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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

EXPOSURE DRAFT EXPLANATORY MATERIALS

TAXATION (MULTINATIONAL—GLOBAL AND DOMESTIC MINIMUM TAX)
IMPOSITION BILL 2024

TAXATION (MULTINATIONAL—GLOBAL AND DOMESTIC MINIMUM TAX)
BILL 2024

TAXATION (MULTINATIONAL—GLOBAL AND DOMESTIC MINIMUM TAX)
CONSEQUENTIAL BILL 2024

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on this exposure draft explanatory material in explaining the policy context and operation of the proposed new law. Without intending to limit feedback, stakeholder views are sought on particular provisions, which are noted at the following paragraphs:

- paragraph 3.33 – regarding delayed exchange of the GloBE Information Return between jurisdictions
- paragraph 3.41 – regarding the lodgement of DMT Returns
- paragraph 3.68 – regarding timing issues for franking credits
- paragraph 3.75 – regarding interactions with other laws, including the Australian foreign hybrid mismatch rules, controlled foreign company regime and foreign income tax offsets.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
AASB	Australian Accounting Standards Board
AFAS	Either an Authorised Financial Accounting Standard or Acceptable Financial Accounting Standard
Agreed Administrative Guidance	The following collection of documents: <ul style="list-style-type: none">• <i>Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)</i> published by the OECD on 2 February 2023• <i>Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)</i>, July 2023 published by the OECD on 17 July 2023• <i>Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)</i>, December 2023 published by the OECD on 18 December 2023.
Assessment Bill	<i>Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024</i>
ATO	Australian Taxation Office
CFS	Consolidated Financial Statements
Commentary	<i>Tax Challenges Arising from the Digitalisation of the Economy –</i>

	<i>Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)</i> published by the OECD on 14 March 2022
Commissioner	The Commissioner of Taxation
Consequential Bill	<i>Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024</i>
DMT	Domestic Minimum Tax
ETR	Effective Tax Rate
FANIL	Financial Accounting Net Income or Loss
FITO	Foreign Income Tax Offset
FXGL	Foreign Currency Exchange Gains or Losses
GloBE Rules	OECD GloBE Model Rules (as modified by the Commentary, Agreed Administrative Guidance and Safe Harbours Rules)
IIR	Income Inclusion Rule as Defined in the GloBE Rules
Imposition Bill	<i>Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024</i>
IPE	Intermediate Parent Entity as defined in the GloBE Rules
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
JV	Joint Venture
LTCE	Low-Taxed Constituent Entity

MOCE	Minority-owned Constituent Entity
MNE	Multinational enterprise
MNE Group	MNE Group as defined in the GloBE Rules
OECD	Organisation for Economic Cooperation and Development
OECD GloBE Model Rules	<i>Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)</i> published by the OECD on 20 December 2021
OECD Model Tax Convention	OECD (2017), <i>Model Tax Convention on Income and on Capital: Condensed Version 2017</i>
PE	Permanent Establishment as defined in the GloBE Rules
POPE	Partially-owned Parent Entity as defined in the GloBE Rules
QDMTT	Qualified Domestic Minimum Top-Up Tax as defined in the GloBE Rules
QIIR	Qualified Income Inclusion Rules as defined in the GloBE Rules
RBA	Reserve Bank of Australia
Safe Harbours Rules	<i>Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)</i> published by the OECD on 20 December 2022
The Rules	<i>Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024</i>
UPE	Ultimate Parent Entity as defined in the GloBE Rules

UTPR	Undertaxed Profits Rules as defined in the GloBE Rules
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Overview and context for Two-Pillar Solution in Australia

On 8 October 2021, Australia and 135 other members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework) agreed to the ‘Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy’ (the Two-Pillar Solution). The Two-Pillar Solution seeks to reform the international taxation rules and ensure that MNEs pay a fair share of tax wherever they operate and generate profits in today’s digitalised and globalised world economy. The Two-Pillar Solution is a result of an OECD and G20 policy process with involvement of 140 countries.

The Two-Pillar Solution is intended to be achieved through a series of tax reforms, including through the ratification of multilateral conventions and instruments. Different reforms are scheduled on different timeframes but are generally to be implemented as a coordinated approach across jurisdictions, with the earliest reforms taking effect from 1 January 2024.

The Two-Pillar Solution is comprised of Pillar 1 and Pillar 2. Pillar 1 aims to ensure a fairer distribution of profits and taxing rights among countries with respect to certain large MNEs. The GloBE Rules under Pillar 2 ensure that in-scope MNEs will be subject to a global minimum tax rate of 15 per cent. This is achieved through a set of rules which identify low-taxed pools of income within a MNE Group and which allow another jurisdiction to claim taxing rights over that income.

The Australian Government announced its intention to implement key aspects of Pillar 2 in the 2023-24 Budget, as part of its continuing efforts to ensure multinationals pay their fair share of tax.

The charging provisions in the GloBE Rules are composed of the IIR and the UTPR.

The Assessment Bill also implements a Domestic top-up tax in respect of Australian entities that are subject to an ETR below the 15 per cent minimum rate.

The IIR applies by allocating the top-up tax amount on the Parent Entity generally closest to the top of the corporate structure (the ‘top-down’ approach). The top-up tax amount relates to LTCEs that are subject to an ETR below the 15 per cent minimum rate in that jurisdiction.

The UTPR serves as a backstop to the IIR. It permits other jurisdictions to impose top-up tax (by denying deductions or an equivalent adjustment) on certain Constituent Entities to the extent that an LTCE in the MNE Group is not subject to tax under an IIR.

The two sets of rules provide a systematic solution to ensure all in-scope MNE Groups are subject to a minimum of 15 per cent effective tax rate in the jurisdictions in which they operate.

These three Bills form part of a set of legislation required to implement the GloBE Rules and a DMT in Australia:

- Imposition Bill: *Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024*;
- Assessment Bill: *Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024*; and
- Consequential Bill: *Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024*.

The Imposition Bill imposes top-up tax, namely the Domestic top-up tax, the IIR top-up tax and the UTPR top-up tax.

The Assessment Bill implements the framework for imposition of top-up tax for the IIR, UTPR and the DMT consistent with the GloBE Rules.

The Consequential Bill contains consequential and miscellaneous provisions necessary for the administration of the top-up tax in respect of Applicable MNE Groups.

The OECD published the Safe Harbours Rules on 20 December 2022, which outlined a common understanding on transitional penalty relief for implementing jurisdictions. This included that tax administrations should consider not applying penalties or sanctions in connection with the filing of the GloBE Information Return during a Transition Period where a tax administration considers that an MNE has taken “reasonable measures” to ensure the correct application of the GloBE Rules. The approach also contemplated that in many cases jurisdictions already provide, as a matter of law or administrative practice, for penalty relief in accordance with the common understanding.

Domestic top-up tax and IIR top-up tax apply for Fiscal Years beginning after 1 January 2024. UTPR top-up tax applies for Fiscal Years beginning after 1 January 2025.

Chapter 1: Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024

Outline of chapter

- 1.1 The Chapter explains the operation of the Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024 (Imposition Bill).

Summary of new law

- 1.2 The Imposition Bill is a taxation bill which imposes a global and domestic minimum tax (in these explanatory materials referred to as top-up tax).

Detailed explanation of new law

- 1.3 To comply with section 55 of the Constitution the Imposition bill deals only with the imposition of top-up tax.
- 1.4 The top-up tax is as follows:
- Tax payable in accordance with subsection 7(1) of the Assessment Bill (**Domestic top-up tax**) is imposed
 - Tax payable in accordance with subsection 4(1) of the Assessment Bill (**IIR top-up tax**) is imposed
 - Tax payable in accordance with subsection 10(1) of the Assessment Bill (**UTPR top-up tax**) is imposed.
[Section 3 of the Imposition Bill]

Commencement, application, and transitional provisions

- 1.5 Top-up tax applies from the day after Royal Assent of the Imposition Bill.
[Table item 1 in subsection 2(1) of the Imposition Bill]
- 1.6 However, if the Assessment Bill does not receive Royal Assent then top-up tax does not apply. This ensures that all related legislation must be enacted before

top-up tax can apply. The effect of this is that, if Royal Assent is obtained, Domestic top-up tax and GloBE top-up tax imposed under subsection 4(1) and 7(1) of the Assessment Bill respectively, apply for Fiscal Years commencing on or after 1 January 2024 and UTPR top-up tax applies for Fiscal Years commencing on or after 1 January 2025, when each of those provisions of the Assessment Bill take effect.

[Table item 2 in subsection 2(1) of the Imposition Bill]

Chapter 2: Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024

Outline of chapter

- 2.1 This Chapter explains the operation of the Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024 (Assessment Bill).
- 2.2 The Assessment Bill establishes a new taxation framework to implement the GloBE Rules and a DMT for certain MNE Groups. The framework establishes rules for assessing the domestic minimum top-up tax and the global minimum top-up tax liability of certain MNEs as a part of a coordinated global approach. The Assessment Bill ensures that MNEs within scope of the GloBE Rules have an ETR of at least 15 per cent in respect of the GloBE income arising in each jurisdiction in which they operate, consistent with the GloBE Rules.

