

L.N. 32 of 2024

**INCOME TAX ACT
(CAP. 123)**

**European Union Global Minimum Level of Taxation for
Multinational Enterprise Groups and Large-Scale Domestic
Groups Regulations, 2024**

IN EXERCISE of the powers conferred by articles 52B and 96 of the Income Tax Act, the Minister responsible for finance has made the following regulations:-

**First Part
General Provisions**

1. (1) The title of these regulations is the European Union Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups Regulations, 2024. Citation, scope and commencement.

(2) These regulations transpose the provisions of Council Directive (EU) 2022/2523 of 14 December 2022 laying down rules on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

(3) These regulations shall be deemed to have come into force on 31st December 2023 and shall be applicable in respect of fiscal years beginning from 31st December 2023.

2. (1) As a result of the election taken in terms of Article 50(1) of Council Directive (EU) 2022/2523 of 14 December 2022, for a maximum period of six (6) consecutive fiscal years beginning from 31st December 2023, these regulations shall be limited to the provisions contained in Chapters I, VIII, IX and X, which have been established as the minimum measures which are of relevance to ensure the proper functioning of the system of global minimum level of taxation for multinational enterprise groups and large-scale domestic groups, as laid down in the said Directive. Applicability.

(2) These regulations shall apply to constituent entities located in Malta that are members of an multinational enterprise group or of a large-scale domestic group as defined in regulation 3 which has an annual revenue of seven hundred and fifty million euro (€750,000,000) or more, including the revenue of the excluded entities referred to in sub-regulation (4), in its ultimate parent entity's consolidated financial statements in at least two (2) of the four (4) fiscal years immediately

preceding the tested fiscal year.

(3) Where one (1) or more of the four (4) fiscal years referred to in sub-regulation (2) is longer or shorter than twelve (12) months, the revenue threshold referred to in that sub-regulation shall be adjusted proportionately for each of those fiscal years.

(4) These regulations shall not apply to the following excluded entities:

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

(b) an entity where at least ninety-five percent (95%) of the value of the entity is owned by one (1) or more entities referred to in paragraph (a), directly or through one (1) or several excluded entities, except pension services entities, and that:

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

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

(c) an entity where at least eighty-five percent (85%) of the value of the entity is owned, directly or through one (1) or several excluded entities, by one (1) or more entities referred to in paragraph (a), except pension services entities, provided that substantially all of its income is derived from dividends, equity gains or equity losses that are excluded from the computation of the qualifying income or loss in accordance with Article 16(2)(b) and (c) of Council Directive (EU) 2022/2523 of 14 December 2022 laying down rules on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

(5) Notwithstanding the provisions of sub-regulation (4), the filing constituent entity may make an election, in accordance with regulation 6(1), not to treat an entity referred to in sub-regulation (4)(b) and (c) as an excluded entity.

Interpretation.

3. In these regulations, unless the context otherwise requires:
"acceptable financial accounting standard" means

International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council(8)) and the generally accepted accounting principles of Australia, Brazil, Canada, the Member States of the European Union, the Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom and the United States of America;

"authorised financial accounting standard" means, in respect of an entity, a set of generally acceptable accounting principles permitted by an authorised accounting body in the jurisdiction where that entity is located; for the purposes of this definition, "authorised accounting body" means the body with legal authority in a jurisdiction to prescribe, establish or accept accounting standards for financial reporting purposes;

"Commissioner" means the Commissioner for Tax and Customs;

"consolidated financial statements" means:

(a) the financial statements prepared by an entity in accordance with an acceptable financial accounting standard, in which the assets, liabilities, income, expenses and cash flows of that entity and of any entities in which it has a controlling interest are presented as those of a single economic unit;

(b) for groups defined in paragraph (b) of the definition of "group", the financial statements prepared by an entity in accordance with an acceptable financial accounting standard;

(c) the financial statements of the ultimate parent entity described in paragraphs (a) or (b) that are not prepared in accordance with an acceptable financial accounting standard and that have been subsequently adjusted to prevent any material competitive distortions; and

