Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union

Part 04A-01-02

This document should be read in conjunction with Part 4A of the Taxes Consolidation Act 1997

Document updated February 2025

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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1 Overview

Section 94 of Finance (No.2) Act 2023, by inserting a new Part 4A of the Taxes Consolidation Act (TCA) 1997, implemented the Pillar Two minimum effective tax rate for large groups and companies by transposing the *EU Minimum Tax Directive (Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union)* (the 'EU Minimum Tax Directive') into Irish law.

A number of additional amendments to Part 4A of the Taxes Consolidation Act (TCA) 1997 were subsequently made in Finance Act 2024.

1.1 Background

Pillar Two is one element of an October 2021 agreement by almost 140 countries in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework), with the overall aim to reform the international tax framework as it applies to large corporate groups.

Building on that agreement, the Inclusive Framework published OECD Model Rules[1] to provide the basis for implementation of Pillar Two in national law. The EU Minimum Tax Directive is largely based upon the Model Rules, with some adjustments to take account of the requirements of EU law.

Technical guidance on Pillar Two implementation has continued to issue from the OECD since the Model Rules were published. This has taken the form of a Commentary on the Model Rules, and various pieces of Administrative Guidance which will update the Commentary in due course. A consolidated Commentary[2] was released in April 2024 incorporating Administrative Guidance released up to that point.

[1] OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm

[2] OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/b849f926-en.

Recital 24 of the Directive notes that:

> "Member States should use the OECD Model Rules and the explanations and examples in the Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti- Base Erosion Model Rules (Pillar Two) released by the OECD/G20 Inclusive Framework on BEPS, as well as the GloBE Implementation Framework, including its safe harbour rules, as a source of illustration or interpretation in order to ensure consistency in application across Member States to the extent that those sources are consistent with this Directive and Union law".

1.2 Content of the rules

Pillar Two consists of a series of interlinked rules, known as the Global Anti-Base Erosion (GloBE) rules, which provide that in scope businesses will, in general, pay a minimum effective tax rate (ETR) of 15% on their profits in respect of each country in which they operate. The GloBE rules operate as a top-up tax, with the 15% effective tax rate being achieved when added to corporation tax charged under domestic rules already paid. Pillar Two uses its own tax base, calculated by reference to financial accounting rules subject to certain adjustments. The new provisions will apply to both multinational and domestic businesses with a global annual turnover of €750 million and above in at least two of the preceding four years.

The main Pillar Two charging rules are:

1. Income Inclusion Rule (IIR)

- The IIR is the primary GloBE rule and requires a parent company to determine whether its subsidiaries (constituent entities) in the group paid at least the minimum effective rate of tax on a jurisdictional basis in each jurisdiction in which those subsidiaries are located. If the effective rate of tax for the constituent entities in a jurisdiction is below the minimum rate, the parent company will pay an additional amount of tax to increase the overall level of taxation in respect of that subsidiary's jurisdiction to the minimum effective rate (i.e., 15%).
- The IIR will typically be applied by the ultimate parent entity company (UPE) of a multinational group, i.e., by the entity at the top of the ownership chain. However, if the UPE is not required to apply an IIR, for example if the jurisdiction in which that UPE is located does not adopt the GloBE rules, the obligation to apply an IIR moves down the ownership chain. In such circumstances, an Intermediate Parent Entity (IPE), located in a jurisdiction that has adopted the GloBE rules, would be required to apply the IIR to its subsidiaries (with priority to intermediate parents higher up in the ownership chain).

- There is a departure from the standard top-down rule for a Partially Owned Parent Entity (POPE). This is a constituent entity that owns (directly or indirectly) an ownership interest in another constituent entity in the same group, and the right to more than 20% of the POPE's profits are held by persons that are not part of the MNE group. Even if the group UPE or IPE applies an IIR, the POPE is also obliged to apply an IIR in respect of any subsidiary low-taxed entity with the liability of the UPE/IPE reduced accordingly.

- The Pillar Two rules also provide for other ownership structures such as joint ventures and multi-parented groups.

- The starting point for calculating the effective tax rate is to take the financial accounts used to prepare the group's consolidated financial statements, subject to certain adjustments made for agreed differences (as an example, typically excluding intra-group dividends). The tax figure in the effective tax rate calculation is the tax expense figure as per the financial accounts including, subject to some adjustments, deferred tax assets and liabilities.

- Tax is allocated to the same jurisdiction as the income on which that tax is levied. This means that withholding taxes on interest and royalties are allocated to the payee jurisdiction, and CFC taxes are generally allocated to the jurisdiction of the controlled foreign company.

- Certain entities are excluded from the application of the GloBE rules. These include:
    - Certain regulated investment funds;
    - Pension funds;
    - Governmental entities;
    - International, intergovernmental organisations; and
    - Non-profit organisations.

2. Undertaxed Profit Rule (UTPR)

- The UTPR is a secondary GloBE rule, designed to operate as a backstop to the IIR. Where the full amount of top-up tax is not collected under an IIR (for example if a group does not have a parent company in a jurisdiction that has implemented Pillar Two), the liability to account for the top-up tax falls on the jurisdiction(s) where other constituent entities (group companies) are located. Under the EU Minimum Tax Directive, the UTPR can also apply to undertaxed profits in the jurisdiction of the group UPE itself.

- Liability arising under the UTPR, as the rule has been implemented in Ireland, will operate as an additional top-up tax payment.

- The mechanism for calculating the effective tax rate and the top-up tax is broadly the same for the UTPR as for the IIR. Top-up tax to be collected via the UTPR is allocated to jurisdictions where the group operates using an allocation key based on employee headcount and the value of tangible assets per jurisdiction, weighted equally.
- The UTPR comes into effect one year following the IIR and QDTT (see below), except for certain limited circumstances where it may apply at the same time as the IIR.

3. Qualified Domestic Top-up Tax (QDTT)

- Alongside the IIR and the UTPR, the OECD Model Rules and EU Minimum Tax Directive provide the option of introducing a QDTT. This will allow implementing jurisdictions to preserve their primary right of taxation over profits arising in their jurisdiction.
- The QDTT is designed to ensure collection of the top-up tax from in scope entities located in the jurisdiction and is fully creditable against any IIR or UTPR liability. It allows jurisdictions to collect any top-up tax due from domestic entities before an IIR or UTPR rule in another jurisdiction would apply to collect it or may, in certain circumstances, result in the IIR or UTPR not applying in respect of domestic entities (QDTT Safe Harbour status).
- Ireland has introduced a domestic top-up tax (QDTT) as part of the legislation implementing Pillar Two. The QDTT has been designed with a view to obtaining Qualifying and Safe Harbour status (see below) under peer review.

Substance-Based Income Exclusion

The rules for computation of the 15% effective tax rate include a “substance-based income exclusion” (SBIE). The SBIE excludes a certain amount of income from the scope of the Pillar Two top-up tax, calculated by reference to payroll costs and tangible assets in the jurisdiction. The SBIE starts with a 10% carve-out for payroll costs and 8% carve-out for tangible assets. The percentages then reduce annually over ten years, before settling at 5% for each category.

Safe Harbours

Pillar Two includes transitional and permanent safe harbour provisions, which aim to ease the administrative burden on in scope groups, particularly in the initial period of the application of the Pillar Two rules.

- The Transitional CbCR Safe Harbour operates through the use of simplified jurisdictional revenue and income information contained in an MNE’s qualified Country -by -Country Report, and jurisdictional tax information contained in an MNE’s qualified financial statements. During the three-year transitional period, the top-up tax in a jurisdiction for a fiscal year is deemed to be zero, and detailed GloBE calculations will not be required, where the group can meet one of three tests based on those data sources: de minimis (low revenues and low profits); simplified ETR; or routine profits (profits less than the SBIE amount).

- The Transitional UTPR Safe Harbour allows relief from the application of a UTPR to the jurisdiction of a UPE, where that jurisdiction has a statutory corporate tax rate of at least 20%, for fiscal years which are no more than 12 months in duration that begin on or before 31 December 2025 and end before 31 December 2026 (referred to as the transition period).

- A QDTT Safe Harbour, which allows MNE groups to recognise that Pillar Two top-up taxes have been accounted for in respect of entities in a jurisdiction that has implement a QDTT, and therefore to exclude those group entities when undertaking group top-up tax computations in another jurisdiction under an IIR or UTPR rule, other than in cases where the Switch-Off mechanism applies.

- A Simplified Calculations Safe Harbour, which allows for a simplified income, revenue and tax calculation to be used by eligible groups for non-material constituent entities (NMCE). This safe harbour allows, on election, for the jurisdictional top-up tax for a group for a fiscal year to be deemed to be zero where certain requirements are met. The safe harbour can only be availed of where there is at least one non-material constituent entity located in the jurisdiction and the group meets a routine profits test, a de minimis test or an effective tax rate test. An election may be made to determine the qualifying income or loss, qualifying revenue and adjusted covered taxes of an NMCE for a fiscal year using simplified calculations for the purposes of the simplified calculations safe harbour.

2 OECD/G20 Guidance on the GloBE Rules

The OECD has published the following guidance in respect of the Model Rules:

"OECD Pillar Two Model Rules Commentary"

- the document entitled OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS, OECD Publishing, Paris published by the OECD on 14 March 2022[3,4]

"OECD Pillar Two Model Rules Commentary Examples"

- the document entitled OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) Examples, OECD, Paris published by the OECD on 14 March 2022[5] (subsequently updated on 25 April 2024)[6]

"Safe Harbour and Penalty Relief Guidance"

- the document entitled OECD (2022), Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 20 December 2022[7]

"OECD Administrative Guidance February 2023"

- the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 2 February 2023[8]

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[3] https://www.oecd-ilibrary.org/docserver/1e0e9cd8-en.pdf?expires=1712564041&id=id&accname=guest&checksum=EDFB207CB1E2A5C332C24B4B117B1BA1

[4] In April 2024, the OECD released a Consolidated Commentary which updated the text of the Commentary to incorporate the various pieces of Administrative Guidance that were approved by the Inclusive Framework before the end of December 2023. This document is titled 'OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris' and can be found at https://www.oecd.org/en/publications/tax-challenges-arising-from-the-digitalisation-of-the-economy-consolidated-commentary-to-the-global-anti-base-erosion-model-rules-2023_b849f926-en.html

[5] https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two-examples.pdf

[6] https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-globe-rules-pillar-two-examples.pdf

[7] https://www.oecd.org/tax/beps/safe-harbours-and-penalty-relief-global-anti-base-erosion-rules-pillar-two.pdf

[8] https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf

"OECD Administrative Guidance July 2023"

- the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 17 July 2023[9]

"GloBE Information Return"

- the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 17 July 2023[10]

"OECD Administrative Guidance December 2023"

- The document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy –Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 18 December 2023.[11]

"OECD Administrative Guidance June 2024"

- The document entitled OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris published by the OECD on 17 June 2024.[12]

3 Destination Table of Irish Legislation and Model Rules

Appendix 1 contains a correlation table which cross references the legislation contained in Part 4A of the TCA 1997 with:

- The relevant article of the EU Minimum Tax Directive,
- The relevant article of the OECD Model Rules,
- OECD Commentary, where relevant, and
- OECD Administrative Guidance, where relevant.

[9] https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july-2023.pdf
[10] https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july-2023.pdf
[11] https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf

[12] https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-global-anti-base-erosion-rules-pillar-two-june-2024.pdf

4 Commencement of GloBE Rules

The IIR and QDTT came into effect in Ireland for fiscal years for in scope groups, or accounting periods for standalone entities, commencing on or after 31 December 2023.

The UTPR backstop rule will come into effect from 31 December 2024, or 31 December 2023 in certain limited circumstances. Such circumstances are where a derogation provided for under the Directive to allow a delayed application of the IIR and UTPR is availed of by another EU Member State[13]. In those circumstances, the UTPR must be applied by Ireland from 31 December 2023 in relation to constituent entities of a group where its UPE is located in that other Member State.

5 Chapter 1 – Interpretation and general

5.1 Section 111A - Interpretation (Part 4A)

Relevant definitions applicable for the purposes of Part 4A can be found in section 111A.

Important definitions for the operation of Part 4A are contained in this section including constituent entity, controlling interest, entity, financial accounting net income or loss, fiscal year, flow-through entity, group, investment entity, large-scale domestic group, low-taxed constituent entity, MNE group, ownership interest, parent entity, ultimate parent entity, etc.

Further guidance on the meaning of these definitions is contained in the OECD Pillar Two Model Rules Commentary to Article 10.1. Please refer to Appendix 1 which provides cross references for these definitions to the Directive and Model Rules (and/or Commentary and Administrative Guidance where required).

Of note, one of the conditions in the definition of investment fund is that the entity has as its main purpose the generation of investment income or gains, or protection against a particular or general event or outcome. The Model Rules and Directive describe this condition as the entity being primarily designed to generate investment income or gains, or protection against a particular or general event or outcome. Revenue does not, in this case, draw a distinction between having "a main purpose" and being "primarily designed".

[13] By way of derogation, the Directive provides that Member States in which no more than twelve UPEs of groups within the scope of the Directive are located may elect not to apply the IIR and the UTPR for six consecutive fiscal years beginning from 31 December 2023. The following Member States notified the Commission of their intention to elect for a delayed application of the IIR and UTPR in accordance with Article 50 of the Pillar Two Directive: Estonia, Latvia, Lithuania, Malta and Slovakia.

Investment Funds – Widely Held

The definition of 'investment fund' in section 111A requires, at condition (a), that the fund is designed to pool financial or non-financial assets from a number of investors, some of which are not connected. A question arises as to whether an investment fund that is held by a single investor that is itself widely held, (e.g. a pension fund or a feeder fund of a master fund) or a number of connected investors that are themselves widely held can satisfy the above requirement.

OECD Pillar Two Model Rules Commentary on the definition of investment fund states in relation to condition (a):

> "Paragraph (a) requires that some of the investors of the fund be unconnected…In some instances, a fund will only have one investor for a short period of time, even though the fund is designed to pool assets for more than one unrelated investor. For example, a fund might have a single investor when the entity is within the initial offering period or in the process of liquidation. A fund in these circumstances with only one investor will meet the criteria of paragraph (a) provided that the fund was designed to pool assets from a number of investors (some of which are unconnected)."

The issue of whether an investment fund held by a single investor that is itself widely held (or a number of connected investors that are themselves widely held) is not addressed in OECD Commentary or Administrative Guidance. However, on the basis that:

- a fund is designed to, and is capable of, pooling financial or non-financial assets from a number of investors, and
- the fund does so indirectly via a single investor that is itself widely held (or a number of connected investors that are themselves widely held), i.e., the beneficial owners of the investor(s) are not connected,

then Revenue is willing to accept that the fund meets the criteria of condition (a). The requirements of condition (a) will not be met where the connected investors noted above are ultimately owned by persons that are connected.

Investment Funds – Master-Feeder Funds

In addition to the 'widely-held' condition noted above, the other conditions set out in the definition of an 'investment fund' are that:

- the fund invests in accordance with a defined investment policy,
- the fund allows investors to reduce transaction, research and analytical costs or to spread risk collectively,
- the fund has as its main purpose the generation of investment income or gains, or protection against a particular or general event or outcome,

- the fund's investors have a right to return from the assets of the fund or income earned on those assets, based on the contribution they made,
- the fund is, or its management is, subject to the regulatory regime, including appropriate anti-money laundering and investor protection regulation for investment funds in the jurisdiction in which it is established or managed, and
- the fund is managed by investment fund management professionals on behalf of the investors.

It is noted that investment funds in Ireland may be established as master-feeder structures. The master fund may have multiple feeder funds or in some cases may have a single feeder fund which, in turn, has a number of investors. The master fund itself, or the management of the master fund, may be regulated. However, it may be the case that the feeder fund may not itself be regulated, nor is its management. Where a fund does not meet one or more of the criteria listed above it will not be considered to be an investment fund for the purposes of Part 4A.

Section 10 (Definitions) of the OECD Pillar Two Model Rules Commentary discusses the definition of investment funds at paragraphs 36 to 45. It states that the definition of Investment Fund draws on the definition of "investment entity" in IFRS 10 (IFRS Foundation, 2022[14]) and the European Union Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD) (European Union, 2011[15]). At paragraph 44, it says in relation to condition (f) that:

> "The requirement under paragraph (f) is that the fund or the fund manager is subject to a regulatory regime in the jurisdiction in which it is established or managed (including appropriate anti-money laundering and investor protection regulation). This paragraph is intended to encompass the different approaches to prudential regulation of Investment Funds. In respect of a fund that is established or created by a government or that acts as an agent or mandatary of a government, to the extent that it does not qualify as a Governmental Entity, regulation may take any form endorsed by the General Government, for example provisions for accountability and review contained in the Investment Fund's constituting legislation."

The OECD Commentary or Administrative Guidance does not provide for any 'look-through' provision to allow a fund to meet the relevant criteria as set out in legislation by amalgamating the features and characteristics of a master and feeder fund. On this basis, a master fund and feeder fund must be assessed separately when considering if the fund meets the conditions to be treated as an investment fund under Part 4A.

[14] IFRS Foundation (2022), International Financial Reporting Standards, https://www.ifrs.org/.
[15] European Union (2011), *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010*, http://data.europa.eu/eli/dir/2011/61/oj.

Umbrella Fund/Sub-Fund Structure

Section 111A TCA 1997 defines ‘entity’ for the purposes of Part 4A as follows:

> ‘entity’ means—
> a) any legal arrangement of whatever nature or form that prepares separate financial accounts, or
> b) any legal person other than an individual,
>
> but does not include central, state or local government, or their administration or agencies that carry out government functions.

A question arises as to the application of this definition to umbrella fund structures. Chapter 1 of the OECD Pillar Two Model Rules Commentary, at paragraph 2, states that:

> “A broad definition of Entity in Chapter 10 ensures that the term captures separate legal persons as well as arrangements such as partnerships and trusts.”

No further discussion of the definition of entity is included in the OECD Commentary or Administrative Guidance.

A sub-fund cannot be considered to be a separate legal person, however it may be considered to be a legal arrangement for these purposes. Therefore, where a sub-fund prepares separate financial accounts, it should meet the definition of an “entity” for the purposes of Part 4A TCA.

“Separate financial accounts” are not defined. However, Article 3.4.1 of the OECD Model Rules refers to a permanent establishment having "separate financial accounts". This is an indicator that separate financial accounts does not mean financial statements but rather accounts, or statements of accounts, showing the debits and credits making up the income/expenses/assets/liabilities of the arrangement. The OECD Pillar Two Model Rules Commentary notes that in some cases the permanent establishment will not have separate financial accounts. In that scenario, the second sentence of Article 3.4.1 provides that the Financial Accounting Net Income or Loss is the amount that would have been reflected in its separate financial accounts if they existed. Therefore, accounts or reports will need to be prepared in such a scenario to compute the amount that would have been reflected in the financial accounts. Article 3.4.1 requires this determination to be based on the accounting standard used in preparation of the Consolidated Financial Statements of the UPE.

Therefore, it appears reasonable to conclude that a sub-fund of an umbrella fund that prepares a separate P&L account and balance sheet should be considered to have "separate financial accounts". It is understood that where financial statements are prepared at the umbrella level, if there are multiple sub-funds, a separate P&L account and balance sheet will always be prepared per sub-fund.

In summary, where a sub-fund of an umbrella fund is a legal arrangement that prepares separate financial accounts, it should be considered to be an 'entity' for the purposes of Part 4A.

5.2 Section 111B - Principles for construing rules in accordance with OECD Pillar Two Guidance

The legislation contained in Part 4A is derived from the EU Minimum Tax Directive and the OECD Model Rules. There are also various documents which can provide guidance in relation to the calculation and administration of the IIR top-up tax, UTPR top-up tax or domestic top-up tax known as the OECD Pillar Two guidance (refer to Section 2 above). When calculating and administering the top-up taxes, Part 4A is construed so as to ensure consistency, as far as practically possible between Part 4A and the Model Rules as they apply in accordance with OECD Pillar Two guidance. As at the date of enactment of Finance (No.2) Act 2023, OECD Pillar Two Guidance consisted of—

- OECD Pillar Two Model Rules Commentary
- OECD Pillar Two Model Rules Commentary Examples*
- Safe Harbour and Penalty Relief Guidance
- OECD Administrative Guidance February 2023
- OECD Administrative Guidance July 2023, and
- The GloBE Information Return

The legislation contains a mechanism to incorporate references to future iterations of OECD Pillar Two guidance within the definition of 'OECD Pillar Two guidance' by way of order of the Minister for Finance.

To date two such orders have been made in respect of further OECD guidance packages, OECD Administrative Guidance December 2023[16] and OECD Administrative Guidance June 2024.[17]

[16] https://www.irishstatutebook.ie/eli/2023/si/675/made/en/print
[17] https://www.irishstatutebook.ie/eli/2024/si/551/made/en/print#

In general, OECD Administrative Guidance is interpretative in nature, i.e., providing clarity as to the operation of the OECD Pillar Two Model Rules. However, there are instances where the OECD Administrative Guidance introduces a supplementary rule. In these instances, primary legislation is required in order to give effect to the supplementary rule in Irish legislation. This is because the primary legislation cannot be construed in accordance with the Administrative Guidance if the primary legislation does not already contain the supplementary rule. Where that is the case, the primary legislation will commence in accordance with the relevant provisions of the relevant Finance Act. Where primary legislation is not required, and the OECD Administrative Guidance has been adopted either by way of inclusion in the definition of "OECD Pillar Two guidance" in section 111B(1) or by way of order of the Minister for Finance in accordance with section 111B(3), then it should be considered to provide certainty with regard to the application of a rule already in force and therefore a commencement date is not required in respect of that OECD Administrative Guidance (unless the Administrative Guidance provides for a specific commencement date).

** A revised version of this document was published on 25 April 2024 and incorporated into Section 111B by Finance Act 2024.*

5.3 Section 111C - Scope of Part 4A

Part 4A applies to constituent entities (and qualifying entities subject to domestic top-up tax - see section 13 below) located in the State which are members of MNE Groups or large-scale domestic groups (in scope groups) which have passed the consolidated revenue test. Part 4A does not apply to certain types of entities, referred to as excluded entities, despite them being in scope of the rules due to being part of an in scope group which has met the consolidated revenue test.

The consolidated revenue test means that the revenue of the group (including that of any excluded entities – see below) recorded in the group's consolidated financial statements is no less than the consolidated revenue threshold for at least two of the four fiscal years immediately preceding that fiscal year. The consolidated revenue threshold is €750,000,000 for a fiscal year of 12 months and is pro-rated for fiscal years less than or greater than 12 months. Further guidance on the consolidated revenue test is contained in OECD Administrative Guidance December 2023 at section 3.1.[18]

[18] https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf

An excluded entity includes an entity which is—

I. a governmental entity,
II. an international organisation,
III. a non-profit organisation,
IV. a pension fund,
V. an investment fund that is an ultimate parent entity, or
VI. a real estate investment vehicle that is an ultimate parent entity.

In addition:

a) An entity will also be an excluded entity where at least 95 per cent of the value of that entity is owned by one or more entities referred to in (I) to (VI) above, directly or through one or more excluded entities, other than a pension services entity, that
   - operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the entities referred to above, or
   - exclusively carries out activities ancillary to those performed by the entities referred to above.

b) an entity will be an excluded entity where at least 85 per cent of the value of that entity is owned, directly or through one or more excluded entities, by one or more entities referred to in (I) to (VI) above other than a pension services entity, provided that substantially all of the income of the entity is derived from dividends or equity gains or losses that are excluded from the calculation of qualifying income or loss.

However, an excluded entity referred to in (a) or (b) above is not treated as an excluded entity where an election is made by a filing constituent entity. Such election will have effect for a period of five years.

The exclusions in (a) and (b) above apply where an entity that is a member of a group is held by an excluded entity that is not a member of that group. An entity that is a member of a group that is held by an investment fund or a real estate investment vehicle can still meet the requirements under these two exclusions notwithstanding that that the investment fund or real estate investment vehicle is not the UPE of that group.

Example 5.3.1

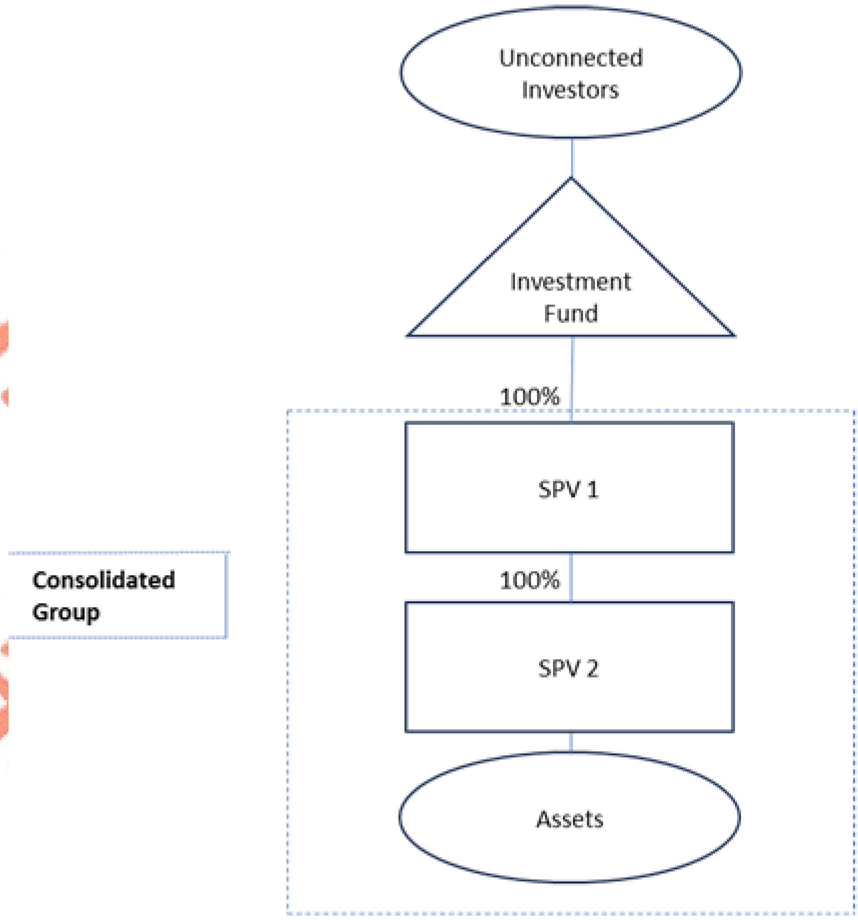

Figure 5.3.1: A group diagram with investment funds, excluded entities and a UPE which is an SPV

An investment fund owns 100% of the ownership interests in SPV 1, which operates exclusively to hold assets for the benefit of the investment fund. The investment fund is widely held by many unconnected investors and meets the definition of an investment fund in section 111A TCA 1997. SPV 1 holds 100% of the ownership interests in SPV 2, which operates exclusively to hold assets for the benefit of the investment fund. The investment fund is treated as an investment entity under IFRS 10 with the result that it does not consolidate the results of SPV 1 and SPV 2 on a line-by-line basis in its consolidated financial statements. SPV 1 prepares consolidated financial statements in which the results of SPV 2 are consolidated on a line-by-line basis. Both SPV 1 and SPV 2 are located in Ireland for the purposes of Part 4A.

In this scenario, SPV 1 is the UPE of a group. An entity will be an excluded entity where at least 95 per cent of the value of that entity is owned by an excluded entity, directly or through one or more excluded entities, other than a pension services entity, where it operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the excluded entity. An entity that is a member of a group that is held by an investment fund can still meet these requirements notwithstanding that that the investment fund is not the UPE of that group. Therefore, SPV 1 and SPV 2 should be excluded entities.

Further guidance on the scope of the Pillar Two top-up taxes and excluded entities is contained in OECD Pillar Two Model Rules Commentary to Articles 1.1 to 1.5.

5.4 Section 111D - Location of constituent entity

An entity, other than a flow through entity, will be located for the purposes of Part 4A where it is resident for tax purposes, based on its place of management, creation or other criteria. If it is not possible to determine the location of an aforementioned entity based on where it is considered to be tax resident, it will be located where it is created. There are further provisions in section 111D TCA 1997 which set out the rules in relation to the location of a flow through entity, a permanent establishment and dual located entities. Further guidance on the location of entities for the purposes of Pillar Two top-up taxes is contained in OECD Pillar Two Model Rules Commentary to Article 10.3.

The OECD Pillar Two Model Rules Commentary to Article 10 states that:

> "The principle underlying the rules is to follow the treatment under local law. The rules give a priority to tax residence whenever possible. In most cases, an Entity will be a tax resident in a jurisdiction, and that will be its location for the purpose of the GloBE Rules. In the event that there is no tax residence, the location will be the place of creation."

On the basis of this priority to tax residence, where an entity is

- created during a fiscal year in a jurisdiction, and
- not resident in that jurisdiction or any other jurisdiction for the purposes of tax,

and establishes tax residence in another jurisdiction during that fiscal year (based on its place of management or similar criteria), then the entity will be considered to be located in the jurisdiction that it has established residence for that fiscal year.

It is noted that a stateless constituent entity will be deemed to be located in a jurisdiction in which no other entity is located so that the top-up taxes, while operating on a jurisdictional basis, can be applied to a stateless entity.

6 Chapter 2 – IIR and UTPR

6.1 Section 111E - Ultimate parent entity in the State

A UPE located in the State will be subject to IIR top-up tax if it has an ownership interest in a low taxed constituent entity or it was itself a low taxed constituent entity during the fiscal year.

6.2 Section 111F - Intermediate parent entity in the State

An intermediate parent entity located in the State will be subject to IIR top-up tax where:

- its UPE is located in a third country or Member State that has not applied a qualified IIR to the UPE, and
- it owns an ownership interest in a low taxed constituent entity during the fiscal year, or
- it was itself a low taxed constituent entity during the fiscal year.

The intermediate parent entity will not be subject to the IIR if its UPE is subject to a qualified IIR during the fiscal year or another intermediate parent entity which owns a controlling interest in the first mentioned intermediate parent entity is subject to a qualified IIR during the fiscal year.

Example 6.2.1

A Co is located in Country A and is the UPE of the ABC Group. A Co directly owns B Co 1 and B Co 2, both located in Ireland. B Co 1 and B Co 2 each hold 50% of the Ownership Interests in C Co, which is a constituent entity located in Country C. The ownership interests of C Co are ordinary shares that carry an equal right to profit distributions and capital. A Co, B Co 1, B Co 2 and C Co are the only constituent entities in the ABC Group.

A Co has an ETR for the fiscal year above 15% but B Co 1, B Co 2 and C Co all have an ETR for the Fiscal Year that is below 15%.. Of the three jurisdictions, only Ireland has implemented a qualified IIR. A diagram illustrating the holding structure and location of the members of the ABC Group is set out below.

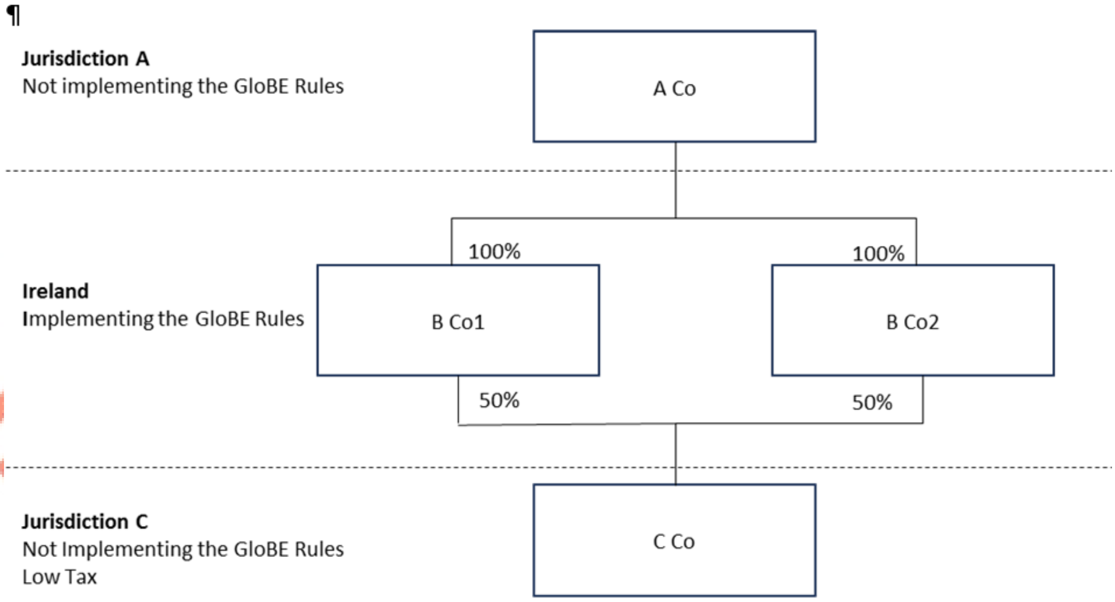

Figure 6.2.1: Holding structure where the UPE jurisdiction has not adopted a qualified IIR.

A Co is the UPE and would have the priority to apply the IIR if Country A had introduced a qualified IIR. In this case, however, only Ireland has introduced a qualified IIR and thus, the intermediate parent entities (B Co 1 and B Co 2) are required to apply the IIR in accordance with section 111F TCA 1997 in respect of themselves and B Co 1 and B Co 2 must apply the IIR based on their allocable share of the top-up tax (50% each) of C Co.

Further examples of the ‘top-down’ approach as it relates to intermediate parent entities are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 2.1.3.

6.3 Section 111G - Intermediate parent entity located in the State and held by excluded ultimate parent entity

An intermediate parent entity located in the State whose ownership interest is held by a UPE which is an excluded entity is subject to IIR top-up tax in respect of its low taxed constituent entities and/or itself if it is a low taxed constituent entity. The intermediate parent entity located in the State will not be subject to IIR top-up tax if its controlling interest is held by an intermediate parent entity which is subject to a qualified IIR.

Example 6.3.1

A Co is located in Country A and is the UPE of the ABC Group. A Co is an excluded entity. A Co directly owns B Co located in Ireland. B Co holds 100% of the ownership interests in C Co, which is a constituent entity located in Country C. The ownership interests of C Co are ordinary shares that carry an equal right to profit distributions and capital. A Co, B Co and C Co are the only constituent entities in the ABC Group.

A Co and B Co each have an ETR for the fiscal year that is above the minimum rate (“high-tax jurisdictions”), however, C Co is an LTCE located in a low-tax jurisdiction. Of the three jurisdictions, Countries A and Ireland have implemented a qualified IIR. A diagram illustrating the holding structure and location of the members of the ABC Group is set out below.

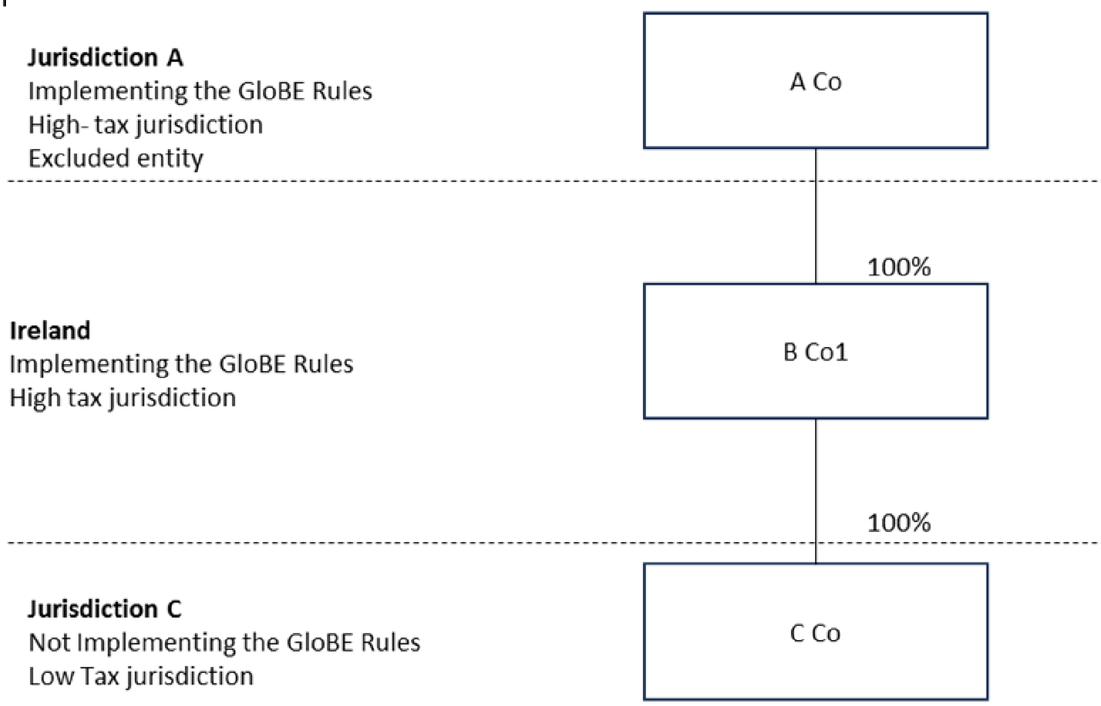

Figure 6.3.1: Group structure where the low taxed constituent entity is located in a jurisdiction which has not implemented the GloBE Rules and the UPE is an excluded entity.

