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PART 1

MULTINATIONAL TOP-UP TAX

CHAPTER 1

INTRODUCTION AND CHARGE

1 Introduction to multinational top-up tax

(1) The purpose of this Part is to implement the provisions of the Pillar 2 model rules relating to top-up tax under the IIR (within the meaning of those rules) as further explained in the Pillar 2 commentary.

(2) For that purpose, this Part makes provision for a tax payable in respect of members of multinational groups who are located in territories where their rate of tax (as determined in accordance with this Part) is less than 15%.

(3) That tax is to be known as "multinational top-up tax".

(4) Sections 2 and 3 set out the charge to multinational top-up tax.

(5) Chapter 2 of this Part sets out—
   (a) the meaning of "multinational group",
   (b) who the members of such a group are,
   (c) how to identify who is the ultimate parent of such a group,
   (d) a condition relating to a revenue threshold of 750 million euros a year, which limits the application of multinational top-up tax to groups that meet this condition (a group meeting this condition is "qualifying"), and
   (e) how to determine which of the members are "responsible members" of the group, and which of the other members they are responsible for.

2 Charge

(1) A person is chargeable to multinational top-up tax for an accounting period if—
   (a) the person—
      (i) is a responsible member of a qualifying multinational group,
      (ii) is a body corporate or a partnership that is not a body corporate, and
      (iii) is located in the United Kingdom, or
   (b) the person is chargeable to tax in respect of a responsible member of a qualifying multinational group, and

at least one of the members of that group that the responsible member is responsible for has a top-up amount for that period.

(2) A person is chargeable to tax in respect of a responsible member of a qualifying multinational group if—

(a) the profits of a responsible member of a qualifying multinational group would be, on the relevant assumptions, the profits of the person for the purposes of income tax or corporation tax,

(b) the responsible member is located in the United Kingdom, and

(c) the responsible member is neither a body corporate nor a partnership that is not a body corporate.

(3) The relevant assumptions are that—

(a) the responsible member has profits that are chargeable to income tax or corporation tax, and

(b) the person is resident in the United Kingdom for the purposes of that tax.

(4) Where a partnership that is not a body corporate is chargeable to multinational top-up tax as a result of subsection (1)(a)—

(a) the person liable to pay the tax is the responsible partners, and

(b) the liability of the responsible partners to do so is joint and several.

(5) The references in subsection (4) to "the responsible partners" are to all the persons who are members of the partnership at any time during the accounting period.

(6) A partnership is to be regarded for the purposes of this section as continuing to be the same partnership regardless of a change in membership, provided that a person who was a member before the change remains a member after the change.

(7) Where more than one person is chargeable to tax in relation to the same responsible member of a qualifying multinational group as a result of the application of subsection (2), each of those persons is jointly and severally liable to multinational top-up tax.

3 Amount charged

(1) Where a person is chargeable to multinational top-up tax for an accounting period as a responsible member of a qualifying multinational group or in respect of a responsible member of a qualifying multinational group, the amount the person must pay is determined as follows—

Step 1

Determine which of the multinational group's members the responsible member is responsible for have top-up amounts or additional top-up amounts for that period and the extent of those amounts.

Step 2

Determine how much of each of those amounts is to be attributed to the responsible member.

Step 3
Add together the amounts so attributed.

Step 4
If the result of Step 3 is not expressed in sterling, convert the result of that Step to sterling.

(2) Generally, a member of a multinational group in a territory will have a top-up amount for an accounting period if—
 (a) the effective tax rate of the members of the group in that territory for that period is less than 15%, and
 (b) that member has profits for that period.

(3) Chapter 3 of this Part sets out how to determine the effective tax rate of the members of a multinational group in a territory by reference to the profits of, and the taxes payable by, those members in that territory.

(4) Chapter 4 of this Part sets out how to calculate the profits of members of a multinational group.

(5) Chapter 5 of this Part sets out—
 (a) which taxes (referred to in this Part as "covered taxes") are to be considered in determining the effective tax rate of those members, and
 (b) how to determine the amount of covered taxes allocated to those members.

(6) Chapter 6 of this Part sets out how to use the effective tax rate and profits of the members of a multinational group to determine the top-up amounts of those members.

(7) Chapter 7 of this Part sets out how to attribute those top-up amounts to a responsible member of the group.

(8) Chapter 8 of this Part contains provisions about—
 (a) additional top-up amounts, and
 (b) further adjustments that may need to be made (including provision about adjustments for restructuring of multinational groups).

(9) Chapter 9 of this Part sets out special provision for investment entities, joint venture groups and minority owned members (including provision that applies to those entities instead of provision in the previous chapters).

(10) Chapter 10 of this Part contains definitions and other provisions relevant to the calculations and other determinations to be made for the purposes of multinational top-up tax and Chapter 11 contains general provision.

4 Administration

Schedule 1 makes provision in connection with—
 (a) information returns,
 (b) assessments,

(c) penalties, and
(d) other administrative matters.

CHAPTER 2

QUALIFYING MULTINATIONAL GROUPS AND THEIR MEMBERS

Multinational groups

5 Meaning of "multinational group" and "ultimate parent"

(1) References in this Part to a multinational group are to—
(a) a consolidated group where at least one of the members of that group is not in the same territory as the others, or
(b) a permanent establishment group.

(2) A "consolidated group" means the following entities (which are its members)—
(a) an entity (the "ultimate parent")—
(i) in which no other entity has a controlling interest, and
(ii) which has a controlling interest in other entities, and
(b) the entities whose assets, liabilities, income, expenses and cash flows—
(i) are included in the consolidated financial statements of the ultimate parent, or
(ii) are not included in those statements only because of an exclusion on size or materiality grounds or on the grounds that the entity in question is held for sale.

(3) A "permanent establishment group" means the following entities (which are its members)—
(a) an entity (the "ultimate parent") that—
(i) is not a member of a consolidated group, and
(ii) has a relevant permanent establishment that is not an excluded entity, and
(b) its relevant permanent establishments.

(4) A permanent establishment is "relevant" unless it is a permanent establishment falling within section 101(2)(d) (stateless permanent establishments).

(5) For the purposes of this Part, a permanent establishment is always to be treated as an entity distinct from the entity it is a permanent establishment of (whether that would otherwise be the case or not).

6 Excluded entities

(1) For the purposes of the provisions of this Part, other than section 5 and this section, excluded entities are to be treated as not being members of a multinational group.

(2) The following are excluded entities—

(a) a governmental entity;
(b) an international organisation;
(c) a non-profit organisation;
(d) a pension fund;
(e) a qualifying service entity;
(f) a qualifying exempt income entity.

(3) The following are also excluded entities if they are the ultimate parent of a multinational group, or would be but for the fact they do not produce consolidated financial statements that include assets, liabilities, income expenses and cash flows of entities in which they have ownership interests—
(a) an investment fund,
(b) a UK REIT, or
(c) an overseas REIT equivalent.

(4) An entity is a qualifying service entity if—
(a) it is 95% owned by one or more qualifying excluded entities,
(b) either—
(i) the entity only carries out activities that are ancillary to the activities of those owners, or
(ii) almost all of its activities consist of the holding of assets or the investment of funds for the benefit of those owners, and
(c) no election under subsection (6) is in force in relation to the entity.

(5) An entity is a qualifying exempt income entity if—
(a) it is 85% owned by one or more qualifying excluded entities,
(b) almost all of the entity's income is excluded dividends or excluded equity gains (or a mixture of both), and
(c) no election under subsection (6) is in force in relation to the entity.

(6) The filing member of a multinational group (see paragraph 2 of Schedule 1) may make an election that a member of that group that would otherwise be an excluded entity as a result of subsection (4) or (5) is not to be an excluded entity.

(7) Schedule 2 makes provision about elections under this Part.

(8) Paragraph 1 of that Schedule (long term elections) applies to an election under subsection (6).

(9) For the purposes of subsections (4) and (5)—
(a) an excluded entity is "qualifying" if it is not a pensions service entity, and
(b) references to an entity being 95% or 85% owned by qualifying excluded entities are to those entities together having at least that percentage of the ownership interests in that entity.

Responsible members

7 Responsible members

(1) The ultimate parent of a multinational group is a responsible member of that group if it is subject to Pillar 2 IIR tax.

(2) An ultimate parent that is a responsible member of a multinational group is responsible for all of its members that are not located in the territory it is located in.

(3) An intermediate parent member of a multinational group (see section 97(2)) that is resident in a Pillar 2 territory is a responsible member of that group if it is subject to Pillar 2 IIR tax and—
   (a) no intermediate parent member of that group that is subject to Pillar 2 IIR tax has a controlling interest in it,
   (b) the ultimate parent is not subject to Pillar 2 IIR tax, and
   (c) it has an direct or indirect ownership interest in a member of the group that has a top-up amount.

(4) Such an intermediate parent member is responsible for all of the members of the group it has a direct or indirect ownership interest in that are not located in the territory it is located in.

(5) A partially-owned parent member of a multinational group (see section 97(1)) that is resident in a Pillar 2 territory is a responsible member if it is subject to Pillar 2 IIR tax and—
   (a) it is not wholly owned by another partially-owned parent member of that group that is subject to Pillar 2 IIR tax, and
   (b) it has an direct or indirect ownership interest in a member of the group that has a top-up amount.

(6) Such a partially owned parent member is responsible for all of the members of the group it has a direct or indirect ownership interest in that are not located in the same territory it is located in.

(7) For the purposes of this Part an entity is subject to Pillar 2 IIR tax if—
   (a) the entity is located in the United Kingdom and is not an excluded entity, or
   (b) the entity—
      (i) is located in a Pillar 2 territory in which a tax equivalent to multinational top-up tax is in force, and
      (ii) is not excluded from the application of that tax as a result of provision equivalent to section 6.

Qualifying multinational groups

8 Qualifying multinational groups

(1) For the purposes of this Part, a multinational group is "qualifying" in an accounting period if its members have revenue that exceeds the threshold set out in subsection (2) in at least 2 previous accounting periods of the previous 4 accounting periods.

(2) The threshold in relation to an accounting period is the amount given by multiplying 750 million euros by the amount given by dividing the number of days in the accounting period by 365.

(3) The revenue of the members of a multinational group for a period is to be determined by reference to the consolidated financial statements of the ultimate parent for that period.

9 Change in composition of multinational group

(1) This section applies for the purpose of determining whether a multinational group is qualifying in an accounting period ("the qualifying period") where its composition has changed in that period, or during the previous 4 accounting periods ("the testing period").

(2) Where a member of the multinational group was not a member of any multinational group in one or more of the accounting periods in the testing period, its revenues for those accounting periods are to be determined by reference to its financial statements or any consolidated financial statements in which its revenue is included (and, if necessary, apportioned on a just and reasonable basis to those accounting periods) and added to the revenues of the multinational group in those periods.

(3) Where a multinational group is the result of the merger of two or more groups in the testing period, for each accounting period of the testing period before the merger, add together the revenues of each group for that period (determined by reference to the consolidated financial statements of the ultimate parent of each group and if necessary, apportioned on a just and reasonable basis to the accounting period of the merged group) to determine whether the threshold in section 8(2) is met for that period.

(4) For the purposes of this Part "merger" means any arrangement where all, or substantially all, of the members of two or more groups are brought under common control such that they constitute members of a combined group.

(5) References to a "group" (other than in the expression "multinational group") in this section, and in section 10, is to a consolidated group or a permanent establishment group.

10 Whether de-merged groups are qualifying

(1) Subsection (2) applies, instead of section 8(1), for the purposes of determining if a multinational group that is the result of a de-merger ("a de-merged group") is qualifying in the first accounting period ending with the de-merger, and in the 3 accounting periods that follow it.

(2) A de-merged group is qualifying—
   (a) in the first accounting period ending after the de-merger, if its members have revenue for that period that exceeds the threshold set out in section 8(2), and
   (b) in any of the second to fourth accounting periods ending after the de-merger, if its members have revenue that exceeds the threshold set out in that section in any two of the following periods—
      (i) that period;
      (ii) any of the accounting periods that precede that period and end after the de-merger.

(3) In this Part "de-merger" means the separation of members of a multinational group into two or more groups, such that those members cease to all be consolidated by the same ultimate parent.

CHAPTER 3

EFFECTIVE TAX RATE OF MEMBERS OF A MULTINATIONAL GROUP IN A TERRITORY

11 Effective tax rate

(1) The effective tax rate of the standard members of a multinational group in a territory for an accounting period is determined as follows—

Step 1

Determine, in accordance with Chapter 4, the adjusted profits for that period of each standard member of that group in that territory.

Step 2

Subtract the sum of the losses of those members of the group that made a loss in that period from the sum of the profits of those members of the group that made a profit in that period.

Step 3

If the result of Step 2 is nil or less, the effective tax rate is to be treated as 15%. Otherwise, proceed to Step 4.

Step 4

Determine the combined covered tax balance for the standard members of the group in that territory (which may be negative).

Step 5

If that balance is nil the effective tax rate is 0%. Otherwise, proceed to Step 6.

Step 6

Divide the combined covered tax balance by result of Step 2.

Step 7

Except where Step 3 or 5 applies, the effective tax rate of the members of that group is X% where X (which will be negative if the combined covered tax balance is negative) is the result of Step 6 multiplied by 100.

(2) The combined covered tax balance for standard members of a multinational group in a territory is—

(a) where those members only have positive covered tax balances, the sum of those balances,

(b) where those members only have negative covered tax balances, the sum of those balances expressed as a negative number, or

(c) where those members have a mixture of positive covered tax balances and negative covered tax balances, the amount (which may be positive or negative) given by subtracting the sum of those negative covered tax balances from the sum of those positive covered tax balances.

Section 45 contains provision about the determination of covered tax balances of members of multinational groups.

(3) For the purposes of this Part—

(a) a member of a multinational group is a "standard member" if it is not—

(i) an investment entity, or

(ii) a minority owned member, and

(b) a stateless member of a multinational group is to be treated as being the sole member of the group located in a nominal territory.

CHAPTER 4

CALCULATION OF ADJUSTED PROFITS OF MEMBERS OF A MULTINATIONAL GROUP

Adjusted profits of a member of a multinational group

12 Adjusted profits of a member of a multinational group

(1) For the purposes of this Part, references to the adjusted profits of a member of a multinational group are to the underlying profits of that member adjusted in accordance with this Chapter and (to the extent applicable) the provisions of Chapter 8.

(2) Sections 13 to 17 sets out how to determine the underlying profits.

(3) Sections 18 to 37 set out various adjustments that may need to be made to those profits.

(4) Sections 38 and 39 set out adjustments to be made in relation to members that are permanent establishments.

(5) Sections 40 and 41 set out adjustments in relation to "flow-through entities" and entities subject to a "deductible dividend regime" .

(6) Sections 42 to 45 make provision for elections for certain matters to be calculated in an alternative manner.

13 Underlying profits as determined for statements of ultimate parent

(1) The normal rule is that the underlying profits of a member of a multinational group, other than a member that is a permanent establishment, are the member's profits as they would be determined for that member in preparing consolidated financial statements for the ultimate parent.

(2) But those profits may instead be determined on the basis of an alternative accounting standard if all of the conditions in subsection (3) are met.

(3) Those conditions are that—

(a) it is not reasonably practicable to determine those profits on the basis of the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent,

(b) the alternative accounting standard is an acceptable accounting standard or an authorised accounting standard,

(c) the alternative accounting standard is that used for the financial accounts of the member, and

(d) the information in those accounts is reliable.

(4) Subsection (5) applies where the application of a particular principle of the alternative accounting standard in the determination of the profits of the member results in a permanent difference of more than 1 million euros that would not arise if the accounting standard of the ultimate parent had been applied.

(5) Where this subsection applies, the underlying profits are to be adjusted to eliminate that difference (as if the accounting standard of the ultimate parent had been applied).

(6) Information in accounts of the member is "reliable" if an auditor applying the generally accepted auditing standards of a relevant territory would reasonably conclude the member has in place such processes relating to their preparation as are likely to make the information in the accounts a fair and accurate description of the income, expenses, assets and liabilities of that member.

(7) For the purposes of subsection (6), the following are relevant territories—

(a) the territory in which the member is located;

(b) if the member is a flow-through entity (see section 15(2)) that is a stateless entity , the territory in which it was created;

(c) the territory in which the ultimate parent is located.

(8) For the purposes of this Part, reference to a "permanent difference" is to a difference between the treatment of an amount for tax purposes and for

accounting purposes that is not eliminated over time (and accordingly does not give rise to deferred tax).

14 Underlying profits of permanent establishments

(1) The underlying profits of a member of a multinational group that is a permanent establishment are the member's profits—

(a) if the member has them, as reflected in their separate financial accounts, and

(b) if not, as they would have been reflected in separate financial accounts prepared on a standalone basis in accordance with the accounting standard used in the preparation of the ultimate parent's consolidated financial accounts.

(2) But if the member is a permanent establishment falling within paragraph (d) of section 101(2) (meaning of permanent establishment) the member's underlying profits are determined by reference to its relevant income and relevant expenses.

(3) For the purposes of subsection (2)—

(a) the relevant income of the member is the income of the member that is exempted from tax in the territory where the main entity is located that is attributable to operations carried out outside the territory the main entity is located in, and

(b) the relevant expenses of the member are such of its expenses as are attributable to those operations and are not deducted for tax purposes in the territory of the main entity.

(4) Except as provided for in section 39, the profits of a permanent establishment are not to be taken account in determining the adjusted profits of the main entity, and vice versa.

15 Underlying profits of flow-through entities

(1) This section makes provision about the allocation of profits of members of multinational groups that are "flow-through entities".

(2) A member of a multinational group is a flow-through entity to the extent that—

(a) it is transparent under the law of the territory in which it was created, and

(b) it is not tax resident and subject to covered taxes on its income or profits in another territory.

(3) Where—

(a) a member of a multinational group, other than the ultimate parent, is a flow-through entity, and

(b) entities ("third-party owners") who are not members of that group hold ownership interests in the member directly or through a tax transparent structure,

the amount of the member's profits that can be allocated to third-party owners is not to be included in the adjusted profits of any member of the group (or of any member of any other group).

(4) The amount of the member's profits that can be allocated to third-party owners is the amount of those profits that reflect the ownership interests of those persons, excluding any ownership interest to the extent it represents an ownership interest of the ultimate parent in the member held directly or through a tax transparent structure.

(5) Where a member of a multinational group ("O") has ownership interests in another member of that group ("T") that is not the ultimate parent and that, in relation to O, is a tax transparent flow-though entity, O is treated as having such of the profits of T as can be allocated to O.

(6) The profits of T that can be allocated to O are those that reflect O's ownership interests in T.

(7) Any profits of a member of a multinational group that is a flow-through entity that are not allocated in accordance with subsection (3) or (5) are profits of that member for the purposes of this Part.

(8) For the purposes of this Part—

(a) a flow-through entity is a tax transparent flow-through entity in relation to a member of a multinational group to the extent it is transparent under the law of the territory of the member;

(b) an entity is transparent under the law of a territory if the territory treats the income, expenditure, profits and losses of the entity as the income, expenditure, profits and losses of the direct owner of the entity in proportion to its interest in the entity;

(c) an ownership interest is held by an entity through a tax transparent structure if that interest is held through a chain of entities that are tax transparent flow-through entities in relation to the entity.

16 Certain non tax resident entities to be treated as flow-through entities

A member of a multinational group that is not tax resident in any territory and is not subject to covered taxes is to be treated as a flow-through entity that is a tax transparent flow-through entity to the extent that—

(a) it is tax transparent in relation to its owners,

(b) it does not have a place of business in the territory where it was created, and

(c) its income, expenditure, profits and losses are not attributable to a permanent establishment.

17 No amounts outside of profit and loss account to be included

Except as required by any other provision of this Part, amounts that are recognised outside the profit and loss account of a member of multinational group are not to be reflected in their adjusted profits for the purposes of this Part.

Adjustments of underlying profits

18 Profits adjusted to be before tax

(1) The underlying profits of a member of a multinational group for an accounting period are to be adjusted by adding back any debit, and excluding any credit, for relevant tax amounts reflected in those profits.

(2) In this section "relevant tax amount" means an amount in respect of—
 (a) a covered tax (whether or not the income to which the tax relates are excluded from adjusted profits for the purposes of this Part);
 (b) multinational top-up tax, or any tax equivalent to multinational top-up tax;
 (c) a qualifying domestic top-up tax;
 (d) any other tax payable as a result of the implementation of the Pillar 2 model rules;
 (e) taxes accrued by an insurance company in respect of returns to policyholders to the extent that section 32(2) applies in relation to those taxes.
 (f) a disqualified refundable imputation tax.

(3) For the purposes of this Part "qualifying domestic top-up tax" means a tax specified in regulations made by the Treasury by statutory instrument.

(4) A tax may only be specified in regulations if the Treasury consider that—
 (a) it is payable in relation to members of a multinational group located in a territory,
 (b) it is imposed under the law of that territory,
 (c) it is imposed for purpose of securing that the effective tax rate of those members in that territory is at least 15%, and
 (d) it is, subject to any modifications that are necessary in connection with that purpose, equivalent to multinational top-up tax.

(5) For those purposes such a tax is to be treated as equivalent despite being not being calculated in accordance with the financial accounting standard used in the consolidated financial statements of the ultimate parent if calculated in accordance with an authorised accounting standard that is either—
 (a) an acceptable accounting standard, or
 (b) another financial accounting standard that is adjusted to prevent material competitive distortions.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

19 Profits adjusted to be profits before consolidation adjustments to eliminate intragroup transactions

Unless an election under section 45 applies, the underlying profits of a member of a multinational group are to include income, expenses, gains and losses arising from transactions between that member and other members of that group.

20 Profits adjusted to be profits before certain purchase accounting adjustments

[Placeholder for adjustment reversing purchase accounting adjustments]

21 General exclusion of dividends

(1) The underlying profits of a member of a multinational group for an accounting period are to be adjusted so as to exclude any excluded dividends received or accrued in that period by that member.