(d) where the ultimate parent entity does not prepare financial statements as described in paragraphs (a), (b) or (c), the financial statements that would have been prepared if the ultimate parent entity were required to

prepare such financial statements in accordance with:

(i) an acceptable financial accounting standard; or

(ii) another financial accounting standard, and provided such financial statements have been adjusted to prevent any material competitive distortions;

"constituent entity" means:

(a) any entity that is part of an MNE group or of a large-scale domestic group; and

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

"constituent entity-owner" means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group;

"controlled foreign company tax regime" means a set of tax rules, other than a qualified IIR, under which a direct or indirect shareholder of a foreign entity, or the main entity of a permanent establishment, is subject to taxation on its share of part or all of the income earned by that foreign constituent entity, irrespective of whether that income is distributed to the shareholder;

"controlling interest" means an ownership interest in an entity whereby the interest holder:

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

(b) would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis if the interest holder had prepared consolidated financial statements:

Provided that a main entity is deemed to hold the controlling interests in its permanent establishments;

"designated filing entity" means the constituent entity, other than the ultimate parent entity, that has been appointed by

the MNE group or large-scale domestic group to fulfil the filing obligations set out in regulation 5 on behalf of the MNE group or the large-scale domestic group;

"disqualified refundable imputation tax" means any tax, other than a qualified imputation tax, accrued or paid by a constituent entity that is:

(a) refundable to the beneficial owner of a dividend distributed by such constituent entity in respect of that dividend or creditable by the beneficial owner against a tax liability other than a tax liability in respect of such dividend; or

(b) refundable to the distributing company upon distribution of a dividend to a shareholder.

For the purposes of this definition, a "qualified imputation tax" means a covered tax accrued or paid by a constituent entity, including a permanent establishment, that is refundable or creditable to the beneficial owner of the dividend distributed by the constituent entity or, in the case of a covered tax accrued or paid by a permanent establishment, a dividend distributed by the main entity, to the extent that the refund is payable or the credit is provided:

(a) by a jurisdiction other than the jurisdiction which imposed the covered taxes;

(b) to a beneficial owner of the dividend that is subject to tax at a nominal rate that equals or exceeds the minimum tax rate on the dividend received under the domestic law of the jurisdiction which imposed the covered taxes on the constituent entity;

(c) to an individual who is the beneficial owner of the dividend and tax resident in the jurisdiction which imposed the covered taxes on the constituent entity and who is subject to tax at a nominal rate that equals or exceeds the standard tax rate applicable to ordinary income; or

(d) to a governmental entity, an international organisation, a resident non-profit organisation, a resident pension fund, a resident investment entity that is not part of the MNE group or the large-scale domestic group, or a resident life insurance company to the extent that the

dividend is received in connection with resident pension fund activities and is subject to tax in a similar manner as a dividend received by a pension fund:

Provided that for the purposes of paragraph (d):

(i) a non-profit organisation or pension fund is resident in a jurisdiction if it is created and managed in that jurisdiction;

(ii) an investment entity is resident in a jurisdiction if it is created and regulated in that jurisdiction;

(iii) a life insurance company is resident in the jurisdiction in which it is located;

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

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

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

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

"entity" means any legal arrangement that prepares separate financial accounts or any legal person;

"European Union Global Minimum Tax Directive" means Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union;

"excluded entity" means any entity specified in regulation 2(4);

"filing constituent entity" means an entity filing a top-up tax information return in accordance with regulation 5;

"fiscal year" means the accounting period with respect to which the ultimate parent entity of an MNE group or of a large-scale domestic group prepares its consolidated financial statements or, if the ultimate parent entity does not prepare consolidated financial statements, the calendar year;

"flow-through entity" means an entity to the extent it is fiscally transparent 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 deemed to be:

(a) 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;

(b) 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;

