with at most one year of deferral;

"top-up tax" means the top-up tax imposed under section 5;

"Tribunal" means the Barbados Revenue Appeals Tribunal established by section 24 of the *Barbados Revenue Authority Act* (Act 2014-1);

" Under Profits Tax Rule" or "UPTR" means a set of rules implemented in the domestic law of a jurisdiction, provided that such a jurisdiction does not provide any benefits that are related to those rules, and that

(a) allows that jurisdiction to compute and collect its allocable share of top-up tax of an MNE group that was not charged under a QDMTT or IIR in respect of a low-taxed constituent entity of that MNE group;

(b) administered in a manner that is consistent with the OECD Model Rules;

"ultimate parent entity" means;

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

(b) the main entity of a group as defined in paragraph *(b)* of the definition of "group".

Purpose

3. The purpose of this Act is to establish an effective tax rate of 15 per cent for a qualifying entity through the imposition of a top-up tax which is designed to ensure

(a) that profits of the entity are taxed where the economic activities generating those profits are performed and where value is created;

(b) the removal of substantial part of the advantages of shifting profits outside of Barbados; and

(c) to better protect Barbados' corporation tax base.

Administration

4. The Authority is responsible for the administration of this Act and the provisions of section 51 of the *Income Tax Act*, Cap. 73, which relate to secrecy, shall apply to the administration of this Act as if this Act formed part of the *Income Tax Act*.

PART II

IMPOSITION AND SCOPE OF TOP-UP TAX

Imposition of top-up tax

5.(1) For income years commencing on or after 1st January, 2024, and every subsequent income year, a qualifying entity shall have an effective tax rate of 15 per cent.

(2) Where the effective tax rate of a qualifying entity is below 15 per cent in an income year, the entity shall pay to the Commissioner, a tax to be known as a "top-up tax" to be calculated in accordance with section 29 for that income year.

(3) Where the qualifying entity is a group, it shall be jointly and severally liable for the top-up tax payable under subsection (2) and the entire tax liability may be assessed against each entity of the group.

(4) The top-up tax, referred to in subsection (1), shall be paid into the Consolidated Fund.

(5) The Minister may amend the effective tax rate specified in subsection (1) by order.

Scope of top-up tax

6.(1) This Act shall apply to a qualifying entity which includes

(a) a constituent entity that is a member of an MNE group, that has an annual revenue of

(i) €750 000 000 or more in the consolidated financial statement of the ultimate parent entity; or

(ii) an amount that is at least the minimum threshold that applies under an IIR to which any member of the MNE group is subject if that amount is less than €750 000 000

in at least 2 of the 4 income years immediately preceding the tested income year;

(b) [joint venture or a joint venture affiliate];

(c) [an entity not referred to in paragraph *(a)* or *(b)*, that has revenue that exceeds the entity revenue threshold as calculated pursuant to subsection (4) for an income year in at least 2 previous income years of the immediately previous 4 income years determined by reference to its standalone financial statements.]

(2) Where one or more of the income years of a qualifying entity is of a period longer or shorter than 12 months, the revenue threshold shall be adjusted proportionally for each of those income years.

(3) Subsection (1) shall not apply to an excluded entity.

(4) For the purposes of this section,

"excluded entity" includes the following:

(a) a governmental entity, an international organisation, a non-profit organisation, a pension fund, an investment fund that is an ultimate parent entity or a real estate investment vehicle that is an ultimate parent entity;

(b) an entity where at least 95 per cent of the value of the entity is owned by one or more entities referred to in paragraph *(a)*, directly or through one or several excluded entities, except pension services entities, and that:

(i) operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the entity or entities referred to in paragraph *(a)*; or

(ii) exclusively carries out activities ancillary to those performed by the entity or entities referred to in paragraph *(a)*;

(c) an entity where at least 85 per cent of the value of the entity is owned, directly or through one or several excluded entities, by one or more entities referred to in paragraph *(a)*, except pension services entities, provided that substantially all of entity's income is excluded dividends or excluded equity gains or losses that are excluded from the computation of the qualifying income or loss in accordance with Part III;

(d) [a constituent entity which is part of a MNE group,

(i) the ultimate parent entity or intermediate parent entity of which, is located in a jurisdiction that has not implemented an IIR or an UTPR in the income year; or

(ii) the members of which are not subject to an UTPR in the income year.]

"revenue threshold"shall be calculated as follows:

€750,000,000 x A/365

where A is the number of days in the income year concerned.

Location of a constituent entity

7.(1) For the purposes of this Act, an entity other than a flow-through entity shall be determined to be located in the jurisdiction where it is considered to be resident for tax purposes based on its

(a) place of management;

(b) place of incorporation or

(c) criteria similar to *(a)* or *(b)*.

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

(3) A flow-through entity shall be considered to be stateless, unless it is

(a) the ultimate parent entity of an MNE group; or

(b) required to apply an IIR,

in which case, the flow-through entity shall be deemed to be located in the jurisdiction where it was incorporated.

(4) A permanent establishment

(a) as defined in section 2, paragraph *(a)* of the definition shall be determined to be located in the jurisdiction where it is treated as a permanent establishment and is liable to tax under the applicable tax treaty;

(b) as defined in section 2, paragraph *(b)* of the definition shall be determined to be located in the jurisdiction where it is subject to net basis taxation based on its business presence;

(c) as defined in section 2, paragraph *(c)* of the definition shall be determined to be located in the jurisdiction where it is situated;

(d) as defined in section 2, paragraph *(d)* of the definition shall be considered to be stateless.

(5) Where a constituent entity is located in 2 jurisdictions and those jurisdictions have an applicable tax treaty, the constituent entity shall be deemed to be located in the jurisdiction where it is considered to be resident for tax purposes under that tax treaty.

(6) Where

(a) the applicable tax treaty referred to in subsection (5) requires that the competent authorities reach a mutual agreement on the deemed residence for tax purposes of the constituent entity, and no agreement is reached; or

(b) there is no relief for double taxation under the applicable tax treaty, referred to in subsection (5), due to the fact that a constituent entity is resident for tax purposes in both contracting parties

subsection (8) shall apply;

(7) Where a constituent entity is located in 2 jurisdictions and those jurisdictions do not have an applicable tax treaty, the constituent entity shall be deemed to be located in the jurisdiction which charged the higher amount of covered taxes for the income year.

(8) For the purpose of computing the amount of covered taxes referred to in the subsection (8), the amount of tax paid in accordance with a controlled foreign company tax regime shall not be taken into consideration.

(9) If the amount of covered taxes due in the 2 jurisdictions is the same or zero, the constituent entity shall be deemed to be located in the jurisdiction where it has the higher amount of substance-based income exclusion computed on an entity basis in accordance with section 30.

(10) If the amount of the substance-based income exclusion in the 2 jurisdictions is the same or zero, the constituent entity shall be considered to be

stateless, unless it is an ultimate parent entity, in which case it shall be deemed to be located in the jurisdiction where it was created.

(11) Where a constituent entity changes its location in the course of an income year, it shall be deemed to be located in the jurisdiction where it was deemed to be located under this section at the beginning of that income year.

Currency conversion

8.(1) If an amount that is relevant to the computation of the qualifying income or loss of a qualifying entity for an income year is denominated in a currency other than the reporting currency of the consolidated financial statements of the ultimate parent entity of the qualifying entity and is not converted to the relevant reporting currency in the course of preparing the consolidated financial statements, that amount is to be converted to the relevant reporting currency using the foreign currency translation principles of the financial accounting standard that would have been used to convert the amount to the relevant reporting currency if that conversion were undertaken in the course of preparing the consolidated financial statements.

(2) Notwithstanding the generality of subsection (1), when determining if any materiality or other threshold in this Act that is denominated in the currency of the European Monetary Union is satisfied or exceeded by an amount in respect of a group, entity or jurisdiction for a particular income year, the amount is to be converted from that currency to the currency of the European Monetary Union using the average of the daily rates of exchange, in respect of the 2 currencies for the month of December included in the income year, one year immediately preceding the particular income year, as determined by the Central Bank.

(3) For the purposes of this section "reporting currency" means the relevant reporting currency utilised in the course of the preparation of a consolidated financial statement.

PART III

COMPUTATION OF QUALIFYING INCOME OR LOSS

Determination of qualifying income or loss

Determination of qualifying income or loss

9.(1) For the purposes of this section, the income or loss of a constituent entity is the financial accounting net income or loss determined for the entity for the income year adjusted for the items described in sections 10 to 21.

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

(3) Where it is not reasonably practicable to determine the financial accounting net income or loss of a constituent entity based on the acceptable financial accounting standard or authorised financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, the financial accounting net income or loss of the constituent entity for the income year may be determined using another acceptable financial accounting standard or an authorised financial accounting standard provided that

(a) the financial accounts of the constituent entity are maintained based on that accounting standard;

(b) the information contained in the financial accounts is reliable; and

(c) permanent differences in excess of €1 000 000 that arise from the application of a particular principle or standard to items of income or expense or transactions, where that principle or standard differs from the financial standard used in the preparation of the consolidated financial statements of the ultimate parent entity, are adjusted to conform to the treatment required for that item under the accounting

standard used in the preparation of the consolidated financial statements.

Adjustment to Determine Qualifying Income or Loss

General approach to adjustment to determine qualifying income or loss

10.(1) A constituent entity's qualifying income or loss shall be determined by adjusting the financial accounting net income or loss of that constituent entity in the manner set out as follows:

(a) net taxes expense;

(b) excluded dividends;

(c) excluded equity gain or loss;

(d) included revaluation method gains or losses;

(e) gains or losses from the disposal of assets and liabilities;

(f) asymmetric foreign currency gains or losses;

(g) policy disallowed expenses;

(h) prior period errors and changes in accounting principles;

(i) accrued pension expenses.