(2) "Excluded dividends" means any dividend or other distribution arising as a result of a qualifying interest in an entity, other than—

(a) a dividend or other distribution arising as a result of a qualifying interest that is a short-term portfolio holding, or

(b) a dividend or other distribution arising as a result of a qualifying interest in an investment entity that is subject to an election under section 75 (taxable distribution method election).

(3) For the purposes of subsection (2), a qualifying interest is a short-term portfolio holding if—

(a) it is a qualifying interest held in an entity by the member for less than 1 year before the date on which the distribution was made, and

(b) the members of the multinational group do not, between them, hold qualifying interests that entitle them, on the earlier of those dates, to 10% or more of that entity's—

(i) profits,

(ii) capital,

(iii) reserves, or

(iv) voting rights.

(4) In this section, and in section 22, "qualifying interest" in an entity means—

(a) an ownership interest in it, or

(b) an entitlement to exercise voting rights in relation to it.

22 Excluded equity gains

(1) The underlying profits of a member of a multinational group are to be adjusted so as to exclude any excluded equity gain or loss.

(2) "Excluded equity gain or loss" means any gain, profit or loss arising from—

(a) gains and losses from changes in fair value of a qualifying interest or the impairment of such an interest, other than an interest to which subsection (3) applies,

(b) profit or loss in respect of a qualifying interest included in underlying profits under the equity method of accounting, or

(c) gains and losses from a disposition of a qualifying interest, other than an interest to which subsection (3) applies.

(3) This subsection applies to a qualifying interest in an entity if the members of the multinational group do not, between them, hold qualifying interests that entitle them, at the time of the change in fair value or at the time of the disposition (as the case may be), to 10% or more of that entity's—

(a) profits,

(b) capital,

(c) reserves, or

(d) voting rights.

23 Included revaluation method gain or loss

(1) The underlying profits of a member of a multinational group are to be adjusted so as to include any relevant revaluation method gain or loss.

(2) "Relevant revaluation method gain or loss" means a gain or loss, before covered taxes, arising as a result of the use of an accounting method or practice that—

(a) periodically adjusts the carrying value of the member's 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 gains or losses through the profit and loss account.

(3) In this Part—

"other comprehensive income", in relation to a member of a multinational group, means items of income and expense that are not recognised in profit or loss as required or permitted by the authorised accounting standard used in the consolidated financial statements used as the basis of determining the member's adjusted profits;

"property, plant and equipment" has the meaning given, for the time being, by International Accounting Standard 16.

24 Adjustments for asymmetric foreign currency gains and losses

(1) This section only applies in relation to a member of a multinational group where its accounting currency and its tax currency are different.

(2) Where—

(a) the member has income or a loss as a result of fluctuations in the exchange rate between its accounting currency and its tax currency, and

(b) the income or loss is reflected differently in its taxable income and in the determination of its underlying profits (including where is not reflected at all in one of those),

the member's underlying profits are to be adjusted so that the income or loss is reflected in those profits on the same basis it is reflected in its taxable income.

(3) Where—

(a) the member has income or a loss as a result of fluctuations in the exchange rate between its accounting currency and a third currency,

(b) the income or loss is reflected in its underlying profits, and

(c) the income or loss is not reflected, or is reflected to a different extent, in its taxable income,

the member's underlying profits are to be adjusted so that the income or loss is reflected in the those profits on the same basis it is reflected in its taxable income.

(4) Where—

(a) the member has income or a loss as a result of fluctuations in the exchange rate between its tax currency and a third currency, and

(b) the income or loss is not reflected, or is not fully reflected in its underlying profits,

the member's underlying profits are to be adjusted so that the income or loss is fully reflected in the those profits (whether or not it is reflected in its taxable income).

(5) In this Part—

"accounting currency" means the currency of the main economic environment in which a member of a multinational group operates;

"tax currency" means the currency in which the profits of that member are determined for the purposes of determining its liability to covered taxes in the territory in which it is located;

"third currency" means any currency which is neither the accounting currency nor the tax currency of the member;

"taxable income" means income subject to, and determined for the purposes of, covered taxes.

25 Exclusion of expenses for improper or illegal payments, fines or penalties

(1) Where—

(a) expenses accrued by a member of a multinational group for improper or illegal payments (such as bribes or kickbacks), or

(b) expenses accrued by the member for fines or penalties of 50,000 euros or more,

are included in the determination of its underlying profits, those profits are to be adjusted to exclude them.

(2) For the purposes of subsection (1)(b), where more than one fine or penalty is accrued in respect of the same conduct, or for continuing conduct, those fines or penalties are to be aggregated.

26 Adjustment for prior period errors and changes in accounting principles

Where there has been a change to the net assets and liabilities of a member of a multinational group at the start of an accounting period, the underlying profits of that member for that period are to be adjusted to include the amount of that change if the change is attributable to—

(a) a change in accounting principle or policy that affects income or expenses included in determining the member's adjusted profits, or

(b) a correction of an error in the accounts used in determining the adjusted profits of the member for a previous accounting period, except to the extent the correction of the error results in a material decrease to the member's liability to covered taxes such that section 77 applies.

27 Accrued pension expense

(1) Where the underlying profits of a member of a multinational group for an accounting period do not reflect the actual net expense of contributions made to pension funds by a member of a multinational group in respect of that period, the underlying profits are to be adjusted so that they do.

(2) Where, for an accounting period, no contributions are made by a member of a multinational group to a pension fund and instead the member recognises income in its underlying profits relating to the fund, any such income is to be excluded from its underlying profits.

28 Treatment of qualified refundable tax credits

(1) The underlying profits of a member of a multinational group are to be adjusted (if necessary) to secure that—

(a) qualifying refundable tax credits are treated as income, and

(b) other refundable tax credits are not treated as income.

(2) A refundable tax credit is "qualifying" if, under the law of the territory in which it is given, it entitles a person to receive the full amount of the credit,

in cash, cash equivalents or by reduction to a tax liability within 4 years of meeting the conditions for receiving it.

(3) But a refundable tax credit is never qualifying if it is creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax (see section 100).

(4) Where a refundable tax credit would be qualifying but for the fact that it only entitles a person to receive part of the credit within 4 years of meeting the conditions for receiving it, that part of the credit is "qualifying".

(5) In this section "refundable tax credit" means an entitlement of a person to a tax credit which is not limited by the tax liability of the person.

29 Deferred tax assets recorded at less than minimum rate

(1) Where a deferred tax asset that is attributable to a loss taken account of in determining the adjusted profits of a member of a multinational group in an accounting period in which it has a loss is recorded at a rate of less than 15%, the value of that asset is to be treated as the value it would be if it were recorded at a rate of 15%.

(2) Subsection (1) only applies in relation to a deferred tax asset if the filling member has made an election for it to apply.

(3) Paragraph 2 of Schedule 2 (annual elections) applies to an election under this section.

30 Arm's length requirement for certain transactions

(1) Where—
  (a) a loss is recorded in the financial accounts of a member of a multinational group that arises from a transaction comprising a transfer of an asset between the member and another member of that group,
  (b) those members are located in the same territory, and
  (c) that loss is not recorded on an arm's length basis,

the underlying profits of the member are to be adjusted to secure that the transaction is reflected on an arm's length basis.

(2) Subsection (4) applies to a member of a multinational group if—
  (a) it is party to a transaction with another member of that group,
  (b) one of the members is a minority owned member and the other is not, and.
  (c) the transaction is not recorded in the member's financial accounts on an arms length basis.

(3) Subsection (4) also applies to a member of a multinational group if—
  (a) it is party to a transaction with another member of that group,
  (b) both members are located in the same territory,
  (c) one of the members is an investment entity and the other is not, and

(d) the transaction is not recorded in the member's financial accounts on an arms length basis.

(4) Where this subsection applies to a member of a multinational group the underlying profits of the members are to be adjusted to secure that the transaction is reflected on an arm's length basis.

(5) In this section, and in section 31, "arm's length basis" in relation to a transaction between members of the same multinational group means reflecting the conditions of the transaction as would have been obtained had the transaction been conducted between independent enterprises in a comparable transaction under comparable circumstances.

31 Transactions between members of a multinational group: differences with accounting for tax

(1) This section applies if—

(a) a transaction between two members of a multinational group located in different territories is not recorded in the same amount, or is not recorded on an arm's length basis, in the financial accounts of both of those members, and

(b) there is a permanent difference in respect of the transaction in relation to one or both of those members as a result of adjustments to the taxable income of the member made in connection with transfer pricing.

(2) Subsection (3) applies if—

(a) for each member there is a permanent difference in respect of the transaction which arises as a result of adjustments made in connection with transfer pricing, and

(b) the permanent difference for each member corresponds to the permanent difference for the other.

(3) Where this subsection applies, the underlying profits of each of the members are to be adjusted so that the amount of the transaction reflects the amount reflected in the member's taxable income.

(4) Subsection (5) applies if—

(a) one of the members ("A") is a high tax member,

(b) there is a permanent difference for A in respect of the transaction which arises as a result of adjustments made in connection with transfer pricing, and

(c) there is no permanent difference for the other member ("B") in respect of the transaction arising as a result of adjustments made in connection with transfer pricing.

(5) Where this subsection applies—

(a) the underlying profits of A are to be adjusted so that the amount of the transaction reflects the amount reflected in the member's taxable income, and

(b) an adjustment is to be made to the underlying profits of B which corresponds with the amount of the adjustment made to the profits of A.

(6) For the purposes of this section, a member of a multinational group is a high tax member for an accounting period if—

(a) the nominal tax rate of the member in the territory it is located in is, or exceeds, 15%, or

(b) the effective tax rate of the member in at least one of the previous two accounting periods is, or exceeds, 15%.

32 Adjustments for basic life assurance and general annuity businesses

(1) This section applies to a member of a multinational group that carries on a basic life assurance and general annuity business.

(2) Where amounts charged to the member's policyholders for taxes paid by the member are reflected in its underlying profits, those profits are to be adjusted to exclude those amounts.

(3) Where returns to the member's policyholders are not reflected in the member's underlying profits but corresponding increases or decreases in the liability of the member to the policyholders are so reflected, those profits are to be adjusted so as to reflect those returns to the extent they correspond with those increases or decreases in liability.

33 Exclusion of qualifying intra-group financing arrangement expenses

(1) Where—

(a) the underlying profits of the member of a multinational group for an accounting period reflect expenses attributable to a qualifying intra-group financing arrangement that, over the duration of the arrangement, could be expected to—

(i) increase the amount of expenses taken into account in calculating the member's underlying profits, and

(ii) not result in a corresponding increase in the taxable income of a member of the group that is a high tax member for that period,

(b) the member is a low tax member for that period, and

(c) the expenses are not required to be included as a result of section 34,

the member's underlying profits for that period are to be adjusted to exclude those expenses.

(2) In this section—

"qualifying intra-group financing arrangement" means an arrangement between two or more members of a multinational group under which a high tax member for the purposes of the arrangement directly or indirectly provides credit or otherwise makes an investment in a low tax member for the purposes of the arrangement;

a member of a multinational group is a "low tax member" if the effective tax rate for the standard members of the group located in the member's territory would, ignoring the arrangement, be less than 15%;

a member of a multinational group is a "high tax member" if the effective tax rate for the standard members of the group located in the member's territory would, ignoring the arrangement, be 15% or more.

34 Additional tier one capital

(1) Where amounts recognised by a member of a multinational group as a decrease to its equity in an accounting period that is attributable to distributions paid or payable in respect of additional tier one capital issued by the member are not reflected in its underlying profits for that period as expenses, those profits are to be adjusted to reflect those amounts as expenses.

(2) Where amounts recognised by a member of a multinational group as an increase to its equity in an accounting period that is attributable to distributions received or receivable in respect of additional tier one capital held by the member are not reflected in its underlying profits for that period as income, those profits are to be adjusted to reflect those amounts as income.

(3) In this section "additional tier one capital" means an instrument issued by an entity pursuant to 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.

35 Exclusion of international shipping profits

(1) Where the underlying profits of a member of a multinational group for an accounting period reflect the inclusion of international shipping profits, the member's underlying profits for that period are to be adjusted to exclude those profits.

(2) The member's international shipping profits for the period are the sum of the member's—
   (a) core international shipping profits (see section 36), and
   (b) ancillary international shipping profits (see section 37).

36 Core international shipping profits

(1) A member's core international shipping profits for a period are the member's core international shipping revenue for the period less the member's core international shipping costs for the period.

(2) A member's core international shipping revenue is all revenue earned by the member in consideration for the member's performance of core international shipping activities.

(3) A member's core international shipping costs are the sum of—

(a) all costs incurred by the member that are directly attributable to the member's performance of core international shipping activities, and

(b) all costs incurred by the member that are indirectly attributable to the member's performance of core international shipping activities multiplied by the core international shipping factor.

(4) The core international shipping factor is the member's core international shipping revenue divided by all revenue earned by the member from any source.

(5) An activity is a core international shipping activity if—

(a) it is of a type referred to in subsection (6), and

(b) the strategic and commercial management of the performance of that activity by the member is effectively carried on within the territory in which the member is located.

(6) The types of activity are—

(a) the transportation of passengers or cargo by ship in international waters between different territories ("international shipping");

(b) leasing as lessor a ship to be used for international shipping, where—

(i) the ship is leased fully equipped, crewed and supplied, or

(ii) the lessee is a member of the same multinational group and the purpose of the lease is to allow that member to carry out a core international shipping activity;

(c) arranging for another person to carry out international shipping;

(d) carrying out international shipping in conjunction with another person;

(e) the sale of a ship used for international shipping, where—

(i) the ship has been used by the member for international shipping on a continuous basis for the period of one year ending with the date of the sale, and

(ii) the ship would, for the entirety of that period, have been recorded on the member's balance sheet as a fixed asset of that member if the balance sheet were prepared according to international accounting standards.

(7) In subsection (6)—

"international waters" means any waters outside the territorial waters of the territory in which the member is located;

"transportation" does not include towing or dredging.

37 Ancillary international shipping profits

(1) A member's ancillary international shipping profits for a period are the member's ancillary international shipping revenue for the period less the member's ancillary international shipping costs for the period less the member's ancillary international shipping profit cap adjustment for the period.

(2) A member's ancillary international shipping revenue is all revenue earned by the member in consideration for the member's performance of ancillary international shipping activities.

(3) A member's ancillary international shipping costs are the sum of—
(a) all costs incurred by the member that are directly attributable to the member's performance of ancillary international shipping activities, and
(b) all costs incurred by the member that are indirectly attributable to the member's performance of ancillary international shipping activities multiplied by the ancillary international shipping factor.

(4) The ancillary international shipping factor is the ancillary international shipping revenue divided by all revenue earned by the member from any source.

(5) An activity is an ancillary international shipping activity if—
(a) it is of a type referred to in subsection (6), and
(b) the strategic and commercial management of the performance of that activity by the member is effectively carried on in the territory in which the member is located.

(6) The types of activity are—
(a) leasing as lessor a ship to be used for international shipping, where—
(i) the ship is not leased fully equipped, crewed and supplied,
(ii) the lessee is not a member of the same multinational group, and
(iii) the lease has not been in effect for a period exceeding three years;
(b) selling tickets for the transportation of passengers or cargo by ship in waters that are not international waters, where—
(i) the transportation is carried out by a person other than the member or another member of the same multinational group,
(ii) the transportation continues to international waters without stopping in the territory in which the member is located, and
(iii) the transportation ends in a territory other than that territory;
(c) leasing as lessor a container used for international shipping;
(d) storing such a container for a short period;
(e) leasing as lessor for a short period space for the storage of such a container or of other goods used in international shipping;
(f) providing services to persons engaged in international shipping primarily for the purposes of such shipping (for example, engineering, maintenance, cargo handling, catering or customer relations services);
(g) holding assets necessary to carry out a core international shipping activity, where those assets are not, or are not acquired using, the assets of another member of the same multinational group.

(7) For the purposes of subsection (6)—

(a) "international shipping", "international waters" and "transportation" have the same meanings as in section 36;

(b) a lease of a ship is in effect for a period that is the total of the following periods—

(i) a period specified in the lease as the duration of the lease;

(ii) any period a prior lease in relation to that lease was in effect;

(c) a prior lease, in relation to a lease of a ship (a "subsequent lease"), means a lease of the same ship by the same lessor that was in effect on the day before the day on which a period specified in the subsequent lease as the duration of the subsequent lease began.

(8) The member's ancillary international shipping profit cap adjustment is to be calculated by taking the following steps—

Step 1

Determine the "cap threshold" in accordance with steps 2 to 5.

Step 2

Calculate the core international shipping profits for each member of the group in the territory.

Step 3

Add together the amounts calculated at Step 2.

Step 4

If the result of Step 3 is nil or less, the cap threshold is nil. Otherwise, proceed to Step 5.

Step 5

Divide the result of Step 3 by two. This is the cap threshold.

Step 6

Calculate the ancillary international shipping profits for each member of the group in the territory (ignoring the requirement to subtract the ancillary international shipping profit cap adjustment).

Step 7

Add together the amounts calculated at Step 6.

Step 8

Subtract the cap threshold from the result of Step 7. If the result is nil or less, the member's ancillary international shipping profit cap adjustment is nil. Otherwise, proceed to Step 9.

Step 9

If the ancillary international shipping profits for the member calculated at Step 6 are nil or less, the member's ancillary international shipping income cap adjustment is nil. Otherwise, proceed to Step 10.

Step 10

Add together any positive ancillary international shipping profits calculated at Step 6.

Step 11

Divide the ancillary international shipping profits for the member calculated at Step 6 by the result of Step 10.

Step 12

Multiply the result of Step 8 by the result of Step 11. This is the member's ancillary international shipping income cap adjustment.

Adjustments only applicable to permanent establishments

38 Permanent establishment income and expense attribution

(1) Where a member of a multinational group is a permanent establishment falling within paragraph (a) of section 101(2) (entity treated as permanent establishment in accordance with tax treaty), its underlying profits are to be adjusted so that they only reflect amounts of income and expenses that are attributable to it in accordance with the tax treaty in accordance with which it is treated as a permanent establishment (regardless of whether an amount of income is subject to tax or not, or an amount of expenses are deductible or not).

(2) Where a member of a multinational group is a permanent establishment falling within paragraph (b) of section 101(2) (permanent establishment taxed on similar basis to residents in absence of tax treaty), its underlying profits are to be adjusted so that they only reflect amounts of income and expenses that are attributable to it in accordance with the law of the territory in which the member is located (regardless of whether an amount of income is subject to tax or not, or an amount of expenses are deductible or not).

(3) Where a member of a multinational group is a permanent establishment falling within paragraph (c) of section 101(2) (permanent establishment located in territory without corporate income tax), its underlying profits are to be adjusted so that they only reflect amounts of income and expenses that would have been attributed to in accordance with Article 7 of the OECD Tax model.

39 Attribution of losses between permanent establishment and main entity

(1) Subsection (2) applies where a member of a multinational group that is a permanent establishment has a loss (for the purposes of this Part).

(2) So much of that loss as—

(a) is treated as an allowable expense of the main entity for the purposes of the computation of tax in the territory in which the main entity is located, and

(b) is not set off against an item of income that is subject to tax under the laws of both the territory of the permanent establishment and the territory of the main entity, is to be treated as an expense for the purposes of determining the adjusted profits of the main entity (and not of the permanent establishment) .

(3) Where the permanent establishment has profits in subsequent accounting periods, those profits are to be treated as profits of the main entity (and not of the permanent establishment) until so much of its profits as is equal to the loss treated as an expense under subsection (2) have been treated as profits of the main entity.

Adjustments for flow-through entities and entities subject to deductible dividend regime

40 Ultimate parent entity that is a flow-through entity

(1) Where the ultimate parent of a multinational group is a flow-through entity that has profits for an accounting period, its underlying profits for that period are to adjusted so as to exclude the proportion of its underlying profits that can be allocated to ownership interests in the ultimate parent that are qualifying for the purposes of this subsection.

(2) For the purposes of subsections (1) and (5), the proportion of an ultimate parent's underlying profits that can be attributed to an ownership interest in it is the same as the proportion that interest represents of all ownership interests in the ultimate parent.

(3) An ownership interest in an ultimate parent of a multinational group is qualifying for the purpose of subsection (1) if—
(a) its holder is subject to tax on the profits that can be allocated to it for a taxable period that ends within 12 months of the accounting period of group and—
(i) its holder is subject to tax on the full amount of those at a nominal rate equal to, or in excess of, 15%, or
(ii) it is reasonable to expect that the sum of the covered taxes payable by the ultimate parent in respect of those profits and taxes payable by the holder of the interest on those profits is at least the amount given by multiplying the amount of those profits by 15%, or
(b) its holder is a natural person that—
(i) is tax resident in the territory of the ultimate parent, and
(ii) does not hold ownership interests that together entitle the person to more than 5% of the profits and assets of the ultimate parent, or
(c) its holder is a governmental entity, an international organisation, a non-profit organisation or a pension fund that—
(i) is located in the territory of the ultimate parent, and
(ii) does not hold ownership interests that together entitle that entity to more than 5% of the profits and assets of the ultimate parent.

(4) Where the underlying profits of the ultimate parent of a multinational group for an accounting period are reduced as a result of subsection (1), its covered tax balance (see section 47) is—
    (a) in the case of a positive covered tax balance, to be reduced by the same proportion that the underlying profits were reduced, or
    (b) in the case of a negative covered tax balance, to be increased by that same proportion.

(5) Where the ultimate parent of a multinational group is a flow-through entity that has a loss for an accounting period, its underlying profits for that period are to be adjusted so as to exclude the proportion of its underlying profits as can be allocated to ownership interests in the ultimate parent that are qualifying for the purposes of this subsection.