Summary of new law

- 2.3 The Assessment Bill sets out a framework for the entities that are liable to top-up tax in a way that seeks to achieve outcomes consistent with the GloBE Rules. This includes establishing the entities that are within scope of the GloBE Rules, relevant definitions that are used to support the framework and the description of taxes that may be charged to an entity.
- 2.4 It is intended that the substantive computation of top-up tax, consistent with the GloBE Rules, is to be determined under the Minister’s rule-making power. This approach ensures that future administrative guidance released by the OECD can be more easily adapted and incorporated in a timely and efficient manner, while retaining an appropriate level of parliamentary oversight. The Rules will contain detailed provisions that establish the computations for calculating an ETR. Provisions consistent with the ancillary Chapters 6 and 7 of the GloBE Rules are included to support the ETR computations for special entities. The safe harbours and transitional provisions from Chapters 8 and 9 are also contained in The Rules.

Detailed explanation of new law

Objective

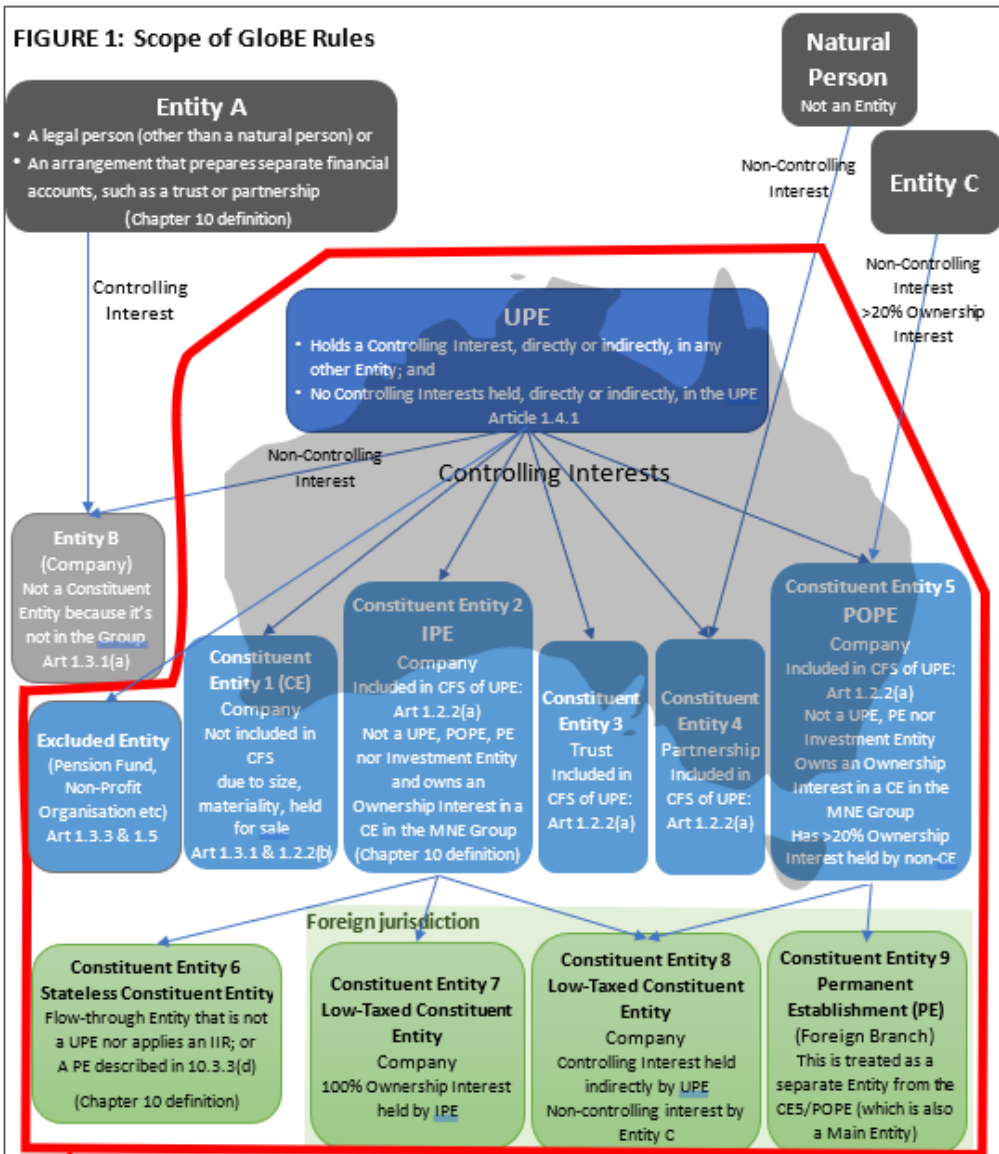
- 2.5 The objective of the Assessment Bill is to ensure MNE groups pay a minimum level of tax on the income arising in each of the jurisdictions where they operate. It does so by imposing a top-up tax on profits in a jurisdiction whenever the effective tax rate, that is determined for that jurisdiction, is below the minimum rate. The meaning of Domestic top-up tax Amount in Australia is delegated to the Rules.
[Section 5 of the Assessment Bill]
- 2.6 The Assessment Bill implements a liability to pay a IIR top-up tax in the event that a Constituent Entity is located in a jurisdiction that has an ETR below the 15 per cent global minimum tax rate.
[Section 7 of the Assessment Bill]

MNE Group

- 2.7 In considering whether the top-up tax computations are applicable to a **Group** there must be a UPE and at least one Constituent Entity located in a different jurisdiction. This can also extend to a group that consists of a solely a Permanent Establishment and a Main Entity. This is also the definition of an **MNE Group**. However, to be a group, the Constituent Entity or Permanent Establishment must be either:
- included in the CFS of the UPE, which shows that they are related through ownership or control with the UPE; or
 - not included in the CFS of the UPE based solely on size or materiality grounds, or on the grounds that the Entity is held for sale.
- [Subsections 1-15(1) and (3) of the Assessment Bill]*
- 2.8 If there is only one Entity and one Permanent Establishment in the MNE Group, then that Permanent Establishment must not be a **Stateless Constituent Entity**.
- 2.9 An MNE Group subject to the GloBE Rules is called an **Applicable MNE Group**. The Rules apply to an Applicable MNE Group if it meets the following two criteria:
- satisfying the corporate structure of an MNE Group; and
 - the MNE Group has a consolidated annual revenue of at least EUR 750 million in at least 2 of the 4 Fiscal Years immediately preceding the test year.

2.10 The consolidated revenue threshold is referred to as the **GloBE Threshold**.
 [Section 12 of the Assessment Bill]

2.11 An MNE Group can consist of both Constituent Entities and Excluded Entities.



Group: This collection of Entities is a ‘Group’ because the Entities are related through ownership or control such that the assets, liabilities income, expenses and cash flows of these Entities are included in the CFS of the UPE, or excluded from the CFS due to size, materiality or being held for sale (Article 1.2.2 and 1.2.3).

MNE Group: This Group is also a MNE Group because at least one of the Entities or Permanent Establishments is in a different jurisdiction from the UPE (Article 1.2.1).

Entities

- 2.12 An Entity is any legal person (other than a natural person). To ensure partnerships, trusts and other arrangements are captured, the definition of Entity also extends to an arrangement that prepares financial accounts. Given the reliance on the CFS, each Entity can only be in one MNE Group consolidated on a line-by-line basis.
[Subsections 13(1) and (2) of the Assessment Bill]

UPE

- 2.13 An **UPE** can either be a **Main Entity** that is a UPE of a Group with **Permanent Establishments** in other jurisdictions or an Entity which satisfies both of the following:
- it directly or indirectly owns a Controlling Interest in another Entity; and
 - it is not owned with a Controlling Interest directly or indirectly by another Entity.
- [Subsection 13(3) of the Assessment Bill]*
- 2.14 The terms ‘Controlling Interest’ and ‘Ownership Interest’ are used for different purposes within the GloBE Rules. In general, where a UPE holds a Controlling Interest in another Entity, the UPE will consolidate the Entity’s assets, liabilities, income, expenses and cash flows, on a line-by-line basis, into its CFS pursuant to the Authorised Financial Accounting Standard (AFAS).
- 2.15 In contrast, an Ownership Interest is any equity interest that carries rights to the profits, capital or reserves of an entity, including the profits, capital or reserves of a Main Entity’s Permanent Establishment. Ownership Interest is used for the purposes of determining a Parent Entity’s **Allocable Share** of top-up tax.
[Subsections 29(2) and 30(5), (6) and (7) of the Assessment Bill]

Constituent Entity

- 2.16 A **Constituent Entity** is an Entity that is included in the Applicable MNE Group. A Permanent Establishment is deemed to be a Constituent Entity so that it is captured within the MNE Group and subject to top-up tax. An Excluded Entity is not a Constituent Entity.
[Section 12 and subsections 15(1)(b) and (c) of the Assessment Bill]

Permanent establishments and main entities

- 2.17 A Permanent Establishment is a place of business of the Main Entity. It can be recognised as having taxable income attributable to it for income tax purposes.

