

**Decision no. (172) of 2024**

**Issuance of the Executive Regulations for Decree-Law No. (11) of 2024 Regarding the  
Implementation of Tax on Multinational Enterprises**

**Minister of Finance and National Economy:**

Having reviewed Decree-Law No. 11 of 2024 regarding the Implementation of Tax  
on Multinational Enterprises,  
and after the approval of the Cabinet,

**Decided as follows:**

**Article 1**

The provisions of the Executive Regulations for Decree-Law No. (11) of 2024  
regarding the Implementation of tax on Multinational Enterprises, attached to this  
decision, shall be implemented.

**Article 2**

All relevant authorities, each within their respective jurisdiction, shall implement  
the provisions of this decision, and It shall come into effect on 1 January 2025 and  
shall be published in the Official Gazette.

**Issued on: 10 Jumada Al-Akhirah 1446**

**Minister of Finance and National  
Economy**

**Corresponding to: 11 December 2024**

**Salman bin Khalifa Al Khalifa**

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## Chapter One: Preliminary Provisions

### Article 1: Definitions

In applying the provisions of these Regulations, the words and phrases contained therein shall have the same meaning as stated in Article 1 of Decree-Law No. 11 of 2024 regarding the Implementation of Tax on Multinational Enterprises, and the following words and phrases shall have the meaning indicated next to each of them, unless the context requires otherwise.

1. **The Law:** The Implementation of Tax on Multinational Enterprises Law issued by Decree-Law No. 11 of 2024.
2. **Transition Year:** The first Fiscal Year for which a Multinational Enterprise Group comes within the scope of Tax, irrespective of whether the Multinational Enterprise Group had been within the scope of Tax in any Fiscal Year other than the immediately preceding Fiscal Year.
3. **Reporting Fiscal Year:** Means the Fiscal Year that is the subject of the Tax Return.
4. **Parent Entity:** Means an Ultimate Parent Entity that is not an Excluded Entity, an Intermediate Parent Entity, or a Partially-Owned Parent Entity.
5. **Partially-Owned Parent Entity:** Means a Constituent Entity (other than an Ultimate Parent Entity, Permanent Establishment, or Investment Entity) that satisfies all of the following:
  - a. Owns (directly or indirectly) an Ownership Interest in another Constituent Entity of the same Multinational Enterprise Group.
  - b. Has more than 20% of the Ownership Interests in its profits held directly or indirectly by persons that are not Constituent Entities of the Multinational Enterprise Group.

6. **Intermediate Parent Entity:** Means a Constituent Entity (other than an Ultimate Parent Entity, Partially-Owned Parent Entity, Permanent Establishment, or Investment Entity) that owns (directly or indirectly) an Ownership Interest in another Constituent Entity in the same Multinational Enterprise Group.
7. **Investment Entity:** Means an Entity that meets any of the following conditions:
  - a. It is an Investment Fund or a Real Estate Investment Vehicle.
  - b. It is an Entity that is at least 95% owned directly by an Investment Fund or a Real Estate Investment Vehicle or through a chain of such Entities and that operates exclusively or almost exclusively to hold assets or invest funds for the benefit of such Investment Entities.
  - c. It is an Entity where at least 85% of the value of the Entity is owned by an Investment Fund or a Real Estate Investment Vehicle provided that substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or Loss that is excluded from the computation of Constituent Entity Income or Loss in accordance with [Article 12](#) of these Regulations.
8. **Group Entity:** In respect of any Entity or Group, means an Entity that is a member of the same Group.
9. **Constituent Entity-owner:** Means a Constituent Entity that directly or indirectly owns an Ownership Interest in another Constituent Entity of the same Multinational Enterprise Group.
10. **Hybrid Entity:** Means an Entity that is treated as a separate taxable person for income tax purposes in the jurisdiction where it is located 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.
11. **Tax Transparent Entity:** A Flow-through Entity is a Tax Transparent Entity if the tax laws of the jurisdiction in which the owner is located treats the Entity as fiscally transparent. Where the

owner is a Flow-through Entity that is not a Flow-through Ultimate Parent Entity, such Entity shall not be considered the owner and instead the next owner further up the ownership chain that is not a Flow-through Entity shall be considered the owner for the purposes of determining whether a Flow-through Entity is a Tax Transparent Entity except where there is no such Entity in which case the owner shall be the Flow-through Ultimate Parent Entity.

12. **Insurance Investment Entity:** Means an Entity that would meet the definition of an Investment Fund or a Real Estate Investment Vehicle except that it is established in relation to liabilities under an insurance or annuity contract and is wholly owned by an Entity that is subject to regulation in its location as an insurance company.
13. **Low-Taxed Constituent Entity:** Means a Constituent Entity of the Multinational Enterprise Group that is located in a Low-Tax Jurisdiction or a Stateless Constituent Entity that, in respect of a Fiscal Year, has Constituent Entity Income and is subject to an Effective Tax Rate in that Fiscal Year which is lower than the Minimum Rate.
14. **Sovereign Wealth Fund:** An Entity that has the principal purpose of managing or investing a government's or jurisdiction's assets through the making and holding of investments, asset management, and related investment activities for the government's or jurisdiction's assets.
15. **Qualified Imputation Tax:** Means a Covered Tax accrued or paid by a Constituent Entity that is refundable or creditable to the beneficial owner of a dividend distributed by such 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 in any of the following cases:
  - a. By a jurisdiction other than the jurisdiction which imposed the Covered Taxes under a foreign tax credit regime.

- b. The refund is payable, or the credit is provided to a beneficial owner of the dividend that is subject to tax at a nominal rate that equals or exceeds the Minimum Rate on the dividend on a current basis under the domestic law of the jurisdiction which imposed the Covered Taxes on the Constituent Entity.
  - c. The refund is payable, or the credit is provided to a beneficial owner of the dividend who is a natural person and tax resident in the jurisdiction which imposed the Covered Taxes on the Constituent Entity and who is subject to tax on the dividends as ordinary income.
  - d. The refund is payable, or the credit is provided to a Government Body, an International Organisation, a resident Non-profit Organisation, a resident Pension Fund, a resident Investment Entity that is not a Group Entity, or a resident life insurance company to the extent that the dividends are received in connection with a pension fund business and subject to tax in a similar manner as a dividend received by Pension Fund. For this purpose, a Non-profit Organisation or Pension Fund is resident in a jurisdiction if it is created and managed in that jurisdiction, an Investment Entity is resident in a jurisdiction if it is created and regulated in the jurisdiction, and a life insurance company is resident in the jurisdiction in which it is located.
16. **Qualified Refundable Tax Credit:** Means a refundable tax credit designed in a way such that it shall be paid as cash or available as cash equivalents within four years from when a Constituent Entity satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit. A tax credit that is refundable in part is a Qualified Refundable Tax Credit to the extent it shall be paid as cash or available as cash equivalents within four years from when a Constituent Entity satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit. A Qualified Refundable Tax Credit does not include any amount of tax creditable or refundable pursuant to a Qualified Imputation Tax or a Disqualified Refundable Imputation Tax.

17. **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.
18. **Disqualified Refundable Imputation Tax:** Means any amount of Tax, other than a Qualified Imputation Tax, accrued or paid by a Constituent Entity that is refundable to any of the following:
- a. 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.
  - b. The distributing corporation upon distribution of a dividend.
19. **Marketable Transferable Tax Credit:** Means a tax credit, or portion of a tax credit, that meets all of the following, in line with the Administrative Guidance:
- a. Can be used by the holder of the credit to reduce its liability for a Covered Tax in the jurisdiction that issued the tax credit.
  - b. Meets the legal transferability standard in the hands of the holder of the tax reduction.
  - c. Meets the marketability standard in the hands of the holder of the tax reduction.
20. **Ownership Interest:** 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(s).
21. **Controlling Interest:** Means an Ownership Interest in an Entity such that any of the following cases applies:
- a. The interest holder 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.

- b. The interest holder 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.

A Main Entity is deemed to have the Controlling Interests of its Permanent Establishments.

- 22. **Portfolio Shareholding:** Means Ownership Interests in an Entity that are held by the Multinational Enterprise Group and that carry rights to less than 10% of the profits, capital, reserves, or voting rights of that Entity at the date of the distribution or disposition.
- 23. **Short-term Portfolio Shareholding:** Means a Portfolio Shareholding that has been economically held by the Constituent Entity that receives or accrues the dividends or other distributions for less than one year at the date of the distribution.
- 24. **Intra-group Financing Arrangement:** Means any arrangement entered into between two or more members of the Multinational Enterprise Group whereby a High-Tax Counterparty directly or indirectly provides credit or otherwise makes an investment in a Low-Tax Entity.
- 25. **High-Tax Counterparty:** Means a Constituent Entity that is located in a jurisdiction that is not a Low-Tax Jurisdiction or that is located in a jurisdiction that would not be a Low-Tax Jurisdiction if its Effective Tax Rate were determined without regard to any income or expense accrued by that Entity in respect of an Intra-group Financing Arrangement.
- 26. **Low-Tax Jurisdiction:** In respect of a Multinational Enterprise Group in any Fiscal Year, means a jurisdiction where the Multinational Enterprise Group has Net Constituent Entity Income and is subject to an Effective Tax Rate in that period which is lower than the Minimum Rate.

27. **Excluded Equity Gain or Loss:** Means the gain, profit or loss included in the Financial Accounting Net Income or Loss of the Constituent Entity arising from any of the following:
- a. Gains and losses from changes in fair value of an Ownership Interest, except for a Portfolio Shareholding.
  - b. Profit or loss in respect of an Ownership Interest included under the equity method of accounting.
  - c. Gains and losses from disposition of an Ownership Interest, except for a disposition of a Portfolio Shareholding.
28. **Excluded Dividends:** Means dividends or other distributions received or accrued in respect of an Ownership Interest, except for any of the following:
- a. A Short-term Portfolio Shareholding.
  - b. An Ownership Interest in an Investment Entity that is subject to an election under [Article 61](#) of these Regulations.
29. **Generally Accepted Accounting Principles:** Generally Accepted Accounting Principles shall include the generally accepted accounting principles of Australia, Brazil, Canada, Member States of the European Union, Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom, and the United States of America.
30. **Controlled Foreign Company Tax Regime:** Means a set of tax rules (other than an Income Inclusion Rule (IIR)) under which a direct or indirect shareholder of a foreign entity is subject to current taxation on its share of part or all of the income earned by the foreign entity, irrespective of whether that income is distributed currently to the shareholder.

31. **Material Competitive Distortion:** In respect of the application of a specific principle or procedure under a set of generally accepted accounting principles, means an application that results in a material variation in a Fiscal Year as compared to the amount that would have been determined by applying the corresponding IFRS principle or procedure only.
32. **Additional Tier One Capital:** Means an instrument issued by a Constituent Entity pursuant to prudential regulatory requirements that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.
33. **Arm's Length Principle:** Means the principle under which transactions between Constituent Entities shall be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.
34. **Other Comprehensive Income:** Means items of income and expense that are not recognised in profit or loss as required or permitted by the Authorised Financial Accounting Standard used in the Consolidated Financial Statements.
35. **Taxable Profit or Loss:** The net income or loss determined by the Entity for the purposes of computing the amount of tax due under the corporate tax law (or equivalent) in the jurisdiction in which the Entity operates.
36. **Passive Income:** Means income included in Constituent Entity Income that is any of the following:
- a. A dividend or dividend equivalents.
  - b. Interest or interest equivalent.
  - c. Rent.
  - d. Royalty.
  - e. Annuity.
  - f. Net gains from property of a type that produces income described in Clauses a to e of this definition, but only to the extent a Constituent Entity-owner is subject to tax on such income

under a Controlled Foreign Company Tax Regime or as a result of an Ownership Interest in a Hybrid Entity.

37. **Constituent Entity Loss Deferred Tax Asset:** Is equal to the Net Constituent Entity Loss in a Fiscal Year for the jurisdiction multiplied by the Minimum Rate.

38. **Recaptured Deferred Tax Liability:** For the current Fiscal Year is the amount of the increase in the category of deferred tax liability that was included in the Total Deferred Tax Adjustment Amount in the fifth year preceding the current Fiscal Year that has not reversed by the end of the last day of the current Fiscal Year.

39. **Qualified Domestic Minimum Top-up Tax:** Means a minimum tax that is included in the domestic law of a jurisdiction and all of the following conditions are met:

- a. The minimum tax determines the excess profits of the Constituent Entities located in the jurisdiction in a manner that is equivalent to the Model Rules.
- b. The minimum tax operates to increase domestic tax liability with respect to domestic excess profits to the Minimum Rate for the jurisdiction and Constituent Entities for a Fiscal Year.
- c. The minimum tax is implemented and administered in a way that is consistent with the outcomes provided for under the Model Rules and the Commentary, provided that such jurisdiction does not provide any benefits that are related to such rules.

40. **Income Inclusion Rule (IIR):** Means the rules set out in Article 2.1 to 2.3 of the Model Rules.

41. **Qualified Income Inclusion Rule (IIR):** Means a set of rules equivalent to Article 2.1 to Article 2.3 of the Model Rules (including any provisions of the Model Rules associated with those Articles) that are included in the domestic law of a jurisdiction and that are implemented and administered in a way that is consistent with the outcomes provided for under the Model Rules and the Commentary provided that such jurisdiction does not provide any benefits that are related to those rules.

42. **Undertaxed Payments Rule (UTPR):** means the rules set out in Article 2.4 to Article 2.6 of the Model Rules.
43. **Qualified Undertaxed Payments Rule (Qualified UTPR):** Means a set of rules equivalent to Article 2.4 to Article 2.6 of the Model Rules (including any provisions of the Model Rules associated with those Articles) that are included in the domestic law of a jurisdiction and that are implemented and administered in a way that is consistent with the outcomes provided for under the Model Rules and the Commentary provided that the jurisdiction does not provide any benefits that are related to such rules.
44. **Administrative Guidance:** Means the guidance issued by the OECD named “Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)” published in February 2023, July 2023, December 2023 and June 2024, and any subsequent versions as approved by a decision of the Chief Executive Officer.
45. **Transfer Pricing Guidelines:** The document named “OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organisation for Economic Co-operation and Development (2022)”, OECD Publishing, Paris or subsequent versions as approved by a decision by the Chief Executive Officer.
46. **Commentary:** Means the document named “OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy - Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)” first published on 14 March 2022 and the latest version published on 25 April 2024, or any subsequent versions as approved by a decision of the Chief Executive Officer.
47. **Tax Treaty:** An agreement for the avoidance or elimination of double taxation with respect to taxes on income and on capital.
48. **Presentation Currency:** The currency in which the financial statements are presented.

**49. Flow-through Entity:** 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 may be 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, or a Flow-through Entity is a Reverse Hybrid Entity with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which the owner is located.

A Constituent Entity that is not a tax resident and not subject to a covered tax or taxation based on its place of management, establishment, or similar criteria shall be treated as an income Flow-through entity and a Tax Transparent Entity with respect to its income, expenses, profits, or losses, to the extent that all the following conditions are met:

- a. The owners of the entity are located in a jurisdiction that treats the Entity as fiscally transparent.
- b. The entity does not have a place of business in the jurisdiction where it was created.
- c. The income, expenditure, profit or loss is not attributable to a Permanent Establishment.

## **Chapter Two: Scope of Application**

### **Article 2: Excluded Entities**

For the purposes of Article 4 of the Law, all of the following shall apply:

A. A Government Body is an Entity that meets all of the following criteria:

1. It is part of or wholly-owned by a government (including any political subdivision or local authority thereof).
2. It has the principal purpose of fulfilling a government function, or managing or investing that government's or jurisdiction's assets through the making and holding of investments, asset management, and related investment activities for the government's or jurisdiction's assets, and does not carry on a trade or business.
3. It is accountable to the government on its overall performance, and provides annual information reporting to the government.
4. Its assets vest in such government upon dissolution and to the extent it distributes net earnings, such net earnings are distributed solely to such government with no portion of its net earnings inuring to the benefit of any private person.

B. An International Organisation means any intergovernmental organisation (including a supranational organisation) or wholly-owned agency or instrumentality thereof that meets all of the following criteria:

1. It is comprised primarily of governments.

2. It has in effect a headquarters or substantially similar agreement (for example, arrangements that entitle the organisation's offices or establishments in the jurisdiction (e.g. a subdivision, or a local, or regional office) to privileges and immunities) with the jurisdiction in which it is established.
3. Any law or the International Organisation's governing documents prevent its income inuring to the benefit of private persons.

C. A Non-profit Organisation is an Entity that meets all of the following criteria:

1. It is established and operated in its jurisdiction of residence for any of the following purposes:
  - a. Exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational, or other similar purposes.
  - b. 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.
2. Substantially all of the income from the activities mentioned in Sub-paragraph A of this Paragraph is exempt from income tax in its jurisdiction of residence.
3. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets.
4. 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 for any of the following purposes:
  - a. Pursuant to the conduct of the Entity's charitable activities.

- b. As payment of reasonable compensation for services rendered or for the use of property or capital.
  - c. As payment representing the fair market value of property which the Entity has purchased.
- 5. Upon termination, liquidation or dissolution of the Entity, all of its assets must be distributed or revert to a Non-profit Organisation or to the government (including any Government Body) of the Entity's jurisdiction of residence or any political subdivision thereof.
- D. For the purposes of Paragraph C of this Article, a Non-profit Organisation does not include any Entity carrying on a trade or business that is not directly related to the purposes for which the Non-profit Organisation was established.
- E. A Pension Fund is 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 natural persons and meets any of the following conditions:
  - 1. Regulated as such by that jurisdiction or one of its political subdivisions or local authorities.
  - 2. 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 Multinational Enterprise Group.
- F. For the purposes of Paragraph E of this Article, a Pension Fund includes a Pension Services Entity which is an Entity that is established and operated exclusively or almost exclusively for any of the following purposes:
  - 1. To invest funds for the benefit of a Pension Fund.

2. To carry out activities that are ancillary to those regulated activities carried out by a Pension Fund provided that they are members of the same Group.

G. An Investment Fund is an Entity that meets all of the following conditions:

1. It is designed to pool assets (which may be financial and non-financial) from a number of investors (some of which are not connected).
2. It invests in accordance with a defined investment policy.
3. It allows investors to reduce transaction, research, and analytical costs, or to spread risk collectively.
4. It is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome:
  - a. Investors have a right to return from the assets of the fund or income earned on those assets, based on the contributions made by those investors.
  - b. The Entity or its management is subject to a regulatory regime in the jurisdiction in which it is established or managed (including appropriate anti-money laundering and investor protection regulation).
  - c. It is managed by investment fund management professionals on behalf of the investors.

H. A Real Estate Investment Vehicle is an Entity the taxation of which achieves a single level of taxation either in its hands or the hands of its interest holders (with at most one year of deferral), provided that the Entity holds predominantly immovable property and is itself widely held.

### **Article 3: Revenue Test**

For the purposes of the Revenue Test in Paragraph C of Article 3 of the Law, all of the following shall apply:

- A. Revenue shall be determined in accordance with the Consolidated Financial Statements and shall include the inflow of economic benefits arising from the Multinational Enterprise Group's ordinary activities, including the delivery or production of goods, rendering of services, or other relevant activities.
- B. To the extent applicable, the following adjustments shall be made in determining revenue:
  - 1. Realised and unrealised net gains from investments that are reported in the profit and loss statement of the Consolidated Financial Statements shall be included in revenue.
  - 2. Income or gains separately presented as extraordinary or non-recurring items in the Consolidated Financial Statements shall be included in revenue.
- C. Where different types of revenue are separately presented in the profit and loss statement of the Consolidated Financial Statements, such amounts shall be aggregated for the purposes of the Revenue Test.
- D. Where a Multinational Enterprise Group does not have Consolidated Financial Statements for any of the four Fiscal Years preceding the Reporting Fiscal Year due to the Entities forming the Multinational Enterprise Group being recently created, the annual revenue for any such Fiscal Year preceding the Reporting Fiscal Year shall be deemed not to equal or not to exceed EUR 750 million.

## **Article 4: Permanent Establishments in the Kingdom**

- A. Without prejudice to the definition of Permanent Establishment included in Article 1 of the Law and the provisions of [Article 6](#) of these Regulations, a Non-Resident Entity has a Permanent Establishment in the Kingdom as described in Paragraph D of Article 5 of the Law in any of the following situations:
1. If it has a fixed or permanent place in the Kingdom through which the business of the Non-Resident Entity, or part of it, is conducted.
  2. Where a person, other than an agent of an independent status to whom Paragraph F of this Article applies, has and habitually exercises an authority to conduct business in the Kingdom on behalf of the Non-Resident Entity.
  3. If it has any other form of nexus in the Kingdom as determined by a decision issued by the Minister.
- B. For the purposes of applying Clause 1 of Paragraph A of this Article, a fixed or a permanent place in the Kingdom includes:
1. A place of management.
  2. A branch.
  3. An office.
  4. A factory.
  5. A workshop.

6. A mine, an oil or gas well, a quarry or any other site for the extraction or exploration of natural resources including, but not limited to, vessels and structures used for the extraction of such natural resources.
  7. Building and construction site, assembly, and installation project, but only where such site or project or activity continues for more than 12 months.
- C. Notwithstanding Clause 1 of Paragraph A and Paragraph B of this Article, a fixed or permanent place in the Kingdom shall not be considered a Permanent Establishment of a Non-Resident Entity in the Kingdom if it is used solely for any of the following purposes:
1. The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the Non-Resident Entity.
  2. The maintenance of a stock of goods or merchandise belonging to the Non-Resident Entity solely for the purposes of storage, display or delivery.
  3. The maintenance of a stock of goods or merchandise belonging to the Non-Resident Entity for the purpose of processing by another person.
  4. The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the Non-Resident Entity.
  5. The maintenance of a fixed place of business solely for the purpose of carrying on, for the Non-Resident Entity, any other activity.
  6. The maintenance of a fixed place of business solely for any combination of activities mentioned in Clauses 1 to 5 of this Paragraph.

Provided that the activity is of a preparatory or auxiliary nature, or in the case mentioned in Clause 6 of this Paragraph, that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

D. Paragraph C of this Article shall not apply to a fixed or permanent place of business that is used or maintained by a Non-Resident Entity if that Non-Resident Entity or a related person carries on business activities at the same place or at another place in the Kingdom and any of the following applies:

1. That place or other place constitutes a Permanent Establishment for the Non-Resident Entity or the related person under the provisions of this Article.
2. The overall activity resulting from the combination of the activities carried out by the Non-Resident Entity and the related person at the same place or at the two places is not of a preparatory or auxiliary nature and together would form a cohesive business operation, had the activities not been fragmented.

E. For the purposes of Clause 2 of Paragraph A of this Article, a person shall be considered as having and habitually exercising an authority to conduct business in the Kingdom on behalf of a Non-Resident Entity in any of the following situations:

1. The person habitually concludes contracts on behalf of the Non-Resident Entity.
2. The person habitually negotiates contracts that are concluded by the Non-Resident Entity without the need for material modification by the Non-Resident Entity.

F. Notwithstanding Clause 2 of Paragraph A and Paragraph E of this Article, a Non-Resident Entity shall not have a Permanent Establishment in the Kingdom where a person conducts business in the Kingdom as an independent agent and acts for the Non-Resident Entity in the ordinary course of that

business, or conducts activities limited to those mentioned in Paragraph C of this Article which through a fixed or permanent place of business, unless any of the following situations occur:

1. The person acts exclusively or almost exclusively on behalf of the Non-Resident Person.
  2. The person cannot be considered legally or economically independent from the Non-Resident Person.
  3. The person conducts activities through a fixed or permanent place of business for which Paragraph D of this Article applies.
- G. For the purposes of applying the provisions of this Article, a Non-Resident Entity is an Entity which does not fulfil the criteria stipulated in Paragraph E of Article 5 of the Law.
- H. For the purposes of this Article, a person is related to another person if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons.
- I. Financial Accounting Net Income or Loss shall be allocated to a Permanent Establishment in the Kingdom in accordance with [Article 10](#) of these Regulations.