(2) For the purposes of this section

"net taxes expense" means the net amount of the following items:

(a) covered taxes accrued as an expense and any current and deferred covered taxes included in the income tax expense, including covered taxes on income that is excluded from the qualifying income or loss computation;

(b) deferred tax assets attributable to a loss for the income year;

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

(d) taxes arising pursuant to the rules of this Act, or any tax under an IIR or UTPR, accrued as an expense; and

(e) disqualified refundable imputation taxes accrued as an expense;

"excluded dividend" means a dividend or other distribution received or accrued in respect of an ownership interest, except a dividend or other distribution received or accrued in respect of

(a) an ownership interest

(i) held by the group in an entity, that carries rights to less than 10 per cent of the profits, capital or reserves, or voting rights of that entity at the date of the distribution or disposition (a 'portfolio shareholding'); and

(ii) that is economically owned by the constituent entity that receives or accrues the dividend or other distribution for less than one year at the date of the distribution;

(b) an ownership interest in an investment entity that is subject to an election pursuant to section 43;

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

(a) gains and losses arising from changes in the fair value of an ownership interest, except for a portfolio shareholding;

(b) profits or losses in respect of an ownership interest that is included under the equity method of accounting; and

(c) gains and losses from the disposal of an ownership interest, except for the disposal of a portfolio shareholding;

"included revaluation method gain or loss" means a net gain or loss, increased or decreased by any associated covered taxes for the income year, arising

from the application of an accounting method or practice that, in respect of all property, plant and equipment

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

(b) records the changes in value in other comprehensive income; and

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

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

(a) included in the computation of the taxable income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity;

(b) included in the computation of the financial accounting net income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity;

(c) included in the computation of the financial accounting net income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between a third foreign currency and the accounting functional currency of the constituent entity; and

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

the tax functional currency is the functional currency used to determine the constituent entity's taxable income or loss for a covered tax in the jurisdiction in which it is located; the accounting functional currency is the

functional currency used to determine the constituent entity's financial accounting net income or loss; a third foreign currency is a currency that is not the constituent entity's tax functional currency or accounting functional currency;

"policy disallowed expense" means

(a) an expense accrued by the constituent entity for illegal payments, including bribes and kickbacks; and

(b) an expense accrued by the constituent entity for fines and penalties that equal or exceed €50 000 or an equivalent amount in the functional currency in which the financial accounting net income or loss of the constituent entity is computed;

"prior period errors and changes in accounting principles" means a change in the opening equity of a constituent entity at the beginning of a fiscal year that is attributable to

(a) a correction of an error in the determination of the financial accounting net income or loss in a previous fiscal year that affected the income or expenses able to be included in the computation of the qualifying income or loss in that previous fiscal year, except to the extent such correction of an error resulted in a material decrease of a liability for covered taxes subject to section 27; and

(b) change in accounting principles or policy that affected the income or expenses included in the computation of the qualifying income or loss;

"accrued pension expense" means the difference between the amount of pension liability expense included in the financial accounting net income or loss and the amount contributed to a pension fund for the fiscal year.

[Stock based compensation adjustment to determine qualifying income or loss

11.(1) At the election of the filing constituent entity, a constituent entity may substitute the amount allowed as a deduction for the computation of its taxable

income in its location for the amount expensed in its financial accounts for a cost or expense of such constituent entity that was paid with stock-based compensation.

(2) Where the option to use the stock-options has not been exercised, the amount of stock-based compensation cost or expense that has been deducted from the financial accounting net income or loss of the constituent entity for the computation of its qualifying income or loss for all previous income years shall be included in the income year in which that option has expired.

(3) Where part of the amount of stock-based compensation cost or expense has been recorded in the financial accounts of the constituent entity in fiscal years prior to the income year in which the election is made, an amount equal to the difference between the total amount of stock-based compensation cost or expense that has been deducted for the computation of its qualifying income or loss in those previous income years and the total amount of stock-based compensation cost or expense that would have been deducted for the computation of its qualifying income or loss in those previous income years if the election had been made in such income years shall be included in the computation of the qualifying income or loss of the constituent entity for that income year.

(4) The election shall be made in accordance with section 41(1) and shall apply consistently to all constituent entities located in the same jurisdiction for the year in which the election is made and all subsequent income years.

(5) In the income year in which the election is revoked, the amount of unpaid stock-based compensation cost or expense deducted pursuant to the election that exceeds the financial accounting expense accrued shall be included in the computation of the qualifying income or loss of the constituent entity.]

Arm's Length Principle adjustment to determine qualifying income or loss

12.(1) Any transaction between constituent entities

(a) located in Barbados; or

(b) not located in Barbados,

that is not recorded in the same amount in the financial accounts of both constituent entities, that is not consistent with the arm's length principle, shall be adjusted so as to be in the same amount and consistent with the arm's length principle.

(2) Where a loss from a sale or other transfer of an asset arises between 2 constituent entities that is not recorded consistently with the arm's length principle, that loss shall be adjusted based on the arm's length principle if the loss is included in the computation of the qualifying income or loss.

(3) For the purposes of this section, "arm's length principle" means the principle under which transactions between constituent entities are to be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.

Tax credit adjustment to determine qualifying income or loss

13.(1) A qualified refundable tax credit shall be treated as income for the computation of the qualifying income or loss of a constituent entity.

(2) A non-qualified refundable tax credit shall not be treated as income for the computation of the qualifying income or loss of a constituent entity.

(3) For the purposes of this section,

"qualified refundable tax credits" means

(a) a refundable tax credit designed in such a way that it is to be paid as a cash payment or a cash equivalent to a constituent entity within 4 years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit; or

(b) if the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent to a

constituent entity within 4 years from the date when the constituent entity is entitled to receive the partial refundable tax credit

a qualified refundable tax credit does not include any amount of tax creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax;

"non-refundable tax credit" means a tax credit that is not a qualified refundable tax credit but that is refundable in whole or in part.

Fair value or impairment adjustment to determine qualifying income or loss

14.(1) At the election of the filing constituent entity, gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting in the consolidated financial statements for a income year may be determined on the basis of the realisation principle for the computation of the qualifying income or loss.

(2) Gains or losses which result from applying fair value or impairment accounting in respect of an asset or a liability shall be excluded from the computation of the qualifying income or loss of a constituent entity under the subsection (1).

(3) The carrying value of an asset or a liability for the purpose of determining a gain or a loss under the subsection (1) shall be the carrying value at the time the asset was acquired or the liability was incurred, or on the first day of the income year in which the election is made, whichever date is the latest.

(4) The election shall be made in accordance with section 45(1) and shall apply to all constituent entities located in the jurisdiction to which the election is made, unless the filing constituent entity chooses to limit the election to the tangible assets of the constituent entities or to investment entities.

(5) In the income year in which the election is revoked, an amount equal to the difference between the fair value of the asset or liability and the carrying value of the asset or liability on the first day of the income year in which the revocation

is made, determined pursuant to the election, shall be included, if the fair value exceeds the carrying value, or deducted, if the carrying value exceeds the fair value, for the computation of the qualifying income or loss of the constituent entities.

Tangible asset gain or loss adjustment to determine qualifying income or loss

15.(1) At the election of the filing constituent entity, the qualifying income or loss of a constituent entity arising from the disposal of tangible assets by the constituent entity to third parties, other than a member of the group, for a income year may be adjusted as set out in this section.

(2) The net gain shall be offset first against the net loss, if any, that has arisen in the earliest fiscal year of the five-year period.

(3) Any residual amount of net gain shall be carried forward and offset against any net losses that have arisen in subsequent fiscal years of the five-year period.

(4) Any residual amount of net gain that remains shall be spread evenly over the five-year period for the computation of the qualifying income or loss of each constituent entity located in that jurisdiction that has made a net gain from the disposal of tangible assets as referred to in the subsection (1) in the income year in which the election is made.

(5) The residual amount of net gain allocated to a constituent entity shall be proportionate to the net gain of that constituent entity divided by the net gain of all constituent entities.

(6) Where no constituent entity has made a net gain from the disposal of tangible assets as referred to in subsection (1) in the income year in which the election is made, the residual amount of net gain as referred to subsections (4) and (5) shall be allocated equally to each constituent entity and spread evenly over the five-year period for the computation of the qualifying income or loss of each of those constituent entities.

(7) Any adjustment under this section for the income years preceding the income year in which the election is made shall be subject to adjustments in accordance with section 31.

(8) The election shall be made annually in accordance with section 45(2).

(9) For the purposes of this section,

"tangible assets" means immovable property located in the same jurisdiction as the constituent entity;

"five-year period" means the period in which the net gain arising from the disposal of tangible assets as referred to in the subsection (1), in the income year in which the election is made, shall be offset against any net loss of a constituent entity located in that jurisdiction arising from the disposal of tangible assets

(a) in the income year in which the election is made; and

(b) in the 4 income years prior to that income year.

Intra-group financing arrangement adjustment to determine qualifying income or loss

16.(1) Any expense related to a intra-group financing arrangement shall not be taken into consideration in the computation of the qualifying income or loss of a constituent entity if the following conditions are met:

(a) it can reasonably be anticipated that, over the expected duration of the intra-group financing arrangement to increase the amount of expenses taken into account for the computation of the qualifying income or loss of that constituent entity;

(b) it would not result in a commensurate increase in the taxable income of the counter party;

(c) the counterparty is located in a jurisdiction that is not a low-tax jurisdiction or in a jurisdiction that would not have been low-taxed if

the income related to the expense had not been accrued by the counterparty.

(2) For the purposes of this section

" intra-group financing arrangement " means a financing arrangement whereby one or more constituent entities provides credit to or otherwise makes an investment in one or more other constituent entities of the same group;

"counter party" means the constituent entity providing the credit.

Insurance companies adjustment to determine qualifying income or loss

17.(1) An insurance company shall exclude from the computation of its qualifying income or loss any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders.

(2) An insurance company shall include in the computation of its qualifying income or loss any returns to policyholders that are not reflected in its financial accounting net income or loss to the extent that the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss.

Additional tier one capital adjustment to determine qualifying income or loss

18.(1) An amounts recognised as a decrease to the equity of a constituent entity attributable to distributions paid or payable in respect of additional tier one capital issued by the constituent entity shall be treated as an expense in the computation of its income or loss.

(2) An amounts recognised as an increase to the equity of a constituent entity attributable to distributions received or receivable in respect of additional tier one capital held by the constituent entity shall be included in the computation of its income or loss.

(3) For the purposes of this section "additional tier one capital" means an instrument issued by a constituent pursuant to a prudential regulatory requirements applicable to the banking sector that is convertible to equity or written down if a per-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.

International shipping income exclusion

International shipping income exclusion

19.(1) The international shipping income and the qualified ancillary international shipping income of a constituent entity shall be excluded from the computation of its qualifying income or loss, provided that the constituent entity demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located.

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

(3) The aggregated qualified ancillary international shipping income of all constituent entities shall not exceed 50 per cent of those constituent entities' international shipping income.

(4) The costs incurred by a constituent entity that are directly attributable to its .

(a) international shipping activities listed in the definition of international shipping income referred to in subsection (7); and

(b) qualified ancillary international shipping activities listed in the definition of qualified ancillary international shipping income referred to in subsection (7)

shall be allocated to such activities for the purpose of computing the net international shipping income and the net qualified ancillary international shipping income of the constituent entity.