A Co is the UPE and would have the priority to apply the IIR. While Country A has introduced a qualified IIR, the UPE is an excluded entity. As such, as Ireland has introduced a qualified IIR, the intermediate parent entity (B Co) is required to apply the IIR in accordance with section 111G TCA 1997. B Co must apply the IIR and pay the top-up tax under the IIR equal to the full amount of C Co’s top-up tax. If B Co had an ETR less than the minimum rate of 15% it would be required to apply the IIR in accordance with section 111G TCA 1997 in respect of itself.

6.4 Section 111H - Partially-owned parent entity in the State

A partially owned parent entity (POPE) located in the State will be subject to IIR top-up tax in respect of itself if it is a low taxed constituent entity, or any low taxed constituent entities it has an ownership interest in. A POPE is a constituent entity that owns (directly or indirectly) an ownership interest in another constituent entity in the same group, and the right to more than 20% of the POPE’s profits are held by persons that are not part of the MNE group. A POPE located in the State will not be subject to the IIR if its ownership interests are wholly owned by another POPE which is subject to a qualified IIR.

Examples of the ‘top-down’ approach as it relates to POPEs are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 2.1.5.

6.5 Section 111I - Allocation of top-up tax under IIR

The IIR top-up tax due by a parent entity (i.e., UPE, IPE, or POPE, as the case may be) in relation to its low taxed constituent entities will be based on the top-up tax of the low taxed constituent entities (calculated in accordance with section 111AD) multiplied by the parent entity’s allocable share in the top-up tax for the fiscal year (i.e., the proportion of the qualifying income of the low taxed constituent entity attributable to ownership interests held by the parent compared to the qualifying income of the low taxed constituent entity). The IIR top-up tax due by the parent entity in relation to itself is the full amount of the top-up tax calculated for that parent entity.

Further guidance on the allocation of IIR top-up tax to parent entities is contained in OECD Pillar Two Model Rules Commentary to Article 2.2. Examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 2.2.3 and 2.2.4.

6.6 Section 111J - IIR offset mechanism

Where a parent entity located in the State holds an ownership interest in a low-taxed constituent entity via an IPE or POPE which is subject to a qualified IIR, the IIR top-up tax due by that parent entity is reduced by an amount equal to the portion of the parent entity´s allocable share of the top-up tax which is due by the IPE or POPE.

Further guidance on the IIR offset mechanism is contained in OECD Pillar Two Model Rules Commentary to Article 2.3. Examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 2.3.2.

6.7 Section 111K - Effect of qualified domestic top-up tax

In accordance with Article 11 of the Directive, this section provides that where a Member State does not apply a QDTT to collect any ‘additional top-up tax’ (see section 9.4) arising from a recalculation of the ETR and top-up tax for a previous year, then additional top-up tax is computed and added to the amount of jurisdictional top-up tax in respect of the jurisdiction where the constituent entity is located (see section 9.2), to be collected via the IIR or UTPR.

In addition, where the QDTT in respect of a constituent entity has not been paid within 4 years of the fiscal year in which it was due, the unpaid amount is added to the jurisdictional top-up tax in respect of the jurisdiction where the constituent entity is located, to be collected via the IIR or UTPR. For these purposes, Revenue will accept the offset of tax refunds against a QDTT liability as equivalent to the QDTT being paid.

Where domestic top-up tax due under Part 4A TCA 1997 has not been paid within 4 fiscal years of the fiscal year in which it was due, the domestic top-up tax will no longer be payable to the Revenue Commissioners.

When calculating the financial accounting net income or loss of a constituent entity for the purposes of a QDTT applied in another jurisdiction, an acceptable financial accounting standard may be used or an authorised financial accounting standard which is different from the one used by the UPE when preparing the consolidated financial statements (provided there is an adjustment to prevent any material competitive distortions). The definitions of acceptable financial accounting standard, authorised financial accounting standard, consolidated financial statements and material competitive distortions are contained in section 111A TCA 1997 and further guidance on these terms can be found contained in OECD Pillar Two Model Rules Commentary to Article 10.1.

6.8 Section 111L - Application of UTPR across MNE group

A constituent entity located in the State is subject to the UTPR top up tax if the UPE is located in a jurisdiction which does not apply a qualified IIR or the UPE is an excluded entity (see section 5.3). The UTPR top-up tax will not apply if the constituent entity is an investment entity.

6.9 Section 111M - Application of UTPR in jurisdiction of ultimate parent entity

Where the UPE of the MNE group is a low taxed constituent entity and not located in a Member State, a constituent entity of that MNE group located in the State will be subject to the UTPR, provided that constituent entity is not an investment entity. However, the constituent entity will not be subject to the UTPR where the UPE is subject to a qualified IIR in respect of itself and its low taxed constituent entity(ies).

6.10 Section 111N – Calculation and allocation of UTPR top-up tax amount

The UTPR top-up tax amount arising in respect of an MNE group that is allocated to a constituent entity is calculated by multiplying the UTPR top-up tax amount of an MNE group allocated to the State for a fiscal year, by the UTPR percentage in respect of the constituent entity for a fiscal year.

The total UTPR top-up tax of an MNE group for a fiscal year is equal to the sum of the top-up tax calculated for each low-taxed constituent entity of the MNE group for that fiscal year.

The UTPR top-up tax amount of an MNE group allocated to the State for a fiscal year is calculated by multiplying the total UTPR top-up tax amount of an MNE group for a fiscal year, by the UTPR percentage in respect of the MNE group located in the State for a fiscal year.

The UTPR percentage in respect of the MNE group located in the State for a fiscal year is based on the portion of employees and net book values of tangible assets of all the constituent entities of the MNE group located in the State relative to the total number of employees of all the constituent entities of the MNE group located in jurisdictions that have a qualified UTPR in force for the fiscal year.

The UTPR percentage in respect of a constituent entity for a fiscal year is based on the portion of employees and net book values of tangible assets of the constituent entity relative to the total number of employees of all the constituent entities of the MNE group located in the State.

Example 6.10.1

A Co is the UPE of the ABC Group. A Co is located in jurisdiction A. A Co directly owns 100% of B Co located in jurisdictions B, and 100% of C Co and 100% of D Co, located in Ireland. A diagram illustrating the holding structure and location of the members of the ABC Group is set out below.

C Co has 150 full time employees and tangible assets with a net book value of €15m. In addition to the tangible assets, C Co also holds cash of €2m and intangible assets of €5m. D Co has 50 full time employees and tangible assets with a net book value of €5m. There are no other group entities located in Ireland, other than C Co and D Co.
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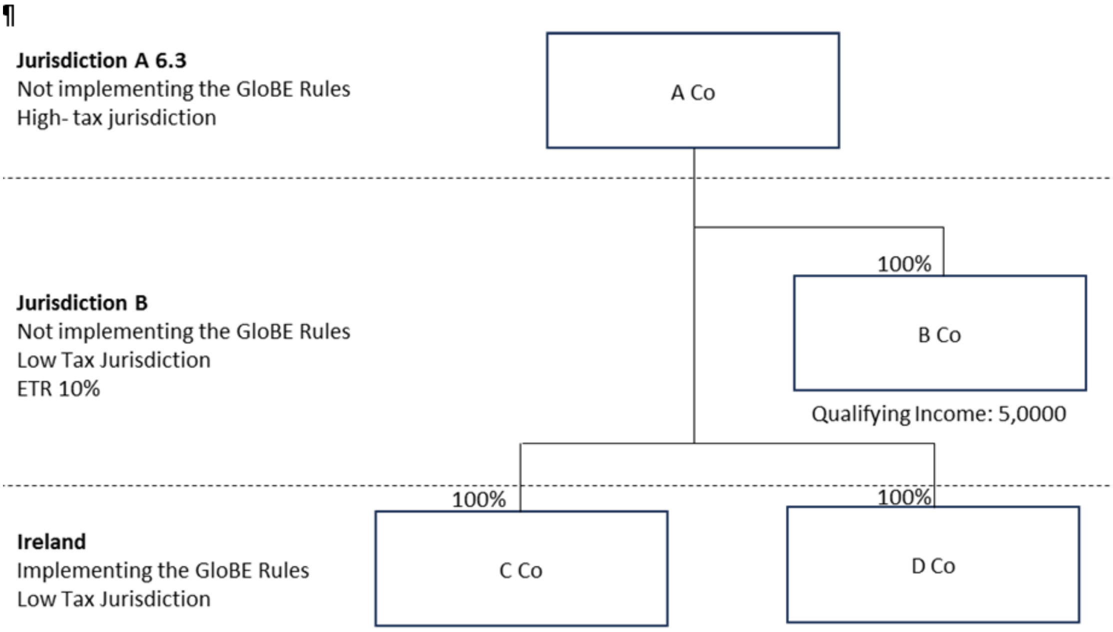

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Figure 6.10.1: Holding group structure where the UTPR applies

A Co is located in a jurisdiction that does not apply the IIR. B Co is a LTCE, also located in a jurisdiction that does not apply the IIR. C Co and D Co will be required to apply the UTPR with regards to B Co’s qualified income.

The UTPR top-up tax is equal to B Co's qualified income multiplied by the difference between the minimum tax rate and B Co's effective tax rate. The UTPR top-up tax is 250 [5000*(15%-10%)].

The next step is to allocate the UTPR top-up tax on a jurisdictional basis. This will require the UTPR top-up tax amount (i.e., 250) to be multiplied by the UTPR percentage for each jurisdiction operating a qualified UTPR.

The UTPR percentage is based on the formula found in section 111N(6):

$$((A/B) * 50\%) + (C/D) * 50\%)).$$

A is the total number of employees of all constituent entities of the MNE group located in the State.
B is the total number of all employees of all constituent entities in the MNE group located in jurisdictions which have a qualified UTPR in force for that fiscal year.
C is the sum of the net book value of tangible assets of all constituent entities of the MNE group located in the State.
D is the sum of the net book value of tangible assets of all constituted entities of the MNE group located in jurisdictions that have a qualified UTPR in force for that fiscal year.

In this example all employees and tangible assets of the group located in jurisdictions that have a qualified UTPR in force are located in Ireland. As Ireland is due to collect 100% of the UTPR top-up tax, 250 will need to be collected from the two constituent entities of the MNE group located in Ireland.

The UTPR top-up tax of 250 is allocated among C Co and D Co based on number of employees and tangible assets.

The allocation of the UTPR top-up tax to constituent entities located within a jurisdiction is based on the percentage derived from the formula located in section 111N(1)(b). The formula is:

$$((A/B) * 50\%) + (C/D) * 50\%)).$$

A is the total number of employees of the constituent entity.
B is the total number of employees of all the constituent entities of the MNE group located in the State.
C is the sum of the net book value of the tangible assets of the constituent entity.
D is the sum of the net book values of the tangible assets of all constituent entities of the MNE group located in the State.

Based on the formula and the figure provided for C Co, its allocation of the UTPR top up tax will be 187.5. This is 75% of 250. The 75% figure was produced by the formula ((150/200 * 50%) + (15/20 * 50%)) = 75%.

The corresponding UTPR top-up tax figure for D Co is 62.5, being 25% of 250. The 25% figure was produced by the formula ((50/200 * 50%) + (5/20 * 50%) = 25%.

If the qualified UTPR top-up tax allocated to a jurisdiction in a prior fiscal year has not resulted in the constituent entities in that jurisdiction having an additional cash tax expense equal to that amount of tax for that prior fiscal year, then the UTPR percentage for that MNE group for that jurisdiction will be deemed to be zero for the fiscal year and the number of employees and net book value of tangible assets located in the jurisdiction are excluded from the above calculations. However, this will not apply if all jurisdictions with a qualified UTPR in force for the fiscal year have a UTPR percentage of zero for the MNE group.

Example 6.10.2

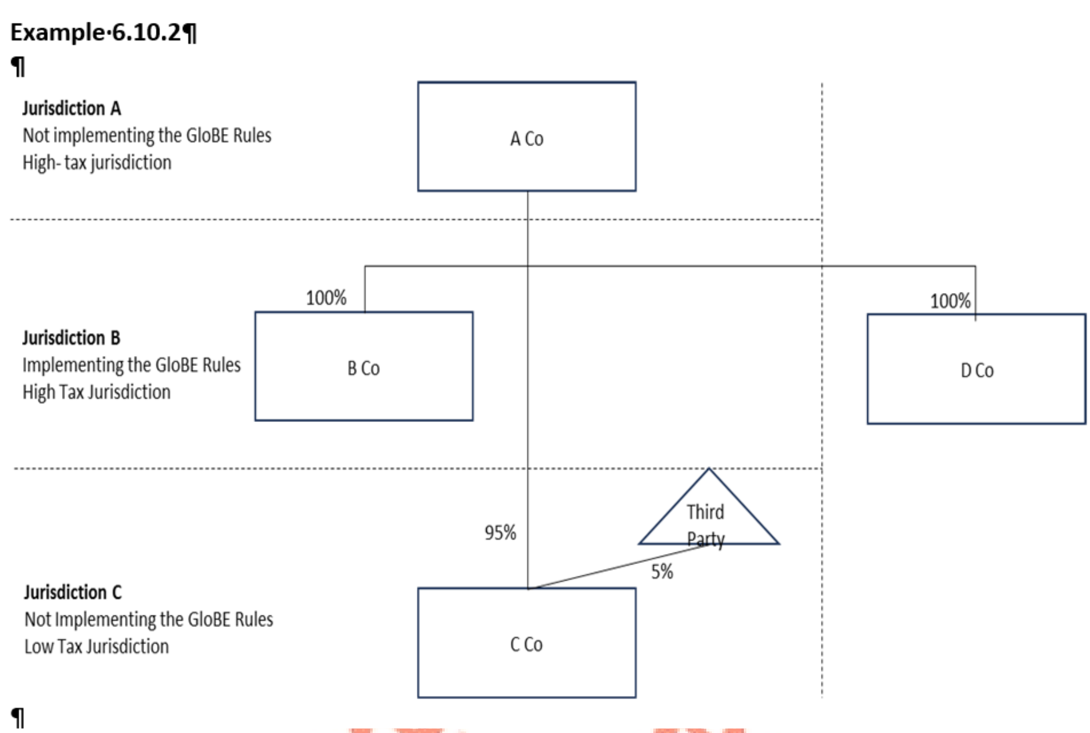

Figure 6.10.2: Holding group structure where the UTPR applies across multiple jurisdictions.

In this example, no constituent entity is required to apply a qualified IIR with respect to the top-up tax of C Co because jurisdiction A has not implemented the GloBE Rules and B Co and D Co do not have ownership interests in C Co. Therefore, the total amount of top-up tax is allocated under the UTPR.

Assume that the UTPR top-up tax amount in respect of C Co is €100 for each of fiscal years 1 to 4 and the UTPR percentages of jurisdictions B and D are 50% each over the same period.

For Fiscal Year 1, jurisdiction B and D are each allocated an amount of top-up tax of €50. Jurisdiction B is not able to collect the whole amount of €50 for the taxable year in which Fiscal Year 1 ends. Section 111N(8) TCA 1997 provides that jurisdiction B's

UTPR percentage is deemed to be zero for Year 2 as long as the UTPR top-up tax amount of €50 allocated to jurisdiction B in Year 1 has not resulted in B Co having an equivalent additional cash tax expense. This means that no more UTPR top-up tax amount is allocated to Jurisdiction B until it has been able to impose the relevant tax.

In Fiscal Year 2, jurisdiction B has a UTPR percentage of zero. As a consequence, the whole UTPR top-up tax calculated for Fiscal Year 2 (€100) is allocated to jurisdiction D. Jurisdiction B is again not able to collect the whole amount of UTPR top-up tax of €50 (allocated in respect of Fiscal Year 1) for the taxable year in which Fiscal Year 2 ends. Further, jurisdiction D is also not able to collect the whole amount of €100 (allocated in respect of Fiscal Year 2) for the taxable year in which Fiscal Year 2 ends. As provided in section 111N(8), both jurisdictions B and D would have a UTPR percentage of zero for Fiscal Year 3.

However, section 111N(9) stipulates that section 111N(8) would not apply when it would result in all UTPR jurisdictions' UTPR percentages being reduced to zero. In Fiscal Year 3, the total UTPR top-up tax amount of €100 is allocated to Jurisdictions B and D in respect of their UTPR percentage based on the formula under Section 111N(2) (50%/50%) without the application of Section 111N(8) .

Finally, all remaining UTPR top-up tax amounts are collected in both jurisdictions for the taxable year in which Fiscal Year 3 ends. In Fiscal Year 4, the UTPR top-up tax amount of €100 is allocated to jurisdictions B and D based on their respective UTPR percentages determined using the formula in Section 111N(2).

The following table summarises the amount of UTPR top-up tax allocated to each jurisdiction under this example.

Year	UTPR Top-up Tax Amount	Allocation Jurisdiction B	Allocation Jurisdiction D
1	€100	€50 (UTPR Percentage of 50%)	€50 (UTPR Percentage of 50%)
2	€100	€0 (UTPR Percentage of 0%)	€100 (UTPR Percentage of 100%)
3	€100	€50 (UTPR Percentage of 50%)	€50 (UTPR Percentage of 50%)
4	€100	€50 (UTPR Percentage of 50%)	€50 (UTPR Percentage of 50%)

Further guidance on the calculation and allocation of the UTPR top-up tax is contained in OECD Pillar Two Model Rules Commentary to Article 2.4, 2.5 and 2.6. Further examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 2.4.1, 2.4.2, 2.5.3 and 2.6.4.

7 Chapter 3 – Calculation of the qualifying income or loss

7.1 Section 111O – Determination of qualifying income or loss

The starting point for calculating the qualifying income or loss of a constituent entity (which is a key component of the calculation of the effective tax rate for a jurisdiction) is the financial accounting net income or loss (FANIL) of that entity. The FANIL is defined as the net income or loss determined for a constituent entity in preparing consolidated financial statements of the UPE for a fiscal year before any consolidation adjustments eliminating intra-group transactions. Where a UPE prepares consolidated financial statements under more than one accounting standard for a fiscal year, it must be consistent in the accounting standard applied for the purposes of Part 4A for each fiscal year.

Where it is not reasonably practicable for the FANIL of a constituent entity to be determined based on an acceptable financial accounting standard or the authorised financial accounting standard used to prepare the consolidated financial statements of the UPE, another acceptable financial accounting standard or authorised financial accounting standard may be used where:

- the accounts of the entity are maintained based on that accounting standard,
- the information contained in the accounts is reliable, and
- permanent differences greater than €1m between the application of that accounting principle or standard compared to the principle or standard used in the consolidated financial statements of the UPE are adjusted to conform to the treatment required by the standard used to prepare the consolidated financial statements.

If the consolidated financial statements of the UPE are prepared using a financial accounting standard which is not an acceptable financial accounting standard, those consolidated financial statements are adjusted to prevent any 'material competitive distortion' when determining the qualifying income or loss.

Material competitive distortion means, in respect of the application of a specific principle or procedure under a set of generally acceptable accounting principles, an application that results in an aggregate variation of income or expense of more than €75,000,000 in a fiscal year as compared to the amount that would have been determined by applying the corresponding principle or procedure under International Financial Reporting Standards.

If the application of a specific principle or procedure under a set of generally accepted accounting principles results in a material competitive distortion, the principle or procedure is adjusted to conform to the treatment required for that item or transaction under IFRS.

Further guidance on financial accounts and material competitive distortion is contained in OECD Pillar Two Model Rules Commentary to Article3.1 and Article 10.1 respectively.

The FANIL is further adjusted in arriving at qualifying income or loss in accordance with sections 111P, 111Q, 111R, 111S, 111W, 111AB, 111AM, 111AN, 111AQ, 111AR, 111AV and 111AW discussed below.

7.2 Section 111P – Adjustments to determine qualifying income or loss

To determine the qualifying income or loss of a constituent entity, the FANIL of that constituent entity is adjusted for various tax policy items. There are also a number of elections which impact on these adjustments.

The FANIL is adjusted by each of the following:

(a) net taxes expense,
(b) excluded dividends,
(c) excluded equity gains or losses,
(d) included revaluation method gains or losses,
(e) gains or losses from the disposal of assets and liabilities excluded pursuant to section 111AN,
(f) asymmetric foreign currency gains or losses,
(g) policy disallowed expenses,
(h) prior period errors and changes in accounting principles,
(i) accrued pension expenses, and
(j) the net amount of the additions and reductions to qualifying income for the fiscal year as set out in section 111W.

Guidance with respect to each of the above adjustments from (a) to (i) is contained in OECD Pillar Two Model Rules Commentary to article 3.2. Adjustment (j) above relates to Section 2.9.2 of OECD Administrative Guidance February 2023, relating to the equity gain or loss inclusion election and qualified flow-through tax benefits (see section 8.4 below).

Examples in relation to excluded dividends and asymmetric foreign currency gains or losses are contained in OECD Pillar Two Model Rules Commentary Examples to Article 3.2.1(b) and 3.2.1(f).

Asymmetric foreign currency gains or losses

Asymmetric foreign currency gains or losses are foreign currency exchange gains or losses (FXGL) that arise due to differences between the functional currency for accounting purposes and the one used for local tax purposes. The legislation does not make any adjustments for FXGL when the functional currencies for accounting and tax purposes are the same. In those circumstances, any FXGL reflected in the financial accounts are included in the qualifying income or loss computation.

However, the legislation makes adjustments to avoid distortions that could arise when the functional currencies used for accounting and tax differ. The definition of asymmetric foreign currency gain or loss includes four types of FXGL. The FXGL included in the definition are described based on the relationship between the tax functional currency, the accounting functional currency and a third foreign currency. The tax functional currency is the functional currency used to determine the constituent entity's taxable income or loss for a covered tax in the jurisdiction in which it is located. The third functional currency is a currency that is not the constituent entity's tax functional currency or accounting functional currency. For entities located in Ireland, the tax functional currency of the entity depends on the nature of the taxable income, such that an entity may have more than one tax functional currency for these purposes, e.g., the tax functional currency in relation to Schedule D Case I trading income will be the accounting functional currency for that entity but the tax functional currency in relation to passive income will be Euro. Therefore, the asymmetric foreign currency gains or loss adjustment for an entity located in Ireland may need to take into account different tax functional currencies for different sources of income.

Example 7.2
An Irish company has a trade selling widgets. The company has an accounting functional currency of USD. The company has some sales in GBP. The excess GBP is lent to a group company. In the income statement there is an unrealised foreign exchange (FX) gain on GBP trade receivables of 50 and there is an unrealised FX gain on a non-trading GBP loan receivable of 100.

The tax functional currency in respect of the company's trading income is USD as the trading income is determined in USD and the accounting functional currency is USD. Therefore, there is no asymmetry in respect of the trade receivable and the provisions of section 111P(2)(f) TCA 1997 should not apply to the unrealised FX gain of 50. The tax functional currency in respect of the company's non-trading income is Euro and is therefore Euro for the purposes of analysing the unrealised FX gain of 100, because the FX arises in respect of a non-trading receivable. As the accounting functional currency is USD, there is asymmetry as defined and the provisions of section 111P(2)(f) TCA 1997 should apply to the unrealised FX gain of 100.

Stock based compensation

A five-year election may be made such that in the calculation of qualifying income or loss of the constituent entity in respect of a fiscal year, the entity may substitute the amount allowed as a deduction in the calculation of its taxable income in the jurisdiction where it is located for the amount expensed in its financial accounts for a cost or expense that was paid with stock-based compensation. Guidance with respect this adjustment is contained in OECD Pillar Two Model Rules Commentary to article 3.2.2.

Arm's length

Transactions between constituent entities of an MNE group in different jurisdictions must be consistent with the arm's length principle and recorded at the same amount in both constituent entities. If a loss arises between two constituent entities in the same jurisdiction on the sale or transfer of an asset, it is recorded at the arm's length price if that loss is included in the qualifying income or loss of the constituent entity. Guidance with respect this adjustment is contained in OECD Pillar Two Model Rules Commentary to article 3.2.3. Examples in relation to this provision are contained in OECD Pillar Two Model Rules Commentary Examples to Article 3.2.3.

There is no interaction between the following:

(i) the transfer pricing provisions in Part 35A TCA 1997 which apply for the purposes of calculating corporation tax, and

(ii) the application of the arm's length principle contained in section 111P(4) TCA 1997 for the purposes of GloBE top-up taxes.

The application of both provisions to an arrangement or transaction needs to be considered independently.

Refundable and marketable transferable tax credits

A qualified refundable tax credit or marketable transferable tax credit is treated as income when calculating the qualifying income or loss of a constituent entity. A non-qualified refundable tax credit is not treated as income but rather is treated as a reduction to covered taxes. A constituent entity may follow its accounting policy for the purposes of determining the qualifying income or loss of the constituent entity for a fiscal year where a qualified refundable tax credit or marketable transferable tax credit is related to the acquisition, or construction, of an asset and the constituent entity has an accounting policy of reducing the carrying value of the asset in respect of such a tax credit, or recognises the tax credit as deferred income over the productive life of that asset.

Detailed guidance on the conditions relating to qualified refundable tax credits and marketable transferable tax credits is contained in OECD Pillar Two Model Rules Commentary to article 3.2.4 and section 2 of OECD Administrative Guidance July 2023. The tax credit for research and development and the digital games corporation tax credit should be considered to be a qualified refundable tax credit for these purposes.

The OECD Administrative Guidance July 2023 states that the Inclusive Framework will consider providing further guidance to address transitional issues and deferred tax implications in respect of qualified refundable tax credits and other tax credits, including for those qualified refundable tax credits and other tax credits that are taxable income.

Where a qualifying refundable tax credit or marketable tax credit is:

- claimed in respect of a fiscal year prior to a group coming in scope of a top-up tax under Part 4A, and
- that credit is accounted for by reducing the carrying value of an asset or treating the credit as deferred income over the life of the asset,

the qualifying income of an entity will increase for a fiscal year(s) when the entity comes in scope of a top-up tax, in line with the accounting treatment. This would result in a lowering of the effective tax rate for the jurisdiction for that fiscal year where a corresponding deferred tax asset has not been reflected or disclosed in the entity's accounts.

However, in the absence of further clarification through agreed administrative guidance, where a constituent entity:

- has claimed a qualifying refundable tax credit or marketable tax credit in respect of a fiscal year prior to that entity coming in scope of a top-up tax under Part 4A, and
- that credit is accounted by reducing the carrying value of an asset or treating the credit as deferred income over the life of the asset,

then a deferred tax asset equal to the amount of the tax credit which has not yet been booked to the income statement at the beginning of the transition year multiplied by the applicable domestic tax rate, or the minimum rate if lower, shall be treated as a deferred tax accounting attribute to be used in the calculation of the ETR in the transition year and subsequent years (whether or not it is reflected or disclosed in the financial accounts of the entity). The creation of the deferred tax asset will not give rise to a reduction in covered taxes in the transition year or later years. The deferred tax asset will unwind as the deferred income is recognised in the accounts, or over the same period as the asset is depreciated, as the case may be.

Example

Company A receives a qualifying refundable tax credit of €40,000 in 2023. For accounting purposes, the credit is netted against the carrying value of machinery purchased, in part, using the qualifying refundable tax credit. The cost of the machinery was €160,000, therefore the carrying value of the machinery booked to the accounts is €120,000. The depreciation policy in respect of that type of machinery is to depreciate the cost of the asset over 8 years including the year of acquisition. Absent the qualifying refundable tax credit, depreciation of €20,000 would have been booked to the income statement in each of the fiscal years ending in 2023 to 2030. However, when the qualifying refundable tax credit is netted against the cost of the machinery, depreciation of €15,000 is booked in each of the fiscal years ending in 2023 to 2030.

Company A comes within scope of Part 4A TCA in respect of the fiscal year commencing 1 January 2024. For the purposes of calculating its adjusted covered taxes, it can recognise a deferred tax asset of €4,375 ((€40,000*7/8) @12.5%) as at 1 January 2024. The recognition of the deferred tax asset does not result in a reduction of adjusted covered taxes in the transition year. As the asset is depreciated over the remaining seven years, the deferred tax asset is also unwound over those seven years, i.e., adjusted covered taxes are increased by €625 each fiscal year.

Elections regarding gains and losses and the disposal of tangible assets

Where assets and liabilities are subject to fair value or impairment accounting in the consolidated financial statements, a five-year election may be made to determine gains and losses on a realised basis for the purposes of calculating qualifying income or loss. The election will apply to all constituent entities located in the jurisdiction to which the election applies and to all the assets and liabilities unless the election is limited to tangible assets. If the election is revoked, the qualifying income or loss is adjusted by the difference at the beginning of the revocation year between the fair value of the asset or liability and the carrying value of the asset or liability pursuant to the election.

An annual election, on a jurisdictional basis, may be made with regard to the treatment of gains on local tangible assets that are disposed of to non-group members. 'Local tangible assets' means immovable property located in the same jurisdiction as the constituent entity. The election permits a group to spread the effect of gains and losses from the sale of local tangible assets over a period of up to five years to mitigate the effect of recognising the entire gain in a single year on the group's jurisdictional ETR computation. Where the election is made, the aggregate gain is allocated in the fiscal year in which the election is made and the 4 fiscal years prior to that fiscal year. The gain is equal to the net gain in the year the election is made from the disposition of local tangible assets by all constituent entities located in the jurisdiction except for a gain or loss on a transfer of assets between group members. The gain is first matched against a net loss of a constituent entity located in same jurisdiction arising from the disposal of local tangible assets (that haven't already been offset under a previous election), starting with the earliest loss year in the 5-year period.

If the gain is not fully absorbed in the earliest loss Year, the balance is brought forward to the next loss Year, and so on, until the gain is fully absorbed or there are no remaining loss years in the 5-year period. If there is an amount of gain in excess of the net losses that excess is spread evenly over the 5-year period and then allocated among constituent entities based on their respective net gain on the disposal of local tangible assets in the election year. The ETR for each previous Fiscal Year in the 5-year period must be re-calculated under section 111AF TCA 1997.

Guidance with respect these elections is contained in OECD Pillar Two Model Rules Commentary to article 3.2.5 and 3.2.6.

Intra-group financing arrangements

An adjustment is required in respect of an intra-group financing arrangement that increases the amount of expenses taken into account in computing the qualifying income or loss of an entity located in a low-tax jurisdiction and does not result in a corresponding increase to the taxable income of an entity that is not located in a low-tax jurisdiction. An intra-group financing arrangement means a financing arrangement whereby one or more constituent entities directly or indirectly provide credit to, or otherwise makes an investment in, one or more other constituent entities of the same group. A 'low-tax jurisdiction' means, a jurisdiction in which a group has qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate of 15%.

The requirement for an adjustment is not dependent on there being an impact on the ETR of the borrower. It applies where the interest expense can reasonably be anticipated, over the expected duration of the arrangement to:

a) Increase amount of expenses taken into account in calculating the GloBE income or loss of the low-tax entity;
b) Without resulting in a commensurate increase in the taxable income of the high-tax counterparty.

Top-up taxes can be reduced even where the ETR is not increased, by reducing the amount of excess profits to which the top-up tax percentage is applied. Where there is no commensurate increase in the taxable income of the high-tax counterparty then the adjustment is specifically disallowed.

An example of scenarios where a commensurate increase in the taxable income of the high-tax counterparty would occur is set out below:

- where a lender has expenses and is taxed on a net basis, i.e., interest expense from third party borrowings and interest income from intra-group lending;
- where the lender is able to claim group relief in relation to losses incurred by another member of the group; or
- where the lender has losses carried forward which are used to shelter the interest income.

However, where the losses carried forward by the lender that are used to shelter the interest income from an intra-group financing become recognised for accounting purposes solely as a consequence of the intra-group financing arrangement taking place (and the recognition of income as a consequence of the arrangement) then it will not be considered as a commensurate increase in the taxable income of a high-tax counterparty.

Where a group qualifies for the CbCR safe harbour (see section 111AJ) in respect of a jurisdiction for a fiscal year, Revenue is prepared to accept that a member of that group located in that jurisdiction is located in a jurisdiction that is not a low-tax jurisdiction for the purposes of section 111P(8)(c).

Where a borrower:

- is a hybrid entity, (i.e., treated as fiscally transparent in the jurisdiction in which its owner is located but not treated as fiscally transparent in the location where it is itself located), and
- pays interest on a debt instrument it has issued such that the owner is taxed on the income of the borrower without deduction of the interest expense on the instrument,

then, on the basis that the borrower's income is included in the taxable income of the owner, for the purposes of section 111P(8)(b) there is deemed to be a commensurate increase in the taxable income of the owner relating to the intra-group financing arrangement.

When applying section 111P(8), it must be assessed whether

- a constituent entity is a low-taxed constituent entity or would have been low-taxed if the expenses had not accrued to the constituent entity, and
- the counterparty to the transaction is located in a jurisdiction that is not a low-tax jurisdiction, or in a jurisdiction that would not have been low-taxed if the income related to the expense had not been accrued to the counterparty.

'Low-tax jurisdiction' means a jurisdiction in which the MNE group has qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate. When applying the hypothetical tests required in section 111P(8)(a) and section 111P(8)(c), the calculation of the jurisdictional ETR must be performed without regard to the income or expense accrued on the intragroup financing arrangement, as the case may be, and it is also necessary to also make an equivalent adjustment to covered taxes, i.e. where the income or expense related to the intragroup financing transaction is excluded then the corresponding increase or decrease in covered taxes are also excluded.

Guidance with respect to intra-group financing arrangements is contained in OECD Pillar Two Model Rules Commentary to article 3.2.7.

Consolidated accounting election

An election is available so that a UPE may apply consolidated accounting treatment to transactions between constituent entities located in the same jurisdiction and included in a tax consolidation group for the purposes of calculating qualifying income or loss. This means that income, expenses, gains and losses from such transactions are eliminated. A tax consolidation group consists of constituent entities where, under the law of a jurisdiction, the income, expenses, gains and losses of those constituent entities 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 constituent entities. A tax consolidation group does not exist under Irish law.

Guidance with respect to the consolidation accounting election is contained in OECD Pillar Two Model Rules Commentary to article 3.2.8.

Insurance companies

Insurance companies must exclude from the calculation of qualifying income or loss amounts charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders. An insurance company must include in the calculation of qualifying income or loss returns to policyholders which are not reflected in its accounts, to the extent that the corresponding movement in liability to the policyholders is included in FANIL.

Guidance with respect to this adjustment is contained in OECD Pillar Two Model Rules Commentary to article 3.2.9.

In accordance with section 3.4.1 and section 3.4.2 of OECD Administrative Guidance February 2023, where a movement in an insurance company's reserves:

- economically matches an excluded dividend, net of any investment management fee, from a security held by the insurance company on behalf of a policyholder, or
- is related to an excluded dividend or an excluded equity gain or loss from a security held by the insurance company on behalf of a policyholder,

it shall not be allowed as a deduction in the calculation of the constituent entity's qualifying income or loss.

Tier One Capital

Increases or decreases to the equity of a constituent entity attributable to distributions in respect of additional tier one capital are treated as income or expense in the computation of its qualifying income or loss. Equity adjustments attributable to the issuance or redemption of additional tier one capital are not included in the computation of qualifying income or loss. For these purposes, 'additional tier one capital' means an instrument issued by a constituent entity pursuant to prudential regulatory requirements.

Guidance with respect to the treatment of additional tier one capital is contained in OECD Pillar Two Model Rules Commentary to article 3.2.10.

Debt releases

In accordance with section 2.4.3 of OECD Administrative Guidance February 2023, an election may be made in respect of each debt release such that the amount of a debt release included in the FANIL of a constituent entity is excluded from the calculation of the constituent entity's qualifying income or loss. The election may be made where the debt release:

a) is undertaken under statutorily provided insolvency or bankruptcy proceedings, that are supervised by a court or other judicial body in the relevant jurisdiction or where an independent insolvency administrator is appointed,
b) arises pursuant to an arrangement where one or more creditors is a person not connected with the debtor, and it is reasonable to assume that the debtor would be insolvent within 12 months but for the release of the debt under the arrangement, or
c) occurs when the debtor's liabilities are in excess of the fair market value of its assets determined immediately before the debt release.