- 2.18 A Main Entity can be a Constituent Entity subject to top-up tax and is the Entity that includes the income of any Permanent Establishment/s in its value and activities assessment.
[Subsection 15(3) of the Assessment Bill]
- 2.19 If an Entity is a Main Entity in relation to one or more Permanent Establishments located in a different jurisdiction, the Main Entity is taken to be separate from each of its Permanent Establishments for the purposes of this Bill and is taken to hold a Controlling Interest in each of its Permanent Establishments.
[Subsection 15(1)(a) of the Assessment Bill]

Join Ventures

- 2.20 The GloBE Rules operate to capture joint venture (JV) arrangements where a UPE holds at least 50% of the ownership interests in an entity (directly or indirectly) and these are reported under the equity method in the CFS. The Rules do not specifically capture JVs, but ensures that MNE Group calculates top-up tax in respect of a JV and any subsidiaries located in a low-taxed jurisdiction.
[Subsection 17(1) of the Assessment Bill]
- 2.21 A JV group may consist of the JV and any subsidiaries in that jurisdiction. JV subsidiaries includes any entities that are, or would have been, consolidated by the JV under an acceptable accounting standard.
[Subsection 17(2) of the Assessment Bill]
- 2.22 Consistent with the entities that are excluded from the GloBE Rules, a JV is not an entity that is an Excluded Entity or where the ownership interests are directly held through an Excluded Entity.
[Subsection 17(2) of the Assessment Bill]
- 2.23 The extension of the GloBE Rules to JV arrangements operates so that the top-up tax of the JV and JV subsidiaries is calculated separately from the MNE group. The JV is to be treated as the UPE of a separate MNE Group. The Rules outlined in Part 3 to Part 7, Part 8-2, 9-1 and 9-2 of the Assessment Bill apply to JVs when computing top-up tax separately from the MNE Group. This is to ensure that the GloBE income or loss and covered taxes of the JV and JV subsidiaries are not combined with the Constituent Entities of the broader MNE Group.
- 2.24 Only Parent Entities with ownership interests in the JV or JV subsidiaries can be liable to IIR top-up tax, which is allocated based on its allocable share.

Excluded Entity

- 2.25 An *Excluded Entity* is a type of Entity. Broadly, the operative provisions of the GloBE Rules do not apply to an Excluded Entity. However, its revenue is

included in ascertaining whether the EUR 750 million GloBE Threshold has been satisfied.

- 2.26 ***Excluded Entities*** who are members of an MNE Group are excluded from the operation of GloBE Rules and are therefore not Constituent Entities. In particular, an Excluded Entity cannot be liable to top-up tax. Subsidiaries of Excluded Entities that are not of a type listed in subsection 16(2) of the Assessment Bill and that do not satisfy the general test of an Excluded Entity in section 16 of the Assessment Bill will not be considered an Excluded Entity. ***[Section 16 of the Assessment Bill]***
- 2.27 An Excluded Entity cannot be a Partially Owned Parent Entity or an Intermediate Parent Entity because an IPE and a POPE are Constituent Entities and section 16 of the Assessment Bill states that an Excluded Entity is not a Constituent Entity.
- 2.28 Where an MNE Group is composed entirely of Excluded Entities, the entire MNE Group would be excluded from the operation of the Assessment Bill.
- 2.29 The practical effects of an Entity being characterised as an Excluded Entity is that the IIR, UTPR and DMT do not apply to Excluded Entities. The GloBE attributes of Excluded Entities are removed from the various computations under The Rules (except for the purposes of assessing the GloBE Threshold of the MNE Group), and the Excluded Entities do not have any administrative obligations, such as the filing of a GloBE Information Return.
- 2.30 The following entities are defined as Excluded Entities:
- a Governmental Entity;
 - an International Organisation;
 - a Non-profit Organisation;
 - a Pension Fund;
 - an Investment Fund that is an UPE; or
 - a Real Estate Investment Vehicle that is an UPE;
 - an Excluded Service Entity;
 - an Excluded Exempt Income Entity;
 - an Excluded Non-Profit Subsidiary.
- [Subsection 16(2) of the Assessment Bill]***

Sovereign wealth funds and Government Entities

- 2.31 Sovereign wealth funds are deemed not to own a Controlling Interest in an Entity in which it has an ownership interest. Because some sovereign wealth funds have a controlling interest, it is possible for a UPE to be controlled by a sovereign wealth fund and included in the CFS of a sovereign wealth fund.

- 2.32 A sovereign wealth fund which meets the definition of a Government Entity under the GloBE Rules cannot be a UPE and will not be considered part of a MNE Group. Sovereign wealth funds are generally established to hold or manage investments on behalf of the government or jurisdiction.
[Subsection 13(2) of the Assessment Bill]
- 2.33 Generally, an Excluded Entity can be a UPE if it holds a controlling interest in another entity. However, where the Excluded Entity is a Government Entity, it will not be a UPE because Government Entities are not typically required to consolidate the financial results of non-Government Entities they own on a line-by-line basis.
- 2.34 In some circumstances, a sovereign wealth fund can be a Government Entity. Sovereign wealth funds may qualify as a Governmental Entity, if the entity:
- is accountable to the government;
 - provides annual information reporting to the government, and
 - vests assets with the government upon dissolution and any distributions of earnings are made to the government.
- 2.35 For example, the fund can be wholly owned by a government and has the principal purpose of investing and managing the government's, or the jurisdiction's, assets. In those circumstances, the fund should be treated in the same manner as a Government Entity, consistent with the policy outcome under the GloBE Rules.

Excluded Service Entity

- 2.36 An Entity can be an Excluded Service Entity depending on the value of the Entity owned by the Excluded Entity and the activities conducted by the Entity.
- 2.37 The 'value of entity' refers to the aggregate value of the Ownership Interests held by the Excluded Entity in the subsidiary Entity and is tested on the date of the most recent change in the Excluded Entity's relative Ownership Interests in the Entity. Where Ownership Interests are represented by shares, the value of the Entity refers to the value of the issued and outstanding shares held by the shareholders.
- 2.38 An **Excluded Service Entity** must have at least 95 per cent of its value owned by an Excluded Entity and meet one, or both, of the following criteria:
- operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the Excluded Entities; and
 - only carries out activities that are ancillary to those carried out by the Excluded Entities.

This rule applies to Excluded Service Entities that are Permanent establishments.

[Section 16(3) of the Assessment Bill]

- 2.39 For an Entity that is considered to be an Excluded Service Entity, a Filing Constituent Entity can make a **Five-Year Election** not to treat that Entity as an Excluded Entity. If an election is made, the Entity would be treated as a Constituent Entity and not an Excluded entity.

[Subsections 16(6) to (8) of the Assessment Bill]

- 2.40 If an election is made, it will be a Five-year election, which means that it cannot be revoked with respect to a Fiscal Year (election year) or the four succeeding years immediately after the election year. The election will remain in effect indefinitely until it is revoked with respect to a Fiscal Year (the revocation year), from which point the MNE Group cannot make another election for the four succeeding years immediately after the revocation year.

[Subsections 16(6) to (8) of the Assessment Bill]

- 2.41 It is intended for MNE Groups to be able to make an election so that it can apply the IIR with respect to the top-up tax of its LTCEs and prevent the UTPR from operating. For example, a Filing Constituent Entity may elect to treat an Excluded Entity as a Constituent Entity in order to apply IIR and not UTPR with respect to the top-up tax of the LTCE.

Ownership interests

- 2.42 Both direct and indirect ownership interests are taken into account when determining an Entity's liability to pay top-up tax in respect of an LTCE. Direct and indirect ownership interests are broadly defined as interests that carry rights to the share of profits, capital and/or reserves in an Entity and that would be classified as equity under the relevant financial accounting standard.

[Section 29 of the Assessment Bill]

Example 2.1 Ownership interests

Identifying whether an indirect ownership interest exists

Scenario: Entity A holds a Direct Ownership Interest in Entity B. Entity B holds a Direct Ownership Interest in Entity C.

Interpretation: Therefore, Entity A holds an Indirect Ownership Interest in Entity C.

[Section 10-16(4) of the Assessment Bill]

Calculating the proportion of a direct ownership interest

Scenario: Entity A issues ownership interests of two types, profit units which carry equal rights to the profits of the entity and capital

units which carry equal rights to the capital of the entity in liquidation. These units are held by 3 other entities, B, C and D. Entity B holds 50% of the issued profit units and 80% of the issued capital units. Entity C holds 50% of the profit units. Entity D holds the remaining 20% of capital units.

Interpretation: Entity B’s ownership interest amounts to the average of its ownership interests in Entity A, $(50\% + 80\%) / 2 = 65\%$. Entity C has 25% of the ownership interest in A, $(50\% + 0) / 2$. Entity D has the remaining $(0 + 20\%) / 2 = 10\%$.

[Section 10-17(2) of the Assessment Bill]

Calculating the proportion of an indirect ownership interest

Scenario: Entity A directly owns 70% of the shares in Entity B which directly owns 40% of shares in Entity C.