(5) The costs incurred by a constituent entity that indirectly result from its international shipping activities and qualified ancillary international shipping activities shall be deducted from the constituent entity's revenues from such activities to compute the international shipping income and qualified ancillary international shipping income of the constituent entity on the basis of its revenues from such activities in proportion to its total revenues.

(6) All direct and indirect costs attributed to a constituent entity's international shipping income and qualified ancillary international shipping income in accordance with subsections (4) and (5) shall be excluded from the computation of its qualifying income or loss.

(7) For the purposes of this section,

"international shipping income"means net income obtained by a constituent entity from the following activities, provided that the transportation is not carried out via inland waterways within the same jurisdiction

(a) transportation of passengers or cargo by ship in international traffic, whether the ship is owned, leased or otherwise at the disposal of the constituent entity;

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

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

(d) leasing of a ship used for the transportation of passengers or cargo in international traffic, on a bare-boat charter basis, to another constituent entity;

(e) participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ship in international traffic; and

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

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

(a) leasing of a ship, on a bare-boat charter basis, to another shipping enterprise that is not a constituent entity, provided that the duration of the charter does not exceed 3 years;

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

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

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

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

Allocation of qualifying income or loss

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

20.(1) A permanent establishment's financial accounting net income or loss shall be the net income or loss reflected in the separate financial accounts of that permanent establishment.

(2) Where a permanent establishment does not have separate financial accounts, its financial accounting net income or loss shall be the amount that would have been reflected in its separate financial accounts if they had been prepared on a standalone basis and in accordance with the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity.

(3) A permanent establishment's financial accounting net income or loss shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with the applicable tax treaty or enactment, regardless of the amount of income subject to tax and the amount of deductible expenses.

(4) The financial accounting net income or loss of a permanent establishment shall not be taken into account in determining the qualifying income or loss of the main entity, unless the loss

(a) of the permanent establishment is treated as an expense in the computation of taxable income of such main entity; and

(b) is not set off against an item of the taxable income that is subject to tax under the laws of both the jurisdiction of the main entity and the jurisdiction of the permanent establishment.

(5) Qualifying income that is subsequently earned by the permanent establishment shall be treated as qualifying income of the main entity up to the amount of the qualifying loss that was previously treated as an expense of the main entity under the subsection (5).

(6) For the purposes of this section "main entity" in respect of a permanent establishment, means the entity that includes the financial accounting net income or loss of the permanent establishment in its financial statements.

Allocation of qualifying income or loss from a flow-through entity

21.(1) The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the amount allocable to its owners that are not group entities and that hold their ownership interest in such flow-through entity directly or through one or more of the tax transparent entities, unless

(a) the flow-through entity is an ultimate parent entity; or

(b) the flow-through entity is held, directly or through a tax transparent structure by an ultimate parent entity referred to in paragraph *(a)*.

(2) The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the financial accounting net income or loss that is allocated to another constituent entity.

(3) Where a flow-through entity wholly or partially carries out business through a permanent establishment, its financial accounting net income or loss which remains after applying the formulae referred to in subsection (1) shall be allocated to that permanent establishment.

(4) Where a tax transparent entity is not the ultimate parent entity, the financial accounting net income or loss of the flow-through entity which remains after applying the formulae set out subsection (1) and (3) shall be allocated to its constituent entity-owners in accordance with their ownership interests in the flow-through entity.

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

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

PART IV

COMPUTATION OF ADJUSTED COVERED TAXES

Covered taxes

22.(1) The covered taxes of a constituent entity shall include

(a) taxes recorded in the financial accounts of a constituent entity with respect to its income or profits, or its share of the income or profits of a constituent entity in which it owns an ownership interest;

(b) taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an eligible distribution tax system;

(c) taxes imposed in lieu of a generally applicable corporate income tax; and

(d) taxes levied by reference to retained earnings and corporate equity, including taxes on multiple components based on income and equity.

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

(a) the top-up tax accrued by a parent entity under a qualified IIR;

(b) the top-up tax accrued by a constituent entity under a qualified domestic top-up tax;

(c) taxes attributable to an adjustment made by a constituent entity as a result of the application of a qualified UTPR;

(d) [disqualified refundable imputation tax]; and

(e) taxes paid by an insurance company in respect of returns to policyholders.

(3) The covered taxes in respect of any net gain or loss, arising from the disposal of tangible assets as referred to in section 13, in the income year in which the election referred to in that section is made, shall be excluded from the computation of the covered taxes.

Adjusted covered taxes

23.(1) The adjusted covered taxes of a constituent entity for an income year shall be determined by adjusting the sum of the current tax expense accrued in its financial accounting net income or loss with respect to covered taxes for the income year, by

(a) the net amount of its additions and reductions to covered taxes for the income year as set out in subsections (2) and (3);

(b) the total deferred tax adjustment amount as set out in section 24; and

(c) any increase or decrease in covered taxes recorded in equity or other comprehensive income relating to amounts included in the computation of qualifying income or loss that will be subject to tax under the *Income Tax Act*, Cap. 73.

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

(a) any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts;

(b) any amount of qualifying loss deferred tax asset that has been used pursuant to section 25(2);

(c) any amount of covered taxes relating to an uncertain tax position previously excluded under subsection (3)*(d)*, that is paid in the income year; and

(d) any amount of credit or refund in respect of a qualified refundable tax credit that was accrued as a reduction to the current tax expense.

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

(a) the amount of current tax expense with respect to income excluded from the computation of qualifying income or loss under Part III;

(b) any amount of credit or refund in respect of a non-qualified refundable tax credit that was not recorded as a reduction to the current tax expense;

(c) any amount of covered taxes refunded or credited to a constituent entity that was not treated as an adjustment to current tax expense in the financial accounts, unless it relates to a qualified refundable tax credit;

(d) the amount of current tax expense that relates to an uncertain tax position; and

(e) any amount of current tax expense that is not expected to be paid within 3 years after the end of the income year.

(4) An amount is referred to in subsections (1), (2) and (3) shall only be taken into account once for the purpose of computing adjusted covered taxes

(5) Where, in an income year, there is no net qualifying income and the amount of adjusted covered taxes is negative and less than an amount equal to the net qualifying loss multiplied by the minimum tax rate, the amount equal to the difference between the amount of adjusted covered taxes and the amount of expected adjusted covered taxes shall be treated as an additional top-up tax for that income year.

(6) The amount of additional top-up tax shall be allocated to each constituent entity in the jurisdiction in accordance with section 31(4).

Total deferred tax adjustment amount

24.(1) Where the tax rate applied for the purpose of computing the deferred tax expense is equal or below the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent

entity for an income year pursuant to section 23(1) *(b)*, shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes, subject to the adjustments under subsections (3) to (6).

(2) Where the tax rate applied for the purpose of computing the deferred tax expense is above the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year pursuant to section 23(1) *(b)*, shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes recast at the minimum tax rate, subject to the adjustments under subsections (3) to (6).

(3) The total deferred tax adjustment amount shall be increased by:

(a) any amount of disallowed accrual or unclaimed accrual paid during the fiscal year; and

(b) any amount of recaptured deferred tax liability determined in a preceding fiscal year that has been paid during the fiscal year.

(4) Where, in an income year, a loss deferred tax asset is not recognised in the financial accounts because the recognition criteria are not met, the total deferred tax adjustment amount shall be reduced by the amount that would have reduced the total deferred tax adjustment amount if a loss deferred tax asset for the fiscal year had been accrued.

(5) The total deferred tax adjustment amount shall not include

(a) the amount of deferred tax expense with respect to items excluded from the computation of qualifying income or loss under Part III;

(b) the amount of deferred tax expense with respect to disallowed accruals and unclaimed accruals;

(c) the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset;

(d) the amount of deferred tax expense arising from a re-measurement with respect to a change in the applicable domestic tax rate; and

(e) the amount of deferred tax expense with respect to the generation and use of tax credits.

(6) Where a deferred tax asset that is attributable to a qualifying loss of a constituent entity has been recorded in an income year at a rate lower than the minimum tax rate, it may be recast at the minimum tax rate in the same income year, provided that the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss.

(7) Where a deferred tax asset is increased pursuant to the subsection (6), the total deferred tax adjustment amount shall be reduced accordingly.

(8) A deferred tax liability that is not reversed and whose amount is not paid within the 5 subsequent income years shall be recaptured to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity.

(9) The amount of the recaptured deferred tax liability determined for the current income year shall be treated as a reduction to the covered taxes in the fifth income year preceding the current income year, and the effective tax rate and top-up tax of that income year shall be recomputed in accordance with section 31.

(10) The recaptured deferred tax liability in the current income year shall be the amount of the increase in the category of deferred tax liability that was included in the total deferred tax adjustment amount in the fifth income year preceding the current income year that has not reversed by the end of the last day of the current income year.

(11) Notwithstanding subsection (7), where a deferred tax liability is a recapture exception accrual, it shall not be recaptured even if it is not reversed or paid within the 5 subsequent years.

(12) A recapture exception accrual shall be the amount of tax expense accrued that is attributable to changes in associated deferred tax liabilities, in respect of the following items

(a) cost recovery allowances on tangible assets;

(b) cost of a licence or similar arrangement from a government for the use of immovable property or exploitation of natural resources which entails significant investment in tangible assets;

(c) research and development expenses;

(d) de-commissioning and remediation expenses;

(e) fair value accounting on unrealised net gains;

(f) foreign currency exchange net gains;

(g) insurance reserves and insurance policy deferred acquisition costs;

(h) gains from the sale of tangible property located in the same jurisdiction as the constituent entity that are reinvested in tangible property in the same jurisdiction; and

(i) additional amounts accrued as a result of accounting principle changes with respect to items listed in paragraphs *(a)* to *(h)*.

(13) For the purposes of this section,

"disallowed accrual" means

(a) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to an uncertain tax position; and

(b) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to distributions from a constituent entity;

"unclaimed accrual" means any increase in a deferred tax liability recorded in the financial accounts of a constituent entity in an income year that is not expected to be paid within the time period set out in subsections (8), (9) and (10) and which the filing constituent entity annually elects, in accordance with section 45 not to include in the total deferred tax adjustment amount for such income year.

Qualifying loss election

25.(1) Notwithstanding section 24, a filing constituent entity may make a qualifying loss election according to which a qualifying loss deferred tax asset shall be determined in each income year in which there is a net qualifying loss.

(2) Pursuant to subsection (1), the loss deferred tax asset shall be equal to the net qualifying loss in an income year multiplied by the minimum tax rate.

(3) A qualifying loss election shall not be made for a jurisdiction with an eligible distribution tax system under section 40.