However, an amount of a debt release is only excluded from qualifying income or loss in accordance with (c) above with respect to debts owed to a creditor that is a person that is not connected with the debtor and only to the extent of the lesser of:

- the excess of the debtor's liabilities over the fair market value of its assets determined immediately before the debt release, or
- the reduction in the debtor's attributes under the tax laws of the debtor's jurisdiction resulting from the debt release.

Other adjustments

In accordance with section 2.3.3 of OECD Administrative Guidance February 2023, a financial instrument issued by one constituent entity and held by another constituent entity in the same group must be classified as debt or equity consistently for both the issuer and holder of the financial instrument and accounted for accordingly in the calculation of their qualifying income or loss.

In accordance with section 2.2.3 of OECD Administrative Guidance February 2023, a 5 year election may be made whereby foreign exchange gains or losses included in a constituent entity's FANIL are treated as an excluded equity gain or loss. This treatment is permitted to the extent that—

- such foreign exchange gains or losses are attributable to hedging instruments that hedge the currency risk in ownership interests other than portfolio shareholdings,

- such foreign exchange gains or losses are recognised in other comprehensive income in the consolidated financial statements, and
- the hedging instrument is considered an effective hedge under the acceptable or authorised financial accounting standard used in the preparation of the consolidated financial statements.

In accordance with section 3.5 of OECD Administrative Guidance February 2023, a 5 year election may be made whereby a constituent entity can include in the calculation of its qualifying income or loss all dividends received by the constituent entity with respect to a portfolio shareholding (being an ownership interest that carries rights to less than 10 per cent of the profits, capital or reserves, or voting rights of that entity at the date of the distribution).

7.3 Section 111Q - International shipping income exclusion

International shipping profits or losses and the qualified ancillary international shipping income or loss of a constituent entity are excluded from the calculation of its qualifying income and loss if the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located. The total qualified ancillary international shipping income of all constituent entities located in the jurisdiction cannot exceed 50% of those constituent entities international shipping income.

Guidance with respect to the international shipping income exclusion is contained in OECD Pillar Two Model Rules Commentary to article 3.3. Examples in relation to this provision are contained in OECD Pillar Two Model Rules Commentary Examples to Article 3.3.1.

7.4 Section 111R - Allocation of qualifying income or loss between main entity and permanent establishment

The term ‘permanent establishment’ is specifically defined for the purposes of Part 4A as follows:

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

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

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

(d) a place of business or a deemed place of business, that is not referred to in paragraph (a), (b) or (c), through which operations are conducted outside the jurisdiction where the entity is located if such jurisdiction exempts the income attributable to such operations.

Where a constituent entity meets the definition of a permanent establishment, in accordance with paragraphs (a) to (c) above, the FANIL of the permanent establishment is the net income or loss in the separate financial accounts of that permanent establishment. In the absence of separate financial accounts of the permanent establishment, the amount to be used is the amount that would have been reflected in separate financial accounts had they been prepared for the permanent establishment in accordance with the accounting standard used in the preparation of the consolidated financial statements of the UPE. Thes amounts are then adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with the applicable tax treaty or domestic law of the jurisdiction where it is located, or that are attributable to it in accordance with Article 7 of the OECD Model Tax Convention on Income and Capital, as the case may be.

Where a constituent entity meets the definition of a permanent establishment, in accordance with paragraphs (d) above its FANIL is calculated based on:

- the amounts and items of income that are exempt from tax in the jurisdiction where the main entity is located and attributable to the operations conducted outside of that jurisdiction, and
- the amounts and items of expense that are not deducted for tax purposes in the jurisdiction where the main entity is located that are attributable to those operations.

The FANIL of the permanent entity is not taken into account when determining the qualifying income or loss of the main entity. However, a qualifying loss of a permanent establishment is included as an expense of the main entity for the purposes of the main entities qualifying income or loss, to the extent that loss is only treated as an expense of the main entity when calculating the main entity´s taxable income in the jurisdiction the main entity is located. Any further qualifying income earned by the permanent establishment is treated as qualifying income of the main entity up to the amount of qualifying loss that was treated as an expense of the main entity.

Guidance with respect to the allocation of qualifying income or loss between a main entity and permanent establishment is contained in OECD Pillar Two Model Rules Commentary to article 3.4.

7.5 Section 111S - Allocation of qualifying income or loss of flow-through entity

An entity is a flow-through entity to the extent it is transparent for tax purposes with respect to its income, expenditure, profit or loss in the jurisdiction where it was created, unless it is tax resident and subject to a covered tax on its income or profit in another jurisdiction. A flow-through entity is a tax transparent entity with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located. 'Owner' in this context means the constituent-entity owner that is closest in the ownership chain to the flow-through entity that is either not a flow-through entity or where there is no such constituent-entity owner, a flow-through entity that is the ultimate parent entity of the group. A flow-through entity is a reverse hybrid entity with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which its owner is located.

Qualifying income or loss of a flow-through entity must be allocated between different constituent entities because in many cases, these entities would have separate financial accounts even though they have no taxable net income or loss because it has been allocated to its owners under domestic tax rules. This section provides for the allocation of FANIL between these entities and its owners for the purposes of calculating top-up tax.

Firstly, the FANIL of a constituent entity that is a flow through entity is reduced by the amount allocable to the owners that are not part of that in scope group and that hold their interest in the flow through entity either directly or via another tax transparent entity or entities unless the flow through entity is a UPE or is held directly or indirectly through tax transparent entities by a UPE that is a flow-through entity.

Secondly, where a flow-through entity wholly or partially carries out business through a permanent establishment, its remaining FANIL is allocated to that permanent establishment in accordance (see section 7.4 above).

Thirdly, where a tax transparent entity is not a UPE, the FANIL of the flow-through entity which remains is allocated to its constituent entity owners in proportion to their ownership interests that carry rights to profits in the flow-through entity. Where a flow-through entity is a tax transparent entity that is a UPE, or a reverse hybrid entity, any FANIL of the flow-through entity which remains is allocated to the UPE or the reverse hybrid entity.

Guidance with respect to the allocation of FANIL of a flow-through entity is contained in OECD Pillar Two Model Rules Commentary to article 3.5.

8 Chapter 4 – Computation of adjusted covered taxes

8.1 Section 111T – Covered Taxes

The starting point for the computation of the taxes to be taken into account in the ETR calculation for is the current tax expense that is accrued in the FANIL with respect to covered taxes. Where current tax expense accrued for FANIL includes amounts that are not accrued in respect of covered taxes, those amounts are excluded from the taxes that are taken into account in the ETR calculation. Section 111T outlines what taxes are included and excluded from covered taxes. In determining whether a Tax is a covered tax, the focus is on the underlying character of the tax.

Covered taxes include:

- taxes recorded in the financial accounts of a constituent entity with respect to its income or profits or its share of the income or profits of a constituent entity in which it owns an ownership interest;
- taxes on distributed profits imposed under an eligible distribution tax system (see section 11.3);
- taxes imposed in lieu of a generally applicable corporate income tax;
- taxes levied by reference to retained earnings and corporate equity, including a tax on multiple components based on income and equity.

Certain taxes are specifically excluded from the definition of covered taxes. These are top-up taxes arising under the Model Rules, a disqualified refundable imputation tax, and taxes paid by an insurance company in respect of returns to policyholders.

Where an election has been made under section 111P(7)(a) in relation to the disposal of local tangible assets, taxes in relation to any net gain or loss from the disposal in the election year is excluded from the calculation of covered taxes.

The treatment of a payment for group relief shall follow its accounting treatment in arriving at FANIL, i.e., where an entity has a current tax expense relating to its Irish corporation tax liability, which is reduced by claiming group relief, and that entity makes a payment to the surrendering entity such that the payment is accounted for as a current tax expense, then that current tax expense will be considered to be a covered tax. Two entities cannot include the same corporation tax charge as covered tax.

Guidance with respect to the definition of covered taxes is contained in OECD Pillar Two Model Rules Commentary to article 4.2.

8.2 Section 111U – Adjusted covered taxes

The adjusted covered taxes of a constituent entity is determined by adjusting the current tax expense accrued in the FANIL as discussed above with respect to:

- certain additions and reduction outlined below,
- the total deferred tax adjustment amount (see section 8.5),
- any increase or decrease in covered taxes recorded in equity or other
- comprehensive income relating to amounts included in the calculation of qualifying income or loss that will be subject to tax under local tax rules, and
- the net amount of the additions and reductions to covered taxes for the fiscal year as set out in section 8.4.

If an amount of covered tax falls into more than one of the items listed above, the current tax expense is only be adjusted once for that item when calculating the adjusted covered tax figure.

The additions to covered taxes mentioned above are:

- covered taxes accrued as an expense in the profit before taxation in the financial accounts of the constituent entity;
- any amount of qualifying loss deferred tax asset that has been used by the constituent entity (see section 8.6 below regarding the qualifying loss election),
- any amount of covered taxes relating to an uncertain tax position of the constituent entity previously excluded from covered taxes that is paid in the fiscal year, and
- any amount of credit or refund in respect of a qualified refundable tax credit, or marketable transferable tax credit, that was accrued as a reduction to the current tax expense in the financial accounts of the constituent entity.

A 'qualified refundable tax credit' means a refundable tax credit that is designed such that it is to be paid as a cash payment or a cash equivalent to a constituent entity within 4 years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit, or refundable portion thereof but does not include any amount of tax creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax.

See section 8.3 below regarding the definition of a marketable transferable tax credit.

The reductions to covered taxes mentioned above are:

- the amount of current tax expense with respect to income excluded from the calculation of qualifying income or loss of the constituent entity,
- any amount of credit or refund in respect of a non-qualified refundable tax credit, or non-marketable transferable tax credit, that was not recorded as a reduction to the current tax expense in the financial accounts of the constituent entity,
- any amount of covered taxes refunded or credited to a constituent entity, other than a qualified refundable tax credit, or marketable transferable tax credit, that was not treated as an adjustment to current tax expense in the financial accounts of the constituent entity,
- the amount of current tax expense of the constituent entity which relates to an uncertain tax position,
- any amount of current tax expense of the constituent entity that is not expected to be paid within 3 years after the end of the fiscal year,
- the amount received by the originator, as defined in section 111V of a non-marketable transferable tax credit in exchange for the credit,
- any excess received by the purchaser of the face value of a non-marketable transferable tax credit over its purchase price in proportion to the amount of the credit used to satisfy its liability for a covered tax, and
- the amount of any gain received by the purchaser on the transfer of a non-marketable transferable tax credit provided the transfer occurs during the fiscal year concerned.

Excess negative tax expense

Subject to the election noted below, a special rule applies when there is no net qualifying income in a jurisdiction for the fiscal year and a constituent entity has a deferred tax asset that has arisen due to a permanent difference (e.g., a loss attributable to an amount that is not deductible in calculating qualifying income or loss) in the same fiscal year. In these cases, the amount of adjusted covered taxes for that jurisdiction will be less than zero, and less than an amount equal to the net qualifying loss multiplied by the minimum tax rate (referred to as the 'expected adjusted covered taxes'). Where this arises, an amount calculated as the difference between the amount of adjusted covered taxes of a jurisdiction for a fiscal year, and the amount of expected adjusted covered taxes of a jurisdiction for a fiscal year (excess negative tax expense), is treated as an additional top-up tax for the fiscal year. See section 9.2 below regarding additional top-up tax and the operation of section 111AD.

Alternatively, on the making of an election or where the top-up tax percentage for a jurisdiction for a fiscal year exceeds 15%, an MNE Group or large-scale domestic group can exclude the excess negative tax expense from its adjusted covered taxes for a jurisdiction in respect of the fiscal year and instead establish an excess negative tax expense carry-forward. In the following fiscal years, where an MNE group or large-scale domestic group has qualifying income and adjusted covered taxes for that jurisdiction, the MNE group or large-scale domestic group will reduce the adjusted covered taxes for the jurisdiction by the balance of the excess negative tax expense carry-forward but the amount of adjusted covered taxes after such reduction cannot be less than zero. The balance of the excess negative tax expense carry-forward is then reduced by the amount used to reduce the adjusted covered tax.

Guidance with respect to the adjustments to covered taxes is contained in OECD Pillar Two Model Rules Commentary to article 4.1 and examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 4.1.3 and 4.1.5. OECD guidance on excess negative tax expense is set out in OECD Administrative Guidance February 2023, section 2.7.3.

8.3 Section 111V- Meaning of marketable transferable tax credit

As noted in section 7.2 above, a marketable transferable tax credit is treated as income when calculating the qualifying income or loss of a constituent entity. This section provides the conditions necessary for a tax credit, or portion thereof, to be classified as a marketable transferable tax credit. The conditions are as follows:

- It can be used by the holder of the credit to reduce its liability for a
- covered tax in the jurisdiction that issued the tax credit,
- it meets the legal transferability standard, and
- it meets the marketability standard;

The tax credit may be held by an originator or a purchaser of the tax credit. The originator means the constituent entity that engages in the activities that generates the tax credit concerned. The purchaser is another entity that has purchased the benefit of the tax credit from the originator.

From the perspective of the originator, a tax credit will meet the legal transferability standard where the originator may, under the laws governing the tax credit, transfer the tax credit to an entity that is not connected with the originator in the origination year, or within a period of 15 months beginning on the final date of the origination year (being the fiscal year in which the eligibility criteria for a tax credit is met by a constituent entity). A tax credit will meet the marketability standard where the tax credit is transferred to an entity that is not connected with the originator within a period of 15 months beginning on the final date of the origination year, for a price equal to, or exceeding, the marketable price floor. Where the tax credit is not transferred, or is transferred between entities connected with the originator, the condition will be met where similar tax credits trade for a price equal to, or exceeding, the marketable price floor between entities that are not connected within a period of 15 months beginning on the final date of the origination year.

The 'marketable price floor' means 80 per cent of the net present value of the tax credit. The net present value is determined based on the yield to maturity on a debt instrument issued by the government that issued the tax credit with equal or similar maturity (up to 5-year maturity) issued in the same fiscal year as the tax credit is transferred, or if not transferred, the origination year.

From the perspective of the purchaser a tax credit will meet the legal transferability standard where the purchaser may, under the laws governing the tax credit, transfer the tax credit to an entity that is not connected with the purchaser in the fiscal year in which that purchaser purchased the tax credit. A tax credit will meet the marketability standard where that purchaser acquired the credit from an entity that is not connected with that purchaser at a price equal to or exceeding the marketable price floor.

OECD guidance on marketable transferable tax credit is set out in OECD Administrative Guidance July 2023, section 2.

8.4 Section 111W - Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests

Section 111W provides for an equity investment inclusion election that can be made with respect to a jurisdiction that includes the profit, gain or loss of an equity investment in the domestic tax base. This is designed to neutralise the impact of a gain or loss with respect to an equity investment that is included in the domestic tax base in a jurisdiction. An equity investment inclusion election applies on a jurisdictional basis to all ownership interests other than a portfolio shareholding, (being an ownership interest that carries rights to less than 10 per cent of the profits, capital or reserves, or voting rights of that entity at the date of the distribution), owned by constituent entities located in the jurisdiction with respect to which the election is made. It is a five-year election but cannot be revoked with respect to an ownership interest if a loss with respect to that ownership interest has been taken into account in the computation of the qualifying income or loss during the period in which the election was in effect.

When an election is made, subject to certain conditions, an owner other than one which has a qualified ownership interest (see below) includes in its qualifying income the:

- accounting gain, profit, or loss with respect to any fair value gains and losses and impairments on that ownership interest

- profit and loss attributable to that ownership interest where the interest is in a tax transparent entity and the owner accounts for the interest using the equity method, and
- gains or losses that are included in the owner's domestic taxable income related to the dispositions of that ownership interest.

The owner will include all current and deferred tax expense or benefits associated with the above items in the computation of its adjusted covered taxes.

Flow- through tax credits

Tax credits may flow through a tax transparent entity and will affect the ETR of an investor in a tax transparent entity. The character of a tax credit does not change, such that a qualified refundable tax credit derived through a tax transparent entity that is accounted for under the equity method is treated as income in computing the investor's qualifying income or loss and a non-qualified refundable tax credit or non-refundable credit reduces the investor's adjusted covered taxes.

However, there is a special rule that applies to qualified flow-through tax benefits. These are tax credits (other than qualified refundable tax credits) where the tax benefits flow to an investor as a return of (rather than a return on) the investor's investment. Where the above-mentioned election is made, qualified flow-through tax benefits that flow through a qualified ownership interest are allowed as a positive amount in the owner's adjusted covered taxes. This special treatment is designed to ensure the neutrality of certain tax equity structures where such non-refundable tax credits are an essential element of the investment return. Accordingly, this special treatment only applies:

- where, at the time of the investment, the investor's expected return on the ownership interest would not be positive in the absence of the expected non-refundable credits; and
- to the extent the qualified flow-through tax benefits constitute a return of all or part of the investor's investment.

A qualified flow-through tax benefit is any amount of:

- tax credits, other than qualified refundable tax credits, and
- tax-deductible losses multiplied by the statutory tax rate applicable to the owner of a qualified ownership interest,

that flow through a qualified ownership interest in a tax transparent entity to the extent that it reduces the owner's investment in the qualified ownership interest.

A 'qualified ownership interest' means an investment in a tax transparent entity that:

- is treated as an equity interest for local tax purposes, or
- would be treated as an equity interest under an authorised financial accounting standard in the jurisdiction in which the tax transparent entity operates, where the assets, liabilities, income, expenses, and cash flows of the tax transparent entity are not consolidated on a line-by-line basis in the consolidated financial statements of the MNE group

and the total return with respect to that ownership interest, excluding tax credits other than qualified refundable tax credits, is, at the time the investment is entered into, expected to be less than the total amount invested by the owner of the ownership interest such that a portion of the investment will be returned in the form of tax credits other than qualified refundable tax credits. The investor must have a bona-fide economic interest in the flow-through entity and cannot be protected from loss of its investment,

A qualified ownership interest does not include an investment in a tax transparent entity where a jurisdiction only permits the benefits of a tax credit to be transferred through such investment when the entity that originates the tax credits or investor is subject to a qualified IIR or qualified UTPR.

OECD guidance on the equity investment inclusion election and qualified flow-through tax benefits is set out in OECD Administrative Guidance February 2023, section 2.9 and OECD Administrative Guidance July 2023, section 2 (beginning at page 45).

8.5 Section 111X - Total deferred tax adjustment amount

Temporary differences arise when income or loss is recognised in a different period for financial accounting and tax purposes. Section 111X seeks to address temporary differences using deferred tax accounting, with certain adjustments so as to ensure the integrity of the rules. As noted above, adjusted covered taxes includes an adjustment for the 'total deferred tax adjustment'. The starting point is the deferred tax expense accrued in an entity's financial accounts for a fiscal year with respect to covered taxes. Where the tax rate applied for the purposes of calculating the deferred tax expense in the financial accounts of an entity is greater than 15%, the total deferred tax adjustment amount is recalculated at 15%.

Where a deferred tax asset is not recognised in the financial accounts of a constituent entity because the recognition criteria are not met under the relevant accounting standard, the total deferred tax adjustment amount is reduced by the amount that would have reduced the total deferred tax adjustment amount if a deferred tax asset had been accrued in the financial accounts. The foregoing applies to both deferred tax assets arising before and after a group becomes in scope of Part 4A. Deferred tax assets that are not disclosed in financial statements due to materiality may be included in the calculation of the deferred tax adjustment. The taxpayer will need to maintain a schedule of such differences with appropriate linking documents in order to track the deferred tax adjustment back to the underlying records.

The following items are excluded from the total deferred tax adjustment:

- deferred tax expense with respect to items excluded from the calculation of qualifying income or loss,
- deferred tax expense with respect to disallowed accruals and unclaimed accruals (see below),
- the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset,
- deferred tax expense arising from a re-measurement with respect to a change in the applicable domestic tax rate, and
- deferred tax expense with respect to the generation and use of tax credits except where a substitute loss carry-forward arises, in which case the deferred tax expense attributable to the substitute loss carry-forward deferred tax asset is included in the constituent entity's total deferred tax adjustment amount in the fiscal year that it arises and in the fiscal years it reverses.

A substitute loss carry-forward arises where:

- the tax laws of a jurisdiction require that foreign source income offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income,
- the constituent entity has a domestic tax loss in that jurisdiction that is fully or partially offset by foreign source income, and
- the tax laws in that jurisdiction allows foreign tax credits to be used to offset a tax liability in a subsequent year in relation to income that is included in the calculation of the constituent entity's qualifying income or loss.

A 'disallowed accrual' refers to any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to an uncertain tax position or which relates to distributions from a constituent entity;

An 'unclaimed accrual' means any increase in a deferred tax liability recorded in the financial accounts of a constituent entity for a fiscal year that is not expected to be paid within five years and for which the filing constituent entity elects, not to include in total deferred tax adjustment amount for that fiscal year.

Where a constituent entity can demonstrate that a deferred tax asset is attributable to a qualifying loss, it may be recalculated at a 15% tax rate where the applicable tax rate is less than 15%. In order to demonstrate this, the taxpayer should assess and document the impact of the book to tax adjustments as set out in Part 4A TCA 1997 in respect of the accounting loss, where reasonably practicable. The taxpayer should make all best efforts to review the relevant financial information in respect of the fiscal year in which the loss arose and make adjustments to calculate the qualifying loss in respect of the fiscal year.

The reversal of a loss deferred tax asset shall be attributable to losses incurred on a last-in first out basis. For example, if an entity has a tax loss carried forward of 100 which arose in the fiscal years ended in 2023 (loss of 10), 2024 (loss of 60) and 2025 (loss of 30) and 50 of that loss was used to shelter taxable income in 2026 then the tax losses utilised are deemed to have arisen in 2025 (30) and 2024 (20). The taxpayer would then need to assess whether the full loss of 30 relating to 2025 was a qualifying loss and whether 20 of the loss of 60 which arose in 2024 was a qualifying loss.

A deferred tax liability that is not reversed and has not been paid within 5 years of the end of the fiscal year in which it arose is recaptured (referred to as the "DTL recapture rule") to the extent that it was taken into account in the total deferred tax adjustment amount of a constituent entity except where deferred tax liability is a recapture exception accrual.

The OECD Administrative Guidance June 2024 provides more detailed guidance in respect of this adjustment which provides for agreed mechanisms with respect to how a constituent entity may aggregate DTL categories, and methodologies for the purposes of determining whether a DTL has reversed within the five- years period. For example, the guidance outlines when a taxpayer may use the First-in-first out ("FIFO") or Last-in-last-out ("LIFO") methodologies and how those methodologies operate with respect to the DTL recapture rule.

The OECD Administrative Guidance June 2024 provides that a constituent entity may track its DTLs according to three possible approaches.

The categories of DTL may be determined:

1. on an item-by-item basis, where deferred tax liabilities related to each single asset or liability are tracked individually,
2. on a general ledger account basis, where deferred tax liabilities related to all the assets or liabilities encompassed in a general ledger account are grouped and tracked as a single deferred tax liability category, or
3. on an aggregate deferred tax liabilities category basis, with certain exceptions.

Finance Act 2024 amended section 111X to provide for the above aspects of the OECD Administrative Guidance June 2024.

The detailed OECD guidance (inclusive of illustrative examples) with respect to the operation of these DTL recapture rules is set out in Chapter 1 of the OECD Administrative Guidance June 2024.

The total deferred tax adjustment amount is increased where any amount of disallowed accrual or unclaimed accrual or any amount of recaptured deferred tax liability is paid during the fiscal year.

Taxpayers should prepare a deferred tax schedule/balance sheet with supporting linking documents that track adjustments from underlying financial data to evidence the total deferred tax adjustment for a fiscal year.

8.5.1 Deferred tax adjustment amount and asset values

The OECD Administrative Guidance June 2024 provides guidance with respect to how a constituent entity should determine its deferred tax assets and liabilities where the qualifying income or loss of a constituent entity related to an asset or a liability, as the case may be, is calculated based on a value of the asset or the liability which differs from the value of the asset or liability per the financial statements.

Finance Act 2024 introduced a legislative amendment which prescribes that MNE groups (and large-scale domestic groups where applicable) must determine the deferred tax assets and liabilities for the purposes of Part 4A based on the difference between:

- the tax value of the asset or liability and
- the value of the asset or liability as determined under Part 4A for the purpose of calculating the qualifying income or loss of the entity (which may differ from the value of the asset or liability as recorded in the financial statements), unless otherwise expressly provided.

As such, the constituent entity must determine:

(a) the deferred tax assets and liabilities relating to an asset or liability by reference to the value of the asset or liability as determined under Part 4A, and

(b) the total deferred tax adjustment amount using a deferred tax expense/credit determined:
  - by reference to the deferred tax assets and liabilities calculated in accordance with paragraph (a), and
  - in accordance with the accounting standard used to calculate the deferred tax expense recorded in the financial statements that are used to determine the qualifying income or loss of the constituent entity.

The detailed OECD guidance with respect to the operation of the rules regarding divergences between GloBE and accounting carrying values is set out in Chapter 2 of the OECD Administrative Guidance June 2024.

Guidance with respect to the total deferred tax adjustment amount is contained in OECD Pillar Two Model Rules Commentary to article 4.4. Examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 4.4.1.
Detailed guidance with respect to the practical operation of the DTL recapture rule is contained in Chapter 1 OECD Administrative Guidance June 2024.

8.6 Section 111Y - Qualifying loss election

Where an election is made, known as the qualifying loss election, section 111X will not apply and instead a qualifying loss deferred tax asset is determined for the jurisdiction for each fiscal year in which there is a net qualifying loss in the jurisdiction. Such an election cannot be made where there is an eligible distribution tax system in the jurisdiction, within the meaning of section 111AS.

The qualifying loss deferred tax asset for a jurisdiction will be calculated by multiplying the net qualifying loss for the jurisdiction by the minimum tax rate of 15%. The qualifying loss deferred tax asset is used in any subsequent fiscal year where there is net qualifying income for the jurisdiction until it has been fully utilised.

The qualifying loss election may be withdrawn. Any remaining qualifying loss deferred tax asset is reduced to zero and the group transitions to the deferred tax accounting method set out in section 8.5, where the historic deferred tax assets and liabilities will be taken into account as if they had been calculated under section 111X and section 111AW.

Guidance with respect to the qualifying loss election is contained in OECD Pillar Two Model Rules Commentary to article 4.4.

8.7 Section 111Z - Specific allocation of covered taxes incurred by certain types of constituent entities

Covered taxes are generally allocated to the constituent entity that includes the corresponding income in the computation of its qualifying income or loss which is then taken into account in the calculation of the ETR computation for the jurisdiction in which the entity is located. Generally covered taxes will be paid by the constituent entity with respect to its own income in the jurisdiction in which it is resident. However, covered taxes may be imposed on the constituent entity in respect of income included in another constituent entity's qualifying income or loss computation or by a jurisdiction other than the one in which the constituent entity is located. In those cases, with some limited exceptions, it is necessary to allocate the covered taxes to the constituent entity that earned the qualifying income.

A permanent establishment is allocated the covered taxes that are included in the financial accounts of a constituent entity that relate to the qualifying income of that permanent establishment. If any qualifying income of a permanent establishment is treated as qualifying income of the main entity (see section 7.4 above regarding allocation of income from a permanent establishment to its main entity in certain circumstances), any covered tax arising in relation to that income in the jurisdiction of the permanent establishment is allocated to the main entity but not exceeding the amount of that income multiplied by the highest tax rate on ordinary income in the jurisdiction of the main entity.

A constituent entity owner is allocated the covered taxes included in the financial accounts of a tax transparent entity that relate to the qualifying income or loss allocated to the constituent entity owner (see section 7.5 above regarding allocation of qualifying income or loss of a flow through entity).

A constituent entity that has made a distribution during the fiscal year is allocated the amount of any covered taxes accrued in the financial accounts of its direct constituent entity owners on such distribution.

A constituent entity is allocated the covered taxes included in the financial accounts of its constituent entity owner(s) under a CFC tax regime based on the constituent entity owner's share of that constituent entity income.

A constituent entity that is a hybrid entity, or a reverse hybrid entity, is allocated the covered taxes included in the financial accounts of the constituent entity owner(s) which relate to the qualifying income of the hybrid entity, or reverse hybrid entity as applicable.

A hybrid entity means:

- an entity not treated as fiscally transparent in the jurisdiction where it is located but as fiscally transparent in the jurisdiction in which its owner is located, or
- an entity which is located in a jurisdiction that does not have a corporate income tax and the entity is treated as fiscally transparent in the jurisdiction where its owner is located and is not treated as a flow-through entity and a tax transparent entity in accordance with section 111A(5)(c).

A flow-through entity is a reverse hybrid entity with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which its owner is located.

However, the amount of covered taxes allocated from an owner to a constituent entity in relation to a CFC tax or in relation to a hybrid entity, or reverse hybrid entity, on passive income is limited to the lesser of-

- The actual amount of covered taxes in respect of such passive income, or
- the top-up tax percentage that applies in the subsidiary jurisdiction (see section 8.8 below, (determined without regard to the taxes to be pushed down to the subsidiary under the CFC tax regime or fiscal transparency rule), multiplied by the amount of the subsidiary's passive income that is includible under the CFC tax regime or fiscal transparency rule.

Any remaining covered taxes of the owner incurred with respect to such passive Income is included in the owner's own adjusted covered taxes.

Passive income in this context means:

- dividend or dividend equivalents,
- interest or interest equivalents,
- rent,
- royalty,
- annuity, or
- net gains from assets of a type that produces income referred to above.

8.7.1 Deferred tax expense election

The OECD Administrative Guidance June 2024 provides for an election with respect to the allocation of certain deferred tax expenses.

This rule provides for the making of a five-year election with respect to a parent entity jurisdiction to exclude the allocation of all deferred tax expenses and benefits from the parent entity to the constituent entities in other jurisdictions (e.g., foreign branches) for the purposes of effective tax rate calculations. Where the election is made, the deferred tax expense/benefit must also be excluded from the adjusted covered taxes of the parent entity. The election may apply to fiscal years commencing on or after 31 December 2023.

Guidance with respect to the allocation of covered taxes is contained in OECD Pillar Two Model Rules Commentary to article 4.3. Examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 4.3.3. Guidance regarding the deferred tax expense election are contained in Chapter 4.2, Paragraph 43 of OECD Administrative Guidance June 2024.

There are exceptions to the application of certain provisions within section 111Z when calculating the domestic top-up tax. These exceptions can be found in section 111AAD (and are referred to in section 13.4 below).

8.8 Section 111AA - Rules required for blended CFC regime

Section 111Z generally requires taxes imposed under a controlled foreign company tax regime to be allocated from the owner that is subject to the CFC tax to the constituent entity through which the CFC income has arisen. To identify which CFC tax relates to what entity becomes complex when the CFC tax arises under a blended CFC tax regime. A blended CFC tax regime is one in which the tax charge under the CFC tax regime is computed based on a blend of income, losses and / or creditable taxes of multiple CFCs whose ownership interests are held by an owner. An example of such a regime is the US Global Intangible Low-Taxed Income (GILTI) regime.

For fiscal years beginning on or before 31 December 2025 but not including a fiscal year that ends after 30 June 2027, for the purposes of allocating covered taxes to a CFC where the CFC tax regime is a blended CFC tax regime, section 111AA(2) sets out the formula to be used.

The formula allocates CFC tax incurred under a blended CFC tax regime to entities located in jurisdictions in which the jurisdictional ETR for entities located in the jurisdiction (calculated before any pushdown of CFC tax) is below the applicable rate for the blended CFC tax regime. The applicable rate means the rate at which foreign taxes on CFC income generally fully offset the CFC tax through the tax credit mechanism applicable to the CFC tax regime.

If the jurisdictional ETR equals or exceeds the applicable rate or the minimum tax rate, the blended CFC allocation key for a constituent entity is deemed to be zero.

Guidance with respect to blended CFC tax regimes is contained in OECD Administrative Guidance February 2023, Section 2.10 and Chapter 4 of OECD Administrative Guidance December 2023.

8.9 Section 111AB - Post-filing adjustments and tax rate changes

Adjustments to covered taxes for previous fiscal years are treated as an adjustment to covered taxes in the fiscal year the adjustment was made, unless the adjustment relates to a decrease in covered taxes. If the adjustment relates to a decrease in covered taxes previously included in the adjusted covered taxes for the constituent entity, the ETR and top-up tax must be recalculated (in line with section 111AF – see section 9.4 below) to take account of the decrease. The qualifying income for that fiscal year and any previous fiscal years shall also be adjusted accordingly.

An election is available where the aggregate decrease of adjusted covered taxes for the jurisdiction for a fiscal year is less than €1,000,000. Where an election is made, the decrease is treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made.

If a domestic tax rate is reduced, the deferred tax expense previously claimed as a covered tax is adjusted to the amount of such tax that will actually be paid upon reversal of the deferred tax liability.

For example, in year 1, a constituent entity claims 15 of covered taxes resulting from a deferred tax liability on 100 of qualifying income at 15%. In year 2, the jurisdiction reduces its domestic tax rate to 10%. The year 1 top-up tax must be recomputed. In this case, 5 of top-up tax would be due in year 2 owing to the re-computation of year 1.

If a deferred tax expense has been taken into account at a rate lower than 15% and the applicable tax rate is subsequently increased, then the amount of deferred tax expense that has resulted from the increase is treated as an adjustment to a constituent entity's liability for covered taxes for a previous fiscal year.

For example, assume in Year 1, a constituent entity has 100 of qualifying income and records a deferred tax liability of 10 and claims such amount as a covered tax. In year 2, the jurisdiction increases its tax rate to 15%. An additional deferred tax liability of 5 is recorded for financial accounting purposes. However, this increase of 5 is disregarded under section 111X(5)(d) in Year 2 and deferred until payment of the tax. In Year 3, the tax of 15 is paid and the full deferred tax liability reverses. The incremental 5 of deferred tax liability that reverses, which has not previously been claimed as a covered tax because it was disregarded, is taken into account Year 3 upon payment and is treated as an increase to covered taxes. If the tax rate in this example was increased to 20% rather than 15% in Year 2, an incremental 10 of covered tax would arise upon payment in Year 3, which would consist of the 5 of deferred tax liability that was previously disregarded, and the incremental 5 of tax liability that reflects tax in excess of the minimum rate, which is taken into account when paid.

Where more than €1,000,000 of an accrued current tax expense included in the adjusted covered taxes for a fiscal year is not paid within 3 years from the end of the fiscal year, the ETR and top-up tax for the fiscal year in which the amount unpaid was included is recalculated in line with section 111AF by excluding the unpaid amount.

Guidance with respect to post-filing adjustments and tax rate changes is contained in OECD Pillar Two Model Rules Commentary to article 4.6.

9 Chapter 5 – Calculation of the effective tax rate and the top-up tax

9.1 Section 111AC - Determination of effective tax rate

The ETR of an in scope group is calculated for each fiscal year and each jurisdiction provided there is net qualifying income in the jurisdiction. The ETR is the aggregate adjusted covered taxes of all the constituent entities located in the jurisdiction, divided by the net qualifying income of all the constituent entities located in the jurisdiction.

The adjusted covered taxes and net qualifying income or loss of investment entities and insurance investment entities are excluded from these calculations (see section 11.4 below regarding the effective tax rate and top-up tax of investment entities). The ETR of each stateless constituent entity is calculated separately from the ETR of all other constituent entities.

Guidance with respect to the determination of the effective tax rate is contained in OECD Pillar Two Model Rules Commentary to article 5.1.

9.2 Section 111AD - Calculation of top-up tax

Where the ETR of a jurisdiction as calculated above for an in scope group is less than 15%, the group will need to calculate the top-up tax for each of the constituent entities whose net qualifying income has been included in the calculation of the ETR for that jurisdiction.

The top-up tax percentage for a jurisdiction is based on the difference between the minimum tax rate, i.e., 15% and the group's ETR of that jurisdiction.

The jurisdictional top-up tax for the group is the group's top-up tax percentage for the jurisdiction multiplied by the group's excess profits of the jurisdiction for a fiscal year (see below). To that amount is added any additional top-up tax (see section 9.4 below regarding additional top-up tax) less any qualified domestic top-up tax payable (as defined in section 111A) by the group for the jurisdiction for the fiscal year.

The group's excess profit for a jurisdiction is the net qualifying income of all the constituent entities of the group in the jurisdiction for the fiscal year less the substance-based income exclusion amount for the jurisdiction for the fiscal year determined in accordance with section 111AE (see section 9.3 below)

The top the top-up tax of a constituent entity for a fiscal year is then calculated as the jurisdictional top-up tax of the group for a fiscal year multiplied by the qualifying income of the constituent entity for the jurisdiction for a fiscal year divided by the sum, of the qualifying income of all the constituent entities of the group for a fiscal year located in the jurisdiction.