Interpretation: Entity A has an indirect ownership interest of 28% in Entity C, through Entity B.

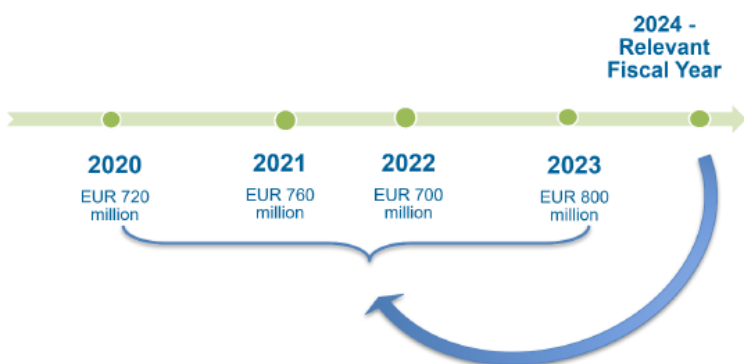
GloBE Threshold

2.43 An MNE Group is subject to the GloBE Rules in a Fiscal Year if its annual revenue meets the EUR 750 million **GloBE Threshold** in at least 2 of the 4 Fiscal Years immediately preceding the Fiscal Year.

[Subsection 12(3) of the Assessment Bill]

Diagram 2.1 Consolidated Revenue Threshold

Figure 1.3. Example: Revenue threshold test



OECD (2023), *Figure 1.3 of the Minimum Tax Implementation Handbook (Pillar Two), OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris*, <https://www.oecd.org/tax/beps/minimum-tax-implementation-handbook-pillar-two.pdf>

2.44 The annual revenue of the MNE Group is the amount determined in accordance with relevant accounting standards and generally represents

amount disclosed in the CFS as annual revenue of the MNE Group. The UPE is typically the Entity which prepares the CFS, which would identify all the Entities within the MNE Group.

[Subsection 12(2) of the Assessment Bill]

- 2.45 The GloBE threshold is EUR 750 million. This is based on revenue which includes the inflow of economic benefits arising from delivering or producing goods, rendering services, or other activities that constitute the MNE Group’s ordinary activities.

[Subsection 12(3)(a) of the Assessment Bill]

- 2.46 However, if a Fiscal Year of the MNE Group is a period other than 12 months, then for each of those Fiscal Years, the EUR 750 million threshold is adjusted proportionally to correspond with the length of the relevant Fiscal Year as follows:

$$\left(\frac{\text{fiscal year period in months}}{12} \right) \times 750 \text{ million}$$

[Subsection 12(3)(b) of the Assessment Bill]

- 2.47 The revenue from Joint Operations is included in the revenue threshold calculations but is limited to the portion consolidated in the Group’s CFS. Therefore, the GloBE Income or Loss of such Joint Operations is only included on a proportional basis.
- 2.48 Revenue amounts are determined in line with the relevant accounting standard, which may allow for netting of discounts, returns and allowances, which are generally reflected in the profit and loss statement. However, if different types of revenue are separately presented in the consolidated profit and loss statement of the consolidated financial statements, they must be aggregated for the purposes of determining the GloBE threshold.
- 2.49 All MNE Groups must include net gains from investments (whether realised or unrealised) reflected in the profit and loss statement of the CFS and income or gains separately presented as extraordinary or non-recurring items.
- 2.50 Where an MNE Group’s consolidated profit and loss statement presents gross gains from investments and gross losses from investments separately, then the MNE Group must reduce revenues by the amount of such gross losses to the extent of gross gains from investments in determining revenues for the GloBE threshold.
- 2.51 For financial entities, which may not record gross amounts from transactions in their financial statements with respect to certain items, the item(s) considered similar to revenue under the UPE’s financial accounting standards should be used in the context of financial activities. Those items could be labelled as ‘net banking product’, ‘net revenues’, or others depending on the financial accounting standard. For example, if the income or gains from a financial transaction, such as an interest rate swap, is appropriately reported on a net

basis under the UPE’s financial accounting standards, the term ‘revenue’ means the net amount from the transaction.

- 2.52 Where the UPE is not required to prepare a CFS, a hypothetical CFS is used based on the assets, liabilities, income and expenses the UPE would have been required to consolidate in the accounts, on the assumption that the relevant Parent Entity holds a controlling interest in an entity in which it has an Ownership Interest in. This ensures that the first Entity is still a UPE.

Liability to tax

- 2.53 The adjusted income and taxes of an MNE Group are used to calculate the ETR of a Group in that jurisdiction. Where this calculation results in an ETR that is below 15 per cent, an MNE Group is required to pay a top-up tax, to bring the total amount of tax in that low-tax jurisdiction up to the 15 per cent rate.
- 2.54 Top-up tax is collected under three types of provisions: the DMT, the IIR and the UTPR.
- 2.55 The imposition of a DMT allows Australia to impose additional tax on excess profits of Australian Constituent Entities of MNE Groups in order to bring the ETR on those profits up to the 15 per cent minimum rate.
[Sections 7 and 8 of the Assessment Bill]
- 2.56 If a jurisdiction where a LTCE is located does not have a DMT, and the UPE is located in Australia, Australia collects the top-up tax under the IIR.
[Sections 4 and 5 of the Assessment Bill]
- 2.57 Where the IIR cannot be applied to a jurisdiction’s low-tax income, top-up tax is collected by all jurisdictions that have implemented a UTPR. The total amount of top-up tax is allocated among jurisdictions by reference to a substance-based allocation key. Each jurisdiction collects the top-up tax by applying the UTPR as a denial of deduction under its existing corporate income tax, or through an equivalent mechanism.
[Section 10 of the Assessment Bill]

Keeping of records

- 2.58 The Assessment Bill ensures Constituent Entities are required to keep records that are necessary for the collection and recovery of GloBE top-up tax and Domestic top-up tax. Constituent Entities are required to keep records that fully explain whether the Constituent Entity of the Applicable MNE Group has complied with the Assessment Bill. The requirement to keep records applies to Constituent Entities located in Australia notwithstanding that the GloBE Information Return may be lodged overseas and then exchanged with the

Commissioner.

[Section 26 of the Assessment Bill]

2.59 This obligation to keep records relates to records in respect of the operation and application of the provisions of the Assessment Bill. Records must be kept in writing in English, or so as to enable the records to be readily accessible and convertible to English, and must enable the Constituent Entity’s liability to top-up tax to be readily ascertainable. Excluded Entities, who are excluded from the scope of the GloBE Rules and do not have obligations to lodge a GloBE Information Return, Australian GloBE Tax Return or DMT Return, are required to keep records to explain their determination as being an Excluded Entity.

[Subsection 26(2) of the Assessment Bill]

2.60 For the purposes of whether an Entity has complied with the Assessment Bill, such records that must be kept include (but are not limited to) all records that explain and show the basis of every disclosure in the GloBE Information Return lodged or exchanged with the Commissioner.

2.61 Records must be kept until the end of 8 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later. The length of this record keeping retention period is necessary given the extended period of time the treatment and calculations under the Assessment Bill operate, as well as the relatively long timeframes for lodgment and exchange of the GloBE Information Return.

[Subsection 26(3) of the Assessment Bill]

2.62 The retention period is extended where the underlying period of review is extended. The records must be kept until the later of the original 8 year period or the end of the period of review as extended.

[Subsection 26(3)(c) of the Assessment Bill]

2.63 Failure to meet the obligations to keep records is an offence of strict liability. The current penalty is 30 penalty units.

[Subsection 26(4) of the Assessment Bill]

2.64 As the Assessment Bill is a ‘taxation law’, the existing administrative penalty for a failure to keep or retain records, in section 288-25 of Schedule 1 to TAA 1953 may apply in respect of this record-keeping requirement. The current penalty is 20 penalty units. Further, the existing record-keeping offences in sections 8L, 8Q and 8T of the TAA 1953 may apply where the relevant elements are met.

[Subsection 26(1), note 1 of the Assessment Bill]

Interpretation

2.65 The provisions of the Assessment Bill including the Rules made for the purposes of provisions under the Assessment Bill are to be interpreted in a

manner consistent with the GloBE Rules, Commentary, Examples, Administrative Guidance, GloBE Implementation Framework, and a document, or part of a document prescribed by the Rules.