(4) The qualifying loss deferred tax asset determined pursuant to subsection (1) shall be used in any subsequent income year in which there is net qualifying income is an amount equal to the net qualifying income multiplied by the minimum tax rate or, if lower, the amount of qualifying loss deferred tax asset that is available.

(5) The qualifying loss deferred tax asset determined pursuant to subsection (1) shall be reduced by the amount that is used in an income fiscal year and the balance shall be carried forward to subsequent income years.

(6) Where a qualifying loss election is revoked, any remaining qualifying loss deferred tax asset determined pursuant to subsection (1) shall be reduced to zero as of the first day of the first income year in which the qualifying loss election is no longer applicable.

(7) The qualifying loss election shall be filed with the first top-up tax information return, referred to in section 46, of the qualifying entity.

(8) Where a flow-through entity which is the ultimate parent entity of a qualifying entity makes a qualifying loss election under this section, the qualifying loss deferred tax asset shall be computed by reference to the qualifying loss of the flow-through entity after reduction pursuant to section 38.

[Specific allocation of covered taxes incurred by certain types of constituent entities

26.(1) A constituent entity-owner shall be allocated the amount of any covered taxes that are included in the financial accounts of a tax transparent entity and that relate to qualifying income or loss allocated to that constituent entity-owner in accordance with section 21(4).

(2) A constituent entity-owner shall be allocated the amount of any covered taxes that are included in the financial accounts of a tax transparent entity and that relate to qualifying income or loss allocated to that constituent entity-owner in accordance with section 21(4).

(3) A constituent entity that made a distribution during the fiscal year shall be allocated the amount of any covered taxes accrued in the financial accounts of its direct constituent entity-owners on such distribution.

(4) Where the qualifying income of a permanent establishment is treated as qualifying income of the main entity in accordance with section 20, any covered taxes arising in the jurisdiction where the permanent establishment is located and associated with such income shall be treated as covered taxes of the main entity for an amount not exceeding such income multiplied by the highest tax rate on ordinary income in the jurisdiction where the main entity is located.]

Post-filing adjustments and tax rate changes

27.(1) Where a constituent entity records an adjustment to its covered taxes in a previous income year in its financial accounts, such adjustment shall be treated as an adjustment to covered taxes in the income year in which the adjustment is made, unless the adjustment relates to an income year in which there is a decrease in covered taxes.

(2) Where there is a decrease in covered taxes that were included in the constituent entity's adjusted covered taxes for a previous income year, the effective tax rate and top-up tax for such income year shall be recomputed in accordance with section 31(1) and (2) by reducing adjusted covered taxes by the

amount of the decrease in covered taxes and the qualifying income for the income year and any previous income years shall be adjusted accordingly.

(3) At the annual election of the filing constituent entity, made in accordance with section 45, an immaterial decrease in covered taxes may be treated as an adjustment to covered taxes in the income year in which the adjustment is made.

(4) An immaterial decrease in covered taxes shall be an aggregate decrease of less than €1 000 000 in the adjusted covered taxes determined for the jurisdiction for the income year.

(5) Where the applicable domestic tax rate is reduced below the minimum tax rate and such reduction results in a deferred tax expense, the amount of the resulting deferred tax expense shall be treated as an adjustment to the constituent entity's liability for covered taxes that are taken into consideration pursuant to section 23 for a previous income year.

(6) Where a deferred tax expense was taken into account at a rate lower than the minimum tax rate and the applicable tax rate is later increased, the amount of deferred tax expense that results from such increase shall be treated upon payment as an adjustment to a constituent entity's liability for covered taxes claimed for a previous fiscal year in accordance with section 23.

(7) The adjustment under subsection (6) shall not exceed an amount equal to the deferred tax expense recast at the minimum tax rate.

(8) Where more than €1 000 000 of the amount accrued by a constituent entity as current tax expense and included in adjusted covered taxes for an income year is not paid within 3 years after the end of that income year, the effective tax rate and top-up tax for the income year in which the unpaid amount was claimed as a covered tax shall be recomputed in accordance with section 31(1) and (2) by excluding such unpaid amount from the adjusted covered taxes.

PART V

COMPUTATION OF THE EFFECTIVE TAX RATE AND TOP-UP TAX

Determination of the effective tax rate

28.(1) The effective tax rate of a qualifying entity shall be computed, for each income year, provided that there is net qualifying income, in accordance with the following formula:

$$\textit{Effective tax rate} = \frac{\textit{adjusted covered taxes of the constituent entities in the jurisdiction}}{\textit{net qualifying income of the constituent entities in the jurisdiction}}$$

where the adjusted covered taxes of the constituent entities are the sum of the adjusted covered taxes of all the constituent entities located in the jurisdiction determined in accordance with Part IV.

(2) The net qualifying income or loss of the constituent entities in the jurisdiction for an income year shall be determined in accordance with the following formula:

Net qualifying income or loss = qualifying income of the constituent entities — qualifying losses of constituent entities

where

(a) the qualifying income of the constituent entities is the positive sum, if any, of the qualifying income of all constituent entities located in the jurisdiction determined in accordance with Part III;

(b) the qualifying losses of the constituent entities are the sum of the qualifying losses of all constituent entities located in the jurisdiction determined in accordance with Part III.

(3) Adjusted covered taxes and qualifying income or loss of constituent entities that are investment entities shall be excluded from the computation of the effective tax rate in accordance with subsection (1) and the computation of the net qualifying income in accordance with subsection (2).

(4) The effective tax rate of each stateless constituent entity shall be computed, for each income year, separately from the effective tax rate of all other constituent entities.

Computation of top-up tax

29.(1) Where the effective tax rate of a jurisdiction in which qualified entities are located is below the minimum tax rate for an income year, the qualifying entity shall compute the top-up tax separately for each of its qualified entities that have qualifying income included in the computation of net qualifying income and the top-up tax shall be computed on a jurisdictional basis.

(2) The top-up tax percentage for an income year shall be the positive percentage point difference, if any, computed in accordance with the following formula:

Top-up tax percentage = minimum tax rate — effective tax rate

where the effective tax rate is the rate computed in accordance with section 28.

(3) The top-up tax for a fiscal year shall be the positive amount, if any, computed in accordance with the following formula:

Jurisdictional top-up tax=(top-up tax percentage x excess profit) + additional top-up tax — domestic top-up tax

where

(a) the additional top-up tax is the amount of tax as determined in accordance with section 31 for the income year;

(b) the domestic top-up tax is the amount of tax for the an income year.

(4) The excess profit for the jurisdiction for the income year referred to in subsection (3) shall be the positive amount, if any, computed in accordance with the following formula:

Excess profit = net qualifying income — substance-based income exclusion

where:

(a) the qualifying income of the constituent entity for an income year is the income determined in accordance with Part III;

(b) the aggregate qualifying income of all constituent entities for an income year is the sum of the qualifying income of all the constituent entities for the income year.

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

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

where:

(a) the qualifying income of the constituent entity for an income year is the income determined in accordance with Part III;

(b) the aggregate qualifying income of all constituent entities for an income year is the sum of the qualifying income of all the constituent entities for the income year.

(6) If the top-up tax results from a recomputation pursuant to section 31(1) and (2) and there is no net qualifying income in the jurisdiction for the income year, the top-up tax shall be allocated to each constituent entity using the formula set out in subsection (5), based on the qualifying income of the constituent entities in the income years for which the recomputations pursuant to section 31(1) and (2) are performed.

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

Substance-based income exclusion

30.(1) Unless a filing qualified entity of MNE group elects, in accordance with section 45, not to apply the substance-based income exclusion for the income year, the net qualifying income for a jurisdiction shall be reduced, for the purpose of computing the top-up tax, by an amount equal to the sum of the payroll carve-out referred to in subsection (2) and the tangible asset carve-out referred to in subsection (3) for each entity located in the jurisdiction.

(2) The payroll carve-out of a qualifying entity shall be equal to 5 per cent of its eligible payroll costs of eligible employees who perform activities for the MNE group, with the exception of eligible payroll costs that are:

(a) capitalised and included in the carrying value of eligible tangible assets;

(b) attributable to income that is excluded in accordance with section 19.

(3) The tangible asset carve-out of a constituent entity shall be equal to 5 per cent of the carrying value of the eligible tangible assets located in the jurisdiction, with the exception of

(a) the carrying value of property, including land and buildings, that is held for sale, lease or investment;

(b) the carrying value of tangible assets used to derive income that is excluded in accordance with section 19.

(4) For the purposes of subsection (3)*(b)*, the carrying value of eligible tangible assets shall be the average of the carrying value of eligible tangible assets at the beginning and end of the income year, as recorded for the purpose of preparing the consolidated financial statements of the ultimate parent entity, reduced by any accumulated depreciation, amortisation and depletion and increased by any amount attributable to the capitalisation of payroll expenses.

(5) For the purposes of subsections (2) and (3), eligible payroll costs and eligible tangible assets of a constituent entity which is a permanent establishment shall be those that are included in its separate financial accounts in accordance with section 20, provided that the eligible payroll costs and eligible tangible assets are located in the same jurisdiction as the permanent establishment.

(6) The eligible payroll costs and eligible tangible assets of a permanent establishment shall not be taken into account for the eligible payroll costs and eligible tangible assets of the main entity.

(7) Where the income of a permanent establishment was wholly or partially excluded pursuant to section 20(1) and section 38, the eligible payroll costs and eligible tangible assets of such permanent establishment shall be excluded in the same proportion from the computation under this section for the MNE group.

(8) Eligible payroll costs of eligible employees paid by, and eligible tangible assets owned by, a flow-through entity that are not allocated under paragraph 6 shall be allocated to:

(a) the constituent entity-owners of the flow-through entity, in proportion to the amount allocated to them pursuant to section 21(4), provided that

the eligible employees and eligible tangible assets are located in the jurisdiction of the constituent entity-owners; and

(b) the flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the computation of the qualifying income of the flow-through entity pursuant to section 38(1) and (2), provided that the eligible employees and eligible tangible assets are located in the jurisdiction of the flow-through entity.

(9) All other eligible payroll costs and eligible tangible assets of the flow-through entity shall be excluded from the substance-based income exclusion computations of the MNE group.

(10) The substance-based income exclusion of each stateless constituent entity shall be computed, for each income year, separately from the substance-based income exclusion of all other constituent entities.

(11) The substance-based income exclusion computed under this section shall not include the payroll carve-out and the tangible asset carve-out of constituent entities that are investment entities in that jurisdiction.