(6) An ownership interest in an ultimate parent of a multinational group that has a loss for an accounting period is qualifying for the purpose of subsection (5) to the extent the holder of the interest is allowed to use its share of the loss in computing the holder's taxable income.

(7) This section applies to a member of a multinational group as it applies to the ultimate parent if the member is—
    (a) a permanent establishment through which the ultimate parent of a multinational group wholly or partly carries out its business, if the ultimate parent is a flow-through entity, or
    (b) a permanent establishment through which the business of a tax-transparent flow-through entity is carried out, if the ultimate parent's interest in that entity is held directly or through a tax transparent structure.

41 Ultimate parent entity subject to deductible dividend regime

(1) Where—
    (a) the ultimate parent of a multinational group that is subject to a deductible dividend regime distributes a deductible dividend within 12 months of the end of its accounting period, and
    (b) it has made a profit for that period,

its underlying profits for that period are to be reduced (but not below nil) by the amount of that dividend if any one of conditions A to C is met.

(2) Condition A is that the dividend is subject to tax in the hands of the dividend recipient for a taxable period that ends within 12 months of the end of the ultimate parent's accounting period and—
    (a) its holder is subject to tax on the full amount of the dividend at a nominal rate equal to, or in excess of, 15%,
    (b) it is reasonable to expect that the sum of the covered taxes payable by the ultimate parent in respect of those profits and taxes payable by the dividend recipient in respect of the dividend income is at least the amount given by multiplying the amount of that income by 15%, or

(c) the dividend recipient is a natural person and the dividend is a patronage dividend from a supply cooperative.

(3) For the purposes of subsection (2)(c) patronage dividends from a supply cooperative are subject to tax to the extent they reduce an expense or cost that is deductible in the computation of the recipients taxable income.

(4) Condition B is that the dividend recipient is a natural person that—
(a) is tax resident in the territory of the ultimate parent, and
(b) does not hold ownership interests that together entitle the person to more than 5% of the profits and assets of the ultimate parent, or

(5) Condition C is that the dividend recipient is located in the territory of the ultimate parent and is—
(a) a governmental entity,
(b) an international organisation,
(c) a non-profit organisation, or
(d) a pension fund that is not a pension services entity.

(6) Where the underlying profits of the ultimate parent of a multinational group for an accounting period are reduced as a result of subsection (1)—
(a) its covered tax balance, excluding any tax in respect of which a deduction for the dividend was allowed, is—
(i) in the case of a positive covered tax balance, to be reduced by the same proportion that underlying profits were reduced, or
(ii) in the case of a negative covered tax balance, to be increased by that same proportion, and
(b) its underlying profits are to be further reduced by an amount equal to the amount by which its covered tax balance was adjusted under paragraph (a).

(7) Where—
(a) a member of a multinational group is in the same territory as the ultimate parent,
(b) is also subject to the deductible dividend regime, and
(c) the ultimate parent's interests in the member is direct or through a chain of members subject to the regime,

subsections (1) and (6) apply to a distribution of a deductible dividend by the member to the ultimate parent as it applies to a distribution by the ultimate parent in relation to which one of conditions A to C is met to the extent that the dividend received is further distributed by the ultimate parent and one of those conditions is met in relation to the further distribution.

(8) For the purposes of this section—
"deductible dividend regime" means a tax regime designed to result in a single level of taxation on the owners of an entity through a deduction from the income of the entity for distributions of profits to the owners, including a regime applicable to cooperatives that exempts

the cooperative from taxation (and for these purposes, patronage dividends of a cooperative are treated as distributions to owners);

"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 territory in which it is located that is designed to ensure tax neutrality in respect of—

(a) member's property or services sold through the cooperative, or

(b) property or services acquired by members through the cooperative;

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

Elections to treat certain amounts differently

42 Election to use realisation principle

(1) The filing entity of a multinational group may elect that all of the group's members in a territory, or all of the group's members in that territory that are investment entities, are to use the realisation principle in determining gains and losses in relation to—

(a) all assets and liabilities that are subject to fair value or impairment accounting, or

(b) tangible assets that are subject to fair value accounting or impairment accounting.

(2) Where such an election is in force in relation to members of multinational group in a territory—

(a) the underlying profits of each of the group's members for each of the accounting periods in respect of which the election is in force are to be adjusted so as to exclude gains and losses in respect of assets or liabilities to which the election applies that are attributable to fair value or impairment accounting;

(b) the carrying value of an asset or liability to which the election applies to be used for the purposes of determining gains or losses in respect of that asset or liability, is to be its carrying value at the later of—

(i) the commencement of the first accounting period of the multinational group to which the election applied, or

(ii) the time the asset was acquired or the liability was incurred.

(3) Paragraph 1 of Schedule 2 (long term elections) applies to an election under this section.

(4) Where an election under this section has been revoked, the underlying profits of each member of a multinational group in respect of which the election was in force are to be adjusted in the first accounting period in respect of which the election no longer applies ("the revocation period") by adjusting for the change in treatment of the assets and liabilities that were subject to the election

and that remain held by the member at the commencement of the revocation period.

(5) To adjust the underlying profits of a member of a multinational group for the change in treatment of an asset or liability subject to an election under this section, subtract the carrying value of that asset or liability as determined in accordance with subsection (2)(b) from the fair value of the asset or liability at the commencement of the revocation period and—

(a) if the amount given is positive, add it to those profits, or

(b) if the amount is negative, subtract it from the those profits.

43 Election to reflect deductions for stock based compensation

(1) The filing member of a multinational group may make an election under this section for the members of the group located in a territory to adjust their underlying profits in accordance with subsection (2).

(2) Where such an election has effect—

(a) the underlying profits of each such member is adjusted by substituting, for the amount of any expense for stock-based compensation, the amount that was allowed as a deduction for the same expense when calculating the member's taxable income, and

(b) where such a member has an expense for stock-based compensation that arises in connection with an option that expires without exercise, the underlying profits of that member for the accounting period in which the option expires are to be increased by such amount of that expense as was an expense in determining the member's adjusted profits for a previous accounting period.

(3) Where—

(a) the underlying profits of a member of a multinational group are adjusted in accordance with subsection (2) in respect of an amount of stock based compensation,

(b) some expenses in respect of that compensation were recorded in the underlying profits of the member in one or more accounting periods before the election had effect, and

(c) the sum of the expenses recorded in those periods exceeds the sum of what those expenses would have been had the election been in effect for those periods,

the member's adjusted profits are to be adjusted to include the amount of that excess as if it were income.

(4) Paragraph 1 of Schedule 2 (long term elections) applies to an election under this section.

(5) Where—

(a) the underlying profits of a member of a multinational group are adjusted in accordance with subsection (2),

(b) the election is revoked before all of the stock-based compensation has been paid, and

(c) the sum of amounts deducted in accordance with subsection (2) exceeds the sum of the financial account expense accrued that has been paid,

the member's adjusted profits are to be adjusted to include the amount of that excess as if it were income.

44 Election to spread certain capital gains over five years

(1) The filing member of a multinational group may elect that the net gain in respect of the disposal of local tangible assets by members of the group in a territory in an accounting period ("the election period") is to be spread across the preceding 4 accounting periods (collectively "the look-back period") in accordance with subsection (2).

(2) To spread the net gain across those periods take the following steps—

Step 1

For each member of the group in the territory, determine whether it has net losses in the first accounting period of the look-back period ("the carry-back period") in respect of the disposal of local tangible assets (ignoring any losses in relation to which these steps have previously been carried out).

Step 2

Allocate the proportion of the net gain in the election period to each member with such losses in the carry-back period that is equal to the proportion those losses represent of the total losses in respect of the disposal of local tangible assets of all such members of the group in the carry-back period.

Step 3

Adjust the underlying profits of each such member by reducing the member's losses (but not below nil) by the amount allocated to it under Step 2.

Step 4

If there remains an amount of the net gain which was not used to reduce members' losses in accordance with Step 3, carry out steps 1 to 3 again, but as if—

(a) the reference in Step 2 to the net gain were to that amount,

(b) the reference to the first accounting period of the look-back period were to the second accounting period of the look-back period.

Step 5

If there still remains an amount of the net gain which was not used to reduce the members' losses, carry out Steps 1 to 3 again but as if—

(a) the reference in Step 2 to the net gain were to that amount,

(b) the reference to the first accounting period of the look-back period were to the third accounting period of the look-back period.

Step 6

If there still remains an amount of the net gain which was not used to reduce the members' losses, carry out Steps 1 to 3 again but as if—

(a) the reference in Step 2 to the net gain were to that amount,

(b) the reference to the first accounting period of the look-back period were to the final accounting period of the look-back period.

Step 7

If there still remains an amount of the net gain which was not used to reduced the members' losses, divide the amount remaining by 4.

Step 8

For each accounting period of the look-back period, determine whether any member of the group in the territory has net gains from the disposal of local tangible assets.

Step 9

For each accounting period in the look-back period where at least one member in the territory has such gains, adjust the underlying profits of each member who has such gains in that period by adding the amount given by multiplying the result of Step 7 by the amount given by dividing the amount of those gains by the amount of net gains from the disposal of local tangible assets of all members in that territory for that period.

Step 10

For each accounting period in the look-back period where no member has any such gains, adjust the underlying profits of each member in the territory by adding the amount given by multiplying the result of Step 7 by the amount given by dividing 1 by the number of members of the group in that territory.

(3) For the purposes of this section any gain or loss arising from the transfer of assets between members of a multinational group is to be ignored.

(4) Where, as a result of an election under this section, the underlying profits of a member of a multinational group in an accounting period is adjusted, the following are to be recalculated for that period—

(a) the effective tax rate for the member and the other members of that group located in the same territory, and

(b) the top-up amounts that those members would have.

(5) Section 68—

(a) makes provision about the consequences of a recalculation (which may include the generation of an additional top-up amount), and

(b) applies to recalculations under subsection (4).

(6) Where an election under this section has effect in relation to a member of a multinational group, any amount of tax with respect to any gains or loss in respect of the disposal of local tangible assets in the election year is to be excluded from the calculation of the member's covered tax balance.

(7) Paragraph 2 of Schedule 2 (annual elections) applies to an election under this section.

(8) In this section "local tangible asset" means immovable property located in the same territory as a member of a multinational group.

45 Election to exclude intra-group transactions

(1) The filing member of a multinational group may elect that members of the group that are located in the same territory and are included in a tax consolidation group are to apply the consolidated accounting treatment of the ultimate parent to eliminate income, expenses, gains and losses arising from transactions between those members.

(2) Where an election under this section has effect—
   (a) the underlying profits of those members are to be adjusted accordingly in the accounting periods for which the election has effect, and
   (b) the underlying profits of those members are to be adjusted for the first accounting period for which the election has effect so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising from the making of the election.

(3) Paragraph 1 of Schedule 2 (long term elections) applies to an election under this section.

(4) Where an election under this section is revoked, the underlying profits of the members to whom the election applied are to be adjusted in the first accounting period in which the revocation has effect so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising from the revocation of the election.

(5) For the purposes of this section, members of a multinational group in a territory are included in a "tax consolidation group" if under the law of that territory the income, expenses, gains or losses of those members may for tax purposes be aggregated, surrendered to each other or otherwise shared or transferred between them as a result of a connection between those members.

CHAPTER 5

COVERED TAX BALANCE

46 Covered taxes

(1) The following are covered taxes in relation to a member of a multinational group—
   (a) taxes on profits of that member in the territory in which it is located (including, where it has ownership interests in another member of the group, taxes on its share of the income or profits of that member),
   (b) taxes imposed on the member under an eligible distribution tax system,
   (c) taxes imposed on the member as a substitute for a tax on profits that generally applies in the territory of the member, and
   (d) taxes charged by reference to the capital of a company, or by reference to its capital and profits.

(2) But none of the following are to be regarded as covered taxes—

(a) multinational top-up tax, or any tax equivalent to multinational top-up tax;

(b) a qualifying domestic top-up tax (see section 18(3));

(c) any other tax payable as a result of the implementation of the Pillar 2 model rules;

(d) a disqualified refundable imputation tax;

(e) taxes accrued by an insurance company in respect of returns to policyholders to the extent that section 32(2) applies in relation to those taxes.

(3) In this section "eligible distribution tax system" means a system of tax on companies that—

(a) is generally only payable when a company distributes, or is deemed to distribute, its profits to its members, or when it incurs certain non-business expenses,

(b) is charged at a rate of at least 15%, and

(c) was in force on or before 1 July 2021.

47 Amount of covered tax balance

(1) To determine the covered tax balance of a member of a multinational group for an accounting period—

Step 1

Determine the amount of the qualifying current tax expense accrued by the member for that period.

Step 2

Determine whether any amounts need to be excluded from that expense under section 48 (and adjust it accordingly).

Step 3

Determine whether any amounts need to be included in that expense under section 49 (and adjust it accordingly).

Step 4

Adjust the expense so as to include any amounts of covered taxes to be allocated to the member as a result of sections 50 to 53 and exclude any amounts to be allocated from the member to another member as a result of those sections.

Step 5

If any amount of covered taxes is taken into account more than once in the qualifying current tax expense, adjust that expense so that the amount is only taken into account once.

(2) For the purposes of this Chapter, current tax expense is to be expressed—

(a) as a positive number where it represents an expense, and

(b) as a negative number where it represents a credit.

(3) If the result of subsection (1) is a negative amount that amount (expressed as a positive number) is a "negative covered tax balance".

(4) In the result of subsection (1) is a positive amount, or nil, that amount is a "positive covered tax balance".

(5) In this Part—

references to the "covered tax balance" of a member of a multinational group are to a positive covered tax balance or a negative covered tax balance;

"qualifying current tax expense" means the amount of the current tax expense as determined for the purposes of determining the member's adjusted profits to the extent the expense relates to covered taxes.

48 Amounts excluded from covered tax balance

(1) The amounts referred to in subsection (2) are to be excluded from a member of a multinational group's qualifying current tax expense (to the extent they would otherwise be included).

(2) Those amounts are as follows—

(a) an amount of the qualifying current tax expense that relates to income which is excluded from the determination of the member's adjusted profits;

(b) an amount of the member's qualifying current tax expense that relates to an uncertain tax position;

(c) any amount of credit or refund in respect of a qualified refundable tax credit that is recorded as a reduction of its qualifying current tax expense;

(d) an amount of qualifying current tax expense that is not expected to be paid before the end of the period of three years commencing with the first day after the end of the accounting period.

49 Amounts to be included in determination of covered tax balance

(1) The amounts referred to in subsection (2) are to be included in a member of a multinational group's qualifying current tax expense (to the extent they are not already so reflected).

(2) Those amounts are as follows—

(a) an amount of covered taxes accrued, in the member's accounts, as an expense before tax in the accounting period to which the qualifying current tax expense relates;

(b) the total deferred tax adjustment amount (see section 54);

(c) an amount of covered taxes paid in that period that relates to an uncertain tax position where the amount was excluded under section 48(2)(b) for a previous accounting period;

(d) any amount of credit or refund in respect of a non-qualified refundable tax credit;

(e) any amount of covered taxes refunded or credited to the member, other than a qualified refundable tax credit;

(f) an amount of loss deferred tax asset used in that period in accordance with section 57(2);

(g) covered taxes recorded in other comprehensive income of the member relating to amounts included in determining its adjusted profits that are subject to covered taxes under the law of the territory in which the member is located.

50 Allocation of taxes: permanent establishments

(1) Any amount of covered taxes included in the financial accounts of a member of a multinational group that is in respect of profits of a permanent establishment is to be allocated to the permanent establishment.

(2) Where profits of a permanent establishment are treated as profits of the main entity as a result of section 39(3), covered taxes on those profits that arise in the territory of the permanent establishment are to be allocated to the main entity.

(3) But the amount allocated in accordance with subsection (2) is not to exceed the amount given by multiplying the amount of those profits by the highest corporate tax rate on ordinary income in the territory where the main entity is located.

51 Allocation of taxes: tax transparent entities and hybrid entities

(1) Where a member of a multinational group ("O") has ownership interests in another member of that group ("T") that in relation to O is a tax transparent flow-through entity, any covered taxes included in the financial accounts of T with respect to profits allocated to O as a result of section 15(5) are to be allocated to O.

(2) Where a member of a multinational group ("P") has ownership interests in another member of that group ("H") that in relation to P is a hybrid entity, the amount of any covered taxes included in the financial accounts of P on income of H is allocated to H.

(3) But the amount of covered taxes in respect of mobile income allocated to H is not to exceed the amount given by taking the following steps—

Step 1

Determine the effective tax rate of the members of the multinational group in the territory of H for the accounting period to which the covered taxes relate, ignoring those covered taxes.

Step 2

Subtract the result of Step 1 from 15%.

Step 3

Multiply the result of Step 2 by the amount of mobile income to which the covered taxes relates.

(4) For the purposes of this Part "hybrid entity", in relation to another entity that has ownership interests in it, means an entity that—

(a) is treated as a separate taxable person for the purposes of taxes on income under the law of the territory in which it is located, and

(b) is transparent under the law of the territory in which the other entity is located.

(5) For the purposes of this section and section 52, "mobile income" means income in respect of which a member of a multinational group is subject to tax under a controlled foreign company tax regime (see section 52(3)) or as a result of an ownership Interest in a hybrid entity that is—

(a) a dividend or dividend equivalents,

(b) interest or interest equivalent,

(c) rent,

(d) a royalty,

(e) an annuity, or

(f) net gains from property of a type that produces income described in paragraphs (a) to (e).

52 Allocation of taxes: controlled foreign company tax regimes

(1) Where a member of a multinational group ("C") is subject to a controlled foreign company tax regime and C has a direct or indirect ownership interest in another member of the group ("F") that is a controlled foreign company in relation to C, any covered taxes included in C's financial accounts with respect to C's share of the profits of F are to be allocated to F.

(2) But the amount of covered taxes in respect of mobile income allocated to F is not to exceed the amount given by taking the following steps—

Step 1

Determine the effective tax rate of the members of the multinational group in the territory of F for the accounting period to which the covered taxes relate, ignoring those covered taxes.

Step 2

Subtract the result of Step 1 from 15%.

Step 3

Multiply the result of Step 2 by the amount of mobile income to which the covered taxes relates.

(3) In this Part "controlled foreign company tax regime" means a set of tax rules (other than multinational top-up tax or any tax equivalent to multinational top-up tax) under which a direct or indirect shareholder of an entity located

in a different territory ("the controlled foreign company") is subject to current taxation on its share of part or all of the income earned by the controlled foreign company, irrespective of whether that income is distributed currently to the shareholder.

53 Allocation of taxes: distributions from other members of a group

Where covered taxes are accrued in an accounting period in the financial accounts of a member of a multinational group ("R") in respect of a distribution received in that period from another member of the group ("D") in which R has a direct ownership interest, those covered taxes are allocated to D.

54 Total deferred tax adjustment amount

(1) The total deferred tax adjustment amount for a member of a multinational group for an accounting period is the deferred tax expense relating to covered taxes accrued in the member's financial accounts, adjusted as follows.

(2) The deferred tax expense is to be adjusted to exclude the following—

(a) any amount of that expense that reflects items excluded from the calculation of the member's adjusted profits;

(b) any amount of that expense that reflects disallowed accruals or unclaimed accruals;

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

(d) any amount of that expense arising from a re-measurement with respect to a change in the rate of tax;

(e) any amount of that expense that reflects the generation or use of tax credits.

(3) Where an amount of disallowed accrual relating to an uncertain tax position is reversed during the accounting period, that amount is to be added to the deferred tax expense.

(4) Where the amount of a deferred tax asset is adjusted as a result of section 29, an amount equal to that adjustment is to be included in the deferred tax expense.

(5) Where an amount of recaptured deferred liability (see section 56) that was determined for a previous accounting period is reversed during the accounting period, that amount is to be added to the deferred tax expense.

(6) Where the deferred tax expense accrued in the member's financial accounts relates to covered tax where the rate is greater than 15%, the amount of that expense (after adjustment under subsections (2) to (5)) is to be adjusted so that it reflects the amount it would have been had the rate been 15%.

(7) For the purposes of this section—

"disallowed accrual" means—

(a) any movement in deferred tax expense accrued in the financial accounts of a member of a multinational group which relates to an uncertain tax position, or

(b) any movement in deferred tax expense accrued in the financial accounts of a member of a multinational group which relates to distributions from another member of that group;

"unclaimed accrual" means an increase in a deferred tax liability recorded in the financial accounts of a member of a multinational group for an accounting period—

(a) that is not expected to be reversed before the end of the fifth accounting period after that period, and

(b) in respect of which the filing member has elected not to include in the total deferred tax adjustment amount for that period.

Paragraph 2 of Schedule 2 (annual elections) applies to such an election.

55 Inclusion of existing deferred tax assets and liabilities on entry into regime

(1) Each deferred tax asset and deferred tax liability of the member as at the beginning of the first accounting period it is a member of a qualifying multinational group that is reflected in consolidated financial statements of the ultimate parent is—

(a) to be taken into account in determining the member's deferred tax expense for that period—

(i) if its nominal tax rate is less than 15%, at its nominal tax rate,

(ii) in the case of a deferred tax asset that the member can demonstrate is attributable to the fact of the member having a loss which would have been taken account of in determining adjusted profits had those profits been determined under this Part, as if the rate of tax to which the asset related was 15%, or

(iii) otherwise, as if the rate of tax to which the asset or liability related was 15%, and

(b) to the extent the member continues to have that asset or liability in a subsequent period, taken account of in that period on the same basis.

(2) Subsection (3) applies to a deferred tax asset of a member of a qualifying multinational group that arises—

(a) as a result of a transaction made on or after 30 November 2021 and before the commencement of the first accounting period for which the member is a member of a qualifying multinational group, and

(b) in relation to an item that either—

(i) is included in the member's taxable income but which would not be included in the member's adjusted profits (had those profits been determined under this Part), or

(ii) is not included in the member's taxable income but which would be included in the member's adjusted profits (had those profits been determined under this Part).