## **Chapter Three: Location of an Entity**

### **Article 5: Constituent Entities That Are Located in More Than One Jurisdiction**

- A. Where a Constituent Entity is located in more than one jurisdiction, and there is a Tax Treaty in force between those jurisdictions, the Constituent Entity shall be deemed as located solely in the jurisdiction where it is resident for the purposes of that Tax Treaty.
- B. Where a Constituent Entity is located in more than one jurisdiction and there is no Tax Treaty in force between the jurisdictions, or where there is a Tax Treaty in force in accordance with which the competent authorities are expected to endeavour to mutually agree the residence of the Constituent Entity and no such agreement has been reached, or where there is a Tax Treaty in force and the Tax Treaty does not provide relief or exemption from tax because the Constituent Entity is resident of both of the contracting states, the location of the Constituent Entity shall be determined as follows:
  - 1. The Constituent Entity shall be deemed as located in the jurisdiction where it paid more Covered Taxes for the Fiscal Year, without taking into account the taxes paid in accordance with a Controlled Foreign Company Tax Regime.
  - 2. If the amount of Covered Taxes paid in both jurisdictions is the same or zero, the Constituent Entity shall be deemed as located in the jurisdiction where it has more Substance-based Income Exclusion computed on a standalone basis for the Fiscal Year.
  - 3. If the amount of Substance-based Income Exclusion in both jurisdictions is the same or zero for the Fiscal Year, the Constituent Entity shall be considered a Stateless Constituent Entity unless the Constituent Entity is the Ultimate Parent Entity of the Multinational Enterprise Group, in which case it shall be deemed as being located in the jurisdiction where it is created.

- C. For the purposes of Clause 2 of Paragraph B of this Article, the Substance-based Income Exclusion is computed on a standalone basis where the provisions of Article 10 of the Law and [Article 46](#) of these Regulations are applied as if the relevant Entity is the only Constituent Entity of a Multinational-Enterprise Group in the Kingdom.

## **Article 6: Location of a Constituent Entity That Is a Permanent Establishment**

For the purposes of applying the provisions of Article 5 of the Law, the location of a Constituent Entity that is a Permanent Establishment shall be determined as follows:

- A. Where the Constituent Entity is a Permanent Establishment in accordance with Paragraph A of the definition of a Permanent Establishment under Article 1 of the Law, it shall be located in the jurisdiction in which it is treated as a Permanent Establishment and to which the Tax Treaty allocates taxing rights.
- B. Where the Constituent Entity is a Permanent Establishment in accordance with Paragraph B of the definition of Permanent Establishment under Article 1 of the Law, it shall be located in the jurisdiction where it is subject to net basis income taxation based on its place of business or deemed place of business.
- C. Where the Constituent Entity is a Permanent Establishment in accordance with Paragraph C of the definition of Permanent Establishment under Article 1 of the Law, it shall be located in the jurisdiction where it is situated.

## **Article 7: Change in a Constituent Entity's Location**

Where a Constituent Entity has changed its location during the Fiscal Year, it shall be located in the jurisdiction where it was located at the start of the first day of that Fiscal Year.

## **Chapter Four: Accounting**

### **Article 8: Computation of the Financial Accounting Net Income or Loss of a Constituent Entity**

- A. For the purposes of applying the provisions of Paragraph B of Article 6 of the Law, a Constituent Entity's Financial Accounting Net Income or Loss shall be determined based on financial accounts prepared in accordance with a Local Financial Accounting Standard where all of the following conditions are met:
1. All of the Constituent Entities located in the Kingdom that are members of the same Multinational Enterprise Group have financial accounts prepared in accordance with the Local Financial Accounting Standard.
  2. The accounting period of all such accounts is the same as the Fiscal Year of the Consolidated Financial Statements of the Multinational Enterprise Group or Joint Venture Group.
  3. Either all such Constituent Entities are required to prepare or use such financial accounts for the purposes of determining their liability to taxes in the Kingdom or to comply with any other law of the Kingdom, or such financial accounts are subject to an external audit.
- B. For the purposes of Clause 2 of Paragraph A of this Article, a Joint Venture Group means any Joint Venture and its Joint Venture Subsidiaries.
- C. Where any of the Constituent Entities located in the Kingdom that are members of the same Multinational Enterprise Group do not prepare financial accounts which meet all of the requirements under Paragraph A of this Article, the Constituent Entity Income or Loss shall be determined based on Paragraph D or E of this Article as applicable.

- D. Where Paragraph C of this Article applies, the Financial Accounting Net Income or Loss of such Constituent Entity shall be the net income or loss for the Fiscal Year determined for the Constituent Entity, before making any consolidation adjustments aimed at eliminating intra-group transactions, which has been used in preparing Consolidated Financial Statements of the Ultimate Parent Entity.
- E. Where it is not reasonably practicable to determine the Financial Accounting Net Income or Loss of a Constituent Entity located in the Kingdom in accordance with Paragraph D of this Article, the Financial Accounting Net Income or Loss of the Constituent Entity may be determined using another Acceptable Financial Accounting Standard or Authorised Financial Accounting Standard provided that all of the following conditions apply:
1. The financial accounts of the Constituent Entity are prepared based on that accounting standard.
  2. The information contained in the financial accounts is reliable.
  3. Permanent differences greater than EUR 1 million that arise from the application of the other Acceptable Financial Accounting Standard or Authorised Financial Accounting Standard are conformed to the treatment which would have applied under the financial accounting standard used in the preparation of the Consolidated Financial Statements of the Ultimate Parent Entity.

## **Article 9: Material Competitive Distortions**

Where the application of a specific principle or procedure under a set of generally accepted accounting principles results in a Material Competitive Distortion, the accounting treatment of any item or transaction subject to that principle or procedure shall be adjusted to conform to the treatment required for that item or transaction under International Financial Reporting Standards in accordance with any Administrative Guidance. A Decision shall be issued by the Minister after the approval of the Cabinet to specify provisions related to Material Competitive Distortions.

## **Article 10: Allocation of Financial Accounting Net Income or Loss: Main Entity and Permanent Establishment**

- A. Subject to the provisions of Paragraphs C and D of this Article, where a Constituent Entity is a Permanent Establishment in accordance with Paragraph A, B or C of the definition of Permanent Establishment included in Article 1 of the Law, the Financial Accounting Net Income or Loss of the Permanent Establishment shall be the net income or loss reflected in the separate financial accounts of that Permanent Establishment.
- B. Where the Permanent Establishment does not have separate financial accounts, its Financial Accounting Net Income or Loss shall be the amount that would have been reflected in its separate financial accounts if they had been prepared on a standalone basis and in accordance with the accounting standard used in the preparation of the Consolidated Financial Statements of the Ultimate Parent Entity of the Multinational Enterprise Group.
- C. The Financial Accounting Net Income or Loss of a Permanent Establishment to which Paragraphs A and B of the definition of Permanent Establishment included in Article 1 of the Law applies shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with the applicable Tax Treaty or domestic law of the jurisdiction where it is located, regardless of the amount of income subject to tax and the amount of tax deductible expenses in that jurisdiction.
- D. The Financial Accounting Net Income or Loss of a Permanent Establishment to which Paragraph C of the definition of Permanent Establishment included in Article 1 of the Law applies shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with Article 7 of the Model Tax Convention.
- E. Where a Constituent Entity is a Permanent Establishment in accordance with Paragraph D of the definition of Permanent Establishment included in Article 1 of the Law, the Financial Accounting Net

Income or Loss of that Permanent Establishment shall be equal to income that is exempted from tax in the jurisdiction where the Main Entity is located due to being attributable to the operations conducted in the other jurisdiction. The Financial Accounting Net Income or Loss of the Permanent Establishment should be computed based on expenses that were not deducted for tax purposes in the jurisdiction where the Main Entity is located that are attributable to those operations.

- F. The Financial Accounting Net Income or Loss of a Permanent Establishment shall not be taken into account in determining the Constituent Entity Income or Loss of the Main Entity.
- G. Notwithstanding Paragraph F of this Article, where a Permanent Establishment derives a Constituent Entity Loss, such loss shall be treated as an expense of the Main Entity for the purposes of computing Constituent Entity Income or Loss of that Main Entity and not as an expense of that Permanent Establishment, to the extent that:
  - 1. The loss of the Permanent Establishment is treated as an expense in the computation of the domestic taxable income of such Main Entity.
  - 2. The loss is not set off against an item of income that is subject to tax under the laws of both the jurisdiction of the Main Entity and the jurisdiction of the Permanent Establishment.
- H. Where Paragraph G of this Article applies, Constituent Entity Income subsequently derived by the Permanent Establishment shall be treated as Constituent Entity Income of the Main Entity and not of the Permanent Establishment for the purposes of determining its Constituent Entity Income or Loss up to the amount of the Constituent Entity Loss that was previously treated as an expense of the Main Entity.

## **Article 11: Allocation of Financial Accounting Net Income or Loss: Flow-through Entity**

- A. The Financial Accounting Net Income or Loss of a Constituent Entity that is a Flow-through Entity shall be reduced by the amount allocable to its owners that are not members of the Multinational Enterprise Group and that hold their Ownership Interest in that Flow-through Entity either directly or indirectly through one or more Tax Transparent Entities.
- B. Paragraph A of this Article shall not apply to any of the following:
  - 1. An Ultimate Parent Entity that is a Flow-through Entity.
  - 2. The Flow-through Entity that is owned by an Ultimate Parent Entity that is also a Flow-through Entity, either directly or indirectly through one or more Tax Transparent Entities.
- C. Where a Flow-through Entity wholly or partially carries out business through a Permanent Establishment, its Financial Accounting Net Income or Loss after the reduction of the amount calculated in accordance with Paragraph A of this Article shall be allocated to that Permanent Establishment in accordance with [Article 10](#) of these Regulations.
- D. Where a Flow-through Entity is a Tax Transparent Entity that is not an Ultimate Parent Entity, any Financial Accounting Net Income or Loss after the reduction of the amount calculated in accordance with Paragraph A or C of this Article shall be allocated to its Constituent Entity-owners in proportion to their Ownership Interests that carry rights to profits in the Flow-through Entity.
- E. For the purposes of Paragraph D of this Article, where a Flow-through Entity is owned by another Flow-through Entity, the Constituent Entity-owner shall be the next entity in the ownership chain that is not a Flow-through Entity or where there is no such Entity the owner shall be the Flow-through Entity which is the Ultimate Parent Entity.

- F. Where a Flow-through Entity is a Tax Transparent Entity that is an Ultimate Parent Entity, any Financial Accounting Net Income or Loss of the Flow-through Entity after the reduction of the amount calculated in accordance with Paragraph A or C of this Article shall be allocated to the Ultimate Parent Entity.
- G. Where a Flow-through Entity is a Reverse Hybrid Entity, any Financial Accounting Net Income or Loss of the Flow-through Entity after the reduction of the amount calculated in accordance with Paragraph A or C of this Article shall be allocated to the Reverse Hybrid Entity.
- H. Paragraphs C, D, E, F and G of this Article shall be applied separately with respect to each Ownership Interest that carries rights to profits in the Flow-through Entity.
- I. The Financial Accounting Net Income or Loss of a Constituent Entity that is a Flow-through Entity shall be reduced by the amount that is allocated to another Constituent Entity.
- J. For the purposes of Paragraph G of this Article, a Flow-through Entity is a Reverse Hybrid Entity if the tax laws of the jurisdiction in which the owner is located does not treat the Entity as fiscally transparent. Where the owner is a Flow-through Entity, that is not a Flow-through Ultimate Parent Entity, such Entity shall not be considered the owner and instead the next owner further up the ownership chain that is not a Flow-through Entity shall be considered the owner for the purposes of determining whether a Flow-through Entity is a Reverse Hybrid except where there is no such Entity in which case the owner shall be the Flow-through Ultimate Parent Entity.

## **Article 12: Adjustments to Determine Constituent Entity Income or Loss**

- A. For the purposes of applying the provisions of Paragraph A of Article 6 of the Law, the Constituent Entity Income or Loss for a Fiscal Year shall be the Financial Accounting Net Income or Loss adjusted for all of the following as applicable:

1. Net Taxes Expense.
2. Excluded Dividends.
3. Excluded Equity Gains and Losses.
4. Included Revaluation Method Gains or Losses.
5. Gains or losses from the disposal of assets and liabilities excluded under [Article 39](#) of these Regulations.
6. Asymmetric Foreign Currency Gains or Losses.
7. Illicit Expenditure, Fines and Penalties.
8. Prior Period Errors and Changes in Accounting Principles.
9. Accrued Pension Expense.
10. Adjustments in relation to the Arm's Length Principle as specified under [Article 13](#) of these Regulations.
11. Any transaction between Constituent Entities that is not recorded in the same amount in the financial accounts of such Constituent Entities.
12. Stock-based compensation where an election has been made in accordance with Paragraph A of [Article 14](#) of these Regulations.

13. Foreign exchange gains or losses attributable to hedging instruments where an election has been made in accordance with Paragraph A of [Article 15](#) of these Regulations.
14. Gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting where an election has been made in accordance with Paragraph A of [Article 16](#) of these Regulations.
15. Net gains arising from the disposal of immovable property located in the Kingdom where an election has been made in accordance with [Article 17](#) of these Regulations.
16. Expenses attributable to an Intra-group Financing Arrangement in accordance with [Article 18](#) of these Regulations.
17. Debt releases where an election has been made in accordance with Paragraph A of [Article 19](#) of these Regulations.
18. Dividends from Portfolio Shareholdings where an election has been made in accordance with Paragraph A of [Article 20](#) of these Regulations.
19. Financial instruments in accordance with [Article 22](#) of these Regulations.
20. Marketable Transferable Tax Credits and Qualified Refundable Tax Credits in accordance with [Article 23](#) of these Regulations.
21. Income or Losses attributable to a Permanent Establishment in accordance with [Article 10](#) of these Regulations.
22. Income or Losses attributable to a Flow-through Entity in accordance with [Article 11](#) of these Regulations.

23. Consolidation adjustments where an election has been made in accordance with [Article 24](#) of these Regulations.
24. Additional Tier One Capital in accordance with [Article 25](#) of these Regulations.
25. Adjustments in respect of transactions specified in [Chapter Five](#) of these Regulations.
- B. Where a Constituent Entity located in the Kingdom is an insurance company, its Constituent Entity Income or Loss shall also be adjusted in accordance with [Article 26](#) of these Regulations.
- C. Where a Constituent Entity located in the Kingdom derives income from international shipping, its Constituent Entity Income or Loss shall also be adjusted in accordance with [Article 27](#) of these Regulations.
- D. For the purposes of Clause 1 of Paragraph A of this Article, Net Taxes Expense means the net amount, if any, of all of the following where applicable:
1. Any Covered Taxes accrued as an expense and any current and deferred Covered Taxes included in the income tax expense, including Covered Taxes on income that is excluded from the Constituent Entity Income or Loss computation.
  2. Any deferred tax asset attributable to a loss for the Fiscal Year.
  3. Any Qualified Domestic Minimum Top-up Tax accrued as an expense.
  4. Any taxes arising pursuant to the Model Rules accrued as an expense.
  5. Any Disqualified Refundable Imputation Tax accrued as an expense.

6. Taxes accrued by an insurance company in respect of returns to policyholders.
- E. For the purposes of Clause 4 of Paragraph A of this Article, an Included Revaluation Method Gain or Loss means the net gain or loss, increased or decreased by any associated Covered Taxes, for the Fiscal Year in respect of all property, plant and equipment that arises under an accounting method or practice that meets all of the following:
1. The accounting method or practice periodically adjusts the carrying value of such property to its fair value.
  2. The accounting method or practice records the changes in value in Other Comprehensive Income.
  3. The accounting method or practice does not subsequently report the gains or losses recorded in Other Comprehensive Income through profit and loss.
- F. For the purposes of Clause 6 of Paragraph A of this Article, an Asymmetric Foreign Currency Gain or Loss means a foreign currency gain or loss of a Constituent Entity where the Accounting Functional Currency and Tax Functional Currency used by that Constituent Entity are different and where all of the following apply:
1. The foreign currency gain or loss is included in the Taxable Profit or Loss of the Constituent Entity in the jurisdiction in which it is located and attributable to fluctuations in the exchange rate between its Accounting Functional Currency and its Tax Functional Currency.
  2. The foreign currency gain or loss is included in the computation of a Constituent Entity's Financial Accounting Net Income or Loss and attributable to fluctuations in the exchange rate between its Tax Functional Currency and its Accounting Functional Currency.

3. The foreign currency gain or loss is included in the computation of a Constituent Entity's Financial Accounting Net Income or Loss and attributable to fluctuations in the exchange rate between a Third Foreign Currency and its Accounting Functional Currency.
  4. The foreign currency gain or loss is attributable to fluctuations in the exchange rate between a Third Foreign Currency and the Constituent Entity's Tax Functional Currency, whether or not such foreign currency gain or loss is included in the Taxable Profit or Loss of the Constituent Entity in the jurisdiction in which it is located.
- G. For the purposes of Clause 7 of Paragraph A of this Article, Illicit Expenditure, Fines and Penalties includes any of the following:
1. Expenses accrued by the Constituent Entity for illegal payments, such as bribes and kickbacks.
  2. Expenses accrued by the Constituent Entity for fines and penalties that equal or exceed EUR 50,000 (or an equivalent in the Functional Currency in which the Constituent Entity's Financial Accounting Net Income or Loss was calculated).
- H. For the purposes of Paragraphs F and G of this Article, the Functional Currency is the currency of the primary economic environment in which the Entity operates.
- I. For the purposes of Clause 8 of Paragraph A of this Article, Prior Period Errors and Changes in Accounting Principles means all changes in the opening equity at the beginning of the Fiscal Year of a Constituent Entity attributable to any of the following:
1. A correction of an error in the determination of the Financial Accounting Net Income or Loss of the Constituent Entity in a previous Fiscal Year that affected the income or expenses that may be included in the calculation of the Constituent Entity Income or Loss for such Fiscal Year, except to the extent that [Article 36](#) of these Regulations applies to such error or corrections.

2. A change in accounting principle or policy that affected the income or expenses included in the calculation of the Constituent Entity Income or Loss.
- J. For the purposes of Clause 9 of Paragraph A of this Article, an Accrued Pension Expense means the difference between the amount of pension liability expense included in the Financial Accounting Net Income or Loss and the amount contributed to a Pension Fund for the Fiscal Year.
- K. For the purposes of applying the provisions of Paragraph J of this Article, the adjustment to the Financial Accounting Income or Loss for the Accrued Pension Expense shall be computed in accordance with the formula  $((A \text{ or } B) + (C)) \times (-1)$ , where:
- A: The pension liability income of a Constituent Entity accrued for the Fiscal Year and is expressed as a positive amount.
  - B: The pension liability expense of a Constituent Entity accrued for the Fiscal Year and is expressed as a negative amount.
  - C: The amount contributed by the Constituent Entity to a Pension Fund for the Fiscal Year and is expressed as a positive amount.
- L. For the purposes of this Article, all of the following shall apply:
1. The Tax Functional Currency is the functional currency used to determine a Constituent Entity's taxable income or loss for a Covered Tax in the jurisdiction in which it is located.
  2. The Accounting Functional Currency is the functional currency used to determine a Constituent Entity's Financial Accounting Net Income or Loss.
  3. A Third Foreign Currency is a currency that is not the Constituent Entity's Tax Functional Currency or Accounting Functional Currency.

## **Article 13: Arm's Length Principle and Transfer Pricing Documentation Requirements**

- A. For the purposes of applying the provisions of Clause 10 of Paragraph A of [Article 12](#) of these Regulations, a Constituent Entity located in the Kingdom shall make an adjustment to the amount recorded in its financial accounts in determining its Constituent Entity Income or Loss to ensure that an outcome of a transaction or an arrangement with another Constituent Entity located in a different jurisdiction which is a member of the same Multinational Enterprise Group is consistent with the Arm's Length Principle.
- B. For the purpose of applying the Arm's Length Principle the most appropriate method shall be used in consideration of the facts and circumstances of a transaction or an arrangement and shall be one of the following methods, provided that the Arm's Length Principle and the method used shall be applied in a manner consistent with the Transfer Pricing Guidelines:
1. Comparable uncontrolled price method according to which the price for property or services transferred between Constituent Entities of the same Multinational Enterprise Group shall be compared with the price charged for property and services transferred in the comparable uncontrolled transaction in comparable circumstances.
  2. Resale price method according to which a price at which a product that has been purchased from another Constituent Entity of the same Multinational Enterprise Group is sold to an independent entity.
  3. Cost plus method according to which a comparable cost-plus mark-up shall be added to appropriate direct and indirect costs incurred by the supplier of property or services in a transaction or an arrangement with other Constituent Entity of the same Multinational Enterprise Group.

4. Transactional net margin method according to which a comparable net profit margin relative to an appropriate base shall be added to the appropriate costs to price the one or more transactions or arrangements with other Constituent Entity.
  5. Profit split method according to which a relevant profit was identified and split between Constituent Entities of the same Multinational Enterprise Group from one or more transactions or arrangements between them based on economically valid criteria.
- C. For the purposes of applying the provisions of Paragraph A of this Article, where a bilateral or multilateral Advance Pricing Agreement has been agreed by the relevant competent authorities of the jurisdictions of the Constituent Entities, the adjustment to the Constituent Entity Income or Loss shall be applied consistently in accordance with the arm's length price agreed under the Advance Pricing Agreement.
- D. Where Constituent Entities that are members of the same Multinational Enterprise Group are located in the Kingdom, any loss from a sale or transfer of an asset between them shall be adjusted based on the Arm's Length Principle for the purposes of determining the Constituent Entity Income or Loss of those Constituent Entities.
- E. Constituent Entities located in the Kingdom which are party to a transaction or an arrangement with another Constituent Entity which is a member of the same Multinational Enterprise Group shall prepare and maintain a local file and a master file in the manner prescribed by the Bureau.
- F. For the purposes of applying the provisions of Paragraph E of this Article, the local file shall include all of the following concerning a Constituent Entity located in the Kingdom:
1. A description of the Constituent Entity, business activities and its business strategy including an indication of whether the Constituent Entity has been involved in or affected by a business restructuring or intangible asset transfer in the Fiscal Year or immediately preceding Fiscal Year together with the explanation of those aspects of such transaction affecting the Constituent

Entity.

2. A description of the management structure of the Constituent Entity, local organisation chart and a description of the natural persons to whom local management reports.
3. An identification of the relevant Constituent Entity's transaction or arrangement with other Constituent Entity which is a member of the same Multinational Enterprise Group together with a description of all identified transactions or arrangements including the context in which such transaction or arrangement take place.
4. An identification of other Constituent Entities involved in each of the identified transactions or arrangements and the relations among them.
5. A detailed comparability and functional analysis of the Constituent Entity and relevant other Constituent Entities with respect to each identified transaction or arrangement in accordance with Clause 3 of this Paragraph, including significant changes compared to prior years.
6. A list and description of selected internal or external comparable uncontrolled transactions or arrangements, if any, and information on relevant financial indicators for independent enterprises which has been relied on for the purposes of the transfer pricing analyses, including a description of the comparable search strategy and all the steps taken and the source of such information.
7. A description of any comparability adjustments performed, and an indication of whether any adjustments have been made to the results of the tested party, the comparable uncontrolled transactions or arrangements, or both.
8. A description of the transfer pricing policy in place.

9. An indication of the most appropriate transfer pricing method with regard to the identified transaction or arrangement together with a descriptive explanation of the reasons for selecting that method and, if applicable, an explanation of the tested party.
  10. Copies of all material intercompany agreements concluded by the Constituent Entity.
  11. Copies of existing unilateral, bilateral or multilateral Advance Pricing Agreements and other tax rulings to which the Kingdom is not party and which are related to identified transactions or arrangements.
  12. Financial information of the Constituent Entity including the annual financial accounts for the Fiscal Year.
  13. Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- G. For the purposes of applying the provisions of Paragraph E of this Article, the master file shall include all of the following:
1. An organisational structure illustrating the Multinational Enterprise Group's ownership structure and geographical location of operating entities.
  2. A general description of the Multinational Enterprise Group's business or businesses which includes all of the following:
    - a. Important drivers of business profit.
    - b. A description of the supply chain for the Multinational Enterprise Group's five largest products or service offerings based on turnover and any other products or service offerings

which account for at least 5% of the Multinational Enterprise Group's turnover.

- c. A list and description of important service arrangements between members of the Multinational Enterprise Group, except for research and development services.
  - d. A description of the main geographic markets for the Multinational Enterprise Group's products and services identified under Subclause b of Clause 2 of this Paragraph.
  - e. A functional analysis describing the principal contributions to value creation by individual Constituent Entities within the Multinational Enterprise Group.
  - f. A description of important business restructuring transactions, acquisitions and disposals which occurred during the Fiscal Year.
- 3. A description of the Multinational Enterprise Group's overall strategy for the development, ownership and exploitation of intangibles, including the location of principal research and development facilities and location of research and development management.
  - 4. A list of intangibles or groups of intangibles owned by the Multinational Enterprise Group that are important for transfer pricing purposes and information regarding which Constituent Entity legally owns them.
  - 5. A description of the Multinational Enterprise Group's transfer pricing policies related to research and development and intangibles.
  - 6. A description of any significant transfers of interest in intangible assets amongst Constituent Entities which are members of the same Multinational Enterprise Group during the Fiscal Year including the Constituent Entities and compensation involved.