(12) For the purpose of applying subsection (2) , the value of 5 per cent shall be replaced by the values set out in column II of Part I of the *First Schedule,* for each income year beginning from the 31st of December of the calendar years set out in column I of Part I of the *First Schedule*.

(13) For the purpose of applying subsection (3) , the value of 5 per cent shall be replaced by the values set out in column II of Part II of the *First Schedule,* for each income year beginning from the 31st of December of the calendar years set out in column I of Part II of the *First Schedule*.

(14) For the purposes of this section,

“eligible employees”means full-time or part-time employees of a constituent entity and independent contractors participating in the ordinary operating activities of the MNE group under the direction and control of the MNE group;

"eligible payroll costs" means employee compensation expenditures, including salaries, wages and other expenditures that provide a direct and separate personal benefit to the employee, such as health insurance and pension contributions, payroll and employment taxes, and employer social security contributions;

"eligible tangible assets" means

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

(b) natural resources located in the jurisdiction;

(c) a lessee's right of use of tangible assets located in the jurisdiction; and

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

Additional top-up tax

31.(1) Where, pursuant to sections 15, 24(6), 27(1) and (8) and 41(8) and (10), an adjustment to covered taxes or qualifying income or loss results in the recomputation of the effective tax rate and top-up tax of the MNE group for a prior income year, the effective tax rate and top-up tax shall be recomputed in accordance with the rules set out in sections 28, 29 and 30.

(2) Any amount of incremental top-up tax arising from such recomputation shall be treated as an additional top-up tax for the purposes of section 29(3) for the income year during which the recomputation is made.

(3) Where there is an additional top-up tax and no net qualifying income for the jurisdiction for the income year, the qualifying income of each constituent entity located in that jurisdiction shall be an amount equal to the top-up tax allocated to such constituent entities pursuant to section 29(5) and (6) divided by the minimum tax rate.

(4) Where, pursuant to section 23(5) and (6), additional top-up tax is due, the qualifying income of each constituent entity located in the jurisdiction shall be

an amount equal to the top-up tax allocated to such constituent entity divided by the minimum tax rate.

(5) The allocation shall be made pro-rata, to each constituent entity, based on the following formula:

(Qualifying income or loss x minimum tax rate) — adjusted covered taxes

(6) The additional top-up tax shall only be allocated to constituent entities that record an amount of adjusted covered tax that is less than zero and less than the qualifying income or loss of such constituent entities multiplied by the minimum tax rate.

(7) Where a constituent entity is allocated additional top-up tax in accordance with this section and section 29(5) and (6), such constituent entity shall be treated as a low-taxed constituent entity for the purposes of this Act.

De minimis exclusion

32.(1) Notwithstanding sections 28 to 30 and section 33, at the election of the filing constituent entity, the top-up tax due for the constituent entities shall be equal to zero for an income year if, for such income year:

(a) the average qualifying revenue of all constituent entities is less than €10 000 000; and

(b) the average qualifying income or loss of all constituent entities is a loss or is less than €1 000 000.

(2) The election referred to in subsection (1) shall be made annually in accordance section 45.

(3) The average qualifying revenue or average qualifying income or loss referred to subsection (1) shall be the average of the qualifying revenue or qualifying income or loss of the constituent entities for the income year and the 2 preceding income years.

(4) If there are no constituent entities with qualifying revenue or qualifying loss in the first or second preceding income year, or both, such income year or years shall be excluded from the computation of the average qualifying revenue or qualifying income or loss.

(5) The qualifying revenue of the constituent entities for an income year shall be the sum of all the revenues of the constituent entities, reduced or increased by any adjustment carried out in accordance with Part III.

(6) The qualifying income or loss of the constituent entities for an income year shall be the net qualifying income or loss as computed in accordance with section 29(2).

(7) The de minimis exclusion set out in subsections (1) to (4) shall not be applicable to stateless constituent entities and investment entities.

(8) The revenue and qualifying income or loss of stateless constituent entities and investment entities shall be excluded from the computation of the de minimis exclusion.

[Minority-owned constituent entities

33.(1) The computation of the effective tax rate and the top-up tax applicable to members of a minority-owned subgroup shall apply as if each minority-owned subgroup were a separate MNE group.

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

(a) the determination of the residual amount of the effective tax rate of the MNE group computed in accordance with section 28(1); and

(b) the net qualifying income computed in accordance with section 28(2).

(3) The effective tax rate and top-up tax of a minority-owned constituent entity that is not a member of a minority-owned subgroup shall be computed on an entity basis in accordance with Parts III to VII.

(4) The adjusted covered taxes and qualifying income or loss of the minority-owned constituent entity shall be excluded from the determination of the residual amount of the effective tax rate of the MNE group computed in accordance with section 28(1) and from the net qualifying income computed in accordance with section 28(2).

(5) This section shall not apply to a minority-owned constituent entity that is an investment entity referred to in section 43.

(6) For the purposes of this section,

"minority-owned constituent entity" means a constituent entity in which the ultimate parent entity has a direct or indirect ownership interest of 30 per cent less;

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

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

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

Top-up tax safe harbour

34.(1) [Notwithstanding subsections 28 to 33, on making of an election by the filing constituent entity, the top-up tax due by a group shall be deemed to be zero for an income year if the effective level of taxation of the constituent entities is determined to have met the QDMTT Safe Harbour standards under an OECD peer review process prior to the specified return date in respect of that income year.]

(2) The QDMTT Safe Harbour standards shall not apply where a top-up tax

(a) is subject, directly or indirectly, to a challenge by a qualifying entity or a MNE group in court or administrative proceedings; or

(b) has been determined as not assessable or collectible by the Authority.

(3) For the purposes of this section

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

"QDMTT Safe Harbour standards" means the standards referred to as 'Standards for a QDMTT Safe Harbour' in the OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), July 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris.

PART VI

SPECIAL RULES FOR CORPORATE RESTRUCTURING AND HOLDING STRUCTURES

Application of the consolidated revenue threshold to group mergers and demergers

35.(1) Where 2 or more groups merge to form a single group in any of the last 4 consecutive income years immediately preceding the tested income year, the consolidated revenue threshold of the MNE group shall be deemed to be met for any income year prior to the merger if the sum of the revenue included in each of their consolidated financial statements for that fiscal year is €750 000 000 or more.

(2) Where an entity that is not a member of a group, referred to as the 'target', merges with an entity or a group, referred to as the 'acquiring entity', in the tested

income year, and either the target or the acquiring entity did not have consolidated financial statements in any of the last 4 consecutive income years immediately preceding the tested income year, the consolidated revenue threshold of the MNE group shall be deemed to be met for that year if the sum of the revenue included in each of their financial statements or consolidated financial statements for that income year is €750 000 000 or more.

(3) Where a single MNE group under this Act, demerges into 2 or more groups, each referred to as a 'demerged group', the consolidated revenue threshold shall be deemed to be met by a demerged group where:

(a) with respect to the first tested income year ending after the demerger, the demerged group has an annual revenue of €750 000 000 or more in that income year;

(b) with respect to the second to fourth tested income years ending after the demerger, the demerged group has an annual revenue of €750 000 000 or more in at least 2 of those income years.

(4) For the purposes of this section,

"merger" means any arrangement where:

(a) all or substantially all of the group entities of 2 or more separate groups are brought under common control in a way that they constitute entities of a combined group; or

(b) an entity that is not a member of any group is brought under common control with another entity or group in a way that they constitute entities of a combined group;

"demerger" means any arrangement where the group entities of a single group are separated into 2 or more different groups that are no longer consolidated by the same ultimate parent entity.

Constituent entities joining and leaving an MNE group

36.(1) Where an entity, referred to as the "target', becomes or ceases to be a constituent entity of an MNE group, as a result of a transfer of direct or indirect ownership interests in the target, or where the target becomes the ultimate parent entity of a new group during an income year, referred to the 'acquisition year', the target shall be treated as a member of the MNE group for the purposes of this Act provided that a portion of its assets, liabilities, income, expenses and cash flows is included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year.

(2) The effective tax rate and top-up tax of the target, referred to in subsection (1), shall be computed in accordance with subsections (3) to (9).

(3) In the acquisition year, referred to in subsection (1), an MNE group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target, referred to in subsection (1), that are included in the consolidated financial statements of the ultimate parent entity for the purposes of this Act.

(4) In the acquisition year, referred to in subsection (1), and in each subsequent income year, the qualifying income or loss and adjusted covered taxes of the target, referred to in subsection (1), shall be based on the historical carrying value of its assets and liabilities

(5) In the acquisition year, referred to in subsection (1), the computation of the eligible payroll costs of the target, referred to in subsection (1), pursuant to section 30(2) shall take into account only the costs that are reflected in the consolidated financial statements of the ultimate parent entity.

(6) The computation of the carrying value of the eligible tangible assets of the target, referred to in subsection (1), pursuant to section 30(3) shall be adjusted, where applicable, in proportion to the period of time in which the target was a member of the MNE group during the acquisition year referred to in subsection (1).

(7) With the exception of the qualifying loss deferred tax asset as referred to in section 25, the deferred tax assets and deferred tax liabilities of a target, referred to in subsection (1), that are transferred between MNE groups shall be taken into account by the acquiring MNE group and to the same extent as if the acquiring MNE group controlled the target when such assets and liabilities arose.

(8) Deferred tax liabilities of the target, referred to in subsection (1), that have previously been included in its total deferred tax adjustment amount shall be treated as reversed, for the purposes of section 24(8), (9) and (10), by the disposing MNE group and as arising from the acquiring MNE group in the acquisition year, except that in such a case any subsequent reduction of covered taxes pursuant to section 24(8), (9) and (10) shall have effect in the year in which the amount is recaptured.

(9) Where the target, referred to in subsection (1), is a group entity in 2 or more MNE groups during the acquisition year, referred to in subsection (1), it shall apply separately the top-up tax to its allocable shares of the constituent entities of the MNE group.

(10) Notwithstanding subsections (1) to (8), in the case of a disposition or acquisition of assets and liabilities, a disposing constituent entity shall include the gain or loss on disposition in the computation of its income or loss and an acquiring constituent entity shall determine its income or loss using the acquiring constituent entity's carrying value of the acquired assets and liabilities determined under the accounting standard used in preparing the consolidated financial statements of the ultimate parent entity.

Transfer of assets and liabilities

37.(1) A disposing constituent entity shall include the gain or loss arising from such disposal in the computation of its qualifying income or loss.

(2) An acquiring constituent entity' shall determine its qualifying income or loss on the basis of its carrying value of the acquired assets and liabilities determined under the financial accounting standard used in preparing consolidated financial statements of the ultimate parent entity.