For the purposes of this definition a "fiscally transparent entity" means an entity whose income, expenditure, profit or loss is treated by the laws of a jurisdiction as if it were derived or incurred by the direct owner of that entity in proportion to its interest in that entity. An ownership interest in an entity or a permanent establishment that is a constituent entity shall be treated as held through a tax transparent structure if that ownership interest is held indirectly through a chain of tax transparent entities. A constituent entity that is not tax resident and not subject to a covered tax or a qualified domestic top-up tax based on its place of management, place of creation or similar criteria shall be treated as a flow-through entity and a tax transparent entity in respect of its income, expenditure, profit or loss, to the extent that:

(a) its owners are located in a jurisdiction that treats the entity as fiscally transparent;

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

(c) the income, expenditure, profit or loss is not attributable to a permanent establishment;

"governmental entity" means an entity that meets all the following criteria:

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

(b) it does not carry on a trade or business and has the principal purpose of:

(i) fulfilling a government function; or

(ii) managing or investing that government's or jurisdiction's assets through the making and holding of investments, asset management, and related investment activities for that government's or jurisdiction's assets;

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

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

"group" means:

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

(b) an entity that has one (1) or more permanent establishments, provided that it is not part of another group as defined in paragraph (a);

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

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

(a) it is comprised primarily of governments;

(b) it has in effect a headquarters or substantially similar agreement with the jurisdiction in which it is established, for example arrangements that entitle the organisation's offices or establishments in that jurisdiction to privileges and immunities; and

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

"investment entity" means:

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

(b) an entity that is at least ninety-five percent (95%) owned directly by an entity referred to in paragraph (a) or through a chain of such entities and that operates exclusively or almost exclusively to hold assets or invest funds for their benefit; or

(c) an entity where a minimum of eighty-five percent (85%) of the value of the entity is owned by an entity referred to in paragraph (a), provided that substantially all of its income is derived from dividends, equity gains or equity losses that are excluded from the computation of the qualifying income or loss for the purposes of the European Union on Global Minimum Level of Tax Directive;

"investment fund" means an entity or arrangement that meets all the following conditions:

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

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

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

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

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

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

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

"large-scale domestic group" means any group of which all constituent entities are located in Malta;

"low-taxed constituent entity" means:

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

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

"low-tax jurisdiction" means, in respect of an MNE group or a large-scale domestic group in any fiscal year, a Member State or a third-country jurisdiction in which the MNE group or the large-scale domestic group has a qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate;

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

"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 seventy-five million euro (€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 (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002);

"minimum tax rate" means fifteen percent (15%);

"multinational enterprise group" or "MNE group" means any group that includes at least one (1) entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity;

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

"non-profit organisation" means an entity that meets all the following criteria:

(a) it is established and operated in its jurisdiction of residence:

(i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational or other similar purposes; or

(ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

(b) substantially all the income from the activities mentioned in paragraph (a) is exempt from income tax in its jurisdiction of residence;

(c) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(d) the income or assets of the entity may not be distributed to, or applied for the benefit of, a private person or non-charitable entity other than:

(i) pursuant to the conduct of the entity's charitable activities;

(ii) as payment of reasonable compensation for services rendered or for the use of property or capital; or

(iii) as payment representing the fair market value of property which the entity has purchased; and

(e) upon termination, liquidation or dissolution of the entity, all of its assets are to be distributed to or revert to a non-profit organisation or to the government, including any governmental entity, of the entity's jurisdiction of residence or any political subdivision thereof;

(f) it does not carry on a trade or business that is not directly related to the purposes for which it was established;

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

"OECD Model Rules" means the Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) approved on 14 December 2021 by the OECD/G20 Inclusive Framework on BEPS;

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

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

"partially-owned parent entity" means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group, and for which more than twenty percent (20%) of the ownership interest in its profits is held, directly or indirectly, by one (1) or several persons that are not constituent entities of that MNE group or large-scale domestic group and that does not qualify as an ultimate parent entity, a permanent establishment or an investment entity;

"pension fund" means:

(a) an entity that is established and operated in a jurisdiction exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals where:

(i) that entity is regulated as such by that jurisdiction or one (1) of its political subdivisions or local authorities; or

(ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trustor to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the MNE group and large-scale domestic group;

(b) a pension services entity;

"pension services entity" means an entity that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities referred to in paragraph (a) of the definition of "pension fund" or to carry out activities that are ancillary to the regulated activities referred to in paragraph (a) of the definition of "pension fund", provided that the pension services entity forms part of the same group as the entities carrying out those regulated activities;

"permanent establishment" means:

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

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

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

(d) a place of business or a deemed place of business that is not described in paragraphs (a) to (c) through which operations are conducted outside the

jurisdiction where the entity is located, provided that such jurisdiction exempts the income attributable to such operations;

"qualified domestic 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:

(a) 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 European Union Global Minimum Tax Directive or, as regards third-country jurisdictions, the OECD Model Rules and 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 European Union Global Minimum Tax Directive or, as regards third-country jurisdictions, the OECD Model Rules; and

(b) is administered in a way that is consistent with the rules laid down in the European Union Global Minimum Tax Directive or, as regards third-country jurisdictions, the OECD Model Rules;

"qualified IIR" means a set of rules 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 is:

(a) equivalent to the rules laid down in the European Union Global Minimum Tax Directive or, as regards third-country jurisdictions, the OECD Model Rules, in accordance with which the parent entity of an MNE group or of a large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of that group;

(b) administered in a way that is consistent with the rules laid down in the European Union Global Minimum Tax Directive or, as regards third-country jurisdictions, with the OECD Model Rules;

"qualified refundable tax credit" means:

(a) a refundable tax credit designed in such a way that it is to be paid as a cash payment or a cash equivalent

(which for these purposes includes by way of discharge against a liability to a tax which is not a covered tax) to a constituent entity within four years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit; or

(b) if the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent (which for these purposes includes by way of discharge against a liability to a tax which is not a covered tax) to a constituent entity within four (4) years from the date when the constituent entity is entitled to receive the partial refundable tax credit:

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

"qualified UTPR" means a set of rules 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:

(a) is equivalent to the rules laid down in the European Union Global Minimum Tax Directive or, as regards third-country jurisdictions, the OECD Model Rules, in accordance with which a jurisdiction collects its allocable share of top-up tax of an MNE group that was not charged under the IIR in respect of the low-taxed constituent entities of that MNE group;

(b) is administered in a way that is consistent with the rules laid down in the European Union Global Minimum Tax Directive or, as regards third-country jurisdictions, the OECD Model Rules;

"qualifying income or loss" means the financial accounting net income or loss of a constituent entity adjusted in accordance with the rules established in with Chapters III, VI and VII of the European Union Global Minimum Tax Directive;

"real estate investment vehicle" means a widely held entity that holds predominantly immovable property and that is subject to a single level of taxation, either in its hands or in the hands of its interest holders, with at most one (1) year of deferral;

"top-up tax" means the top-up tax computed for a jurisdiction or a constituent entity pursuant to Article 27 of the European Union Global Minimum Tax Directive;

"ultimate parent entity" means:

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

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

Location of a constituent entity.

4. (1) For the purposes of these regulations, an entity other than a flow-through entity shall be determined to be located in the jurisdiction where it is considered to be resident for tax purposes based on its place of management, its place of creation or similar criteria:

Provided that where it is not possible to determine the location of an entity other than a flow-through entity based on this sub-regulation, it shall be deemed to be located in the jurisdiction where it was created.

(2) A flow-through entity shall be considered to be stateless, unless it is the ultimate parent entity of an MNE group or of a large-scale domestic group or it is required to apply an IIR in accordance with Articles 5, 6, 7 and 8 of the European Union Global Minimum Tax Directive, in which case the flow-through entity shall be deemed to be located in the jurisdiction where it was created.

(3) (a) A permanent establishment as defined in paragraph (a) of such definition under regulation 3 shall be determined to be located in the jurisdiction where it is treated as a permanent establishment and is liable to tax under the applicable tax treaty.