7. A description of how the Multinational Enterprise Group is financed, including significant financing arrangements with unrelated lenders.
  8. The identification of any members of the Multinational Enterprise Group that provides a central financing function for the Group, including the country under whose laws the entity is organised and the place of effective management of such Entities.
  9. A description of the Multinational Enterprise Group's transfer pricing policies related to financing arrangements between Constituent Entities which are members of the Group.
  10. The Multinational Enterprise Group's annual Consolidated Financial Statement for the Fiscal Year concerned, if prepared, for financial reporting, regulatory, internal management, tax or other purposes.
  11. A list and brief description of the Multinational Enterprise Group's existing unilateral Advance Pricing Agreements and other tax rulings relating to the allocation of income among countries.
- H. For the purposes of applying the provisions of Paragraphs C, F and G of this Article, an Advance Pricing Agreement is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for those transactions over a fixed period of time.

## **Article 14: Adjustments for Stock-based Compensation**

- A. At the election of the Filing Constituent Entity, for the purposes of determining the Constituent Entity Income or Loss of a Constituent Entity located in the Kingdom, a Filing Constituent Entity may substitute the amount allowed as a deduction in the computation of its Taxable Profit or Loss for the amount expensed in its financial accounts with regards to a cost or expense paid with stock-based compensation.

- B. Where a stock-option granted by a Constituent Entity expires without being exercised, the Constituent Entity shall include the total amount previously deducted in the computation of its Constituent Entity Income or Loss for all previous Fiscal Years in respect of that stock-option as additional income in the Fiscal Year in which the option expired.
- C. Where the election referred to in Paragraph A of this Article is made for a Fiscal Year after part of the amount of stock-based compensation expense of a transaction has been recorded in the financial accounts but before the date on which the option is exercised, the Constituent Entity shall include in the computation of its Constituent Entity Income or Loss for that Fiscal Year an amount equal to the difference between the total amount of stock-based compensation cost or expense that has been deducted in the computation of its Constituent Entity Income or Loss in previous Fiscal Years and the total amount of stock-based compensation cost or expense that would have been deducted in the computation of its Constituent Entity Income or Loss in previous Fiscal Years had the election been in place.
- D. The election referred to in paragraph A of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law and shall apply to all Constituent Entities located in the Kingdom.
- E. Where the election referred to in Paragraph A of this Article is revoked, the Constituent Entity shall include in the computation of its Constituent Entity Income or Loss for the revocation year the amount that was deducted pursuant to the election that is in excess of the financial accounting expense accrued in respect of stock-based compensation that has not been paid.

## **Article 15: Foreign Exchange Gains or Losses Attributable to Hedging Instruments**

- A. At the election of the Filing Constituent Entity, foreign exchange gains or losses included in the Financial Accounting Net Income or Loss of a Constituent Entity located in the Kingdom shall be

treated as an Excluded Equity Gain or Loss to the extent that all of the following apply:

1. Such foreign exchange gains or losses are attributable to hedging instruments that hedge the currency risk in Ownership Interests other than Portfolio Shareholdings.
  2. Such foreign exchange gains or losses are recognised in Other Comprehensive Income in the Consolidated Financial Statements.
  3. The hedging instrument is considered an effective hedge under the Acceptable Financial Accounting Standard or Authorised Financial Accounting Standard used in the preparation of the Consolidated Financial Statements.
- B. The election referred to in paragraph A of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law.

## **Article 16: Adjustments in Respect of Assets and Liabilities That Are Subject to Fair Value or Impairment Accounting**

- A. At the election of the Filing Constituent Entity, gains or losses in respect of assets and liabilities that are subject to fair value or impairment accounting shall be determined on the basis of the realisation principle for the purposes of determining the Constituent Entity Income or Loss.
- B. For the purposes of determining the gain or loss on an asset or liability which is subject to the election under Paragraph A of this Article, the carrying value of the asset or liability shall be the carrying value adjusted for accumulated depreciation at the later of:
1. The date on which the asset was acquired, or the liability was incurred.

2. The first day of the Fiscal Year in respect of which the election is made.
- C. Gains or losses recognised in the Financial Accounting Net Income or Loss of a Constituent Entity in respect of an asset or liability which is subject to the election under Paragraph A of this Article shall be excluded for the purposes of determining the Constituent Entity Income or Loss where they result from the application of fair value or impairment accounting.
  - D. The election referred to in Paragraph A of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law and shall apply to all Constituent Entities located in the Kingdom to which the election is made unless the Filing Constituent Entity chooses to limit the election only to the tangible assets of the Constituent Entities or to Constituent Entities that are Investment Entities.
  - E. Where the election referred to in Paragraph A of this Article is revoked, the Constituent Entity shall include in the computation of its Constituent Entity Income or Loss for the first year for which the election is revoked an amount determined in accordance with the formula  $(A - B)$  where:
    - A: The fair value of the assets or liabilities that are subject to the election as at the beginning of the revocation year.
    - B: The carrying value of the assets and liabilities that are subject to the election adjusted for accumulated depreciation as at the beginning of the revocation year.

## **Article 17: Adjustments in Respect of Gains from the Disposal of Immovable Property Located in the Kingdom**

- A. Where a Constituent Entity located in the Kingdom derives a net gain from the disposal of immovable property located in the Kingdom to entities other than Group Entities, the Filing Constituent Entity may elect to adjust the Net Constituent Entity Income or Loss in each Fiscal Year in the Look-back

Period in accordance with provisions of this Article.

- B. For the purposes of applying the provisions of Paragraph A of this Article, the Look-back Period means the Fiscal Year for which the election is made and the four Fiscal Years prior to that Fiscal Year.
- C. Where the election under Paragraph A of this Article applies, the net gain shall be offset against any net loss of a Constituent Entity located in the Kingdom which is a member of the same Multinational Enterprise Group that arose from the disposal of immovable property located in the Kingdom during the Look-back Period.
- D. The net gain referred to in Paragraph A of this Article, shall be offset against net losses incurred during the Look-back Period in the order in which such net losses occurred.
- E. Where, following the application of Paragraphs C and D of this Article, the net gain is not fully offset by net losses, the remaining net gain shall be spread evenly over the Look-back Period for the purposes of determining the Net Constituent Entity Income or Loss in the Fiscal Years which form part of the Look-back Period.
- F. The election referred to in Paragraph A of this Article is an Annual Election which can be made in accordance with Article 20 of the Law and shall apply to all net gains on immovable property located in the Kingdom derived by Constituent Entities located in the Kingdom which are members of the same Multinational Enterprise Group that arise in the year for which the election is made.
- G. Where an election is made under Paragraph A of this Article, any adjustments which relate to a Fiscal Year preceding the Fiscal Year for which the election is made shall be subject to the provisions of [Article 50](#) of these Regulations.
- H. Where an election is made under Paragraph A of this Article, any Covered Taxes (including deferred tax assets) with respect to any gain that would have been offset in accordance with the provisions of

this Article shall be excluded from the computation of Adjusted Covered Taxes in the Fiscal Year in respect of which the election is made.

## **Article 18: Adjustments in Respect of Intra-Group Financing Arrangements**

- A. Paragraph B of this Article shall apply where a Constituent Entity located in the Kingdom which is a Low-Tax Constituent Entity has incurred any expense related to an Intra-group Financing Arrangement with a High-Tax Counterparty.
- B. For the purposes of determining the Net Constituent Entity Income or Loss for a Fiscal Year, the Constituent Entities located in the Kingdom shall exclude any expense attributable to an Intra-group Financing Arrangement that can reasonably be expected over the duration of the arrangement to increase the amount of expenses taken into account in determining the Net Constituent Entity Income or Loss without resulting in a commensurate increase in the Taxable Profit or Loss of the High-Tax Counterparty.

## **Article 19: Adjustments in Respect of Debt Releases**

- A. At the election of the Filing Constituent Entity, the amount of income from a release of a debt included in the Financial Accounting Net Income or Loss of a Constituent Entity located in the Kingdom shall be excluded from the computation of the Constituent Entity Income or Loss where any of the following apply:
  - 1. The debt release is undertaken under statutorily provided insolvency or bankruptcy proceedings, that are supervised by a court or other juridical body in the Kingdom or where an independent insolvency administrator is appointed.
  - 2. The debt release arises pursuant to an arrangement where one or more creditors is a person not connected with the debtor and it is reasonable to assume that the debtor would be insolvent

within 12 months but for the release of the third-party debts released under the arrangement.

3. Subject to Paragraph B of this Article, and where Clauses 1 and 2 of this Paragraph do not apply, the debt release occurs when the debtor's liabilities are in excess of the fair market value of its assets determined immediately before the debt release.
- B. Where a Filing Constituent Entity makes an election on the basis of Clause 3 of Paragraph A of this Article, only an amount with respect to debts owed to a creditor that is a person that is not connected with the debtor will be excluded from the Constituent Entity Income or Loss and only to the extent of the lesser of any of the following:
1. The excess of the debtor's liabilities over the fair market value of its assets determined immediately before the debt release.
  2. The reduction in the debtor's tax attributes under the tax laws of the debtor's jurisdiction resulting from the debt release.
- C. An election under Paragraph A of this Article is an Annual Election which can be made in accordance with Article 20 of the Law.

## **Article 20: Adjustments in Respect of Dividends from Portfolio Shareholdings**

- A. A Filing Constituent Entity may make an election in respect of each of the Constituent Entities located in the Kingdom which are members of the same Multinational Enterprise Group, to include all dividends received by the Constituent Entity with respect to Portfolio Shareholdings, regardless of whether these are Short-term Portfolio Shareholdings, in their Constituent Entity Income or Loss computation, notwithstanding the adjustment for Excluded Dividends that would apply in the

absence of this election.

- B. Where the election under Paragraph A of this Article is made, any expense in relation to movements in insurance reserves related to Excluded Dividends from securities held on behalf of policyholders shall not be deducted in computing Constituent Entity Income or Loss.
- C. The election referred to in Paragraph A of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law.

## **Article 21: Equity Investment Inclusion Election**

- A. At the election of the Filing Constituent Entity in relation to Constituent Entities located in the Kingdom holding Ownership Interests other than Qualified Ownership Interests, all of the following shall apply:
  - 1. The Constituent Entities shall include in their Constituent Entity Income or Loss the accounting gain, profit, or loss, adjusted as required by Paragraph A of [Article 12](#) of these Regulations with the exception of any adjustment described in Clause 3 of Paragraph A of [Article 12](#) of these Regulations, with respect to any of the following:
    - a. Fair value gains and losses and impairments on the Ownership Interests where the owner is taxable on a mark-to-market basis or on the impairment, and the tax consequences of the mark-to-market movements or impairments on Ownership Interests are reflected in the tax expense, or the owner is taxable on a realisation basis and the tax expense includes deferred tax expense on the mark-to-market movement or impairments on the Ownership Interests.

- b. Profit and loss attributable to the Ownership Interests other than Qualified Ownership Interests, where the interest is in a Tax Transparent Entity and the owner accounts for the Ownership Interests using the equity method.
    - c. Dispositions of the Ownership Interests which give rise to gains or losses that are included in the owner's Taxable Profit or Loss, excluding any gain fully offset, and the proportionate share of any gain partially offset, by any deduction or other similar relief on that gain.
  - 2. The Constituent Entities shall, notwithstanding Clause 1 of Paragraph B of [Article 31](#) and Clause 1 of Paragraph C of [Article 33](#) of these Regulations, include all current and deferred tax expenses in respect of the amounts referred to in Clause 1 of this Paragraph in the calculation of their Adjusted Covered Tax.
- B. All of the following shall apply in relation to the election in Paragraph A of this Article:
- 1. The election shall apply to all Ownership Interests held by all Constituent Entities of the Multinational Enterprise Group which are located in the Kingdom, but shall not apply to any Portfolio Shareholdings owned by the Constituent Entities.
  - 2. The election is a Five-Year Election which can be made in accordance with Article 20 of the Law.
- C. Paragraphs D to N of this Article shall apply to Qualified Flow-through Tax Benefits that flow through a Qualified Ownership Interest to which the election under Paragraph A of this Article applies.
- D. Subject to Paragraphs K and L of this Article, where the election under Paragraph A of this Article applies, Qualified Flow-through Tax Benefits shall be added to the Adjusted Covered Taxes of a Constituent Entity that is the direct owner of a Qualified Ownership Interest, or indirect owner held via Tax Transparent Entities that are not Constituent Entities of the Multinational Enterprise Group, to the extent that the Qualified Flow-through Tax Benefit was treated as reducing tax expense accrued

in the Financial Accounting Net Income or Loss of the Constituent Entity.

- E. Subject to Paragraphs K and L of this Article, a Constituent Entity's investment in a Qualified Ownership Interest shall be treated as being reduced by receipts with respect to the Qualified Ownership Interest in respect of any of the below, provided that no amount shall be treated as reducing the investment to the extent that it would reduce the investment to below zero:
1. The amount of tax credits that have flowed through to the Constituent Entity.
  2. The amount of any tax-deductible losses that have flowed through to the Constituent Entity multiplied by the nominal rate applicable to the Constituent Entity.
  3. The amount of any distributions to the Constituent Entity, including returns of capital.
  4. The amount of proceeds from a sale of all or part of the Qualified Ownership Interest.
- F. Subject to paragraph G of this Article, any amount referred to in Clauses 1 to 4 of Paragraph E of this Article that flows through, or are received in respect of, a Qualified Ownership Interest, after the Constituent Entity's investment has been reduced to zero, shall be subtracted in the calculation of that Constituent Entity's Adjusted Covered Taxes.
- G. An amount referred to in Clauses 3 and 4 of Paragraph E of this Article or a Qualified Refundable Tax Credit shall be subtracted in the calculation of a Constituent Entity's Adjusted Covered Taxes only to the extent of the amount of any Qualified Flow-through Tax Benefits that flowed through the Qualified Ownership Interest and that were treated as an addition in the calculation of that a Constituent Entity's Adjusted Covered Taxes.
- H. A Qualified Ownership Interest means an investment in a Tax Transparent Entity that satisfies all of the following conditions:

1. Either of the following apply:
  - a. The investment in the Tax Transparent Entity is treated as an equity interest for local tax purposes.
  - b. The Tax Transparent Entity would be treated as an equity interest under an Authorised Financial Accounting Standard in the jurisdiction in which the Tax Transparent Entity operates.
2. The assets, liabilities, income, expenses, and cash flows of the Tax Transparent Entity are not consolidated on a line-by-line basis in the Consolidated Financial Statements of the Multinational Enterprise Group.
3. Both of the following apply:
  - a. The total return with respect to that Ownership Interest, excluding tax credits other than Qualified Refundable Tax Credits, is, at the time the investment is entered into, expected to be less than the total amount invested by the owner of the Ownership Interest such that a portion of the investment will be returned in the form of tax credits other than Qualified Refundable Tax Credits.
  - b. The investor has a genuine economic interest in the Tax Transparent Entity and is not protected from loss of its investment.
- I. Notwithstanding Paragraph H of this Article, a Qualified Ownership Interest shall not include an investment in a Tax Transparent Entity where a jurisdiction only permits the benefits of a tax credit to be transferred through such investment when the Entity that originates the tax credits or investor is subject to a Qualified Income Inclusion Rule (IIR) or Qualified Undertaxed Payments Rule (UTPR).
- J. A Qualified Flow-through Tax Benefit means any amount of tax credits, other than Qualified Refundable Tax Credits, and tax-deductible losses multiplied by the nominal rate applicable to the

owner of a Qualified Ownership Interest, that flow through a Qualified Ownership Interest in a Tax Transparent Entity to the extent that it reduces the owner's investment in the Qualified Ownership Interest pursuant to Paragraph E of this Article.

- K. Where a Constituent Entity uses the Proportional Method of Accounting for its investment in a Qualified Ownership Interest, the Constituent Entity shall apply that method of accounting such that any of the amounts specified in Clauses 1 to 4 of Paragraph E of this Article that flow-through or are received in respect of a Qualified Ownership Interest shall be treated as a reduction to the investment in the Qualified Ownership Interest in proportion to the Expected Tax Benefits Ratio.
- L. The amounts specified in Clauses 1 to 4 of Paragraph E of this Article that flow-through or are received in respect of the Qualified Ownership Interest in excess of the reduction to the investment in the Qualified Ownership Interest pursuant to K of this Article shall not be included as a positive amount in the Constituent Entity's Adjusted Covered Taxes.
- M. On the making of an election by a Filing Constituent Entity, where the Entity concerned holds a Qualified Ownership Interest but does not use the Proportional Amortisation Method of Accounting, the Entity may apply Paragraphs K and L of this Article as if it used the Proportional Amortisation Method of Accounting in respect of its Qualified Ownership Interest.
- N. An Expected Tax Benefit Ratio means the ratio of the amount of tax credits, and the amount of any tax-deductible losses multiplied by the nominal rate applicable to the owner of the Qualified Ownership Interest, that flowed through, or are received, in respect of the Qualified Ownership Interest in the Fiscal Year to the total of such items that are expected to flow-through or be received in respect of the Qualified Ownership Interest over the term of the investment.
- O. Proportional Amortisation Method of Accounting means an accounting method whereby an investor adjusts its tax expense by the net benefit that flows through a Qualified Ownership Interest each Fiscal Year, where all of the following apply:

1. The net benefit is determined based on the excess of the tax benefits that flow-through the Qualified Ownership Interest during the Fiscal Year, over the proportional amount of the investment.
  2. The proportional amount of the investment is determined based on the total investment multiplied by the ratio of the tax benefits that flow-through the Qualified Ownership Interest during the Fiscal Year to the total tax benefits expected to flow-through the Qualified Ownership Interest over the term of the investment.
- P. The election under Paragraph M of this Article must be made by the Filing Constituent Entity for a Qualified Ownership Interest in the first Fiscal Year in which the investor acquired the interest or became subject to this Law. The election under Paragraph M is an irrevocable election that shall remain in effect for all subsequent Fiscal Years.

## **Article 22: Treatment of Financial Instruments**

- A. A financial instrument issued by a Constituent Entity to a Constituent Entity which is a member of the same Multinational Enterprise Group shall be classified as debt or equity consistently for both the issuer and the holder of the financial instrument and accounted for accordingly in the computation of their Constituent Entity Income or Loss.
- B. Where the Constituent Entities have classified a financial instrument differently, the classification adopted by the issuer of the financial instrument shall be used by the issuer and the holder of the financial instrument in computing Constituent Entity Income or Loss.

## **Article 23: Treatment of Marketable Transferable Tax Credits and Qualified Refundable Tax Credits**

- A. The amount of tax credits available in respect of Qualified Refundable Tax Credits and Marketable Transferable Tax Credits shall be treated as income in the computation of Constituent Entity Income or Loss for the Fiscal Year during which such entitlements first accrue.
- B. Where a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit is related to the acquisition, or construction, of an asset, and the Constituent Entity that has the benefit of the tax credit has an accounting policy of either reducing the carrying value of the asset in respect of such a tax credit, or recognising the tax credit as deferred income over the productive life of that asset, that Constituent Entity may, for the purposes of determining its Constituent Entity Income or Loss for a Fiscal Year, follow that accounting policy.

## **Article 24: Consolidation Adjustments**

- A. On behalf of an Ultimate Parent Entity located in the Kingdom, the Filing Constituent Entity may elect to apply its consolidated accounting treatment to eliminate income, expenses, gains and losses from transactions between Constituent Entities that are located in the Kingdom and included in a tax consolidation group, for the purposes of determining the Constituent Entity Income or Loss of such Constituent Entities.
- B. Adjustments shall be made to the Constituent Entity Income or Loss of any Constituent Entities to which the election under Paragraph A of this Article applies, for the Fiscal Year in respect of which the election is made or revoked so that no items are taken into account more than once or omitted as a result of the election.
- C. The election referred to in Paragraph A of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law.

## **Article 25: Adjustments in Respect of Additional Tier One Capital**

- A. Any amount recognised as a decrease to the equity of a Constituent Entity located in the Kingdom which relates to distributions paid or payable in respect of Additional Tier One Capital shall be treated as an expense for the purposes of determining the Constituent Entity Income or Loss for that Fiscal Year.
- B. Any amount recognised as an increase to the equity of a Constituent Entity located in the Kingdom which relates to distributions received or due in respect of Additional Tier One Capital shall be treated as income for the purposes of determining the Constituent Entity Income or Loss for that Fiscal Year.

## **Article 26: Adjustments for Insurance Companies**

- A. A Constituent Entity located in the Kingdom that is an insurance company shall make the adjustments in accordance with Paragraphs B, C, D and E of this Article for the purposes of determining its Constituent Entity Income or Loss.
- B. The Constituent Entity shall exclude any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders.
- C. The Constituent Entity shall include returns to policyholders that are not reflected in its Financial Accounting Net Income or Loss to the extent that the corresponding change in liability to the policyholders is reflected in its Financial Accounting Net Income or Loss.
- D. The Constituent Entity shall not deduct any expense related to the movement in its reserves where both of the following apply:
  - 1. Such movement economically matches an Excluded Dividend, net of any investment management fee.

2. The dividend income is derived from a security held by the insurance company on behalf of a policyholder.
- E. The Constituent Entity shall not deduct any expense related to the movement in its reserve where such movement relates to an Excluded Dividend or to an Excluded Equity Gain or Loss derived from a security held by the insurance company on behalf of a policyholder.

## **Article 27: International Shipping Income Exclusion**

- A. For the purposes of applying the provisions of Paragraph C of [Article 12](#) of these Regulations, where the Constituent Entity can demonstrate that the strategic or commercial management of all ships concerned is effectively carried on from within the Kingdom, International Shipping Income and Qualified Ancillary International Shipping Income shall be excluded for the purposes of determining the Constituent Entity Income or Loss.
- B. Where the computation of a Constituent Entity's International Shipping Income and Qualified Ancillary International Shipping Income results in a loss, the loss shall be excluded from the computation of its Constituent Entity Income or Loss.
- C. For the purposes of applying the provisions of this Article, International Shipping Income is the net income derived from International Shipping Activities.
- D. International Shipping Activities means any of the following:
  1. The transportation of passengers or cargo by ships operated by the Constituent Entity in international traffic, whether the ship is owned, leased or otherwise at the disposal of the Constituent Entity.

2. The transportation of passengers or cargo by ships operated in international traffic under slot-chartering arrangements.
  3. Leasing a ship, to be used for the transportation of passengers or cargo in international traffic, on charter fully equipped, crewed and supplied.
  4. Leasing a ship on a bare boat charter basis, for the use of transportation of passengers or cargo in international traffic, to another Constituent Entity in the same Multinational Enterprise Group.
  5. The participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ships in international traffic.
  6. The sale of a ship used for the transportation of passengers or cargo in international traffic provided that the ship has been held for use by the Constituent Entity for a minimum of one year.
- E. For the purposes of applying the provisions of Paragraph D of this Article, International Shipping Activity shall not include the transportation of passengers or cargo by ships via inland waterways within the Kingdom.
- F. For the purposes of applying the provisions of this Article, Qualified Ancillary International Shipping Income is the net income derived from Qualified Ancillary International Shipping Activities.
- G. Qualified Ancillary International Shipping Activity means any of the following activities that are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic:
1. Leasing a ship on a bare boat charter basis to another shipping enterprise that is not a Constituent Entity, provided that the charter does not exceed three years.

2. Sale of tickets issued by other shipping enterprises for the domestic leg of an international voyage.
  3. Leasing and short-term storage of containers or detention charges for the late return of containers.
  4. Provision of services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel.
  5. Investment income where the investment that generates the income is made as an integral part of the carrying on the business of operating the ships in international traffic.
- H. For the purposes of applying the provisions of Paragraph A of this Article, if the aggregated Qualified Ancillary International Shipping Income of all Constituent Entities located in the Kingdom exceeds 50% of the aggregated International Shipping Income of such Constituent Entities, the Qualified Ancillary International Income of all such Constituent Entities shall be limited to 50% of such aggregated International Shipping Income.
- I. For the purposes of computing International Shipping Income and Qualified Ancillary International Shipping Income all of the following shall apply:
1. Costs incurred by a Constituent Entity that are directly attributable to International Shipping Activities or to Qualified Ancillary International Shipping Activities shall be allocated to these activities and deducted from the revenue earned from such activities.
  2. Costs incurred by a Constituent Entity that are indirectly attributable to International Shipping Activities or to Qualified Ancillary International Shipping Activities shall be allocated to these activities and deducted from the revenue earned from these activities on the basis of the revenues earned by the Constituent Entity from these activities in proportion to its total revenues.