[Subsection 3(1) of the Assessment Bill]

- 2.66 This is because the GloBE Rules operate as a common approach meaning that jurisdictions that decide to adopt the GloBE Rules have agreed to implement them in a way that is consistent with the outcomes provided under the GloBE Rules including the agreed rule order.
- 2.67 The Rules may also prescribe that a document or part of a document be disregarded in interpreting the Assessment Bill. This provides for the circumstances where it is necessary to interpret a provision of the Assessment Bill in a manner that is inconsistent with parts of a document. It can also be used to resolve inconsistencies between documents for the purposes of interpreting the Assessment Bill.
- [Subsection 3(2) of the Assessment Bill]***
- 2.68 The provisions of the Assessment Bill and the Rules also use common financial accounting terms that are not defined. When principles that rely on financial accounting, or financial accounting terminology or concepts that are not defined are used, such terms and concepts should be interpreted consistently with the meaning given to them in financial accounting standards and guidance.
- 2.69 The OECD GloBE Model Rules, Commentary and Agreed Administrative Guidance published by the OECD are defined with reference to their full titles.
- [Section 3 of the Assessment Bill]***

Rule-making powers

- 2.70 The Minister may, by legislative instrument, make Rules related to computation of top-up tax.
- [Section 20 of the Assessment Bill]***
- 2.71 This Rule making power has been included to ensure that any OECD Administrative Guidance can be incorporated efficiently and in a timely manner, while still retaining an appropriate level of parliamentary oversight. It will also allow the swift correction of any unforeseen consequences that arise from the implementation of this Bill.
- 2.72 The Rules may, via reference, incorporate extrinsic materials in force at the time The Rules are made or at another fixed point in time.
- 2.73 Given the importance and evolving nature of the OECD Administrative Guidance, it is important that the rule-making power exist to implement Guidance into legislation quickly and flexibly.
- 2.74 If a legislative instrument or notifiable instrument, or a provision of such an instrument, commences before the instrument is registered, the instrument

implementing The Rules will apply from the time of commencement, rather than the time of registration, to ensure swift implementation. The Rules will prevail over the provisions of Parts 3 and 5 of the Assessment Bill to the extent of any inconsistency.

- 2.75 There are appropriate legislative safeguards put in place to ensure the Rules are used appropriately. Apart from the limits set out in subsection 20(2) of the Assessment Bill, the Minister’s rule-making power has also been effectively limited to the purpose of ensuring consistency between Parts 3 and 5 of the Assessment Bill and the documents mentioned in subsection 3(1) of the Assessment Bill. The documents mentioned in subsection 3(1) of the Assessment Bill are documents with which the Assessment Bill must have consistent interpretation in order to operate as intended. The timeframe for rule-making has also been restricted such that The Rules must not be made after 31 December 2026.

[Section 24 of the Assessment Bill]

Location of an Entity

- 2.76 Each Constituent Entity is treated as being located in a particular jurisdiction. The principle underlying the provisions that determine the location of an Entity is to follow the treatment under local law. However, certain Constituent Entities may not be liable for tax anywhere and may be treated as “Stateless Entities”. The provisions apply for opaque Entities, Flow-through Entities and Permanent Establishments. Where an Entity changes its location during the Fiscal Year, it is taken to be located in the jurisdiction in which it was located at the start of that Fiscal Year.

[Sections 32 to 36 of the Assessment Bill]

- 2.77 Following this principle, an Entity that is not a Flow-through Entity will be treated as being located in Australia if it is an ‘Australian entity’ within the meaning of the ITAA 1997. This definition takes the meaning of that term as provided in section 336 of the ITAA 1936, which covers an Australian partnership, an Australian trust and a Part X Australian resident. The effect of this is that an Entity that is not a Flow-through Entity is an Australian entity and is therefore located in Australia if it is an Australian resident within the meaning of section 6 of the ITAA 1936 and it is not deemed to be a resident of a foreign jurisdiction by any applicable tie-breaker rules in an Australian tax treaty.

[Subsection 32(1) and paragraph 32(2)(a) of the Assessment Bill]

- 2.78 If an Entity that is not a Flow-through Entity is resident in a jurisdiction outside of Australia based on its place of management, place of creation, or similar criterion, it will be treated as being located in that jurisdiction.

[Subsection 32(1) and paragraph 32(2)(b) of the Assessment Bill]

- 2.79 If such Entity, falls into neither of these above categories, it is located in the jurisdiction where it is created.
[Subsection 32(1) and paragraph 32(2)(c) of the Assessment Bill]
- 2.80 An Entity that is a Flow-through Entity is located in the jurisdiction where it was created if the Entity is either a UPE, or it is required to apply a Qualified IIR. This allows jurisdictions to impose an IIR on Flow-through Entities that are created in that jurisdiction.
[Section 33 of the Assessment Bill]
- 2.81 Where a Flow-through Entity is not a UPE and is not required to apply an IIR in a particular jurisdiction, it is a Stateless Entity of the MNE Group.
[Subsection 33(3) of the Assessment Bill]

Location of a Permanent Establishment

- 2.82 The location of a Permanent Establishment is determined with reference to the definition of Permanent Establishment under the Assessment Bill, which broadly covers a Permanent Establishment under any applicable tax treaty or the OECD Model Tax Convention, or the jurisdiction that taxes the income from the carrying on of business in that jurisdiction. If any of these situations apply, as set out in paragraphs (a), (b) or (c) of the definition of Permanent Establishment, the Permanent Establishment is located in the jurisdiction mentioned in that paragraph. These are catch-all provisions to ensure that the location of a Permanent Establishment can be determined even where different jurisdictions may treat places of business differently.
[Subsections 34(1) and (2) of the Assessment Bill]
- 2.83 Paragraph (d) applies where the residence jurisdiction exempts the income from a resident's operations (or a portion of its operations) on the grounds that they are conducted outside of the residence jurisdiction. In this case, the Permanent Establishment will be treated as a Stateless Constituent Entity.
[Subsections 15(2)(d) and 34(3) of the Assessment Bill]

Dual-located entities

- 2.84 For the purposes of the ETR and top-up tax computation, the tax attributes of a Constituent Entity can only be considered in one jurisdiction. Additionally, to avoid double taxation, a Constituent Entity can only be required to apply the IIR or UTPR in one jurisdiction.
- 2.85 To address situations where a Constituent Entity, other than a Permanent Establishment, is located in two or more jurisdictions, a Constituent Entity is taken to be located, for the Fiscal Year, in the jurisdiction worked out in accordance with The Rules, unless it is a Stateless Constituent Entity.
[Subsection 35(2) of the Assessment Bill]

Definitions

2.86 Relevant provisions of the Assessment Bill and The Rules that define certain terms are provided in the Definition section. Additional commentary on some of the terms defined in the Assessment Bill is set out in the following table.

Definition	Reference	Comments
Consolidated Financial Statements (CFS)	Section 26	<p>Paragraph (d) of the definition does not require an entity to consolidate assets, liabilities, income, expenses and cash flows on a line-by-line basis whether the authorised accounting standard does not require that consolidation.</p> <p>Section 14 of the Assessment Bill defines ‘Group’. This definition also applies to CFS.</p> <p>The deemed consolidation test interacts with paragraph (b) of the controlling interest definition. An entity with an ownership interest in another entity is deemed to have a controlling interest if the interest holder would be required to consolidate if it had prepared CFS.</p>
GloBE Information Return	Section 26	<p>The GloBE Information Return is a document filed by a Constituent Entity and is a return that is published by the OECD on 17 July 2023 as amended from time to time.</p>
Real Estate Investment Vehicle	Section 26	<p>An Entity that meets all of the following criteria:</p> <ul style="list-style-type: none"> (a) taxation of the Entity achieves a single level of taxation either in its hands or the hands of the holders of the Ownership Interests in the Entity (with at most one year of deferral); (b) it holds predominantly immovable property; (c) it is widely held. <p>A Real Estate Investment Vehicle that is owned directly by a small number of other widely-held Investment Entities or Pension Funds that have numerous beneficiaries is considered to be widely-held.</p>

Commencement, application, and transitional provisions

- 2.87 The Assessment Bill commences the day after Royal Assent.
- 2.88 The amendments apply to Fiscal Years commencing on or after 1 January 2024.

Chapter 3: Taxation (Multinational—Global and Domestic Minimum Tax) Consequential Bill 2024

Outline of chapter

- 3.1 This Chapter explains the operation of the Taxation (Multinational—Global and Domestic Minimum Tax) Consequential Bill 2024 (Consequential Bill).
- 3.2 The Consequential Bill sets out the consequential and miscellaneous provisions necessary for the collection and recovery of GloBE top-up tax and Domestic top-up tax. Both GloBE top-up tax and Domestic top-up tax link into the existing machinery provisions in the TAA 1953.
- 3.3 The Commissioner has general administration of the Assessment Bill. Giving the Commissioner general administration brings the Assessment Bill within the definition of *taxation law* and ensures that a liability to pay either GloBE top-up tax or Domestic top-up tax is a *tax-related liability*.
- 3.4 The amendments provide for the lodgment of returns, assessments and collection for both GloBE top-up tax and Domestic top-up tax. Both shortfall interest charge and general interest charge apply to liabilities that arise under Assessment Bill.
- 3.5 The amendments allow the Commissioner to issue rulings about the operation of the Assessment Bill, either as public rulings or as private rulings upon application and bring objections and appeals against assessments.
- 3.6 The amendments provide obligations to keep records for GloBE top-up tax and Domestic top-up tax.

Summary of new law

- 3.7 These consequential and miscellaneous amendments are necessary for the administration of GloBE top-up tax and Domestic top-up tax.
- 3.8 To reduce the compliance burden on taxpayers, the amendments link into the existing administrative framework in the TAA 1953 with few modifications except as required to be consistent with the GloBE Rules.