(b) A permanent establishment as defined in paragraph (b) of such definition under regulation 3 shall be determined to be located in the jurisdiction where it is subject to net basis taxation based on its business presence.

(c) A permanent establishment as defined in paragraph (c) of such definition under regulation 3 shall be determined to be located in the jurisdiction where it is situated.

(d) A permanent establishment as defined in paragraph (d) of such definition under regulation 3 shall be considered to be stateless.

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

(b) Where the applicable tax treaty requires that the competent authorities reach a mutual agreement on the deemed residence for tax purposes of the constituent entity, and no agreement is reached, sub-regulation (5) shall apply.

(c) Where there is no relief for double taxation under the applicable tax treaty due to the fact that a constituent entity is resident for tax purposes in both contracting parties, sub-regulation (5) shall apply.

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

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

(c) If the amount of covered taxes due in the two (2) jurisdictions is the same or zero (0), the constituent entity shall be deemed to be located in the jurisdiction where it has the higher amount of substance-based income exclusion computed on an entity basis in accordance with Article 28 of the European Union Global Minimum Tax Directive.

(d) If the amount of the substance-based income exclusion in the two (2) jurisdictions is the same or zero (0), the constituent entity shall be considered to be stateless, unless it is an ultimate parent entity, in which case it shall be deemed to be located in the jurisdiction where it was created.

(6) Where, as a result of applying sub-regulations (4) and (5), a parent entity is located in a jurisdiction where it is not subject to a qualified IIR, it shall be deemed to be subject to the qualified IIR of the other jurisdiction, unless an applicable tax treaty prohibits the application of such rule.

(7) Where a constituent entity changes its location in the

course of a fiscal year, it shall be deemed to be located in the jurisdiction where it was deemed to be located under this regulation at the beginning of that fiscal year.

Second Part
Administrative Provisions

Filing obligations.

5. (1) For the purposes of this regulation, the following definitions shall apply:

"designated local entity" shall mean the constituent entity of an MNE group or of a large-scale domestic group that is located in Malta and has been appointed by the other constituent entities of the MNE group or large-scale domestic group located in Malta to file the top-up tax information return or submit the notifications in accordance with this regulation on their behalf;

"qualifying competent authority agreement" shall mean a bilateral or multilateral agreement or arrangement between two (2) or more competent authorities that provides for the automatic exchange of annual top-up tax information returns.

(2) A constituent entity located in Malta shall file a top-up tax information return with the Commissioner, in accordance with sub-regulation (5):

Provided that such return may be filed by a designated local entity on behalf of the constituent entity:

Provided further that such return shall be on such form and in such manner as the Commissioner may require.

(3) Notwithstanding the provisions of sub-regulation (2), a constituent entity shall not have the obligation to file a top-up tax information return with the Commissioner if such return has been filed, in accordance with the requirements set out in sub-regulation (5), by:

(a) the ultimate parent entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with Malta; or

(b) the designated filing entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with Malta.

(4) Where sub-regulation (3) applies, the constituent entity located in Malta, or the designated local entity on its behalf, shall

notify the Commissioner of the identity of the entity that is filing the top-up tax information return as well as the jurisdiction in which it is located:

Provided that such notification shall be made to the Commissioner on such form and in such manner as the Commissioner shall determine.

(5) The top-up tax information return shall be filed in a standard template and include the following information with respect to the MNE group or large-scale domestic group:

(a) identification of the constituent entities, including their tax identification numbers, if any, the jurisdiction in which they are located and their status under these regulations;

(b) information on the overall corporate structure of the MNE group or large-scale domestic group, including the controlling interests in the constituent entities held by other constituent entities;

(c) the information that is necessary in order to compute:

(i) the effective tax rate for each jurisdiction and the top-up tax of each constituent entity;

(ii) the top-up tax of a member of a joint venture group;

(iii) the allocation of top-up tax under the IIR and the UTPR top-up tax amount to each jurisdiction; and

(d) a record of the elections made in accordance with these regulations.