Example 9.2.1

Company A and Company B are entities within the same jurisdiction and a members of an in scope MNE group. The qualifying income for Company A is 150 and Company B is 50 giving a combined total of 200 and the combined adjusted covered taxes is 16. This results in an ETR of 8% for the jurisdiction. As this is below the minimum tax rate the top-up tax percentage is 7% (15% minus 8%). Company A and Company B have a substance-based income inclusion amount of 30 resulting in excess profits of 170. Top-up tax for the jurisdiction is 12 (170 multiplied by 7%). The top-up tax allocated to Company A is (12*150/200) = 9. The top-up tax allocated to Company B is (12*50/200) = 3.

If the jurisdictional top-up tax arises due to an amount of additional top-up tax in accordance with section 111AF, and there is no net qualifying income in respect of the jurisdiction, the top-up tax is calculated based on the above formula but using the qualifying income of the constituent entities in the period which gave rise to recalculations.

The top-up tax for each stateless constituent entity is calculated separately from the top-up tax of all other constituent entities.

Guidance with respect to the calculation of top-up tax is contained in OECD Pillar Two Model Rules Commentary to article 5.2.

9.3 Section 111AE - Substance-based income exclusion

This section provides for the exclusion of a fixed return for substantive activities within a jurisdiction from the application of top-up tax.

When calculating the top-up tax for a jurisdiction, the net qualifying income for a jurisdiction is reduced by an amount known as the substance-based income exclusion (SBIE). The SBIE will not apply where an election has been made to disapply the exclusion on a jurisdictional basis.

The SBIE is comprised of two components – the payroll carve-out and the tangible asset carve-out. The payroll carve-out subtracts from the net qualifying income of a jurisdiction a fixed return (5%) on activities performed in that jurisdiction calculated by reference to the constituent entity's payroll costs (salaries, wages, other expenditures that provide a direct and separate personal benefit to the employee, payroll and employment taxes not included in the foregoing, and employer social security contributions). The tangible asset carve-out subtracts from the net qualifying income of a jurisdiction a fixed return (5%) on the carrying value of eligible tangible assets located in that jurisdiction. It should be noted that there are transitional provisions which provide for a higher fixed return in fiscal years beginning in 2023 to 2032 (see section 12.2 below regarding section 111AX).

Detailed guidance on the eligible payroll costs and the calculation of the carrying value of eligible tangible assets is contained in OECD Pillar Two Model Rules Commentary to article 5.3. Examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 5.3.7.

An eligible employee is considered to perform activities for the group, in the jurisdiction in which the constituent entity is located, where the eligible employee is located within that jurisdiction for greater than 50 per cent of their working time in a fiscal year. Where an eligible employee is located within the jurisdiction of the constituent entity employer for 50 per cent, or less, of their working time in that fiscal year the constituent entity must only include the proportionate share of the eligible payroll costs for a fiscal year for an eligible employee in the calculation of the payroll carve-out.

An eligible tangible asset is considered to be located in the jurisdiction in which the constituent entity is located where the eligible tangible asset is located within that jurisdiction more than 50 per cent of the time in a fiscal year. Where the eligible tangible asset is located in the jurisdiction of the constituent entity for 50 per cent, or less, of the time in that fiscal year, the constituent entity must only include the proportionate share of the carrying value of the eligible tangible asset for a fiscal year in the calculation of the tangible asset carve-out.

Detailed guidance on the location of employees and tangible assets is contained in OECD Administrative Guidance July 2023 section 3. This guidance also deals with certain simplifications in relation to the calculation, issues relating to stock-based compensation, leases, impairment losses and interactions with deductible dividend regimes.

In particular, in the case of leased assets, the lessor of an operating lease will be allowed to take a portion of the carrying value of an asset subject to an operating lease into account in determining its eligible tangible asset if the asset is located in the same jurisdiction as the lessor. The amount allowed is equal to the excess, if any, of the lessor's average carrying value of the asset determined at the beginning and end of the fiscal year over the average amount of the lessee's right of use asset determined at the beginning and end of the fiscal year. By allowing only the excess of the carrying value over the right-of-use asset, the lessor is prevented from also claiming SBIE in respect of the same asset value that is included in the lessee's SBIE computation. If the lessee is not a constituent entity of the MNE group, the lessee's right-of-use asset for this purpose is equal to the un-discounted amount of payments remaining due under the lease, including any extensions that would be taken into account in determining a right-of-use asset under the financial accounting standard used to determine the FANIL of the lessor. In the case of a short-term rental asset, for example a hotel room or rental car, the lessee's right-of-use asset is deemed to be nil. A short-term rental asset is an asset that is regularly leased several times to different lessees during the fiscal year and the average lease period, including any renewals and extensions, with respect to each lessee is 30 days or less.

The SBIE of a stateless constituent entity is calculated separately from any other constituent entity. The payroll carve out and tangible asset carve out of investment entities is not included in the SBIE.

OECD Administrative Guidance July 2023 provides numerical examples with regard to the calculation of SBIE for lessors and lessees.

9.4 Section 111AF - Additional top-up tax

Pursuant to certain sections of the legislation, there may be adjustments to covered taxes or qualifying income or loss which results in a recalculation of the ETR and top-up tax required in a jurisdiction for a previous year. Any additional top-up tax arising from such a recalculation is treated as additional top-up tax for the purposes of section 111AD (see section 9.2 above) for the period in which the relevant adjustment is made.

If there is additional top-up tax for a period and there is no net qualifying income in the jurisdiction, the qualifying income of a constituent entity in that jurisdiction is calculated by dividing the top-up tax allocated to the constituent entity in line with section 111AD by 15%.

If an additional top-up tax is due for a jurisdiction under section 111U(5) and (6) (see section 8.2 above regarding excess negative tax expense), the qualifying income of a constituent entity located in that jurisdiction for the purposes of calculating a parent entity's allocable share in the top-up tax is equal to the additional top-up tax allocated to the constituent entity divided by 15%.

The allocation of additional top-up tax to a constituent entity in such circumstances is on a pro-rata basis, based on a constituent entity's qualifying income or loss at 15%, less its adjusted covered taxes. However, the additional top-up tax is only allocated to constituent entities that record an adjusted covered tax that is less than zero and less that the qualifying income or loss of that entity multiplied by 15%.

For example, assume in a fiscal year there are two constituent entities in Country A. Both constituent entities have a qualifying loss of (100). Entity A has adjusted covered taxes of minus 15 while Entity B has adjusted covered taxes of minus 18. The expected adjusted covered taxes for Country A is minus 30, but the adjusted covered taxes amount is actually minus 33 due to the permanent difference of minus 3 generated by Entity B. Additional top-up tax of 3 is due with respect to Country A for the fiscal year (assuming the excess negative tax expense election is not made). The additional top-up tax of 3 is allocated to Entity B, since that is the constituent entity which generated the permanent difference.

Where a constituent entity is allocated additional top-up tax, the entity is treated as a low taxed constituent entity.

Guidance with respect to additional top-up tax is contained in OECD Pillar Two Model Rules Commentary to article 5.4.

9.5 Section 111AG - De minimis exclusion

An annual election may be made such that the top-up tax due for a constituent entity, which is not a stateless constituent entity or an investment / insurance investment entity, is equal to zero where it meets certain conditions. These conditions are:

- the average qualifying revenue of all constituent entities of an in scope group in the jurisdiction is less than €10 million, and
- the average qualifying income or loss of all constituent entities of the in scope group is a loss or less that €1m.

The average qualifying revenue, and the average qualifying income or loss, are the average of the qualifying revenue or qualifying income or loss respectively of the constituent entities of a group located in the jurisdiction for the fiscal year and the 2 preceding fiscal years.

Qualifying revenue means the revenue included in FANIL for the fiscal year reduced, or increased, by any adjustment carried out pursuant to Chapter 3 of Part 4A.

The qualifying revenue and qualifying income or loss of stateless constituent entities or investment entities is excluded from these calculations. Where the election is made it applies to all constituent entities located in the jurisdiction.

Guidance with respect to the de minimus exclusion is contained in OECD Pillar Two Model Rules Commentary to article 5.5. Examples are contained in the OECD Pillar Two Model Rules Commentary Examples to Article 5.5.2.

9.6 Section 111AH - Minority owned constituent entities

A minority-owned constituent entity (MOCE) is a constituent entity of a group where the UPE holds directly or indirectly 30% or less of its ownership interests. A MOCE is a constituent entity because the UPE holds their controlling interests, despite the small ownership percentage.

A minority-owned parent entity is a MOCE that holds directly or indirectly the controlling interests of another MOCE. If there are two or more parent entities that meet the definition of an MOCE in the same ownership chain, only the entity that is in the highest level in the ownership chain is considered to be the minority-owned parent entity.

A minority-owned subsidiary means a MOCE whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.

A minority-owned subgroup is a subgroup within a group that is comprised of a minority-owned parent entity and its minority-owned subsidiaries.

The calculation of the ETR and top-up tax for a jurisdiction is made as if each minority owned subgroup were a separate in scope group. If a MOCE is not a member of a minority owned subgroup, its ETR and top-up tax is calculated on an entity basis. The adjusted covered taxes and qualifying income or loss of the minority owned subgroup or MOCE are excluded from the residual amount of the ETR and net qualifying income or loss for the jurisdiction for the in scope group.

Guidance with respect to MOCEs is contained in OECD Pillar Two Model Rules Commentary to article 5.6.

9.7 Section 111AI - Qualified domestic top-up tax safe harbour

A qualified domestic top-up tax means a top-up tax that is implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that -

- provides for the determination of the excess profits of the constituent entities located in that jurisdiction in accordance with the rules laid down in the EU Minimum Tax Directive or, as regards third country jurisdictions, the OECD Model Rules,
- provides for the application of the minimum tax rate to those excess profits for the jurisdiction and the constituent entities in accordance with the rules laid down in the EU Minimum Tax Directive or, as regards third country jurisdictions, the OECD Model Rules, and
- is administered in a way that is consistent with the rules laid down in the Directive or, as regards third country jurisdictions, the OECD Model Rules.

A qualified domestic top-up tax may obtain safe harbour status under an OECD peer review process. To obtain safe harbour status, the qualified domestic top-up tax must meet certain standards which are detailed in the OECD Administrative Guidance July 2023 section 5. Where the qualified domestic top-up tax implemented under the tax law of a jurisdiction is determined to have met the requisite standards under an OECD peer review process, then, on the making of an election, the jurisdictional top-up tax in respect of the entities that are subject to that domestic top-up tax is deemed to be zero for the fiscal year. This is subject to certain conditions and rules which can 'switch off' the safe harbour status.

Detailed guidance with respect to the 'switch off' rules is contained in OECD Administrative Guidance July 2023 section 5.

The OECD Administrative Guidance June 2024 provides for a specific switch-off rule where domestic top-up tax is not charged on securitisation entities in a jurisdiction, unless the domestic top-up tax liability in respect of the securitisation entity is applied to another group entity in that jurisdiction or on the securitisation entity itself where there are no other group entities. Finance Act 2024 introduced this rule into Part 4A (in section 111AI(4)(d)) in line with this agreed OECD guidance. Please see section 13.3.1 below which discusses securitisation entities in further detail.

Guidance with respect to the 'switch off' rule relating to securitisation entities is contained in OECD Administrative Guidance June 2024 Chapter 6.

9.7.1 Additional current top-up tax and the qualified domestic top-up tax safe harbour

Under section 111AF, additional top-up tax may be calculated for a fiscal year, for example where there is a post-filing adjustment under section 111AB (see section 9.4 above). The amount of incremental top-up tax arising from the recalculation is treated as an additional top-up tax for the fiscal year in which the relevant adjustment is made.

Where the qualified domestic top-up tax safe harbour applies in respect of a fiscal year, but did not apply to a prior fiscal year in respect of which there is a recalculation of top-up tax in accordance with section 111AF, the additional top-up tax is collected in respect of the prior fiscal year (in respect of which the safe harbour did not apply).

9.8 Section 111AJ – Transitional CbCR safe harbour

The transitional CbCR (country-by-country reporting) safe harbour is designed as a short-term measure that effectively excludes a group's operations in certain lower-risk jurisdictions from the scope of top-up taxes in the initial years, thereby providing relief to MNEs in respect of their compliance obligations.

The safe harbour allows a group to undertake simplified calculations in respect of a jurisdiction based on its qualified CbCR and financial accounting data. It must demonstrate, based on this data, that in that jurisdiction it has revenue and income below the de minimis threshold (the de minimis test), an ETR that equals or exceeds an agreed rate (the ETR test), or no excess profits after excluding routine profits (the routine profits test).

These calculations use revenue and profit (loss) before income tax from a group's CbC Report and income tax expense from its financial accounts (after eliminating taxes which are not covered taxes and uncertain tax positions) to determine whether the tests are met. A group must perform a full substance-based income exclusion calculation for the purposes of the routine profits test.

On the making of an election, the jurisdictional top-up tax for an MNE group in respect of a jurisdiction for a fiscal year during the transition period is deemed to be zero where in respect of the fiscal year concerned:

- The MNE group reports total revenue of less than €10 million and profit or loss before income tax of less than €1 million in respect of that jurisdiction in its qualified CBC report (the de minimis test),
- The MNE group has a simplified ETR for that jurisdiction which is equal to or greater than the transition rate for the fiscal year (the ETR test), or
- The MNE group reports profit or loss before income tax in that jurisdiction in its qualified CBC report that is equal to or less than the substance-based income exclusion amount in respect of constituent entities located in that

jurisdiction, in respect of constituent entities that are both resident in that jurisdiction for the purposes of the qualified CbC report and located in that jurisdiction in accordance with section 111D.

Example 9.8.1
Group A has a CbC report for 2024 which shows total revenue of €8m and profits before income tax of €2.5m in Jurisdiction A. The substance based income exclusion amount for the constituent entities located in Jurisdiction A and resident for the purposes of the CbC report is €3m. The simplified ETR for Jurisdiction A is 16%.

Group A will qualify for the CbCR safe harbour in jurisdiction A for 2024, as only one of the three criteria above need to be met. Group A has a simplified ETR in jurisdiction A of 16%, which is above the required ETR for the year of 15%. In addition, the substance based income exclusion of constituent entities located and resident in jurisdiction A for the purposes of the CbC report is €3m, which is in excess of the profit before income tax of €2.5m for the jurisdiction. Group A failed the de minimis test as it had a profit before income tax in the jurisdiction of €2.5m which is in excess of the required minimum of €1m. However, as only one of the three conditions needs to be met, the CbCR safe harbour will apply, deeming the top-up tax due for jurisdiction A in 2024 to be zero.

Group B has a CBC report for 2024 which shows total revenue of €11m and profits before income tax of €2m in jurisdiction B. The simplified ETR of jurisdiction B is 10% and the substance based income exclusion of constituent entities resident for the purposes of the CbC report and located in jurisdiction B is €1m. As Group B has failed all three criteria in jurisdiction B, the CbCR safe harbour will not apply.

The safe harbour may apply to a fiscal year beginning on or before 31 December 2026 but does not include a fiscal year that ends after 30 June 2028.

The simplified ETR of an MNE group in respect of a jurisdiction for a fiscal year is equal to its simplified covered taxes divided by its profit or loss before income tax in its qualified CBC report.

The simplified covered taxes are the aggregate income tax expense of all constituent entities, or joint venture and joint venture affiliates, as the case may be, of an MNE group in a jurisdiction for a fiscal year, as reported in the MNE group's qualified financial statements, excluding any tax that is not a covered tax or any uncertain tax positions. The transition rate to which the simplified ETR is compared is:

- for fiscal years beginning during the year 2023 or 2024, 15%
- for fiscal years beginning during the year 2025, 16%;
- for fiscal years beginning during the year 2026, 17%.

In applying the above tests, a net loss which arises from changes in fair value of ownership interests (other than portfolio shareholdings is excluded from profit or loss before income tax if that loss exceeds €50,000,000 in respect of a jurisdiction for a fiscal year.

In order for a CbC report to be considered to be 'qualified' it must be prepared using qualified financial statements, i.e., financial statements that are either:

- the accounts used to prepare the consolidated financial statements of the UPE before any consolidation adjustments eliminating intra-group transactions,
- separate financial statements of each constituent entity, joint venture or joint venture affiliate provided they are prepared in accordance with:
- an acceptable financial accounting standard, or
- an authorised financial accounting standard and the information contained in the financial statements is reliable, or
- in the case of a constituent entity that is not included in an MNE group's consolidated financial statements on a line-by-line basis solely due to size or materiality grounds, the financial accounts of that constituent entity that are used for preparation of the MNE group's CbC report.

The transitional CbCR safe harbour is applied to a joint venture and joint venture affiliates as if they were constituent entities of a separate MNE group. For the purposes of the transitional CBCR calculations, the profit or loss before income tax and total revenue of the joint venture and joint venture affiliates in respect of the fiscal year, and jurisdiction, concerned are the profit or loss before income tax and total revenue reported in their qualified financial statements.

The transitional CbCR safe harbour cannot apply to a stateless constituent entity, a multi-parented MNE group where a single qualified CbC report does not include the information of the combined groups, or a jurisdiction with constituent entities which are subject to an eligible distribution tax system election made in accordance with section 111AS(1) (see section 11.3 below). There are also specific rules with regard to the operation of the calculations to flow-through entities.

Where the transitional CbCR safe harbour election is made, the transitional rules set out in chapter 8 of Part 4A are impacted such that the transition year for those purposes is the first fiscal year where the transitional CbCR safe harbour no longer applies to that MNE group in respect of that jurisdiction.

For the purposes of the simplified calculations, an MNE group excludes from a jurisdiction an investment entity or insurance investment entity, and top-up tax in respect of such entity is calculated separately, unless the investment entity

- has not made an election to be treated as a transparent entity or to apply the taxable distribution (see section 11.5 and 11.6 below regarding section 111AU and 111AV), and
- all the constituent entity owners of the entity are resident in the same jurisdiction as the entity.

Guidance with respect to this safe harbour is contained in OECD Administrative Guidance December 2022 section 1.

9.8.1 Additional considerations with respect to the Transitional CbCR safe harbour

The OECD Administrative Guidance December 2023 provides some additional guidance with respect to the operation of the transitional CbCR safe harbour which has been reflected in Part 4A.

Guidance was provided with respect to the following items:

1. the treatment of purchase price accounting (PPA) adjustments,
2. the determination of what is a qualified CbCR Report,
3. eligibility of MNE groups and large-scale domestic groups for the transitional CbCR safe harbour,
4. allocation rules with respect to tax expense of permanent establishments (PE's),
5. allocation rules with respect to CFC taxes, and
6. anti-avoidance provisions with respect to "hybrid arbitrage arrangements".

Purchase price accounting
In the case of a constituent entity that was acquired through an acquisition of its ownership interests, adjustments to the carrying value of the constituent entity's assets and liabilities attributable to PPA may be held in the MNE group's consolidation accounts (CFS), directly incorporated into the financial accounts of the constituent entity used to prepare the CFS, or in the separate financial statements of the constituent entity (where push down of PPA adjustments is allowed).

The OECD Administrative Guidance December 2023 provides that where an MNE group allocated and incorporated the PPA adjustments into the financial accounts of an acquired constituent entity that are used in the preparation of the CFS or the separate financial statements of the constituent entity, those financial accounts or separate financial statements will not be considered qualified financial statements for the purposes of the CbCR safe harbour unless:

- The MNE group has not filed a CbC report for a fiscal year beginning after 31 December 2022 that was based on financial information that excluded the PPA adjustments (except where the constituent entity was required by law or regulation to change its financial information to include PPA adjustments), and

- Any reduction to the constituent entity's income attributable to an impairment of goodwill related to transactions entered into after30 November 2021 has been added back for the profit or loss before income tax for the purposes of –
    - o applying the routine profits test, and
    - o calculating the simplified ETR (but only if the financial accounts do not also have a reversal of a deferred tax liability or recognition or increase of a deferred tax asset in respect of the impairment of goodwill).

The above has been legislated for in section111AJ(15).

Qualified CbC Report

The OECD Administrative Guidance December 2023 clarifies that whether a CbC report is considered to be a "qualified" CbC report is determined separately for each tested jurisdiction. Consequently, a CbC report may be considered a qualified CbC report with respect to some tested jurisdictions and not others.

The definition of "qualified CBC report" in section 111AJ(1) was amended in Finance Act 2024 to reflect the above OECD Administrative Guidance December 2023.

Eligibility for CbCR Safe Harbour

The OECD Administrative Guidance December 2023 provides that MNE Groups that are in scope of Pillar Two but not required to file CbC reports are still eligible for the transitional CbCR Safe Harbour if they complete the GloBE Information Return (referred to in Part 4A as a top-up tax information return) using the data from qualified financial statements that would have been reported as total revenue and profit before tax in a qualified CbC report if the MNE Group were required to file a CbC report.

The above has been legislated for in section111AJ(19).

Allocation Rules

The OECD Administrative Guidance December 2023 Guidance provides that the tax expense in the jurisdiction in which a PE is located on the PE's income must be allocated exclusively to the PE's jurisdiction for the purposes of the simplified CbCR safe harbour calculations.

Additionally, it provides that taxes paid under CFC tax regime, or a taxable branch regime (i.e., where a main entity is taxable in the income of its PE), do not need to be allocated for purposes of determining the simplified effective tax rate for the jurisdiction of the constituent entity-owner or main entity, notwithstanding the fact that part or all of such taxes are also taken into account in the computations of a jurisdiction that includes a CFC, PE or hybrid entity under the main calculative provisions of Part 4A.

The above has been legislated for in section111AJ(16).

Anti-arbitrage rule

The OECD Administrative Guidance December 2023 Guidance introduced an anti-arbitrage rule that provides that a constituent entity must exclude certain transactions when calculating whether they can qualify for the transitional CbCR safe harbour. The transactions are referred to as hybrid arbitrage arrangements which were entered into after 15 December 2022.

The guidance provides certain definitions relating to hybrid arbitrage arrangements and sets out the adjustments that must be made to a tested jurisdiction's safe harbour calculation.

Any expense or loss arising as a result of a "deduction without inclusion arrangement" or "duplicate loss arrangement" is excluded from an MNE group's profit or loss before income tax in respect of a jurisdiction, and any income tax expense arising as a result of a "duplicate tax recognition arrangement" is excluded from the MNE group's income tax expense in respect of a jurisdiction. These rules are intended to prevent misuse of the transitional CbCR safe harbour.

Where the safe harbour is not available because of the application of these rules, the taxpayer will be required to calculate whether a top-up tax liability arises under the provisions of Part 4A.

The above has been legislated for in section111AJ(17) and section111AJ(18).

The anti-arbitrage rules apply in respect of a fiscal year, or an accounting period, as the case may be, commencing on or after 31 December 2024.

Guidance with respect to this safe harbour is contained in OECD Administrative Guidance December 2022 section 1 and Chapters 1 and 2 of OECD Administrative Guidance December 2023.

9.9 Section 111AK - Transitional UTPR safe harbour

During a transitional period, and on the making of an election, the top-up tax calculated for each low taxed constituent entity of an MNE group or member of a joint venture group that is located in the jurisdiction of the UPE is deemed to be zero for the purposes of the UTPR where that jurisdiction has a corporate income tax rate that is equal to or greater than 20%.

The transitional period is a fiscal year not exceeding twelve months that begins on or before 31 December 2025 and ends before 31 December 2026.

An election cannot be made under this section and also under the transitional CbCR safe harbour in respect of the same jurisdiction and fiscal year.

Guidance with respect to this safe harbour is contained in OECD Administrative Guidance July 2023 section 5.

9.10 Section 111AKA – Simplified calculations safe harbour

The OECD Administrative Guidance December 2023 provides for an additional safe harbour to be applied under a new framework termed the "Simplified Calculations Safe Harbour". This was introduced into Part 4A by Finance Act 2024 with the introduction of a new section 111AKA - Simplified calculations safe harbour. The section applies to fiscal years commencing on or after 31 December 2023.
This safe harbour allows for simplified income, revenue and tax calculation to be used by eligible groups for non-material constituent entities (NMCE). An NMCE, in general, means a constituent entity that is a member of an MNE group or large-scale domestic group that is not consolidated on a line-by-line basis in the UPEs consolidated financial statements solely on size or materiality grounds, subject to certain conditions.
The safe harbour allows, on election, for the jurisdictional top-up tax for a group for a fiscal year to be deemed to be zero where certain requirements are met.
The safe harbour can only be availed of where there is at least one non-material constituent entity located in the jurisdiction and the group meets a routine profits test (i.e., no excess profit), a de minimis test (average qualifying revenue less than €10m and average qualifying income less than €1m), or an ETR test (ETR equal to or greater than 15%).

An election may be made to determine the qualifying income or loss, qualifying revenue and adjusted covered taxes of an NMCE for a fiscal year using simplified calculations for the purposes of the simplified calculations safe harbour, i.e the amounts are determined in accordance with the relevant country-by-country reporting regulations.

Where a main entity is not an NMCE then none of its permanent establishments (PEs) may be considered an NMCE but where a main entity is an NMCE then all of its PE's will be considered to be NMCEs.

Guidance with respect to this safe harbour is contained in OECD Administrative Guidance December 2023 chapter 6.

10 Chapter 6 – Corporate restructuring and holding structures

10.1 Section 111AL - Application of consolidated revenue threshold to group mergers and demergers

Where two or more groups merge to form a single group (referred to a merged group) in any of the 4 consecutive fiscal years immediately preceding a fiscal year, for the purposes of the consolidated revenue test, the revenue of the merged group is deemed to be greater than the consolidated revenue threshold for any fiscal year prior to the merger if the sum of the revenue included in each of their consolidated financial statements for that fiscal year is equal to or greater than the consolidated revenue threshold.

If an entity that is not a member of a group merges with an entity or group in a fiscal year and either the new member or the acquiring member (or group) did not have consolidated financial statements in any of the last four consecutive years immediately preceding the fiscal year, the consolidated revenue threshold is met for that fiscal period if the sum of the revenue included in each of their financial statements or consolidated financial statements for that fiscal year is equal to or greater than the consolidated revenue threshold.

Where an in scope group de-merges into 2 or more groups (both referred to as a demerged group), the consolidated revenue test is deemed to be met by a demerged group:

- in the first tested fiscal year ending after the demerger, where the demerged group has revenue recorded in the groups consolidated financial statements equal to or greater than the consolidated revenue threshold in that fiscal year, and
- in the second to fourth tested fiscal year ending after the demerger, where the demerged group has revenue recorded in the groups consolidated financial statements equal to or greater than the consolidated revenue threshold in at least 2 of the fiscal years following the year of the demerger.

10.2 Section 111AM - Constituent entities joining and leaving MNE group or large-scale domestic group

Where during a fiscal year, referred to as the acquisition year, an entity (referred to as the target entity) either:

- becomes or ceases to be a constituent entity of an in scope group due to a transfer of ownership interests in that target entity, or
- becomes the UPE of a new group,

the target entity is treated as a member of an in scope group provided a portion of its assets, liabilities, income, expenses and cash flow is included on a line-by-line basis in the consolidated financial statements of the UPE in the acquisition year.

There are special rules in relation to the target entity:

(i) In an acquisition year, an in scope group will only take into account the financial accounting net income or loss and adjusted covered taxes of a target entity that are included in the consolidated financial statements of the UPE.

(ii) In an acquisition year, the qualifying income or loss and adjusted covered taxes of the target entity shall be based on the historical carrying value of its assets and liabilities. This will apply in the acquisition year and each subsequent year.

(iii) In an acquisition year, when calculating the eligible payroll costs of a target entity under section 111AE only the costs that are reflected in the consolidated financial statements of the ultimate parent entity shall be taken into account.

(iv) When calculating the carrying value of eligible tangible assets of the target entity pursuant to section 111AE, there shall be an adjustment, where applicable, in proportion to the period in which the target entity was a member of the in scope group during the acquisition year.

For the purposes of deferred tax assets and deferred tax liabilities of a target entity that are transferred between in scope groups, the acquiring in scope group should take the deferred tax assets and deferred tax liabilities into account in the same manner and to the same extent as if the acquiring in scope group held a controlling interest in the target entity when the deferred tax assets or deferred tax liabilities arose. However, this cannot apply to a qualifying loss deferred tax asset as referred to in section 111Y.

In relation to the section 111X(9), if a deferred tax liability of a target entity has previously been included in its total deferred tax adjustment amount, it is treated as reversed by the disposing in scope group and treated as arising from the acquiring in scope group in the acquisition year. Any subsequent reduction of covered taxes pursuant to 111X(9) shall have effect in the fiscal year in which the amount is recaptured.

If during an acquisition year, a target entity is a parent entity and a member of 2 or more in scope groups, Part 4A shall apply separately to its allocable shares of the top-up tax of low taxed entities determined for each in scope group.

If the jurisdiction the target entity is located, or in the case of a tax transparent entity, where the assets are located, treats the acquisition or disposal of a controlling interest in the target entity in a similar manner to the acquisition of an asset and liability and imposes a covered tax on the seller, then the acquisition or disposal of that controlling interest shall be treated as an acquisition or disposal of assets and liabilities. The covered tax imposed on the seller needs to be based on the difference between the tax basis and either (i) the consideration paid in exchange for the controlling interest or (ii) the fair value of the assets and liabilities.

10.3 Section 111AN - Transfer of assets and liabilities

This section provides rules for the recognition or non-recognition of gain or losses on the disposition of assets and liabilities and for determining the carrying value of assets and liabilities acquired in an ordinary acquisition or disposition and an acquisition or disposition in connection with a Pillar Two reorganisation where the seller is not subject to tax on the gain (or loss), in whole or part.

Subsection (1) contains the following definitions:

A 'non-qualifying gain or loss' means the lesser of:

- the gain or loss of the disposing constituent entity arising in connection with a reorganisation that is subject to tax in the disposing constituent entity's location, and
- the gain or loss arising in connection with the reorganisation recorded in the disposing constituent entity's financial accounting net income or loss.

A 'reorganisation' means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction;

- where:

  (i) the consideration for the transfer is, in whole or in significant part, equity interests issued by the constituent entity acquiring the assets and liabilities (in this section referred to as the "acquiring constituent entity") or by a person connected with the acquiring constituent entity,

  (ii) in the case of a liquidation, the consideration for the transfer is the cancellation of the holding of the equity interests of the entity being liquidated, or

  (iii) no consideration is provided, and the issuance of an equity interest would have no economic significance,

- where the disposing constituent entity's gain or loss on the disposal of the assets and liabilities is not subject to tax, in whole or in part, and

- where the tax laws of the jurisdiction in which the acquiring constituent entity is located require the acquiring constituent entity to calculate taxable income after the disposal or acquisition using the value of the assets for tax purposes of the disposing constituent entity under the tax laws of the jurisdiction in which the disposing constituent entity is located at the date of the transfer, adjusted for any non-qualifying gain or loss on the disposal or acquisition.

In relation to the condition provided for at the second bullet above (in paragraph (b) of the definition of "reorganisation" in section 111AN(1)), a question arises as to whether certain reliefs under Irish legislation, which provide for a transfer to be regarded as having occurred for such an amount that results in no gain or no loss on the disposing entity (e.g. section 617(1)), would satisfy the requirement that the disposing constituent entity's gain or loss on the disposal of the assets and liabilities is "not subject to tax". It is Revenue's view that where such a relief applies (resulting in no gain or no loss for the disposing entity) the condition provided for in the second bullet above should be regarded as satisfied. However, it is important to note that the remaining conditions to be regarded as a "reorganisation" would have to be satisfied.

A disposing constituent entity means the constituent entity disposing of the assets and liabilities.

A disposing constituent entity must include the gain or loss from the disposal of its assets and liabilities in the calculations of its qualifying income or loss for a fiscal year. This is subject to the provisions found in subsection (4) and (5) of this section.

The acquiring constituent entity, when determining its qualifying income or loss, must use its carrying value of the acquired assets and liabilities determined under the financial accounting standard used in preparing the consolidated financial statements of the UPE. This is subject to the provisions found in subsection (4) and (5) of this section.

On the event of a reorganisation, the disposing constituent entity must exclude any gains or losses on the disposal of its assets or liabilities from its qualifying income or loss. The acquiring constituent entity shall use the carrying value of the acquired assets and liabilities of the disposing constituent entity at the time of the disposal for the purposes of its qualifying income or loss.

However, if the reorganisation results in a non-qualifying gain or loss for the disposing constituent entity, the disposing constituent entity must include the gain or loss on the disposal of the assets and liabilities when calculating its qualifying income or loss to the extent of the non-qualifying gain or loss. The acquiring constituent entity must use the disposing constituent entity's carrying value of the acquired assets and liabilities upon disposal, adjusted for the tax laws of the jurisdiction of the acquiring entity to account for the non-qualifying gain or loss.

An election is available where a constituent entity is required or permitted to adjust the tax basis of its assets and amount of its liabilities to their fair value under the tax law in the jurisdiction where it is located (referred to as the "tax adjustment"). Where this election is made, the constituent entity must:

- include an amount in the calculation of its qualifying income or loss which is equal to the difference between the carrying value of the asset and liability immediately before the event that triggered the tax adjustment and the fair value of the asset or liability immediately after the event as determined under the tax law in the jurisdiction where it is located (adjusted for any non-qualifying gain or loss arising in connection with the event).
- use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to calculate qualifying income or loss in the fiscal years ending after the triggering event.

If the above election is made, a constituent entity may include the net amount arising in relation to the difference between the carrying value and fair value of the asset and liability (adjusted for any non-qualifying gain or loss arising in connection with the event) in its qualifying income or loss in the fiscal year in which the event that triggered the adjustment. Alternatively, the constituent entity may include the net amount evenly in the year in which the event that triggered the adjustment occurred and the four subsequent years but where the entity leaves the group within that period, the remaining amount must be included in that fiscal year.

10.4 Section 111AO - Joint ventures

A joint venture is an entity whose ownership interests are at least 50% held directly or indirectly by its ultimate parent entity and whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity.

Joint ventures do not include:

- an ultimate parent entity of an MNE group or of a large-scale domestic group to which a qualified IIR applies,
- an excluded entity,
- an entity whose ownership interests held by the MNE group or large-scale domestic group are held directly through an excluded entity and which:
    - operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors,
    - carries out activities that are ancillary to those carried out by the excluded entity, or

    - has substantially all of its income excluded from the calculation of qualifying income or loss in accordance with section 111P(2)(b) and (c) (excluded dividends and equity gains or losses),

- an entity that is held by an MNE group or large-scale domestic group composed exclusively of excluded entities, or
- a joint venture affiliate.

Sections 111E to 111J, which contain the IIR charging provisions, allocation of top-up tac under the IIR and offset mechanism, apply to a parent entity that holds a direct or indirect ownership interest in a joint venture or a joint venture affiliate with respect to its allocable share of the top-up tax of that joint venture or joint venture affiliate.

Part 4A applies to a joint venture and its joint venture affiliates as if they were constituent entities of a separate in scope group and the joint venture was the UPE of that group.

The top-up tax of a joint venture group for a fiscal year is reduced by each parent entity's allocable share of the top-up tax under subsection (3) of each member of the joint venture group that is brought into charge under subsection (4) and any remaining top-up tax is added to the total UTPR top-up tax in accordance with section 111N(3).

10.5 Section 111AP - Multi-parented MNE and large-scale domestic groups

Where entities and constituent entities of two or more groups form part of a multi-parented in scope group, the entities and constituent entities of each group are treated as members of one in scope group. A multi-parented in scope group can be either a large-scale domestic group or MNE group.

A multi-parented large-scale domestic group means two or more groups where the UPEs enter into an arrangement that is a stapled structure or a dual listed arrangement that does not include an entity or permanent establishment of either group subject to the arrangement which is located in a different jurisdiction with respect to the location of the other entities of the two groups.

A multi-parented MNE group is two or more groups where the UPEs enter into an arrangement that is a stapled structure or dual-listed arrangement that includes at least one entity or permanent establishment of either group subject to the arrangement which is located in a different jurisdiction with respect to the location of the other entities of the two groups.

An entity (other than an excluded entity) is treated as a constituent entity if it is consolidated on a line-by-line basis in the consolidated financial statements of the multi-parented in scope group or if its controlling interest are held by entities in the multi-parented in scope group. The UPE of the separate groups that make up the multi-parented in scope group are the UPE´s of the multi-parented in scope group and any reference to a UPE throughout Part 4A shall apply, as required, as if they are references to multiple UPE´s.

Sections 111E to 111J shall apply to the parent entities and UPE´S of the multi - parented in scope group with respect to their allocable share of the top-up tax of low-taxed constituent entities.

Sections 111L to 111N, which provide for the application, calculation and allocation of the UTPR, and section 111AZ, which relates to the delayed application of IIR and UTPR, shall apply to constituent entities of multi parented in scope groups taking into account the top-up tax of each low taxed constituent entity that is a member of the multi parented in scope group.