(3) A deferred tax asset to which this subsection applies is to be excluded from the member's deferred tax expense.

56 Recaptured deferred tax liabilities

(1) A member of a multinational group has a recaptured deferred tax liability if it has a deferred tax liability, other than an excluded liability, taken into account in its total deferred tax adjustment amount for an accounting period ("the initial period") that is not reversed before the end of the fifth accounting period after the initial period.

(2) Where a member of a multinational group has a recaptured deferred tax liability—

(a) the amount included in the total deferred tax adjustment amount for the initial period in relation to that recaptured deferred tax liability is to be excluded from its covered tax balance for that period, and

(b) the following are to be accordingly recalculated for the initial period—

(i) the effective tax rate for the member and the other members of that group located in the same territory, and

(ii) the top-up amounts that those members would have.

(3) Section 68 applies to recalculations under subsection (2).

(4) For the purposes of subsection (1) "excluded liability" means a tax expense attributable to changes in associated deferred tax liabilities in respect of—

(a) cost recovery allowances on tangible assets,

(b) the cost of a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that 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 territory as the member that are reinvested in tangible property in the same territory, or

(i) additional amounts accrued as a result of accounting principle changes with respect to things falling within any of paragraphs (a) to (h).

57 Placeholders

(1) [Placeholder for Article 4.5 (election to use alternative method)]

(2) [Placeholder for Article 4.5.3]

(3) [Placeholder for Article 7.3 (eligible distributions tax systems)]

CHAPTER 6

CALCULATION OF TOP-UP AMOUNTS

Top-up amounts

58 Calculation of top-up amounts

Take the following steps to determine if a standard member of a multinational group ("the member in question") has a top-up amount for an accounting period and, if it does, the extent of it—

Step 1

Determine, under section 59, the total top-up amount for the accounting period for the territory the member in question is located in.

Step 2

If the total top-up amount for that territory is nil, the member in question does not have a top-up amount. Otherwise, proceed to Step 3.

Step 3

Determine the adjusted profits of the member in question for the period (in accordance with Chapter 4).

Step 4

If the member has no profits (or has made a loss) for the period, the member in question does not have a top-up amount. Otherwise, proceed to Step 5.

Step 5

If there are no other standard members of the multinational group located in the same territory as the member in question, the member's top-up amount is equal to the total top-up amount for that territory for the period. Otherwise, proceed to Step 6.

Step 6

Determine (in accordance with Chapter 4) the adjusted profits for the period of all of the other standard members of the group that are located in same territory as the member in question.

Step 7

Add together the adjusted profits of all standard members of the group in that territory that have profits (including those of the member in question).

Step 8

Divide the member in question's adjusted profits by the result of Step 7.

Step 9

The member's top-up amount is the result of multiplying the total top-up amount for the territory by the result of Step 8.

59 Total top-up amount for a territory

(1) Take the following steps to determine the total top-up amount for an accounting period for a territory—

Step 1
Subtract the effective tax rate of the standard members of the group in that territory for that period (as determined in accordance with section 11) from 15%.

Step 2
If the result of Step 1 is nil or less, the total top-up amount for that territory is nil. Otherwise, proceed to Step 3.

Step 3
Subtract the sum of the losses of those members of the group that made a loss in that period from the sum of the profits of those members of the group that made a profit in that period.

Step 4
Subtract the substance based income exclusion for that period for that territory (if any) from the result of Step 3.

Step 5
If the result of Step 4 is nil or less, the total top-up amount for that territory is nil. Otherwise, proceed to Step 6.

Step 6
Multiply the result of Step 1 (which will be a percentage) by the result of Step 4.

Step 7
The total top-up amount is the amount given by reducing the result of Step 6 by any QDT credit those members have for that period.

(2) Standard members of a multinational group have a "QDT credit" for an accounting period if qualifying domestic top-up tax (see section 18(3)) is payable by one or more of those members for that period.
Subsections (3) to (6) apply for determining the amount of that credit for the purposes of this section.

(3) Where—
   (a) the standard members do not have a collective additional amount for that period arising as a result of section 68, and
   (b) the result of Step 6 in subsection (1) is equal to or greater than the sum of amounts of qualifying domestic top-up tax payable by those members for that period,

the QDT credit for those members for that period is equal to the sum of those amounts.

(4) Where—

(a) the standard members do not have a collective additional amount for that period arising as a result of section 68, and

(b) the result of Step 6 in subsection (1) is less than the sum of amounts of qualifying domestic top-up tax payable by those members for that period,

the QDT credit for those members for that period is equal to result of Step 6 (and accordingly the result of Step 7 will be nil).

(5) Where—

(a) the standard members have a collective additional amount for that period arising as a result of section 68, and

(b) the sum of the result of Step 6 in subsection (1) and that collective additional amount is less than the sum of amounts of qualifying domestic top-up tax payable by those members for that period,

the QDT credit for those members for that period is equal to result of Step 6 (and accordingly the result of Step 7 will be nil).

(6) Where—

(a) the standard members have a collective additional amount for that period arising as a result of section 68, and

(b) the sum of the result of Step 6 in subsection (1) and that collective additional amount is equal to or greater than the sum of amounts of qualifying domestic top-up tax payable by those members for that period,

the QDT credit for those members for that period is equal to the proportion of the sum of amounts of qualifying domestic top-up tax payable by those members for that period that is equal to the proportion of the sum of the result of Step 6 in subsection (1) and that collective additional amount that the result of that Step represents.

60 Substance based income exclusion

(1) The substance based income exclusion for a period for a territory is calculated by taking the following steps—

Step 1

Determine the payroll carve-out amount for that period for each standard member of the group in that territory.

Step 2

Determine the tangible asset carve-out amount for that period for each standard member of the group in that territory.

Step 3

Add together the amounts determined at steps 1 and 2.

(2) But if the filing member for the group elects not to calculate the substance based income exclusion for the period in a self assessment (see Schedule 1), the exclusion is nil.

(3) Paragraph 2 of Schedule 2 (annual elections) applies to an election under subsection (2).

(4) The payroll carve-out amount for a member is 5% of the eligible payroll costs incurred by the member in the period.

(5) The tangible asset carve-out amount for a member is 5% of the eligible tangible asset amount of the member in the period.

(6) Section 61 sets out how to calculate the eligible payroll costs of a member.

(7) Section 62 sets out how to calculate the eligible tangible asset amount of a member.

(8) Section 63 sets out special rules on calculating the eligible payroll costs and eligible tangible asset amount of a member that is a permanent establishment or a flow-through entity.

61 Eligible payroll costs

(1) The eligible payroll costs of a member for a period are all costs incurred by the member in the period in connection with the employment of an employee of that member, provided that—
  (a) the employee is an individual,
  (b) the costs are payable primarily in respect of work done in the course of the ordinary operating activities of the member or the group, and
  (c) the costs are not excluded costs.

(2) The costs may include in particular—
  (a) salaries, wages and other expenditures that provide a direct and personal benefit to the employee,
  (b) payroll and other employment taxes payable by the member, and
  (c) social security contributions payable by the member.

(3) "Employee" means—
  (a) a person regarded as an employee under the law of the territory in which the member is located, and
  (b) any other person while they are acting exclusively under the direction or control of the member or the group (including on a part-time basis),

and "employment" is to be construed accordingly.

(4) "Excluded costs" are the following—
  (a) costs taken into account in a carrying value used to calculate the eligible tangible asset amount (see section 62);
  (b) costs that are core international shipping costs (see section 36);
  (c) costs that are ancillary international shipping costs (see section 37), subject to subsection (5).

(5) Costs that are ancillary international shipping costs are not excluded costs to the extent that they have not been taken into account in determining the

member's ancillary international shipping profits under section 37(1) as a result of the deduction of the member's ancillary international shipping profit cap adjustment.

62 Eligible tangible asset amount

(1) The eligible tangible asset amount of a member for a period is the average of—

(a) the sum of the carrying values of each eligible tangible asset held by the member, as those values are recorded at the start of the period;

(b) the sum of the carrying values of each eligible tangible asset held by the member, as those values are recorded at the end of the period.

(2) Where a value is not recorded at a time referred to in subsection (1), the value is to be calculated as if it were recorded at that time.

(3) "Recorded" means recorded for the purposes of preparing the consolidated financial statements of the ultimate parent entity.

(4) "Carrying value" means the carrying value of the asset—

(a) not including—

(i) any positive difference between the value of an asset recorded from time to time and the value of an asset when it was acquired by the member, where that difference is solely attributable to a revaluation, or

(ii) accumulated depreciation, amortisation or depletion, but

(b) including—

(i) amounts attributable to any purchase accounting adjustment relating to the asset, and

(ii) amounts attributable to the capitalisation of eligible payroll costs and costs that would be eligible payroll costs were they not excluded costs under section 61(4).

(5) An asset is an eligible tangible asset if it is—

(a) of a type referred to in subsection (6), and

(b) not an excluded asset.

(6) The types of asset are—

(a) property, plant or equipment located in the same territory as the member;

(b) natural resources located in that territory;

(c) a right to use a tangible asset located in that territory under a lease;

(d) a license or similar right to use a tangible asset located in that territory, provided that—

(i) the right is granted by a government of that territory, and

(ii) it is a condition of the grant of the right that the member incurs significant expenditure in enhancing the value of that asset (or that asset together with other assets subject to an equivalent right).

(7) An asset is an excluded asset if it is of one of the following types—
   (a) property (including land or buildings) that is held for sale or lease (whether such sale or lease is to be carried out in the period or not);
   (b) an asset used in the course of core international shipping activity (see section 36);
   (c) an asset used in the course of ancillary international shipping activity (see section 37), subject to subsection (8).

(8) An asset used in the course of ancillary international shipping activity is not an excluded asset to the extent that income and costs deriving from that activity have not been taken into account in determining the member's ancillary international shipping profits under section 37(1) as a result of the deduction of the member's ancillary international shipping profit cap adjustment.

63 Eligible payroll costs and eligible tangible asset amount: special rules for permanent establishments and flow-through entities

(1) In calculating the eligible payroll costs and eligible tangible asset amount of a permanent establishment, any amount that would not be allocated to the establishment in determining its underlying profits in accordance with section 12 must be excluded.

(2) In calculating the eligible payroll costs and eligible tangible asset amount of a flow-through entity, any amount that would not be considered in determining its underlying profits in accordance with section 15 must be excluded.

64 Election to treat total top-up amount as nil

[Placeholder for Article 5.5]

CHAPTER 7

ALLOCATING TOP-UP AMOUNTS TO RESPONSIBLE MEMBERS

65 Top-up amounts multiplied by inclusion ratio

(1) The amount of a top-up amount of a member of a multinational group that is attributed to a responsible member is found by multiplying the top-up amount by the responsible member's inclusion ratio for the member whose top-up amount it is.

(2) Where the responsible member's ("the first responsible member") interest in the member is through another responsible member, the first responsible member's top-up amount is to be reduced (but not below nil) by the amount attributed under this section to that other responsible member.

66 Inclusion ratio

(1) A responsible member's inclusion ratio for a member with a top-up amount ("the relevant member") is found as follows—

Step 1

Determine the adjusted profits of the relevant member with the top-up amount (in accordance with Chapter 4).

Step 2

Determine how much of those profits are attributable to ownership interests held by entities other than the responsible member.

Step 3

Subtract the amount determined under Step 2 from the amount determined under Step 1.

Step 4

The inclusion ratio is given by dividing the amount determined under Step 3 by the amount determined under Step 1.

(2) But for the purpose of applying step 2 when the relevant member is a flow-through entity, ignore any adjusted profits that are attributable to ownership interests held by persons that are not members of the multinational group.

(3) The amount of profits of the relevant member attributable to ownership interests held by entities other than the responsible member is the amount that would, in hypothetical consolidated financial statements prepared by the responsible member (whether or not it actually prepared consolidated financial statements), have been treated in those statements as attributable to such entities under the principles of the authorised accounting standard used, or treated as used (see section 89(1)(d)), in the ultimate parent's consolidated financial statements.

(4) For the purposes of determining what that amount would be in those hypothetical consolidated financial statements of the responsible member, use the following assumptions—

(a) the relevant member's profits were its adjusted profits as determined in accordance with Chapter 4;

(b) the responsible member had a controlling interest in the relevant member such that all of its income and expenses were consolidated on a line-by-line basis with those of the responsible member;

(c) all of the profits of the relevant member were attributable to transactions with persons who are not members of the multinational group;

(d) all ownership interests that are not directly or indirectly held by the responsible member were held by persons other than members of the multinational group.

CHAPTER 8

FURTHER ADJUSTMENTS

Additional top-up amounts

67 Additional top-up amounts where covered taxes less than expected

(1) This section applies in an accounting period in relation to standard members of a multinational group in a territory where—
- (a) those members have a collective loss for that period, and
- (b) those members have a collective negative covered tax balance,
- (c) the collective negative covered tax balance is greater than the amount given by multiplying the collective loss by 15% ("the expected covered tax amount").

(2) Where this section applies, those members in that territory collectively have an additional top-up amount (a "collective additional amount") equal to the amount given by subtracting the expected covered tax amount from the collective negative covered tax balance.

(3) Where those members have a QDT credit, the collective additional amount is to be reduced by that amount.

(4) [Placeholder for provision equivalent to section 59(3) to (6)].

(5) A collective additional amount is only to be allocated to members that have a negative covered tax balance, expressed as a negative number, which is less than the adjusted profits of that member (which may be positive or negative) multiplied by 15%.

(6) To determine the amount of the collective additional amount to be allocated to each such member, take the following steps—

Step 1

For each such member determine the amount given by subtracting the member's negative covered tax balance, expressed as a negative number, from its adjusted profits multiplied by 15%.

Step 2

Add together the amounts determined under Step 1.

Step 3

For each such member, divide the amount determined for that member under Step 1 by the result of Step 2.

Step 4

Allocate to each member the amount given by multiplying the result of Step 3 for that member by the collective additional amount.

(7) For the purposes of this Part, an amount of a collective additional amount allocated to a member of a multinational group is an additional top-up amount.

(8) Chapter 7 (allocation of top-up amounts to responsible members) applies to an additional top-up amount allocated to a member of a multinational group under this section as it applies to a top-up amount of that member as if the adjusted profits of that member were the amount given by dividing the additional top-up amount by 15%.

(9) For the purposes of this section—

(a) standard members of a multinational group in a territory collectively have a collective loss for a period if the result of Step 2 in section 11(1) is nil or less (and the amount of that loss is that result expressed as a positive number),

(b) standard members of a multinational group in a territory have a collective negative covered tax balance if the sum of positive covered tax balances that standard members in that territory have is less than the sum of negative covered tax balances that standard members in that territory have, and

(c) the amount of that collective negative covered tax balance is the amount, expressed as a positive number, given by subtracting those negative covered tax balances from those positive covered tax balances.

68 Additional top-up amounts where recalculations required

(1) This section applies where in an accounting period (the current period) a recalculation is required in relation to a previous accounting period ("the prior period") as a result of any of the following sections—

(a) section 44(4);

(b) section 56(2);

(c) section 77(5);

(d) section 79(1).

(2) [Placeholder for remainder of Article 5.4]

Restructuring of groups

69 Member joining or leaving multinational group

(1) Subsection (2) applies to an entity where in an accounting period ("the transfer period") of a multinational group there is a transfer of direct or indirect ownership interests in the entity that causes the entity to—

(a) become a member of that multinational group (including, where it was previously a member of a different group, as a result of it becoming the ultimate parent of a new group), or

(b) cease to be a member of that multinational group.

(2) The entity is to be treated as a member of that group for the whole of the transfer period (whether or not that results in it being treated as a member of two or more groups) if any portion of its assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the consolidated financial statements of the ultimate parent for that period.

(3) But in applying this Part in relation to the entity as a member of the multinational group it has become or ceased to be a member of, only its profits, covered taxes and (where applicable) eligible payroll costs that are taken into account in the consolidated financial statements of the ultimate parent are to be taken account of.

(4) Any purchase accounting consolidation adjustments arising from the transfer of the ownership interests resulting in an entity becoming a member of a multinational group are to be ignored in determining the adjusted profits and covered tax balance of that entity as a member of that group in the transfer period and in subsequent accounting periods.

(5) When (where applicable) determining the eligible tangible asset amount of an entity that becomes a member of a multinational group as a member of that group in the transfer period, adjust that amount by multiplying it by the amount given by dividing the number of days in the post-transfer period by the number of days in the transfer period.

(6) For the purposes of subsection (5) the "post-transfer period" means the period beginning with the day on which the ownership interests were transferred and ending with the last day of the transfer period.

(7) When (where applicable) determining the eligible tangible asset amount of an entity that ceased to be a member of a multinational group as a member of that group in the transfer period, adjust that amount by multiplying it by the amount given by dividing the number of days in the pre-transfer period by the number of days in the transfer period.

(8) For the purposes of subsection (7) the "pre-transfer period" means the period beginning with the commencement of the transfer period and ending with the day before the day on which the ownership interests were transferred.

(9) Subsections (10) and (11) apply where an entity that becomes a member of a multinational group ("group A") as a result of a transfer of direct or indirect ownership interests in it was already a member of a multinational group ("group B").

(10) The amount of deferred tax assets and tax liabilities (other than a [GLoBE Loss Deferred Tax Asset]) of the entity that existed immediately before the transfer to be taken into account in relation to that entity as a member of group A is the amount that would have been taken into account had group A had a controlling interest in the entity at the time the assets and liabilities arose.

(11) Where a deferred tax liability of the entity was included in the total deferred tax adjustment amount for that member in group B—

(a) that deferred tax liability is to be deemed to have reversed without the need to reflect the reversal in any calculation made for the purposes of this Part in relation to group B, and

(b) the deferred tax liability is to treated as arising in the transfer period for the purpose of determining the total deferred tax adjustment amount for the member in group A,

(c) any resulting reduction in the covered tax balance of the entity as a member of group A (see section 54) is only to have effect in the accounting period in which the deferred tax liability is recaptured.

70 When transfer of controlling interest treated as transfer of acquisition of assets and liabilities

(1) This section applies to the acquisition or disposal of a controlling interest in a member of a multinational group where—

(a) the acquisition or disposal of that controlling interest is treated in the same, or a similar manner, as a transfer of assets and liabilities of the member (rather than ownership interests in it) by—

(i) in the case of a transfer of a controlling interest in an entity which is tax transparent under the law of the territory in which it was created, the territory in which the assets are located, or

(ii) in any other case, the territory in which the member is located, and

(b) that territory imposes a covered tax on the seller based on the difference between the tax basis and either the consideration paid in exchange for the controlling interest or the fair value of the assets and liabilities.

(2) Where this section applies to an acquisition or disposal of a controlling interest in a member of a multinational group, that acquisition or disposal is to be treated as an acquisition or disposal of the assets and liabilities of the member (and accordingly, section 69 will not apply in relation to that transfer).

71 Transfer of assets or liabilities

(1) Where a member of a multinational group transfers assets or liabilities to another entity in the course of a qualifying reorganisation, any gain or loss on the transfer is to be excluded from the adjusted profits of the member.

(2) Subsection (3) applies where there has been a transfer of assets or liabilities to a member of a multinational group.

(3) Where this subsection applies—

(a) if the transfer forms part of a qualifying reorganisation (see section 72), the value of the assets or liabilities is, for the purposes of determining the adjusted profits of the member, the carrying value of the assets or liabilities in the hands of the transferor immediately before the transfer, or

(b) otherwise, the value of the assets or liabilities, for that purpose, is the carrying value of the assets or liabilities immediately after the transfer as determined under the accounting standard used in preparing consolidated financial statements of the ultimate parent.

(4) [Placeholder for Articles 6.3.3 and 6.3.4]

72 Transfers in the course of qualifying reorganisation

(1) For the purposes of section 71 a transfer of assets or liabilities is made in the course of a qualifying reorganisation if the transfer takes place as a result of a merger, de-merger, liquidation or a change in form of an entity, or a similar event, and the conditions A, B and C are met.

(2) Condition A is that—
  (a) in any case, the consideration for the transfer is wholly, or mostly equity interests issued by the transferee, or by a person connected with the transferee,
  (b) in the case of a liquidation, the consideration for transfer is wholly, or mostly, the cancellation of equity interests in the entity subject to the liquidation, or
  (c) the reorganisation does not result in a change in the ownership of an entity.

(3) Condition B is that any gain or loss of the transferor that arises from the transfer is not, in whole or in part, subject to tax.

(4) Condition C is that, under the law of the territory the transferee is located in, the value of the assets or liabilities for the purpose of determining the transferee's taxable income is the tax basis value of the assets or liabilities in the hands of the transferor, adjusted for any non-qualifying gain or loss.

(5) For the purposes of this section—

"non-qualifying gain or loss" means a gain or loss of the transferee on the transfer of assets or liabilities, and is the lesser of—
  (a) the amount of that gain or loss that is subject to tax in the territory the transferee is located in, and
  (b) the amount of that gain or loss reflected in the financial accounts of the transferee;

an entity is "connected" with another if they are "closely related" within the meaning of Article 5(8) of the OECD Tax Model.

Application to multi-parent groups

73 Multi-parent groups

[Placeholder for provision about multi-parent groups]

Elections in relation to investment entities

74 Investment entity tax transparency election

(1) The filing member of a multinational group may elect that a member of the group that is an investment entity is to be treated as a tax transparent flow-through entity (see sections 15 and 51) in relation to a member of the group with ownership interests in that entity (an "owner").

(2) The filing member may only make such an election if—
   (a) an election under section 75 is not in effect in relation to the entity and the owner,
   (b) the owner is subject to tax (in the territory in which the owner is located) on increases in the fair value of its ownership interests in the entity, and
   (c) the rate of tax applicable to such increases is equal to or exceeds 15%.

(3) Paragraph 1 of Schedule 2 (five year elections) applies to an election under this section.