(6) Notwithstanding the provisions of sub-regulation (5), where a constituent entity is located in Malta with an ultimate parent entity located in a third-country jurisdiction that applies rules which have been assessed as equivalent to these regulations pursuant to regulation 13, the constituent entity or the designated local entity shall file a top-up tax information return containing the following information:

(a) all information that is necessary for the application of Article 8 of the European Union Global Minimum Tax Directive, including:

(i) identification of all the constituent entities in

which a partially-owned parent entity located in Malta holds, directly or indirectly, an ownership interest at any time during the fiscal year and the structure of such ownership interests;

(ii) all information that is necessary to compute the effective tax rate of the jurisdictions in which a partially-owned parent entity located in Malta holds ownership interests in constituent entities identified under paragraph (i) and the top-up tax due; and

(iii) all information that is relevant for that purpose in accordance with Articles 9, 10 or 11 of the European Union Global Minimum Tax Directive;

(b) all information that is necessary for the application of Article 13 of the European Union Global Minimum Tax Directive, including:

(i) identification of all the constituent entities located in the ultimate parent entity jurisdiction and the structure of such ownership interests;

(ii) all information that is necessary in order to compute the effective tax rate of the ultimate parent entity's jurisdiction and its top-up tax due; and

(iii) all information necessary for the allocation of such top-up tax based on the UTPR allocation formula set out in Article 14 of the European Union Global Minimum Tax Directive;

(c) all information that is necessary for the application of a qualified domestic top-up tax by any Member State that has made the election to apply such a top-up tax, in accordance with Article 11 of the European Union Global Minimum Tax Directive.

(7) (a) The top-up tax information return referred to in sub-regulations (5) and (6) shall be filed with the Commissioner no later than fifteen (15) months after the last day of the reporting fiscal year;

(b) Any relevant notifications in terms of this regulation shall be filed with the Commissioner no later than twelve (12) months after the last day of the reporting fiscal year.

Elections.

6. (1) Where applicable, the elections referred to in regulation 2(7) and Articles 16(3), (6), and (9), 42 and 43 of the

European Union Global Minimum Tax Directive shall be valid for a period of five (5) years, starting from the year in which the election is made. The election shall be renewed automatically unless the filing constituent entity revokes the election at the end of the five (5) year period. A revocation of the election shall be valid for a period of five (5) years, starting from the end of the year in which the revocation is made.

(2) Where applicable, the elections referred to in Articles 16(7), 22(1)(b), 25(1), 28(2), 30(1) and 40(1) of the European Union Global Minimum Tax Directive shall be valid for a period of one (1) year. The election shall be renewed automatically unless the filing constituent entity revokes the election at the end of the year.

(3) The elections referred to in regulation 2(7) and Articles 16(3), (6), (7), (9), 22(1)(b), 25(1), 28(2), 30(1), 40(1), 42 and 43 of the European Union Global Minimum Tax Directive shall be made to the tax administration of the Member State in which the filing constituent entity is located:

Provided that such election shall be made to the Commissioner on such form and in such manner as the Commissioner shall determine.

7. (1) Where a constituent entity located in Malta or the designated local entity on its behalf fails to file the top-up tax information return with the Commissioner in terms of regulation 5(2) within the time stipulated in regulation 5(7)(a) it shall be liable to an administrative penalty of:

(a) two hundred euro (€200); and

(b) one hundred euro (€100) for every day during which the default existed:

Provided that this administrative penalty shall not exceed in total twenty thousand euro (€20,000).

(2) Where a constituent entity located in Malta or the designated local entity on its behalf fails to report the information required to be reported in terms of regulation 5(5) in a complete and accurate manner, it shall be liable to an administrative penalty of:

(a) two hundred euro (€200); and

(b) fifty euro (€50) for every day during which the default existed:

Provided that this administrative penalty shall not exceed in total five thousand euro (€5,000).