## **Article 28: Covered Taxes**

- A. For the purposes of applying the provisions of Paragraph A of Article 7 of the Law, Covered Taxes shall not include any of the following amounts:
1. Taxes accrued by a Parent Entity under a Qualified Income Inclusion Rule (IIR).
  2. Taxes accrued by a Constituent Entity under a Qualified Domestic Minimum Top-Up Tax.
  3. Taxes attributable to an adjustment made by a Constituent Entity as a result of the application of a Qualified Undertaxed Payments Rule (UTPR).
  4. A Disqualified Refundable Imputation Tax.
  5. Taxes paid by an insurance company in respect of returns to policyholders.
  6. Tax imposed under the Law.
- B. Covered Taxes in respect of any net gain or loss arising from the disposal of immovable property located in the Kingdom in the Fiscal Year for which the election under Paragraph A of [Article 17](#) of these Regulations is made shall be excluded from the computation of Covered Taxes.

## **Article 29: Allocation of Covered Taxes**

- A. Covered Taxes included in the financial accounts of a Constituent Entity and relate to the Constituent Entity Income or Loss of that Constituent Entity's Permanent Establishment shall be allocated to that Permanent Establishment.
- B. Covered Taxes included in the financial accounts of a Tax Transparent Entity with respect to Constituent Entity Income or Loss allocated to its Constituent Entity-owners in accordance with

Paragraph D of [Article 11](#) of these Regulations shall be allocated to such Constituent Entity-owners.

- C. Covered Taxes that are included in the financial accounts of a Constituent Entity-owner and relate to taxes paid under a Controlled Foreign Company Tax Regime on the Constituent Entity-owner's share of the Constituent Entity's income shall be allocated to the Constituent Entity.
- D. Covered Taxes that are included in the financial accounts of a Constituent Entity-owner and relate to the Constituent Entity Income or Loss of a Hybrid Entity shall be allocated to the Hybrid Entity.
- E. Notwithstanding Paragraphs C and D of this Article, a Constituent Entity that is allocated Covered Taxes under Paragraphs C and D of this Article in respect of its Passive Income shall include in its Adjusted Covered Taxes in relation an amount equal to the lesser of the following:
  - 1. The Covered Taxes allocated in respect of such Passive Income.
  - 2. An amount determined in accordance with the formula  $(A \times B)$  where:
    - A: The Additional Tax Rate for the Fiscal Year determined without regard to Covered Taxes incurred with respect to such Passive Income by the Constituent Entity-owner.
    - B: The amount of the Constituent Entity's Passive Income that is included under a Controlled Foreign Company Tax Regime or a fiscal transparency rule.
- F. Any Covered Taxes of the Constituent Entity-owner incurred with respect to Passive Income that remains after the application of Paragraph E of this Article shall not be allocated under Paragraphs C and D of this Article.
- G. Covered Taxes accrued in the financial accounts of a Constituent Entity's direct owner on a distribution from the Constituent Entity that has been made during the Fiscal Year shall be allocated to the Constituent Entity that made the distribution.

H. Where Constituent Entity Income of a Permanent Establishment is treated as Constituent Entity Income of the Main Entity in accordance with Paragraph H of [Article 10](#) of these Regulations, any Covered Taxes arising in the jurisdiction where the Permanent Establishment is located which is related to such income shall be treated as Covered Taxes of the Main Entity up to an amount determined in accordance with the formula  $(C \times D)$  where:

C: The amount of Constituent Entity Income of the Permanent Establishment which is treated as Constituent Entity Income of the Main Entity in accordance with Paragraph H of [Article 10](#) of these Regulations.

D: The highest rate of income taxes on ordinary income in the jurisdiction in which the Main Entity is located.

### **Article 30: Adjusted Covered Taxes**

For the purposes of applying the provisions of Paragraph B of Article 7 of the Law, the Adjusted Covered Taxes of a Constituent Entity for a Fiscal Year shall be determined by adjusting the sum of the current tax expense accrued in the Financial Accounting Net Income or Loss with respect to Covered Taxes for the Fiscal Year by all of the following where applicable:

1. The net amount of its additions and reductions to Covered Taxes for the Fiscal Year as determined under Paragraphs A and B of [Article 31](#) of these Regulations.
2. The Total Deferred Tax Adjustment Amount as determined under [Article 33](#) of these Regulations.
3. Any increase or decrease in Covered Taxes recorded in equity or Other Comprehensive Income relating to amounts included in the computation of Constituent Entity Income or Loss that will be subject to tax under local tax rules.

## **Article 31: Additions to and Reductions in Covered Taxes**

- A. For the purposes of applying the provisions of Clause 1 of [Article 30](#) of these Regulations, additions to Covered Taxes of a Constituent Entity for the Fiscal Year shall include all of the following where applicable:
1. Any amount of Covered Taxes accrued as an expense in the profit before taxation in the financial accounts of the Constituent Entity.
  2. Any amount of Constituent Entity Loss Deferred Tax Asset that has been used by the Constituent Entity under the provisions of [Article 35](#) of these Regulations.
  3. Any amount of Covered Taxes that is paid in the Fiscal Year and that relates to an uncertain tax position where that amount has been treated for a previous Fiscal Year as a reduction to Covered Taxes under Paragraph B of this Article.
  4. Any amount of credit or refund in respect of a Qualified Refundable Tax Credit that is recorded as a reduction to the current tax expense.
- B. For the purposes of applying the provisions of Clause 1 of [Article 30](#) of these Regulations, the reductions to Covered Taxes of a Constituent Entity for the Fiscal Year is the sum of any of the following:
1. The amount of current tax expense with respect to income excluded from the computation of Constituent Entity Income or Loss except when the Constituent Entity is a Pension Fund and the current expense relates to a pension surplus.
  2. Any amount of credit or refund in respect of a Non-Qualified Refundable Tax Credits that is not recorded as a reduction to the current tax expense.

3. Any amount of tax refund or credit, except for a Qualified Refundable Tax Credit or Marketable Transferable Tax Credit, that is not included in the current tax expense in the financial accounts.
4. The amount of current tax expense which relates to an uncertain tax position.
5. Any amount of current tax expense that is not expected to be paid within three years of the last day of the Fiscal Year.
6. The amount received by the originator of a non-marketable transferable tax credit in exchange for the credit.
7. Any excess received by the purchaser of the face value of a non-marketable transferable tax credit over its purchase price in proportion to the amount of the credit used to satisfy its liability for a Covered Tax.
8. The amount of any gain received by the purchaser on the transfer of a non-marketable transferrable tax credit provided the transfer occurs during the Fiscal Year concerned.

## **Article 32: Additional Provisions Relating to Computation of Adjusted Covered Taxes**

Where an amount of Covered Tax is mentioned in more than one of the Clauses within [Article 30](#) and Paragraph A or B of [Article 31](#) of these Regulations, the current tax expense shall only be adjusted once in the computation of Adjusted Covered Taxes of a Constituent Entity for a Fiscal Year.

## **Article 33: Temporary Differences**

- A. For the purposes of applying the provisions of [Article 30](#) of these Regulations, the Total Deferred Tax Adjustment Amount of a Constituent Entity for a Fiscal Year is equal to the deferred tax expense accrued in the Financial Accounting Net Income or Loss of the Constituent Entity for that Fiscal Year,

subject to the adjustments specified in Paragraphs B to K of this Article.

- B. Where the tax rate applied for the purposes of computing the deferred tax expense in the financial accounts of the Constituent Entity for a Fiscal Year is greater than the Minimum Rate, the deferred tax expense shall be recomputed at the Minimum Rate.
- C. The Deferred Tax Adjustment Amount of a Constituent Entity for a Fiscal Year shall not include any of the following:
  - 1. The amount of deferred tax expense related to items excluded from the computation of the Constituent Entity Income or Loss.
  - 2. The amount of deferred tax expense with respect to a Disallowed Accrual and an Unclaimed Accrual which have not been paid during the Fiscal Year.
  - 3. The impact of a valuation adjustment or Accounting Recognition adjustment with respect to a deferred tax asset.
  - 4. The amount of deferred tax expense resulting from a remeasurement with respect to a change in the applicable tax rate in the Kingdom.
  - 5. The amount of deferred tax expense with respect to the generation and use of tax credits.
- D. Where a Constituent Entity has not recognised a loss deferred tax asset in its financial accounts because the recognition criteria are not met, the Total Deferred Tax Adjustment Amount shall be reduced by the amount that would have been reduced had the loss deferred tax asset for the Fiscal Year been recognised.

- E. The Total Deferred Tax Adjustment Amount of a Constituent Entity for a Fiscal Year shall be increased by all of the following:
1. Any amount of a Disallowed Accrual paid during the Fiscal Year.
  2. Any amount of an Unclaimed Accrual paid during the Fiscal Year.
  3. Any amount of a Recaptured Deferred Tax Liability determined in a preceding Fiscal Year in accordance with Paragraphs H and I of this Article which has been paid during the Fiscal Year.
- F. For the purposes of applying the provisions of Clause 2 of Paragraph C and Clause 1 of Paragraph E of this Article, a Disallowed Accrual means any movement in deferred tax expense accrued in the financial accounts of a Constituent Entity which relates to an uncertain tax position or to distributions from a Constituent Entity.
- G. For the purposes of applying the provisions of Clause 2 of Paragraph C and Clause 2 of Paragraph E of this Article, an Unclaimed Accrual means any increase in a deferred tax liability recorded in the financial accounts of a Constituent Entity for a Fiscal Year that is not expected to be paid within five subsequent Fiscal Years from the end of the Fiscal Year in which it arose and for which the Filing Constituent Entity makes an Annual Election in accordance with Article 20 of the Law not to include in the Total Deferred Tax adjustment Amount for that Fiscal Year.
- H. A deferred tax liability that is not a Recapture Exception Accrual and that has not been paid within five years of the end of the Fiscal Year in which it arose shall be treated as a Recaptured Deferred Tax Liability under Paragraph I of this Article to the extent that it was taken into account in determining the Total Deferred Tax Adjustment Amount of the Constituent Entity.
- I. The amount of the Recaptured Deferred Tax Liability determined for the current Fiscal Year shall be treated as a reduction to the Covered Taxes for the Fiscal Year which falls five Fiscal Years before the current Fiscal Year and the Effective Tax Rate and Top-up Tax of that Fiscal Year shall be recomputed

in accordance with [Article 50](#) of these Regulations.

- J. For the purposes of Paragraph H of this Article, a Recapture Exception Accrual means an amount of tax expense accrued in the financial accounts of a Constituent Entity that is attributable to changes in associated deferred tax liabilities in respect of any of the following:
1. Cost recovery allowances on tangible assets.
  2. The cost of a license or similar arrangement from a government for the use of immovable property or exploitation of natural resources which entails significant investment in tangible assets.
  3. Research and development expenses.
  4. De-commissioning and remediation expenses.
  5. Fair value accounting on unrealised net gains.
  6. Foreign currency exchange net gains.
  7. Insurance reserves and insurance policy deferred acquisition costs.
  8. Gains from the sale of tangible property located in the same jurisdiction as the Constituent Entity that are reinvested in tangible property in the same jurisdiction.
  9. Additional amounts accrued as a result of accounting principle changes with respect to any item referred to in Clauses 1 to 8 of this Paragraph.
- K. Where a deferred tax asset attributable to a Constituent Entity Loss has been recorded for a Fiscal Year at a rate lower than the Minimum Rate, the deferred tax asset shall be recomputed at the

Minimum Rate and the Total Deferred Tax Adjustment Amount shall be reduced accordingly provided that the Constituent Entity can demonstrate that the deferred tax asset is attributable to a Constituent Entity Loss.

### **Article 34: Impact of Divergences in Carrying Values**

- A. For the purposes of determining a Constituent Entity's Adjusted Covered Taxes and Total Deferred Tax Adjustment Amount, where the Constituent Entity is subject to an election under [Article 14](#) of these Regulations, any deferred tax expense or benefit related to stock-based compensation shall be computed in accordance with the stock-based compensation amount included in the Constituent Entity Income or Loss.
- B. Where a Constituent Entity is subject to an election under Paragraph A of [Article 16](#) of these Regulations, any deferred tax expense for the purposes of determining the Constituent Entity's Adjusted Covered Taxes shall be computed based on the carrying value of the relevant asset at the later of the following dates:
  - 1. The first day of the Fiscal Year in which the election is made.
  - 2. The date on which the asset was acquired.
- C. For the purposes of determining a Constituent Entity's Adjusted Covered Taxes and Total Deferred Tax Adjustment Amount, any deferred tax asset or liability in relation to an asset or liability which has been acquired by the Constituent Entity and to which [Article 13](#) of these Regulations applies shall be computed based on the acquired asset's or liability's carrying value determined in accordance with the provisions of the Law and these Regulations.
- D. For the purposes of determining an acquiring Constituent Entity's Total Deferred Tax Adjustment Amount, the carrying value of the assets and liabilities to which Paragraph I of [Article 38](#) of these

Regulations applies shall be computed based on the carrying value.

- E. For the purposes of determining a Constituent Entity's Total Deferred Tax Adjustment Amount, the carrying value of an asset or liability to which Paragraph B, C or F of [Article 39](#) of these Regulations applies shall be computed based on the carrying value of the asset or liability initially determined under [Article 39](#) of these Regulations and accounted for in subsequent Fiscal Years by applying the relevant Accounting Standard.

### **Article 35: Loss Election**

- A. [Article 33](#) of these Regulations shall not apply where a Filing Constituent Entity makes an election under this Article which shall be called a Loss Election.
- B. Where a Loss Election is made, a Constituent Entity Loss Deferred Tax Asset shall be determined for each Fiscal Year in which the Constituent Entities located in the Kingdom which are members of the same Multinational Enterprise Group derive a Net Constituent Entity Loss.
- C. For the purposes of applying the provisions of Paragraph B of this Article, the Constituent Entity Loss Deferred Tax Asset in the Kingdom in respect of a Fiscal Year shall be determined in accordance with the formula (A x B) where:
  - A: The Net Constituent Entity Loss for the Fiscal Year.
  - B: The Minimum Rate.
- D. A Constituent Entity Loss Deferred Tax Asset in respect of a Fiscal Year shall be used in any subsequent Fiscal Year in which the Constituent Entities located in the Kingdom which are members of the same Multinational Enterprise Group derive Net Constituent Entity Income.
- E. For the purposes of applying the provisions of Paragraph D of this Article, the amount of Constituent Entity Loss Deferred Tax Asset that shall be used shall be the lesser of:

1. The amount of Constituent Entity Loss Deferred Tax Asset that is available.
2. An amount determined in accordance with the formula  $(C \times D)$  where:
  - C: The Net Constituent Entity Income for the Fiscal Year.
  - D: The Minimum Rate.
- F. The Constituent Entity Loss Deferred Tax Asset shall be reduced by the amount that is used for a Fiscal Year in accordance with Paragraphs D and E of this Article and the balance remaining, if any, shall be carried forward to subsequent Fiscal Years.
- G. Where the Loss Election is revoked all of the following shall apply:
  1. Any remaining Constituent Entity Loss Deferred Tax Asset shall be reduced to zero as at the first day of the Fiscal Year in which the Loss Election is no longer applicable.
  2. The deferred tax assets and deferred tax liabilities of the Constituent Entities located in the Kingdom that are members of the same Multinational Enterprise Group shall be taken into account as if they had been computed in accordance with [Article 33](#) and [Article 91](#) of these Regulations for the prior Fiscal Year.
- H. Subject to Paragraph I of this Article, the Loss Election shall be made by the Filing Constituent Entity in the Tax Return in the first Fiscal Year in which the Multinational Enterprise Group has a Constituent Entity located in the Kingdom for which an election is made.
- I. Where the Loss Election applies to a Flow-through Entity that is an Ultimate Parent Entity of a Multinational Enterprise Group, the Constituent Entity Loss Deferred Tax Asset shall be computed in accordance with Paragraphs B to G of this Article, after the reduction is applied pursuant to

Paragraphs C and D of [Article 58](#) of these Regulations.

- J. The election referred to in Paragraph A of this Article is an Annual Election which can be made in accordance with Article 20 of the Law.

### **Article 36: Post-Filing Adjustments**

- A. An adjustment to Covered Taxes for a previous Fiscal Year of a Constituent Entity located in the Kingdom recorded in its financial accounts shall be treated as an adjustment to Covered Taxes in the Fiscal Year in which the adjustment is made, unless the adjustment relates to a Fiscal Year in which there is a decrease in Covered Taxes of the Constituent Entity located in the Kingdom.
- B. Subject to Paragraph C of this Article, where a decrease in Covered Taxes included in the Adjusted Covered Taxes of a Constituent Entity located in the Kingdom for a previous Fiscal Year arises, all of the following clauses shall apply:
1. Effective Tax Rate and Tax Due for such Fiscal Year shall be recomputed by reducing Adjusted Covered Taxes by the amount of the decrease in Covered Taxes.
  2. The Constituent Entity Income for that Fiscal Year and any previous Fiscal Years shall be adjusted accordingly.
- C. On the making of an Annual Election by the Filing Constituent Entity in accordance with Article 20 of the Law, when there is an aggregate reduction of less than EUR 1 million in the Adjusted Covered Taxes determined for the jurisdiction for a Fiscal Year, the decrease in Covered Taxes may be treated as an adjustment to Covered Taxes in the Fiscal Year in which the adjustment is made.
- D. The amount of deferred tax expense resulting from a reduction to the applicable domestic tax rate shall be treated as an adjustment to Covered Taxes for a previous Fiscal Year of a Constituent Entity located in the Kingdom when such reduction results in the application of a rate that is less than the

Minimum Rate.

- E. Where a deferred tax expense was recorded in the financial accounts of a Constituent Entity at a rate lower than the Minimum Rate, and the applicable tax rate is increased in a subsequent Fiscal Year, the amount of deferred tax expense that results from such increase shall be treated, upon payment of the related tax, as an adjustment to a Constituent Entity's liability for Covered Taxes claimed for the previous Fiscal Year in which the deferred tax expense was recorded.
- F. The adjustment under Paragraph E of this Article shall not exceed an amount equal to the deferred tax expense recomputed at the Minimum Rate.
- G. Where more than EUR 1 million of the amount incurred by a Constituent Entity as a current tax expense and included in Adjusted Covered Taxes for a Fiscal Year is not paid within three years after the end of that Fiscal Year, the Effective Tax Rate and Tax for the Fiscal Year in which the unpaid amount was included as a Covered Tax shall be recomputed by excluding such unpaid amount from the Adjusted Covered Taxes.

## **Chapter Five: Restructuring and Holding Structures**

### **Article 37: Consolidated Revenue Test for Group Mergers and Demergers**

- A. Where two or more Groups merge to form a single Group in any of the last four consecutive Fiscal Years immediately preceding a Fiscal Year, the Revenue Test, shall be deemed to be met for any Fiscal Year prior to the Merger if the sum of the revenue included in each of their Consolidated Financial Statements for that Fiscal Year is equal to or exceeds EUR 750 million.
- B. For the purposes of applying the provisions of this Article, any income or expenses relating to transactions between the Groups during years prior to the merger are not taken into account when computing the sum of the revenue.
- C. Where an Entity that is not a member of a Group (the Acquired Entity) merges with an Entity or a Group (the Acquiring Entity) in a Fiscal Year, and either the Acquired Entity or the Acquiring Entity do not have Consolidated Financial Statements in any of the four Fiscal Years preceding that Fiscal Year, the Revenue Test shall be deemed to be met for that Fiscal Year if the sum of the revenue included in each of their financial statements or Consolidated Financial Statements for that Fiscal Year is equal to or exceeds EUR 750 million.
- D. For the purposes of applying the provisions of Paragraph A of this Article, where an Acquired Entity merges with an Acquiring Entity and the Fiscal Years of the Acquired Entity and Acquiring Entity prior to the merger do not align, the revenue of the merged Group shall be computed by aggregating the revenue of the relevant Entities of the financial period that ends with or within the fiscal period that the Group uses after the merger.
- E. Where a single Multinational Enterprise Group with Constituent Entities within the scope of the Model Rules or the Law demerges into two or more Groups (each a Demerged Group), the Revenue

Test shall be deemed to be met by a Demerged Group where all of the following apply:

1. With respect to the first Fiscal Year ending after the Fiscal Year in which the demerger took place, the Demerged Group has an annual revenue of EUR 750 million or more in that Fiscal Year.
2. With respect to the second to fourth Fiscal Years ending after the Fiscal Year in which the demerger took place, the Demerged Group has an annual revenue of EUR 750 million or more in at least two the Fiscal Years following the year of the demerger.

### **Article 38: Constituent Entities Joining or Leaving the Multinational Enterprise Group**

- A. For the purposes of applying the provisions of this Article, a Target Entity means an Entity to which either of the following applies during a Fiscal Year (the Acquisition Year):
  1. The Entity becomes or ceases to be a Constituent Entity of a Multinational Enterprise Group as a result of a transfer of direct or indirect Ownership Interests in the Entity.
  2. The Entity becomes the Ultimate Parent Entity of a new Group.
- B. A Target Entity shall be treated as a member of a Multinational Enterprise Group during the Acquisition Year provided that a portion of its assets, liabilities, income, expenses and cash flow is included on a line-by-line basis in the Consolidated Financial Statements of the Ultimate Parent Entity.
- C. In the Acquisition Year, a Multinational Enterprise Group shall take into account only the Financial Accounting Net Income or Loss and Adjusted Covered Taxes of the Target Entity that are included in the Consolidated Financial Statements of the Ultimate Parent Entity.

- D. In the Acquisition Year and each subsequent Fiscal Year, the Constituent Entity Income or Loss and Adjusted Covered Taxes of the Target Entity shall be based on the historical carrying value of its assets and liabilities adjusted for depreciation and amortisation as well as additions, capitalised expenditure and disposals.
- E. For the purposes of Article 10 of the Law, the following shall apply in relation to the calculation of the Substance-based Income Exclusion in an Acquisition Year:
1. Eligible Payroll Costs of the Target Entity shall be taken into account only if such costs are included in the Consolidated Financial Statements of the Ultimate Parent Entity.
  2. The carrying value of the Eligible Tangible Assets of the Target Entity shall be adjusted in proportion to the period in which the Target Entity was a member of the Multinational Enterprise Group during the Acquisition Year.
- F. With the exception of the Constituent Entity Loss Deferred Tax Asset, the deferred tax assets and deferred tax liabilities of a Target Entity that are transferred from one Multinational Enterprise Group to another shall be taken into account by the Multinational Enterprise Group which has acquired the Target Entity in the same manner and to the same extent as if the Multinational Enterprise Group held a Controlling Interest in the Target Entity when such assets and liabilities arose.
- G. For the purposes of determining the amount of the Recaptured Deferred Tax Liability under Paragraphs H and I of [Article 33](#) of these Regulations, where a deferred tax liability of a Target Entity has previously been included in its Total Deferred Tax Adjustment Amount, it shall be treated as reversed in the Acquisition Year by the Multinational Enterprise Group which disposes of the Target Entity and shall be treated as arising in the Acquisition Year by the Multinational Enterprise Group which acquires the Target Entity.
- H. Where Paragraph G of this Article applies, any subsequent reduction of Covered Taxes in accordance with Paragraphs H and I of [Article 33](#) of these Regulations shall have effect in the year in which the

amount is recaptured.

- I. Notwithstanding Paragraphs B to H of this Article, the acquisition or disposal of a Controlling Interest in a Target Entity shall be treated as an acquisition or disposal of assets and liabilities under [Article 39](#) of these Regulations where all of the following apply to the jurisdiction in which the Target Entity is located:
1. The jurisdiction treats the acquisition or disposal of a Controlling Interest in the Target Entity in the same, or in a similar manner, as an acquisition or disposal of assets and liabilities.
  2. The jurisdiction imposes a Covered Tax on the seller based on the difference between the tax basis and either the consideration paid in exchange for the Controlling Interest or the fair value of the assets and liabilities.
- J. For the purposes of Paragraph I of this Article, where the Target Entity is a Tax Transparent Entity, Clauses 1 and 2 of Paragraph I of this Article will be applied in relation to the jurisdiction in which the assets of the Tax Transparent Entity are located.

### **Article 39: Transfer of Assets and Liabilities**

- A. Where an asset or liability has been acquired or disposed all of the following shall apply:
1. A disposing Constituent Entity shall take into account a gain or loss on disposal for the purposes of determining its Constituent Entity Income or Loss.
  2. An acquiring Constituent Entity shall determine its Constituent Entity Income or Loss and Adjusted Covered Taxes on the basis of its carrying value of the acquired asset or liability determined under the Accounting Standard used for the purposes of determining the Constituent Entity's Financial Accounting Net Income or Loss.