(4) Subsection (5) applies where—
   (a) an election under this section has been revoked, and
   (b) the adjusted profits of the investment entity fall to be determined for the first accounting period in respect of which the election no longer applies (the "revocation period").

(5) In determining those profits, the value of any gain or loss from the disposition of an asset or liability by that entity is to be determined by reference to the fair value of the asset or liability as at the first day of the revocation period.

(6) Subsection (7) applies where—
   (a) an election under this section has been revoked, and
   (b) the adjusted profits of the investment period fall to be determined for an accounting period—
      (i) after the revocation period, but
      (ii) before an accounting period for which a further election under this section has been made.

(7) In determining those profits, the value of any gain or loss from the disposition of an asset or liability by that entity is to be determined by reference to—
   (a) if the entity's assets and liabilities are accounted for on a realisation basis, the fair value of the asset or liability as at the first day of the revocation period;
   (b) if the entity's assets and liabilities are accounted for on a fair value basis, the fair value of the asset or liability as accounted for at the end of the previous accounting period.

75 Taxable distribution method election

(1) The filing member of a multinational group may elect that a member of the group with ownership interests in an investment entity other than an insurance investment entity (an "owner") is to have those interests treated in accordance with this section.

(2) The filing member may only make such an election if—

(a) an election under section 74 is not in effect in relation to the owner,

(b) the owner is not itself an investment entity, and

(c) the owner can reasonably be expected to be subject to tax [(in the territory in which it is located)] on distributions from the entity at a rate equal to or exceeding 15%.

(3) If an election is made under this section, in calculating amounts under this Part—

(a) distributions and deemed distributions from the investment entity to the owner in an accounting period are to be included in the adjusted profits of the owner in that period;

(b) credit the owner receives to reduce the tax payable by the owner in an accounting period to reflect tax payable [or to be paid] by the entity in that period is to be included in the adjusted profits of the owner in that period;

(c) if the owner receives such credit, such tax payable [or to be paid] by the entity in an accounting period is to be taken into account in determining the covered tax balance of the owner in that period.

(4) If an election is made under this section—

(a) an undistributed income amount for the entity for an accounting period is to be determined under section 76, and

(b) any positive undistributed income amount is to be added to the top-up amount of that entity as determined under section 80(1) (see section 80(2)).

(5) Paragraph 1 of Schedule 2 (five year elections) applies to an election under this section.

(6) Subsection (7) applies where—

(a) an election under this section has been revoked, and

(b) the adjusted profits of the investment entity fall to be determined under section 80 for the first accounting period in respect of which the election no longer applies.

(7) Those profits are to include any positive undistributed income amount for the entity for the previous accounting period.

76 Undistributed income amount

(1) The undistributed income amount for an investment entity for an accounting period is the entity's adjusted profits for the income period less the amounts referred to in subsection (2).

(2) The amounts are—

(a) the covered taxes payable by the entity (determined in accordance with Chapter 5) in the income period;

(b) distributions and deemed distributions paid by the entity and received by shareholders other than other investment entities in the review period;

(c) the amount of losses incurred by the entity in the review period;

(d) the investment loss carry-forward amount for the review period.

(3) But an amount referred to in subsection (2) is not to be deducted from the undistributed income amount for an accounting period if it has already been deducted from the undistributed income amount for a previous accounting period.

(4) In this section—

(a) the "income period" is the third accounting period before the accounting period for which the undistributed income amount falls to be determined;

(b) the "review period" is the period beginning with the first day of the income period and ending with the last day of the accounting period for which the undistributed income amount falls to be determined;

(c) a "deemed distribution" is an amount arising from the transfer of an ownership interest held by the owner to a person that is not a member of the group;

(d) the amount of a deemed distribution is to be calculated as the undistributed income amount for the accounting period in which the transfer occurs (disregarding the deemed distribution) multiplied by the transfer factor;

(e) the transfer factor is the value of the ownership interest transferred divided by the sum of that value and the value of the remaining ownership interest held by the owner;

(f) the "investment loss carry-forward amount" for a review period is the amount of any loss not deducted from the undistributed income amount for any accounting period preceding the review period.

Other adjustments

77 Post filing adjustments of covered taxes

(1) This section applies where, in an accounting period ("the current period"), the liability of a member of a multinational group to covered taxes for a prior accounting period ("the prior period") as reflected in an information return,

overseas information return or self assessment return (see Schedule 1) has increased or decreased.

(2) Subsection (4) applies where—
 (a) that liability has increased, or
 (b) that liability has decreased and the decrease is to be treated as insignificant.

(3) Subsection (5) applies where that liability has decreased, unless the decrease is to be treated as insignificant.

(4) Where this subsection applies, the covered tax balance of the member for the current period is to be adjusted so as to reflect the amount of that increase or decrease if not already reflected in that balance.

(5) Where this subsection applies—
 (a) the following are to be recalculated for the prior period to take account of the decrease—
  (i) the effective tax rate for the member and the other members of that group located in the same territory,
  (ii) the top-up amounts that those members would have, and
  (iii) if the liability to covered taxes has decreased because of a reduction of the member's profits, its adjusted profits but only to the extent necessary to prevent the effective tax rate from decreasing, and
 (b) the adjusted profits of those members in subsequent accounting periods are to be adjusted in consequence of the decrease, and the matters referred to in paragraph (a) recalculated accordingly.

(6) Section 68 applies to a recalculation under subsection (5).

(7) Where subsection (5) applies in relation to a decrease in liability to covered taxes that arises as a result of the member being permitted to treat a loss in a later accounting period as a loss in the prior period, the member is treated—
 (a) as having a deferred tax asset that arises in the later period that is equal to the amount of that loss multiplied by 15%, and
 (b) as having used that asset in the prior accounting period.

(8) For the purposes of this section, a decrease of liability is to be treated as insignificant if—
 (a) the aggregate decrease in liability for covered taxes for the prior period is less than 1 million euros, and
 (b) the filing member has made an election for decreases in the prior period to be treated as insignificant.

Paragraph 2 of Schedule 2 (annual elections) applies to an election under this subsection.

78 Effect of rate changes to deferred tax expense

(1) Where—

(a) the rate of tax for a member of a multinational group is reduced below 15% in an accounting period, and

(b) that reduction would (if calculated) result in a change to the deferred tax expense of the member for a previous accounting period,

section 77 applies to that change as it applies to an increase or decrease in liability to covered taxes.

(2) Where—

(a) the rate of tax for a member of a multinational group is increased in an accounting period, and

(b) there is an amount included in the deferred tax expense of the member that relates to a deferred tax asset or liability that was previously recorded by reference to a rate of tax of less than 15%,

section 77 applies, as it applies to an increase or decrease in liability to covered taxes, to the change in the value of that deferred tax asset or liability, ignoring any amount of the change in value that is attributable to the increase of the rate above 15%.

79 Adjustment where covered taxes not paid

(1) Where an amount of covered taxes included in the covered tax balance of a member of a multinational group for an accounting period is not paid before the end of the period of 3 years commencing with the last day of that accounting period, the following are to be recalculated excluding that amount—

(a) the effective tax rate for the member and the other members of that group located in the same territory, and

(b) the top-up amounts that those members would have.

(2) But subsection (1) does not apply unless the total of amounts included in the covered tax balance for that accounting period which are not paid before the end of that 3 year period exceeds 1 million euros.

(3) Section 68 applies to a recalculation under subsection (1).

CHAPTER 9

SPECIAL PROVISION FOR INVESTMENT ENTITIES, JOINT VENTURE GROUPS AND MINORITY-OWNED MEMBERS

Investment entities

80 Top-up amount of investment entity

(1) The top-up amount for an accounting period of a member of a multinational group that is an investment entity is, subject to subsection (2), determined by taking the following steps—

Step 1

Determine the adjusted profits (if any) of the entity for the period in accordance with Chapter 4. If the adjusted profits are nil or less, the top-up amount is nil. Otherwise, proceed to Step 2.

Step 2

Adjust the result of Step 1 in accordance with section 83 (to the extent applicable). If the adjusted result is nil, the top-up amount is nil. Otherwise, proceed to Step 3.

Step 3

Determine the substance-based income exclusion for the entity for the period (see section 81).

Step 4

Adjust the result of Step 3 in accordance with section 83 (to the extent applicable).

Step 5

Subtract the result of Step 4 from the result of Step 2. If the result is nil or less, the top-up amount is nil. Otherwise, proceed to Step 6.

Step 6

Determine the investment entity effective tax rate for the territory for the period (see section 82).

Step 7

Subtract the result of Step 6 from 15%. If the result is nil or less, the top-up amount is nil. Otherwise, proceed to Step 8.

Step 8

Multiply the result of Step 7 by the result of Step 5. This is the top-up amount for the entity.

(2) If an election under section 75 (taxable distribution method election) has been made in relation to the entity, the top-up amount for an accounting period of the entity is the top-up amount determined under subsection (1) added

together with any positive undistributed income amount for the entity for the period (see section 76).

(3) For the purposes of applying Chapter 4 in relation to an investment entity, the references section 33(2) to "standard members" of a multinational group are instead to members of the multinational group that are investment entities.

81 Substance based income exclusion for investment entity

(1) The substance based income exclusion for an investment entity is to be determined by adding together—

(a) the payroll carve-out amount of the entity, and

(b) the tangible asset carve-out amount of the entity,

(2) Section 60(4) applies to the determination of the payroll carve-out amount of the entity as it applies for members of the group that are not investment entities.

(3) Section 60(5) applies to the determination of the tangible asset carve-out amount of the entity as it applies for members of the group that are not investment entities.

(4) If the filing member for the group elects not to calculate the substance based income exclusion for the period in a self-assessment (see Schedule 1), the exclusion is nil.

(5) Paragraph 2 of Schedule 2 (annual elections) applies to an election under subsection (4).

82 Investment entity effective tax rate

The investment entity effective tax rate in a territory for an accounting period is determined by taking the following steps—

Step 1

Add together any positive adjusted profits made by each of the investment entities in the territory, as determined under Chapter 4 and adjusted under section 83.

Step 2

Determine the covered tax balance of each such investment entity in accordance with Chapter 5.

Step 3

Adjust the amounts determined in Step 2 in accordance with section 83 (to the extent applicable).

Step 4

Add together the amounts determined in Step 3 that are adjusted positive covered tax balances.

Step 5

Add together the amounts determined in Step 3 that are adjusted negative covered tax balances.

Step 6
Subtract the result of Step 5 from the result of Step 4.

Step 7
Divide the result of Step 6 by the result of Step 1. This is the investment entity effective tax rate.

83 Adjustments

(1) In the circumstances referred to in subsection (2), an adjustment is to be made to each of the following amounts (each, a "relevant amount")—

(a) the adjusted profits of an investment entity;

(b) a substance based income exclusion for an investment entity;

(c) the covered tax balance of an investment entity.

(2) The circumstances are that—

(a) a person that is not a member of the multinational group has ownership interests in the entity (in which case an adjustment under subsection (6) is to be made), or

(b) an election under section 74 (tax transparency election) or 75 (taxable distribution method election) has been made in relation to the entity (in which case an adjustment under subsection (7) is to be made).

(3) An adjustment under this section is a reduction of the relevant amount by an adjustment amount.

(4) An adjustment amount is the adjustment factor for the adjustment multiplied by the relevant amount.

(5) An adjustment under subsection (7) is to be made after any adjustment under subsection (6) (and accordingly is to be an adjustment of a relevant amount as it may be adjusted under subsection (6)).

(6) The adjustment factor for an adjustment under this subsection is the value obtained by dividing—

(a) the amount of profits of the entity attributable to ownership interests held by persons that are not members of the group, by

(b) the total amount of profits of the entity determined under Chapter 4.

(7) The adjustment factor for an adjustment under this subsection is the value obtained by dividing—

(a) the amount of profits of the entity attributable to ownership interests held by the owners in relation to which an election has been made, by

(b) the total amount of profits of the entity attributable to ownership interests held by members of the group.

(8) The amount of profits attributable to ownership interests is to be determined in accordance with the method in section 66(3) for determining the amount of profits attributable to the ownership interests referred to in that section.

84 Attribution of top-up amount to responsible member

(1) Section 65 applies to the attribution of a top-up amount of a member of a multinational group that is an investment entity to a responsible member as it applies to a top-up amount of any other member of the group.

(2) Section 66 applies to determining the inclusion ratio of the responsible member, but—
- (a) in carrying out Step 1 in section 66(1), the adjusted profits of the entity determined in that Step are to be further adjusted in accordance with section 83 (to the extent applicable);
- (b) in carrying out Step 2 in section 66(1), only profits attributable to ownership interests held by persons in the group are to be considered.

Joint venture group

85 Joint venture group

(1) For the purposes of this Part "joint venture group" means a joint venture parent of a multinational group and its joint venture subsidiaries (together its members).

(2) An entity is a joint venture parent of a multinational group if—
- (a) the financial results of that entity are reported under the equity method in the consolidated financial statements of the ultimate parent of that group,
- (b) the ultimate parent directly or indirectly holds at least 50% of the ownership interests in the entity,
- (c) the entity is not the ultimate parent of a multinational group,
- (d) the entity is not an excluded entity,
- (e) the entity is not an entity owned by an excluded entity where—
  - (i) the entity only carries out activities that are ancillary to the activities of the excluded entity,
  - (ii) almost all of the entity's activities consist of the holding of assets or the investment of funds for the benefit of the excluded entity, or
  - (iii) almost all of the entity's income is excluded dividends or excluded equity gains (or a mixture of both),
- (f) the multinational group is composed exclusively of excluded entities, and
- (g) it is not a joint venture subsidiary in relation to another joint venture parent.

(3) An entity is a joint venture subsidiary of a joint venture parent if its assets liabilities, income, expenses and cash flows are included in the consolidated financial statements of the joint venture parent.

(4) Where the main entity of a permanent establishment is a joint venture parent of a multinational group or a joint venture subsidiary, that permanent establishment is to be treated as a separate joint venture subsidiary of the same multinational group joint venture group.

86 Application of Part to joint venture groups

(1) Chapters 3 to 6 and 8 of this Part and Schedules 2 and Schedule 3 apply to a joint venture group as they apply to a multinational group as if—
   (a) references to the ultimate parent were to the joint venture parent of that group,
   (b) references to a member of multinational group were to the members of the joint venture group.

(2) Section 7 and Chapter 7 have effect in relation to a multinational group as if references to members of that group, other than references to a responsible member of that group, the ultimate parent, an intermediate parent member or a partially owned parent member, included the members of a joint venture group whose joint venture parent is a joint venture parent of that group.

Minority owned members

87 Minority owned members

(1) For the purposes of this Part, a member of a multinational group is a “minority owned member” if the ultimate parent holds (directly or indirectly) less than 30% of the ownership interests in that member.

(2) If—
   (a) a minority owned member (“M”) holds (directly or indirectly) ownership interests in another minority owned member, and
   (b) no other minority owned member holds (directly or indirectly) ownership interests in M,

M is the minority owned parent of a minority subgroup, and the minority owned members in which M has ownership interests are also members of that group.

(3) For the purpose of determining the effective tax rate and top-up amounts of members of a minority subgroup, this Part applies as if references to standard members of a multinational group were instead to members of that subgroup.

(4) For the purposes of determining the effective tax rate and top-up amounts of a minority owned member, other than a minority owned member that is an investment entity, that is not a member of a minority subgroup, this Part applies as if references to standard members of a multinational group were instead to that member.

CHAPTER 10

DEFINITIONS AND FURTHER PROVISION ABOUT CALCULATIONS AND DETERMINATIONS

Introduction

88 Meaning of terms used in this Part

This Chapter defines or otherwise explains terms used in this Part.

Financial statements and accounting period

89 Consolidated financial statements

(1) The consolidated financial statements of an entity are—

(a) where the entity is a member of a consolidated group, the financial statements prepared by the entity in accordance with acceptable accounting standards in which the assets, liabilities, income expenses and cash flows of that entity and the entities it has a controlling interest in are presented as those of a single economic unit,

(b) where the entity is the ultimate parent of a permanent establishment group, the financial statements of that entity that are prepared in accordance with an acceptable accounting standard,

(c) where the entity has prepared statements that would fall within paragraph (a) or (b) but they were not prepared in accordance with an acceptable accounting standard, those statements but adjusted to prevent material competitive distortions, or

(d) where no statements were prepared falling within paragraphs (a) to (c), the statements that would have been prepared (whether or not the entity was required to prepare such statements) in accordance with an authorised accounting standard that is either—

(i) an acceptable accounting standard, or

(ii) another financial accounting standard that is adjusted to prevent material competitive distortions.

(2) "Authorised accounting standard" in relation to an entity means a set of generally acceptable accounting principles permitted by the body responsible for prescribing establishing or accepting accounting standards for financial reporting purposes in the territory the entity is located in.

(3) There are "material competitive distortions" in accounts not prepared in accordance with an acceptable accounting standard if the differences between the treatment of items in those accounts and in accounts prepared in accordance with international financial reporting standards exceed (in aggregate) 75 million euros.

90 Acceptable accounting standards

(1) In this Part “acceptable accounting standards” means—
(a) UK GAAP,
(b) acceptable overseas GAAP, or
(c) international financial reporting standards.

(2) “UK GAAP”—
(a) means generally accepted accounting practice in relation to accounts of UK companies (other than accounts prepared in accordance with international accounting standards or international financial reporting standards) that are intended to give a true and fair view, and
(b) has the same meaning in relation to entities other than companies, and companies that are not UK companies, as it has in relation to UK companies.

(3) “Acceptable overseas GAAP” means the generally accepted accounting practice and principles of any of the following—
(a) [Placeholder for countries with acceptable GAAP]

91 Accounting periods

(1) The general rule is that reference to an accounting period in relation to a multinational group, or any member of that group, is to an accounting period for which the ultimate parent prepares its consolidated financial statements.

(2) Where the ultimate parent does not prepare consolidated financial statements, references to accounting periods are to the period of a year commencing on 1 January.

(3) But—
(a) where an accounting period (“the default period”) had started as a result of the rule in subsection (2), but the ultimate parent prepares consolidated financial statements during the default period for a period commencing with a date after the start of the default period, the default period is to end immediately before that date, and
(b) where the ultimate parent had previously been preparing consolidated financial statements but ceases to do so, the accounting period that follows the last period for which it had prepared consolidated financial statements begins immediately after that last period and ends immediately before 1 January in the following year.

Provision relating to location of entities

92 Location of entities

(1) The normal rule for determining, for the purposes of this Part, the territory in which an entity is located is that—

(a) if it is tax resident in a territory based on its place of management, place of creation or similar criteria, it is located in that territory, or

(b) if it is not tax resident in any territory based on such criteria, it is located in the territory in which it was created.

(2) But subsection (1) does not apply to a flow-through entity or a permanent establishment.

(3) Where, in an accounting period, an entity is tax resident based on its place of management, place of creation or similar criteria in more than one territory and—

(a) all of those territories are party to a tax treaty, and

(b) for the purposes of the treaty the entity is deemed resident in one of those territories,

the entity is treated as located in that territory for that period.

(4) Otherwise, where an entity is tax resident in an accounting period based on its place of management, place of creation or similar criteria in more than one territory—

(a) if the entity has accrued more covered taxes in an accounting period in one of those territories than in the others, ignoring any taxes accrued in accordance with a controlled foreign company tax regime, it is to be treated as located in that territory for that period,

(b) if paragraph (a) does not apply and the entity has a greater qualifying substance based income exclusion amount in one of those territories than in the others, it is to be treated as located in that territory for that period, or

(c) if neither paragraph (a) nor (b) applies—

(i) if the entity is the ultimate parent of a multinational group, it is to be treated as being located in the place where it was created for that period, or

(ii) otherwise, the entity is a stateless entity for that period.

(5) For the purposes of subsection (4)(b), the qualifying substance based income exclusion amount for an entity for a period in a territory is—

(a) if the substance based income exclusion is calculated for that period for that territory, the sum of the payroll carve-out amount and the tangible asset carve-out amount as would be determined under section 60(1) for the entity for that period if the entity were located in that territory, and

(b) if the substance based income exclusion is not calculated for that period for that territory, nil.

(6) Where—

(a) an entity is not (ignoring this subsection) subject to Pillar 2 IIR tax within the meaning of section 7,

(b) it is tax resident based on its place of management, place of creation or similar criteria in the United Kingdom,

(c) as a result of the application of subsection (3) or (4) it is treated as not being located in the United Kingdom, and

(d) if it were located in the United Kingdom, it would be a responsible member of a multinational group,

the entity is instead to be treated as located in the United Kingdom for the purposes of sections 2 and 5 of this Part (but not otherwise).

(7) For the purposes of this Part—

(a) a "stateless entity" is to be treated as not being located in any territory;

(b) where an entity's location changes during an accounting period, it is to be treated as being located in the territory it was located, or was treated as being located, at the start of that year.

93 Location of flow-through entities and permanent establishments

(1) A flow-through entity which is a responsible member of a multinational group is, for the purposes of this Part, located in the territory in which it was created.

(2) Any other flow-through entity is a stateless entity.

(3) A permanent establishment that is a permanent establishment falling within paragraph (a) of section 101(2) (entity treated as permanent establishment in accordance with tax treaty) is located in the territory where it is treated as a permanent establishment in accordance with the tax treaty in accordance with which it is treated as a permanent establishment.

(4) A permanent establishment that is a permanent establishment falling within paragraph (b) of section 101(2) (permanent establishment taxed on similar basis to residents in absence of tax treaty) is located in the territory where it is subject to net basis taxation based on its business presence.

(5) A permanent establishment that is a a permanent establishment falling within paragraph (c) of section 101(2) (permanent establishment located in territory without corporate income tax) is located in the territory in which it is situated.

(6) A permanent establishment that is a permanent establishment falling within paragraph (d) of section 101(2) (other permanent establishments) is a stateless entity.

94 Pillar 2 territories

(1) In this Part "Pillar 2 territory" means a territory specified as such in regulations made by the Treasury by statutory instrument.