Detailed explanation of new law

General Administration of the Assessment Bill

- 3.9 The Commissioner has general administration of the Assessment Bill. This brings the Assessment Bill within the definition of *taxation law* as defined in subsection 995-1(1) of the ITAA 1997 and consequently enlivens a number of provisions within the existing administrative framework used by the Commissioner in the administration of these taxation laws.
[Schedule xx, item 27, subdivision 356-D in Schedule 1 to the TAA 1953]
- 3.10 As the Assessment Bill is a taxation law, several existing provisions of the TAA 1953 apply in relation to the Assessment Bill, including provisions relating to information gathering and penalties.
- 3.11 The Commissioner’s powers to obtain information and evidence in relation to a taxation law in Subdivision 353-A in Schedule 1 to the TAA 1953 apply in relation to the Assessment Bill. This includes the Commissioner’s ability to exercise the powers in sections 353-10 and 353-15 to gather information for purposes connected with the Assessment Bill.
- 3.12 Information gathered for purposes related to the Assessment Bill is *protected information* as defined in section 355-30 in Schedule 1 to the TAA 1953. This ensures this information is covered by the secrecy provisions in Division 355 in Schedule 1 to the TAA 1953.
- 3.13 Administrative penalty provisions in Schedule 1 to the TAA 1953 which refer to a taxation law will apply in relation to the Assessment Bill. These include penalties for making a false and misleading statement under Subdivision 284-B and penalties for failing to lodge under Division 286.
- 3.14 Where an administrative penalty is imposed under Part 4-25 of Schedule 1 to the TAA 1953 in relation to the Assessment Bill, as part of the process of assessing the amount of the penalty, the Commissioner is required to determine if remission is appropriate under section 298-20 of Schedule 1 to the TAA 1953. Where a penalty is imposed, the taxpayer has objection rights in certain circumstances, consistent with subsection 298-20(2) of Schedule 1 to the TAA 1953.
- 3.15 Offences which refer to a taxation law also apply in relation to the Assessment Bill.
- 3.16 A liability raised under the Assessment Bill is a *tax-related liability* within the definition in section 255-1 in Schedule 1 to the TAA. This ensures that:
- the Commissioner can recover debts arising from the non-payment of these liabilities;

- the Commissioner can issue an offshore information notice under section 353-25 in Schedule 1 to the TAA to collect information relevant to the assessment of GloBE and Domestic top-up tax;
- the penalties for failing to lodge a document necessary to determine a tax-related liability under subsection 284-75(3) of Schedule 1 to the TAA 1953 may apply; and
- the Commissioner may allocate an entity's liability for GloBE and Domestic top-up tax to the entity's running balance account under Part IIB of the TAA 1953 so that any available credit may offset these top-up tax liabilities.

Returns

- 3.17 The Consequential Bill inserts Division 127 in Schedule 1 to the TAA 1953 to require the following returns to be given to the Commissioner:
- A GloBE Information Return – an obligation to lodge this standardised return with the Commissioner is consistent with the GloBE Rules.
 - An Australian GloBE Tax Return – this return supplements the GloBE Information Return and contains information for the purposes of administering the GloBE Rules to assess and collect IIR top-up tax and UTPR top-up tax.
 - A DMT Return – this return supplements the GloBE Information Return and contains information for the purposes of administering the GloBE Rules to assess and collect Domestic top-up tax.
[Schedule xx, item 18, section 127-5, 127-10 and 127-15 in Schedule 1 to the TAA 1953]
- 3.18 The obligation to prepare a GloBE Information Return is separate from the requirement to declare and pay taxes for the purposes of assessment under a tax return. That is, a GloBE Information Return is not a tax return giving rise to assessment. The Australian GloBE Tax Return and DMT Return form the basis of the Commissioner's assessment of GloBE and Domestic top-up tax respectively.
[Schedule xx, item 18, notes to subsections 127-5(1), 127-10(1) and 127-15(1), section 127-10(3A) and 127-15(3A) in Schedule 1 to the TAA 1953]
- 3.19 A GloBE Information Return, Australian GloBE Tax Return and DMT Return must be lodged with the Commissioner in the approved form. The returns are to be lodged electronically. As the Assessment Bill is a 'taxation law', an administrative penalty under section 286-75 in Schedule 1 to the TAA 1953 applies for each return a Constituent Entity fails to lodge.
[Schedule xx, item 18, subsections 127-5(2), 127-10(3) and 127-15(3) in Schedule 1 to the TAA 1953]

- 3.20 The due date for lodgment of the returns is harmonised. The Australian GloBE Tax Return and the DMT Return are required to be lodged within the time that is specified for the lodgment of the GloBE Information Return. This is consistent with the GloBE Rules, which stipulate lodgment to be within 15 months after the end of every Fiscal Year, except for the first Fiscal Year in which a jurisdiction’s domestic implementation of the GloBE Rules are applied by an Applicable MNE Group, where the return must be given within 18 months after the end of the Fiscal Year.
[Schedule xx, item 18, subsections 127-20(1) and (2) in Schedule 1 to the TAA 1953]
- 3.21 A transitional provision provides for short Reporting Fiscal Years. Where any of the three returns are required to be given to the Commissioner at a time before 30 June 2026, such returns are instead required to be given to the Commissioner no later than 30 June 2026. That is, the due date for lodgment is extended to 30 June 2026.
[Schedule xx, item 18A of the Consequential Bill]
- 3.22 The Commissioner does not have discretion to defer time for lodgment of the GloBE Information Return, to be consistent with the due date for filing under the GloBE Rules. The Commissioner may defer the time for lodgment of the Australian GloBE Tax Return and DMT Return.
[Schedule xx, item 18, subsection 127-20(3) in Schedule 1 to the TAA 1953]
- 3.23 If a Constituent Entity is a Permanent Establishment, the Main Entity in relation to that Permanent Establishment is required to give to the Commissioner a GloBE Information Return, an Australian GloBE Tax Return and a DMT Return in respect of that Permanent Establishment.
[Schedule xx, item 18, section 127-25 in Schedule 1 to the TAA 1953]

GloBE Information Return

- 3.24 The GloBE Information Return is a standardised form that provides each jurisdiction’s tax administration with the information required to assess an entity’s tax liability consistent with the GloBE Rules. It is in accordance with the standardised return developed in accordance with the GloBE Implementation Framework. Currently, that return is the standardised return published by the OECD on 17 July 2023. In this way, the GloBE Information Return is consistent for information reporting requirements across implementing jurisdictions.
- 3.25 As set out in the GloBE Rules, is intended that the GloBE Information Return captures general information, corporate structure, the ETR computation, computation and allocation of top-up tax liabilities and any elections made for the relevant Fiscal Year, subject to the dissemination approach for the GloBE Information Return detailed in the standardised return published by the OECD on 17 July 2023.

- 3.26 Each Constituent Entity of an Applicable MNE Group that is located in Australia at the start of the Fiscal Year must lodge a GloBE Information Return that is in accordance with the GloBE Implementation Framework and includes the following information:
- identification number of the Constituent Entity;
 - location of the Constituent Entity;
 - status of the Constituent Entity under GloBE rules;
 - information on the overall corporate structure of the group including controlling interests;
 - all information relevant to the determination of the following in relation to the Applicable MNE Group:
 - ETR for each jurisdiction
 - top-up tax of each Constituent Entity
 - top-up-tax of a member of the JV Group (under Chapter 6); and
 - allocation of top-up-tax for each for the Fiscal Year (under Chapter 2);
 - annual elections, five year elections and other elections made under the relevant provisions; and
 - other relevant information agreed as part of the GloBE Implementation Framework and is necessary to carry out the administration of the GloBE Rules.
[Schedule xx, item 18, subsection 127-5(3)(b) in Schedule 1 to the TAA 1953]
- 3.27 A Constituent Entity is required to give a GloBE Information Return to the Commissioner even if the amount of GloBE top-up tax or Domestic top-up tax the Constituent Entity is liable to pay is nil.
[Schedule xx, item 18, subsection 127-5(1) in Schedule 1 to the TAA 1953]
- 3.28 The GloBE Information Return must be in the approved form, which must reflect any amendments to the standardised form made by the GloBE Implementation Framework.
[Schedule xx, item 18, subsections 127-5(2) and (3) in Schedule 1 to the TAA 1953]
- 3.29 Entities that are excluded from applying the GloBE Rules generally have no administrative obligations, however, to the extent that such excluded entities form part of an MNE group, those entities must be identified as part of the overall corporate structure of the Applicable MNE Group.
- 3.30 A Constituent Entity's obligation to lodge a GloBE Information Return is met if the ***Designated Filing Entity*** has lodged the GloBE Information Return on behalf of the Applicable MNE Group. The Constituent Entity is taken to give

the GloBE Information Return to the Commissioner at the time the Designated Filing Entity gives it to the Commissioner.