- B. Where the disposal or acquisition of assets and liabilities is part of a Reorganisation, Paragraph A of this Article shall not apply, and both of the following shall apply:
1. A disposing Constituent Entity shall exclude any gain or loss on the disposal for the purpose of determining its Constituent Entity Income or Loss.
  2. An acquiring Constituent Entity shall determine its Constituent Entity Income or Loss after the acquisition on the basis of the disposing Entity's carrying value of the acquired assets and liabilities at the time of the disposal.
- C. Where a disposal or acquisition of assets and liabilities is part of a Reorganisation in which a disposing Constituent Entity recognises a Non-qualifying Gain or Loss, Paragraphs A and B of this Article shall not apply, and both of the following shall apply:
1. A disposing Constituent Entity shall take into account a gain or loss on the disposal for the purposes of determining its Constituent Entity Income or Loss to the extent of the Non-qualifying Gain or Loss.
  2. An acquiring Entity shall determine its Constituent Entity Income or Loss after the acquisition based on the carrying value of the acquired assets and liabilities from the disposing Entity at the time of disposal. The Constituent Entity Income or Loss shall be adjusted in accordance with the applicable tax rules in the jurisdiction where the acquiring Constituent Entity is located to account for the Non-qualifying Gain or Loss.
- D. For the purposes of applying the provisions of Paragraphs B and C of this Article, a Reorganisation means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction where Clauses 1, 2 and 3 of this Paragraph apply:

1. The consideration received in exchange for the transfer of assets and liabilities meets any of the following conditions:
    - a. The consideration is in whole or in significant part, equity interests issued by the acquiring Constituent Entity or by another person related to the acquiring Constituent Entity.
    - b. In a liquidation, the consideration is the cancellation of the holding of the equity interests of the Entity being liquidated.
    - c. The consideration is nil and the issuance of an equity interest would have no economic significance.
  2. The disposing Constituent Entity's gain or loss on those assets and liabilities is not subject to income taxes, in whole or in part.
  3. The tax laws of the jurisdiction in which the acquiring Constituent Entity is located require the acquiring Constituent Entity to calculate Taxable Profit or Loss after the disposal or acquisition using the disposing Constituent Entity's value of the assets for tax purposes under the tax laws of the jurisdiction in which the disposing Constituent Entity is located at the date of the transfer, adjusted for any Non-qualifying Gain or Loss on the disposal or acquisition.
- E. For the purposes of applying the provisions of Paragraphs C and D of this Article, a Non-qualifying Gain or Loss means the lesser of:
1. The gain or loss of the disposing Constituent Entity arising in connection with a Reorganisation that is subject to tax in the disposing Constituent Entity's location.
  2. The gain or loss arising in connection with the Reorganisation recorded in the disposing Constituent Entity's Financial Accounting Net Income or Loss.

- F. Where the acquiring Constituent Entity is located in the Kingdom at the time of the transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction, that Constituent Entity shall be deemed to have met the requirements of Clause 3 of Paragraph D of this Article.
- G. At the election of the Filing Constituent Entity, a Constituent Entity that is required or permitted to adjust the tax basis of its assets and the amount of its liabilities to fair value for tax purposes in the jurisdiction in which it is located, shall apply all of the following:
1. The Constituent Entity shall take into account an amount of gain or loss in respect of each of its assets and liabilities for the purposes of determining its Constituent Entity Income or Loss for a Fiscal Year.
  2. The Constituent Entity shall use the fair value for financial accounting purposes of the asset or liability immediately after the event that triggered the tax adjustment for the purposes of determining its Constituent Entity Income or Loss.
- H. For the purposes of applying the provisions of Clause 1 of Paragraph G of this Article, the amount of the gain or loss in respect of each asset or liability shall be equal to both of the following:
1. The difference between the carrying value of the asset or liability immediately before the event that triggered the tax adjustment and the fair value of the asset or liability immediately after the event as determined under the applicable tax law in the jurisdiction where it is located.
  2. Decreased or increased as the case may be, by the Non-qualifying Gain or Loss, if any, arising in connection with the triggering event.
- I. Where an election is made under Paragraph G of this Article, a Constituent Entity shall apply either of the following:

1. The Constituent Entity shall take into account the net total of the amounts determined in accordance with Paragraph G of this Article for the purposes of determining its Constituent Entity Income or Loss in the Fiscal Year in which the event that triggered the tax adjustment occurs.
  2. The Constituent Entity shall take into account the net total of the amounts determined in accordance with Paragraph G of this Article divided by five for the purposes of determining its Constituent Entity Income or Loss in the Fiscal Year in which the event that triggered the tax adjustment occurs and in each of the immediate four subsequent Fiscal Years.
- J. Where a Constituent Entity applies Clause 2 of Paragraph I of this Article and subsequently leaves the Multinational Enterprise Group within the five-year period, the Constituent Entity shall take into account the remaining amount for the purposes of determining its Constituent Entity Income or Loss in the Fiscal Year in which it leaves the Multinational Enterprise Group.

## **Article 40: Joint Venture Exclusions**

For the purpose of applying the provisions of Paragraph A of Article 11 of the Law, all of the following Entities shall not be considered as Joint Ventures:

1. An Ultimate Parent Entity of a Multinational Enterprise Group that meets the Revenue Test.
2. An Excluded Entity.
3. An Entity whose Ownership Interests are held directly through an Excluded Entity, and which is any of the following:
  - a. An Entity which operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors.

- b. An Entity which carries out activities that are ancillary to those carried out by the Excluded Entity.
  - c. An Entity which has its income excluded from the computation of Constituent Entity Income or Loss in accordance with Clauses 2 and 3 of Paragraph A of [Article 12](#) of these Regulations.
- 4. An Entity whose Ownership Interests are held by an Entity of a Multinational Enterprise Group that meets the Revenue Test which is composed exclusively of Excluded Entities.
- 5. A Joint Venture Subsidiary.

## **Article 41: Multi-Parented Multinational Enterprise Groups**

- A. A Multi-Parented Multinational Enterprise Group is formed when both of the following conditions are met:
  - 1. The Ultimate Parent Entities of two or more Groups have entered into an arrangement that is a Stapled Structure or a Dual-listed Arrangement.
  - 2. At least one Entity or Permanent Establishment of either Group is located in a jurisdiction different from other Entities of the Groups.
- B. A Stapled Structure is an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, for which all of the following conditions apply:
  - 1. 50% or more of the Ownership Interests in the Ultimate Parent Entities of the separate Groups meet both of the following conditions:
    - a. The Ownership Interests are combined with each other by reason of form of ownership, restrictions on transfer, or other terms or conditions, and cannot be transferred or traded

independently.

- b. The Ownership Interests are quoted at a single price if they are listed on a securities exchange.
  - 2. One of those Ultimate Parent Entities prepares Consolidated Financial Statements in which the assets, liabilities, income, expenses and cash flows of all the Entities of the Groups are presented together as those of a single economic unit and that are required by a regulatory regime to be audited by an external independent auditor.
- C. A Dual-listed Arrangement is an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, for which all of the following conditions apply:
- 1. The Ultimate Parent Entities agree to combine their business solely by way of contract rather than merging such business under the ownership and control of a single Entity.
  - 2. The Ultimate Parent Entities make distributions to their shareholders based on a fixed ratio and pursuant to contractual arrangements.
  - 3. The activities of the Ultimate Parent Entities are managed collectively as a single economic unit under contractual arrangements while retaining the separate legal personality of each Ultimate Parent Entity.
  - 4. The Ownership Interests in the Ultimate Parent Entities that comprise the contract described in Clause 1 of this Paragraph are quoted, traded or transferred independently in different capital markets.
  - 5. The Ultimate Parent Entities prepare Consolidated Financial Statements in which the assets, liabilities, income, expenses and cash flows of all the Entities of the Groups are presented together as those of a single economic unit and that are required by a regulatory regime to be

audited by an external independent auditor.

- D. The Entities and Constituent Entities of a Multi-parented Multinational Enterprise Group shall be treated as members of a single Multinational Enterprise Group.
- E. An Entity, other than an Excluded Entity, shall be treated as a Constituent Entity of the Multi-parented Multinational Enterprise Group if it is consolidated on a line-by-line basis by an Ultimate Parent Entity of a Multi-Parented MNE Group or its Controlling Interests are held by other Entities being members of the Multi-Parented MNE Group.
- F. The Consolidated Financial Statements of the Multi-Parented MNE Group shall be the combined Consolidated Financial Statements referenced in Paragraphs D and E of this Article, prepared under an Acceptable Financial Accounting Standard.
- G. The Ultimate Parent Entities of the separate Groups that form a Multi-parented Multinational Enterprise Group shall be the Ultimate Parent Entities of that Multi-parented Multinational Enterprise Group.
- H. The Filing Constituent Entity of a Multi-parented Multinational Enterprise Group shall submit a single Tax Return, as stipulated in [Article 66](#) of these Regulations, of each group forming a Multi-parented Multinational Enterprise Group that meets the Revenue Test.
- I. For the purposes of applying the provisions of the Law and these Regulations on Multi-parented Multinational Enterprise Groups, all of the following shall be considered:
  - 1. References to an Ultimate Parent Entity shall apply as if they were references to multiple Ultimate Parent Entities.

2. Reference to the accounting standard of an Ultimate Parent Entity shall apply as if they were references to the accounting standard which has been used by the Multi-parented Multinational Enterprise Group to prepare its combined Consolidated Financial Statements.

## **Chapter Six: Tax Computation**

### **Article 42: Effective Tax Rate Computation**

- A. Except as otherwise provided in the Law or these Regulations, for the purposes of computing the Effective Tax Rate in Paragraph A of Article 8 of the Law, Adjusted Covered Taxes for Constituent Entities located in the Kingdom means the sum of the Adjusted Covered Taxes of all the Constituent Entities for a Fiscal Year as determined in accordance with Article 7 of the Law.
- B. Except as otherwise provided in the Law and these Regulations, for the purposes of the computation of the Effective Tax Rate in Paragraph C of Article 8 of the Law, the Adjusted Covered Taxes and Constituent Entity Income or Loss of Constituent Entities that are Insurance Investment Entities shall be excluded from the computation of the Effective Tax Rate.
- C. For the purposes of Paragraph A of Article 8 of the Law, the result of the computation of the Effective Tax Rate is expressed as a percentage rounded to the fourth decimal place. The Effective Tax Rate shall be computed for each Fiscal Year.

### **Article 43: Exclusion of Adjusted Covered Taxes from the Effective Tax Rate Calculation**

For the purposes of Paragraph A of Article 8 of the Law, to the extent applicable, the following Adjusted Covered Taxes shall be excluded from the computation of the Effective Tax Rate for Constituent Entities located in the Kingdom:

- A. Any amount of Covered Taxes of a Constituent Entity-owner subject to a Controlled Foreign Company Tax Regime that are allocable under Paragraph C of [Article 29](#) of these Regulations to a

Constituent Entity located in the Kingdom.

- B. Any amount of Covered Taxes of a Main Entity that are allocable under Paragraph A of [Article 29](#) of these Regulations to a Permanent Establishment located in the Kingdom, other than [Covered Taxes arising from tax] imposed under any other law in the Kingdom.
- C. Any amount of Covered Taxes of a Constituent Entity-owner on income of a Hybrid Entity that is allocable under Paragraph D of [Article 29](#) of these Regulations to a Hybrid Entity located in the Kingdom.
- D. Any amount of Covered Taxes incurred in respect of Passive Income under Paragraph E of [Article 29](#) of these Regulations.
- E. Any amount of Covered Taxes of a Constituent-Entity Owner imposed by the Kingdom that is allocable under Paragraph G of [Article 29](#) of these Regulations to a Constituent Entity located in the Kingdom, unless such Covered Taxes relate to withholding tax imposed under any other law in the Kingdom.

## **Article 44: Separate Computation for Joint Ventures and Joint Venture Subsidiaries**

- A. The Effective Tax Rate for Joint Ventures and Joint Venture Subsidiaries of a Multinational Enterprise Group shall be calculated as if they were Constituent Entities of a separate Multinational Enterprise Group and the Joint Venture was the Ultimate Parent Entity of that Group.
- B. In computing a single Effective Tax Rate for a Joint Venture and its Joint Venture Subsidiaries, the Adjusted Covered Tax and Constituent Entity Income or Loss for each Joint Venture or Joint Venture Subsidiary shall be aggregated.

## **Article 45: Additional Tax Rate**

Where the Additional Tax Rate calculated in accordance with Paragraph A of Article 9 of the Law for Constituent Entities located in the Kingdom which are part of the same Multinational Enterprise Group, exceeds the Minimum Rate, a Filing Constituent Entity shall apply the Excess Negative Tax Expense Procedure included in [Article 52](#) of these Regulations.

## **Article 46: Substance-based Income Exclusion**

- A. For the purposes of Clause 1 of Paragraph A of Article 10 of the Law the Substance-based Income Exclusion shall be the sum of the following:
1. The percentage of Eligible Payroll Costs of Eligible Employees who perform activities for Constituent Entities located in the Kingdom applicable for Fiscal Year as set out in Clause B of this Article.
  2. The percentage of the carrying value Eligible Tangible Assets located in the Kingdom for the relevant Fiscal Year as set out in Clauses C of this Article.
- B. For the purposes of Clause 1 of Paragraph A of this Article the percentages shall be the following:
1. For Fiscal Years beginning in 2023, the percentage shall be 10%.
  2. For Fiscal Years beginning in 2024, the percentage shall be 9.8%.
  3. For Fiscal Years beginning in 2025, the percentage shall be 9.6%.
  4. For Fiscal Years beginning in 2026, the percentage shall be 9.4%.

5. For Fiscal Years beginning in 2027, the percentage shall be 9.2%.
  6. For Fiscal Years beginning in 2028, the percentage shall be 9.0%.
  7. For Fiscal Years beginning in 2029, the percentage shall be 8.2%.
  8. For Fiscal Years beginning in 2030, the percentage shall be 7.4%.
  9. For Fiscal Years beginning in 2031, the percentage shall be 6.6%.
  10. For Fiscal Years beginning in 2032, the percentage shall be 5.8%.
  11. For Fiscal Years beginning in 2033 and in all subsequent Fiscal Years, the percentage shall be 5%.
- C. For the purposes of Clause 2 of Paragraph A of this Article the percentages shall be the following:
1. For Fiscal Years beginning in 2023, the percentage shall be 8.0%.
  2. For Fiscal Years beginning in 2024, the percentage shall be 7.8%.
  3. For Fiscal Years beginning in 2025, the percentage shall be 7.6%.
  4. For Fiscal Years beginning in 2026, the percentage shall be 7.4%.
  5. For Fiscal Years beginning in 2027, the percentage shall be 7.2%.
  6. For Fiscal Years beginning in 2028, the percentage shall be 7.0%.

7. For Fiscal Years beginning in 2029, the percentage shall be 6.6%.
8. For Fiscal Years beginning in 2030, the percentage shall be 6.2%.
9. For Fiscal Years beginning in 2031, the percentage shall be 5.8%.
10. For Fiscal Years beginning in 2032, the percentage shall be 5.4%.
11. For Fiscal Years beginning in 2033 and in all subsequent Fiscal Years, the percentage shall be 5%.

### **Article 47: Eligible Payroll Costs**

- A. For the purposes of applying the provisions of the Law, Eligible Payroll Costs are employee compensation expenditure, including salaries, wages and other expenditure that provide a direct and separate personal benefit to the employee, such as health insurance, stock-based compensation, pension contributions, payroll taxes and employer social security contributions with the exception of both of the following:
  1. Costs that are capitalised and included in the carrying value of Eligible Tangible Assets.
  2. Costs attributable to a Constituent Entity's International Shipping Income or Qualified Ancillary International Shipping Income that is excluded from the computation of the Constituent Entity Income or Loss. Attribution of such costs should be made in accordance with the principles applied in [Article 27](#) of these Regulations.
- B. Eligible Employees comprise both of the following:
  1. Full-time or part-time employees of a Constituent Entity.

2. Independent contractors participating in the ordinary operating activities of the Multinational Enterprise Group under the direction and control of the Multinational Enterprise Group.
- C. For the purposes of [Article 46](#) of these Regulations, an Eligible Employee shall be considered to perform activities for a Constituent Entity located in the Kingdom where that Eligible Employee is located in the Kingdom for more than 50% of their working time in a Fiscal Year.
- D. Notwithstanding the provisions of Paragraph C of this Article, where an Eligible Employee is located in the Kingdom for 50% or less of their working time in a Fiscal Year, but spends any of their working time in the Kingdom during that Fiscal Year, this Eligible Employee shall be considered to perform activities for a Constituent Entity located in the Kingdom for the Fiscal Year, but the maximum amount of Eligible Payroll Costs for that Eligible Employee for the Fiscal Year shall be calculated in accordance with the formula  $(A \times B \div C)$ , where:
- A: The amount of Eligible Payroll Costs incurred in respect of that Eligible Employee for the Fiscal Year.
- B: The number of working days spent by that Eligible Employee in the Kingdom during the Fiscal Year.
- C: The total number of working days in that Fiscal Year.

## **Article 48: Eligible Tangible Assets**

- A. For the purposes of applying the provisions of [Article 46](#) of these Regulations, Eligible Tangible Assets means tangible assets comprising any of the following:
1. Property, plant and equipment located in the Kingdom.

2. Natural resources located in the Kingdom including oil and gas deposits, timber tracts and mineral deposits.
  3. A lessee's right of use of tangible assets located in the Kingdom.
  4. A license or similar arrangement from the government of the Kingdom for the use of immovable property or exploitation of natural resources in the Kingdom that entails significant investment in tangible assets.
- B. Notwithstanding Paragraph A of this Article, Eligible Tangible Assets excludes all of the following:
1. Property held for sale, lease or investment including land and buildings.
  2. Tangible assets used to derive income that is excluded in accordance with [Article 27](#) of these Regulations.
- C. Notwithstanding Clause 1 of Paragraph B of this Article, where a Constituent Entity is the lessor of property, plant or equipment under an operating lease, the following shall apply:
1. Such property, plant or equipment shall be Eligible Tangible Assets where it is located in the same jurisdiction as the Constituent Entity.
  2. For the purposes of Clause 2 of Paragraph A of [Article 46](#) of these Regulations, the carrying value of such property, plant and equipment shall be computed in accordance with the formula (A - B), where:
    - A: The Constituent Entity's average carrying value of the property, plant or equipment at the beginning and at the end of the Fiscal Year.

- B: The average amount of the lessee's right-of-use asset determined at the beginning and end of the Fiscal Year in respect of that leased property.
3. For the purposes of Clause 3 of Paragraph A of this Article and subject to Clause 4 of this Paragraph, where the lessee is not a Constituent Entity, the lessee's right-of-use asset shall be equal to the undiscounted amount of payments remaining due under the operating lease agreement, including any extensions that would be taken into account in determining a right-of-use asset under the financial accounting standard used to determine the Constituent Entity Income.
4. For the purposes of Clause 3 of this Paragraph, the value of the lessee's right-of-use asset shall be deemed to be nil where the property, plant or equipment subject to the operating lease is regularly leased several times to different lessees during the Fiscal Year and the average lease period, including any renewals and extensions, with respect to lessee is 30 days, or less.
- D. Where there is dual use of property, plant or equipment under an operating lease by both the lessor and the lessee, the carrying value of such asset shall be allocated between the lessor and the lessee on a fair basis taking into account the use of the asset by each party.
- E. For the purposes of Paragraph A of this Article, an Eligible Tangible Asset shall be considered to be located in the Kingdom where the Eligible Tangible Asset is located within the Kingdom for more than 50% of the time in a Fiscal Year.
- F. Notwithstanding the provisions of Paragraph E of this Article, where an Eligible Tangible Asset is located in the Kingdom for 50% or less of a Fiscal Year, the Eligible Tangible Asset shall be considered to be located in the Kingdom for that Fiscal Year, but the maximum carrying value of the Eligible Tangible Asset for the Fiscal Year shall be calculated in accordance with the formula  $(C \times D \div E)$ , where:
- C: The carrying value of the Eligible Tangible Asset for the Fiscal Year.

D: The number of days the Eligible Tangible Asset was located in the Kingdom during the Fiscal Year.

E: The total number of days in that Fiscal Year.

- G. For the purposes of Clause 2 of Paragraph A of [Article 46](#) of these Regulations, the carrying value of Eligible Tangible Assets shall be the average of the carrying value of Eligible Tangible Assets at the beginning and at the end of the Fiscal Year as per the financial accounts, reduced by any accumulated depreciation, amortisation and depletion and increased by any amount attributable to the capitalisation of payroll expenses.

## **Article 49: Special Computation Rules for Substance-based Income Exclusion**

- A. For the purposes of [Article 46](#) of these Regulations, the Eligible Payroll Costs and Eligible Tangible Assets of a Constituent Entity which is a Permanent Establishment shall be those that are included in its separate financial accounts in accordance with [Article 10](#) of these Regulations, provided that the Eligible Payroll Costs and Eligible Tangible Assets are located in the same jurisdiction as the Permanent Establishment.
- B. Eligible Payroll Costs and Eligible Tangible Assets of a Permanent Establishment shall not be taken into account as Eligible Payroll Costs and Eligible Tangible Assets of the Main Entity.
- C. Where the income of a Permanent Establishment was wholly or partially excluded pursuant to Paragraphs C and F of [Article 11](#) of these Regulations, Eligible Payroll Costs and Eligible Tangible Assets of such Permanent Establishment shall be excluded in the same proportion from the computation under this Article for the Multinational Enterprise Group.
- D. Eligible Payroll Costs of Eligible Employees paid by, and Eligible Tangible Assets owned by, a Flow-through entity that are not allocated under Paragraphs A, B and C of this Article shall be allocated in

accordance with Clauses 1 and 2 of this Paragraph, and all other Eligible Payroll Costs and Eligible Tangible Assets of the Flow-through Entity that have not been so allocated shall be deemed not to be Eligible Payroll Costs and Eligible Tangible Assets for the purposes of calculating the Substance-based Income Exclusion:

1. The Constituent Entity-owners of the Flow-through Entity, in proportion to the amount allocated to them pursuant to [Article 11](#) of these Regulations, provided that the Eligible Employees and Eligible Tangible Assets are located in the jurisdiction of the Constituent Entity-owners.
  2. The Flow-through Entity if it is the Ultimate Parent Entity, reduced in proportion to the income excluded from the computation of the Constituent Entity Income of the Flow-through Entity pursuant to [Article 11](#) of these Regulations, provided that the Eligible Employees and Eligible Tangible Assets are located in the jurisdiction of the Flow-through Entity.
- E. The Substance-based Income Exclusion of each Stateless Constituent Entity shall be computed, for each Fiscal Year, separately from the Substance-based Income Exclusion of all other Constituent Entities located in the Kingdom.
- F. The Substance-based Income Exclusion of Investment Entities and Insurance Investment Entities shall be computed, for each Fiscal Year, separately from all other Constituent Entities located in the Kingdom in accordance with [Article 59](#) of these Regulations.

## **Article 50: Additional Current Tax**

- A. For the purposes of Paragraph D of Article 9 of the Law, where, a re-computation of the Effective Tax Rate and Tax is made for a prior Fiscal Year in accordance with [Article 17](#), Paragraph I of [Article 33](#) and [Article 36](#) of these Regulations, the re-computation shall be made in accordance with the rules set out in Articles 8, 9 and 10 of the Law.

- B. For the purposes of Paragraph D of Article 9 of the Law, any amount of incremental Tax arising from a re-computation under Paragraph A of this Article shall constitute Additional Current Tax for the current Fiscal Year.

### **Article 51: Additional Tax for Permanent Differences**

- A. Where the conditions stipulated in Paragraph E of Article 9 of the Law are met, a Filing Constituent Entity may make an election to apply the Excess Negative Tax Expense Procedure set out in [Article 52](#) of these Regulations.
- B. In a Fiscal Year in which a Filing Constituent Entity elects to apply the Excess Negative Tax Expense Procedure, the Additional Tax for Permanent Differences shall be deemed to be zero for that Fiscal Year.
- C. The election referred to in Paragraph A of this Article is an Annual Election which can be made in accordance with Article 20 of the Law.