(3) Notwithstanding subsection (2), where a disposal or acquisition of assets and liabilities is performed in the context of a reorganisation:

(a) the disposing constituent entity shall exclude any gain or loss arising from such disposal from the computation of its qualifying income or loss; and

(b) the acquiring constituent entity shall determine its qualifying income or loss on the basis of the carrying value of the acquired assets and liabilities of the disposing constituent entity upon disposal.

(4) Notwithstanding subsections (2) and (3), where the disposal of assets and liabilities is performed in the context of a reorganisation which results, for the disposing constituent entity, in a non-qualifying gain or loss:

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

(b) the acquiring constituent entity shall determine its qualifying income or loss after the acquisition using the disposing constituent entity's carrying value of the acquired assets and liabilities upon disposal, as adjusted consistently with local tax rules of the acquiring constituent entity to account for the non-qualifying gain or loss.

(5) At the election of the filing constituent entity, where a constituent entity is required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes in the jurisdiction where it is located, such constituent entity may:

(a) include, in the computation of its qualifying income or loss, an amount of gain or loss in respect of each of its assets and liabilities, which shall be:

(i) equal to the difference between the carrying value for financial accounting purposes of the asset or liability immediately before the date of the event that triggered the tax adjustment (the

'triggering event') and the fair value of the asset or liability immediately after the triggering event; and

(ii) decreased (or increased) by the non-qualifying gain or loss, if any, arising in connection with the triggering event;

(b) use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to compute qualifying income or loss in the income years ending after the triggering event; and

(c) include the net total of the amounts determined paragraph *(a)* in the constituent entity's qualifying income or loss in one of the following ways:

(i) the net total of those amounts is included in the income year in which the triggering event occurs; or

(ii) an amount equal to the net total of those amounts divided by 5 is included in the income year in which the triggering event occurs and in each of the immediate 4 subsequent income years, unless the constituent entity leaves the MNE group in a income year within this period, in which case the remaining amount will be wholly included in that income year.

(6) For the purposes of this section,

"acquiring constituent entity" means a constituent entity that acquires assets and liabilities

"disposing constituent entity" means a constituent entity that disposes of assets and liabilities;

"reorganisation" means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction where:

(a) the consideration for the transfer is, in whole or in significant part, equity interests issued by the acquiring constituent entity or by a person connected with the acquiring constituent entity, or, in the case of a

liquidation, equity interests of the target, or, when no consideration is provided, where the issuance of an equity interest would have no economic significance;

(b) the disposing constituent entity's gain or loss on those assets is not subject to tax, in whole or in part; and

(c) the tax laws in which the acquiring constituent entity is located require the acquiring constituent entity to compute taxable income after the disposal or acquisition using the disposing constituent entity's tax basis in the assets, adjusted for any non-qualifying gain or loss on the disposal or acquisition;

"non-qualifying gain or loss" means the lesser of the gain or loss of the disposing constituent entity arising in connection with a reorganisation that is subject to tax in the disposing constituent entity's location and the financial accounting gain or loss arising in connection with the reorganisation.

[Joint ventures

38.(1) The computation of the top-up tax of the joint venture and its joint venture affiliates shall be made in accordance with Parts III to VII, as if they were constituent entities of a separate MNE group and the joint venture was the ultimate parent entity of that group.

(2) The top-up tax due by the joint venture group shall be reduced by each parent entity's allocable share of the top-up tax under subsection (1) of each member of the joint venture group that is brought into charge under subsection (1).

(3) For the purposes of this section,

"joint venture group" means a joint venture and its joint venture affiliates;

"top-up tax due by the joint venture group" means the parent entity's allocable share of the top-up tax of the joint venture group.]

PART VII

TAX NEUTRALITY AND DISTRIBUTION REGIMES

Ultimate parent entity that is a flow-through entity

39.(1) The qualifying income of a flow-through entity that is an ultimate parent entity shall be reduced, for the income year, by the amount of qualifying income that is attributable to the ownership holder, provided that:

(a) the ownership holder is subject to tax on such income for a taxable period that ends within 12 months after the end of that income year at a nominal rate that equals or exceeds the minimum tax rate; or

(b) it can be reasonably expected that the aggregated amount of adjusted covered taxes of the ultimate parent entity and taxes paid by the ownership holder on such income within 12 months after the end of the income year equals or exceeds an amount equal to that income multiplied by the minimum tax rate.

(2) The qualifying income of a flow-through entity that is an ultimate parent entity shall also be reduced, for the income year, by the amount of qualifying income that is allocated to the ownership holder in the flow-through entity provided that the ownership holder is

(a) a natural person that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity; or

(b) a governmental entity, an international organisation, a non-profit organisation or a pension fund that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity.

(3) The qualifying loss of a flow-through entity that is an ultimate parent entity shall be reduced, for the income year, by the amount of qualifying loss that is attributable to the ownership holder.

(4) Subsection (3) shall not apply to the extent the ownership holder is not allowed to use such loss for the computation of its taxable income.

(5) Subsections (1) to (4) shall apply to a permanent establishment through which a flow-through entity that is an ultimate parent entity wholly or partly carries out its business or through which the business of a tax transparent entity is wholly or partly carried out, provided that the ultimate parent entity's ownership interest in that tax transparent entity is held directly or through one or more tax transparent entities.

(6) For the purposes of this section, "ownership holder" means the holder of an ownership interest in the flow-through entity.

[Ultimate parent entity subject to a deductible dividend regime

40.(1) An ultimate parent entity of an MNE group that is subject to a deductible dividend regime shall reduce, up to zero, for the income year, its qualifying income by the amount that is distributed as deductible dividend within 12 months after the end of the income year, provided that:

(a) the dividend is subject to tax in the hands of the recipient for a taxable period that ends within 12 months after the end of the income year at a nominal rate that equals or exceeds the minimum tax rate; or

(b) it can be reasonably expected that the aggregate amount of adjusted covered taxes and taxes of the ultimate parent entity paid by the recipient on such dividend equals or exceeds that income multiplied by the minimum tax rate.

(2) An ultimate parent entity of an MNE group that is subject to a deductible dividend regime shall also reduce, up to zero, for the income year, its qualifying

income by the amount that it distributes as deductible dividend within 12 months after the end of the income year, provided that the recipient is:

(a) a natural person, and the dividend received is a patronage dividend from a supply cooperative;

(b) a natural person that is tax resident in the same jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 per cent or less of the profits and assets of the ultimate parent entity; or

(c) a governmental entity, an international organisation, a non-profit organisation or a pension fund other than a pension services entity, that is a tax resident in the jurisdiction where the ultimate parent entity is located.

(3) The covered taxes of an ultimate parent entity, other than the taxes for which the dividend deduction was allowed, shall be reduced proportionally to the amount of qualifying income reduced in accordance with subsection (1) and (2).

(4) Where the ultimate parent entity holds an ownership interest in another constituent entity that is subject to a deductible dividend regime, directly or through a one or more such constituent entities, subsections (1), (2) and (3) shall apply to any other constituent entity located in the jurisdiction of the ultimate parent entity that is subject to the deductible dividend regime, to the extent that its qualifying income is further distributed by the ultimate parent entity to recipients that meet the requirements set out in subsections (1) and (2).

(5) For the purposes of subsection (1), a patronage dividend distributed by a supply cooperative shall be treated as subject to tax in the hands of the recipient insofar as such dividend reduces a deductible expense or cost in the computation of the recipient’s taxable income or loss.

(6) For the purposes of this section,

"deductible dividend" means, with respect to a constituent entity that is subject to a deductible dividend regime:

(a) a distribution of profits to the holder of an ownership interest in the constituent entity that is deductible from the taxable income of the constituent entity under the laws of the jurisdiction in which it is located; or

(b) a patronage dividend to a member of a cooperative; and

"deductible dividend regime" means a tax regime that applies a single level of taxation on the income of the owners of an entity by deducting or excluding from the income of the entity the profits distributed to the owners or by exempting a cooperative from taxation;

"cooperative" means an entity that collectively markets or acquires goods or services on behalf of its members and that is subject to a tax regime in the jurisdiction where it is located that ensures the tax neutrality in respect of goods or services that are sold or acquired by its members through the cooperative;

"patronage dividend" means a distribution by a cooperative to its members.]

[Eligible distribution tax systems

41.(1) A filing constituent entity may make an election for itself or with respect to another constituent entity that is subject to an eligible distribution tax system to include the amount determined as a deemed distribution tax in accordance with subsection (2) in the adjusted covered taxes of the constituent entity for the income year.

(2) The election shall be made annually in accordance with section 45 and shall apply to all the constituent entities that are located in a jurisdiction.

(3) The amount of deemed distribution tax shall be the lesser of:

(a) the amount of adjusted covered taxes necessary to increase the effective tax rate as computed in accordance with section 29(2) for the jurisdiction for the income year to the minimum tax rate; or

(b) the amount of tax that would have been due if the constituent entities located in the jurisdiction had distributed all of their income that is subject to the eligible distribution tax system during such income year.

(4) Where an election is made under subsection (1), a deemed distribution tax recapture account shall be established for each income year in which such election applies.

(5) The amount of deemed distribution tax determined in accordance with subsection (2) for the jurisdiction shall be added to the deemed distribution tax recapture account for the income year in which it was established.

(6) At the end of each subsequent income year, the outstanding balances in the deemed distribution tax recapture accounts established for prior income years shall be reduced in chronological order, up to zero, by the taxes paid by the constituent entities during the income year in relation to actual or deemed distributions.

(7) Any residual amount in the deemed distribution tax recapture accounts remaining after the application of the subsection (6) shall be reduced, up to zero, by an amount equal to the net qualifying loss of a jurisdiction multiplied by the minimum tax rate.

(8) Any residual amount of net qualifying loss multiplied by the minimum tax rate remaining after the application of subsection (7), for the jurisdiction, shall be carried forward to the following income years and shall reduce any residual amount in the deemed distribution tax recapture accounts remaining after the application of subsections (5), (6) and (7).

(9) The outstanding balance, if any, of the deemed distribution tax recapture account on the last day of the fourth income year after the income year for which

such account was established shall be treated as a reduction to the adjusted covered taxes previously determined for such income year.

(10) The effective tax rate and top-up tax for the income year referred to in subsection (9) shall be recomputed in accordance with section 31(1).

(11) Taxes that are paid during the income year in relation to actual or deemed distributions shall not be included in adjusted covered taxes to the extent they reduce a deemed distribution tax recapture account in accordance with subsections (4), (5) , (6) and (7).