The UPE´s of the multi-parented in scope group are required to file the top-up tax information return in respect each of the groups that compose the multi-parented in scope group in accordance with section 111AAI, unless they appoint a designated filing entity.

11 Chapter 7 – Tax neutrality and distribution regimes

11.1 Section 111AQ - Ultimate parent entity that is a flow-through entity

Jurisdictions may treat certain entities or arrangements as transparent for tax purposes or permit an entity or arrangement to deduct distributions to its investors from its taxable income. Under such regimes, the tax on the entity's income is effectively collected at the level of the owner, either by taxing that owner directly on its allocable share of the entity's income (in the case of a tax transparent entity) or by taxing the owners on a deductible dividend paid by the entity. The rules used to calculate top-up taxes need to be adaptable to such tax regimes. This section deals with UPEs that are flow-through entities. Section 7.5 above sets out the definitions for flow-through entities, tax transparent entities and reverse hybrid entities.

The qualifying income of a flow through entity that is a UPE is reduced by the amount of qualifying income that is attributable to the holder of an ownership interest in the flow through entity. For the qualifying income to be reduced, the holder of the ownership interest needs to be subject to tax on such income for a taxable period that ends within 12 months of the end of the fiscal year at a nominal rate which equals or exceeds 15%. Alternatively, the qualifying income may also be reduced where it is reasonably expected that the sum of the adjusted covered taxes paid by the UPE, and other entities that are part of the tax transparent structure, and taxes paid by the ownership holder on such income within 12 months after the end of the fiscal year equals or exceeds 15%.

In addition, the qualifying income of a flow-through entity that is a UPE is reduced, for a fiscal year, by the amount of qualifying income that is allocated to an ownership holder in the flow-through entity where the ownership holder is an individual and holds an ownership interest representing a right to 5% or less of the profits and assets of the UPE, or a governmental entity, an international organization, a nonprofit organization or a pension fund that is tax resident in the jurisdiction of the UPE and holds an ownership interest representing a right to 5% or less of the profits and assets of the UPE.

The qualifying loss of a flow through entity which is a UPE is reduced by the amount of qualifying loss attributable to the ownership holder of the flow through entity, provided that ownership holder is not permitted to use the qualifying loss for the calculation of its taxable income.

For the purposes of identifying the 'ownership holder' referred to in section 111AQ(1) TCA 1997, where the holder of an ownership interest in the UPE is itself a flow-through entity, the 'ownership holder' should be interpreted as referring to the indirect holder closest to the UPE in the ownership chain which is not itself a flow-through entity.

The covered taxes of a flow through entity that is a UPE is reduced in the same proportion as the qualifying income of that flow through entity has been reduced as set out above.

Guidance with respect to this section is contained in OECD Pillar Two Model Rules Commentary and OECD Pillar Two Model Rules Commentary Examples to Article 7.1.

11.2 Section 111AR - Ultimate parent entity subject to a deductible dividend regime

As mentioned in the previous section, jurisdictions may permit an entity to deduct distributions to its investors from its taxable income. For these purposes, a deductible dividend regime means a tax regime that applies a single level of taxation on the income of the owners of an entity by deducting or excluding from the income of the entity the profits distributed to the owners, or by exempting a cooperative from taxation.

A UPE of an in scope group that is subject to a deductible dividend regime must reduce its qualifying income for the fiscal year by the amount that is distributed as a deductible dividend within 12 months after the end of the fiscal year, but such reduction is limited to the qualifying income for the fiscal year. This treatment will apply where the recipient of the dividend meets one of the following conditions

- the recipient of the dividend referred is subject to tax in respect of that dividend for a taxable period that ends within 12 months after the end of the fiscal year at a nominal rate of tax that equals or exceeds 15%,

- it can be reasonably expected that the aggregate amount of covered taxes paid by the UPE and taxes paid by the recipient on such dividend equals or exceeds that income multiplied by 15%, or
- the recipient of the dividend is:
    - an individual, and the dividend received is a patronage dividend from a supply cooperative,
    - an individual who is tax resident in the same jurisdiction where the UPE is located and who holds ownership interests representing a right to 5 per cent or less of the profits and assets of the UPE, or
    - a governmental entity, an international organisation, a non-profit organisation or a pension fund other than a pension services entity, that is tax resident in the jurisdiction where the ultimate parent entity is located.

The covered taxes of a UPE, other than the taxes for which a dividend deduction was allowed under a deductible dividend regime, are reduced in the same proportion as the qualifying income of UPE has been reduced as set out above.

Where the UPE holds an ownership interest in another constituent entity that is subject to a deductible dividend regime, the above paragraphs shall apply to any other constituent entity located in the jurisdiction of the UPE that is subject to the deductible dividend regime, to the extent that its qualifying income is further distributed by the UPE to recipients that meet the requirements of the first paragraph.

Guidance with respect to this section is contained in OECD Pillar Two Model Rules Commentary to Article 7.2 and OECD Pillar Two Model Rules Commentary Examples.

11.3 Section 111AS - Eligible distribution tax systems

A distribution tax regime is a tax system that generally imposes income tax on a corporation when the corporation's income is distributed or deemed to be distributed to its shareholders, rather than when it is earned. Distribution tax regimes also impose current tax in respect of certain non-business expenses. This section is designed to mitigate the impact on the calculation of top-up taxes of the timing differences between the time the income accrues in the financial accounts and the time it is subject to distribution tax, to the extent that distributions are made within a four-year period.

To be an eligible distribution tax system for the purposes of this section the corporate income tax system must impose income tax on profits only when those profits are distributed or deemed to be distributed to shareholders, or when the company incurs certain non-business expenses, at a rate equal to, or in excess of, 15%, and be in force on or before 1 July 2021.

On the making of an election, a constituent entity that is subject to an eligible distribution tax system will include an amount as deemed distribution tax in the adjusted covered taxes of that constituent entity for the fiscal year. The amount included is the lesser of:

- The amount of adjusted covered taxes needed to increase the ETR for the jurisdiction of the constituent entity referred to above for the fiscal year to 15%, and
- The amount of tax that would have been due if the constituent entities located in the jurisdiction has distributed all of their income that is subject to the eligible distribution tax system during the fiscal year.

If an election is made, a deemed distribution tax recapture account is established for each fiscal year such election applies. The amount of deemed distribution tax included in the adjusted covered taxes is added to the recapture account for the fiscal year in which it was established. At the end of each subsequent fiscal year, the outstanding balances of the recapture accounts established for prior fiscal years is reduced in chronological order by the taxes paid by the constituent entities during the fiscal year in relation to actual or deemed distribution. Such deductions are limited to the amount of outstanding balances in the recapture account. Where a loss occurs in a fiscal year, any residual amount in the recapture account is reduced in chronological order by an amount equal to the net qualifying loss of a jurisdiction for the fiscal year multiplied by 15%. Any reduction will be limited to the residual amount in the recapture account and any unused amount of losses is carried forward to subsequent fiscal years.

The outstanding balance, if any, of the deemed distribution tax recapture account, on the last day of the fourth fiscal year after the fiscal year for which such account was established must be subtracted from the adjusted covered taxes determined for the year in which the recapture account was established. This will result in a recalculation of the ETR and top-up tax for that fiscal year in accordance with section 111AF.

Taxes paid during a fiscal year in relation to actual or deemed distributions is not included in the adjusted covered taxes figure to the extent that they reduce the deemed distribution tax recapture account in accordance with the previous paragraphs.

The election will apply to all constituent entities located in the same jurisdiction for the fiscal year in which the election was made.

When a constituent entity that is subject to an election under this section leaves the group or when substantially all of the assets of a constituent entity are transferred outside the group or outside the jurisdiction, the ETR and top-up tax for the jurisdiction must be re-calculated by reducing the covered taxes by the balance of the deemed distribution tax recapture account at the end of that fiscal year. If the re-calculation results in top-up tax, that amount is multiplied by a ratio and the result is included in the additional top-up tax for the fiscal year. The ratio is the sum of the qualifying income of that constituent entity in the fiscal tears for which a deemed distribution tax recapture account is outstanding to the sum of the net qualifying income of the jurisdiction for those fiscal years.

Guidance with respect to this section is contained in OECD Pillar Two Model Rules Commentary to Article 7.3. Examples in relation to eligible distribution tax systems are contained in the OECD Pillar Two Model Rules Commentary Examples to article 7.3.4.

11.4 Section 111AT - Determination of effective tax rate and top-up tax of investment entity

This section provides a mechanism for calculating the ETR of an investment entity or insurance investment entity that is not an excluded entity or a tax transparent entity and has not made an election in line with section 111AU (tax transparency election) or 111AV (taxable distribution method election). The ETR of such investment entity, known as a relevant investment entity, is calculated separately from the ETR of the jurisdiction in which it is located. If more than one relevant investment entity is located in a jurisdiction, their ETR is calculated on a combined basis.

The ETR of a relevant investment entity is based on its adjusted covered taxes, divided by the allocable share of the in scope group in the qualifying income or loss of the relevant investment entity.

The adjusted covered taxes of a relevant investment entity is the adjusted covered taxes attributable to the allocable share of the in scope group in the qualifying income of the relevant investment entity and the covered taxes allocated to the relevant investment entity by section 111Z (see section 8.7 above). Covered taxes accrued by the relevant investment entity attributable to income that is not part of the in scope group’s allocable share of the relevant investment entity´s income are not included.

The allocable share of the in scope group in the qualifying income or loss of the relevant investment entity is determined in accordance with section 111I (see section 6.5 above) and does not take into account interests that are subject to an election under section 111AU or 111AV.

The top-up tax for a relevant investment entity is the sum of its qualifying income less substance based income inclusion, multiplied by the top-up tax percentage of the investment entity (i.e., any positive amount where the relevant investment entity’s ETR is subtracted from the minimum rate). A credit is provided for the amount of qualified domestic top-up tax payable for the relevant investment entity for the fiscal year.

Example 11.1
In this example, the following circumstances arise:

- The UPE is located in Ireland.
- The group consists of one wholly owned relevant investment entity (R.I.E 1) and another relevant investment entity of which the group has an ownership interest of 70% (R.I.E. 2). The remaining interest of 30% is held outside the in scope group.
- The UPE also holds a 100% ownership interest in Constituent Entity 1.
- All entities held by the UPE are located in jurisdiction X which does not apply a domestic top-up tax.
- All entities have a qualifying income of €100m, and an adjusted covered tax figure of €10m.
- The SBIE figure for R.I.E 2 is €30m.
- No election has been made in accordance with section 111AU or 111AV.

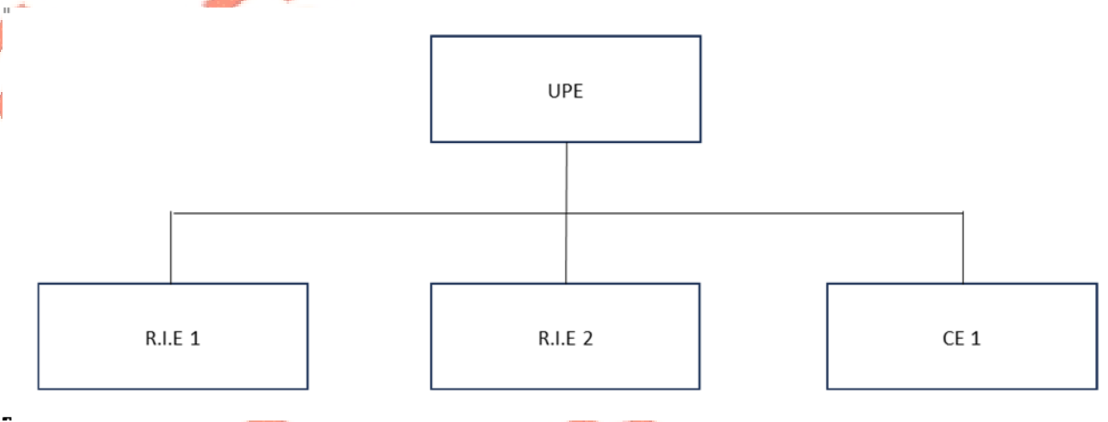

Figure 11.1: Group structure with relevant investment entities, constituent entities and a UPE.

STEP 1: Calculate the adjusted covered taxes figure of the relevant investment entities:

The adjusted covered taxes in this instance will be based on the adjusted covered taxes figure of the relevant investment entity and the allocable share of the in scope group in the qualifying income of that relevant investment entity.

In this instance, as relevant investment entity 1 is 100% owned by the UPE the share of adjusted covered taxes will be €10m. In relation to the relevant investment entity 2, as the amount of qualifying income attributable to ownership interests held by owners other than the parent entity is €30m out of a total of €100m, , the adjusted covered taxes amount allocable to the in scope group is €7m.

As there are two relevant investment entities within the same in scope group, their adjusted covered taxes amount will be added together. This will result in a combined adjusted covered taxes figure of €17m.

Step 2: Calculate the qualifying income figure of the relevant investment entities:

The qualifying income for the relevant investment entities will be based on the allocable share of the in scope group in the qualifying income or loss of the relevant investment entities. In this example the allocable share of the in scope group in the qualifying income or loss of the relevant investment entities is €100m for R.I.E. 1 and €70m for R.I.E 2.

These figures produce a combined qualifying income of the relevant investment entities of €170m.

Step 3: Calculate the ETR of the investment entities and the top-up tax percentage:

The ETR of investment entities is calculated by dividing the combined adjusted covered taxes figure by the combined qualifying income figure for the relevant investment entities.

This will produce an ETR of 10% (i.e., 17m/170m) and top-up tax percentage of 5% for the relevant investment entities.

Step 4: Calculate the top-up tax of the relevant investment entity by applying the formula found in subsection 4(a) of section 111AT TCA 1997:

The formula (A X (B-C))-D is applied as follows:

- A represents the top-up tax percentage of the relevant investment entities, in this case this is 5% (see step 3).
- B is the qualifying income of the relevant investment entities, in this case this is €170m (see step 2).
- The substance-based income exclusion figure in this instance for R.I.E 2 is 30m, this will amount to €21m when pro-rated. There is no SBIE carve out for R.I.E. 1.
- D represents the qualified domestic top-up tax payable for the relevant investment entities. As both the entities are located in a jurisdiction which does not implement a QDTT this figure will be zero.

The above will produce the following figures:

(5% X (170m-21m)) – 0 = 7.45m

The UPE will then include the amount of €7.45m in its IIR liability for the fiscal year in respect of the relevant investment entities. The UPE will calculate the IIR top-up tax due in respect of Constituent Entity 1 separately.

Guidance with respect to this section is contained in OECD Pillar Two Model Rules Commentary to Article 7.4.

11.5 Section 111AU - Election to treat investment entity as tax transparent entity

This section provides for a five-year election to treat an investment entity (or insurance investment entity) as a tax transparent entity for the purposes of Part 4A where the constituent entity-owner(s) of the investment entity are subject to a mark-to-market or similar tax regime on investments in investment entities. The election does not need to be made with respect to all constituent entity-owners of the investment entity. However, the election applies to all of a constituent entity-owner's interests in the investment entity. The purpose of this election is to allow the in scope group to include the constituent entity-owner's share of the investment entity's results as income of the constituent entity owner thereby matching the timing and location of income earned through an investment entity under Part 4A and the local tax rules where the constituent entity-owner is subject to a mark-to-market or similar regime.

On the making of an election, a constituent entity that is an investment entity is treated as a tax transparent entity for the purposes of Part 4A, provided:

- The constituent entity owner is subject to tax in the jurisdiction in which it is located under a fair market value (or similar regime) based on the annual changes in the fair value of its ownership interest in such entity, and
- The rate at which the constituent entity owner is subject to tax on the annual changes in the fair value of its ownership interest is equal to or greater than 15%.

The election is available for both directly owned investment entities as well as investment entities that are indirectly owned through other investment entities. If the election is withdrawn, gains or losses from the disposition of an asset or liability held by the investment entity is determined based on the fair value of the assets or liabilities on the first day of the fiscal year that the election is withdrawn.

Guidance with respect to this section is contained in OECD Pillar Two Model Rules Commentary to Article 7.5.

11.6 Section 111AV - Election to apply taxable distribution method

This section provides for a reduction in the exposure to top-up tax of income earned through an investment entity or insurance investment entity to the extent that the entity makes distributions of its income within a four-year period that are taxable in the hands of the recipients at a rate of 15% or more. The election does not need to be made with respect to all constituent entity-owners of the investment entity. However, the election applies to all of a constituent entity-owner's interests in the investment entity.

On the making of a five-year election, a constituent entity owner of an investment entity applies the taxable distribution method in relation to its ownership interest in the investment entity provided the constituent entity owner is not an investment entity and can be reasonably expected to be subject to tax on distributions from the investment entity at a tax rate equal to or greater than 15%. This method is intended to match both the timing and location of the income earned by an in scope group through the investment entity with the tax on that income in the location where the constituent entity-owner is subject to tax on the distributions.

The constituent entity-owner includes actual and deemed distributions in the computation of its qualifying income. Deemed distributions are generally determined by reference to the law applicable to the constituent entity-owner.

The constituent entity-owner must include in its qualifying income and adjusted covered taxes, the amount of covered taxes incurred by the investment entity that is allowed as a credit in the computation of the constituent entity-owner's tax liability in respect of a distribution from the investment entity (to the same extent a credit is allowed for local tax purposes).

Where there is undistributed net qualifying income of the investment entity that arose in the third year preceding the current fiscal year, the share of the constituent-entity owner in that undistributed net qualifying income is treated as qualifying income of that investment entity for the fiscal year. The amount equal to such qualifying income multiplied by 15% is treated as top-up tax of a low-taxed constituent entity for the fiscal year.

The undistributed net qualifying income of an investment entity is calculated as the amount of qualifying income of that investment entity for the third year preceding the current fiscal year ('tested year') reduced by:

- the covered taxes of the investment entity,
- distributions and deemed distributions to shareholders that are not investment entities in the four year testing period,
- qualifying losses arising during the four year testing period, and

- any residual amount of qualifying losses that has not already reduced the undistributed net qualifying income of that investment entity for a previous tested year,

but not exceeding the amount of qualifying income for the tested year and not allowing for any double counting of distributions, deemed distributions or losses.

A deemed distribution will also arise when an ownership interest in the investment entity is transferred to an entity that is not a member of the in scope group. The amount of the deemed distribution is equal to the share of undistributed net qualifying income attributable to such ownership interest on the date of such transfer, determined without regard to the deemed distribution.

If an election is withdrawn, the constituent entity-owner's share in the undistributed net qualifying income of the investment entity for the tested year, at the end of the fiscal year preceding the fiscal year the withdrawal is made, is treated as qualifying income of the investment entity for the fiscal year. That amount multiplied by 15% is treated as top-up tax of a low-taxed constituent entity for the fiscal year.

Guidance with respect to this section is contained in OECD Pillar Two Model Rules Commentary to Article 7.5.

12 Chapter 8 – Transition Rules

12.1 Section 111AW - Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition

When calculating the ETR of a jurisdiction in accordance with section 111AC in a transition year and for each subsequent year, the in scope group shall take into account all the deferred tax assets and deferred tax liabilities, reflected or disclosed in the financial accounts of all the constituent entities in a jurisdiction for the transition year. “Transition year”, for a jurisdiction, is defined in subsection (1) as the first fiscal year in which an in scope group falls within scope of a qualified IIR, qualified UTPR or qualified domestic top-up tax, in respect of that jurisdiction.

The deferred tax assets and deferred tax liabilities are taken into account at the lower of 15% or the applicable domestic tax rate. However, where a deferred tax asset is attributable to a qualifying loss and has been recorded at a rate lower than 15%, it is taken into account at 15%.

As outlined in section 8.5, the reversal of a loss deferred tax asset shall be attributable to losses incurred on a last-in first out basis.

The impact of any valuation adjustment or accounting recognition adjustment, with respect to a deferred tax asset, is disregarded for these purposes.

Deferred tax assets arising from items excluded from the calculation of qualifying income or loss in accordance with Chapter 3 and generated in a transaction which took place after 30 November 2021 are not taken into account when determining the ETR for a jurisdiction.

If, in the period between 30 November 2021 and the commencement of a transition year in respect of the transferring entity, assets (other than inventory) are transferred between constituent entities, the acquirer’s basis in the acquired assets will equal the transferring entity´s carrying value of the transferred assets at the time immediately before the disposal, with deferred tax assets and deferred tax liabilities determined accordingly.

Guidance with respect to deferred tax attributes on transition is contained in OECD Pillar Two Model Rules Commentary, Chapter 9 in relation to Article 9.1. Examples are also contained in the OECD Pillar Two Model Rules Commentary Examples, Chapter 9.

12.2 Section 111AX - Transitional relief for substance-based income exclusion

For the purposes of applying section 111AE(3), the payroll carve-out under the substance-based income exclusion, the value of 5% is replaced for each fiscal year beginning in the calendar year listed in the first column of the Table found in section 111AX(1), with the corresponding percentage in the second column of the same table reproduced below:

(1)	(2)
2023	10 per cent
2024	9.8 per cent
2025	9.6 per cent
2026	9.4 per cent
2027	9.2 per cent
2028	9.0 per cent
2029	8.2 per cent
2030	7.4 per cent
2031	6.6 per cent
2032	5.8 per cent

For the purposes of applying section 111AE(4), the tangible asset carve-out under the substance-based income exclusion, the value of 5% is replaced for each fiscal year beginning in the calendar year listed in the first column of the Table found in section 111AX(2), with the corresponding percentage in the second column of the same table reproduced below:

(1)	(2)
2023	8 per cent
2024	7.8 per cent
2025	7.6 per cent
2026	7.4 per cent
2027	7.2 per cent
2028	7.0 per cent
2029	6.6 per cent
2030	6.2 per cent
2031	5.8 per cent
2032	5.4 per cent

12.3 Section 111AY - Initial phase of exclusion from IIR and UTPR of MNE groups and large-scale domestic groups

The top-up tax due by a UPE located in the State (in accordance with section 111E(1) or (2)) or an intermediate parent entity located in the State (in accordance with section 111G(1) or (2)) where the UPE is an excluded entity is reduced to zero where:

- The UPE or intermediate parent entity are part of an MNE group in the first 5 years of the initial phase of international activity of the MNE group, or
- The UPE or intermediate parent entity are part of a large-scale domestic group, in the first 5 years, starting from the first day of the fiscal year in which the large-scale domestic group falls within scope of Part 4A for the first time.

For MNE groups or large-scale domestic groups that are within scope when Part 4A comes into operation as it relates to IIR top-up tax, the five year period will start on 31 December 2023.

The period of 5 years as it relates to MNE groups, shall start from the beginning of the fiscal year in which the MNE group first comes within the scope of Part 4A where they were not in scope when Part 4A came into operation.

If the UPE of the MNE group is located in a third country jurisdiction, the top-up tax due (UTPR) by a constituent entity located in the State under section 111N(1) is reduced to zero in the first five years of international activity of the MNE group. The five year period in this instance where the MNE group is within scope of Part 4A when Part 4A comes into operation shall start on 31 December 2024.

An MNE group will be in its initial phase of international activity if it has constituent entities in no more than 6 jurisdictions and the sum of the net book value of the tangible assets of all the constituent entities of the MNE Group located in all jurisdictions other than the reference jurisdiction does not exceed €50,000,000. A reference jurisdiction is defined in section 111AY(3)(b) as the jurisdiction in which the constituent entities of the MNE group have the highest total value of tangible assets in the fiscal year in which the MNE group originally falls within the scope of Part 4A.

If subsections (1) and (2) of section 111AY apply for a fiscal year and the filing constituent entity is located in the State for the fiscal year, the filing constituent entity shall inform Revenue of the start date of the initial phase of international activity of the MNE Group.

12.4 Section 111AZ - Delayed application of IIR and UTPR by Member States

Subject to section 111AAL, where the UPE of an MNE group is located in a Member State which has made an election pursuant to Article 50.1 of the EU Minimum Tax Directive, a constituent entity of that MNE group located in the State will be subject to the UTPR for fiscal years beginning on or after 31 December 2023 in accordance with section 111N.

The UPE in this case will nominate a designated filing entity in a Member State which it is not located in, or if there are no constituent entities in a Member State, in a third country jurisdiction that has, for the reporting fiscal year, a qualifying competent agreement in effect with the Member State in which the UPE is located. If the designated filing entity is located in the State it shall file a top-up tax information return in line with section 111AAI.

13 Chapter 9 – Domestic top-up tax

13.1 Section 111AAA - Interpretation

Important definitions for the operation of Chapter 9 are contained in this section including foreign IIR election, local accounting standard, qualifying entity and standalone financial statements.

Chapter 10 (Administration) applies for the purposes of administering the charge to domestic top-up tax of a qualifying entity.

13.2 Section 111AAB - Qualifying entities

An entity or permanent establishment is a qualifying entity if it is located in the State (in accordance with section 111D) or would be if it was a constituent entity and it is:

- a constituent entity to which Part 4A applies in line with section 111C,
- a joint venture or joint venture affiliate with a parent entity to which Part 4A applies or would apply but for the fact that no parent entity is located in the State, or
- an entity not referred to in (a) or (b) above, that:
    - has revenue exceeding the entity revenue threshold for an accounting period in at least 2 of the immediate previous 4 accounting periods based on its standalone financial statements,
    - is not an excluded entity by virtue of section 111C(2), and
    - is not an investment undertaking* within the meaning of section 246.

* *An investment undertaking, as defined in section 246, will, for the purposes of applying chapter 9 of Part 4A, include a sub-fund of an umbrella fund where that umbrella fund meets the qualifying criteria of an investment undertaking as set out in section 246 and the sub-fund is an entity for the purposes of Part 4A – see section 5.1.*

An investment entity, as construed in accordance with section 111A(1), cannot be a qualifying entity.

The entity revenue threshold referred to above is calculated as €750,000,000 multiplied by the number of days in the accounting period concerned divided 365.

13.3 Section 111AAC - Chargeable entities

Subject to section 111AAO, which provides for specific provisions where a QDTT Group exists, a qualifying entity within the meaning of section 111AAB(1) is chargeable to the domestic top-up tax for a fiscal year or an accounting period, as the case may be.

Where a flow-through entity which is not a body corporate is chargeable to domestic top-up tax, the persons who hold an ownership interest in the flow through entity at any point during the fiscal year or accounting period, as the case may be, are jointly and severally liable to the domestic top-up tax.

13.3.1 Securitisation entities

The OECD Administrative Guidance June 2024 provides that a jurisdiction which adopts a QDTT may decide not to impose a QDTT on securitisation entities. A securitisation entity is an entity that is a participant in a securitisation arrangement and that:

- only carries out activities that facilitate one or more securitisation arrangement(s),
- grants security over its assets in favour of its creditors (or the creditors of another securitisation entity),
- pays out all cash received from its assets to its creditors (or the creditors of another securitisation entity) on an annual or more frequent basis, other than:
  - cash retained to meet an amount of profit required by the documentation of the arrangement, for eventual distribution to equity holders (or equivalent), or
  - cash reasonably required under the terms of the arrangement for either (or both) of the following purposes:
    - to make provision for future payments which are required, or will likely be required, to be made by the entity under the terms of the arrangement, or
    - to maintain or enhance the creditworthiness of the entity.

An entity will not be a securitisation entity unless the profit required by the documentation of the arrangement, for eventual distribution to equity holders (or equivalent), is negligible relative to the revenues of the entity.

A securitisation arrangement means an arrangement which satisfies the following conditions:

- it is implemented for the purpose of pooling and repackaging a portfolio of assets (or exposures to assets) for investors that are not constituent entities of the MNE group in a manner that legally segregates one or more identified pools of assets, and

- it seeks through contractual agreements to limit the exposure of those investors to the risk of insolvency of an entity holding the legally segregated assets by controlling the ability of identified creditors of that entity (or of another entity in the arrangement) to make claims against it through legally binding documentation entered into by those creditors.

Example 13.3.1

A banking group has a portfolio of car loans that it wishes to securitise. It pools the loans together and places them into a securitisation vehicle. The banking group issues bonds in the SPV on the market, to third party investors. In line with the securitisation regulation, a constituent entity of the banking group retains a 5% exposure to the risks of the securitisation by way of holding a profit participating note.

The securitisation vehicle exists for the purpose of
- repackaging the car loans into tradeable securities.
- raising financing from third parties to refinance the car loans.

That the banking group banking group retains a 5% exposure to the risks of the securitisation in line with the securitisation regulation does not prevent this arrangement from being a securitisation arrangement.

With regard to the application of the qualified domestic top-up tax safe harbour (see section 9.7 regarding section 111AI TCA), the OECD Administrative Guidance June 2024 provides that where the jurisdiction includes securitisation entities within the scope of its QDTT, but includes provisions to impose any top-up tax liability in respect of the income of a securitisation entity on—

- another constituent entity of the MNE Group that is not a securitisation entity, or
- on the securitisation entity itself if the top-up tax liability cannot be otherwise collected,

the MNE group will not apply the switch-off rule with respect to the jurisdiction where the securitisation entity is located. This means, where the top-up tax liability is so imposed, the MNE Group would be allowed to apply the qualified domestic top-up tax safe harbour for the jurisdiction.

Finance Act 2024 introduced section 111AAC(4)(a) and (b) to implement the above option in Irish legislation with regard to securitisation entities located in Ireland. The amendment applies in respect of a fiscal year or accounting period, as the case may be, commencing on or after 31 December 2023. Therefore, where a securitisation entity is a member of an MNE group or large-scale domestic group, then no domestic top-up tax will be imposed on that securitisation entity for a fiscal year. Instead, the top-up tax applicable to that securitisation entity is allocated to other members of the group located in Ireland that are not securitisation entities, based on their relative share of qualifying income.

This is also the case where the securitisation entity is a minority owned constituent entity. However, if there are no other such members of the group, the top-up tax is charged on the securitisation entity itself.

Example 13.3.2

An MNE group in scope of Part 4A has three constituent entities located in Ireland (CE1, CE2 and a securitisation entity, as defined). For bankruptcy remoteness reasons, shares in the securitisation entity are held by a corporate share trustee that is unconnected with the MNE group. While the shares are held on orphan trust, the results of the securitisation entity is consolidated with the MNE group under IFRS10 due, in this instance, to a servicing agreement that the MNE group has entered into with the securitisation entity. Absent the application of section 111AAC(4), the top-up tax and qualifying income of the entities for the fiscal year are as follows:

- CE1 – qualifying income = 100
- CE2 – qualifying income = 200
- Jurisdictional top-up tax for CE1 and CE2 = 50
- Securitisation entity – qualifying income 500 and top-up tax of 75

For the purposes of calculating the domestic top-up tax of CE1 and CE2 on the application of section 111AAC(4), the following calculation is made:

- Jurisdictional top-up tax = 50 + 75 = 125
- Total qualifying income of CE1 and CE2 = 100+200 = 300
- Top-up tax allocated to CE1 = 125 * 100/300 = 41.67
- Top-up tax allocated to CE2 = 125 * 200/300 = 83.33
- Top-up tax allocated to securitisation entity = nil

The rules regarding securitisation entities apply to fiscal years commencing on or after 31 December 2023. Guidance with respect to securitisation entities and QDTT is contained in OECD Administrative Guidance June 2024 chapter 6.

13.4 Section 111AAD - Determining top-up amounts of qualifying entity

Chapters 3 to 8 shall apply for the purposes of determining the domestic top-up tax of a qualifying entity (for “domestic purposes”) as those chapters apply for the purposes of determining the top-up tax of a constituent entity. The application of Chapters 3 to 8 is subject to the various adjustments and insertion of subsections as described in subsection (2) to (7) of this section.

Part 4A has effect for domestic purposes as if:

- references to a constituent entity were to a qualifying entity,
- the formula in section 111AD(3) (which calculates the amount of top-up tax) took no account of qualified domestic top-up tax payable, i.e., a credit against domestic top-up tax is not available for domestic top-up tax payable,
- sections 111T(1)(b), 111AI and 111AS (provisions relating to eligible distribution tax systems and the domestic top-up tax safe harbour) were omitted,
- references to financial accounting net income or loss for the fiscal year, where it is determined in accordance with a local accounting standard pursuant to paragraph (e), were to the financial accounting net income or loss determined for a constituent entity, joint venture or joint venture affiliate, as the case may be, in preparing financial statements in accordance with that local accounting standard for an accounting period,
- there were inserted in section 111O (determination of qualifying income or loss) a number of subsections which provide that qualifying income or loss may, in certain circumstances, be calculated based on a local accounting standard and a tiebreaker test is available where a qualifying entity prepares more than one set of accounts under a local accounting standard,
- subsections (4), (5) and (7) of section 111Z (in relation to the allocation of certain covered taxes) did not apply,
- any covered tax of a main entity that is allocable to a permanent establishment located in the State under subsection (2) of 111Z was not allocated to that permanent establishment,
- a reference to covered taxes in section 111Z(6) (in relation to the allocation of covered taxes on distributions) is construed as only including withholding taxes imposed on the distribution of a qualifying entity in the State,
- subsections (3) and (5) of section 111AO (regarding the charging provisions for joint ventures) did not apply, and
- subsections (5) to (7) of section 111AP (regarding the charging provisions for multi-parented MNE and large-scale domestic groups) did not apply.

It is noted that, where in-scope group entities use different local accounting standards in the preparation of their accounts (e.g., one entity prepares Irish GAAP accounts while another group entity prepares IFRS accounts), but none of the entities prepare accounts in more than one accounting standard, then the tie-breaker test mentioned above is not applied, i.e., the tie-breaker test is only applied where an entity has prepared accounts in accordance with more than one accounting standard.

Notwithstanding that, in general, subsections (4), (5) and (7) of section 111Z (in relation to the allocation of certain covered taxes) do not apply when calculating domestic top up tax, covered taxes accrued in the financial accounts of a constituent entity-owner of a hybrid entity or reverse hybrid entity are included in the adjusted covered taxes of the hybrid entity or reverse hybrid entity where those taxes are:

(a) allocated to the hybrid entity or reverse hybrid entity under section 111Z(5),
(b) imposed by the jurisdiction where the hybrid entity or reverse hybrid entity are located, and
(c) relate to the income of the hybrid entity or reverse hybrid entity.

Guidance with respect to this allocation rule of taxes with respect to hybrid entities and reverse hybrid entities is contained in OECD Administrative Guidance June 2024 chapter 5.6. The rule applies to fiscal years commencing on or after 31 December 2024.

As noted above, for the purposes of determining top-up amounts of qualifying entities, section 111AAD provides for the local accounting standard rule which requires the calculation of domestic top-up tax to be based on the applicable local accounting standard, as opposed to the accounting standard used in the consolidated group financial statements, where certain conditions are met.

To allow this rule to operate as intended, three specific adjustments are noted to the general rules contained within Chapters 3 to 8.

References to consolidated financial statements of the ultimate parent entity (UPE) (being the basis of calculation for values or amounts) are construed, for the purposes of domestic to-up tax computations, to instead refer to the financial statements of the entity prepared in accordance with the local accounting standard where that standard is used to calculate the financial accounting net income or loss (FANIL) of the entity for the purpose of the domestic top-up tax.

The three provisions are as follows:

- Section 111P(6) related to the application of the realisation principle in the calculation of qualifying income or loss of a constituent entity,
- Section 111AE(5) related to the calculation of carrying values of tangible assets for the purposes of the substance based income exclusion rule, and
- Section 111AN(3) related to the carrying value of acquired assets.

The above three adjustments apply to fiscal years commencing on or after 31 December 2024. However, for fiscal years commencing on or after 31 December 2023 but before 31 December 2024, Revenue will also accept returns filed on the basis that these adjustments applied.

Part 4A has effect for domestic purposes in respect of a qualifying entity within the meaning of section 111AAB(1)(c), i.e., a standalone entity, as if:

- references to member of a group, member of an MNE group and member of a large-scale domestic group were to qualifying entity,
- references in Part 4A to the consolidated financial statements of the ultimate parent were to the standalone financial statements of the qualifying entity, and
- the following sections of Part 4A were omitted (on the basis that they are not relevant to the calculation of top-up tax for a standalone entity):

section 111R	Allocation of qualifying income or loss between main entity and permanent establishment
section 111S	Allocation of qualifying income or loss of flow-through entity
section 111Z	Specific allocation of covered taxes incurred by certain types of constituent entities
section 111AA	Rules required for blended CFC regime
section 111AH	Minority owned constituent entities
section 111AO	Joint ventures
section 111AP	Multi-parented MNE and large-scale domestic groups
section 111AQ	Ultimate parent entity that is a flow-through entity
section 111AR	Ultimate parent entity subject to a deductible dividend regime
section 111AU	Election to treat investment entity as tax transparent entity
section 111AV	Election to apply taxable distribution method

Subsection (4) of section 111AAD provides that the initial phase of exclusion under section 111AY will apply for domestic purposes:

- where none of the ownership interests in a qualifying entity are held by a parent entity subject to a qualified IIR, or
- the ownership interests in a qualifying entity are held by a parent entity, other than a partially-owned parent entity, located outside the State that is subject to a qualified IIR and the ownership interests in the parent entity are directly or indirectly held by an ultimate parent entity located in the State, or an intermediate parent entity located in the State (when the ultimate parent entity is an excluded entity),

In addition, it will apply as if the following were substituted for subsection (1) of that section:

'(1) The domestic top-up tax due by a qualifying entity in accordance with section 111AAC(1) shall be reduced to zero where: a) the qualifying entity is a member of an MNE group, in the first 5 years of the initial phase of the international activity of the MNE group starting from the first day of the fiscal year in which the MNE group falls within the scope of this Part for the first time, notwithstanding the requirements laid down in Chapter 5, b) the qualifying entity is a member of a large-scale domestic group, in the first 5 years, starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of this Part for the first time, or, c) the qualifying entity is an entity within the meaning of section 111AAB (1)(c), in the first 5 years, starting from the first day of the accounting period in which entity falls within the scope of this Part for the first time.'