### **Article 52: Excess Negative Tax Expense Procedure**

- A. On making an election in accordance with Paragraph A of [Article 51](#) of these Regulations, or where the Additional Tax Rate for a jurisdiction for a Fiscal Year exceeds the Minimum Rate, a Filing Constituent Entity shall exclude the Excess Negative Tax Expense from its Adjusted Covered Taxes in respect of a Fiscal Year and, instead, establish an Excess Negative Tax Expense Carry-forward for that Multinational Enterprise Group of an amount equal to the excluded amount.
- B. For the purposes of Paragraph A of this Article, Excess Negative Tax Expense means any of the following:

1. For a Filing Constituent Entity that makes an election under Paragraph A of this Article, an amount equal to the Additional Tax for Permanent Differences for that Fiscal Year.
  2. For a Filing Constituent Entity that has an Additional Tax Rate for a Fiscal Year that exceeds the Minimum Rate, an amount equal to the negative Adjusted Covered Taxes for that Fiscal Year.
- C. In each Fiscal Year following a Fiscal Year in respect of which Paragraph A of this Article applies, where a Filing Constituent Entity has Net Constituent Entity Income and Adjusted Covered Taxes in the Kingdom, the Filing Constituent Entity shall apply all of the following:
1. Reduce the Adjusted Covered Taxes for the jurisdiction by the balance of the Excess Negative Tax Expense Carry-forward, but the amount of the Adjusted Covered Taxes after such reduction shall not be less than zero.
  2. Reduce the balance of the Excess Negative Tax Expense Carry-forward by the same amount.
- D. Where a Multinational Enterprise Group disposes of one or more of the Constituent Entities located in the Kingdom in respect of which an election under Paragraph A of this Article has been made, the Excess Negative Tax Expense Carry-forward shall remain an attribute of that Multinational Enterprise Group.
- E. Where a Multinational Enterprise Group disposes of all Constituent Entities located in the Kingdom and re-acquires or establishes Constituent Entities located in the Kingdom in a subsequent Fiscal Year, the balance of the Excess Negative Tax Expense Carry-forward shall be taken into account in determining the Adjusted Covered Taxes for the Kingdom beginning with that Fiscal Year.

### **Article 53: Tax Computation for Stateless Constituent Entities**

For the purposes of the computation of the Effective Tax Rate of a Stateless Constituent Entity that is located in the Kingdom pursuant to Paragraph D of Article 8 of the Law, the Adjusted Covered Tax and

Constituent Entity Income or Loss shall be calculated on a standalone basis separated for each of such Stateless Constituent Entity.

## **Article 54: De Minimis Exclusion**

- A. For the purposes of Paragraph A of Article 12 of the Law, where there were no Constituent Entities located in the Kingdom with either Constituent Entity Revenue or Constituent Entity Losses in the first or second Fiscal Years preceding the current Fiscal Year, such year or years shall be excluded when computing the Average Constituent Entity Revenue and Average Constituent Entity Income or Loss for a Fiscal Year.
- B. Where any of the Fiscal Years referred to in Paragraph B of Article 12 of the Law are shorter than 12 months, the Constituent Entity Revenue and Constituent Entity Income or Loss shall be adjusted in proportion to the period covered by the short Fiscal Year over a calendar year, for the purposes of determining the Average Constituent Entity Revenue and Average Constituent Entity Income or Loss for that Fiscal Year.
- C. Where a Multinational Enterprise Group acquires an Entity located in the Kingdom through a merger, the Constituent Entity's revenue and Constituent Entity Income or Loss attributable to that Entity determined for Fiscal Years prior to the merger shall not be taken into account for the purposes of determining the Average Constituent Entity Revenue and Average Constituent Entity Income or Loss.
- D. Where a Constituent Entity located in the Kingdom leaves a Multinational Enterprise Group, the Constituent Entity's revenue and Constituent Entity Income or Loss attributable to that Entity determined for Fiscal years prior to the disposal shall be taken into account for the purposes of determining the Average Constituent Entity Revenue and Average Constituent Entity Income or Loss.
- E. Where, under any Article of the Law, adjustments are made to Constituent Entity Income or Loss in a prior Fiscal Year all of the following shall apply:

1. A Filing Constituent Entity shall not be entitled to apply the provisions of Article 12 of the Law following the adjustments if it had not been entitled to apply those provisions prior to the adjustments having been made.
  2. Where the adjustments increase Constituent Entity Income or Loss in a prior Fiscal Year, and the Filing Constituent Entity had made an Annual Election under Article 12 of the Law, the Tax shall only be equal to zero under that Article if the conditions of Article 12 claimed will make a Multinational Enterprise Group non-eligible for the De Minimis Exclusion for that Fiscal Year if following the adjustments the Revenue Test is satisfied.
- F. Where the Filing Constituent Entity makes an Annual Election to apply the De Minimis Exclusion under Article 12 of the Law for a Fiscal Year, the Filing Constituent Entity will not be required to calculate the Effective Tax Rate as stated in Article 8 of the Law or calculate the Tax as stated in Article 9 of the Law for Constituent Entities located in the Kingdom for that Fiscal Year.
- G. The provisions of Article 12 of the Law shall apply to Joint Ventures and Joint Venture Subsidiaries as if they were Constituent Entities of a separate Multinational Enterprise Group, and the Average Constituent Entity Revenue and the Average Constituent Entity Income or Loss of the Constituent Entities located in the Kingdom that are Joint Ventures or Joint Venture Subsidiaries shall only be taken into account when applying the provisions of Article 12 of the Law to that separate Multinational Enterprise Group.

## **Article 55: Minority-owned Constituent Entity**

- A. The computation of the Effective Tax Rate and Tax for Constituent Entities that are members of a Minority-owned Subgroup shall be performed as if those Constituent Entities were a separate Multinational Enterprise Group.

The Adjusted Covered Taxes and Constituent Entity Income or Loss of members of a Minority-Owned Subgroup are excluded from the determination of the remainder of the Multinational Enterprise

Group's Effective Tax Rate and Net Constituent Entity Income in Paragraphs A and B of Article 8 of the Law.

The provision of this paragraph also does not apply if the Minority-owned Parent Entity is an Investment Entity or an Insurance Investment Entity and an Investment Entity and an Insurance Investment Entity shall not be treated as a member of the Minority-owned Subgroup for the purposes of this provision.

- B. The Effective Tax Rate and Tax of a Minority-owned Constituent Entity that is not a member of a Minority-Owned Subgroup is computed on a standalone entity basis.

The Adjusted Covered Taxes and Constituent Entity Income or Loss of the Minority-owned Constituent Entity are excluded from the determination of the remainder of the Multinational Enterprise Group's Effective Tax Rate and Net Constituent Entity Income in Paragraphs A and B of Article 8 of the Law.

This provision does not apply if the Minority-owned Constituent Entity is an Investment Entity or an Insurance Investment Entity.

- C. For the purposes of these Regulations, all of the following apply:
1. A Minority-owned Constituent Entity is a Constituent Entity in which the Ultimate Parent Entity has a direct or indirect ownership interest of 30% or less.
  2. A Minority-owned Parent Entity is a Minority-owned Constituent Entity that holds, directly or indirectly, the Controlling Interests of another Minority-owned Constituent Entity, except where the Controlling Interests of the former Entity are held, directly or indirectly, by a Minority-owned Constituent Entity.

3. A Minority-owned Subgroup is a Minority-owned Parent Entity and its Minority-owned Subsidiaries.
4. A Minority-owned Subsidiary is a Minority-owned Constituent Entity whose Controlling Interests are held, directly or indirectly, by a Minority-owned Parent Entity.

D. Notwithstanding the provisions of this Article, the following shall apply:

1. The method of allocating the Financial Accounting Net Income or Loss shall be computed in accordance with [Article 11](#) of these Regulations.
2. The method of computation of the Average Constituent Entity Revenue or the Average Constituent Entity Income or Loss shall be in accordance with Article 12 of the Law.

### **Article 56: Simplified Computation Safe Harbour**

The rules, conditions and controls required to apply the provisions of Article 14 of the Law, will be set out in a decision to be issued by the Minister after the approval of the Cabinet.

### **Article 57: Exclusion for Initial Phase of International Activity**

- A. For the purposes of Paragraph A of Article 15 of the Law, Stateless Constituent Entities are not taken into consideration when determining the number of jurisdictions in which the Multinational Enterprise Group operates.
- B. For the purposes of Paragraph A of Article 15 of the Law, the following shall be considered:
  1. The 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.

2. Subject to Clause 3 of this Paragraph, the sum of the Net Book Value of Tangible Assets in a jurisdiction is the sum of the Net Book Values of Tangible Assets of all Constituent Entities of the Multinational Enterprise Group that are located in that jurisdiction.
  3. Tangible Assets are not taken into account where they are held by Joint Ventures and Joint Venture Subsidiaries, or Investment Entities and Insurance Investment Entities that are not Excluded Entities.
  4. Tangible Assets do not include cash or cash equivalents, intangibles, or financial assets.
  5. With regard to Permanent Establishments, Tangible Assets should be allocated to the jurisdiction in which the Permanent Establishment is located provided those Tangible Assets are included in the separate financial accounts of that Permanent Establishment as determined under [Article 10](#) of these Regulations. The Tangible Assets allocated to the jurisdiction of a Permanent Establishment shall not be taken into account as Tangible Assets of the jurisdiction of the Main Entity.
- C. The period of five years referred to in Paragraph C of Article 15 of the Law, shall start from the beginning of the Fiscal Year in which the Multinational Enterprise Group originally came within the scope of the Law.
- The five-year period shall not be suspended or interrupted if a Multinational Enterprise Group comes out of scope of the Law or for any other reason.
- D. The condition in Clause 3 of Paragraph A of Article 15 of the Law is not satisfied if the Ownership Interests in the Constituent Entities located in the Kingdom are held indirectly by a parent entity that applies the Income Inclusion Rule (IIR).
- E. Where the exclusion in Article 15 of the Law applies for a Fiscal Year, a Filing Constituent Entity is not required to compute the Effective Tax Rate or the Tax that would have been due had the exclusion

not been available.

- F. For the purposes of this article, references to tangible assets means the tangible assets of all Constituent Entities resident for tax purposes in the relevant jurisdiction.

## **Chapter Seven: Tax Neutrality**

### **Article 58: Ultimate Parent Entity That Is a Flow-through Entity**

- A. The Constituent Entity Income of a Flow-through Entity that is an Ultimate Parent Entity shall be reduced, for a Fiscal Year, by the amount of Constituent Entity Income that is attributable to each Ownership Interest in the Flow-through Entity in any of the following situations:
1. The holder of the Ownership Interests is subject to income taxes on such income for a taxable period that ends within 12 months of the end of the Multinational Enterprise Group's Fiscal Year and any of the following applies:
    - a. The holder of the Ownership Interest is subject to income taxes on the full amount of such income at a nominal rate that equals to or exceeds the Minimum Rate.
    - b. There is a reasonable expectation that the sum of the amount of Adjusted Covered Taxes of the Ultimate Parent Entity and income taxes of the holder of the Ownership Interest applicable on such income equals to or exceeds the amount that results from multiplying the full amount of such income by the Minimum Rate.
  2. The Ownership Interests are held by a natural person and represent a right to 5% or less of the profits and assets of the Ultimate Parent Entity, provided the natural person is a tax resident in jurisdiction where the Ultimate Parent Entity is located.
  3. The Ownership Interests are held by a Government Body, International Organisation, Non-profit Organisation or a Pension Fund holds Ownership Interests that represent a right to 5% or less of the profits and assets of the Ultimate Parent Entity, provided the holder of the Ownership Interests is a resident in the jurisdiction where the Ultimate Parent Entity is located.

- B. A Flow-through Entity that is an Ultimate Parent Entity which reduces its Constituent Entity Income pursuant to Paragraph A of this Article shall proportionally reduce its Covered Taxes to reflect the reduction.
- C. The Constituent Entity Loss of a Flow-through Entity that is an Ultimate Parent Entity shall be reduced, for a Fiscal Year, by the amount of Constituent Entity Loss that is attributable to each Ownership Interest in that Flow-through Entity.
- D. Paragraph C of this Article shall not be applicable to the extent the Ownership Interest holder is not permitted to utilise the loss in computing its separate income for the purposes of income taxes.
- E. Where the Constituent Entity Loss of an Ultimate Parent Entity that is a Flow-through Entity is not reduced to zero pursuant to Paragraph C of this Article and the relevant Filing Constituent Entity makes a Loss Election as described in [Article 35](#) of these Regulations that applies for that Ultimate Parent Entity, the balance of Constituent Entity Loss can be carried forward as a Constituent Entity Loss Deferred Tax Asset to subsequent Fiscal Years.
- F. For the purposes of Paragraph A of this Article, an Ownership Interest holder is subject to income taxes on its share of the Ultimate Parent Entity's Constituent Entity Income if any of the following applies:
  - 1. That share of income is included in the Ownership Interest holder's income which is subject to income taxes under the laws of the jurisdiction in which the Ownership Interest holder is tax resident.
  - 2. That share of income is subject to income taxes of a Permanent Establishment of the Ownership Interest holder.
- G. This Article shall apply to Permanent Establishments in any of the following cases:

1. A Permanent Establishment through which the business of a Flow-through Entity that is the Ultimate Parent Entity of a Multinational Enterprise Group is wholly or partly carried out.
  2. A Permanent Establishment through which the business of a Tax Transparent Entity is wholly or partly carried out where the Ultimate Parent Entity's Ownership Interest in that Tax Transparent Entity is held directly or through a Tax Transparent Structure.
- H. For the purposes of applying the provisions of the preceding Paragraphs of this Article, 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.

## **Article 59: Separate Computation for Investment Entities and Insurance**

### **Investment Entities**

- A. Subject to Paragraph H of this Article, the Effective Tax Rate for an Investment Entity or Insurance Investment Entity that is a Constituent Entity located in the Kingdom shall be calculated separately from the Effective Tax Rate for other Constituent Entities located in the Kingdom.
- B. Paragraph A of this Article shall not apply in any of the following cases:
1. The Investment Entity or Insurance Investment Entity is a Tax Transparent Entity.
  2. The Insurance Entity or Insurance Investment Entity is subject to an Election in accordance with [Article 60](#) or [Article 61](#) of these Regulations.
- C. For the purposes of Paragraph A of this Article, the Effective Tax Rate for each Investment Entity or Insurance Investment Entity shall be calculated in accordance with the formula  $(A \div B)$ , where:
- A: The Adjusted Covered Taxes of the Investment Entity or Insurance Investment Entity.

- B: The Multinational Enterprise Group's Allocable Share in the Constituent Entity Income of that Investment Entity or Insurance Investment Entity.
- D. The Adjusted Covered Taxes of an Investment Entity or Insurance Investment Entity shall be calculated in accordance with the formula  $(C + D)$ , where:
- C: The Adjusted Covered Taxes attributable to the Multinational Enterprise Group's Allocable share in the Constituent Entity Income of the Investment Entity or Insurance Investment Entity.
- D: The Covered Taxes allocated to that Investment Entity or Insurance Investment Entity as per [Article 29](#) of these Regulations.
- E. For the purposes of applying the formula described in Paragraph D of this Article, the Adjusted Covered Taxes of an Investment Entity or Insurance Investment Entity shall not include any Covered Taxes accrued by that Entity and which are attributable to income that is not part of the Multinational Enterprise Group's Allocable Share in the Constituent Entity Income of the respective Entity.
- F. The Tax of an Investment Entity or Insurance Investment Entity that is a Constituent Entity located in the Kingdom shall be calculated in accordance with the formula  $(E \times (F - G))$ , provided that the result of  $(F - G)$  is a positive amount, where:
- E: The Additional Tax Rate as computed in accordance with Article 9 of the Law.
- F: The Multinational Enterprise Group's Allocable Share in the Constituent Entity Income of the Investment Entity or Insurance Investment Entity.
- G: The Substance-based Income Exclusion of the Investment Entity or Insurance Investment Entity.
- G. Subject to [Article 46](#) of these Regulations the Eligible Tangible Assets and the Eligible Payroll Costs for an Investment Entity or an Insurance Investment Entity that is a Constituent Entity located in the Kingdom shall be reduced in proportion to the Multinational Enterprise Group's Allocable Share in the Constituent Entity Income of that Entity for the purposes of calculating the Substance-based Income Exclusion for such Entities.

- H. Where the Multinational Enterprise Group holds Ownership Interest in more than one Investment Entity or Insurance Investment Entity that is a Constituent Entity located in the Kingdom, the Adjusted Covered Taxes, the Multinational Enterprise Group's Allocable Share of Constituent Entity Income or Loss and the Substance-based Income Exclusion as computed in the preceding Paragraphs of this Article for each Entity shall be aggregated to compute a single Effective Tax Rate and to compute one Tax amount relating to the income of such Entities.
- I. For the purposes of applying the provisions of this Article, the Multinational Enterprise Group's Allocable Share in the Constituent Entity Income of an Investment Entity or Insurance Investment Entity shall be computed in accordance with the formula  $(H - (I + J))$ , where:
- H: The Constituent Entity Income of the Investment Entity or Insurance Investment Entity.
- I: The amount of Constituent Entity Income of the Investment Entity or Insurance Investment Entity attributable to Ownership Interests held by Ownership Interests Holders not forming part of that Multinational Enterprise Group.
- J: The amount of Constituent Entity Income of the Investment Entity or Insurance Investment Entity attributable to Ownership Interests held by the Investment Entity or Insurance Investment Entity which is the subject to an Election as per [Article 60](#) or [Article 61](#) of these Regulations.

## **Article 60: Tax Transparency Election for Investment Entities and Insurance Investment Entities**

- A. The Filing Constituent Entity of a Multinational Enterprise Group may make an election to treat an Investment Entity or an Insurance Investment Entity as a Tax Transparent Entity if all the following conditions are satisfied:
1. The Constituent Entity-owner of that Investment Entity or Insurance Investment Entity is subject to tax in the jurisdiction in which it is located under a mark-to-market or similar regime based on

the annual changes in the fair value of its Ownership Interest in such Entity.

2. The tax rate applicable to the Constituent Entity-owner of that Investment Entity or Insurance Investment Entity on the annual changes in fair market value referenced in Clause 1 of this Paragraph equals to or exceeds the Minimum Rate.
- B. A Constituent Entity that indirectly owns an Ownership Interest in an Investment Entity or Insurance Investment Entity through a direct Ownership Interest in another Investment Entity or Insurance Investment Entity is considered to be subject to tax under a mark-to-market or similar regime with respect to the indirect Ownership Interest if it is subject to a mark-to market or similar regime with respect to the direct Ownership Interest.
- C. Where the election under Paragraph A of this Article is applied, the Constituent Entity Income or Loss and Substance-based Income Exclusion of an Investment Entity and an Insurance Investment Entity shall be proportionally attributed to the relevant Constituent Entity-owner respective to its share of Constituent Entity Income in that Investment Entity or Insurance Investment Entity.
- D. Where the election under Paragraph A of this Article is revoked, any gain or loss from the disposition of an asset or liability held by the Investment Entity and the Insurance Investment Entity shall be determined based on the fair market value of the assets or liabilities on the first day of the Fiscal Year the revocation is made.
- E. The election referred to in Paragraph A of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law.

## **Article 61: Taxable Distribution Method Election**

- A. Subject to Paragraph B of this Article, at the election of the Filing Constituent Entity, a Constituent Entity-owner that is not itself an Investment Entity or Insurance Investment Entity shall apply the Taxable Distribution Method with respect to its Ownership Interest in an Investment Entity or an

Insurance Investment Entity, subject to that Entity being a Constituent Entity located in the Kingdom.

- B. Paragraph A of this Article shall only apply where the Constituent Entity-owner is reasonably expected to be subject to tax on distributions from the Investment Entity or Insurance Investment Entity at a rate that is equal to or greater than the Minimum Rate.
- C. The Taxable Distribution Method comprises the application of all of the following where applicable:
1. Distributions and deemed distributions of Constituent Entity Income of an Investment Entity or Insurance Investment Entity shall be included in determining the Constituent Entity Income of the Constituent Entity-owner that received the distribution.
  2. The amount of Covered Taxes incurred by the Investment Entity or Insurance Investment Entity that is creditable against the tax liability of the Constituent Entity-owner arising from a distribution by an Investment Entity or Insurance Investment Entity shall be included in determining the Constituent Entity Income and Adjusted Covered Taxes of the Constituent Entity-owner that received the distribution.
  3. The Constituent Entity-owner's proportionate share of the Investment Entity's or Insurance Investment Entity's Undistributed Reduced Constituent Entity Income arising in the Tested Year shall be treated as Constituent Entity Income of the Investment Entity or Insurance Investment Entity for the Reporting Fiscal Year and the amount equal to such Constituent Entity Income multiplied by the Minimum Tax Rate shall be treated as Tax Due of a Low-Taxed Constituent Entity for the Fiscal Year.
  4. The Constituent Entity Income or Loss of an Investment Entity or Insurance Investment Entity and the Adjusted Covered Taxes attributable to such income for the Fiscal Year shall be excluded from the calculation of the Effective Tax Rate for other Constituent Entities or one or more Investment Entities or Insurance Investment Entities referred to in [Article 59](#) of these Regulations,

except for the amount of Covered Taxes referred to in Clause 2 of this Paragraph.

- D. For the purposes of Paragraphs C and E of this Article, the Tested Year shall mean the third Fiscal Year preceding the Reporting Fiscal Year.
- E. Subject to Paragraph I of this Article, for the purposes of Clause 3 of Paragraph C of this Article, the Undistributed Reduced Constituent Entity Income of an Investment Entity or Insurance Investment Entity, if any, for the Tested Year is the amount of Constituent Entity Income of that Investment Entity or Insurance Investment Entity for the Tested Year reduced by all of the following amounts where applicable:
1. The Covered Taxes of the Investment Entity or Insurance Investment Entity.
  2. Distributions and deemed distributions made by the Investment Entity or Insurance Investment Entity to shareholders other than Constituent Entities that are Investment Entities or Insurance Investment Entities during the Testing Period.
  3. Constituent Entity Losses of the Investment Entity or Insurance Investment Entity that arose during the Testing Period.
  4. Any Investment Loss Carry-forward.
- F. Any reduction made under Paragraph E of this Article shall not exceed the amount of Constituent Entity Income and the Undistributed Reduced Constituent Entity Income of that Investment Entity or Insurance Investment Entity.
- G. For the purposes of Paragraph E of this Article, the Testing Period shall start from the first day of the Tested Year and end on the last day of the Reporting Fiscal Year that the Ownership Interest was held by a Group Entity.

- H. For the purposes of applying the provisions of Clause 4 of Paragraph E of this Article, where a Constituent Entity Loss of an Investment Entity or Insurance Investment Entity for a Fiscal Year is not reduced to zero under Clause 3 of Paragraph E of this Article before the end of the last tested period that includes such Fiscal Year, the remainder shall be an Investment Loss Carry-forward.
- I. The Undistributed Reduced Constituent Entity Income of an Investment Entity or Insurance Investment Entity shall not be reduced by any of the following:
1. Distributions or deemed distributions that already reduced the Undistributed Reduced Constituent Entity Income of that Investment Entity or Insurance Investment Entity under Clause 2 of Paragraph E of this Article for a previous Tested Year.
  2. The amount of Constituent Entity Losses of the Investment Entity or Insurance Investment Entity that already reduced the Undistributed Reduced Constituent Entity Income of that Investment Entity or Insurance Investment Entity under Clause 3 of Paragraph E of this Article for a previous Tested Year.
- J. For the purposes of this Article, a deemed distribution shall arise when a direct or indirect Ownership Interest in an Investment Entity or Insurance Investment Entity is transferred to an Entity that is not a member of the Multinational Enterprise Group.
- K. For the purposes of Paragraph J of this Article, the amount of the deemed distribution shall be equal to the proportionate share of Undistributed Reduced Constituent Entity Income attributable to the Constituent Entity- owner's Ownership Interest on the date of the transfer, determined without regard to the deemed distribution.
- L. Where the election under Paragraph A of this Article is revoked, the Constituent Entity-owner's proportionate share in the Undistributed Reduced Constituent Entity Income of the Investment Entity or Insurance Investment Entity for the Tested Year at the end of the Fiscal Year preceding the Fiscal Year in which the revocation is made shall be treated as Constituent Entity Income of the Investment

Entity or Insurance Investment Entity for the Fiscal Year and an amount equal to such Constituent Entity Income multiplied by the Minimum Rate shall be treated as Tax Due of a Low-taxed Constituent Entity for the Fiscal Year.

- M. The election referred to in Paragraph A of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law.

## **Chapter Eight: Administrative Procedures**

### **Article 62: Registration**

- A. The Filing Constituent Entity appointed by the Entities referred to in Article 18 of the Law, shall apply for registration with the Bureau no later than 120 days from the first day of the Transition Year.
- B. Notwithstanding Paragraph A of this Article, where the Revenue Test is met for at least two of the four Fiscal Years immediately preceding the date on which the Law comes into effect, a Filing Constituent Entity shall submit to the Bureau a registration application no later than 30 days following the date at which the Law enters into effect.
- C. A Filing Constituent Entity shall apply for registration in the manner prescribed by the Bureau, for this purpose and, as part of the registration, the Filing Constituent Entity shall provide information in relation to all the following:
  - 1. The Ultimate Parent Entity of the Multinational Enterprise Group, including the jurisdiction in which it is located.
  - 2. The ownership structure of the Multinational Enterprise Group.
  - 3. The Fiscal Year of the Ultimate Parent Entity of the Multinational Enterprise Group.
  - 4. The Constituent Entities, Joint Ventures and Joint Venture Subsidiaries of the Multinational Enterprise Group.
  - 5. Financial information of the Multinational Enterprise Group, including details substantiating that the Revenue Test has been met, where applicable.