[Schedule xx, item 18, subsections 127-5(4) and (5) in Schedule 1 to the TAA 1953]

- 3.31 A Constituent Entity’s obligation to lodge a GloBE Information Return is met if the *UPE* or a *Designated Filing Entity* in a foreign jurisdiction has lodged the GloBE Information Return in a foreign jurisdiction that has a Qualifying Competent Authority Agreement with Australia within 15 months of the end of the Fiscal Year (or within 18 months of the end of the first Fiscal Year that the GloBE Rules apply for an Applicable MNE Group). If that return is lodged in a foreign jurisdiction after that time, the Constituent Entity will not have been taken to have met its Australian lodgment obligation and will be required to lodge in Australia. Penalties for failing to lodge the return under Subdivision 286-C of Schedule 1 to the TAA 1953 can apply in such scenarios.

[Schedule xx, item 18, subsections 127-5(6), (7) and (8) and section 127-20 in Schedule 1 to the TAA 1953]

- 3.32 Where a GloBE Information Return is filed in a foreign jurisdiction, the Constituent Entity with an obligation to lodge the return must notify the Commissioner of the identity of the UPE or Designated Filing Entity that has lodged the GloBE Information Return and the foreign jurisdiction in which that filing entity is located. The notification must be made in writing and electronically, in the approved form. It must be made by the due date for lodging the GloBE Information Return (15 months after the end of the Fiscal Year, or within 18 months after the end of the Fiscal Year for the first Fiscal Year in which the GloBE Rules apply for the Applicable MNE Group).

[Schedule xx, items 12 and 18, the definition of Designated Local Entity in subsection 995-1 in the ITAA 1997 and subsection 127-5(7) in Schedule 1 to the TAA 1953]

- 3.33 **[Seeking stakeholder comments:** There could be a circumstance where the GloBE Information Return is not received from the *foreign government agency* within the time period specified in the Qualifying Competent Authority, notwithstanding the GloBE Information Return being filed by the UPE or a Designated Filing Entity. In this circumstance, the Commissioner may by notice in writing require a Constituent Entity to lodge the GloBE Information Return in the approved form within 21 days after the Commissioner provides such notice. Penalties for failing to lodge the return under Subdivision 286-C of Schedule 1 to the TAA 1953 can apply if not lodged by the Constituent Entity within the required time.]

Australian GloBE Tax Return

- 3.34 The Australian GloBE Tax Return is an Australian specific return that forms the basis of the Commissioner’s assessment of GloBE top- up tax for Australian tax purposes.

[Schedule xx, item 18, subsection 127-10(1) in Schedule 1 to the TAA 1953]

- 3.35 In respect of the IIR, a Constituent Entity that is a Parent Entity that could be liable for top-up tax (after applying the ordering rule in section 2-5 of The Rules) for a Fiscal Year, is required to give an Australian GloBE Tax Return to the Commissioner even if nil amount of GloBE top-up tax is payable.
[Schedule xx, item 18, subsection 127-10(2) in Schedule 1 to the TAA 1953]
- 3.36 Where a Constituent Entity is a Permanent Establishment that is required to give an Australian GloBE Tax Return to the Commissioner, the Main Entity is required to give the return to the Commissioner in respect of that Permanent Establishment.
[Schedule xx, item 18, subsections 127-25(1) and (2) in Schedule 1 to the TAA 1953]
- 3.37 A Constituent Entity’s obligation to lodge an Australian GloBE Tax Return may be met by a **Designated Local Entity**. A Designated Local Entity of an Applicable MNE Group may be appointed by all Constituent Entities of an MNE Group to lodge the Australian GloBE Tax Return on behalf of each of those Constituent Entities who have an obligation to lodge, provided the Designated Local Entity is not a Permanent Establishment. Similar to the GloBE Information Return, the appointment must for all Constituent Entities with an obligation to lodge an Australian GloBE Tax Return.
[Schedule xx, item 18, subsection 127-10(4) in Schedule 1 to the TAA 1953]
- 3.38 A Constituent Entity with an obligation to lodge an Australian GloBE Tax Return is taken to give the return to the Commissioner at the time the Designated Local Entity gives it to the Commissioner.
[Schedule xx, item 18, subsection 127-10(5) in Schedule 1 to the TAA 1953]

Domestic Minimum Tax Return

- 3.39 The DMT Return is an Australian-specific return that forms the basis of the Commissioner’s assessment of DMT top-up tax for Australian tax purposes.
[Schedule xx, item 18, subsection 127-15(1) in Schedule 1 to the TAA 1953]
- 3.40 A Constituent Entity of an Applicable MNE Group that is located in Australia is required to give a DMT Return to the Commissioner within the time period required for lodging the GloBE Information Return.
[Schedule xx, item 18, subsection 127-15(2) in Schedule 1 to the TAA 1953]
- 3.41 **[Seeking stakeholder comments:** Currently all Constituent Entities of an Applicable MNE Group that are located in Australia for the purposes of the Assessment Bill are required to lodge a DMT Return. We are seeking views on whether there are circumstances in which lodgment of the DMT Return by a Constituent Entity might not be warranted. In particular, please also note the administrative collection mechanism for tax consolidated groups.]
- 3.42 A Constituent Entity that is required to give a DMT Return to the Commissioner must give that return to the Commissioner within the required period even if the amount of Domestic top-up tax the Constituent Entity is liable to pay is nil.

[Schedule xx, subsection 127-15(2) and section 127-20 in Schedule 1 to the TAA 1953]

- 3.43 An Entity's obligation to lodge a DMT Return may be met by a ***Designated Local Entity***. A ***Designated Local Entity*** of an Applicable MNE Group may be appointed by all Constituent Entities of an MNE Group to lodge the DMT Return on behalf of each of those Constituent Entities who have an obligation to lodge, provided the Designated Local Entity is not a Permanent Establishment. Similar to the GloBE Information Return, the appointment must apply for all Constituent Entities that are required to lodge a DMT Return. A Constituent Entity that is required to lodge a DMT Return is taken to give the return to the Commissioner at the time the Designated Local Entity gives it to the Commissioner.

[Schedule xx, item 18, subsections 127-15(4) and (5) in Schedule 1 to the TAA 1953]

- 3.44 Where a Constituent Entity is a Permanent Establishment that is required to give an Australian GloBE Tax Return to the Commissioner, the Main Entity is required to give the return to the Commissioner in respect of that Permanent Establishment.

[Schedule xx, item 18, subsections 127-25(1) and (2) in Schedule 1 to the TAA 1953]

Assessments

- 3.45 An assessment will be deemed to have been made upon the lodgment of the relevant return – a DMT Return for a liability for Domestic top-up tax and an Australian GloBE Tax Return for an amount of GloBE top-up tax.

[Schedule xx, item 20, items 6 and 7 of the table in subsection 155-15(1) in Schedule 1 to the TAA 1953]

- 3.46 Where a DMT Return or Australian GloBE Tax Return is filed on behalf of other entities by a Designated Local Entity, an assessment of tax is deemed to have been made in respect of each of those entities upon the lodgment of the return by the Designated Local Entity.

- 3.47 Section 155-5 in Schedule 1 to the TAA provides that the Commissioner can make an assessment of an ***assessable amount***. GloBE top-up tax and Domestic top-up tax will be listed in this section giving the Commissioner the power to make an assessment of the GloBE top-up tax and Domestic top-up tax in accordance with Australia's self-assessment regime. This ensures the Commissioner can also make a default assessment of these amounts in the case of entities failing to lodge their return or provide sufficient information in their return.

[Schedule xx, item 19, subsections 155-5(2)(m) and (n) in Schedule 1 to the TAA 1953]

- 3.48 An amount of GloBE top-up tax or Domestic top-up tax is due and payable on the last day of the 15th month after the end of the Fiscal Year (this is the same

day the return that gives rise to the assessment is due).

[Schedule xx, item 18, 127-30(1) in Schedule 1 to the TAA 1953]

- 3.49 In the transition year, an amount is due and payable on the last day of the 18th month after the end of the Fiscal Year.

[Schedule xx, item 18, 127-30(1A) in Schedule 1 to the TAA 1953]

- 3.50 A transitional provision provides for short Reporting Fiscal Years. Where any amount of GloBE Top-up tax or Domestic top-up tax (including extra such tax resulting from the amendment of an assessment) is required to be paid to the Commissioner no later than a particular time before 30 June 2026, the amount is due and payable on 30 June 2026. That is, the deadline for payment is extended to 30 June 2026.

[Schedule xx, item 18A of the Consequential Bill]

Amended assessments, objections and review

- 3.51 The existing provisions in Subdivision 155-B in Schedule 1 to the TAA 1953, giving the Commissioner the power to make amended assessments, apply to assessments of GloBE top-up tax and Domestic top-up tax, subject to the period of review. If the Commissioner makes an amended assessment, any extra amount is due and payable 21 days after the Commissioner gives the notice of amended assessment.

[Schedule xx, item 18, subsection 127-30(2) in Schedule 1 to the TAA 1953]

- 3.52 The existing provisions in Division 3 of Part IVC of the TAA 1953 concerning taxation objections apply in relation to assessments of GloBE top-up tax or Domestic top-up tax. Section 155-90 in Schedule 1 to the TAA 1953 provides that a taxpayer may object to an assessment using the provisions of Part IVC of the TAA 1953. Objections in relation to an assessment of an amount of GloBE top-up tax or Domestic top-up tax need to be made within 60 days after the notice of assessment is issued.