For the purposes of subsection (5) of section 111AAD, 'new transition year' means the first fiscal year that a qualifying entity is subject to a qualified IIR or a qualified UTPR in a jurisdiction, where that fiscal year begins on a date later than the beginning of the first fiscal year that a qualifying entity falls within the scope of domestic top-up tax.

For the purposes of determining the domestic top-up tax of a qualifying entity in respect of a new transition year:

- any excess negative tax expense carry-forward shall be eliminated at the beginning of the new transition year;
- section 111X(9) (deferred tax liability recapture) shall not apply to any deferred tax liability that was taken into account in calculating the effective tax rate for the purposes of determining the domestic top-up tax of the qualifying entity for a fiscal year prior to the new transition year, that was not recaptured prior to the new transition year;
- section 111X(9) shall apply to deferred tax liabilities that are taken into account in, and subsequent to, the new transition year;
- any qualifying loss deferred tax asset in respect of a fiscal year preceding the new transition year shall be eliminated and the filing constituent entity may make a new election in accordance with section 111Y(1)(a) and, notwithstanding section 111Y(5), the filing constituent entity may make a new election in the top-up tax information return of the MNE group for the new transition year in accordance with section 111Y(1)(a);
- the deferred tax assets and deferred tax liabilities taken into account in determining the effective tax rate for a jurisdiction in accordance with section 111AW(2) (transition period deferred tax attributes) shall be eliminated and that subsection shall be applied at the beginning of the new transition year;
- section 111AW(3) shall apply to transactions occurring after 30 November 2021 and before the beginning of the new transition year but where domestic top-up tax was payable due to the application of section 111U(6) in respect of

a deferred tax asset attributable to a tax loss, such deferred tax asset shall not be treated as arising from items excluded from the calculation of qualifying income or loss under Chapter 3.

Where an election may be made with regards to Part 4A, then that election may be made for domestic purposes to the extent that such an election would affect the calculation of domestic top-up tax for a qualifying entity.

A foreign IIR election is to be treated as an election made under Part 4A. Any elections made in the GloBE Information Return for the purposes of calculating the IIR top-up tax will apply for the purposes of the domestic top-up tax. A definition is required for a 'foreign IIR election' as there may be elections that are made for the purposes of calculating IIR/UTPR top-up tax that are given effect for the purposes of domestic top-up tax which are made via a GloBE information Return filed with Revenue or a foreign tax authority.

13.5 Section 111AAE - Scope of application of qualifying domestic top-up tax

Chapter 9 shall apply to a qualifying entity:

- within the meaning of paragraph (a) or (b) of section 111AAB(1) for fiscal years beginning on or after 31 December 2023, and
- within the meaning of paragraph (c) of section 111AAB(1) for accounting period beginning on or after 31 December 2023.

14 Chapter 10 – Administrative provisions

Please refer to Tax and Duty Manual Part 04A-01-03 'Guidance on Administration' for guidance on the administrative provisions.

15 Chapter 11 – Application

15.1 Section 111AAAE - Application (Part 4A)

Subject to section 111AAE, Part 4A shall apply to fiscal years beginning on or after 31 December 2023, except for MNE groups to which section 111AZ(1) applies, section 111L, 111M and 111N shall apply to fiscal years beginning on or after 31 December 2024.

16 Assessment and Enquiries

Certain sections of Part 41A TCA 1997 (assessing rules including rules for self-assessment) will apply to GloBE tax, with necessary modifications, namely:

- Section 959V – Amendment by chargeable person of return and of self-assessment in return.
- Section 959Y – Chargeable persons and other persons: assessment made or amended by Revenue officer.
- Section 959Z – Right of Revenue office to make enquiries.
- Section 959AA -Chargeable persons: time limit on assessment made or amended by Revenue officer.
- Section 959AC – Chargeable persons: Revenue assessment and amendment of assessments in absence of return, etc.
- Section 959AD – Chargeable persons and other persons: Revenue assessment and amendment of assessments where there is fraud or neglect.
- Section 959AE – Other Revenue assessments and miscellaneous matters.
- Section 959AU – Date for payment of tax: amended assessments.
- Section 959AV – Date for payment of tax: determination of an appeal.
- Section 959AW – Mutual Agreement Procedures

17 Appendix 1 - Correlation Table

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Chapter 1 – Interpretation and general (Part 4A)					
Interpretation (Part 4A) Section 111A	(1)	*Acceptable Financial Accounting Standard*	Article 3(25)	10.1.1	To be read with the definition of 'International Financial Reporting Standards' also included in the legislation.
Interpretation (Part 4A) Section 111A	(1)	*The Acts*	n/a	n/a	
Interpretation (Part 4A) Section 111A	(1)	*Adjusted Covered Taxes*	See section 111U below	See section 111U below	To be read per the definition set out in Section 111U
Interpretation (Part 4A) Section 111A	(1)	*Authorised Financial Accounting Standard*	Article 3(26)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Consolidated Financial Statements*	Article 3(6)	10.1.1	The relevant definition per Article 10.1.1 of the Model Rules states: "(c) where the Ultimate Parent Entity has financial statements **described in paragraph (a) or (b)** that are not prepared in accordance with an Acceptable Financial

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					Accounting Standard, the financial statements are those that have been prepared subject to adjustments to prevent any Material Competitive Distortions”.
					The bold and underlined wording in the Model Rules (“described in paragraph (a) or (b)”) was included in the definition of consolidated financial statements in section 111A to ensure that subparagraph (c) of the definition did not unintentionally relate to the financial statements of the UPE only (instead of the group).
Interpretation (Part 4A) Section 111A	(1)	*Consolidated Revenue Test*	See section 111C below	See section 111C below	To be read per the definition set out in Section 111C
Interpretation (Part 4A) Section 111A	(1)	*Consolidated Revenue Threshold*	See section 111C below	See section 111C below	
Interpretation (Part 4A) Section 111A	(1)	*Constituent Entity*	Article 3(2)	1.3.1	Additional text added to clarify that it does not include an “excluded entity”, in accordance with Article 1.3.3 of the Model Rules
Interpretation (Part 4A) Section 111A	(1)	*Constituent Entity-Owner*	Article 3(41)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Controlled Foreign Company Tax Regime*	Article 3(17)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Part 4A) Section 111A	(1) and (4)	*Controlling Interest*	Article 3(21)	10.1.1	There is a difference between the definition per the EU Directive and the Model Rules.
					Member States may use text of the EU Directive which refers to the "acceptable financial accounting standard" in the context of both scenarios (i.e., where “the interest holder is required, or would have been required…) or can follow the Model Rules which do not confine the definition of “controlling interest” to the principles of an acceptable accounting standard under part (b) of the definition contained in the Model Rules. The legislation follows the Model Rules.
Interpretation (Part 4A) Section 111A	(1)	*Covered Taxes*	See section 111T below	See section 111T below	To be read per the definition set out in Section 111T
Interpretation (Part 4A) Section 111A	(1)	*Deferred Tax Expense*			OECD Pillar 2 Model Rules Commentary, Article 4.4.1, paragraph 70. (OECD Pillar 2 Model Rules Consolidated Commentary, Article 4.4.1, paragraph 70, page 129)
Interpretation (Part 4A) Section 111A	(1)	*Designated Filing Entity*	Article 3(44)	10.1.1	The definition refers to section 111AAI [Top-up tax information return] which is included in Chapter 10 of Part 4A – Administration.
Interpretation (Part 4A) Section 111A	(1)	*Directive*	n/a	n/a	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Part 4A) Section 111A	(1)	*Disqualified Refundable Imputation Tax*	Article 3(37)	10.1.1	To be read with the definition of 'qualified imputation tax' also included in the legislation. Definition of 'qualified imputation tax' moved to standalone subsection (6) due to size
Interpretation (Part 4A) Section 111A	(1)	*Domestic Top-up Tax*	See section 111AAC below	See section 111AAC below	To be read per the definition set out in Section 111AAC
Interpretation (Part 4A) Section 111A	(1)	*EEA Agreement*	n/a	n/a	
Interpretation (Part 4A) Section 111A	(1)	*EEA state*	n/a	n/a	
Interpretation (Part 4A) Section 111A	(1)	*Eligible Distribution Tax System*	Article 3(42)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Entity*	Article 3(1)	10.1.1	Para 12, section 1.2 of the OECD's Administrative Guidance provides for the exclusion of local or national government from the definition of entity. This is reflected in the definition. Definition of Entity in Model Rules 10.1 excludes natural persons.
Interpretation	(1)	*Excluded*	See section	See section 111C below	To be read per the definition set out in Section 111C

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
(Part 4A) Section 111A		*Entities*	111C below		
Interpretation (Part 4A) Section 111A	(1)	*Financial Accounting Net Income or Loss*	Article 15(1)	3.1.2	OECD Pillar 2 Model Rules 3.1.2 (OECD Pillar 2 Model Rules Consolidated Commentary, Article 3.1.2 Page 54) The meaning of the term "consolidation adjustments", within this definition, is to be construed from its ordinary accounting meaning.
Interpretation (Part 4A) Section 111A	(1)	*Filing Constituent Entity*	Article 3(8)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Fiscal Year*	Article 3(7)	10.1.1	
Interpretation (Part 4A) Section 111A	(1), (3) and (5)	*Flow-through Entity*	Article 3(12)	10.2.1; 10.2.2; 10.2.3; 10.2.4	
Interpretation (Part 4A) Section 111A	(1)	*Governmental Entity*	Article 3(9)	10.1.1	OECD Commentary 2022, Article 10.1, paragraph 30 and 31. (OECD Pillar 2 Model Rules Consolidated Commentary, Article 10.1, Paragraph 26 to 33, Page 241 to 243.)
Interpretation (Part 4A) Section 111A	(1)	*Group*	Article 3(3)	1.2.2	There are two differences between text in the EU Directive and the Model Rules. **1. Difference – "may have been excluded" versus "are excluded"** Member States ("MS") may use text of the EU Directive

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					which states "may have been excluded" or can use text of Model Rules which states "are excluded". The legislation follows the Model Rules. **2. Difference – reference to “acceptable financial accounting standard”** The reference to “acceptable financial accounting standard” is contained in the definition per the EU Directive but not in the equivalent definition per the Model Rules. Member States may use text of the EU Directive (which states "acceptable financial accounting standard") or can follow the Model Rules which do not confine the definition of 'group' to ownership or control being defined by principles of an acceptable accounting standard. The legislation follows the Model Rules.
Interpretation (Part 4A) Section 111A	(1)	*Hybrid Entity*	Article 24(4)	10.2.5	OECD Administrative Guidance June 2024 chapter 5.5.4 provides that an entity that is located in a jurisdiction that does not have a corporate income tax will be treated as a hybrid entity if it is treated as fiscally transparent in the jurisdiction where its owners are located and is not treated as a flow-through entity and fiscally transparent entity under section 111A(5)(c).
Interpretation (Part 4A) Section 111A	(1)	*Income Inclusion Rule*	n/a	n/a	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Part 4A) Section 111A	(1)	*IIR*	n/a	n/a	
Interpretation (Part 4A) Section 111A	(1)	*IIR Top-up Tax*	n/a	n/a	Definition sets out the sections under which an IIR tax may arise
Interpretation (Part 4A) Section 111A	(1)	*Insurance Investment Entity*	Article 42(1)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Intermediate Parent Entity*	Article 3(20)	10.1.1	OECD Administrative Guidance February 2023 section 3.2 provides for the exclusion of 'an insurance investment entity' from the definition of 'intermediate parent entity'. The legislation follows the Administrative Guidance. (OECD Pillar 2 Model Rules Consolidated Commentary, Article 2.1.2, Paragraph 14, Page 36.) In line with the Administrative Guidance, an insurance investment entity cannot be an IPE or POPE.
Interpretation (Part 4A) Section 111A	(1)	*International Financial Reporting Standards*	Article 3(25)	n/a	
Interpretation (Part 4A) Section 111A	(1)	*International Organisation*	Article 3(10)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Part 4A) Section 111A	(1)	*Investment Entity*	Article 3(30)	10.1.1.	For legislative efficiency, the definition of investment entity includes an insurance investment entity.
Interpretation (Part 4A) Section 111A	(1)	*Investment Fund*	Article 3(31)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Joint Venture, Joint Venture Affiliate and Joint Venture Group*	See section 111AAO below	See section 111AAO below	To be read per the definitions set out in Section 111AO
Interpretation (Part 4A) Section 111A	(1)	*Large-scale Domestic Group*	Article 3(5)	n/a	
Interpretation (Part 4A) Section 111A	(1)	*Local Tangible Assets*	Article 16 (7)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Low Tax Jurisdiction*	Article 3(35)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Low-Taxed Constituent Entity*	Article 3(19)	10.1.1	
Interpretation (Part 4A)	(1)	*Main Entity*	Article 3(40)	10.1.1.	

Irish Legislation – Section Title	**Irish Legislation– Subsection**	**Definition**	**EU Directive**	**Model Rules**	**Notes**
Section 111A					
Interpretation (Part 4A) Section 111A	(1)	*Marketable Transferable Tax Credit*			OECD Administrative Guidance July 2023, Chapter 2, paragraph 37 (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4 paragraph 112.1 to 114.1 Pg 84-86) The definition refers to section 111V [Meaning of marketable transferable tax credit].
Interpretation (Part 4A) Section 111A	(1)	*Material Competitive Distortion*	Article 3(27)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Member State*	n/a	n/a	
Interpretation (Part 4A) Section 111A	(1)	*Minimum Rate*	Article 3(15)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*MNE*	n/a	n/a	
Interpretation (Part 4A) Section 111A	(1)	*MNE Group*	Article 3(4)	1.2.1	
Interpretation (Part 4A)	(1)	*Net Book Value Of*	Article 3(29)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111A		*Tangible Assets*			
Interpretation (Part 4A) Section 111A	(1)	*Non-Marketable Transferable Tax Credit*			OECD Administrative Guidance July 2023, Chapter 2, paragraph 40 (OECD Pillar 2 Model Rules Consolidated Commentary, Article 4.1.3, Paragraph 14.2, Page 112.) The definition refers to section 111V [Meaning of marketable transferable tax credit].
Interpretation (Part 4A) Section 111A	(1)	*Non-profit Organisation*	Article 3(11)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Non-Qualified Refundable Tax Credit*	Article 3(39)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*OECD Model Rules*	Article 3(18)	n/a	
Interpretation (Part 4A) Section 111A	(1)	*OECD Model Tax Convention on Income and Capital*	n/a	n/a	
Interpretation (Part 4A)	(1)	*Ownership Interest*	Article 3(23)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111A					
Interpretation (Part 4A) Section 111A	(1)	*Parent Entity*	Article 3(24)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Partially Owned Parent Entity*	Article 3(22)	10.1.1	OECD Administrative Guidance February 2023 section 3.2, paragraph 2, (OECD Pillar 2 Model Rules Consolidated Commentary Article 2, page 35, paragraph 7) provides for the exclusion of 'an insurance investment entity' from the definition of a 'POPE'. The legislation follows the Administrative Guidance. In line with the Administrative Guidance, an insurance investment entity cannot be an IPE or POPE.
Interpretation (Part 4A) Section 111A	(1)	*Pension Fund*	Article 3(33)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Pension Services Entity*	Article 3(34)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Permanent Establishment*	Article 3(13)	10.1.1	
Interpretation (Part 4A)	(1)	*Qualified Domestic Top-*	Article 3(28)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111A		*up Tax*			
Interpretation (Part 4A) Section 111A	(1)	*Qualified Domestic Top-up Tax Payable*			OECD Administrative Guidance July 2023, page 76, paragraph 81. (OECD Pillar 2 Model Rules Consolidated Commentary Article 5.2.3, Page 149, Paragraphs 19-20.3)
Interpretation (Part 4A) Section 111A	(1)	*Qualified IIR*	Article 3(18)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Qualified Imputation Tax*	See section 111A(6) below	See section 111A(6) below	To be read in accordance with section 111A(6)
Interpretation (Part 4A) Section 111A	(1)	*Qualified Refundable Tax Credit*	Article 3(38)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Qualified UTPR*	Article 3(43)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Qualifying Competent Authority Agreement*	Article 44(1)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Qualifying Entity*	See section 111AAB below	See section 111AAB below	To be read per the definition set out in section 111AAB

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Part 4A) Section 111A	(1)	*Qualifying Income or Loss*	Article 3(36)	3.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Real Estate Investment Vehicle*	Article 3(32)	10.1.1	Irish legislation drafted with reference to OECD Pillar 2 Model Rules Commentary, Article 10.1 page 217, paragraph 144-148. (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Page 275, Paragraph 144-148).
Interpretation (Part 4A) Section 111A	(1)	*Securitisation arrangement*	n/a	n/a	To be construed in accordance with OECD Administrative Guidance June 2024 chapter 6.
Interpretation (Part 4A) Section 111A	(1)	*Securitisation entity*	n/a	n/a	To be construed in accordance with section 111A(8) and OECD Administrative Guidance June 2024 chapter 6.
Interpretation (Part 4A) Section 111A	(1)	*Stateless Constituent Entity*	See section 111D below	See section 111D below	To be read in accordance with subsections (3)(b), (4)(d) or (6)(d)(1) of section 111D
Interpretation (Part 4A) Section 111A	(1)	*Substance-based Income Exclusion Amount*	See section 111AE below	See section 111AE below	To be construed in accordance with section 111AE(2)(a)
Interpretation (Part 4A) Section 111A	(1)	*Tax Treaty*	n/a	10.1.1	

Irish Legislation – Section Title	**Irish Legislation– Subsection**	**Definition**	**EU Directive**	**Model Rules**	**Notes**
Interpretation (Part 4A) Section 111A	(1)	*Third Country Jurisdiction*	n/a	n/a	
Interpretation (Part 4A) Section 111A	(1)	*Top-up Tax*	Article 3(16)	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*Ultimate Parent Entity*	Article 3(14)	1.4.1	
Interpretation (Part 4A) Section 111A	(1)	*Undertaxed Profit Rule*	n/a	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*UTPR*	n/a	10.1.1	
Interpretation (Part 4A) Section 111A	(1)	*UTPR top-up tax'*	n/a	n/a	Definition sets out the sections under which an UTPR tax may arise
Interpretation (Part 4A) Section 111A	(2)		n/a	n/a	This subsection clarifies the meaning of a person or entity being connected with another person or entity for the purposes of Part 4A.
Interpretation (Part 4A) Section 111A	(3)		Article 3(12)	10.2.2	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Part 4A) Section 111A	(4)		Article 3(21)	10.1 (see definition of controlling interest)	
Interpretation (Part 4A) Section 111A	(5)		Article 3(12)	10.2.1; 10.2.3; 10.2.4	
Interpretation (Part 4A) Section 111A	(5A)		Article 3(12)	10.2.1; 10.2.3; 10.2.4	Subsection (5A) provides that for the purposes of applying subsection (5)(a) of section 111A to a flow-through entity, a reference in that subsection to “owner” shall mean the constituent entity-owner that is closest in the ownership chain to the flow-through entity that is either not a flow-through entity, or where there is no such constituent entity-owner, a flow-through entity that is the ultimate parent entity of the MNE group or large-scale domestic group. This is in line with OECD Administrative Guidance June 2024 chapter 5.2.2.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Part 4A) Section 111A	(6)		Article 3(37)	10.1.1	
Interpretation (Part 4A) Section 111A	(7)		n/a	n/a	This subsection provides that any words or expressions used in Part 4A, which are also used in the Directive, will have the same meaning unless the context otherwise requires.
Interpretation (Part 4A) Section 111A	(8)		n/a	n/a	This subsection, in conjunction with section 111A(1), provides for the definition of a “securitisation entity”. This definition is to be construed in accordance with OECD Administrative Guidance June 2024 chapter 6.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Principles for construing rules in accordance with OECD Pillar Two guidance Section 111B	(1) - (4)				Domestic provision to ensure that domestic legislation is to be interpreted in line with OECD Pillar Two Model Rules, OECD Pillar Two Model Rules Commentary, OECD Pillar 2 Consolidated Commentary, all agreed OECD Administrative Guidance publications (December 2022, February 2023, July 2023, December 2023 and June 2024) and all published Examples, provided the aforementioned are not inconsistent with the Directive. Provides for Ministerial orders so that future OECD administrative guidance may be adopted. To date two Ministerial Orders has been made under this section. On 20 December 2023 S.I. No. 675 of 2023 (Taxes Consolidation Act 1997 (Section 111B(3)) Order 2023) was effected, by Ministerial Order, which designated the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, published by the OECD on 18 December 2023, as being comprised in the OECD Pillar Two guidance (within

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					Taxes Consolidation Act 1997 (No. 39 of 1997).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Principles for construing rules in accordance with OECD Pillar Two guidance Section 111B	(1) - (4) continued				On 22 October 2024 S.I. No. 551 of 2024 (Taxes Consolidation Act 1997 (Section 111B(3)) Order 2024) was effected, by Ministerial Order, which designated the document entitled OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, published by the OECD on 17 June 2024, as being comprised in the OECD Pillar Two guidance (within the meaning of section 111B of the Taxes Consolidation Act 1997 (No. 39 of 1997)) for the purposes of Part 4A of the Taxes Consolidation Act 1997 (No. 39 of 1997).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Scope of Part 4A Section 111C	(1)		Article 2(1); Article 2(2)	1.1.1; 1.1.2	The 'consolidated revenue threshold' is defined in the section 111A. The proportional adjustment required per Article 2(2) is included as part of that definition.
Scope of Part 4A Section 111C	(2) and (3)		Article 2(3)	1.1.3; 1.5.1, 1.5.2	
Scope of Part 4A Section 111C	(4)				This subsection ensures that no other legislative provision in the Tax Acts and the Capital Gains Tax Acts can prevent an entity or permanent establishment from being chargeable to IIR top-up tax, UTPR top-up tax or domestic top-up tax, as the case may be, under Part 4A.
Location of a constituent entity Section 111D	(1) and (2)		Article 4(1)	10.3.1	
Location of a constituent entity Section 111D	(3)		Article 4(2)	10.3.2	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Location of a constituent entity Section 111D	(4)		Article 4(3)	10.3.3	
Location of a constituent entity Section 111D	(5)		Article 4(4)	10.3.4 (a)	
Location of a constituent entity Section 111D	(6)		Article 4(5)	10.3.4 (b)	
Location of a constituent entity Section 111D	(7)		Article 4(6)	10.3.5	
Location of a constituent entity Section 111D	(8)		Article 4(7)	10.3.6	
Location of a constituent entity Section 111D	(9)				This subsection confirms that a stateless entity is considered to be located in its own jurisdiction as the calculation of top-up tax is on a jurisdictional basis.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Chapter 2 – IIR and UTPR					
Ultimate parent entity in the State Section 111E	(1)		Article 5(1)	2.1.1	References to “entities that are in another jurisdiction or that are stateless”, in the Directive, have been removed, so that the provisions in subsection (1) effectively refer to all low-taxed constituent entities, including low tax constituent entities located in Ireland. Therefore low-taxed constituent entities in the same member State (referenced in Article 5(2)) are captured in s111E(1), meaning that reference can be removed from subsection(2).
Ultimate parent entity in the State Section 111E	(2)		Article 5(2)		As noted above, low-taxed constituent entities of the group located in the same Member State are included in s111E(1).
Intermediate parent entity in the State Section 111F	(1)		Article 6(1)	2.1.2	Similar approach taken to that outlined above for section 111E [Ultimate parent entity in the State]. Please refer to note above on s111E.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Intermediate parent entity in the State Section 111F	(2)		Article 6(2)		As noted above, low-taxed constituent entities of the group located in the same Member State are included in s111F(1).
Intermediate parent entity in the State Section 111F	(3)		Article 6(3)	2.1.3	
Intermediate parent entity located in the State and held by an excluded ultimate parent entity Section 111G	(1)		Article 7(1)		Similar approach taken to that outlined above for the section 111E [Ultimate parent entity in the State]. Please refer to note above on s111E.
Intermediate parent entity located in the State and held by an excluded ultimate parent entity Section 111G	(2)		Article 7(2)		As noted above, low-taxed constituent entities of the group located in the same Member State are included in s111G(1).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Intermediate parent entity located in the State and held by an excluded ultimate parent entity Section 111G	(3)		Article 7(3)		
Partially-owned parent entity in the State Section 111H	(1)		Article 8(1)	2.1.4	Similar approach taken to that outlined above for section 111E [Ultimate parent entity in the State]. Please refer to note above on s111E.
Partially-owned parent entity in the State Section 111H	(2)		Article 8(2)		As noted above, low-taxed constituent entities of the group located in the same Member State are included in s111H(1).
Partially-owned parent entity in the State Section 111H	(3)		Article 8(3)	2.1.5	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Allocation of the top-up tax under the IIR Section 111I	(1)		Article 9(1)	2.2.1	
Allocation of the top-up tax under the IIR Section 111I	(2)		Article 9(2)	2.2.2; 2.2.3	
Allocation of the top-up tax under the IIR Section 111I	(3)		Article 9(3)		Note that the amount of top-up tax computed for low-taxed constituent entities located in the same Member State allocated to a parent entity is dealt with in subsection (2)(a) and (b).
IIR offset mechanism Section 111J			Article 10	2.3.1; 2.3.2	
Effect of a qualified domestic top-up tax Section 111K	(1)		Article 11(2)		Ireland has elected to apply a qualified domestic top-up tax in accordance with Article 11 of the Directive. The domestic top-up tax does not apply to an investment entity, including an insurance investment entity, or a stateless entity where the stateless entity is not deemed to be located in Ireland under s111D. The legislative provisions are contained in Chapter 9 of Part 4A.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Effect of a qualified domestic top-up tax Section 111K	(2)		Article 11(3)		
Effect of a qualified domestic top-up tax Section 111K	(3)		Article 15(5)		
Effect of a qualified domestic top-up tax Section 111K	(4)		Article 11(3)		
Application of a UTPR across the MNE group Section 111L	(1)	*Application of a UTPR across the MNE group*	Article 12(1)	2.4.1	The Directive gives Member States the option of adopting a top-up tax or a denial of deduction. The approach adopted in the legislation is the application of a top-up tax.
Application of a UTPR across the MNE group Section 111L	(2)		Article 12(3)	2.4.3	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Application of the UTPR in the territory of an ultimate parent entity Section 111M	(1)		Article 13(1)	2.4.1	The approach adopted in the legislation is the application of a top-up tax.
Application of the UTPR in the territory of an ultimate parent entity Section 111M	(2)		Article 13(3)		
Application of the UTPR in the territory of an ultimate parent entity Section 111M	(3)			2.4.3	
Computation and allocation of the UTPR top-up tax amount Section 111N	(1)				This subsection includes instruction on allocation of the UTPR as between entities. The remaining provisions deal with the allocation of the UTPR to the State, in accordance with the Directive.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Computation and allocation of the UTPR top-up tax amount Section 111N	(2)		Article 14(1)	2.6.1 (first sentence)	
Computation and allocation of the UTPR top-up tax amount Section 111N	(3)		Article 14(2)	2.5.1	
Computation and allocation of the UTPR top-up tax amount Section 111N	(4)		Article 14(3)	2.5.2	
Computation and allocation of the UTPR top-up tax amount Section 111N	(5)		Article 14(4)	2.5.3	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Computation and allocation of the UTPR top-up tax amount Section 111N	(6)		Article 14(5)	2.6.1	
Computation and allocation of the UTPR top-up tax amount Section 111N	(7)		Article 14(6); Article 14(7)	10.1.1 (Number of Employees)/ (Tangible Assets); 2.6.2	
Computation and allocation of the UTPR top-up tax amount Section 111N	(8)		Article 14(8)	2.6.3	
Computation and allocation of the UTPR top-up tax amount Section 111N	(9)		Article 14(9)	2.6.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Chapter 3 – Computation of the qualifying income or loss					
Determination of the qualifying income or loss Section 111O	(1)		Article 15(1)	3.1.1; 3.1.2	See section 111A for the definition of financial accounting income or loss which includes the condition regarding eliminating consolidation adjustments. s111O(1) refers to s111P to 111S which are equivalent to Article 16 to 19 of the Directive. There are also other adjustments required in arriving at qualifying income or loss at 111W, 111AB, 111AM, 111AN,111AQ, 111AR, 111AV and 111AW. The term "qualifying income or loss" is used instead of "GloBE income or loss"
Determination of the qualifying income or loss Section 111O	(2)		Article 15(2)	3.1.3	
Determination of the qualifying income or loss Section 111O	(3)		Article 15(3)	See definition of consolidated financial statements in Article 10.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Determination of the qualifying income or loss Section 111O	(4)		Article 15(6)	10.1.1 (Material Competitive Distortion)	
Adjustments to determine the qualifying income or loss Section 111P	(1)	Accounting Functional Currency	Article 16(1)	10.1.1 (Asymmetric Foreign Currency Gains or Losses)	
Adjustments to determine the qualifying income or loss Section 111P	(1)	Accrued Pension Expense	Article 16(1)	10.1.1	The definition of “accrued pension expense” has been added to in the legislation, based on Section 2.5.3, paragraph 10, page 43 of the OECD Administrative Guidance February 2023. (Article 3.2.1, page 76, paragraph 85 of the OECD Pillar 2 Model Rules Consolidated Commentary).
Adjustments to determine the qualifying income or loss Section 111P	(1)	Additional Tier One Capital	Article 16 (11)	10.1.1	
Adjustments to determine the qualifying income or loss Section 111P	(1)	Arm’s Length Principle	Article 16(4)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Adjustments to determine the qualifying income or loss Section 111P	(1)	Asymmetric Foreign Currency Gain or Loss	Article 16(1)	10.1.1	
Adjustments to determine the qualifying income or loss Section 111P	(1)	Excluded Dividends	Article 16(1)	10.1.1	The definition of “excluded dividend” has been added to in the legislation, based on paragraph 13 Section 2.3.3 of the OECD Administrative Guidance February 2023. (Article 3.2.1, Page 63, Paragraph 37 of the OECD Pillar 2 Model Rules Consolidated Commentary).
Adjustments to determine the qualifying income or loss Section 111P	(1)	Excluded Equity Gain or Loss	Article 16(1)	10.1.1	The definition of “excluded equity gain or loss” has been added to the legislation, based on Section 2.2 page 30 of the OECD Administrative Guidance February 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Page 65, Paragraph 46-48).
Adjustments to determine the qualifying income or loss Section 111P	(1)	Included Revaluation Method Gain or Loss	Article 16(1)	10.1.1	
Adjustments to determine the qualifying income or loss Section 111P	(1)	Intra-Group Financing Arrangement	Article 16(8)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Adjustments to determine the qualifying income or loss Section 111P	(1)	Net Taxes Expense	Article 16(1)	10.1.1	The definition of 'net taxes expense' includes a further item being 'taxes accrued by an insurance company in respect of returns to policyholders to the extent that subsection (10)(a) applies in relation to those taxes'. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.9, Page 90, Paragraph 138).
Adjustments to determine the qualifying income or loss Section 111P	(1)	Policy Disallowed Expenses	Article 16(1)	10.1.1	
Adjustments to determine the qualifying income or loss Section 111P	(1)	Prior Period Errors and Changes in Accounting Principles	Article 16(1)	10.1.1	
Adjustments to determine the qualifying income or loss Section 111P	(1)	Tax Functional Currency	Article 16(1)	10.1.1 (Asymmetric Foreign Currency Gains or Losses)	
Adjustments to determine the qualifying income or loss	(1)	Third Foreign Currency	Article 16(1)	10.1.1 (Asymmetric Foreign Currency Gains or Losses)	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111P					
Adjustments to determine the qualifying income or loss Section 111P	(2)		Article 16(2)	3.2.1	Paragraph (j) added in legislation to reflect Section 2.9.2 of OECD Administrative Guidance February 2023, paragraph 16, page 64, which inserts paragraph 57.2 into the OECD Pillar Two Model Rules Commentary to Article 3.2.1(c). (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1(c), Page 65). Point (a) of paragraph 57.2 provides for this adjustment.
Adjustments to determine the qualifying income or loss Section 111P	(3)		Article 16(3)	3.2.2	
Adjustments to determine the qualifying income or loss Section 111P	(4)		Article 16(4)	3.2.3	The words “of an MNE group” included in paragraph (a) of the legislation based on the wording in para 97 Chapter 3 of OECD Pillar Two Model Rules Commentary. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.3, Page 80, Paragraph 97).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Adjustments to determine the qualifying income or loss Section 111P	(5)		Article 16(5)	3.2.4	Detail regarding the treatment of a marketable transferable tax credit and tax credits which are not marketable transferable tax credits for the purposes of determining the qualifying income or loss is included to reflect the additional text arising from OECD Administrative Guidance July 2023, Chapter 2, page 31, paragraph 34-36. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Page 84, Paragraph 112.1-114.1).
Adjustments to determine the qualifying income or loss Section 111P	(6)		Article 16(6)	3.2.5	
Adjustments to determine the qualifying income or loss Section 111P	(7)		Article 16(7)	3.2.6	Definition of “local tangible assets” included in section 111A Interpretation (Part 4A). Paragraph (f) has been drafted to more closely align with OECD Pillar Two Model Rules Article 3.2.6. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.6, Page 87, Paragraph 119-126).
Adjustments to determine the qualifying income or loss Section 111P	(8)		Article 16(8)	3.2.7	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Adjustments to determine the qualifying income or loss Section 111P	(9)		Article 16(9)	3.2.8	Paragraph (c) added to clarify what is a tax consolidation group, based on wording from para 133 Chapter 3 of OECD Pillar Two Model Rules Commentary. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.8, Page 89, Paragraph 133).
Adjustments to determine the qualifying income or loss Section 111P	(10)		Article 16(10)	3.2.9	
Adjustments to determine the qualifying income or loss Section 111P	(11)		Article 16(11)	3.2.10	The definition of “additional tier one capital” contained in the first subparagraph of Article 16(11) is defined in subsection (1) of section 111P.
Adjustments to determine the qualifying income or loss Section 111P	(12)				See paragraph 14, section 2.3.3 of OECD Administrative Guidance February 2023. (OECD Pillar 2 Model Rules Consolidated Commentary, Article 10.1, Page 251, Paragraph 85).
Adjustments to determine the qualifying income or loss Section 111P	(13)				See paragraph 8, section 2.2.3 of OECD Administrative Guidance February 2023. (OECD Pillar 2 Model Rules Consolidated Commentary, Article 3.2.1, Page 67, Paragraph 57).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Adjustments to determine the qualifying income or loss Section 111P	(14)				See paragraph 4, section 3.5 of OECD Administrative Guidance February 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1 (b), Page 65, Paragraph 45).
Adjustments to determine the qualifying income or loss Section 111P	(15)				See paragraph 3 and 4 of section 3.41 and paragraph 5, of section 3.4.2 of OECD Administrative Guidance February 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1(b), Paragraph 36, Page 63, and Article 3.2.1(b), Paragraph 45, Page 65 and Article 3.2.1(c) Paragraph 54, Page 66).
Adjustments to determine the qualifying income or loss Section 111P	(16)				See paragraph 15, section 2.4.3 of OECD Administrative Guidance February 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 86, Page 77).
Adjustments to determine the qualifying income or loss Section 111P	(17)				See paragraph 15, section 2.4.3 of OECD Administrative Guidance February 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 86, Page 77).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
International shipping income exclusion Section 111Q	(1)		Article 17(1)	3.3.2; 3.3.3	Bareboat charter terms is not defined in the OECD Pillar Two Model Rules or Directive. The pre-existing definition in section 697A in the Taxes Consolidation Act 1997 has been used. The definition of international shipping income has been split into two definitions, one for international shipping income and one for international shipping activities.
International shipping income exclusion Section 111Q	(2)		Article 17(2)	3.3.1	
International shipping income exclusion Section 111Q	(3)		Article 17(3)	3.3.1	
International shipping income exclusion Section 111Q	(4)		Article 17(4)	3.3.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
International shipping income exclusion Section 111Q	(5)		Article 17(5)	3.3.5	
International shipping income exclusion Section 111Q	(6)		Article 17(6)	3.3.5	
Allocation of the qualifying income or loss between a main entity and a permanent establishment Section 111R	(1)		Article 18(1)	3.4.1	
Allocation of the qualifying income or loss between a main entity and a	(2)(a) and (2)(b)		Article 18(2)	3.4.2	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
permanent establishment Section 111R					
Allocation of the qualifying income or loss between a main entity and a permanent establishment Section 111R	(2)(c)		Article 18(3)	3.4.3	
Allocation of the qualifying income or loss between a main entity and a permanent establishment Section 111R	(3)		Article 18(4)	3.4.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Allocation of the qualifying income or loss between a main entity and a permanent establishment Section 111R	(4)		Article 18(5)	3.4.5	
Allocation of the qualifying income or loss of a flow-through entity Section 111S	(1)		Article 19(1)	3.5.3; 3.5.4	
Allocation of the qualifying income or loss of a flow-through entity Section 111S	(2)		Article 19(2)	3.5.5	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Allocation of the qualifying income or loss of a flow-through entity Section 111S	(3)		Article 19(3)	3.5.1 (a)	
Allocation of the qualifying income or loss of a flow-through entity Section 111S	(4)		Article 19(4)	3.5.1 (b)	Reference to "that carries rights to profits" included in the legislation to reflect para 84, page 208, Chapter 10 of OECD Pillar Two Model Rules Commentary(OECD Pillar 2 Model Rules Consolidated Commentary Paragraph 84, Page 251, Chapter 10).
Allocation of the qualifying income or loss of a flow-through entity Section 111S	(5)		Article 19(5)	3.5.1 (c)	
Allocation of the qualifying income or loss of a flow-through entity Section 111S	(6)		Article 19(6)	3.5.2	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Chapter 4 – Calculation of adjusted covered taxes					
Covered taxes Section 111T	(1)		Article 20(1)	4.2.1	
Covered taxes Section 111T	(2)		Article 20(2)	4.2.2	
Covered taxes Section 111T	(3)		Article 20(3)	3.2.6 (a)	
Adjusted Covered taxes Section 111U	(1)		Article 21(1)	4.1.1	Paragraph (d) of section 111U reflects OECD Administrative Guidance February 2023 section 2.9.2, paragraph 16, page 64, which inserts paragraph 57.2 into the OECD Pillar 2 Model Rules Commentary to Article 3.2.1(c) (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1(c), Paragraph 57.4-57.5, Page 68). Point (b) of paragraph 57.2 provides for this adjustment.
Adjusted Covered taxes Section 111U	(2)		Article 21(2)	4.1.2	Subsection 2(d) of section 111U includes provisions to clarify the treatment of a marketable transferable tax credit, to reflect OECD Administrative Guidance July 2023 (page 31, paragraph 32). (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Paragraph 112.1-114.1, Page 84).