6. A written consent as stipulated in [Article 64](#) of these Regulations.
  7. Any other relevant information required by the Bureau.
- D. When submitting the registration application, the Filing Constituent Entity shall provide the Bureau with relevant documents supporting the validity of the information included in the application.
- E. Where the application has been accepted, the Bureau shall issue a registration certificate to the Filing Constituent Entity of the Multinational Enterprise Group. The registration shall take effect from the first day of a Fiscal Year as specified on the registration certificate which is the Fiscal Year for which the Filing Constituent Entity should have registered.
- F. Except for the information as described in Clause 5 of Paragraph C of this Article and any other information specified by the Bureau, if any change occurs to the information provided in the registration application, the Filing Constituent Entity shall modify that information in the manner prescribed by the Bureau within 30 days of the date of the change. Where, however, a Filing Constituent Entity has notified the Bureau of a change in the Fiscal Year of the Ultimate Parent Entity of a Multinational Enterprise Group in accordance with and within the time specified by Paragraph A of [Article 69](#) of these Regulations, it shall not be required to also notify the Bureau of such a change under the provisions of this Paragraph.
- G. Without prejudice to criminal liability and administrative fines stipulated in the Law, the Filing Constituent Entity is liable for Tax Due prior to registration if there is a delay in registration as per the provisions of the Law and these Regulations.

## **Article 63: Deregistration**

- A. The Registrant shall apply to deregister from Tax in a manner prescribed by the Bureau, in any of the following cases:

1. The Revenue Test has not been met for five consecutive Fiscal Years, provided the Registrant has submitted a notification to the Bureau in accordance with [Article 67](#) of these Regulations for each of the five Fiscal Years.
  2. The Multinational Enterprise Group no longer has any Constituent Entities, Joint Ventures or Joint Venture Subsidiaries located in the Kingdom as a result of liquidation, dissolution or for any other reason.
  3. The Group is no longer a Multinational Enterprise Group.
  4. Any other circumstances resulting in the Registrant falling outside the scope of the Law.
- B. The Registrant shall apply to deregister in a manner prescribed by the Bureau within 30 days from the date where any of the deregistration cases provided for under Paragraph A of this Article apply. For the purposes of Clause 1 of Paragraph A of this Article, the 30-day period shall start on the date the Registrant notified pursuant to [Article 67](#) of these Regulations, the Bureau that they did not meet the Revenue Test for the fifth Fiscal Year.
- C. When applying for deregistration, the Registrant shall provide the Bureau, at a minimum, with the reason for deregistration and relevant documents supporting the application. The Bureau may request the Registrant to provide any other documentation or materials it considers necessary to process the deregistration application. In all cases, the Bureau may not approve a deregistration application where the Registrant has any outstanding amounts or obligations to the Bureau.
- D. Where the deregistration application is approved, the Bureau shall issue a deregistration notice which prescribes the date in which the deregistration takes effect. The issue of a deregistration notice shall not impact any obligations arising prior to the date of the deregistration including the obligations prescribed under [Article 74](#) and [Article 75](#) of these Regulations.

- E. Where the Registrant does not submit a deregistration application, the Bureau may deregister that Registrant where any of the cases stipulated under Paragraph A this Article apply and issue a deregistration.

## **Article 64: Appointment of the Filing Constituent Entity**

- A. A Filing Constituent Entity, which is appointed pursuant to Article 18 of the Law or Paragraph B or C of this Article, shall submit to the Bureau a written consent in a manner acceptable to the Bureau under which all Entities which have appointed it as Filing Constituent Entity consent to such appointment.
- B. Where the Filing Constituent Entity ceases its economic activity in the Kingdom or leaves the Multinational Enterprise Group as described in [Article 38](#) of these Regulations or is otherwise no longer located in the Kingdom, the Filing Constituent Entity shall, in the manner prescribed by the Bureau, appoint or arrange to appoint another Filing Constituent Entity and shall provide a written consent within 30 days from the date of the occurrence of any of the aforementioned cases.
- C. Notwithstanding paragraph B of this Article, the Filing Constituent Entity may, for any reason, submit a new written consent in the manner acceptable to the Bureau, to appoint another Constituent Entity, Joint Venture or Joint Venture Subsidiary located in the Kingdom which is part of the same Multinational Enterprise Group which it represents as per Article 18 of the Law to act as the Filing Constituent Entity.
- D. Where another Filing Constituent Entity is appointed under Paragraph B or C of this Article, it shall assume all the responsibilities and obligations imposed by the Law and these Regulations on the previous Filing Constituent Entity for the previous Fiscal Years including submission of Tax Returns, payment of Tax and record retention from the date of the change in the Filing Constituent Entity as notified by the Bureau to that Entity.

## Article 65: Elections

- A. A Filing Constituent Entity shall make an Election or revoke it in the manner prescribed by the Bureau.
- B. The following elections shall have effect for a period of five Fiscal Years, commencing on the first day of the Fiscal Year in respect of which the election is made:
  - 1. Election of not treating an Entity as an Excluded Entity as referred in Paragraph B of Article 4 of the Law.
  - 2. Election for Stock-based Compensation as referred in [Article 14](#) of these Regulations.
  - 3. Foreign exchange hedge election as referred in [Article 15](#) of these Regulations.
  - 4. Election of the realisation method for gains or losses as referred in [Article 16](#) of these Regulations.
  - 5. Election to recognise dividends from Portfolio Shareholdings as referred in [Article 20](#) of these Regulations.
  - 6. Equity Investment Inclusion election as referred to in [Article 21](#) of these Regulations.
  - 7. Consolidation Adjustment election as referred in [Article 24](#) of these Regulations.
  - 8. Investment Entity or Insurance Investment Entity Tax Transparency election as referred in [Article 60](#) of these Regulations.
  - 9. Taxable Distribution Method election as referred in [Article 61](#) of these Regulations.

10. Election to use either the Presentation Currency of the Consolidated Financial Statements of the Ultimate Parent Entity or Bahraini Dinar as referred in [Article 72](#) of these Regulations.
- C. For the purposes of Paragraph C of Article 20 of the Law, a revocation of the election shall be valid for a period of five Fiscal Years, starting from the end of the Fiscal Year for which the revocation notice is filed.
- D. The following elections shall be in effect only for the Fiscal Year in respect of which the election was made, and shall be renewed annually if needed for any subsequent Fiscal Year:
  1. Election not to apply Substance-based Income Exclusion as referred in Paragraph B of Article 9 of the Law.
  2. Election for the De Minimis Exclusion as referred in Paragraph A of Article 12 of the Law.
  3. Election to adjust gains from the disposal of immovable property located in the Kingdom as referred in [Article 17](#) of these Regulations.
  4. Debt release election as referred in [Article 19](#) of these Regulations.
  5. Unclaimed Accrual Election as referred in Paragraph G of [Article 33](#) of these Regulations.
  6. Loss Election as referred in [Article 35](#) of these Regulations.
  7. An election in relation to a decrease in Covered Taxes as referred to in Paragraph C of [Article 36](#) of these Regulations.
  8. Excess Negative Tax Expense election as referred to in [Article 51](#) of these Regulations.

- E. For the purposes of Clause 3 of Paragraph D of this Article, the election shall be made in respect of each debt release which is included in the Financial Accounting Net Income or Loss of a Constituent Entity in a Fiscal Year.

## **Article 66: Tax Returns**

- A. A Filing Constituent Entity shall file a Tax Return to the Bureau for each Reporting Fiscal Year, no later than 15 months from the last day of the Reporting Fiscal Year.
- B. The Tax Return shall be submitted on a form prescribed by the Bureau for this purpose, and which is aligned with the requirements specified in the Model Rules, Administrative Guidance, Commentary, or any relevant guidelines issued or which may in future be issued by the OECD.
- C. The Filing Constituent Entity shall disclose the following information in its Tax Return:
1. A Tax Computation Schedule, which includes a self-assessment of Tax Due to the Bureau for the Fiscal Year.
  2. An Information Schedule, which includes, where applicable, information related to Constituent Entities, Joint Ventures and Joint Venture Subsidiaries which are members of the Multinational Enterprise Group, and which may be located outside the Kingdom.
  3. Any other information specified by the Bureau.
- D. A Filing Constituent Entity may submit a Tax Return solely comprising a Tax Computation Schedule, if an Information Schedule which adheres to the requirements stipulated in the Model Rules, Administrative Guidance, Commentary and guidelines issued by the OECD has been submitted by any of the following Entities:

1. The Ultimate Parent Entity of the Multinational Enterprise Group which is located in a jurisdiction that has a Qualifying Competent Authority Agreement in effect with the Kingdom for the Reporting Fiscal Year.
  2. A Constituent Entity of the Multinational Enterprise Group, other than the Ultimate Parent Entity, which is located in a jurisdiction that has a Qualifying Competent Authority Agreement in effect with the Kingdom for the Reporting Fiscal Year.
- E. Where Paragraph D of this Article applies, the Tax Return submitted by a Filing Constituent Entity shall include the identity and location of the Entity which filed the information as set out in Clauses 1 and 2 of Paragraph D of this Article. The Bureau may request the Filing Constituent Entity to supplement a submitted Tax Return where the Bureau does not receive all the required information pursuant to a Qualifying Competent Authority Agreement.
- F. For the purposes of applying the provisions of the preceding Paragraphs of this Article, a Qualified Competent Authority Agreement is a bilateral or multilateral agreement or arrangement between competent authorities that provides for the automatic exchange of Information Schedules which adhere to the requirements stipulated in the Model Rules, Administrative Guidance, Commentary, and guidelines issued by the OECD.
- G. An Excluded Entity registered pursuant to Paragraph C of Article 17 of the Law shall submit a declaration on the form and manner prescribed by the Bureau which shall include information and supporting documents sufficient to substantiate that Entity's status as an Excluded Entity.
- H. Without prejudice to the preceding paragraphs of this Article, the Bureau may, for Fiscal Years beginning on or before 31 December 2028, but not for any Fiscal Year that ends after 30 June 2030, allow a Filing Constituent Entity to submit a simplified Tax Return which contains information prescribed by the Bureau and which is consistent with the Model Rules, Administrative Guidance, Commentary or any relevant guidelines issued or which may in future be issued by the OECD.

### **Article 67: Revenue Test Notification**

- A. For the purposes of Paragraph C of Article 21 of the Law, the Filing Constituent Entity shall submit a notification to the Bureau no later than 15 months from the last day of the Reporting Fiscal Year in which the Multinational Enterprise Group did not meet the Revenue Test.
- B. The notification shall be submitted in the manner prescribed by the Bureau for this purpose and shall include information and supporting documents to substantiate that the Multinational Enterprise Group did not meet the Revenue Test for that Fiscal Year.

### **Article 68: Amended Tax Return Submission Procedures**

- A. The Filing Constituent Entity may not amend a Tax Return, or amend a previously amended Tax Return, while the Tax Return is subject to a Tax Audit.
- B. Without prejudice to Paragraph A of this Article, the Filing Constituent Entity may amend a previously audited Tax Return, provided that the amendments do not relate to any amount reassessed by the Bureau.
- C. Paragraphs A and B of this Article shall not apply where the Filing Constituent Entity is required to make an amendment to the Tax Return pursuant to the provisions of the Law and these Regulations.

- D. Where an amendment to the Tax Return is required as described in Paragraph C of this Article, the Filing Constituent Entity shall submit the amended Tax Return in the manner prescribed by the Bureau.
- E. An amended Tax Return shall include the amended amounts, in addition to the reason and justification for the adjustment.
- F. The Bureau has the right to request additional information, documents, or materials it deems relevant to support an amended Tax Return.
- G. Administrative Fines shall not be imposed on a Filing Constituent Entity upon submission of an amended Tax Return where the amended Tax Return was submitted within the period set out in under Paragraph A of [Article 66](#) of these Regulations.

## **Article 69: Changes to Fiscal Year**

- A. Where there is a change to the Fiscal Year of the Ultimate Parent Entity of a Multinational Enterprise Group, the Filing Constituent Entity shall notify the Bureau of such change prior to the commencement of the new Fiscal Year, unless such change arises during the Fiscal Year in which case the Filing Constituent Entity shall notify the Bureau within 30 days from the date on which the change occurs, in the manner prescribed by the Bureau.
- B. Where Paragraph A of [Article 8](#) of these Regulations applies, the information included in the Tax Return shall be based on the Constituent Entity's data, determined in accordance with the Local Financial Accounting Standard, for the Fiscal Year in which the Consolidated Financial Statements are prepared.
- C. Where Paragraph C of [Article 8](#) of these Regulations applies, the information included in the Tax Return shall be based on the Constituent Entity's data which has been used to prepare the

Consolidated Financial Statements for the Fiscal Year in which the Consolidated Financial Statements are prepared.

- D. Where Paragraph D of [Article 8](#) of these Regulations applies, the information included in the Tax Return shall be based on the Constituent Entity's data, determined in accordance with an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard, for the Fiscal Year in which the Consolidated Financial Statements are prepared.

## **Article 70: Payment of Tax**

- A. A Filing Constituent Entity shall pay advance payments of Tax in respect of each full three-month period or part of a three-month period during a Fiscal Year, except where the length of the Fiscal Year is shorter than three months, in which case no advance payments of Tax shall be payable.
- B. For the purposes of determining the periods in respect of which advance payments are due (Advance Payment Period), the Fiscal Year shall comprise consecutive three-month periods starting from the first day of the Fiscal Year. Where the total number of months in a Fiscal Year cannot be divided equally into three-month periods for each Advance Payment Period, the final period shall be shorter than the preceding three-month periods, with the last period covering the remaining period of the Fiscal Year.
- C. Each advance payment shall be payable no later than 60 days after the end of each Advance Payment Period.
- D. For a Fiscal Year, the Filing Constituent Entity shall elect to calculate advance payments using the Prior Year Method or the Current Year Method as described in Paragraph E or F of this Article, provided that the Filing Constituent Entity makes the election in the manner prescribed by the Bureau on the due date of payment of the first advance payment for the Fiscal Year and such an election shall not be revocable by the Filing Constituent Entity for the Fiscal Year.

- E. For the purposes of applying the Prior Year Method, an advance payment shall be an amount determined in accordance with the formula  $((A \div B) \times C)$ , whereby:
- A: A reasonable estimate of the Tax for the prior Fiscal Year for Constituent Entities, Joint Ventures, and Joint Venture Subsidiaries of a Multinational Enterprise located in the Kingdom, as applicable. For the purposes of the Transition Year, the reasonable estimate of the Tax for those Entities is computed as if they had fallen within the scope of the Law in the prior Fiscal Year.
- B: The number of days in the prior Fiscal Year.
- C: The number of days in the Advance Payment Period for which the relevant advance payment is due.
- F. Under the Current Year Method, each advance payment shall be an amount determined in accordance with the formula  $(A - B)$  whereby:
- A: A reasonable estimate of the Tax that would be due if the period starting from the first day of the Fiscal Year and ending on the last day of the Advance Payment Period, as the case may be, had been a Fiscal Year for the purposes of the Law and these Regulations.
- B: The sum of all advance payments already made, if any, for the Fiscal Year.
- G. Notwithstanding Paragraph C of this Article, the first advance payment for a Transition Year at the time of Entry into Force of the Law shall be paid by the Filing Constituent Entity on the due date for the second advance payment for that Year.
- H. A Filing Constituent Entity shall maintain documentation evidencing how each advance payment was computed and shall provide this documentation to the Bureau upon request.

- I. A Filing Constituent Entity shall pay any balance of Tax Due for the Reporting Fiscal Year no later than 15 months after the last day of the Reporting Fiscal Year.
- J. On making a payment, the Filing Constituent Entity shall specify the reference number of the invoice issued by the Bureau which prescribes the amounts due to the Bureau.

## **Article 71: Tax Refund**

- A. Subject to the provisions of Article 34 of the Law, and upon the submission of a refund request by the Filing Constituent Entity in the manner prescribed for this purpose by the Bureau, the Bureau may refund the Tax in any of the following cases:
  - 1. Payment of an amount or advance payments in excess of the Tax Due for the Fiscal Year.
  - 2. Amendment of a Tax Return following the payment of Tax and resulting in reducing the Tax Due.
  - 3. Not meeting the Revenue Test after paying one or more advance payments, provided that the Filing Constituent Entity has submitted a notification as per Paragraph C of Article 21 of the Law.
- B. The Bureau shall respond to the validity of the refund request within ninety days or within a longer period as determined appropriate by the Bureau. In all cases, the Bureau has the right to postpone processing the refund request where it starts Tax Audit procedures for the Fiscal Year subject to that request.
- C. The Bureau shall process payments relating to refund requests within thirty days of the issue of its decision approving the request and the Filing Constituent Entity may choose to treat the refund as a credit to be applied in subsequent Fiscal Years.

- D. The Bureau may postpone issuing a decision to refund Tax where there are any amounts disputed in accordance with Article 31 of the Law or if the Filing Constituent Entity has any outstanding obligations to the Bureau.
- E. The Bureau may set off excess Tax paid by a Filing Constituent Entity for a Fiscal Year against any Tax Due for other Fiscal Years or administrative fines due by the Filing Constituent Entity until the excess Tax paid is exhausted. The Bureau shall process the refund of the remaining excess Tax in accordance with the provisions of this Article.

## **Article 72: Computation and Payment Currency**

- A. Where all of the Constituent Entities of a Multinational Enterprise Group that are located in the Kingdom use Bahraini Dinar as their Presentation Currency, the computation of Tax shall be made in Bahraini Dinar.
- B. Where one or more of the Constituent Entities of a Multinational Enterprise Group that are located in the Kingdom do not use Bahraini Dinar as their Presentation Currency, the Filing Constituent Entity shall make an election for Tax for the computation of Tax to be made either in Bahraini Dinar or in the Presentation Currency of the Consolidated Financial Statements of the Ultimate Parent Entity.
- C. Any amounts taken into account for the computation of Tax that require conversion into Bahraini Dinars or into the Presentation Currency of the Consolidated Financial Statements of the Ultimate Parent Entity, as the case may be, shall be converted in accordance with the rules under the Acceptable Financial Accounting Standard or the Authorised Accounting Financial Standard used by the Multinational Enterprise Group.
- D. The amount of Tax computed in a currency other than Bahraini Dinars shall be converted into Bahraini Dinars for reporting and payment of Tax using the average foreign exchange rate for the Fiscal Year as determined using rates provided by the Central Bank of Bahrain or a reliable source of foreign exchange rates, provided the same source is used consistently. The Bureau shall publish a list

of reliable sources of foreign exchange rates for which may be used for the purposes of this Paragraph.

- E. A Filing Constituent Entity shall use the same currency conversion method continuously to calculate all amounts throughout the Fiscal Year.
- F. A Filing Constituent Entity shall keep records documenting the reason for selecting a method for currency conversion, rates used, rationale and mechanisms applied to all currency conversion accounts.
- G. The election referred to in Paragraph B of this Article is a Five-Year Election which can be made in accordance with Article 20 of the Law.

### **Article 73: Amounts Expressed in Euro**

For the purpose of converting the amounts expressed in Euro in the Law and these Regulations, amounts which are in a currency other than Euro shall be converted into Euro using the average monthly foreign exchange rate for December in the calendar year immediately preceding the Fiscal Year in respect of which the conversion is required, calculated on the basis of the current average exchange rates for each day of December as described in Paragraph D of [Article 72](#) of these Regulations.

### **Article 74: Retention of Records**

The types of records, accounting books, financial statements required to be kept and maintained in accordance with Article 25 of the Law include the following:

1. Balance sheet and profit and loss accounts.
2. Records of wages and salaries.

3. Records of fixed assets.
4. Inventory records and accounts.
5. Documents supporting the entries in the accounting records, commercial books, and Tax Return including all of the following:
  - a. Correspondence, invoices, licenses and contracts.
  - b. Documents containing the details of any calculation made in accordance with the provisions of the Law and these Regulations including the basis and method of the calculation.
6. Any additional records or documents specified by the Bureau.

### **Article 75: Record Keeping Periods**

- A. Records required to be kept and maintained pursuant to Article 25 of the Law and [Article 74](#) of these Regulations shall be kept and maintained for a period of five years following the end of the Fiscal Year to which they relate.
- B. The following Excluded Entities shall keep and maintain the records described in Article 25 of the Law and [Article 74](#) of these Regulations for a period of five years following the end of the Fiscal Year to which they relate:
  1. Pension Funds.
  2. An Investment Fund that is an Ultimate Parent Entity.
  3. A real estate investment vehicle that is an Ultimate Parent Entity.

4. An Entity, other than a pension service entity, where at least 95% of the value of the Entity is directly or indirectly owned by one or more Excluded Entities referred to in Clauses 1, 2 and 3 of this Paragraph provided that the Entity operates exclusively or almost exclusively to own assets or invest funds on behalf of Excluded Entities and it engages exclusively in activities ancillary to those performed by Excluded Entities.
  5. An Entity, other than a pension service entity, where at least 85% of the value of the Entity is directly or indirectly owned by one or more Excluded Entities referred to in Clauses 1, 2 and 3 of this Paragraph, provided that most of the Entity's income is primarily derived from gains or losses on shares or equity interests excluded from the computation of Constituent Entity Income or Loss.
- C. Notwithstanding Paragraphs A and B of this Article, records relating to real estate and capital assets shall be retained for a period of ten years following the end of the Fiscal Year to which they relate.
- D. The Bureau may, prior to the expiration of the retention periods specified in the preceding Paragraphs, notify an Entity requiring it to retain records beyond the retention period for an additional period provided that such additional period shall not exceed five years.

## **Article 76: Manner of Record Retention**

- A. All records and documents specified in [Article 74](#) of these Regulations, shall be able to be readily produced upon request and shall be maintained by a Filing Constituent Entity, the Entities it represents under Article 18 of the Law and the Excluded Entities specified in Paragraph B of [Article 75](#) of these Regulations in any of the following ways:
1. Retaining the original physical document.

2. Retaining a copy of the original document, provided that the copy is accurate and legible, where there are valid reasons for not maintaining the original physical document deemed acceptable by the Bureau.
- B. Records may be retained electronically if all of the following conditions are met:
1. They are easily accessible.
  2. They are securely maintained in a manner which prevents tampering or manipulation.
- C. Any Entity required to keep and maintain documents and records as per the Law may appoint a third party to retain the documents and records, provided that the Entity remains fully liable for such documents and records.
- D. Financial statements and records described in Clause 1, 2, 3 and 4 of [Article 74](#) of these Regulations shall be maintained in either Arabic or English.
- E. Without prejudice to Paragraph D of this Article, the Bureau may request for a legal translation to be submitted within the period it specifies where a record is maintained in a language other than English or Arabic.

## **Article 77: Tax Audit**

- A. When conducting a Tax audit, the Bureau shall notify the person which will be subject to the Tax audit that a Tax audit will be conducted for certain Fiscal Years unless the Bureau has reasonable suspicion to believe that the notification will impact the Tax audit procedures.
- B. The Bureau may undertake any necessary activities for the purposes of conducting Tax audits per Article 26 of the Law, including any of the following:

1. Examine and review records and documents, including those specified in Article 25 of the Law and [Article 74](#) of these Regulations.
  2. Inspect and record the assets located at the premises of Entities located in the Kingdom.
  3. Notify any person to provide documents, data, or information, whether related to themselves or to another person, as deemed appropriate by the Bureau. The requested documents, data, or information shall be submitted to the Bureau in the manner and within the timeframe specified in the notification by the Bureau.
  4. Retain a copy or image of the records, accounting books, financial statements, invoices, and all documents and records mentioned in Clause 1 of this Paragraph, related to the relevant Tax audit period.
  5. Place a visible mark on the original documents, records, and assets indicating that they were examined and audited.
  6. Retain the original copy of the records or documents for the period deemed appropriate by the Bureau for the purpose of the Tax audit procedures. The original copy should be kept under suitable conditions to prevent loss or damage. The original copy shall be returned to its owner or holder who submitted it to the Bureau upon completion of the Tax audit or at any later date deemed appropriate by the Bureau.
- C. The Bureau may conduct Tax audits at its headquarters, at the premises of the person which will be subject to the audit, or at any other location where that person conducts business, stores goods, or keeps records.
- D. Any person subject to a Tax audit, or their Tax Agent, shall provide all appropriate assistance and support to the Bureau's employees to enable them to perform their duties for the purposes of the Tax audit.

## **Article 78: Tax Audit Results**

Upon the completion of the Tax audit, the Bureau shall issue a decision consisting of the results of the Tax audit without undue delay, provided that the decision includes at a minimum the following information, where applicable:

1. The reference number and date of the notification of the audit results.
2. Name of the person which was subject to the Tax audit.
3. Identification number for tax purposes, (if available).
4. Reasons for the assessment or reassessment of Tax Due, including the facts, information, and authorised legal basis.
5. The net amount of Tax Due to the Bureau or the excess amount to be refunded, if any.