(3) Where a constituent entity located in Malta or the designated local entity on its behalf fails to notify the Commissioner of the identity of the entity that is filing the top-up tax information return as well as the jurisdiction in which it is located in terms of regulation 5(4) within the time stipulated in regulation 5(7)(b) it shall be liable to an administrative penalty of:

(a) two hundred euro (€200); and

(b) fifty euro (€50) for every day during which the default existed:

Provided that this administrative penalty shall not exceed in total five thousand euro (€5,000).

(4) Where the designated local entity fails to notify the Commissioner of the start of the initial phase of the MNE group's international activity in terms of regulation 10(5) within the time stipulated therein it shall be liable to an administrative penalty of:

(a) two hundred euro (€200); and

(b) fifty euro (€50) for every day during which the default existed:

Provided that this administrative penalty shall not exceed in total five thousand euro (€5,000).

Third Part Transition Rules

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

8. (1) For the purposes of this regulation, a "transition year for a jurisdiction" shall mean the first fiscal year in which an MNE group or a large-scale domestic group falls within the scope of the European Union Global Minimum Tax Directive in respect of that jurisdiction.

(2) (a) When determining the effective tax rate for a jurisdiction in a transition year, and for each subsequent fiscal year, the MNE group or a large-scale domestic 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.

(b) Deferred tax assets and deferred tax liabilities shall

be taken into account at the lower of the minimum tax rate and the applicable domestic tax rate. However, a deferred tax asset that has been recorded at a tax rate lower than the minimum tax rate may be taken into account at the minimum tax rate if the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss.

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

(3) Deferred tax assets arising from items excluded from the computation of qualifying income or loss in accordance with Chapter III of the European Union Global Minimum Tax Directive shall be excluded from the computation referred to in sub-regulation (2) when such deferred tax assets are generated in a transaction that takes place after 30th November 2021.

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

9. (1) For the purpose of applying Article 28(3) of the European Union Global Minimum Tax Directive, the value of five percent (5%) shall be replaced, for each fiscal year beginning from 31st December of the following calendar years, with the values set out in the following table:

Transitional relief for the substance-based income exclusion.

Year	%
2023	10
2024	9.8
2025	9.6
2026	9.4
2027	9.2
2028	9
2029	8.2
2030	7.4
2031	6.6
2032	5.8

(2) For the purpose of applying Article 28(4) of the European Union Global Minimum Tax Directive, the value of five percent (5%) shall be replaced, for each fiscal year beginning from 31st December of the following calendar years, with the values set out in the following

table:

Year	%
2023	8
2024	7.8
2025	7.6
2026	7.4
2027	7.2
2028	7
2029	6.6
2030	6.2
2031	5.8
2032	5.4

Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups.

10. (1) The top-up tax due by an ultimate parent entity located in Malta in accordance with Article 5(2) of the European Union Global Minimum Tax Directive, or by an intermediate parent entity located in Malta in accordance with Article 7(2) of the European Union Global Minimum Tax Directive when the ultimate parent entity is an excluded entity, shall be reduced to zero (0):

(a) in the first five (5) years of the initial phase of the international activity of the MNE group, notwithstanding the requirements laid down in Chapter V of the European Union Global Minimum Tax Directive;

(b) in the first five (5) years, starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of these regulations for the first time.

(2) Where the ultimate parent entity of an MNE group is located in a third-country jurisdiction, the top-up tax due by a constituent entity located in Malta in accordance with Article 14(2) of the European Union Global Minimum Tax Directive shall be reduced to zero (0) in the first five (5) years of the initial phase of the international activity of that MNE group, notwithstanding the requirements laid down in Chapter V of the European Union Global Minimum Tax Directive.

(3) (a) An MNE group shall be considered to be in the initial phase of its international activity if, for a fiscal year:

(i) it has constituent entities in no more than six (6) jurisdictions; and

(ii) 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 fifty million euro (€50,000,000).

(b) For the purposes of sub-regulation (1)(a)(ii), "reference jurisdiction" shall mean 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 the European Union Global Minimum Tax Directive. The total value of tangible assets in a jurisdiction shall be the sum of the net book values of all tangible assets of all the constituent entities of the MNE group that are located in that jurisdiction.