(2) Regulations may only specify a territory as a Pillar 2 territory if the Treasury consider that provisions equivalent to this Part have effect under the law of that territory.

(3) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

Ownership of entities

95 Ownership interests and controlling interests

(1) An entity ("A") has an ownership interest in another entity ("B") if—

(a) A is entitled to any share of the profits, capital or reserves of B or of a permanent establishment of B, and

(b) that interest would be accounted for as equity in the consolidated accounts of A.

(2) An entity ("C") has a controlling interest in another entity ("O") if condition A or B is met.

(3) Condition A is that as a result of an ownership interest C has in O—

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

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

(4) Condition B is that O is a permanent establishment of C.

96 Calculating percentage ownership

(1) Where it is necessary under a provision of this Part to determine the percentage of ownership interests an entity ("D") has in another entity ("E") that percentage is determined by—

(a) adding together the proportional entitlement of D of each of the following types of interest that are relevant—

(i) any entitlement to a share of profits of E,

(ii) any entitlement to a share of the capital of E, and

(iii) any entitlement to a share of the reserves of E, and

(b) if—

(i) E issues all of those types of interest and all of those types are relevant, divide the result of paragraph (a) by 3, or

(ii) E only issues 2 of the relevant types of interest or there are only 2 types of interest that are relevant and E issues both of them, divide the result of paragraph (a) by 2.

(2) For the purposes of subsection (1)—

(a) where a provision under which a percentage of ownership interests is to be determined refers to types of interest mentioned in those sub-paragraphs, the types referred to are "relevant", and

(b) where such a provision does not refer to types of interest mentioned in sub-paragraphs (i) to (iii) of subsection (1)(a), all of those types of interest are "relevant".

Types of members and entities

97 Intermediate and partially owned parent entities

(1) A member of a multinational group is a partially-owned parent member of that group if—
  (a) it is not a permanent establishment, investment entity or the ultimate parent,
  (b) it has (directly or indirectly) an ownership interest in another member of the group, and
  (c) more than 20% of the ownership interests that represent an entitlement to a share of the profits of the member are held directly or indirectly by entities that are not members of the group.

(2) A member of a multinational group is an intermediate parent member of the group if—
  (a) it is not a permanent establishment, investment entity, a partially-owned parent member or the ultimate parent, and
  (b) it has (directly or indirectly) an ownership interest in another member of the group.

98 Particular types of entity

(1) This section defines some particular types of entity.

(2) An entity is a "governmental entity" if—
  (a) it is part of, or is wholly owned by, a government (which for this purpose includes any authority responsible for regional or local government),
  (b) it has the principal purpose of—
    (i) carrying on a public function of that government, or
    (ii) managing or investing the assets of that government through investment activities (such as the making and holding of investments or asset management),
  (c) it is accountable to that government on its overall performance and provides annual information reporting to that government,
  (d) it does not carry on a trade or business, other than an investment business described in paragraph (b)(ii),
  (e) its assets vest in that government on its dissolution, and
  (f) it does not make distributions of its profits to, or for the benefit of, any person other than that government.

(3) "Pension fund" means—
  (a) an entity that is established and operated in a territory exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals where—
    (i) the entity is regulated as such in that territory, or

(ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trust to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the entity or the group the entity is a member of, or

(b) a pension services entity.

(4) "Pension services entity" means an entity that is established and operated exclusively or almost exclusively—

(a) to invest funds for the benefit of an entity falling with the description in subsection (3)(a), or

(b) to carry out activities that are ancillary to the regulated activities carried out by an entity falling with that description, provided that the entities are members of the same group.

(5) [Placeholder for other definitions (e.g. international organisation, non-profit, etc)]

99 Investment fund and investment entity

(1) An "investment fund" is an entity that meets all of the following conditions—

(a) it is designed to pool assets (which may be financial and non-financial) from a number of investors, at least some of which are not connected;

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

(c) it operates with a view to allowing its 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) investors have rights to the assets of the fund, or to income earned on those assets, based on the contributions made by those investors;

(f) the entity, or its management, is subject to a regulatory regime in the territory in which it is established or managed, and that regime includes anti-money laundering and investor protection regulation;

(g) it is managed by an investment management professional on behalf of the investors.

(2) An "insurance investment entity" is an entity that meets all of the following conditions—

(a) the entity is not an investment fund under subsection (1), but would be an investment fund if it were designed to pool assets from more than one investor or those investors were required not to be connected;

(b) the costs or risks the entity operates with a view to reducing are those associated with insurance or annuity contracts;

(c) the income or gains the entity is designed to generate are intended to offset, or the event or outcome the entity is designed to protect against consists of, losses arising or that may arise in connection with insurance or annuity contracts;

(d) no person other than members of the group has ownership interests in the entity;

(e) each person with ownership interests in the entity is subject to a regulatory regime in the territory in which it is established or managed, and that regime is specific to persons engaged in the business of entering into insurance or annuity contracts or of performing activities ancillary to such business.

(3) An investment entity is an entity that—

(a) is an investment fund,

(b) is a UK REIT or an overseas REIT equivalent,

(c) is 95% owned by one or more entities falling within paragraph (a) or (b) and all or almost all of its activities consist of the holding of assets or the investment of funds for the benefit of those owners,

(d) is 85% owned by an entity falling within paragraph (a) or (b) if all or almost all of its income is excluded dividends or excluded equity gains (or a mixture of both), or

(e) is an insurance investment entity.

(4) For the purposes of this section, a person or entity is "connected" with another person or entity if they are "closely related" within the meaning of Article 5(8) of the OECD Tax Model.

100 Disqualified and qualified refundable imputation taxes

(1) An amount of tax payable by a member of a multinational group is "disqualified refundable imputation tax" if—

(a) it is—

(i) refundable to the beneficial owner of a dividend distributed by the member in respect of that dividend,

(ii) creditable by the beneficial owner of such a dividend against a tax liability other than a tax liability in respect of that dividend, or

(iii) refundable to an entity upon the distribution of a dividend, and

(b) it is not qualified refundable imputation tax.

(2) [Placeholder for definition of qualified refundable imputation tax]

101 Permanent establishment

(1) In this Part a "permanent establishment" of an entity ("the main entity") means a place of business of the main entity that—

(a) is located in a territory other than the territory of the main entity, and

(b) falls within one of the descriptions in paragraphs (a) to (d) of subsection (2).

(2) Those descriptions are—

(a) that the place of business is situated in a territory where it is treated as a permanent establishment in accordance with an applicable tax treaty in force provided that such territory taxes the income attributable to it in accordance with a provision similar to Article 7 of the OECD tax model;
(b) the place of business is in a territory where there is no applicable Tax Treaty in force and the territory, under its domestic law, taxes the income attributable to such place of business on a net basis similar to the manner in which it taxes its own tax residents;
(c) the place of business is in a territory that has no corporate income tax system, but would be treated as a permanent establishment in accordance with the OECD tax model provided that such territory would have had the right to tax the income attributable to it in accordance with Article 7 of that model;
(d) that—
  (i) the place of business does not fall within paragraphs (a) to (c), and
  (ii) the territory of the main entity exempts the income attributable to the place of business's operations.

(3) In this paragraph, reference to a "place of business", is to be construed in accordance with the OECD tax model.

(4) In this Part, reference to "the main entity" in relation to a permanent establishment is to be construed in accordance with this section.

Miscellaneous

102 Use of currency

Where it is necessary, for the purposes of this Part, to convert an amount expressed in one currency to another, the average exchange rate for the accounting period to which the amount relates is to be used.

103 Other definitions

In this Part—

"company" means a body corporate;

"deferred tax asset" has the meaning it has for accounting purposes;

"entity" means—
(a) a company,
(b) a partnership,
(c) a trust, or
(d) any other arrangement that results in the preparation of separate financial accounts in respect of the activities carried out under the arrangement;

"fair value", "carrying value" and "impairment" have the meanings they have for accounting purposes;

"for accounting purposes" means for the purposes of accounts drawn up in accordance with acceptable accounting standards;

"held for sale" has the meaning given by international accounting standards;

"HMRC" means Her Majesty's Revenue and Customs;

"international financial reporting standards" or "international accounting standards" means those standards as issued or adopted, from time to time, by the International Accounting Standards Board.

"OECD tax model" means the Model Tax Convention on Income and on Capital published (from time to time) by the Organisation for Economic Co-operation and Development;

"overseas REIT equivalent" means an entity resident in a territory outside the United Kingdom that, in accordance with the law of that territory relating to taxation, is the equivalent of a UK REIT;

"Pillar 2 commentary" means—

(a) the commentary on the Pillar 2 model rules published by the Organisation for Economic Co-operation and Development as "Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)", and

(b) the examples illustrating the application of the Pillar 2 model rules published by the Organisation for Economic Co-operation and Development as "Tax Challenges Arising from the Digitalisation of the Economy –Global Anti-Base Erosion Model Rules (Pillar Two) Examples";

"Pillar 2 model rules" means the model rules published by the Organisation for Economic Co-operation and Development as "Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS" published by the Organisation for Economic Co-operation and Development;

"UK REIT" means—

(a) a company UK REIT within the meaning of Part 12 of CTA 2010 (see section 524 of that Act), or

(b) a company that is a member of a group UK REIT within the meaning of that Part (see sections 523 and 606 of that Act);

an "uncertain tax position", in relation to an amount of covered taxes, means the existence of uncertainty over whether the tax authority in question will accept the proposed treatment of the items giving rise to that amount.

CHAPTER 11

GENERAL PROVISION

104 Transitional provision

Schedule 3 makes transitional provision.

105 Index of defined expressions

Schedule 4 contains a table that lists terms defined for this Part and the provisions that define or explain them.

106 Power to amend to ensure consistency with Pillar 2

(1) Where the Treasury consider it necessary for the purpose of ensuring consistency with the Pillar 2 framework, the Treasury may by regulations made by statutory instrument—
   (a) make further provision about the application of provisions of this Part or of Schedules 1 to 3, or
   (b) amend this Part or Schedules 1 to 4.

(2) For the purposes of subsection (1) the "Pillar 2 framework" means—
   (a) the Pillar 2 model rules,
   (b) the Pillar 2 commentary, and
   (c) any further commentaries or guidance published by the OECD that are relevant to the implementation of the Pillar 2 model rules.

(3) A statutory instrument containing (whether alone or with other provision) regulations made under subsection (1)(b) is subject to the made affirmative procedure.

(4) Otherwise, a statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

(5) Where a statutory instrument under this section is subject to "the made affirmative procedure"—
   (a) it must be laid before the House of Commons after being made, and
   (b) it ceases to have effect at the end of the period of 28 sitting days beginning with the day on which the instrument is made, unless within that period the instrument is approved by a resolution of the House of Commons.

(6) Where regulations cease to have effect as a result of subsection (5), that does not—
   (a) affect anything previously done under the regulations, or
   (b) prevent the making of new regulations.

(7) In this section, "sitting day" means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day).

107 Multinational top-up tax to apply from 31 December 2023

This Part has effect in relation to accounting periods commencing on or after 31 December 2023.

SCHEDULES

SCHEDULE 1

section 4

ADMINISTRATION OF MULTINATIONAL TOP-UP TAX

PART 1

OVERVIEW

1 (1) The Commissioners for Her Majesty's Revenue and Customs are responsible for the collection and management of multinational top-up tax.

(2) This Schedule—

(a) contains provision to enable HMRC to determine when a person is chargeable to multinational top-up tax for an accounting period;

(b) contains requirements to provide information to HMRC for the purposes of multinational top-up and taxes under the law of other territories that are equivalent to multinational top-up tax;

(c) allows for the assessment of amounts of multinational top-up tax;

(d) set out associated administrative provisions;

(e) makes consequential and other amendments to other enactments.

(3) This Schedule makes provision about a "filing member" of a multinational group (see Part 2) and contains provision requiring such a member to—

(a) register with HMRC (see Part 3);

(b) submit an information return to HMRC (see Part 4);

(c) submit a self-assessment return to HMRC (see Part 5);

(d) keep and preserve records (see Part 9).

(4) Part 10 of this Schedule makes provision for when and how payment of multinational top-up tax payable is to be made.

(5) This Schedule makes provision for—

(a) penalties (see Part 11);

(b) appeals and claims for repayment of overpaid tax (see Part 12).

PART 2

MEANING OF "FILING MEMBER"

2 (1) The filing member of a multinational group is the ultimate parent of that group, unless a nomination under sub-paragraph (2) is in force.

(2) The nomination referred to in sub-paragraph (1) is a nomination by the ultimate parent of the group that another person should act as the filing member.

(3) The ultimate parent may only nominate a person if—

(a) the person is a member of the group, and
(b) the person is a company.

(4) The ultimate parent must provide the person nominated with everything the person may reasonably require in order to comply with the obligations of a filing member under this Schedule.

(5) While a nomination under sub-paragraph (2) is in force, the filing member of a multinational group is the person nominated.

(6) A nomination is in force from the time it is made until any of the following events occurs—
(a) the ultimate parent nominates another person;
(b) the person nominated ceases to be a member of the group;
(c) the person nominated ceases to be a company;
(d) the ultimate parent revokes the nomination;
(e) an officer of Revenue and Customs revokes the nomination.

(7) An officer of Revenue and Customs may revoke a nomination if the officer considers that—
(a) the ultimate parent is not complying with its obligation under sub-paragraph (4), or
(b) the person nominated is not complying with the obligations of a filing member under this Schedule.

(8) An officer of Revenue and Customs revokes a nomination by notifying the ultimate parent and the nominated person of the revocation.

(9) The revocation has effect when the notification is issued.

(10) Any nomination, or revocation of a nomination, must be in writing.

(11) Paragraph 3 makes provision for circumstances in which the ultimate parent is the filing entity but is not a company.

(12) Paragraph 4 makes specific provision for a multinational group that is part of a multiparent group.

(13) Paragraph 5 makes provision for the effect of the filing member of a multinational group changing.

3 (1) This paragraph applies where—
(a) the filing member of a multinational group is its ultimate parent, and
(b) the ultimate parent is not a company.

(2) The obligations of the filing member under this Schedule may be met by—
(a) in the case of a partnership other than a limited partnership or a limited liability partnership, any partner;
(b) in the case of a limited partnership, any general partner;
(c) in the case of a limited liability partnership, the limited liability partnership;
(d) in the case of a trust, any trustee;

(e) in the case of any other arrangement, any person responsible for preparing the separate financial accounts.

(3) In this paragraph, "partnership", "limited partnership", "limited liability partnership" and "trust" mean a partnership, limited partnership, limited liability partnership or trust (as the case may be) established under the law of a part of the United Kingdom, or an equivalent entity established under the law of a different country or territory.

4 (1) The obligations of a filing member of a multinational group that is part of a multiparent group may be met by the filing member of any of the groups that are part of that multiparent group, subject to sub-paragraph (2).

(2) The obligations of the filing member may not be met by a person nominated under paragraph 2(2) unless the ultimate parent of each group forming the multiparent group has authorised the nomination.

(3) Any authorisation must be in writing.

5 (1) This paragraph applies if at any time ("the relevant time") a person ("the new filing member") becomes the filing member of a multinational group in place of another person ("the old filing member").

(2) The obligations and liabilities of the new filing member under this Schedule include any obligations and liabilities the old filing member had under this Schedule.

(3) Anything done as the filing member of the group by or in relation to the old filing member, before the relevant time, is treated as having been done by or in relation to the new filing member.

(4) Accordingly, a penalty may be imposed on the new filing member in respect of anything done before the relevant time if, at that time, a penalty could have been imposed on the old filing member in respect of the thing done.

(5) Anything done by HMRC in relation to the old filing member under this Schedule, before the end of the day the change is notified, is treated for all purposes under this Schedule as done by or in relation to the new filing member.

(6) Anything that, at any time during the period beginning with the relevant time and ending with the day the change is notified, is in the process of being done under this Schedule in relation to the old filing member may be continued in relation to the new filing member.

(7) Accordingly, any reference in an enactment or other instrument to the filing member of the group is to be read, so far as necessary for the purposes of giving effect to any of sub-paragraphs (2) to (6), as being or including a reference to the new filing member.

(8) In this paragraph—

(a) any reference to an act includes an omission;

(b) any reference to the day the change is notified is to the day on which an officer of Revenue and Customs receives notification that the new filing member has become the filing member of the group.

(9) Nothing in this paragraph—
- (a) prevents HMRC or anyone else, after the relevant time, from imposing a penalty, exercising any other power, or doing anything else, in relation to the old filing member in respect of anything done before the relevant time, or
- (b) affects the validity of anything done before the relevant time.

PART 3

REGISTRATION

6 (1) The filing member of a multinational group must register with HMRC if the group becomes a qualifying multinational group.

(2) For the purposes of sub-paragraph (1), a multinational group becomes a qualifying multinational group on the first day of the first accounting period it is a qualifying multinational group (the “trigger day”).

(3) A filing member registers with HMRC by providing specified information to HMRC.

(4) The specified information is—
- (a) the name of the filing member;
- (b) the name of the ultimate parent (if different to the filing member);
- (c) the date of the trigger day;
- (d) the date on which the accounting period in which the trigger day occurs will end or has ended;
- (e) the day of the year on which an accounting period in relation to the group for the time being begins;
- (f) the day of the year on which an accounting period in relation to the group for the time being ends;
- (g) any other information that may be specified in a notice published by HMRC.

(5) The information must be provided in the way specified in a notice published by HMRC.

(6) The information must be provided before the end of the period of six months beginning with the day after the accounting period in which the trigger day occurs ends.

(7) Paragraphs 7 and 8 provide further notification requirements in relation to a multinational group the filing member of which has registered under this paragraph (a “registered group”).

7 (1) This paragraph applies where the filing member of a registered group changes.

(2) The new filing member must notify HMRC of the change before the end of the period of 6 months beginning with the day the change occurs.

(3) But, if the change occurs before the end of the period referred to in paragraph 6(6), the new filing member may notify HMRC of the change at any time before the end of that period even if later than the end of the period in sub-paragraph (2).

(4) The notification must be given in the way specified in a notice published by HMRC.

8 (1) The filing member of a registered group must notify HMRC of any other change to the information provided under paragraph 6.

(2) The notification must be given before the end of the period of 6 months beginning with the day on which the change occurs.

(3) But, if the change occurs before the end of the period referred to in paragraph 6(6), the filing member may notify HMRC of the change at any time before the end of that period even if later than the end of the period in sub-paragraph (2).

(4) The notification must be given in the way specified in a notice published by HMRC.

PART 4

INFORMATION RETURNS

9 (1) The filing member of a registered group must submit an information return to HMRC for each accounting period in which the group is a qualifying multinational group, unless sub-paragraph (4) applies.

(2) An "information return" is a return containing the following information—

(a) identification of the members of the group;

(b) information on the overall corporate structure of the group;

(c) information relevant to the determination of effective tax rates, top-up amounts or allocation of top-up amounts;

(d) such other information specified in a notice published by HMRC as HMRC may consider relevant to the sharing of information between Pillar 2 territories in connection with the Pillar 2 framework.

(3) HMRC may specify in a notice the particular items of information to be submitted as part of an information return.

(4) This sub-paragraph applies if an information return has been submitted for that period to another qualifying authority.

(5) A "qualifying authority" is an authority outside the United Kingdom with which HMRC has an agreement under which the authority will share the information contained in information returns submitted to that authority with HMRC.

(6) If sub-paragraph (4) applies, the filing member must notify HMRC (an "overseas return notification").

(7) An information return or overseas return notification must be submitted in the way specified in a notice published by HMRC.

(8) HMRC may specify in a notice that other information is to be provided together with an overseas return notification.

(9) An information return or overseas return notification must be submitted by the end of the period of 15 months beginning with the day after the end of the accounting period in respect of which the return or notification is being submitted.

(10) But the longer period in sub-paragraph (11) applies if the return or notification is being submitted in respect of the first accounting period in relation to which the group is a registered group.

(11) Where this sub-paragraph applies, the information return or overseas return notification must be submitted by the end of the period of 18 months beginning with the day after the end of the accounting period.

10 (1) The filing member may amend a return submitted under paragraph 9 by notice to HMRC.

(2) The filing member may further amend a return previously amended by further notice to HMRC.

(3) No amendment may be made after the end of the period of [12] months beginning with the date the return was submitted under paragraph 9.

(4) An amendment must be submitted in the way specified in a notice published by HMRC.

11 HMRC may take into account an information return in performing any of its functions.

PART 5

SELF-ASSESSMENT RETURNS

12 (1) The filing member of a registered group must submit a self-assessment return to HMRC for each accounting period, unless sub-paragraph (3) applies.

(2) A "self-assessment return" is a return containing—

(a) an assessment by the filing member as to—

(i) which members of the group are chargeable to multinational top-up tax, and

(ii) the amount of multinational top-up tax is chargeable to each such member, and

(b) such other information as may be specified in a notice published by HMRC.

(3) This sub-paragraph applies if—

(a) the conditions in sub-paragraph (4) are met in relation to the group,

(b) the filing member has submitted a notification that the conditions are met (a “below-threshold notification”) to HMRC, and

(c) the filing member has not withdrawn the below-threshold notification.

(4) The conditions are that—

(a) the group was not a qualifying multinational group in the accounting period, and

(b) the group is unlikely to be a qualifying multinational group in the next two accounting periods.

(5) An self-assessment return or below-threshold notification must be submitted in the way specified in a notice published by HMRC.

(6) HMRC may specify in a notice that other information is to be provided together with a below-threshold notification.

(7) A self-assessment return or below-threshold notification must be submitted by the end of the period of 15 months beginning with the day after the end of the accounting period in respect of which the return or notification is being submitted.

(8) But the longer period in sub-paragraph (9) applies if the return or notification is being submitted in respect of the first accounting period in relation to which the group is a registered group.