[Schedule xx, items 16 and 17, subsections 14ZW(1)(bg) and (bgb) in Schedule 1 to the TAA 1953]

- 3.53 To facilitate assessments for GloBE top-up tax and Domestic top-up tax, decisions made in the process leading up to those assessments will be excluded from review under the *Administrative Decisions (Judicial Review) Act 1977* in line with the standard operation of Part IVC of the TAA 1953.

[Schedule xx, item 1AA, subsection (e) of Schedule 1 to the Administrative Decisions (Judicial Review) Act 1977]

- 3.54 The period of review for an amount of GloBE top-up tax or Domestic top-up tax is 4 years. For GloBE top-up tax, the period of review commences from the later of when the GloBE Information Return or the Australian GloBE Tax Return is lodged with the Commissioner. For Domestic top-up tax, the period of review commences from the later of when the GloBE Information Return or the DMT Return is lodged with the Commissioner.

[Schedule xx, item 18, section 127-35 in Schedule 1 to the TAA 1953]

Collection from tax consolidated groups

- 3.55 The amendments provide a collection mechanism to aid in the collection of the primary liability to GloBE top-up tax and Domestic top-up tax.
- 3.56 Special rules apply for Constituent Entities of an Applicable MNE Group who are located in Australia and are members of a tax consolidated group. These Constituent Entities are members of a ***GloBE consolidated group*** and the head company of the GloBE consolidated group is liable to a ***GloBE consolidated group amount***.
- 3.57 For GloBE top-up tax and Domestic top-up tax, the head company of the tax consolidated group is liable for the total top-up tax that is allocated to all subsidiary members of the tax consolidated group. When the head company pays the group liability, each subsidiary member is taken to have paid the Commissioner at the same time. This administrative approach is designed to reduce the compliance burden for tax consolidated groups and is available only where all members of the tax consolidated group are within the same Applicable MNE Group.
[Schedule xx, item 18, sections 127-40, 127-45 and 127-55 in Schedule 1 to the TAA 1953]
- 3.58 If the head company has overpaid the GloBE consolidated group amount, the Commissioner must refund the amount overpaid to the head company.
[Schedule xx, item 18, section 127-55 in Schedule 1 to the TAA 1953]

Penalties

- 3.59 As the Assessment Bill is a taxation law in respect of which the administrative penalties regime may apply, the amendments ensure these administrative penalties operate as intended.
- 3.60 For the purpose of Division 284 of Schedule 1 to the TAA 1953, where a Constituent Entity of an Applicable MNE Group is taken to give a GloBE Information Return, Australian GloBE Tax Return or DMT Return to the Commissioner or a foreign government agency because a Designated Filing Entity, UPE or Designated Local Entity gives the return to the Commissioner or foreign government agency, statements made in that return are taken to be made by the filing entity as an agent of the Constituent Entity. This ensures that administrative penalties may apply for the Constituent Entity or the filing entity in respect statements made in those returns.
[Schedule xx, item 25A, section 284-27 of Schedule 1 to the TAA 1953]
- 3.61 Statements made in a GloBE Information Return lodged in a foreign jurisdiction in respect of a MNE Group and exchanged with Australia under a Qualified Competent Authority Agreement will be taken to be statements made to the Commissioner by each Constituent Entity located in Australia of that same Applicable MNE Group.

[Schedule xx, item 25A, subsections 284-27(1) and (2) of Schedule 1 to the TAA 1953]

- 3.62 Administrative penalties that apply to a Constituent Entity of an Applicable MNE Group in respect of false and misleading statements about GloBE top-up tax or Domestic top-up tax liabilities of the MNE Group are doubled. Administrative penalties that apply for failing to lodge a return, notice or other document in relation to GloBE top-up tax or Domestic top-up tax liabilities are 500 times the base penalty amount to align with the administrative penalties that apply to significant global entities.

[Schedule xx, items 26 and 26A, subsections 284-90(1C) and 286-80(4C) and subsection 286-80(1)(b) in Schedule 1 to the TAA 1953]

Further machinery provisions

- 3.63 The amendments ensure that entities will be able to seek rulings on the application of the Assessment Bill.
[Schedule xx, item 28, subsections 357-55(ff) and (fg) in Schedule 1 to the TAA 1953]
- 3.64 The amendments ensure that general interest charge applies to the late payment of any tax-related liability that arises under the Assessment Bill.
[Schedule xx, item 15, the table in subsection 8AAB(4) of the TAA 1953]
- 3.65 The amendments ensure that shortfall interest charge applies to any shortfall that arises as a result of amendments made by the Commissioner.
[Schedule xx, items 15, 22 to 25, sections 280-1, 280-50 and 280-102E and subsection 280-110(1) in Schedule 1 to the TAA 1953]

Franking credits

- 3.66 As Domestic top-up tax is a domestic tax, the payment of a Domestic top-up tax liability will generate franking credits. Similarly, a refund of Domestic top-up tax will cause a franking debit to arise.
[Schedule xx, item 3, table item 9 in the table in section 205-15 of the ITAA 1997]
- 3.67 As GloBE top-up tax is a top-up of low taxation in countries outside Australia, it is an international form of tax and will not give rise to franking credits.
- 3.68 **[Seeking stakeholder comments:** We are seeking views on timing issues in respect of franking credits and debits. In particular, at what point in time, or for what period of time, does a Constituent Entity of an Applicable MNE Group need to be a franking entity for Domestic top-up tax to give rise to a franking credit in the relevant franking account? In this regard, please see the text that is struck-out in both:
- item 9 of the table in item 3, subsection 205-15(1)
 - item 14 of the table in item 7, subsection 205-30(1)].

Non-deductibility of a payment of GloBE top-up tax or Domestic top-up tax

- 3.69 The amendments prevent taxpayers from deducting payments of GloBE top-up tax or Domestic top-up tax. This is to avoid doubt that these payments would be deductible in the absence of a specific deduction denial provision.
[Schedule xx, items 1 and 2, sections 12-5 and 26-99A of the ITAA 1997]
- 3.70 Although payments of the tax liabilities will not be deductible, expenses incurred in managing GloBE and DMT tax affairs and complying with the obligations relating to GloBE and DMT tax affairs, other than the payments of those tax liabilities, will be deductible. This includes expenses incurred to seek advice on whether an entity is a Constituent Entity of an MNE Group.
[Schedule xx, item 1A, subsections 25-5(1)(e) and (f) of the ITAA 1997]
- 3.71 Expenditure is not capital expenditure merely because the GloBE tax affairs concerned relate to matters of a capital nature.
[Schedule xx, item 1B, subsection 25-5(4) of the ITAA 1997]

Confidentiality of taxpayer information

- 3.72 The amendments amend the tax secrecy provisions under Division 355 in Schedule 1 to the TAA 1953 to allow taxation officers to disclose protected information about one Constituent Entity to another Constituent Entity of the same Applicable MNE Group for the purposes of administering the Assessment Bill. The amendments also allow taxation officers to disclose protected information about a JV or JV subsidiary to a Constituent Entity, trustee or a partner that holds a direct ownership in that JV or JV subsidiary.
[Schedule xx, items 26B and 26C, subsections 355-25(2)(fa), (fb), (h) and (j) in Schedule 1 to the TAA 1953]
- 3.73 The exemption ensures that taxation officers do not commit an offence where they disclose protected information in the course of administering the Imposition Bill, the Assessment Bill and the Rules.

Compatibility with tax treaties

- 3.74 The Imposition Bill, the Assessment Bill and The Rules apply in the event of any inconsistency between these laws and a provision of an Australian bilateral tax treaty, which has the force of law, unless expressed otherwise: subsection 5(3) of the *International Tax Agreements Act 1953*. This approach is consistent with the OECD Inclusive Framework's intention for both the IIR and UTPR to be compatible with international tax agreements based on the OECD Model Tax Convention.
[Schedule xx, item 19, section 5 of the International Tax Agreements Act 1953]

Consequential amendments to other income tax provisions

- 3.75 [**Seeking stakeholder comments:** We intend to legislate to ensure appropriate interactions with certain tax integrity and other rules, including foreign income tax offsets and hybrid mismatch rules. We are seeking stakeholder views on these interactions. In particular, it is intended to legislate to ensure that while a FITO will be available for top-up taxes imposed under a foreign jurisdiction's QDMTT (including where the income is subject to tax in Australia through our CFC rules) a FITO will not be available for top-up taxes imposed under a foreign jurisdiction's IIR or UTPR, to avoid known circularity issues that arise if a FITO for such taxes were to be permitted. This is consistent with paragraph 45 in Chapter 4 of the Commentary (page 96). As the Commentary is the OECD document released on 14 February 2022 to complement the OECD Model Rules, this approach is consistent with the approach outlined in the OECD rules. The amount of any offset would be subject to the conditions in Division 770 of the ITAA 1997. Also, it is intended to legislate so that the hybrid mismatch rules (Division 832 ITAA 1997) do not take into account top-up taxes imposed under a QDMTT, IIR or UTPR.]