Irish Legislation – Section Title	**Irish Legislation– Subsection**	**Definition**	**EU Directive**	**Model Rules**	**Notes**
Adjusted Covered taxes Section 111U	(3)		Article 21(3)	4.1.3	A number of additional provisions have been included in s111U(3) to reflect relevant agreed OECD guidance on marketable, and non-marketable, transferable tax credits (OECD Administrative Guidance July 2023). Subsections 3(b) and (c) reflects OECD Administrative Guidance July 2023, page 31, paragraph 32. Subsection 3(f) –reflects OECD Administrative Guidance July 2023, page 36, paragraph 44, item 14.3.a (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.1.3, Paragraph 14.3(a), Page 112). Subsection 3(g)- reflects OECD Administrative Guidance July 2023, page 36, paragraph 44, item 14.3.b (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.1.3, Paragraph 14.3(b), Page 112). Subsection 3(h) – reflects OECD Administrative Guidance July 2023, page 36, paragraph 44, item 14.3.c (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.1.3, Paragraph 14.3(c), Page 112).
Adjusted Covered taxes Section 111U	(4)		Article 21(4)	4.1.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Adjusted Covered taxes Section 111U	(5), (6) and (7)		Article 21(5)	4.1.5	These subsections are subject to subsection (9) which provides for the negative excess tax expense carry forward election as set out in section 2.7 of the OECD Administrative Guidance February 2023 – see subsections (8) to (12) of section 111U. (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.1.5, Paragraph 21, Page 115).
Adjusted Covered taxes Section 111U	(8) to (12)				Additional provisions inserted into legislation to reflect agreed OECD guidance on excess negative tax expense as set out in OECD Administrative Guidance February 2023, section 2.7.3. (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.1.5, Paragraph 19, Page 114).
Meaning of marketable transferable tax credit Section 111V	(1)	*Marketable Price Floor*			See OECD Administrative Guidance July 2023, page 32, paragraph 37(b)(OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Paragraph 112.1(b), Page 84).
Meaning of marketable transferable tax credit Section 111V	(1)	*Marketable Transferable Tax Credit*			See OECD Administrative Guidance July 2023, page 32, paragraph 37(OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Paragraph 112.1, Page 84).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Meaning of marketable transferable tax credit Section 111V	(1)	*Non-Marketable Transferable Tax Credit*			See OECD Administrative Guidance July 2023, page 35, paragraph 40. (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.1.3, Paragraph 14.2 & 14.3, Page 112).
Meaning of marketable transferable tax credit Section 111V	(1)	*Originator*			See OECD Administrative Guidance July 2023, page 32, paragraph 36. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Paragraph 111, Page 83).
Meaning of marketable transferable tax credit Section 111V	(1)	*Origination year*			See OECD Administrative Guidance July 2023, page 32, paragraph 37. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Paragraph 112.1-112.6, Page 84).
Meaning of marketable transferable tax credit Section 111V	(2)				Provides for the definition of legal transferability standard. See OECD Administrative Guidance July 2023 page 32, paragraph 37(a). (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Paragraph 112.1(a), Page 84).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Meaning of marketable transferable tax credit Section 111V	(3)				Provides for the definition of the marketability standard. See OECD Administrative Guidance July 2023, page 32, paragraph 37(b). (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.4, Paragraph 112.1(b), Page 84).
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(1)	*Expected tax benefits ratio*			See OECD Administrative Guidance July 2023, page 37, paragraph 49, 57.7.2 and related provisions in OECD Administrative Guidance February 2023, page 65, 57.6 (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.10.2, Page 70 and Article 3.2.1, Paragraph 57.9, Page 69).
Equity investment inclusion election and qualified flow-through tax benefits of qualified	(1)	*Proportional amortisation method of accounting*			see OECD Administrative Guidance July 2023, page 37, paragraph 47. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.10.1, Page 70).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
ownership interests Section 111W					
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(1)	*Qualified flow-through tax benefit*			see OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.5 and 57.6. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.8-57.9, Page 69).
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(1)	*Qualified ownership interest*			see OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.8. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.11, Page 71).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(2)				See OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.2. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.5, Page 68).
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(3)				See OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.2 (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.5, Page 68).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(4)				See OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.4. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.7, Page 69).
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(5)				See OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.5. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.8, Page 69).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(6)				See OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.6. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.9, Page 69).
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(7)				See OECD Administrative Guidance February 2023, page 64, paragraph 16, 57.7. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.10, Page 70).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(8)				See OECD Administrative Guidance July 2023, page 37, paragraph 49, 57.7.1 and 57.7.2. (OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.10.1-57.10.2, Page 70).
Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests Section 111W	(9)				See OECD Administrative Guidance July 2023, page 37, paragraph 49, 57.7.1 and 57.7.2(OECD Pillar 2 Model Rules Consolidated Commentary Article 3.2.1, Paragraph 57.10.1-57.10.2, Page 70).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Total deferred tax adjustment amount Section 111X	(1)		Article 22(1)	4.4.6; 4.4.7	The definition of a "recapture exception accrual", which is contained in Article 22(8) of the Directive, is provided for in the Irish legislation in section 111X(1). Subsection (1), in the Irish legislation, also contains a number of definitions relating to the application of the deferred tax liability (DTL) recapture rules outlined in chapter 1.3 of the OECD Administrative Guidance June 2024. The relevant definitions are as follows: "aggregate deferred tax liability", "FIFO methodology", "June 2024 Guidance", "LIFO methodology", "swinging account". These definitions are to be construed in accordance with subsections (9) to (15) of section 111X and the OECD Administrative Guidance June 2024.
Total deferred tax adjustment amount Section 111X	(2)		Article 22(2)	4.4.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Total deferred tax adjustment amount Section 111X	(3)		Article 22(3)	4.4.2 (a) ; 4.4.2 (b)	
Total deferred tax adjustment amount Section 111X	(4)		Article 22(4)	4.4.2 (c)	
Total deferred tax adjustment amount Section 111X	(5)		Article 22(5)	4.4.1	
Total deferred tax adjustment amount Section 111X	(6) and (7)				Subsections (6) and (7) added to the legislation to reflect provisions contained in agreed OECD guidance. See paragraph 13, section 2.8.3 of OECD Administrative Guidance February 2023 (which inserts a new paragraph 82.2 into the OECD Pillar 2 Model Rules Commentary). (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.4.1, Paragraph 82.1-82.5, Page 132).
Total deferred tax adjustment amount	(8)		Article 22(6)	4.4.3	The legislation in Section 111X(8), in subsection (b), provides for a last-in-first-out (LIFO) rule regarding the order of utilisation when determining the total deferred tax

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111X					adjustment amount for a fiscal year in relation to a loss deferred tax asset. This rule, although not explicitly provided for by OECD Model Rules, Administrative Guidance or the EU Minimum Tax Directive, is included in the Irish legislation to provide certainty to taxpayers in determining which loss deferred tax assets are utilised in priority.
Total deferred tax adjustment amount Section 111X	(9)		Article 22(7)	4.4.4	
Total deferred tax adjustment amount Section 111X	(10)		Article 22(8)	4.4.4; 4.4.5	Subsection (1) of s111X contains the definitions of "recapture exception accrual" and "aggregate deferred tax liability". Subsection (b) of s111X(10) clarifies that where a constituent entity has a general ledger account or aggregate deferred tax liability (as applicable) that includes one, or more, deferred tax liabilities that are not a recapture exception accrual then the exclusion from the DTL recapture rule, as provided for in section 111X(10)(a) shall not apply to the general ledger account or the entire deferred tax liability category (as applicable).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					Guidance relating to the application of the deferred tax liability recapture rules are outlined in chapter 1.3 of the OECD Administrative Guidance June 2024.
Total deferred tax adjustment amount Section 111X	(11)		Article 22(8)	4.4.4; 4.4.5	Subsection (11) provides for three allowed approaches whereby a constituent entity may track its deferred tax liabilities for the purposes of applying subsection (9). Guidance relating to the application of the deferred tax liability recapture rules are outlined in chapter 1.3 of the OECD Administrative Guidance June 2024.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Total deferred tax adjustment amount Section 111X	(12)		Article 22(8)	4.4.4; 4.4.5	Subsection (12) provides further clarity on the application of the deferred tax liability recapture rules in accordance with subsections (9) and (11) of s111X as outlined in chapter 1.3 of the OECD Administrative Guidance June 2024. Subsection (12) provides that certain deferred tax liabilities, where the aggregate deferred tax liability category basis is being utilised, should only be aggregated at an individual general ledger account level and cannot be aggregated with other general ledger accounts.
Total deferred tax adjustment amount Section 111X	(13)		Article 22(8)	4.4.4; 4.4.5	Subsection (13) provides further clarity on the application of the deferred tax liability recapture rules in accordance with subsections (9) and (11) of s111X as outlined in chapter 1.3 of the OECD Administrative Guidance June 2024. Subsection (13) provides for certain exclusions from aggregate deferred tax liability categories. The term “swinging account” is defined in subsection (1).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Total deferred tax adjustment amount Section 111X	(14)		Article 22(8)	4.4.4; 4.4.5	Subsection (14) provides further clarity on the application of the deferred tax liability recapture rules in accordance with subsection (9) of s111X as outlined in chapter 1.3 of the OECD Administrative Guidance June 2024. Subsection (14) determines when a constituent entity may use the FIFO methodology to determine whether a deferred tax liability has reversed. The term “FIFO methodology” is defined in subsection (1).
Total deferred tax adjustment amount Section 111X	(15)		Article 22(8)	4.4.4; 4.4.5	Subsection (15) provides further clarity on the application of the deferred tax liability recapture rules in accordance with subsection (9) of s111X as outlined in chapter 1.3 of the OECD Administrative Guidance June 2024. Subsection (15) determines when a constituent entity may use the LIFO methodology to determine whether a deferred tax liability has reversed. The term “LIFO methodology” is defined in subsection (1).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Total deferred tax adjustment amount Section 111X	(16)		Article 22(8)	4.4.4; 4.4.5	Section 111X(16) provides for how a constituent entity determines its deferred tax assets and liabilities where the qualifying income or loss of a constituent entity related to an asset or a liability, as the case may be, is calculated based on a value of the asset or the liability which differs from the value of the asset or liability per the financial statements. This is in accordance with chapter 2.1 of OECD Administrative Guidance June 2024.
Qualifying loss election Section 111Y	(1)		Article 23(1)	4.5.1; 4.5.5	
Qualifying loss election Section 111Y	(2)		Article 23(2)	4.5.3	
Qualifying loss election Section 111Y	(3)		Article 23(3)	4.5.2	
Qualifying loss election Section 111Y	(4)		Article 23(4)	4.5.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Qualifying loss election Section 111Y	(5)		Article 23(5)	4.5.5	Subsection (5)(a) is subject to subsection 5(b) which provides for where an election under the CbCR safe harbour has been made, in accordance with the guidance in page 12 paragraph 33 of OECD Administrative Guidance December 2022. (OECD Pillar 2 Model Rules Consolidated Commentary Annex A Safe Harbours, Paragraph 25, Page 294).
Qualifying loss election Section 111Y	(6)		Article 23(6)	4.5.6	
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(1)	*Passive income*	Article 24(6)	10.1.1	
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(2)		Article 24(1)	4.3.2 (a)	Section 111Z (2) to (5) are to be construed in accordance with chapter 4.2.3 of OECD Administrative Guidance June 2024 as it relates to the allocation of deferred taxes.

Irish Legislation – Section Title	**Irish Legislation– Subsection**	**Definition**	**EU Directive**	**Model Rules**	**Notes**
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(3)		Article 24(2)	4.3.2 (b)	
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(4)		Article 24(3)	4.3.2 (c)	
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(5)		Article 24(4)	4.3.2 (d); 10.1.1 (Hybrid Entity)	The definitions of “hybrid entity” and “reverse hybrid entity” are included in subsections (1) and (5) of section 111A [Interpretation (Part4A)] respectively. Section 111Z(5) is also to be construed in accordance with chapter 5.6.2 of OECD Administrative Guidance June 2024.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(6)		Article 24(5)	4.3.2 (e)	
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(7)		Article 24(6)	4.3.3 10.1.1 (Passive Income)	Subsection (1) of s111Z contains the definition of “passive income” which is contained in Article 24(6) of the Directive.
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(8)		Article 24(7)	4.3.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Specific allocation of covered taxes incurred by certain types of constituent entities Section 111Z	(9)		Article 24(1) Article 24(3) Article 24(4) Article 24(5)	4.3.2 (a) 4.3.2 (c) 4.3.2 (d) 4.3.2(e)	Subsection (9) provides for a rule regarding an election with respect to the allocation of deferred tax expenses. The rule provides for the making of a Five-Year Election with respect to a parent entity jurisdiction to exclude the allocation of all deferred tax expenses and benefits from the parent entity to the constituent entities in other jurisdictions (e.g., foreign branches) for the purposes of effective tax rate calculations. Where the election is made, the deferred tax expense/benefit must also be excluded from the adjusted covered taxes of the parent entity. This legislative provision is to be construed in accordance with OECD Administrative Guidance June 2024 chapter 4.2.3 paragraph 43.
Rules required for blended CFC regime Section 111AA	(1)	*Applicable rate*			See OECD Administrative Guidance February 2023, page 68, Section 2.10.3 paragraph 8. (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.3.2, Paragraph 58.1-58.7, Page 124).
Rules required for blended	(1)	*Attributable Income of the*			See OECD Administrative Guidance February 2023, page 68, Section 2.10.3 paragraph 8 (OECD Pillar 2 Model Rules

Irish Legislation – Section Title	**Irish Legislation– Subsection**	**Definition**	**EU Directive**	**Model Rules**	**Notes**
CFC regime Section 111AA		*Entity*			Consolidated Commentary Article 4.3.2, Paragraph 58.1-58.7, Page 124).
Rules required for blended CFC regime Section 111AA	(1)	*Blended CFC Tax Regime*			See OECD Administrative Guidance February 2023, page 68, Section 2.10.3 paragraph 8 (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.3.2, Paragraph 58.1-58.7, Page 124).
Rules required for blended CFC regime Section 111AA	(1)	*Jurisdictional ETR*			See OECD Administrative Guidance February 2023, page 68, Section 2.10.3 paragraph 8 (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.3.2, Paragraph 58.1-58.7, Page 124) and chapter 4.3 of OECD Administrative Guidance December 2023.
Rules required for blended CFC regime Section 111AA	(2)				See OECD Administrative Guidance February 2023, page 68, Section 2.10.3 paragraph 8 (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.3.2, Paragraph 58.1-58.7, Page 124).
Rules required for blended CFC regime Section 111AA	(3)				See OECD Administrative Guidance February 2023, page 68, Section 2.10.3 paragraph 8 (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.3.2, Paragraph 58.1-58.7, Page 124).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Post-filing adjustments and tax rate changes Section 111AB	(1)		Article 25(1)	4.6.1	
Post-filing adjustments and tax rate changes Section 111AB	(2)		Article 25(2)	4.6.2	
Post-filing adjustments and tax rate changes Section 111AB	(3)		Article 25(3)	4.6.3	The wording in subsection (3)(a) of s111AB takes into account the wording and examples in section 4.6.3, paragraph 130 and 131, page 113 of OECD Pillar Two Model Rules Commentary. (OECD Pillar 2 Model Rules Consolidated Commentary Article 4.6.3, Paragraph 130-131, Page 143).
Post-filing adjustments and tax rate changes Section 111AB	(4)		Article 25(4)	4.6.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Chapter 5 – Calculation of the effective tax rate and top-up tax					
Determination of the effective tax rate Section 111AC	(1) and (2)		Article 26(1)	5.1.1	
Determination of the effective tax rate Section 111AC	(3)		Article 26(2)	5.1.2	
Determination of the effective tax rate Section 111AC	(4)		Article 26(3)	5.1.3	
Determination of the effective tax rate Section 111AC	(5)		Article 26(4)	5.1.1	
Calculation of the top-up tax Section 111AD	(1)		Article 27(1)		

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Calculation of the top-up tax Section 111AD	(2)		Article 27(2)	5.2.1	
Calculation of the top-up tax Section 111AD	(3)		Article 27(3)	5.2.3	OECD Administrative Guidance July 2023, Page 76, paragraph 81 provides further guidance on when a “qualified domestic top-up tax” is “payable”. See s111A for the definition of “qualified domestic top-up tax payable”. (OECD Pillar 2 Model Rules Consolidated Commentary Article 5.2.3, Paragraph 20.1-20.3, Page 149).
Calculation of the top-up tax Section 111AD	(4)		Article 27(4)	5.2.2	
Calculation of the top-up tax Section 111AD	(5)		Article 27(5)	5.2.4	
Calculation of the top-up tax Section 111AD	(6)		Article 27(6)	5.2.5	
Calculation of the top-up tax Section 111AD	(7)		Article 27(7)	5.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Substance-based income exclusion Section 111AE	(1)	*Eligible Employees*	Article 28(1)	5.3.4; 10.1.1	
Substance-based income exclusion Section 111AE	(1)	*Eligible Payroll Costs*			Reference to "stock-based compensation" included in the definition of "eligible payroll costs". This is to reflect agreed OECD guidance as referred to in paragraph 34 Chapter 5 of OECD Pillar Two Model Rules Commentary. (OECD Pillar 2 Model Rules Consolidated Commentary Article 5.3.3, Paragraph 34, Page 152).
Substance-based income exclusion Section 111AE	(2)		Article 28(2)	5.3.1; 5.3.2	
Substance-based income exclusion Section 111AE	(3)		Article 28(3)	5.3.3	Subsection (3)(c) has been drafted with reference to Paragraph 28 and 29 on Page 44 of OECD Administrative Guidance July 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Article 5.3.3, Paragraph 33-33.1, Page 152).
Substance-based income exclusion Section 111AE	(4)		Article 28(4)	5.3.4	Subsections 4(b)(ii) & (iii) reflect Paragraph 31 on Pages 44 and 45 of OECD Administrative Guidance July 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Article 5.3.4, Paragraph 38.1, Page 153).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Substance-based income exclusion Section 111AE	(5)		Article 28(5)	5.3.5	
Substance-based income exclusion Section 111AE	(6)		Article 28(6)	5.3.6	
Substance-based income exclusion Section 111AE	(7)		Article 28(7)	5.3.7	
Substance-based income exclusion Section 111AE	(8)		Article 28(8)	5.1.1	
Substance-based income exclusion Section 111AE	(9)		Article 28(9)	5.3.2	
Substance-based income exclusion Section 111AE	(10) & (11)				Subsections (10) and (11) reflect paragraph 53, section 3, page 48 of OECD Administrative Guidance July 2023 which inserts new paragraph 43 into the OECD Pillar Two Model Rules Commentary on Article 5.3.4. (OECD Pillar 2 Model Rules Consolidated Commentary Article 5.3.4, Paragraph 43-

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					43.6, Page 154).
Substance-based income exclusion Section 111AE	(12)				Subsection (12) reflects Paragraph 72, section 3, page 55 of OECD Administrative Guidance July 2023 which amends Paragraph 63 of the OECD Pillar Two Model Rules Commentary to Article 5.3.7. (OECD Pillar 2 Model Rules Consolidated Commentary Article 5.3.7, Paragraph 63, Page 160).
Additional top-up tax Section 111AF	(1)		Article 29(1)	5.4.1	
Additional top-up tax Section 111AF	(2)		Article 29(2)	5.4.2	The legislation contains the text "for the purposes of section 111I(2) [Allocation of top-up tax under IIR]" in line with Articles 5.4.2 and 5.4.3 of the OECD Pillar Two Model Rules.
Additional top-up tax Section 111AF	(3)		Article 29(3)	5.4.3	Same comment as for subsection (2) above.
Additional top-up tax Section 111AF	(4)		Article 29(4)	5.4.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
De minimis exclusion Section 111AG	(1)		Article 30(1)	5.5.1	The requirement to make the election annually under Article 5.5.1 of OECD Pillar Two Model Rules is included in s111AG(6)
De minimis exclusion Section 111AG	(2)		Article 30(2)	5.5.2	
De minimis exclusion Section 111AG	(3)		Article 30(3)	5.5.3 (a)	
De minimis exclusion Section 111AG	(4)		Article 30(4)	5.5.3 (b)	
De minimis exclusion Section 111AG	(5)		Article 30(5)	5.5.4	
De minimis exclusion Section 111AG	(6)		Article 30(1)	5.5.1	
Minority owned constituent entities Section 111AH	(1)		Article 31(1)	10.1.1 (relevant definitions)	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Minority owned constituent entities Section 111AH	(2)		Article 31(2)	5.6.1	
Minority owned constituent entities Section 111AH	(3)		Article 31(3)	5.6.2	
Qualified domestic top-up tax safe harbour Section 111AI	(1)	*OECD peer review process*	Article 11(2)		See OECD Administrative Guidance July 2023, page 78, Section 5.1 paragraph 6. (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 6, Page 319).
Qualified domestic top-up tax safe harbour Section 111AI	(1)	*QDTT Safe Harbour*			Construed in accordance with subsection (2)
Qualified domestic top-up tax safe harbour	(1)	*QDTT Safe Harbour Standards*			See OECD Administrative Guidance July 2023, page 80. (OECD Pillar 2 Model Rules Consolidated Commentary Page 321).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111AI					
Qualified domestic top-up tax safe harbour Section 111AI	(1)	*QDTT Subgroup*			See OECD Administrative Guidance July 2023, page 78, Section 5.1 paragraph 10 (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 10, Page 319).
Qualified domestic top-up tax safe harbour Section 111AI	(1)	*Specified Return Date*			Defined in Section 111AAF
Qualified domestic top-up tax safe harbour Section 111AI	(2)				See paragraph 8, section 5.1, OECD Administrative Guidance July 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 8, Page 319). Subsection (2) provides that top-up tax arising in accordance with s111AF(1)(b) in the current fiscal year will not be deemed to be zero by the application of qualified domestic top-up tax safe harbour. Subsection (2) also provides that the qualified domestic top-up tax safe harbour will be applied for a fiscal year where the domestic top-up tax implemented under the tax law of a

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					jurisdiction is determined to have met the safe harbour standards under an OECD peer review process in respect of that fiscal year.
Qualified domestic top-up tax safe harbour Section 111AI	(3)				See paragraph 12, section 5.1, OECD Administrative Guidance July 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 12, Page 320).
Qualified domestic top-up tax safe harbour Section 111AI	(4)				See - OECD Administrative Guidance July 2023: (a) Page 85 example 2 (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 42, Page 326). (b) Page 85 example 3 (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 43, Page 326). (c) Page 86 example 4 (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 44, Page 327).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Qualified domestic top-up tax safe harbour Section 111AI	(5)				See OECD Administrative Guidance July 2023 Page 86 example 5 (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 3, Paragraph 45, Page 327). Securitisation Entities (d) The OECD Administrative Guidance June 2024 chapter 6.1.4 provides for a "switch-off rule" where domestic top-up tax is not charged on securitisation entities in a jurisdiction, unless the domestic top-up tax liability in respect of the securitisation entity is applied to another group entity in that jurisdiction or on the securitisation entity itself where there are no other group entities. The term "securitisation entity" is defined in section 111A(1) for the purposes of Part 4A.
Qualified domestic top-up tax safe harbour Section 111AI	(6)				See OECD Administrative Guidance July 2023 Page 86 example 7 (OECD Pillar 2 Model Rules Consolidated Commentary, Chapter 3, Paragraph 47, Page 327).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Qualified domestic top-up tax safe harbour Section 111AI	(7)				Administrative provision to ensure that all relevant information concerning the application of the QDTT Safe Harbour is to be included in the top-up tax information return. The provisions in relation to the top-up tax information return is provided for in section 111AAI [Top-up tax information return].
Transitional CbCR safe harbour Section 111AJ	(1)	*Additional tier one capital*			Same definition used as per s111P(1) (as derived from Article 16(11)).
Transitional CbCR safe harbour Section 111AJ	(1)	*Country-by-Country Report*			See section 891H(1) TCA 1997
Transitional CbCR safe harbour Section 111AJ	(1)	*Deduction without inclusion arrangement*			To be construed in accordance with section 111AJ(17).
Transitional CbCR safe harbour Section 111AJ	(1)	*Duplicate loss arrangement*			To be construed in accordance with section 111AJ(17).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional CbCR safe harbour Section 111AJ	(1)	*Duplicate tax recognition*			To be construed in accordance with section 111AJ(17).
Transitional CbCR safe harbour Section 111AJ	(1)	*Hybrid arbitrage arrangement*			See OECD Administrative Guidance December 2023 chapter 2.6.3.
Transitional CbCR safe harbour Section 111AJ	(1)	*Investment Entity Jurisdiction*			See OECD Administrative Guidance December 2022 Page 13 – Special Rules for Investment Entities and their Constituent Entity-owners. (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Paragraph 5-7, Page 296).
Transitional CbCR safe harbour Section 111AJ	(1)	*Multi-Parented MNE Group*			To be construed in accordance with section 111AP
Transitional CbCR safe harbour Section 111AJ	(1)	*Net Unrealised Fair Value Loss*			See OECD Administrative Guidance December 2022 Page 14, points 8 & 9, and page 20 paragraphs 73 & 74 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Paragraph 8 & 9, Page 296 and Page 302, Paragraphs 65 & 66).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional CbCR safe harbour Section 111AJ	(1)	*OECD Report of 2015*			Term has the same meaning as in section 891H.
Transitional CbCR safe harbour Section 111AJ	(1)	*OECD CBCR Guidance*			See OECD (2024), Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13, OECD, Paris, published by the OECD in May 2024.
Transitional CbCR safe harbour Section 111AJ	(1)	*Profit or Loss Before Income Tax*			See OECD Administrative Guidance December 2022 Page 8 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 290).
Transitional CbCR safe harbour Section 111AJ	(1)	*Qualified CbC Report*			See OECD Administrative Guidance December 2022 Page 8 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 290). See section 2.3.1.10 of OECD Administrative Guidance December 2023 which outlines that whether a CbC report is considered a "qualified" CbC report is determined separately for each tested jurisdiction. Consequently, a CbC report may be considered a qualified CbC report with respect to some tested jurisdictions and not others.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional CbCR safe harbour Section 111AJ	(1)	*Qualified Financial Statements*			See OECD Administrative Guidance December 2022 Page 8 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 290).
Transitional CbCR safe harbour Section 111AJ	(1)	*Qualified Person*			See OECD Administrative Guidance December 2022 Page 13 - Special Rule for Tax Neutral UPEs (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 296).
Transitional CbCR safe harbour Section 111AJ	(1)	*Simplified Covered Taxes*			See OECD Administrative Guidance December 2022 Page 6 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 288).
Transitional CbCR safe harbour Section 111AJ	(1)	*Simplified ETR*			See OECD Administrative Guidance December 2022 Page 6 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 288).
Transitional CbCR safe harbour Section 111AJ	(1)	*Total Revenue*			See OECD Administrative Guidance December 2022 Page 6 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 288).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional CbCR safe harbour Section 111AJ	(1)	*Transitional CbCR Safe Harbour*			To be construed in accordance with subsection (2)
Transitional CbCR safe harbour Section 111AJ	(1)	*Transition Period*			See OECD Administrative Guidance December 2022 Page 6 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 288).
Transitional CbCR safe harbour Section 111AJ	(1)	*Transition Rate*			See OECD Administrative Guidance December 2022 Page 6 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 288).
Transitional CbCR safe harbour Section 111AJ	(2)				See OECD Administrative Guidance December 2022 Page 6 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 288). See OECD Administrative Guidance December 2022 Page 11 paragraph 29 with respect to 2(c)(ii). (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Paragraph 21, Page 294).
Transitional CbCR safe harbour Section 111AJ	(3)				See OECD Administrative Guidance December 2022 Page 6 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 288).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional CbCR safe harbour Section 111AJ	(4)				See OECD Administrative Guidance December 2022 Page 14 – Special Rule for Net Unrealised Fair Value Loss and page 20 paragraph 73 & 74 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 296 – Special Rule for Net Unrealised Fair Value Loss and Page 302, Paragraph 65 & 66).
Transitional CbCR safe harbour Section 111AJ	(5)				See OECD Administrative Guidance December 2022 Page 10 Paragraph 26 – De minimis test (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 293, Paragraph 18).
Transitional CbCR safe harbour Section 111AJ	(6)				See OECD Administrative Guidance December 2022 Page 11 Paragraph 30 – Routine profits (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 294, Paragraph 22).
Transitional CbCR safe harbour Section 111AJ	(7)				See OECD Administrative Guidance December 2022 Page 13 – Special Rule for Joint Ventures & Page 15 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 296– Special Rule for Joint Ventures & Page 297).
Transitional CbCR safe harbour Section 111AJ	(8)				See OECD Administrative Guidance December 2022 Page 13 – Special Rule for Tax Neutral UPEs & Page17 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 296– Special Rule for Tax Neutral UPEs & Page 299).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional CbCR safe harbour Section 111AJ	(9)				See OECD Administrative Guidance December 2022 Page 13 – Special Rule for Tax Neutral UPEs & Page 17 (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 296– Special Rule for Tax Neutral UPEs & Page 299).
Transitional CbCR safe harbour Section 111AJ	(10)				See OECD Administrative Guidance December 2022 Page 13 – Paragraph 35 & 36 OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 295, Paragraph 27 & 28).
Transitional CbCR safe harbour Section 111AJ	(11)				See OECD Administrative Guidance December 2022 Page 14 – Exclusions (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 297).
Transitional CbCR safe harbour Section 111AJ	(12)				See OECD Administrative Guidance December 2022 Page 11 & Page 12 – Paragraph 33 – Transition Period (OECD Pillar 2 Model Rules Consolidated Commentary, Annex A Safe Harbours, Page 294 & 295, Paragraph 25).
Transitional CbCR safe harbour Section 111AJ	(13)				See OECD Administrative Guidance December 2022 Page 12 – Paragraph 33 – Footnote 3 – Transition Period
Transitional CbCR safe harbour Section 111AJ	(14)				Administrative provision to ensure that all relevant information concerning the application of the transitional CbCR safe harbour is to be included in the top-up tax information return.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					The administration provisions in relation to the top-up tax information return is provided for in section 111AAI [Top-up tax information return].
Transitional CbCR safe harbour Section 111AJ	(15)				Additional guidance with respect to the treatment of purchase price accounting adjustments (PPA's) in determining qualified financial statements for the purposes of this section. The legislation has been drafted in line with OECD Administrative Guidance December 2023 chapter 1.3.
Transitional CbCR safe harbour Section 111AJ	(16)				Additional guidance which provides for rules relating to the allocation of taxes with respect to the calculation of the simplified ETR in accordance with subsection (3). Subsection (a) concerns the allocation of income tax expenses of PE's. Subsection (b) concerns the allocation of taxes paid under CFC tax regime, or a taxable branch regime (i.e., where a main entity is taxable in the income of its PE).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					The legislation has been drafted in line with OECD Administrative Guidance December 2023 chapter 2.4.2.
Transitional CbCR safe harbour Section 111AJ	(17)				Additional guidance with respect to anti-abuse rules to combat hybrid arbitrage arrangements which were entered into after 15 December 2022. Subsection (17) provides a number of definitions: “deduction without inclusion arrangement”, “duplicate loss arrangement”, “duplicate tax recognition arrangement”. The legislation has been drafted in line with OECD Administrative Guidance December 2023 chapter 2.6.3.
Transitional CbCR safe harbour Section 111AJ	(18)				Additional guidance with respect to anti-abuse rules to combat hybrid arbitrage arrangements which were entered into after 15 December 2022. Subsection (18) provides for the required adjustments that must be made to a tested jurisdiction’s safe harbour calculation with respect to hybrid arbitrage arrangements. The legislation has been drafted in line with OECD

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					Administrative Guidance December 2023 chapter 2.6.3.
Transitional CbCR safe harbour Section 111AJ	(19)				Additional guidance with respect to how certain MNE, or large-scale domestic, groups may apply the provisions of section 111AJ even where they are not required to file a CbC report. The legislation has been drafted in line with OECD Administrative Guidance December 2023 chapter 2.3.4.
Transitional UTPR safe harbour Section 111AK	(1)	*Corporate Income Tax Rate*			See OECD Administrative Guidance July 2023 which contains guidance on the application of a UTPR Safe Harbour at section 5.2. Definition contained at paragraph 5, page 89 & 90. (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 4, Paragraph 5, Page 331).
Transitional UTPR safe harbour Section 111AK	(1)	*Transition Period Fiscal Year*			See OECD Administrative Guidance July 2023 which contains guidance on the application of a UTPR Safe Harbour at section 5.2. Definition contained at point 2 in the table on page 89. (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 4, Point 2 in the table, Page 330).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional UTPR safe harbour Section 111AK	(2)				See OECD Administrative Guidance July 2023, point 1 (and paragraph. 4), in the table on page 89. (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 4, Point 1 in the table, Page 330).
Transitional UTPR safe harbour Section 111AK	(3)				See OECD Administrative Guidance July 2023, paragraph 7, Page 90. (OECD Pillar 2 Model Rules Consolidated Commentary Chapter 4, Paragraph 7, Page 331).
Simplified calculations safe harbour Section 111AKA	(1)				Section 111AKA provides for a simplified income, revenue and tax calculation for non-material constituent entities of groups (NMCE) to be applied under the framework of a Simplified Calculations Safe Harbour. See OECD Administrative Guidance December 2023 chapter 6. Subsection (1) provides a number of new definitions required for the operation of the section.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Simplified calculations safe harbour Section 111AKA	(1)	*CbC report*			The term has the same meaning as in section 111AJ(1).
Simplified calculations safe harbour Section 111AKA	(1)	*Non-material constituent entity*			See OECD Administrative Guidance December 2023 chapter 6.2.
Simplified calculations safe harbour Section 111AKA	(1)	*NMCE*			Means non-material constituent entity (as defined above).
Simplified calculations safe harbour Section 111AKA	(1)	*NMCE simplified calculations*			Means the simplified income calculation, the simplified revenue calculation and the simplified tax calculation (which are defined below).
Simplified calculations safe harbour Section 111AKA	(1)	*OECD Report of 2015*			Has the meaning assigned to it in section 111AJ(1).