(9) Where this sub-paragraph applies, the self-assessment return or below-threshold notification must be submitted by the end of the period of 18 months beginning with the day after the end of the accounting period.

13 (1) The filing member may amend a return submitted under paragraph 12 by notice to HMRC.

(2) The filing member may further amend a return previously amended by further notice to HMRC.

(3) No amendment may be made after the end of the period of [12] months beginning with the date the return was submitted under paragraph 12.

(4) An amendment must be submitted in the way specified in a notice published by HMRC.

PART 6

ENQUIRIES INTO A SELF-ASSESSMENT RETURN

14 (1) This Part of this Schedule applies if the filing member of a multinational group has submitted a self-assessment return under paragraph 12 for an accounting period.

(2) In this Part “return” means a self-assessment return (including as amended under paragraph 13).

15 (1) An officer of Revenue and Customs may enquire into the return if, within the time allowed, the officer gives notice to the filing member of the officer's intention to do so.

(2) The time allowed is—
(a) if the return was submitted on or before the filing date, up to the end of the period of 12 months after the filing date;
(b) if the return was submitted after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;
(c) if the return is amended under paragraph 13, up to and including the quarter day next following the first anniversary of the day on which the return was amended.

(3) The filing date is the day ending the period for submission of the return referred to in paragraph 12(7) (or the longer period referred to in paragraph 12(9) where applicable).

(4) The quarter days are 31 January, 30 April, 31 July and 31 October.

(5) A notice under this paragraph is referred to in this Part of this Schedule as a "notice of enquiry".

(6) A return that has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment of the return.

16 (1) An enquiry may extend to anything contained in the return, or required to be contained in the return, including anything that relates—
(a) to the question of whether multinational top-up tax is chargeable in respect of the accounting period, or
(b) to the amount of tax so chargeable.

(2) Sub-paragraph (1) is subject to sub-paragraph (4) where it applies.

(3) Sub-paragraph (4) applies where the notice of enquiry is given in consequence of an amendment of a return—
(a) at a time when it is no longer possible to give a notice of enquiry under paragraph 15(2)(a) or (b), or
(b) after an enquiry into a return has been completed.

(4) Where this sub-paragraph applies, the enquiry into the return is limited to matters to which the amendment relates or that are affected by the amendment.

17 (1) For the purposes of this Part an enquiry is in progress into a return for the whole of the period—
(a) beginning with the day on which notice of enquiry is given in relation to that return, and
(b) ending with the day on which the enquiry is completed.

(2) The enquiry is completed on the day a closure notice is given (see paragraph 21).

18 (1) If at a time when an enquiry is in progress into a return an officer of Revenue and Customs forms the opinion—

(a) that an amount stated in the return as the amount of multinational top-up tax payable by a member of the group is insufficient, and

(b) that unless the assessment in the return is immediately amended there is likely to be a loss of tax to the Crown,

the officer may by notice in writing to the filing member amend the assessment to make good the deficiency.

(2) In the case of an enquiry that under paragraph 16(4) is limited to matters arising from an amendment of the return, sub-paragraph (1) applies only so far as the deficiency is attributable to the amendment.

19 (1) This paragraph applies if a return is amended at a time when an enquiry is in progress into the return.

(2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.

(3) So far as the amendment affects the amount stated in the return as the amount of tax payable, the amendment does not take effect, in relation to any matter to which it relates or which is affected by it, while the enquiry is in progress.

(4) An amendment whose effect is deferred under sub-paragraph (3) takes effect after the enquiry is completed as follows.

(5) If the conclusions in a closure notice state that the amendment was not taken into account in the enquiry, or that no amendment of the return is required arising from the enquiry, the amendment takes effect when the closure notice is issued.

(6) In any other case, the amendment takes effect in accordance with the closure notice.

20 (1) At any time when an enquiry is in progress into a return any question arising in connection with the subject-matter of the enquiry may be referred to the tribunal for determination.

(2) Notice of the referral must be given to the tribunal jointly by the filing member and an officer of Revenue and Customs.

(3) More than one notice of referral may be given in relation to an enquiry.

(4) An officer of Revenue and Customs or the filing member may withdraw a notice of referral.

(5) The effect of the notice being withdrawn is that the questions referred are not (unless they have already been finally determined) to be finally determined by the tribunal.

(6) While proceedings on a referral are in progress in relation to an enquiry—

(a) no closure notice may be given in relation to the enquiry, and

(b) no application may be made for a direction to give such a notice.

(7) Proceedings are in progress where—
(a) notice of referral has been given,
(b) the notice has not been withdrawn, and
(c) the questions referred have not been finally determined.

(8) In this paragraph, a question referred is finally determined when—
(a) it has been determined by the tribunal, and
(b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

(9) The determination of a question referred to the tribunal is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal under Part 12 of this Schedule.

(10) The determination must be taken into account by an officer of Revenue and Customs—
(a) in reaching the officer's conclusions on the enquiry, and
(b) in formulating any amendments of the return required to give effect to those conclusions.

(11) The question determined may not be reopened on an appeal under Part 12 of this Schedule, except to the extent that it could be reopened if it had been determined as a preliminary issue in that appeal.

21 (1) An enquiry into a return is completed by an officer of Revenue and Customs giving the filing member a closure notice.

(2) A closure notice is a notice stating—
(a) that the enquiry is complete;
(b) the conclusion reached in the enquiry.

(3) The conclusion must be one of the following—
(a) that no amendment of the return is required, or
(b) that the amendments of the return specified in the notice are to be made.

(4) A closure notice takes effect when it is given to the filing member.

(5) The officer—
(a) must provide additional information together with the notice as to the basis for the conclusion;
(b) may provide such other information as the officer thinks fit.

22 (1) The filing member may apply to the tribunal for a direction that an officer of Revenue and Customs give a closure notice within a specified period.

(2) The tribunal hearing the application must give a direction unless satisfied that HMRC has reasonable grounds for not giving a closure notice within a specified period.

(3) An application under this paragraph is to be treated as an appeal under Part 12 of this Schedule.

PART 7

DETERMINATIONS WHERE SELF-ASSESSMENT RETURN NOT SUBMITTED

23 This Part of this Schedule applies if the filing member of a multinational group has not submitted a self-assessment return under paragraph 12 for an accounting period.

24 (1) An officer of Revenue and Customs may make a determination if—

(a) the group is not a registered group and the officer has reasonable grounds to believe the group should be, or

(b) the officer has reasonable grounds to believe the filing member should have submitted a self-assessment return.

(2) A "determination" is a determination by the officer to the best of the officer's knowledge and belief as to the total amount of tax payable by a member of the group for the accounting period.

(3) The officer must give notice of the determination to the filing member.

(4) The notice must state the date on which it was issued.

(5) No HMRC determination may be made more than 3 years after the last date on which the return was required to be submitted.

25 (1) If, after a determination has been made, a self-assessment return is submitted for the accounting period, the assessment in the return supersedes the assessment in the determination.

(2) Sub-paragraph (1) does not apply to a return delivered—

(a) more than 3 years after the day on which the power to make the determination first became exercisable, or

(b) more than 12 months after the date of the determination,

whichever is the later.

(3) Where—

(a) proceedings have begun for the recovery of any tax assessed in a determination, and

(b) before the proceedings are concluded the determination is superseded under sub-paragraph (1),

the proceedings may be continued as if they were proceedings for the recovery of so much of the tax assessed in the return as is due and payable and has not been paid.

(4) Where—

(a) action is being taken under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement of deduction from accounts) for the recovery of an amount ("the original amount") of tax assessed in a determination, and

(b) before that action is concluded the determination is superseded under sub-paragraph (1), that action may be continued as if it were an action for the recovery of so much of the tax assessed in the return as is due and payable, has not been paid and does not exceed the original amount.

PART 8

DISCOVERY ASSESSMENTS

26 (1) If, in respect of an accounting period, an officer of Revenue and Customs discovers that—
   (a) an amount of multinational top-up tax that ought to have been assessed in respect of a multinational group has not been assessed, or
   (b) an assessment to tax is or has become insufficient,

the officer may make an assessment (a "discovery assessment") in the amount which ought in the officer's opinion to be charged in order to make good to the Crown the loss of tax.

(2) This is subject to the restrictions in paragraph 27.

27 (1) This paragraph applies where the filing member of the group has submitted a self-assessment return under paragraph 12 for the accounting period in respect of which the officer makes a discovery assessment.

(2) Where this paragraph applies, the power to make a discovery assessment—
   (a) may only be made in the two cases specified in sub-paragraphs (3) and (4), and
   (b) may not be made in the circumstances specified in sub-paragraph (6).

(3) The first case is where the situation mentioned in paragraph 26(1) was brought about carelessly or deliberately on the part of—
   (a) a member of the group of which the person forms part, or
   (b) a person acting on behalf of a member of the group.

(4) The second case is where an officer of Revenue and Customs, at the time the officer—
   (a) ceased to be entitled to give a notice of enquiry into the return submitted in respect of the ground for the accounting period, or
   (b) completed an enquiry into the return,

could not have been reasonably expected, on the basis of the information made available to the officer before that time, to be aware of the situation mentioned in paragraph 26(1).

(5) For this purpose information is regarded as made available to the officer of Revenue and Customs if—
   (a) it is contained in a self-assessment return, an information return, an overseas return notification or a below-threshold notification for the accounting period in question or either of the two immediately preceding accounting periods,

(b) it is contained in any documents produced or information provided by the filing member for the purposes of an enquiry into any such return or notification, or

(c) it is information the existence of which, and the relevance of which as regards the situation mentioned in paragraph 26(1)—

(i) could reasonably be expected to be inferred by the officer of Revenue and Customs from information falling within paragraph (a) or (b), or

(ii) are notified in writing to an officer of Revenue and Customs by the filing member or another person acting on the filing member's behalf.

(6) No discovery assessment may be made if—

(a) the situation mentioned in paragraph 26(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and

(b) the return was in fact made on the basis or in accordance with the practice generally prevailing at the time it was made.

28 (1) The general rule is that no discovery assessment may be made more than 4 years after the end of the accounting period to which it relates.

(2) A discovery assessment in a case involving a loss of tax brought about carelessly by a member of the group (or a person acting on their behalf) may be made at any time not more than 6 years after the end of the accounting period to which it relates.

(3) A discovery assessment in a case involving a loss of tax brought about deliberately by a member of the group (or a person acting on their behalf) may be made at any time not more than 20 years after the end of the accounting period to which it relates.

(4) A discovery assessment in a case involving a loss of tax brought about as a result of a failure of a filing member to register with HMRC under paragraph 6 may be made at any time not more than 20 years after the end of the accounting period to which it relates.

29 (1) The officer of Revenue and Customs must give notice of a discovery assessment to the filing member.

(2) The notice must state—

(a) the tax due,

(b) the date on which the notice is issued, and

(c) the time within which any appeal against the assessment must be made.

(3) After notice of the assessment has been served under this paragraph, the assessment may not be altered except as provided for by or under this Schedule.

(4) Where an officer of Revenue and Customs has—

(a) decided to make an assessment to tax, and

(b) taken all other decisions needed for arriving at the amount of the assessment,

the officer may entrust to another officer of Revenue and Customs the responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

PART 9

RECORD-KEEPING REQUIREMENTS

30 (1) The filing member of a multinational group must—

(a) keep such records as may be needed to enable it to deliver correct and complete returns if required, and

(b) preserve those records in accordance with this paragraph.

(2) The records must be preserved until the end of the relevant day.

(3) "The relevant day" means—

(a) the sixth anniversary of the last day of the accounting period to which the records relate, or

(b) such earlier day as may be specified in a notice published by HMRC (and different days may be specified for different cases).

(4) The duty to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in a notice published by HMRC.

PART 10

PAYMENTS OF MULTINATIONAL TOP-UP TAX

Timing of payments

31 (1) Multinational top-up tax due must be paid by the end of the period of 15 months beginning with the day after the end of the accounting period.

(2) But the longer period in sub-paragraph (3) applies if the liability to pay tax arises in respect of the first accounting period in relation to which a group is a qualifying multinational group.

(3) Where this sub-paragraph applies, multinational top-up tax due must be paid by the end of the period of 18 months beginning with the day after the end of the accounting period.

(4) A person's liability to pay multinational top-up tax may be discharged by another member of the multinational group to which the liability relates.

32 (1) Interest is to accrue on amounts payable under paragraph 31, but not paid, from the day after the latest date on which the amounts were required to be paid.

(2) The rate of interest is to be as provided in regulations under section 178 of FA 1989.

Group payment notices

33 (1) An officer of Revenue and Customs may issue a group payment notice if an amount payable by a member of a multinational group of multinational top-up tax (including any interest on that amount), is not paid by the end of the period of three months beginning with the relevant date.

(2) A group payment notice may be issued to any member of the group (wherever in the world they are located), subject to paragraph 34 where the group contains ring-fenced entities.

(3) A group payment notice is a notice requiring the recipient to pay an outstanding amount of multinational top-up tax payable by a member of the group by a date specified in the notice.

(4) The notice may not specify a date earlier than the date 30 days after the notice is issued.

(5) A group payment notice must state—

(a) the amount of any tax that remains unpaid,

(b) the date any tax first became payable, and

(c) the member's right of appeal (see paragraph 35(3)).

(6) A group payment notice may not be given more than 3 years and 6 months after the relevant date.

(7) If the amount payable is as assessed in a self-assessment return, the relevant date is the later of—

(a) the date on which multinational top-up tax must be paid;

(b) in a case where the return is delivered after the filing date, the date on which the return is delivered;

(c) if notice of enquiry is given, the date on which the enquiry is completed;

(d) if more than one notice of enquiry is given, the date on which the last notice is given;

(e) if as a result of such an enquiry the return is amended, the date of the closure notice in relation to that enquiry;

(f) if there is an appeal against the closure notice, the date on which the appeal is finally determined.

(8) If the amount payable is as assessed in a discovery assessment, the relevant date is—

(a) if there is no appeal against the assessment, the date on which the notice of assessment is issued, or

(b) if there is such an appeal, the date on which the appeal is finally determined.

(9) If the amount payable is as assessed in a determination that has not been superseded, the relevant date is the date on which notice of the determination was issued.

34 (1) This paragraph applies where the multinational group contains ring-fenced entities.

(2) A ring-fenced entity is a body corporate which is—

(a) a ring-fenced body, or

(b) a member of a ring-fenced body sub-group.

(3) "Ring-fenced body" has the same meaning as in section 142A of the Financial Services and Markets Act 2000.

(4) A "ring-fenced body sub-group" is a group of entities consisting of—

(a) an RFB parent undertaking and its subsidiaries, or

(b) a ring-fenced body, which is not a subsidiary of an RFB parent undertaking, and the ring-fenced body's subsidiaries.

(5) "RFB parent undertaking" means a body corporate which is subject to rules made under section 192JA of the Financial Services and Markets Act 2000 (rules applying to parent undertakings of ring-fenced bodies).

(6) Where this paragraph applies—

(a) a group payment notice may not be issued to a ring-fenced entity in respect of a liability relating to a responsible member of the group which is not a ring-fenced entity;

(b) a group payment notice may not be issued to a member of the group which is not a ring-fenced entity in respect of a liability relating to a responsible member of the group which is a ring-fenced entity.

35 (1) The effect of a group payment notice being issued under paragraph 33 is that the recipient is treated as if—

(a) a liability of a member other than the recipient were a liability of the recipient ("the deemed liability"),

(b) the deemed liability became due and payable when the relevant liability became due and payable, and

(c) any payments made in respect of the relevant liability were made in respect of the deemed liability.

(2) Nothing in this paragraph gives the recipient a right to appeal against any assessment, determination or other decision giving rise to a liability of a member other than the recipient (or against the deemed liability).

(3) The recipient may appeal against the notice, within the period of 30 days beginning with the date on which it is given, on the ground that the person in respect of which the notice is given is not a member of the group.

(4) Where an appeal is made, anything required by the notice to be paid is due and payable as if there had been no appeal.

(5) If the recipient pays any amount in pursuance of the notice the recipient may recover that amount from the person chargeable to multinational top-up tax liable to pay it.

(6) In calculating the recipient's income, profits or losses for any tax purposes—

(a) a payment in pursuance of the notice is not allowed as a deduction, and

(b) the reimbursement of any such payment is not regarded as a receipt.

(7) Any amount paid by the recipient in pursuance of the notice is to be taken into account in calculating—

(a) the amount unpaid, and

(b) the amount due by virtue of any other payment notice relating to the amount unpaid.

(8) Similarly, any payment by the person liable to pay it of any of the amount unpaid is to be taken into account in calculating the amount due by virtue of the payment notice (or by virtue of any other payment notice relating to the amount unpaid).

PART 11

PENALTIES

Penalties payable in connection with this Schedule

36 This Part of this Schedule sets out penalties payable in connection with this Schedule, as follows—

(a) paragraph 37 amends Schedule 41 to FA 2008 to impose a penalty on a filing member of a multinational group that fails to register with or otherwise notify HMRC under Part 3 of this Schedule;

(b) paragraph 38 imposes a penalty on a filing member of a registered group that fails to submit an information return or overseas return notification under Part 4 of this Schedule;

(c) paragraph 39 imposes a penalty on a filing member of a registered group that fails to submit a self-assessment return or below-threshold notification under Part 5 of this Schedule;

(d) paragraph 41 amends Schedule 24 to FA 2007 to impose a penalty on a filing member of a multinational group that provides inaccurate information to HMRC;

(e) paragraph 42 imposes a penalty on a filing member of a multinational group that fails to keep or preserve records under Part 9 of this Schedule;

(f) paragraph 43 amends [Schedule 26 to FA 2021] to impose a penalty on a person that fails to discharge a liability to pay an amount of multinational top-up tax when due under paragraph 31.

37 In paragraph 1 of Schedule 41 to FA 2008 (penalties for failure to notify etc), in the table after the entry relating to digital services tax insert—

"Multinational top-up tax	Obligation of a filing member of a multinational group under Part 3 of Schedule 1 to FA 2023.".

38 (1) A penalty is payable (subject to paragraph 40) if the filing member fails to submit an information return or overseas return notification by the submission date.

(2) The penalty is—

(a) £100, if the return or notification is submitted within three months after the submission date;

(b) £200, if the return or notification is submitted within six months after the submission date;

(c) £200 plus the additional penalty amount, in any other case.

(3) For a third successive failure, the amount referred to in—

(a) sub-paragraph (2)(a) is increased to £500;

(b) sub-paragraph (2)(b) and (c) is increased to £1,000.

(4) For this purpose, a "third successive failure" occurs where—

(a) the duty to submit a return or notification applies in relation to a group for three successive accounting periods,

(b) the member was liable to a penalty under this paragraph in respect of each of the first two accounting periods, and

(c) the member is liable to a penalty under this paragraph in respect of the third accounting period.

(5) The additional penalty amount is £60 multiplied by the number of days, after the day six months after the submission date, on which the filing member fails to submit the return or notification.

(6) The submission date is the last date the filing member is permitted to submit the return or notification under Part 4 of this Schedule.

39 (1) A penalty is payable (subject to paragraph 40) if the filing member fails to submit a self-assessment return or below-threshold notification by the submission date.

(2) The penalty is—

(a) £100, if the return or notification is submitted within three months after the submission date;

(b) £200, if the return or notification is submitted within six months after the submission date;

(c) the higher of £200 and 10% of the unpaid tax, if the return or notification is submitted within twelve months after the submission date;

(d) the higher of £200 and 20% of the unpaid tax, in any other case.

(3) For a third successive failure, the amount referred to in—

(a) sub-paragraph (2)(a) is increased to £500;
(b) sub-paragraph (2)(b), (c) and (d) is increased to £1,000.

(4) For this purpose, a "third successive failure" occurs where—
(a) the duty to submit a return or notification applies in relation to a group for three successive accounting periods,
(b) the member was liable to a penalty under this paragraph in respect of each of the first two accounting periods, and
(c) the member is liable to penalty under this paragraph in respect of the third accounting period.

(5) The "unpaid tax" means the total amount of tax payable by members of the group for the accounting period which remains unpaid on the date when the liability to the penalty under this paragraph arises.

(6) The submission date is the last date the filing member is permitted to submit the return or notification under Part 5 of this Schedule.

40 (1) This paragraph applies if the filing member satisfies HMRC or (on appeal) the tribunal that there is a reasonable excuse for the failure to submit the return or notification (as the case may be).

(2) For that purpose—
(a) an insufficiency of funds is not a reasonable excuse,
(b) where the member relies on any other person to do anything, that is not a reasonable excuse unless the member took reasonable care to avoid the failure, and
(c) where the member had a reasonable excuse for the failure but the excuse has ceased, the member is to be treated as having continued to have the excuse only if the failure is remedied without unreasonable delay after the excuse ceased.

41 In paragraph 1 of Schedule 24 to FA 2007 (penalties for errors etc), in the table after the entry relating to digital services tax returns insert—

"Multinational top-up tax	Information return and information provided with it
Multinational top-up tax	Overseas return notification and information provided with it
Multinational top-up tax	Self-assessment return and information provided with it
Multinational top-up tax	Below-threshold notification and information provided with it".

42 (1) A penalty is payable if—
(a) the member breaches their obligations under Part 9 of this Schedule in relation to an accounting period, and

(b) HMRC is not satisfied that any facts which HMRC reasonably requires to be proved, and which would have been proved by the records, are proved by other documentary evidence provided to HMRC.

(2) The penalty is £3,000.

43 [In paragraph 21 of Schedule 26 to FA 2021 (penalties for failure to pay tax), after the table relating to income tax or capital gains tax insert—

“Multinational top-up tax

1	Amount of multinational top-up tax payable under section 2 of FA 2023	The date specified in paragraph 31 of Schedule 1 as the date by which the amount must be paid”.]

Penalties under paragraphs 38, 39 and 42: administration and supplemental provision

44 Paragraphs 45 to 47 apply in relation to a penalty payable under paragraph 38, 39 or 42.

45 (1) HMRC must—

(a) assess the penalty, and

(b) notify the member of the assessment.