(12) Where a constituent entity that is subject to an election under subsection (1), leaves the MNE group or substantially all of its assets are transferred to a person that is not a constituent entity of the same MNE group located in the same jurisdiction, any outstanding balance of the deemed distribution tax recapture accounts in previous income years in which such account was established shall be treated as a reduction to the adjusted covered taxes for each of those income years in accordance with section 31(1).

(13) Any additional top-up tax amount due shall be multiplied by the following ratio to determine the additional top-up tax due for the jurisdiction:

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

where

(a) the qualifying income of the constituent entity is determined in accordance with Part III for each income year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction; and

(b) the net qualifying income of the jurisdiction is determined in accordance with section 28(2) for each income year in which there is

an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction.]

[Determination of the effective tax rate and top-up tax of an investment entity

42.(1) Where a qualifying entity of an MNE group is an investment entity that is not a tax transparent entity and that has not made an election in accordance with sections 43 and 44, the effective tax rate of such investment entity shall be computed separately from the effective tax rate of the jurisdiction in which it is located.

(2) The effective tax rate of the investment entity as referred to in subsection (1) shall be equal to its adjusted covered taxes divided by an amount equal to the allocable share of the MNE group in the qualifying income or loss of that investment entity.

(3) Where more than one investment entity is located in a jurisdiction, their effective tax rate shall be computed by combining their adjusted covered taxes as well as the allocable share of the MNE group in their qualifying income or loss.

(4) The adjusted covered taxes of an investment entity as referred to in subsection (1) shall be the adjusted covered taxes that are attributable to the allocable share of the MNE group in the qualifying income of the investment entity and the covered taxes allocated to the investment entity in accordance with section 26.

(5) The investment entity's adjusted covered taxes shall not include any covered taxes accrued by the investment entity attributable to income that is not part of the MNE group's allocable share of the investment entity's income.

(6) The top-up tax of an investment entity as referred to in subsection (1) shall be an amount equal to the top-up tax percentage of the investment entity multiplied by an amount equal to the difference between the allocable share of the MNE group in the qualifying income of the investment entity and the substance-based income exclusion computed for the investment entity.

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

(8) The substance-based income exclusion of an investment entity shall be determined in accordance with section 30(1) to (9).

(9) The eligible payroll costs of eligible employees and eligible tangible assets taken into account for such investment entity shall be reduced in proportion to the allocable share of the MNE group in the qualifying income of the investment entity divided by the total qualifying income of such investment entity.

(10) For the purposes of this section, the allocable share of the MNE group in the qualifying income or loss of an investment entity shall be determined by taking into account only interests that are not subject to an election in accordance with sections 43 or 44.]

[Election to treat an investment entity as a tax transparent entity

43.(1) At the election of the filing constituent entity, a constituent entity that is an investment entity or an insurance investment entity may be treated as a tax transparent entity if the constituent entity-owner is subject to tax in the jurisdiction in which it is located under a fair market value or a similar regime based on the annual changes in the fair value of its ownership interests in such entity and the tax rate applicable to the constituent entity-owner on such income equals or exceeds the minimum tax rate.

(2) At the election of the filing constituent entity, a constituent entity that is an investment entity or an insurance investment entity may be treated as a tax transparent entity if the constituent entity-owner is subject to tax in the jurisdiction in which it is located under a fair market value or a similar regime based on the annual changes in the fair value of its ownership interests in such entity and the tax rate applicable to the constituent entity-owner on such income equals or exceeds the minimum tax rate.

(3) A constituent entity that indirectly owns an ownership interest in an investment entity or in an insurance investment entity through a direct ownership

interest in another investment entity or an insurance investment entity shall be considered to be subject to tax under a fair market value or similar regime with respect to its indirect ownership interest in the first-mentioned investment entity or insurance investment entity if it is subject to a fair market value or similar regime with respect to its direct ownership interest in the second-mentioned investment entity or insurance investment entity.

(4) The election under subsection (2) shall be made in accordance with section 45(1).

(5) If the election is revoked, any gain or loss from the disposal of an asset or a liability held by the investment entity or an insurance investment entity shall be determined on the basis of the fair market value of the asset or liability on the 1st day of the year the revocation is made.

(6) For the purposes of this section, "insurance investment entity" means an entity or arrangement that meets all the following conditions:

(a) it is designed to pool financial or non-financial assets from a number of investors, some of which are non-connected;

(b) it invests in accordance with a defined investment policy;

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

(d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;

(e) its investors have a right to return from the assets of the fund or income earned on those assets, based on the contribution they made;

(f) it, or its management, is subject to the regulatory regime, including appropriate anti-money laundering and investor protection regulation, for investment funds in the jurisdiction in which it is established or managed;

(g) it is managed by investment fund management professionals on behalf of the investors;

(h) it is a widely held entity that holds predominantly immovable property and that is subject to a single level of taxation, either in its hands or in the hands of its interest holders, with at most one year of deferral

if it had not been established in relation to liabilities under an insurance or annuity contract and if it were not wholly owned by an entity that is subject to regulation in the jurisdiction where it is located as an insurance company.]

Election to apply a taxable distribution method

44.(1) At the election of the filing constituent entity, a constituent entity-owner may apply a taxable distribution method with respect to its ownership interest in the investment entity, provided that the constituent entity-owner is not an investment entity and can be reasonably expected to be subject to tax on distributions from the investment entity at a tax rate that equals or exceeds the minimum tax rate.

(2) Under the taxable distribution method, distributions and deemed distributions of the qualifying income of an investment entity shall be included in the qualifying income of the constituent entity-owner that received the distribution, provided that it is not an investment entity.

(3) The amount of covered taxes incurred by the investment entity that is creditable against the tax liability of the constituent entity-owner arising from the distribution of the investment entity shall be included in the qualifying income and adjusted covered taxes of the constituent entity-owner that received the distribution.

(4) The share of the constituent entity-owner in the undistributed net qualifying income of the investment entity referred to in subsection (3) arising in the third year preceding the income year, the 'tested year', shall be treated as qualifying income of that investment entity for the income year.

(5) The amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of a constituent entity for the income year.

(6) The qualifying income or loss of an investment entity and the adjusted covered taxes attributable to such income for the income year shall be excluded from the computation of the effective tax rate in accordance with Part V and with section 42(1) to (4), except for the amount of covered taxes referred to in subsection (3).

(7) The undistributed net qualifying income of an investment entity for the tested year, referred to in subsection (4), shall be the amount of qualifying income of that investment entity for the tested year reduced, up to zero, by:

(a) the covered taxes of the investment entity;

(b) distributions and deemed distributions to shareholders that are not investment entities during the period starting with the first day of the third year preceding the income year and ending with the last day of the reporting income year in which the ownership interest was held referred to as the 'testing period';

(c) qualifying losses arising during the testing period referred to in paragraph *(b)*; and

(d) any residual amount of qualifying losses that has not already reduced the undistributed net qualifying income of that investment entity for a previous tested year, namely the investment loss carry-forward.

(8) The undistributed net qualifying income of an investment entity shall not be reduced by distributions or deemed distributions that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in application of the subsection (7)*(b)*.

(9) The undistributed net qualifying income of an investment entity shall not be reduced by the amount of qualifying losses that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in application of the subsection (7)*(c)*.

(10) For the purposes of this section, a deemed distribution shall arise when a direct or indirect ownership interest in the investment entity is transferred to an entity that does not belong to the MNE group and is equal to the share of the

undistributed net qualifying income attributable to such ownership interest on the date of such transfer, determined without regard to the deemed distribution.

(11) The election under subsection (1) shall be made in accordance with section 45.

(12) If the election is revoked, the share of the constituent entity-owner in the undistributed net qualifying income of the investment entity for the tested year at the end of the income year preceding the income year the revocation is made shall be treated as qualifying income of the investment entity for the income year.

(13) The amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of constituent entity for the income year.

(14) For the purposes of this section "constituent entity-owner" means a constituent entity-owner of an investment entity.

PART VIII

ADMINISTRATIVE PROCEDURES AND ENFORCEMENT

Elections

45.(1) The elections referred to in section 11(1) and (4), section 43 and section 44 shall be valid for a period of 5 years, starting from the year in which the election is made.

(2) The election referred to in subsection (1) shall be renewed automatically unless the filing constituent entity revokes the election at the end of the 5 year period.

(3) A revocation of the election pursuant to subsection (2) shall be valid for a period of 5 years, starting from the end of the year in which the revocation is made.

(4) The elections referred to in section 15(1) and (8), section 24(13), section 27(3), section 30(1), section 32(1) and section 41(1) shall be valid for a period of one year.

(5) The election referred to in subsection (4) shall be renewed automatically unless the filing constituent entity revokes the election at the end of the year.

(6) Any election made under this Act shall be made to Authority.

Filing obligations

46.(1) A qualifying entity shall give notice to the Commissioner, in the form and manner specified by the Commissioner, that it is such an entity, not later than 12 months after the last day of the first income year that it is a qualifying entity, immediately following a income year for which it was not a qualifying entity.

(2) A notice under subsection (1) shall contain

(a) the name of the entity;

(b) the TIN of the entity;

(c) the tax or taxes in respect of which the entity is registering,

(d) where the entity is a member of an MNE group

(i) the name of the ultimate parent entity;

(ii) the location of the ultimate parent entity;

(iii) the TIN of the ultimate parent entity;

(e) details of the first income year that the entity is a qualifying entity;

(f) where an entity has been appointed as the designated filing entity on behalf of the MNE group of which the entity is a member

(i) the name of the designated filing entity;

(ii) the location of the designated filing entity;

(iii) the TIN of the designated filing entity;

(g) such other information as the Commissioners may reasonably require for the purposes of this Part.

(3) Where there is any change to the information provided under subsection (2) the entity shall notify the Commissioner of the change within 12 months of the end of the income year in which the change occurred.

(4) Where an entity ceases to be a qualifying entity, the entity shall notify the Commissioner of the cessation within 12 months of the end of the first income year in which the entity is not such an entity immediately following an income year in which the entity was such an entity.

(5) Where an entity fails to give notice to the Commissioner in accordance with subsection (1) the entity shall be liable to a penalty of $10,000.

(6) Where an entity fails to comply with subsection (3) or (4) that constituent entity shall be liable to a penalty of $10,000.

Return and self-assessment

47.(1) An entity that is a qualifying entity for an income year shall prepare and deliver to the Commissioner a full and true return for the income year, in the form and manner specified by the Commissioner, on or before the specified return date.

(2) The QDTT group shall prepare and deliver to the Commissioner a QDTT return in the form and manner specified by the Commissioner on or before the specified return date.