## **Article 79: Assessment of Tax Due**

- A. The Bureau shall issue its decision to reassess the amount of Tax Due in accordance with the provision of Paragraph B of Article 27 of the Law, based on the Tax Audit results as per [Article 78](#) of these Regulations if it is found that a Tax Return or an amended Tax Return submitted by the Filing Constituent Entity contains an error.
- B. The Bureau shall issue its decision to assess the amount of Tax Due in accordance with the provision of Paragraph E of Article 27 of the Law which shall take into account the relevant facts and circumstances and include the amount it deems appropriate in order to arrive at the amount of Tax Due.

C. For the purposes of applying the provisions of Paragraphs A and B of this Article, the assessment of Tax Due decision shall include at least all of the following:

1. Name of the Filing Constituent Entity.
2. Identification number for tax purposes.
3. Date of the decision issuance.
4. Amount of Tax Due to the Bureau after the assessment or reassessment.

### **Article 80: Joint Liability**

A. The application of the provisions of Article 29 of the Law is subject to all of the following:

1. Where an Entity located in the Kingdom joins a Multinational Enterprise Group that meets the Revenue Test, or otherwise becomes a part thereof pursuant to [Article 38](#) of these Regulations, that Entity shall be held jointly and severally liable along with other Entities of the Multinational Enterprise Group in respect to Tax Due and administrative fines for the Fiscal Year during which it became the member.
2. Where a Constituent Entity which is located in the Kingdom changes its location to a jurisdiction other than the Kingdom, leaves a Multinational Enterprise Group that meets the Revenue Test, or otherwise ceases to become a member thereof pursuant to [Article 38](#) of these Regulations, that Constituent Entity shall remain jointly and severally liable for any Tax Due and liabilities arising in respect of the Fiscal Years during which it was a member of the Multinational Enterprise Group including the entire Fiscal Year during which it ceased to become a member of the Multinational Enterprise Group or ceased to be located in the Kingdom.

- B. The provisions of this Article shall also apply to a Joint Venture or a Joint Venture Subsidiary located in the Kingdom.

### **Article 81: Payment of Tax and Fines in Instalments**

- A. The Bureau may approve a request for payment of Tax Due or administrative fines in instalments upon the request of the Filing Constituent Entity in the manner prescribed by the Bureau, considering all of the following:
1. The Filing Constituent Entity has submitted all Tax Returns due.
  2. The Filing Constituent Entity has provided sufficient documentation evidencing the inability to pay the due amounts.
  3. Any other requirements specified by the Bureau.
- B. The Bureau may revoke its approval of the request for the payment of Tax Due and administrative fines in instalments in any of the following cases:
1. The Filing Constituent Entity fails to pay any instalment.
  2. The Filing Constituent Entity or any Entity which it represents as per Article 18 of the Law commits any of the Tax Evasion offences.
  3. Any other case which the Bureau deems appropriate.
- C. Where the Bureau revokes its approval of the request for the payment of Tax Due and administrative fines in instalments pursuant to Paragraph B of this Article, the instalment plan shall be void ab initio. The Filing Constituent Entity shall remain liable to pay such amounts within the timelines prior to the approval of the instalment request.

## **Article 82: Request for Review**

- A. For the purposes of applying the provisions of Paragraphs A of Article 31 of the Law, hearing a request for review is subject to all of the following conditions:
  - 1. Payment of the prescribed fee.
  - 2. Submission of the request within the timelines specified in the Law.
- B. The request for review shall include all of the following information at minimum:
  - 1. The decision or procedure subject to review request, the date of its issuance and its reference number where available.
  - 2. Name of the review request applicant, their work address, email address, and identification number for tax purposes.
  - 3. Summary of the review request, its reasons, and the legal basis.
  - 4. The supporting documents and documentation, records, and other information substantiating the review request.

## **Article 83: Tax Objections Committee**

- A. The Tax Objections Committee shall elect a vice-chairperson from among its members during its first session, who will act in place of the chairperson in their absence or if they are unable to fulfil their duties. The committee's sessions shall be confidential, and the committee shall ensure the preservation of privacy in carrying out its duties. The committee shall hold its sessions periodically at a time specified by the committee or following the request of the chairperson or their deputy. The sessions shall only be valid if a majority of the members are present, including the chairperson or their deputy. The committee may hold its meetings using electronic means or any other means it deems appropriate.

The committee may, when necessary and as determined by the chairperson, make its decisions or issue its recommendations by means of circulation, provided that the decisions or recommendations are issued unanimously by the committee members.

The committee may seek the assistance of experts and specialists from governmental bodies or other sources as it deems appropriate in carrying out its duties, without those individuals having a counted vote in its decisions or recommendations.

- B. The committee shall have a secretariat responsible for preparing and organising the committee's meetings, coordinating among its members, drafting the minutes of its meetings and recommendations, recording in the committee's registers, and carrying out any tasks assigned to them by the committee.
- C. The objection shall include, at a minimum, the following information:
  - 1. The Bureau's decision or procedure subject to the objection or the decision of the review request alongside the issue date and the reference number where available.
  - 2. Name of the objector, their work address, email address, and the identification number for tax purposes.
  - 3. Summary of the objection, its reasons, and the legal basis.
  - 4. The supporting documents and documentation, records, and other information for the objection.
- D. The objection shall be submitted to the committee on the form prescribed for this purpose, and the committee shall notify the objector of the date of the objection hearing sessions at least five days in advance where the Committee deems hearing the objector or his representative's statements as necessary. The objector has the right to appear before the committee in person or through a representative, otherwise the committee will proceed with the available documents in their absence. The committee shall consider the objection during its sessions with the required independence and impartiality. The Committee may request the submission of any data, documents, or information deemed necessary from the objector or his representative.

- E. Hearing an objection request submitted to the Committee is subject to all of the following conditions:
1. Payment of the prescribed fee.
  2. Submission of the objection within the timelines specified in the Law.
- F. The chairperson of the committee, their deputy, or any of its members shall recuse themselves from attending any session in which an objection is being considered if the objector is a relative up to the fourth degree. Any of the members may also request to be recused where that member has a personal or financial connection to the objector or has a suspicion of a conflict of interest.
- G. The committee shall issue its reasoned recommendations on the objections submitted to it by a majority vote of those present, and in the event of a tie, the side with the vote of the session chair shall prevail.

### **Article 84: General Anti-Abuse Rule**

- A. For the purposes of applying the provisions of Article 41 of the Law, a transaction or arrangement may include any agreement, part of arrangement, action, understanding, promise, undertaking, event, scheme, transaction or series of transactions notwithstanding their legal enforceability, the identity of the contracting parties and the date in which the transaction or arrangement come into effect if a result referred in Paragraph B of Article 41 of the Law concern a Fiscal Year.
- B. Determining whether the income from a transaction, arrangement, series of arrangements, or any part thereof, is for a genuine commercial purpose or a non-financial purpose that reflects economic reality within the context of Clause 1 of Paragraph B of Article 41 of the Law requires all of the following:
1. A determination of a legitimate goal aimed to be achieved by a Constituent Entity through the transaction, arrangement, or series of arrangements (if any).

2. An evaluation of whether the transaction, arrangement, or series of arrangements, or each part thereof are justified considering the legitimate goal of the Constituent Entity (if any), other than obtaining a Tax Advantage that defeats the purpose or objective of the Law.

C. In applying Paragraph B of this Article, the Bureau shall consider all the following:

1. The purpose and business justification for a given transaction, arrangement or series of arrangements as provided by the relevant Constituent Entity.
2. The circumstances that led to the decision to conduct the transaction, arrangement, or series of arrangements.
3. The manner in which the transaction, arrangement, or series of arrangements was structured and carried out.
4. Whether any artificiality or contrivance is evident in relation to that transaction, arrangement, or series of arrangements.
5. Whether there is a divergence between the form and substance of the transaction, arrangement, or series of arrangements.
6. The result achieved by the scheme compared to the result under alternative scenarios that would allow parties to achieve a legitimate business goal.

D. For the purposes of Paragraph B of this Article, all of the following criteria may be considered by the Bureau to suggest that a transaction, arrangement, or series of arrangements does not reflect economic reality:

1. The legal characterisation of the individual steps within an arrangement is inconsistent with the legal substance of the arrangement as a whole.

2. The transaction, arrangement, or series of arrangements is carried out in a manner not ordinarily adopted in a reasonable business conduct.
  3. The transaction, arrangement, or series of arrangements includes elements that have the effect of offsetting or cancelling each other.
  4. The transactions concluded are circular in nature.
  5. The transaction, arrangement, or series of arrangements results in a significant tax benefit that is not reflected in the economic effect of the transaction, the business risks undertaken by the Constituent Entity, or its cash flows.
- E. For the purposes of Clause 2 of Paragraph B of Article 41 of the Law, all of the following shall be considered:
1. A transaction, arrangement, or series of arrangements may be considered as having the primary purpose of obtaining a Tax Advantage that defeats the purpose or objective of the Law if it would not be reasonable for the entity to execute it in such a form in the absence of the option to achieve such a Tax Advantage.
  2. The Tax Advantage resulting from the transaction, arrangement, or series of arrangements may be considered as defeating the purpose or objective of the Law, if granting the Tax Advantage is inconsistent with the aim of the provisions based on which the Tax Advantage is granted or if the arrangements are intended to exploit any gaps in the provisions of the Law or these Regulations.
  3. A Tax Advantage may take any of the following forms:
    - a. Decreasing Constituent Entity Income.
    - b. Increasing Constituent Entity Covered Taxes or Adjusted Covered Taxes.

- c. Increasing the Substance-based Income Exclusion of a Constituent Entity.
  - d. Creating or increasing a Constituent Entity Loss.
  - e. Any other form provided that it has an impact on the Tax Due.
- F. Where the Bureau determines Tax liabilities in application of Article 41 of the Law, all of the following shall be considered:
- 1. The adjustments applied shall be aimed at eliminating the Tax Advantage to the extent it defeats the purpose or objective of the Law.
  - 2. The adjustments shall be aimed at establishing Tax at a level that would have been due if the relevant Entities had pursued their goals, other than those relating to obtaining a Tax Advantage that defeats the purpose or objective of the Law.
  - 3. The adjustments may be applied on any Constituent Entity participating in the transaction, arrangement, or series of arrangements, irrespective of whether the Tax Advantage arises on its end.
  - 4. The relevant Constituent Entities may identify the method which will serve as the basis for the Bureau's adjustments if there are multiple ways in which entities could achieve their legitimate goal in the transaction, arrangement, or series of arrangements.
  - 5. The Bureau may indicate necessary adjustments to be made in subsequent years where a Tax Advantage is expected to arise in future Fiscal Years.

## **Article 85: Calculation of Deadlines**

- A. When calculating the deadlines stipulated in the Law and these Regulations, the day the notification is sent or the day the event triggering the timeline occurs shall not be included within the specified timeframe. The timelines specified in months expire on the corresponding day of the last month of the timeline. If there is no corresponding day, the timeline ends on the last day of that month.
- B. If the last day of the timeline falls on an official holiday, the timeline is extended to the next working day.
- C. All references to days and months in the Law and these Regulations shall be construed as calendar days and months and shall be calculated in accordance with the Gregorian calendar.

## **Article 86: Means of Notification**

- A. The Bureau shall notify any person or his Tax Agent of tax decisions made and procedures instigated by the Bureau using one of the following methods, sent to the addresses registered with the Bureau:
  - 1. Post.
  - 2. Email.
  - 3. The Bureau's electronic system.
  - 4. Posting in a visible location at its premises.
  - 5. Any other means specified by the Bureau.

- B. The address for notifying a person which does not have an address registered with the Bureau shall be his place of business in the Kingdom as included in his commercial registration or any other address available to the Bureau.
- C. The date of receipt of the notification shall be the same as the date it is sent by the Bureau to the Filing Constituent Entity or its Tax Agent or any other person for notifications sent by electronic means. Additionally, the date of receipt of the notification carried out in accordance with Clause 4 of Paragraph A of this Article shall be deemed to be the date of posting.

### **Article 87: Conflict of Interest**

It is prohibited for any employee of the Bureau to carry out or participate in any procedures related to a natural or legal person in the following cases:

- 1. There is a familial relationship up to the fourth degree between the employee and the concerned natural person or any of the partners or owners of the legal person.
- 2. There is an interest or material relationship of any kind between the employee and the concerned natural person or any of their relatives up to the third degree or any of the partners or owners of the legal person.

### **Article 88: Legal Representative**

- A. A liquidator, bankruptcy trustee, legal guardian or any other person appointed pursuant to the relevant laws of the Kingdom to manage the affairs of the Filing Constituent Entity shall fulfil the obligations of a Filing Constituent Entity stipulated in the Law and these Regulations.
- B. The person referred to in Paragraph A of this Article shall, within 30 days of appointment, submit a notification to the Bureau in the manner prescribed for this purpose, and shall provide the Bureau with all of the following:

1. The person's name, identity, email and address.
  2. The name and address of the Filing Constituent Entity it represents.
  3. Documentation substantiating the appointment.
  4. The duration of the appointment or the period prescribed for conducting the person's duties in representing the Filing Constituent Entity.
- C. The Bureau may request additional information as deemed necessary from the person referred to in Paragraph A of this Article, from the Filing Constituent Entity where available, or from any other person in relation to the appointment.
- D. The Bureau shall notify the person referred to in Paragraph A of this Article of the date on which it approved that person's appointment to fulfil the obligations of the Filing Constituent Entity.
- E. When the appointment referred to in Paragraph A of this Article is complete, the person shall notify the Bureau, in the manner prescribed for this purpose, no later than 30 days after the date of completion.

## **Article 89: Explanatory Guides and Tax Clarifications**

The Bureau may issue the explanatory guides, and clarifications necessary for the implementation of the provisions of the Law and these Regulations, in addition to illustrative evidence and guidelines that are consistent with the Model Rules, Administrative Guidance, and Commentary issued by the OECD.

## **Chapter Nine: Transitional Provisions**

### **Article 90: Transitional Country-by-Country Reporting Safe Harbour**

A. For the purposes of applying the provisions of Article 13 of the Law, all of the following shall apply:

1. A Qualified Country-by-Country Report is a Country-by-Country Report prepared and filed using Qualified Financial Statements.
2. Qualified Financial Statements are any of the following:
  - a. The accounts used to prepare the Consolidated Financial Statements before any consolidation adjustments eliminating intra-group transactions.
  - b. Separate financial statements of each Constituent Entity, Joint Venture or Joint Venture Subsidiary prepared in accordance with either an Acceptable Financial Accounting Standard, or an Authorised Financial Accounting Standard provided the information contained in such statements is maintained based on that accounting standard and it is reliable.
  - c. In the case of a Constituent Entity that is not included in a Multinational Enterprise Group's Consolidated Financial Statements on a line-by-line basis solely due to size or materiality grounds, the financial accounts of that Constituent Entity that are used for preparation of the Multinational Enterprise Group's Qualified Country-by-Country Report.
  - d. In the case of a Permanent Establishment, Separate Qualified Financial Statements for that Permanent Establishment.

3. Investment Entity Jurisdiction is the jurisdiction in which an Investment Entity or Insurance Investment Entity is resident for the purposes of a Qualified Country-by-Country Report.
  4. A Net Unrealised Fair Value Loss is the sum of all losses, as reduced by any gains, which arise from changes in fair value of Ownership Interests, except for Portfolio Shareholdings, included in a Multinational Enterprise Group's profit or loss before income tax in respect of a jurisdiction for a Fiscal Year as reported in its Qualified Country-by-Country Report.
  5. Profit or Loss Before Income Tax is a Multinational Enterprise Group's profit or loss before income tax in respect of a jurisdiction for a Fiscal Year as reported in the Multinational Enterprise Group's Qualified Country-by-Country Report.
  6. Qualified Person is, in respect of an Ultimate Parent Entity that is a Flow-through Entity, an ownership holder described in [Article 58](#) of these Regulations.
  7. Simplified Covered Taxes comprise the aggregate income tax expense of all Constituent Entities or Joint Ventures and Joint Venture Subsidiaries, as the case may be, of a Multinational Enterprise Group in a jurisdiction for a Fiscal Year, as reported on the Multinational Enterprise Group's Qualified Financial Statements, after eliminating any taxes that are not Covered Taxes and uncertain tax positions reported in the Multinational Enterprise Group's Qualified Financial Statements.
  8. Total Revenue means a Multinational Enterprise Group's Total Revenue in a jurisdiction as reported on its Qualified Country-by-Country Report.
- B. For the purposes of Clause 2 of Paragraph A of Article 13 of the Law, the alternative Effective Tax Rate of a Multinational Enterprise Group in respect of a jurisdiction for a Fiscal Year shall be equal to an amount expressed as a percentage calculated in accordance with the formula  $((A \div B) \times 100)$ , whereby:

- A: The Simplified Covered Taxes
- B: The profit or loss before income tax
- C. A Net Unrealised Fair Value Loss shall be excluded from Profit or Loss Before Income Tax if that loss exceeds EUR 50 million in respect of a jurisdiction for a Fiscal Year.
- D. For the purposes of Clause 1 of Paragraph A of Article 13 of the Law, where a Constituent Entity is held for sale, its revenue for a Fiscal Year shall be aggregated with the revenue of the Multinational Enterprise Group reported in its Qualified Country-by-Country Report for that Fiscal Year in respect of the jurisdiction in which the Constituent Entity is resident.
- E. Taxes paid under a Controlled Foreign Company Tax Regime or a Taxable Branch Regime do not need to be allocated for purposes of determining the alternative Effective Tax Rate under Clause 2 of Paragraph A of Article 13 of the Law for the jurisdiction of the Constituent Entity-owner or Main Entity. A Taxable Branch Regime refers to a tax regime that does not provide an exemption for the taxable income generated by a foreign branch or Permanent Establishment located in a jurisdiction other than the jurisdiction in which the Main Entity is located.
- F. For the purposes of Paragraph C of Article 13 of the Law, the conditions described under Paragraph A of Article 13 of the Law are applied to a Joint Venture and Joint Venture Subsidiaries as if they were Constituent Entities of a separate Multinational Enterprise Group. The Profit or Loss Before Income Tax and Total Revenue of the Joint Venture and Joint Venture Subsidiaries in respect of the Fiscal Year and the jurisdiction concerned shall be those included in their Qualified Financial Statements.
- G. For the purposes of Paragraph A of Article 13 of the Law and subject to Paragraph H of this Article, where an Ultimate Parent Entity of a Multinational Enterprise Group is a Flow-through Entity, then the Profit or Loss Before Income Tax and any associated taxes of the Ultimate Parent Entity are reduced to the extent that such amount is attributable to an Ownership Interest held by a Qualified

Person.

- H. Where an Ultimate Parent Entity is a Flow-through Entity, the Transitional Country-by-Country Reporting Safe-Harbour under Article 13 of the Law will not apply to that Multinational Enterprise Group in respect of the jurisdiction where that Ultimate Parent Entity is located unless all the Ownership Interests in the Ultimate Parent Entity are held by Qualified Persons.
- I. For the purposes of Paragraph A of Article 13 of the Law, a Multinational Enterprise Group shall exclude Investment Entities and Insurance Investment Entities.
- J. Notwithstanding Paragraph I of this Article, an Investment Entity or an Insurance Investment Entity shall not be excluded where all of the following conditions apply:
  - 1. No election has been made under [Article 60](#) or [Article 61](#) of these Regulations where such election covers the Fiscal Year.
  - 2. All Constituent Entity Owners of that Entity are resident in the Investment Entity Jurisdiction.
- K. All relevant information concerning the application of the Transitional Country-by-Country Reporting Safe Harbour shall be included in the Tax Return for the Fiscal Year in accordance with [Article 66](#) of these Regulations.
- L. Where a Multinational Enterprise Group is not required to file Country-by-Country Reports, a Filing Constituent Entity which is a Constituent Entity of that Multinational Enterprise Group may claim Transitional Country-by-Country Reporting Safe Harbour under Article 13 of the Law, provided the Filing Constituent Entity completes a Tax Return pursuant to [Article 66](#) of these Regulations using data from Qualified Financial Statements that would have been reported as Total Revenue and Profit or Loss before Income Tax in a Qualified Country-by-Country Report if the Multinational Enterprise Group had been required to file a Country-by-Country Report.

## **Article 91: Deferred Tax Assets or Liabilities in the Transition Year**

- A. For the purposes of calculating the Effective Tax Rate for Entities referred to in Paragraph A of Article 42 of the Law which are located in the Kingdom, deferred tax assets or deferred tax liabilities shall be taken into account at the lower of the Minimum Rate or the rate at which an item of deferred tax expense has been recorded in the financial accounts.
- B. Where the rate used to determine the deferred tax asset is higher than the Minimum Rate, deferred tax assets shall be calculated in accordance with the formula  $((A \div B) \times C)$ , whereby:
- A: Is the amount of deferred tax assets reflected in the financial accounts.
- B: Is the tax rate used to determine the deferred tax asset in the Fiscal Year preceding the Transition Year.
- C: Is the Minimum Rate.
- C. Notwithstanding Paragraph A of this Article, deferred tax assets in respect of Constituent Entity Losses that have been recorded at a rate lower than the Minimum Rate may be recomputed at the Minimum Rate if the Filing Constituent Entity demonstrates that the deferred tax asset is attributable to a loss that would have been a Constituent Entity Loss had the Multinational Enterprise Group been in scope of the Law in the year in which the loss arose.
- D. For the purpose of applying the provisions of this Article, the impact of any valuation adjustment, or accounting recognition adjustment with respect to a deferred tax asset shall be disregarded.

## **Article 92: Acquirer's Basis Carrying Value**

- A. For the purposes of applying the provisions of Paragraph C of Article 42 of the Law, all of the following shall be considered:

1. The transferring Entity's carrying value shall be adjusted for capital expenditure, amortisation or depreciation after the transaction and before the beginning of the Transition Year.
  2. Any capital expenditures, amortisation or depreciation will be calculated in accordance with the Acceptable Financial Accounting Standard or Authorised Financial Accounting Standard that is applied by the acquirer.
  3. The relevant Transition Year is the Transition Year of the transferring Entity.
  4. A transfer of assets shall include cross-border and domestic transfers of tangible or intangible property treated as a sale of assets from an accounting perspective.
- B. The provisions of Paragraph C of Article 42 of the Law and the preceding Paragraph shall similarly apply to a transfer or a deemed transfer of assets within the same Entity, whereas that Entity shall be treated as both the transferring and acquiring Entity.
- C. Where Paragraph C of Article 42 of the Law applies, deferred tax assets or liabilities with respect to the transferred assets that are recognised at the beginning of the Transition Year shall be those that existed in the financial accounts of the Multinational Enterprise Group prior to the transaction which triggered the application of Paragraph C of Article 42 of the Law and which shall be subject to all of the following:
1. An adjustment for subsequent capitalised expenditure, amortisation and depreciation.
  2. Re-computation at the Minimum Rate, in accordance with [Article 91](#) of these Regulations if the deferred tax assets or liabilities have been recorded at a rate lower than the Minimum Rate.
- D. Any deferred tax asset or liability arising in the Multinational Enterprise Group's financial accounts as a result of the transfer of an asset shall be disregarded except as provided in Paragraph G of this Article.

- E. An acquiring Entity may take into account a deferred tax asset in any the following cases:
1. The transferring Entity paid tax in respect to the transaction.
  2. The deferred tax asset would have been taken into account in accordance with [Article 91](#) of these Regulations but was reversed or not created by the transferring Entity because gain from the disposition was included in the income of the disposing Entity which was subjected to tax.
- F. A deferred tax asset created by virtue of the preceding Paragraph shall not exceed the Minimum Rate multiplied by the difference in the local tax basis in the asset and the carrying value as determined under paragraph C of Article 42 of the Law and this Article.
- G. The creation of a deferred tax asset by virtue of Paragraph E of this Article shall not reduce the Adjusted Covered Taxes of a Constituent Entity, Joint Venture or Joint Venture Subsidiary.
- H. An acquiring Entity may take into account any Covered Taxes that are attributable to the transaction and that would have been allocated to the transferring Entity as per [Article 29](#) of these Regulations.

### **Article 93: Transition Year at the time of Entry into Force of the Law**

- A. For the purposes of implementing the provisions of the Law and these Regulations, the Transition Year at the time of Entry into Force of the Law shall be the first Fiscal Year that begins on or after the date the Law enters into force.
- B. For purposes of applying Article 44 of the Law and without prejudice to [Article 84](#) of these Regulations, obligations shall be established in accordance with the provisions of the Law and these Regulations for entities at the beginning of the Transition Year at the time of Entry into Force of the Law.