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Simplified calculations safe harbour Section 111AKA	(1)	*OECD CBCR Guidance*			Has the meaning assigned to it in section 111AJ(1).
Simplified calculations safe harbour Section 111AKA	(1)	*Relevant CbC regulations*			See OECD Administrative Guidance December 2023 chapter 6.6, Page 40.
Simplified calculations safe harbour Section 111AKA	(1)	*Simplified income calculation*			See OECD Administrative Guidance December 2023 chapter 6.6, Page 40.
Simplified calculations safe harbour Section 111AKA	(1)	*Simplified revenue calculation*			See OECD Administrative Guidance December 2023 chapter 6.6, Page 40.
Simplified calculations safe harbour Section 111AKA	(1)	*Simplified tax calculation*			See OECD Administrative Guidance December 2023 chapter 6.6, Page 40.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Simplified calculations safe harbour Section 111AKA	(1)	*Surrogate parent entity*			See OECD Administrative Guidance December 2023 chapter 6.6, Page 40.
Simplified calculations safe harbour Section 111AKA	(2)				Subsection (2) provides for the safe harbour and allows, on election, for the jurisdictional top-up tax for a fiscal year to be deemed to be zero where the requirements of one of subsection (4) to (6) is met. See OECD Administrative Guidance December 2023 chapter 6.4.
Simplified calculations safe harbour Section 111AKA	(3)				Subsection (3) provides that the safe harbour can only be availed of where there is at least one non-material constituent entity located in the jurisdiction. See OECD Administrative Guidance December 2023 chapter 6.6, Page 41, Paragraph 35.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Simplified calculations safe harbour Section 111AKA	(4)				Subsections (4) relates to qualifying criteria to avail of the safe harbour – routine profits test. See OECD Administrative Guidance December 2023 chapter 6.4.
Simplified calculations safe harbour Section 111AKA	(5)				Subsections (5) relates to qualifying criteria to avail of the safe harbour - de minimis test. See OECD Administrative Guidance December 2023 chapter 6.4.
Simplified calculations safe harbour Section 111AKA	(6)				Subsections (6) relates to qualifying criteria to avail of the safe harbour - an ETR test. See OECD Administrative Guidance December 2023 chapter 6.4.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Simplified calculations safe harbour Section 111AKA	(7)				Section (7) providers that notwithstanding sections 111O(1), 111U and 111AG(3), a filing constituent entity may make an election to determine the qualifying income or loss, qualifying revenue and adjusted covered taxes of an NMCE for a fiscal year using the NMCE simplified calculations for the purposes of the simplified calculations safe harbour. See OECD Administrative Guidance December 2023 chapter 6.4.
Simplified calculations safe harbour Section 111AKA	(8)				Subsection (8)(a) provides that where a main entity is not an NMCE then none of its PE's shall be considered an NMCE but where a main entity is an NMCE then all of its PE's shall be considered to be NMCEs. See OECD Administrative Guidance December 2023 chapter 6.6, Page 41. Subsection (8)(b) provides that in the case of a PE that is an NMCE, the amount of the NMCE simplified calculations shall be determined under the relevant CbC regulations with respect to such PE.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Simplified calculations safe harbour Section 111AKA	(9)				Administrative provisions which outlines that all relevant information concerning the application of the simplified calculations safe harbour must be included in the top-up tax information return for the fiscal year in accordance with section 111AAI.
Simplified calculations safe harbour Section 111AKA	(10)				Subsection (10) provides that the election to avail of the simplified calculations safe harbour and the election to apply the NMCE simplified calculations shall be made in accordance with section 111AAAD.

Irish Legislation – Section Title	**Irish Legislation– Subsection**	**Definition**	**EU Directive**	**Model Rules**	**Notes**
Chapter 6 – Corporate restructuring and holding structures					
Application of consolidated revenue threshold to group mergers and demergers Section 111AL	(1)	*Merger*	Article 33(1)	6.1.2	
Application of consolidated revenue threshold to group mergers and demergers Section 111AL	(1)	*Demerger*	Article 33(1)	6.1.3	
Application of consolidated revenue threshold to group mergers and demergers Section 111AL	(2)		Article 33(2)	6.1.1 (a)	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Application of consolidated revenue threshold to group mergers and demergers Section 111AL	(3)		Article 33(3)	6.1.1 (b)	
Application of consolidated revenue threshold to group mergers and demergers Section 111AL	(4)		Article 33(4)	6.1.1 (c)	
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(1)		Article 34(1)	6.2.1 (a)	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(2)(a)		Article 34(2)	6.2.1 (b)	
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(2)(b)		Article 34(3)	6.2.1 (c)	
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(2)(c)		Article 34(4)	6.2.1 (d)	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(2)(d)		Article 34(5)	6.2.1 (e)	
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(3) and (4)		Article 34(6)	6.2.1 (f)	
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(5)		Article 34(7)	6.2.1 (g)	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(6)		Article 34(8)	6.2.1 (h)	
Constituent entities joining and leaving an MNE group or a large-scale domestic group Section 111AM	(7)		Article 34(9)	6.2.2	
Transfer of assets and liabilities Section 111AN	(1)		Article 35(1)	10.1.1 (Reorganisation) 10.1.1 (Non-qualifying Gain or Loss)	See OECD Commentary 2022, paragraph 23, page 197. (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Paragraph 23, Page 241).
Transfer of assets and liabilities Section 111AN	(2) and (3)		Article 35(2)	6.3.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transfer of assets and liabilities Section 111AN	(4)		Article 35(3)	6.3.2	
Transfer of assets and liabilities Section 111AN	(5)		Article 35(4)	6.3.3	
Transfer of assets and liabilities Section 111AN	(6) and (7)		Article 35(5)	6.3.4	
Joint ventures Section 111AO	(1)		Article 36(1)	10.1.1 (Joint Venture) 10.1.1 (Joint Venture Subsidiary)	The legislation has provided for Article 36(1)(b)(ii) by means of subsection (2) in section 111AO.
Joint ventures Section 111AO	(2)				See note above.
Joint ventures Section 111AO	(3)		Article 36(2)	6.4.1 (a)	
Joint ventures Section 111AO	(4)		Article 36(3)	6.4.1 (b)	
Joint ventures Section 111AO	(5)		Article 36(4)	6.4.1 (c)	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Multi-parented MNE groups Section 111AP	(1)	*Consolidated Financial Statements of the Multi-Parented MNE Group or Multi-Parented Large-Scale Domestic Group*	Article 37(3)	6.4.1 (c)	Article 37(3) is effectively included as a definition of 'consolidated financial statements of the multi-parented MNE group or large-scale domestic group' in subsection (1).
Multi-parented MNE groups Section 111AP	(1)	*Dual-listed Arrangement*		10.1.1	
Multi-parented MNE groups Section 111AP	(1)	*Multi-parented Large-scale Domestic Group*	Article 37(1)	n/a	Definition of 'multi-parented MNE group or large-scale domestic group' has been legislated for by way of two separate definitions for 'multi-parented large-scale group' and 'multi-parented MNE group'. This is to ensure that the provisions also apply in respect of large-scale domestic groups.
Multi-parented MNE groups Section 111AP	(1)	*Multi-parented MNE Group*	Article 37(1)	10.1.1	
Multi-parented MNE groups	(1)	*Stapled Structure*	Article 37(1)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111AP					
Multi-parented MNE groups Section 111AP	(2) and (3)		Article 37(2)	6.4.1 (a) ; 6.4.1 (b)	
Multi-parented MNE groups Section 111AP	(4)		Article 37(4)	6.4.1 (d)	
Multi-parented MNE groups Section 111AP	(5)		Article 37(5)	6.4.1 (e)	
Multi-parented MNE groups Section 111AP	(6)		Article 37(6)	6.4.1 (f)	
Multi-parented MNE groups Section 111AP	(7)		Article 37(7)	6.4.1 (g)	
Chapter 7 – Tax neutrality and distribution regimes					

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Ultimate parent entity that is a flow-through entity Section 111AQ	(1)	*Ultimate parent entity that is a flow-through entity*	Article 38(1)	7.1.1 (a)	
Ultimate parent entity that is a flow-through entity Section 111AQ	(2)		Article 38(2)	7.1.1 (b)	
Ultimate parent entity that is a flow-through entity Section 111AQ	(3)		Article 38(3)	7.1.2	
Ultimate parent entity that is a flow-through entity Section 111AQ	(4)		Article 38(4)	7.1.3	
Ultimate parent entity that is a flow-through entity Section 111AQ	(5)		Article 38(5)	7.1.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(1)	*Cooperative*	Article 39(1)	10.1.1	The definition of a “patronage dividend” and “supply cooperative” based on Article 7.2.1 of OECD Pillar 2 Model Rules Commentary, paragraph 42. (OECD Pillar 2 Model Rules Consolidated Commentary Article 7.2.1, Paragraph 42, Page 201).
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(1)	*Deductible Dividend*	Article 39(1)	10.1.1	
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(1)	*Deductible Dividend Regime*	Article 39(1)	10.1.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(1)	*Patronage Dividend*	n/a	n/a	
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(1)	*Supply Cooperative*			See paragraph 42, page 165 of on Chapter 7 of OECD Pillar 2 Model Rules Commentary. (OECD Pillar 2 Model Rules Consolidated Commentary Article 7.2.1, Paragraph 42, Page 201).
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(2), (3)(a) and (3)(b)		Article 39(2)	7.2.1	In relation to section 111AR(3)(b), see paragraph 41, page 165 of on Chapter 7 of OECD Pillar Two Model Rules Commentary regarding Article 7.2.1(a)(ii) of the OECD Pillar 2 Model Rules. (OECD Pillar 2 Model Rules Consolidated Commentary Article 7.2.1, Paragraph 41, Page 201).
Ultimate parent entity subject to a deductible	(3)(c)		Article 39(3)	7.2.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
dividend regime Section 111AR					
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(4)		Article 39(4)	7.2.2	
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(5)		Article 39(5)	7.2.3	
Ultimate parent entity subject to a deductible dividend regime Section 111AR	(6)		Article 39(6)	7.2.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Eligible Distribution Tax Systems Section 111AS	(1)	*Eligible Distribution Tax Systems*	Article 40(1)	7.3.1	
Eligible Distribution Tax Systems Section 111AS	(2)		Article 40(2)	7.3.2	
Eligible Distribution Tax Systems Section 111AS	(3)		Article 40(3)	7.3.3 (a); 7.3.3 (b)	
Eligible Distribution Tax Systems Section 111AS	(4)		Article 40(4)	7.3.3 (c); 7.3.4	
Eligible Distribution Tax Systems Section 111AS	(5)		Article 40(5)	7.3.5	
Eligible Distribution Tax Systems Section 111AS	(6)		Article 40(6)	7.3.6	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Eligible Distribution Tax Systems Section 111AS	(7)		Article 40(7)	7.3.7; 7.3.8	
Eligible Distribution Tax Systems Section 111AS	(8)		Article 40(1)	7.3.1; 7.3.5	
Determination of the effective tax rate and top-up tax of an investment entity Section 111AT	(1)		Article 41(1)	7.4.1; 7.4.2	
Determination of the effective tax rate and top-up tax of an investment entity Section 111AT	(2)		Article 41(2)	7.4.2	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Determination of the effective tax rate and top-up tax of an investment entity Section 111AT	(3)		Article 41(3)	7.4.3	
Determination of the effective tax rate and top-up tax of an investment entity Section 111AT	(4)		Article 41(4)	7.4.5; 7.4.6	Subsection 4(a) – in the formula, regarding amount “D” – see OECD Administrative Guidance, July 2023, page 64, para 34. (OECD Pillar 2 Model Rules Consolidated Commentary Article 7.4.5, Paragraph 85, Page 208).
Determination of the effective tax rate and top-up tax of an investment entity Section 111AT	(5)		Article 41(5)	7.4.4	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Election to treat an investment entity as a tax transparent entity Section 111AU	(1)		Article 42(2)	7.5.1	Definition of 'insurance investment entity' included in section 111A [Interpretation Part (4A)]. Also to note, 'insurance investment entity' is included in the definition of 'investment entity' in section 111A. Therefore, reference is only made to 'investment entity' in s111AU.
Election to treat an investment entity as a tax transparent entity Section 111AU	(2)		Article 42(3)	7.5.1	
Election to treat an investment entity as a tax transparent entity Section 111AU	(3) and (4)		Article 42(4)	7.5.2	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Election to apply a taxable distribution method Section 111AV	(1)		Article 43(1)	7.6.1	
Election to apply a taxable distribution method Section 111AV	(2)		Article 43(2)	7.6.2; 7.6.5	
Election to apply a taxable distribution method Section 111AV	(3)		Article 43(3)	7.6.3; 7.6.4	
Election to apply a taxable distribution method Section 111AV	(4)		Article 43(4)	7.6.5	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Election to apply a taxable distribution method Section 111AV	(5) and (7)		Article 43(5)	7.6.6	
Election to apply a taxable distribution method Section 111AV	(6)		Article 43(1)	7.6.1	
Chapter 8 – Transition rules					

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition Section 111AW	(1)		Article 47(1)	10.1.1	
Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition Section 111AW	(2)		Article 47(2)	9.1.1	The term "transition year" is defined in Subsection (1) of Section 111AW. Paragraph (e) provides for a last-in-first-out (LIFO) rule regarding the order of utilisation when determining the total deferred tax adjustment amount for a fiscal year in relation to a loss deferred tax asset. See also section 111X(8)(b).
Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition	(3)		Article 47(3)	9.1.2	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Section 111AW					
Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition Section 111AW	(4)		Article 47(4)	9.1.3	
Transitional relief for substance-based income exclusion Section 111AX	(1)		Article 48(1)	9.2.1	For this section, OECD Pillar Two Model Rules Article 9.2.1 has been adopted in the legislation.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Transitional relief for substance-based income exclusion Section 111AX	(2)		Article 48(2)	9.2.2	For this section, OECD Pillar Two Model Rules Article 9.2.2 has been adopted in the legislation.
Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups Section 111AY	(1)		Article 49(1)	9.3.1	
Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups Section 111AY	(2)		Article 49(2)	9.3.1	

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups Section 111AY	(3)		Article 49(3)	9.3.2; 9.3.3	
Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups Section 111AY	(4)		Article 49(4)	9.3.4	
Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic	(5)		Article 49(5)		

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
groups Section 111AY					
Delayed application of the IIR and UTPR by Member States Section 111AZ	(1) and (2)		Article 50(2)		
		Chapter 9 – Domestic Top-up Tax			
Interpretation (Chapter 9) – section 111AAA	(1)	*Foreign IIR Election*			This definition is required as there may be elections that are made for the purposes of calculating a tax equivalent to IIR/UTPR top-up tax in another jurisdiction that are given effect for the purposes of the domestic top-up tax which are made via a GIR filed with the Revenue Commissioners in Ireland or a foreign tax authority.
Interpretation (Chapter 9) – section 111AAA	(1)	*Local Accounting Standard*			See OECD Administrative Guidance July 2023, Section 5.1 page 80. (OECD Pillar 2 Model Rules Consolidated Commentary, Standards for a QDMTT Safe Harbour, Paragraph 5, Page 321).
Interpretation (Chapter 9) – section 111AAA	(1)	*Qualifying Entity*			To be construed in accordance with section 111AAB TCA 1997

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Interpretation (Chapter 9) – section 111AAA	(1)	*Standalone Financial Statements*			This definition is required for the purposes of applying the domestic top-up tax to standalone entities that are within scope of domestic top-up tax.
Interpretation (Chapter 9) – section 111AAA	(2)				Provides that Chapter 10 (Administration) of Part 4A applies for the purposes of administering the domestic top-up tax.
Qualifying entities Section 111AAB	(1) & (2)			OECD Admin Guidance Feb 2023 Section 5 and July 2023 Section 4 and 5.1	This section sets out what entities are in scope of the domestic top-up tax, being 'qualifying entities'. The requirement is that it is an entity or permanent establishment located in Ireland and it is one of para. (a) – (c), excluding investment entities and insurance investment entities. (a) OECD Administrative Guidance February 2023 sets out on page 100 – para. 118.2 – 118.5 that a QDMTT must apply to domestic Constituent Entities of MNE Groups that meet the scope threshold. (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Paragraph 118.1-118.5, Page 256). (b) OECD Administrative Guidance February 2023 page 101 – paragraph 118.8 provides that jurisdictions can choose

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					whether to impose a QDMTT on joint ventures and joint venture affiliates. (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Paragraph 118.8, Page 258). This guidance was further clarified in OECD Administrative Guidance July 2023 – page 57 and page 86 example 7 refers. As JVs and JV affiliates are not constituent entities, as defined, they need to be specifically referred to in order to bring them within scope of the domestic top-up tax. (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Paragraph 118.10, Page 259 and page 327 example 7). (c) Domestic top-up tax applies to standalone entities who meet the revenue threshold condition and are not excluded entities but excluding investment undertakings (within the meaning of section 246).
Chargeable entities Section 111AAC	(1)				Subsection (1) provides that qualifying entities per section 111AAB (1)(a) and (b) are chargeable to QDTT in respect of a fiscal year.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Chargeable entities Section 111AAC	(2)				Subsection (2) provides that qualifying entities per section 111AAB (1)(c) are chargeable to QDTT in respect of an accounting year. This is on the basis that standalone entities will not have a fiscal year as defined (which relates to the accounting period of an ultimate parent entity).
Chargeable entities Section 111AAC	(3)				Subsection (3) provides for joint and several liability to be applied to the owners of a flow-through entity in respect of any QDTT liability of that entity.
Chargeable entities Section 111AAC	(4)				Subject to subsection (4)(b), subsection (4)(a) provides that the domestic top-up tax will not be charged on a securitisation entity. The provision operates by allocating the top-up tax that would have been charged on the securitisation entities to the other members of the group. Subsection (4)(b) provides that subsection (4)(a) will not apply where a securitisation entity (or entities) are the only entity(ies) of the in-scope group located in Ireland(in which case the QDTT liability will still be imposed on the securitisation entity or entities). See OECD Administration Guidance June 2024 chapter 6.1.4.

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
Determining top-up amounts of qualifying entity Section 111AAD	(1)			OECD Admin Guidance Feb 2023 Section 5 and July 2023 Section 4 and 5.1	Subsection (1) provides that the rules relating to the computation of the Income Inclusion Rule ('IIR') and Undertaxed Payments Rule ('UTPR') as set in Chapters 3-8 apply for the purposes of determining the amount due under the QDTT, subject to subsections (2)-(6) of this section. The OECD Administrative Guidance February 2023 provided some guidelines on aspects of the design and operation of a QDMTT to be used for an assessment of whether a minimum tax meets the requirements for qualified status. It set out two guiding principles for evaluating QDMTTs: (a) the minimum tax must be consistent with the design of the GloBE Rules; and (b) the minimum tax must provide for outcomes that are

Irish Legislation – Section Title	Irish Legislation– Subsection	Definition	EU Directive	Model Rules	Notes
					consistent with the GloBE Rules and Commentary. The OECD Administrative Guidance July 2023 set out further specific requirements and the standards to be met in order for a QDMTT to qualify for safe harbour status. The remainder of this section sets out the changes needed for the calculation of the QDTT to operate as intended and give effect to the mandatory variations from the IIR/UTPR rules which must be applied in calculating the QDTT to meet the requirements of the guidance. See pages 83-87 of OECD Administrative Guidance July 2023 regarding the consistency standard, mandatory variations and optional variations. (OECD Pillar 2 Model Rules Consolidated Commentary, Standards for a QDMTT Safe Harbour , Paragraph 27-49, Page 324-328).

Determining top-up amounts of qualifying entity Section 111AAD	(2)				Subsection (2) alters the IIR and UTPR provisions in order to give effect to the QDTT for example, by substitution of certain terms, insertion or omission of certain sections etc. (a) Substitutes 'qualifying entity' where constituent entity is used in Chapters 3-8. (b) The reason for the omission of these provisions is that the calculation of top-up tax for IIR and UTPR requires that a credit be given for QDTT payable in that territory. A credit should not be available for QDTT/QDMTT in calculating QDTT. (c) These provisions are excluded as Ireland does not have a distribution tax system and therefore are irrelevant for to the calculation of a QDTT. (A distribution tax system (Article 3(42)) is a system in place on or before 1 July 2021 that imposes corporation tax of 15% or more on profits only where those profits are distributed or deemed to be distributed or when certain non-business expenses are incurred.) Paragraph (c) also clarifies that where the Irish domestic top-up tax is granted safe harbour status, section 111AI does not reduce Irish domestic top-up tax to nil. (d) Financial accounting net income or loss is defined with reference to the accounting standard of the ultimate parent entity for the purposes of calculating IIR/UTPR top-up tax. As

					the guidance provides for the use of a local accounting standard in the calculation of QDTT in certain circumstances (see below) the definition needs to be amended where a local accounting standard is used. (e) This provision relates to the ‘Accounting Standard Rule’. Page 80 of OECD Administrative Guidance July 2023 provides that in applying a QDMTT a territory can use the provisions of Articles 3.1.2 and 3.1.3 of the OECD Pillar 2 Model Rules or the Local Financial Accounting Standard, subject to certain conditions. The approach in the legislation has been made to apply the Local Financial Accounting Standard. See also para 14-26 pages 80 -82 of the OECD Administrative Guidance July 2023. (OECD Pillar 2 Model Rules Consolidated Commentary Standards for a QDMTT Safe Harbour, Paragraph 14-26, Page 321-323). (f) – (h) Page 67 para. 44 of the OECD Administrative Guidance July 2023 provides for a number of specific mandatory variations of the IIR rules relating to covered taxes when applying a QDMTT. (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Paragraph 118.30, Page 263). (i) Disapplies rules relating to the allocable share of a parent company in a joint venture / joint venture affiliate contained in section 111AO. Page 57 and example 7 on page 86/87 of the OECD Administrative Guidance July 2023 refer. (OECD Pillar 2 Model Rules Consolidated Commentary Page 258 and Example 7, Paragraph 47, Page 327).

					(j) Disapplies the charging and filing provisions contained in the IIR/UTPR sections relating to multi-parented MNE groups as these are not relevant to the QDMTT.

Determining top-up amounts of qualifying entity Section 111AAD	(2A)				To ensure that section 111AAD operates as intended, subsection (2A) provides that three specific sections of Part 4A (all of which reference the consolidated financial statements of the ultimate parent entity (UPE) as the basis of calculation for values or amounts) are to be read as referencing the financial statements of the entity prepared in accordance with the local accounting standard where that standard is used to calculate the financial accounting net income or loss (FANIL) of the entity for the purpose of the domestic top-up tax. The subsections in question are: • Section 111P(6)(a) related to the application of the realisation principle in the calculation of qualifying income or loss of a constituent entity; • Section 111AE(5) related to the calculation of carrying values of tangible assets for the purposes of the substance based income exclusion rule; and • Section 111AN(3) related to the carrying value of acquired assets.

Determining top-up amounts of qualifying entity Section 111AAD	(3)				Subsection (3) provides for the amendments required to ensure that the QDTT operates as intended for standalone entities that are in scope of QDTT. The paragraphs substitute language referrable to group entities ((a) and (b)) and excludes group related provisions ((c)(i) – (xi)) as they are not relevant to standalone entities.
Determining top-up amounts of qualifying entity Section 111AAD	(4)			9.3 – Transitional Rules	Page 86 example 4 of OECD Administrative Guidance July 2023 allows for a territory to opt how it will apply Article 9.3 of the Model Rules for the purposes of the QDTT, which refers to a transitional exclusion for MNE groups in their initial phase of international activity. This option does not impact compliance with the 'Consistency Standard'. (OECD Pillar 2 Model Rules Consolidated Commentary Example 4, Paragraph 44, Page 327). The Irish legislation applies option 2 which is to provide for a limited exclusion i.e., the exclusion is limited to where the entity(ies) are not held by an entity that would be subject to the IIR in respect of that entity(ies).
Determining top-up amounts of qualifying entity Section 111AAD	(5)				Page 69 para 118.49.1 and 118.49.2 of OECD Administrative Guidance July 2023 refers. (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Paragraph 118.49.1-118.49.2, Page 269). This subsection provides for alignment of IIR/UTPR rules and QDTT rules with regard to the transition year where a QDTT applies to an entity before an IIR or UTPR applies to that entity.

Determining top-up amounts of qualifying entity Section 111AAD	(6)				This subsection provides that elections that are made for the purposes of calculating IIR/UTPR top-up tax are given effect for the purposes of QDTT.
Determining top-up amounts of qualifying entity Section 111AAD	(7)				Provides, for the purposes of subsection (6) that a foreign IIR election, as defined, is treated as an election made under Part 4A.
Determining top-up amounts of qualifying entity Section 111AAD	(8)				This subsection provides that, subject to criteria, for the purposes of calculating the domestic top-up tax, covered taxes accrued in the financial accounts of a constituent entity-owner of a hybrid entity or reverse hybrid entity are included in the adjusted covered taxes of the hybrid entity or reverse hybrid entity (rather than the constituent entity owner). This is an exception to the general rule under section 111AAD which provides that taxes accrued in the financial accounts of constituent entity owner are not reallocated for the purposes of the domestic top-up tax. See OECD Administrative Guidance June 2024 chapter 5.6.2.

Scope of application of qualifying domestic top-up tax Section 111AAE	(1)				This is the QDTT commencement date provision. (a) Provides that the provision will apply in respect of constituent entities/joint ventures/joint venture affiliates for fiscal years commencing on or after 31 December 2023; and (b) for standalone entities, that also meet the entity revenue threshold and are not an excluded entity, for accounting periods commencing on, or after, 31 December 2023.
Chapter 10 – Administration					
Interpretation (Chapter 10) Section 111AAF	(1) - (5)				Introduces definitions relating to the administration of this Part
Care and management Section 111AAG	(1) & (2)				This section provides that the three GloBE taxes (IIR top-up tax, UTPR top-up tax and domestic top-up tax) are all under the care and management of the Revenue Commissioners.
Obligation to register Section 111AAH	(1) - (6)				This section imposes an obligation on an entity within scope of GloBE taxes to notify the Revenue Commissioners, register and provide the necessary information.

Top-up tax information return Section 111AAI	(1)		Article 44(2)	8.1.1; 8.1.5	This section places an obligation on an entity to prepare and deliver to the Revenue Commissioners a top-up tax information return.
Top-up tax information return Section 111AAI	(2)		Article 44(3); Article 44(4)	8.1.2; 8.1.3	
Top-up tax information return Section 111AAI	(3)		Article 44(5)	8.1.4	
Top-up tax information return Section 111AAI	(4)				This subsection contains an additional required administrative provisions: • Where an entity does not have the required information to prepare and deliver the top-up tax information return, that entity shall request the required information from the ultimate parent entity. • Where the ultimate parent entity fails to provide such information, the entity is obligated to notify the Revenue Commissioners of that failure.
Top-up tax information return Section 111AAI	(5)		Article 44(6)		

Top-up tax information return Section 111AAI	(6)				This subsection contains an administration provision which clarifies when a top-up tax information return might be amended. A top-up tax information return may be amended where that amendment is necessary to correct either an error or mistake or to comply with any provision of Part 4A.
Top-up tax information return Section 111AAI	(7)				An administration provision which itemises the required information that a notification of filer must include when notifying the Revenue Commissioners under this section.
Top-up tax information return Section 111AAI	(8)		Article 44(7)		Definition of ‘specified return date’ effectively transposes the requirement of Art 44(7).
IIR return and self-assessment Section 111AAJ	(1) - (3)				Details the requirements for a domestic return in relation to IIR top-up tax liabilities. This section provides that a relevant parent entity shall prepare and deliver to the Revenue Commissioners a full and true return for the fiscal year, in the prescribed form, on or before the specified return date. This form is referred to as the “IIR return”.

UTPR return and self-assessment Section 111AAK	(1) - (3)				Details the requirements for a domestic return in relation to UTPR top-up tax liabilities. This section provides that a relevant UTPR entity shall prepare and deliver to the Revenue Commissioners a full and true return for the fiscal year, in the prescribed form, on or before the specified return date. This form is referred to as the “UTPR return”.
UTPR group Section 111AAL	(1) - (5)				Provisions relating to the creation of a UTPR group, designation of group filer and payments matters. This section provides that a “UTPR group” in relation to a fiscal year shall comprise of all members of an MNE group that would be required to prepare and deliver a UTPR return to the Revenue Commissioners for the fiscal year. The members of the group are referred to as “the relevant UTPR members”. The relevant members must have elected to become members of the UTPR group and must have appointed one such member to be designated as the “UTPR group filer”.
UTPR group recovery Section 111AAM	(1) - (3)				Provisions relating to recovery of UTPR defaults within the group. An administrative provision to assist in the collection of taxes, which includes imposing a liability on other group members in certain cases of non-payment by the filing entity.

QDTT return and self-assessment Section 111AAN	(1) - (3)				Details the requirements for a domestic return in relation to domestic top-up tax liabilities. This section provides that a qualifying entity shall prepare and deliver to the Revenue Commissioners a full and true return for the fiscal year, in the prescribed form, on or before the specified return date. This form is referred to as the "QDTT return".
QDTT group Section 111AAO	(1) - (5)				Provisions relating to the creation of a QDTT group, designation of group filer and payments matters. This section provides that a "QDTT group" in relation to a fiscal year shall comprise of all members of an MNE group, large-scale domestic group or joint venture group that would be required to prepare and deliver a QDTT return to the Revenue Commissioners for the fiscal year on or before the specified return date. The members of the group are referred to as "the relevant QDTT members". The relevant QDTT members must have elected to become members of the QDTT group and must have appointed one such member to be designated as the "QDTT group filer".

QDTT group recovery Section 111AAP	(1) - (3)				Provisions relating to recovery of QDTT defaults within the group. An administrative provision to assist in the collection of taxes, which includes imposing a liability on other group members in certain cases of non-payment by the filing entity.
Expression of doubt Section 111AAQ	(1) - (8)				This section provides that an entity may file an expression of doubt with the domestic GloBE returns where they are in doubt as to the correct application of the law relating to the application of this Part, or where applicable, doubt relating to the application of guidance.
Actions by person acting under authority Section 111AAR	(1) - (3)				An administrative section that provides that a person other than an entity can act on behalf of the entity. This is a distinctly separate authority to that of the designated local entity and is designed to cover scenarios where a return is being filed by an agent on behalf of a taxpayer.
Date for payment Section 111AAS	(1)				This section provides that GloBE tax is due and payable on the specified return date (being the day 15 months after the end of the fiscal year, or where the fiscal year is a transition year, 18 months after the end of the fiscal year or where the specified return date arises before 30 June 2026, 30 June 2026).

Assessments and enquiries Section 111AAT	(1)				This section provides for the ability of the Revenue Commissioners to make assessments and enquiries on Globe returns.
Revenue assessment Section 111AAU	(1) - (4)				Provides rules relating to the making of Revenue Commissioner assessments.
Notice of Revenue assessment Section 111AAV	(1) - (3)				This section provides that where a Revenue Commissioners assessment is made, the Revenue Commissioners officer will give notice to the entity of that assessment which may be given by electronic means.
Appeal to Appeal Commissioners Section 111AAW	(1) - (2)				This section provides a right of appeal where an entity is aggrieved by a Revenue Commissioners assessment.
Surcharge for late return Section 111AAX	(1) - (5)				This section provides that where a return is submitted after the specified return date, the amount of GloBE tax payable is increased by a surcharge calculated under this section.
Interest on overdue amounts Section 111AAY	(1) - (3)				This section provides that any of amount of tax that remains unpaid shall be liable to statutory interest calculated in accordance with this section.

Obligation to keep certain records Section 111AAZ	(1) - (6)				This section provides that an entity shall retain or cause to be retained on their behalf, all records to enable a full and true GloBE return to be made.
Use of currency Section 111AAAA	(1) - (5)				Technical administrative section on the translation of currency for the purposes of GloBE calculations and returns. Certain aspects reflect OECD Administrative Guidance July 2023: Subsection (2) reflects para. 34 on page 13. (OECD Pillar 2 Model Rules Consolidated Commentary Paragraph 17.1, Page 12). Subsection (3) reflects para. 36. on page 14. (OECD Pillar 2 Model Rules Consolidated Commentary Paragraph 20.1, Page 15). Subsection (4) reflects para 65. on page 72 (OECD Pillar 2 Model Rules Consolidated Commentary Article 10.1, Paragraph 118.54, Page 270). Subsection (5)(b) reflects para. 34 on page 13. (OECD Pillar 2 Model Rules Consolidated Commentary Paragraph 17.1, Page 12).

Penalties Section 111AAAB	(1)				Subsection(1)(a) provides for a penalty where there is a failure to submit the top-up tax information return. Subsection (1)(b) provides for a penalty where there is a failure to submit the notification of filer.
Penalties Section 111AAAB	(2)				Provides for a penalty where there is a failure to submit any GloBE return (i.e., the domestic return in relation to the top-up taxes), failure to deliver a notification of registration or failure to furnish any particulars etc as requested by notice.
Penalties Section 111AAAB	(3)				Provision relating to the recovery of a penalty.
Penalties Section 111AAAB	(4)				Penalty for assisting or inducing the making or delivery of an incorrect return etc under Part 4A.
Penalties Section 111AAAB	(5)				Provision of transitional penalty relief. This is provided for in Page 29 & 30, OECD Administrative Guidance December 2022. (OECD Pillar 2 Model Rules Consolidated Commentary Page 286 & 287).
Transitional simplified jurisdictional reporting Section 111AAAC	(1) - (4)				This section provides for the 'simplified jurisdictional reporting framework' which is a method of reporting for the purposes of the top-up tax information return, as published by the OECD. The section reflects OECD GloBE Information Return

					Guidance July 2023.
Elections Section 111AAAD	(1)		Article 45(3)		
Elections Section 111AAAD	(2)		Article 45(1)		
Elections Section 111AAAD	(3)		Article 45(2)		
Elections Section 111AAAD	(4)				Section 111P(16) provides that, on the making of an election, the amount of a debt release included in the financial accounting net income or loss of a constituent entity can be excluded from the calculation of a constituent entity’s qualifying income or loss, where that debt release satisfies certain criteria. This subsection, S111AAAD(4) clarifies that this election needs to be made for each debt release which is included in the financial accounting net income or loss of a constituent entity in a fiscal year.

Elections Section 111AAAD	(5)				Section 111W – 'Equity investment inclusion election and qualified flow-through tax benefits of qualified ownership interests' provides for an election in S111W(2), by a constituent entity in its calculation of its qualifying income or loss, with respect to certain types of ownership interests held. This subsection 111AAAD(5) clarifies that that election cannot be withdrawn where a loss in respect of that ownership interest, other than a qualified ownership interest, was included in the calculation of the qualifying income or loss of the constituent entity in the five-year period commencing on the first day of the fiscal year in in respect of which the election was made.
Elections Section 111AAAD	(6)				Section 111AN(6) provides for an election with respect to the transfer of assets and liabilities. This subsection 111AAAD(6) clarifies that an election under Section 111AN(6) shall: • be in effect for the fiscal year in respect of which the election relates, • remain in effect for all subsequent fiscal years, and • not be withdrawn at any time following the fiscal year in respect of which the election is made.

Elections Section 111AAAD	(7)				Section 111AJ(2) provides for an election with respect to applying the Transitional CbCR Safe Harbour. This subsection 111AAAD(7) clarifies that an election under section 111AJ(2) shall apply to the fiscal year in respect of which the election is made.
Elections Section 111AAAD	(8)				Section 111AK(2) provides for an election with respect to applying the Transitional UTPR Safe Harbour. This subsection 111AAAD(8) clarifies that such an election shall apply to the fiscal year in respect of which the election is made.
Elections Section 111AAAD	(8A)				Section 111AKA(2) and (7) provides for an election with respect to applying the Simplified calculations safe harbour election. This subsection clarifies that the election shall be made in respect of each entity to which it relates.
Elections Section 111AAAD	(9)				Section 111AI(2) provides for an election with respect to applying the Qualifying Domestic Top-up tax Safe Harbour. This subsection 111AAAD(8) clarifies that such an election shall apply to the fiscal year in respect of which the election is made.
Elections Section 111AAAD	(10)				Subsection (10) provides that the elections made under subsections (7), (8), (8A) and (9) will not apply in certain cases as outlined in the subsection.
Chapter 11 – Application					

Application (Part 4A) Section 111AAAE	(1) & (2)				