(2) The assessment of a penalty—

(a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(3) A supplementary assessment may be made in respect of a penalty if an earlier assessment is based on an amount of tax due and payable that is found by HMRC to be an underestimate or insufficient.

(4) Sub-paragraph (5) applies if—

(a) an assessment in respect of a penalty is based on a liability to tax shown in a self-assessment return, and

(b) that liability is found by HMRC to be excessive.

(5) HMRC may by notice amend the assessment so it is based on the correct amount.

(6) An amendment under sub-paragraph (5)—

(a) does not affect when the penalty must be paid;

(b) may be made after the last day on which the assessment in question could have been made (under sub-paragraph (7)).

(7) An assessment of a penalty must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the assessment of the liability to tax shown in the self-assessment return, or

(b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil.

(8) In sub-paragraph (7) "appeal period" means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

(9) A penalty must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

46 (1) If HMRC thinks it right because of special circumstances, HMRC may reduce the penalty.

(2) In sub-paragraph (1) "special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings in respect of a penalty.

47 (1) This paragraph applies if—

(a) the filing member liable to the penalty has an agreement in relation to the penalty with one or more companies within the charge to corporation tax, and

(b) as a result of the agreement, the member receives a payment or payments in respect of the penalty that do not, in total, exceed the amount of the penalty.

(2) The payment—

(a) is not to be taken into account in calculating the profits for corporation tax purposes of either the member or the company making the payment, and

(b) is not to be regarded as a distribution for corporation tax purposes.

PART 12

APPEALS AND CLAIMS

Claims in relation to overpaid tax

48 (1) A person (a "claimant") who has paid an amount by way of multinational top-up tax may make a claim to the Commissioners for repayment of tax that was not due.

(2) The claim must—

(a) be made on or before the overpayment claim date,

(b) be in the form and contain information specified in a notice published by HMRC, and

(c) not be submitted at the same time as a self-assessment return.

(3) The overpayment claim date is—

(a) if the amount paid is excessive by reason of a mistake in a self-assessment return, the date four years after the end of the accounting period to which the return (or, if more than one, the first return) relates;

(b) otherwise, the date four years after the end of the accounting period in respect of which the amount was paid.

(4) The Commissioners must give effect to a claim as made, unless—

(a) a condition in sub-paragraph (2) is not met in relation to the claim,

(b) paragraph 49 applies, or

(c) the claim is amended following an enquiry under paragraph 50.

(5) The Commissioners are not otherwise, in the absence of a claim under this paragraph, liable to repay any amount paid by way of multinational top-up tax by reason of the fact it was not tax due.

(6) An amount repayable to the claimant, but not paid, incurs interest at the rate provided for in regulations made under section 178 of FA 1989 from the date of the claim.

(7) Paragraph 51 makes further provision in relation to amounts repaid.

49 (1) This paragraph applies where one or more of Cases A to D apply.

(2) Case A applies where a member of the claimant's group has an unpaid liability to tax.

(3) Case B applies where the claimant is seeking or will be able to seek relief by taking other steps under this Part of this Act.

(4) Case C applies where the claimant—

(a) could have sought relief by taking such steps within a period that has now expired, and

(b) knew, or ought reasonably to have known, before the end of that period that such relief was available.

(5) Case D applies where—

(a) the amount paid is excessive by reason of a mistake in calculating the amount of tax payable by members of the claimant's group for the accounting period, and

(b) the amount was calculated in accordance with the practice generally prevailing at the time.

(6) Where this paragraph applies, the Commissioners are not liable to repay any amount paid by way of multinational top-up tax by reason of the fact it was not tax due.

50 (1) An officer of Revenue and Customs may enquire into a claim if, within the time allowed, the officer gives notice to the claimant of the officer's intention to do so.

(2) The time allowed is the period ending with the quarter day next following the first anniversary of the day on which the claim was made.

(3) The quarter days are 31 January, 30 April, 31 July and 31 October.

(4) A claim enquired into under sub-paragraph (1) may not be the subject of a further notice under that sub-paragraph.

(5) An enquiry is completed when the officer by notice (a "closure notice") informs the claimant that the enquiry is complete and states the conclusion reached in the enquiry.

(6) The conclusion must be one of the following—
  (a) that no amendment of the claim is required, or
  (b) that the amendments of the claim specified in the notice are to be made.

(7) A closure notice takes effect when it is issued.

(8) The officer must give effect to any amendments made by the closure notice by making such adjustments as may be necessary whether—
  (a) by way of assessment, or
  (b) by discharge or repayment of tax.

(9) The adjustments must be made within 30 days of the date of issue of the closure notice.

(10) Paragraph 22 (direction to complete enquiry) applies in relation to an enquiry under this paragraph as it applies in relation to an enquiry under paragraph 15.

51 (1) This paragraph applies where—
  (a) an amount has been paid by way of a repayment of tax, and
  (b) the amount paid exceeded the amount which the Commissioners were liable at that time to repay.

(2) The Commissioners may—
  (a) to the best of their judgment, assess the amount of the excess, and
  (b) notify the amount to the person to whom the repayment was made.

(3) Sub-paragraph (4) applies where—
  (a) an assessment has been notified under sub-paragraph (2), and
  (b) it appears to the Commissioners that the amount which ought to have been assessed as due exceeds the amount that has already been assessed.

(4) The Commissioners may—
  (a) on or before the last day on which the assessment could have been made, make a supplementary assessment of the amount of tax due, and

(b) notify the amount to the person to whom the repayment was made.

(5) An amount assessed and notified under sub-paragraph (2) or (4) counts as a liability to multinational top-up tax for the purposes of this Part of this Act.

(6) But sub-paragraph (5) does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

(7) An assessment under this paragraph may not be made more than 4 years after the end of the accounting period in which evidence of facts sufficient in the opinion of the Commissioners to justify making the assessment comes to their knowledge.

Appeals of decisions: general

52 (1) An appeal may be brought against—

(a) an amendment of a self-assessment return under paragraph 18 (amendment during enquiry to prevent loss of tax);

(b) an amendment made by a closure notice under paragraph 21;

(c) a discovery assessment;

(d) a determination that has not been superseded;

(e) an assessment of a penalty under paragraph 38, 39 or 42;

(f) an amendment made by a closure notice under paragraph 50;

(g) an assessment made under paragraph 51;

(2) Any such appeal is to be brought by the filing member ("the appellant").

(3) Notice of the appeal must be given to HMRC—

(a) in writing,

(b) within 30 days after the specified date.

(4) "Specified date" means—

(a) in relation to an appeal under sub-paragraph (1)(a), the date on which the notice of amendment was issued;

(b) in relation to an appeal under sub-paragraph (1)(b) or (f), the date on which the closure notice was issued;

(c) in relation to an appeal under sub-paragraph (1)(c), (e) or (g), the date on which the notice of assessment was issued;

(d) in relation to an appeal under sub-paragraph (1)(d), the date on which the notice of the determination was issued.

(5) The notice of appeal must specify the grounds of appeal.

(6) Notice may be given after the time limit in sub-paragraph (3)(b) if—

(a) HMRC agrees, or

(b) where HMRC does not agree, the tribunal gives permission.

(7) HMRC must agree to notice being given after the time limit if the appellant has requested in writing that HMRC do so and HMRC is satisfied—

(a) that there was a reasonable excuse for not giving the notice before the time limit, and

(b) that the request has been made without unreasonable delay.

(8) If a request of the kind mentioned in sub-paragraph (7) is made, HMRC must notify the appellant of whether or not HMRC agrees to the request.

53 (1) The effect of a notice of appeal being given is that—

(a) a review may be conducted by HMRC into the matter to which the appeal relates;

(b) HMRC and the appellant may settle the appeal by agreement;

(c) the appeal may be determined by the tribunal;

(d) a payment of multinational top-up tax may be postponed pending determination of the appeal.

(2) But if—

(a) the appeal is an appeal under paragraph 52(1)(a) against an amendment of a self-assessment, and

(b) the appeal is made while an enquiry into the return is in progress,

sub-paragraphs (1)(a) and (c) do not apply in relation to the appeal until the enquiry is completed.

(3) See also paragraph 64 for special provision relating to the appeal of a penalty under paragraph 38, 39 or 42.

Reviews by HMRC

54 (1) A review is to be conducted by HMRC if—

(a) the appellant notifies HMRC that it requires HMRC to review the matter, or

(b) HMRC offers to review the matter and the appellant accepts the offer within the period of 30 days beginning with the date of the offer (the "acceptance period").

(2) The appellant may not notify HMRC that the appellant requires HMRC to review the matter if—

(a) the appellant has already done so in relation to the same matter,

(b) HMRC has offered to review the matter, or

(c) the appellant has notified the appeal to the tribunal.

(3) HMRC may not offer to review the matter if—

(a) HMRC has already done so in relation to the same matter,

(b) the appellant has notified HMRC that the appellant requires HMRC to review the matter, or

(c) the appellant has notified the appeal to the tribunal.

(4) An offer by HMRC to review the matter must—

(a) be made in writing, and

(b) contain a statement of HMRC's view of the matter.

(5) If the appellant does not accept the offer within the acceptance period—
  (a) HMRC's view of the matter is to be treated as if it were contained in a settlement agreement under paragraph 58, but
  (b) the right to withdraw from such an agreement does not apply in relation to that notional agreement.

(6) Sub-paragraph (5) does not apply to the matter if, or to the extent that, the appellant notifies the appeal to the tribunal.

(7) The appellant may notify the appeal to the tribunal—
  (a) within the acceptance period;
  (b) after the end of that period only if the tribunal gives permission.

55 (1) The review is to be conducted as follows.

(2) If the appellant required the review, HMRC must notify the appellant of HMRC’s view of the matter within—
  (a) the period of 30 days beginning with the day on which HMRC received notification of the requirement to review from the appellant, or
  (b) such longer period as is reasonable.

(3) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.

(4) For the purpose of sub-paragraph (3), HMRC must, in particular, have regard to steps taken before the beginning of the review—
  (a) by HMRC in deciding the matter, and
  (b) by any person in seeking to resolve disagreement about the matter.

(5) The review must take account of any representations made by the appellant at a stage which gives HMRC a reasonable opportunity to consider them.

56 (1) The review may conclude that HMRC's view of the matter (as notified to the appellant under paragraph 54(4) or 55(2)) is to be—
  (a) upheld,
  (b) varied, or
  (c) cancelled.

(2) HMRC must notify the appellant of the conclusions of the review and the reasoning for those conclusions within—
  (a) the period of 45 days beginning with the relevant day, or
  (b) such other period as may be agreed.

(3) In sub-paragraph (2) “relevant day” means—
  (a) in a case where the appellant required the review, the day when HMRC notified the appellant of HMRC's view of the matter;
  (b) in a case where HMRC offered the review, the day when HMRC received notification of the appellant's acceptance of the offer.

(4) If HMRC do not give notice of the conclusions of the review within the period specified in sub-paragraph (3), the review is treated as having concluded that HMRC's view of the matter in question is upheld.

(5) If sub-paragraph (4) applies, HMRC must notify the appellant of the conclusions which the review is treated as having reached.

(6) The conclusions of a review are to be treated as if they were contained in a settlement agreement under paragraph 58, but the right to withdraw from such an agreement does not apply in relation to that notional agreement.

(7) Sub-paragraph (6) does not apply to the matter if, or to the extent that, the appellant notifies the appeal to the tribunal.

(8) The appellant may notify the appeal to the tribunal—
   (a) within the post-review period;
   (b) after the end of that period only if the tribunal gives permission.

(9) The post-review period is—
   (a) if HMRC has notified the appellant of the conclusions of the review in accordance with sub-paragraph (2), the period of 30 days beginning with that notice;
   (b) if HMRC has not so notified the appellant, the period beginning with the day following the last day of the period specified in sub-paragraph (2) and ending 30 days after the date on which HMRC gives notice in accordance with sub-paragraph (5).

57 (1) In paragraphs 54 to 56, a reference to the appellant includes a person acting on behalf of the appellant except in relation to—
   (a) notification by HMRC of an offer of review (and of their view of the matter) under paragraph 54;
   (b) notification of HMRC's view under paragraph 55(2)(a);
   (c) notification of the conclusions of a review under paragraph 56(2) or (5).

(2) But if any such notification is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.

(3) A notification in connection with a review must be given in writing.

Settlement agreements

58 (1) "Settlement agreement" means an agreement in writing between the appellant and an officer of Revenue and Customs that is—
   (a) entered into before the appeal is determined, and
   (b) to the effect that the decision appealed against should be upheld without variation, varied in a particular manner or discharged or cancelled.

(2) Where a settlement agreement is entered into in relation to an appeal, the consequences are to be the same (for all purposes) as if, at the time the

agreement was entered into, the tribunal had decided the appeal and had upheld the decision without variation, varied it in that manner or discharged or cancelled it, as the case may be.

(3) Sub-paragraph (2) does not apply if, within 30 days beginning with the date on which the settlement agreement was entered into, the appellant gives notice in writing to HMRC that it wishes to withdraw from the agreement.

(4) Sub-paragraph (5) applies where notice of an appeal has been given and—

(a) the appellant notifies HMRC, orally or in writing, that the appellant does not wish to proceed with the appeal, and

(b) HMRC does not, within 30 days after that notification, give the appellant notice in writing indicating that HMRC is unwilling that the appeal should be withdrawn.

(5) Sub-paragraphs (1) to (3) have effect as if, at the date of the appellant's notification, the appellant and an officer of Revenue and Customs had agreed that the decision under appeal should be upheld without variation.

Determination by tribunal

59 (1) The appellant may notify the appeal to the tribunal.

(2) If the tribunal decides that a person is overcharged to multinational top-up tax, the assessment must be reduced accordingly.

(3) If the tribunal decides that a person is undercharged to multinational top-up tax, the assessment must be increased accordingly.

(4) In a case where neither sub-paragraph (2) or (3) apply, the assessment is to stand good.

(5) On the determination of the appeal—

(a) any tax overpaid must be repaid as if a claim had been made under paragraph 48 on the day notice of the appeal was given to HMRC;

(b) any tax payable in accordance with the determination is payable in accordance with paragraph 31.

(6) Interest is to be incurred on amounts payable in accordance with those paragraphs.

(7) Where a party to an appeal to the tribunal makes a further appeal, tax is to be payable or repayable in accordance with the determination of the tribunal or court (as the case may be), even though the further appeal is pending.

(8) But if the amount charged by the assessment is altered by the order or judgment of the Upper Tribunal or court, then—

(a) if too much tax has been paid, the amount overpaid must be refunded, with any interest allowed by the order or judgment, and

(b) if too little tax has been charged, the tax is payable in accordance with paragraph 31.

(9) The determination of the tribunal is final and conclusive except as otherwise provided in sections 10 to 16 of the Tribunals, Courts and Enforcement Act 2007.

Postponement of payment pending appeal

60 (1) The general rule is that an appeal under this Part of this Schedule does not postpone any liability to pay multinational top-up tax.

(2) Accordingly, the periods within which tax is payable under paragraph 31 continue to apply notwithstanding an appeal.

(3) But a liability may be postponed if—

(a) a determination is made by HMRC to that effect;

(b) a direction is made by a tribunal to that effect;

(c) HMRC and the appellant agree to a postponement.

(4) The effect of a liability being postponed is that the period within which the tax is payable is extended by the period of the postponement.

(5) The period of the postponement—

(a) may not begin after the date the appeal is determined;

(b) is to end on the date the appeal is determined.

61 (1) The appellant may apply to HMRC for a determination if the appellant has grounds to believe that—

(a) a person has been overcharged to multinational top-up tax;

(b) an amount of tax postponed under a previous determination is excessive or insufficient.

(2) An application must be made within 30 days after the specified date (see paragraph 52(4)), unless sub-paragraph (3) applies.

(3) This sub-paragraph applies if—

(a) there is a change in the circumstances of the case as a result of which the appellant has grounds to believe the matter in sub-paragraph (1), or

(b) the application could, if it were a notice of appeal, be given at a later date under paragraph 52(6).

(4) The application must state the amount believed to be overcharged and the grounds for that belief.

(5) HMRC may determine—

(a) whether any amount of tax is to be postponed, and

(b) the amount of any tax postponed.

(6) The amount of any tax postponed is to be determined as the amount (if any) by which it appears that there are reasonable grounds for believing that the person is overcharged.

62 (1) The appellant may apply to the tribunal for a direction if—

(a) the appellant has applied to HMRC for a determination,

(b) HMRC has made a determination, and
(c) the appellant does not agree with the determination.

(2) The tribunal may direct whether the determination of HMRC was correct.

(3) A decision of the tribunal under this paragraph is final and conclusive (despite the provisions of sections 12 and 15 of the Tribunals, Courts and Enforcement Act 2007).

63 (1) HMRC and the appellant may agree that payment of an amount of tax should be postponed pending the determination of the appeal.

(2) The agreement may modify a determination by HMRC under paragraph 61.

(3) Where the agreement does so, it is to be treated in the same way as a settlement agreement under paragraph 58.

(4) The consequences of an agreement are to be the same as if the tribunal had, at the time when the agreement was entered into, made a direction to the same effect as the agreement.

(5) The existence of an agreement does not preclude a further determination by HMRC or direction by the tribunal modifying the agreement.

(6) An agreement—
(a) must be made in writing;
(b) may be made with a person acting on behalf of the appellant in relation to the appeal.

Special provisions as to penalties

64 (1) This paragraph applies to an appeal as to—
(a) whether a penalty under paragraph 38, 39 or 42 is payable;
(b) the amount of such a penalty.

(2) Payment of the penalty is always postponed pending determination of the appeal.

(3) Accordingly—
(a) paragraphs 60(1) to (3) and 61 to 63 do not apply to such an appeal;
(b) paragraphs 60(4) and (5) always apply to such an appeal.

(4) If the appeal is notified to the tribunal, the tribunal may—
(a) confirm a decision of HMRC;
(b) substitute for the decision another decision that HMRC had power to make.

(5) The tribunal may only make a decision that HMRC had power to make under paragraph 46 (reduction of penalties) if the tribunal considers HMRC's decision to have been flawed when considered in light of the principles applicable in proceedings for judicial review.

(6) On determination of the appeal, where a penalty is payable it is to be paid before the end of 30 days beginning with the day on which the determination was issued.

PART 13

OTHER AMENDMENTS

65 (1) In section 1(1) of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax etc) after "digital services tax," insert "multinational top-up tax,".

(2) In section 178(2) of FA 1989 (setting of interest rates), at the end insert—

"(x) paragraphs 32 and 48 of Schedule 1 to the Finance Act 2023.".

(3) In paragraph 63(1) of Schedule 36 to FA 2008 (information and inspection powers), after paragraph (cc) insert—

"(cd) multinational top-up tax;".

(4) In section 206(3) of FA 2013, at the end insert—

"(h) multinational top-up tax.".

SCHEDULE 2

section 6(7)

ELECTIONS

Long term elections

1 (1) This paragraph applies to an election under the following provisions of this Act—

(a) section 6(6);
(b) section 42;
(c) section 43;

(2) An election to which this paragraph applies—

(a) must specify the first accounting period for which it is to have effect ("the first election period"),
(b) must be made no later than the date by which the information return in respect of that period is due,
(c) must be included in that return, and
(d) has effect for the first election period and each subsequent accounting period until the commencement of the first accounting period for which a revocation of the election has effect.

(3) A revocation of an election to which this paragraph applies is to be made by the filing member of a multinational group and—

(a) must specify the first accounting period for which it is to have effect,

(b) must be made no later than the date by which the information return in respect of that period is due, and

(c) must be included in that return.

(4) But a revocation of an election to which this paragraph applies may not be made that has effect for the first election period or any of the next 4 accounting periods.

(5) Where an election to which this paragraph applies has been revoked, no further election of the same type may be made that has effect for the first accounting period for which the revocation has effect or any of the next 4 accounting periods.

Annual elections

2 (1) This paragraph applies to an election under the following provisions of this Act—

(a) section 29(2);

(b) section 44;

(c) section 54(7).

(2) An election to which this paragraph applies—

(a) must specify the accounting period for which it is to have effect,

(b) must be made no later than the date by which the information return in respect of that period is due, and

(c) must be included in that return.

SCHEDULE 3

section 104

TRANSITIONAL PROVISION

Transitional relief for substance-based income exclusion

1 (1) Section 60(4) (payroll carve-out amount) has effect for an accounting period that commences in a year listed in following table as if for "5%" there were substituted the specified percentage for that year—

Year	Specified percentage
2023	10%
2024	9.8%
2025	9.6%
2026	9.4%
2027	9.2%
2028	9.0%

Year	Specified percentage
2029	8.2%
2030	7.4%
2031	6.6%
2032	5.8%

(2) Section 60(5) (tangible asset carve-out amount) has effect for an accounting period that commences in a year listed in following table as if for “5%” there were substituted the specified percentage for that year—

Year	Specified percentage
2023	8%
2024	7.8%
2025	7.6%
2026	7.4%
2027	7.2%
2028	7.0%
2029	6.6%
2030	6.2%
2031	5.8%
2032	5.4%

Intra-group transfers before entry into regime

2 (1) Sub-paragraph (2) applies where—
(a) there has been a transfer of assets between two members of a multinational group before the first accounting period for which the group is a qualifying multinational group,
(b) the transfer took place on or after 1 December 2021.

(2) For the purposes of Part 1 of this Act—
(a) the value of the assets at the beginning of that accounting period is what the carrying value of the assets would have been at that time ignoring any adjustment to its book value on its transfer, and
(b) the value of deferred tax assets and liabilities arising in relation to the assets are to be determined on the same basis.

(3) Sub-paragraph (2) does not apply to a transfer of assets manufactured, or of a class or description sold, in the course of carrying on a trade by the transferor or the transferee.

SCHEDULE 4

section 105

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