(3) The QDTT group may elect a member of that group to prepare and deliver to the Commissioners a QDTT return on behalf of the relevant QDTT members on or before the specified return date for an income year.

(4) The QDTT group may withdraw the election of a member under subsection (3) and where such a withdrawal is made

(a) the QDTT group shall elect another member of the group to prepare and deliver the QDTT group return in accordance with subsection (2); or

(b) each a member of the group shall prepare and deliver a return in accordance with subsection (1).

(5) Notwithstanding subsection (4), a QDTT group is still required to prepare and deliver a QDTT group return in accordance with subsection (2).

(6) A return required under subsections (1) and (2) shall include

(a) a self-assessment;

(b) a declaration to the effect that the return is full and true;

(c) the name of the entity;

(d) the TIN of the entity;

(e) the tax or taxes in respect of which the entity is registering,

(f) where the entity is a member of an MNE group

(i) the name of the ultimate parent entity;

(ii) the location of the ultimate parent entity;

(iii) the TIN of the ultimate parent entity;

(g) details of the first income year that the entity is a qualifying entity;

(h) where an entity has been appointed as the designated filing entity on behalf of the MNE group of which the entity is a member

(i) the name of the designated filing entity;

(ii) the location of the designated filing entity;

(iii) the TIN of the designated filing entity;

(i) such further particulars as the Commissioner may reasonably require for the purposes of this Part.

(7) A return required to be prepared and delivered under this section may be amended only where such an amendment is necessary to

(a) correct either an error or mistake; or

(b) comply with any other provision of this Part.

(8) Where an entity fails to file the relevant return in accordance with this Act, that entity shall pay a penalty of $1000 to the Commissioner in addition to interest at the rate of one per cent calculated for each month during which any part of that amount was not paid on the largest amount of the top-up tax and interest that was due and unpaid at any time in that month.

Payment

48.(1) The top-up tax payable by an entity in respect of an income year shall be due and payable to the Commissioner on or before the specified return date in respect of the income year.

(2) Where a QDTT group member prepares and delivers a QDTT return pursuant to section 45(3) for an income year on or before the specified return date

(a) section 45(1) shall not apply to the other relevant QDTT group members other than the QDTT group member elected pursuant section 45(3);

(b) the other relevant QDTT group members, referred to in paragraph *(a)*, shall not be chargeable to domestic top-up tax in respect of the income year; and

(c) the QDTT group member elected pursuant section 45(3) shall be chargeable to an amount of domestic top-up tax in respect of all of the relevant QDTT group members, in respect of whom the return is prepared and delivered, for the income year and such an amount shall

be equal to the jurisdictional top-up tax for the QDTT group for the income year, as would be determined in accordance with sections 28, 29, 30 and 31 when calculating the top-up tax of the relevant QDTT group members.

(3) A payment made in respect top-up tax that a QDTT group member would have been chargeable to in respect of an income year, if subsection (2) did not apply, shall not

(a) be taken into account in calculating profits or losses of either QDTT group member elected pursuant section 45(3) or the other relevant group members referred to in subsection (2)*(a)*; and

(b) be regarded as a distribution or a charge on income,

for the purposes of the corporation tax purposes the *Income Tax Act*, Cap. 73.

(4) Where an entity fails to

(a) fails to pay the top-up tax imposed under this Act; or

(b) pay the top-up tax after date specified by this Act

that entity shall pay a penalty of $1000 to the Commissioner in addition to interest at the rate of one per cent calculated for each month during which any part of that amount was not paid on the largest amount of the top-up tax and interest that was due and unpaid at any time in that month.

Audit and investigations

49. For the purposes of the conducting audit and investigations under this Act, Division AB of the *Income Tax Act*, Cap. 73 applies *mutatis mutandis*.

Assessment and determinations by Commissioner

50.(1) A top-up tax assessment may be conducted by the Commissioner and shall involve an assessment of

(a) the amount of top-up tax payable for the income year; and

(b) the balance of top-up tax, taking account of any amount of top-up tax paid directly by the entity to the Commissioner for the income year, which under this Part

(i) is due and payable by the entity to the Commissioner for the income year; or

(ii) is overpaid by the entity for the income year and which, subject to this Part, is available for offset or repayment by the Commissioner.

(2) A top-up tax assessment shall include the amount of the surcharge due for the income year.

(3) In making an assessment under subsection (1), the Commissioner is not bound by the information contained in a return submitted under section 47 in respect of the entity or by any other information supplied by, on behalf of, or in respect of that entity.

(4) Where the Commissioner makes a top-up tax assessment, any self-assessment made under section 47 shall, for the purposes of determining the entity's liability to tax for the income year, be treated as if it had not been made and shall be void for such purposes.

(5) Where a self-assessment has been made pursuant to section 47, the Commissioner may make an assessment of the top-up tax for the applicable period

(a) at any time, where the entity has made any misrepresentation or has failed to disclose any material fact in making the return or in supplying information required to be supplied in accordance with this Act; or

(b) in any other case, within 5 years after the end of applicable payment period of the top-up tax.

Objection

51. Division X of the *Income Tax Act*, Cap. 73 applies *mutatis mutandis* in relation to the procedure for objecting to an assessment or a part of an assessment under this Act.

Appeal to Tribunal

52.(1) Any person who has objected to an assessment and who received a notice of confirmation or redetermination, may appeal from the decision of the Commissioner to the Tribunal, within 30 days after the day on which the notice of assessment or redetermination, as the case may be, was delivered to him.

(2) Where a person has filed a notice of objection under this Act and the Commissioner has not, within 12 months thereafter, delivered to the person a notice of confirmation or redetermination, the person may appeal to the Tribunal in respect of the objection.

(3) Where the Commissioner delivers to a person, a notice of confirmation or redetermination respecting an objection after the expiration of the period of 6 months referred to in subsection (2), the person may appeal to the Tribunal within 30 days after the delivery of the notice.

(4) An appeal under this section shall be instituted by filing a notice of appeal with the Tribunal together with such copies thereof as the Tribunal may require, and such notice shall, as far as possible, state the precise grounds of appeal.

(5) Where the Tribunal is satisfied that there is good reason for the failure of a person to object or appeal within 21 days of the date of notice of confirmation, reassessment or redetermination, or in subsections (1), (2) or (3), the Tribunal may allow the person such further time as the Tribunal thinks fit.

(6) In disposing of an appeal under this section in respect of an assessment or determination, the Tribunal may

(a) confirm or vacate the assessment or determination;

(b) make an order referring the assessment or determination back to the Commissioner for reassessment or redetermination in accordance with the directions of the Tribunal; or

(c) make such order as the Tribunal thinks fit.

(7) Where the Tribunal has referred an assessment or determination back to the Commissioner with directions for reassessment or redetermination by him

(a) the Commissioner shall make a reassessment or redetermination in accordance with those directions and shall deliver to the appellant a notice of reassessment or notice of redetermination, as the case may be; and

(b) if the appellant believes that such notice of reassessment or notice of redetermination is not in accordance with the directions of the Tribunal, he may apply to the Tribunal for an order determining the content of the notice of reassessment or notice of redetermination, as the case may be, which shall then be delivered by the Commissioner to the appellant.

Appeal to the High Court

53.(1) Any party to an appeal to the Tribunal may appeal from the decision of the Tribunal to the High Court on a point of law.

(2) In disposing of an appeal under this section in respect of an assessment or determination, the High Court may

(a) confirm or set aside the assessment or determination;

(b) make an order referring the assessment or determination back to the Commissioner for reassessment or redetermination in accordance with the directions of the Court; or

(c) make such other order as it thinks fit.

Enforced collection

54. Division AA of the *Income Tax Act*, Cap. 73 applies *mutatis mutandis* in relation to the procedure for the collection of top-up tax, interest, penalties and other amounts payable under this Act.

PART XI

TRANSITIONAL RELIEF

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

55.(1) When determining the effective tax rate for a jurisdiction in a transition year, and for each subsequent income year, the MNE group shall take into account all the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial accounts of all the constituent entities in a jurisdiction for the transition year.

(2) Deferred tax assets and deferred tax liabilities shall be taken into account at the lower of the minimum tax rate and the applicable domestic tax rate.

(3) Notwithstanding subsection (2), a deferred tax asset that has been recorded at a tax rate lower than the minimum tax rate may be taken into account at the minimum tax rate if the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss.

(4) The impact of any valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset shall be disregarded.

(5) Deferred tax assets arising from items excluded from the computation of qualifying income or loss in accordance with Part III shall be excluded from the computation referred to in subsection (2) when such deferred tax assets are generated in a transaction that takes place after 30th November, 2021.

(6) [In the case of a transfer of assets between constituent entities after 30th November, 2021 and before the commencement of a transition year, the basis in the acquired assets, other than inventory, shall be based upon the disposing constituent entity's carrying value of the transferred assets upon disposal with deferred tax assets and liabilities determined on that basis.]

Transitional relief for filing obligations

56. Notwithstanding section 46, the notifications referred to in section 46 and the return referred to in section 47 shall be filed with the Commissioner no later than 3 months after the specified return date of the reporting income year that is the transition year referred to in section 55.

PART X

MISCELLANEOUS

Administrative Directions and Guidelines

57. The Commissioner may issue administrative directions and guidelines, generally, to provide information and guidance in relation to the compliance with this Act or any statutory instruments made thereunder.

Regulations

58. The Minister may make regulations generally for carrying out the provisions of this Act.

Amendment of Schedule

59. The Minister may by order amend the *First Schedule*.

Consequential amendments

60. The enactments set out in the first column of the *Second Schedule* are amended to the extent set out in the second column opposite thereto.

FIRST SCHEDULE

(Section 30)

Transitional relief for the substance-based income exclusion

PART I

Payroll carve-out

Column I-Calendar years	Column II- Values
2023	10 %
2024	9.8%
2025	9.6%
2026	9.4%
2027	9.2%
2028	9.0%
2029	8.2%
2030	7.4%
2031	6.6%
2032	5.8%

PART II

Tangible assets carve-out

Column I-Calendar years	Column II- Values
2023	8 %
2024	7.8 %
2025	7.6%
2026	7.4%
2027	7.2%

Column I-Calendar years	Column II- Values
2028	7.0%
2029	6.6%
2030	6.2%
2031	5.8%
2032	5.4%

SECOND SCHEDULE

(Section 58)

Consequential Amendments

Column I	*Column II*
Enactment	*Amendment*
Barbados Revenue Act, 2014 (Act 2014-1)	In the *First Schedule* insert the following new paragraph after paragraph 12: "13. *Corporation Top-up Tax Act, 2023* (Act 2023-).".