(4) (a) The period of five (5) years referred to in sub-regulation (1)(a) and in sub-regulation (2) shall start from the beginning of the fiscal year in which the MNE group originally falls within the scope of the European Union Global Minimum Tax Directive.

(b) For MNE groups that are within the scope of the European Union Global Minimum Tax Directive when this came into force, the five (5) year period referred to in sub-regulation (1)(a) shall start on 31st December 2023.

(c) For MNE groups that are within the scope of the European Union Global Minimum Tax Directive when this came into force, the five (5) year period referred to in sub-regulation (2) shall start on 31st December 2024.

(d) For large-scale domestic groups that are within the scope of these regulations when these come into force in terms of regulation 1(2), the five (5) year period referred to in sub-regulation (1)(b) shall start on 31st December 2023.

(5) The designated filing entity referred to in regulation 5 which is located in Malta shall inform the Commissioner of the start of the initial phase of the MNE group's international activity by no later than twelve (12) months after the last day of the reporting fiscal year:

Provided that such notification shall be made to the Commissioner on such form and in such manner as the Commissioner shall determine.

11. (1) An ultimate parent entity of an MNE group located in Malta shall nominate a designated filing entity in any other Member State other than Malta and which Member State has not elected for a delayed application of the IIR and UTPR in terms of Article 50(1) of the European Union Global Minimum Tax Directive or, if the MNE

Election for a delayed application of the IIR and UTPR.

group has no constituent entity in another Member State, in a third-country jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with Malta.

(2) Pursuant to sub-regulation (1), the constituent entities located in Malta shall provide the designated filing entity with information necessary to comply with Article 44(5) of the European Union Global Minimum Tax Directive and shall be exempted from the filing obligation referred to in regulation 5(2):

Provided that notwithstanding the above exemption, the constituent entities located in Malta shall be required to provide the notification as required under regulation 5(4).

(3) The UTPR percentage as computed in terms of Article 14(5) of the European Union Global Minimum Tax Directive for Malta shall be deemed to be zero (0) for the fiscal year.

Transitional relief for filing obligations.

12. Notwithstanding the provisions of regulation 5(7), the top-up tax information return and the notifications referred to in regulation 5 shall be filed with the Commissioner no later than eighteen (18) months after the last day of the reporting fiscal year that is the transition year referred to in regulation 8.

Fourth Part Final Provisions

Assessment of equivalence.

13. The legal framework implemented in the domestic law of a third-country jurisdiction shall be considered to be equivalent to a qualified IIR set out in Chapter II of the European Union Global Minimum Tax Directive, and shall not be treated as a controlled foreign company tax regime, if it fulfils the following conditions:

(a) it enforces a set of rules in accordance with which the parent entity of an MNE group shall compute and pay its allocable share of top-up tax in respect of the low-taxed constituent entities of the MNE group;

(b) it establishes a minimum effective tax rate of at least fifteen percent (15%) below which a constituent entity is considered to be low-taxed;

(c) for the purpose of computing the minimum effective tax rate, it only allows the blending of income of entities located within the same jurisdiction;

(d) for the purpose of computing a top-up tax under the equivalent qualified IIR, it provides for relief for any top-up tax

that was paid in a Member State in application of the qualified IIR and for any qualified domestic top-up tax set out in the European Union Global Minimum Tax Directive; and

(e) is included in the list of third-country jurisdictions that have implemented a legal framework in their domestic law which is considered to be equivalent to a qualified IIR in conformity with the conditions laid down in paragraphs (a) to (d), such list being referred to in Article 52(2) of the European Union Global Minimum Tax Directive.

14. Notwithstanding the procedures laid down in regulation 5(6), any agreement concluded between the European Union and third-country jurisdictions whose legal frameworks have been assessed as equivalent to a qualified IIR in accordance with regulation 13, and which agreement provides for a framework for simplifying the reporting procedures laid down in such agreement, shall be applicable.

Bilateral
agreement on
simplified
reporting
obligations.

VERŻJONI ELETTRONIKA