

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Competition, Charities and Treasury

Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024

Taxation (Multinational—Global and Domestic Minimum Tax) Amendment (2025 Measures No.1) Rules 2025

Section 29 of the *Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024* (the Assessment Act) provides that the Minister may make Rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Taxation (Multinational—Global and Domestic Minimum Tax) Amendment (2025 Measures No.1) Rules 2025* (Amending Rules) is to amend provisions in the *Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024* (the Rules) relating to the release of the OECD's Administrative Guidance.

Specifically, this includes:

- clarifying the limited circumstances where Securitisation Entities would be liable to pay Undertaxed Profits Rules (UTPR) top-up tax;
- inserting an Equity Investment Inclusion Election and the related rules on Qualified Flow-through Tax Benefits;
- minor amendments to the Domestic Minimum Tax (DMT) provisions; and
- clarifying the Investment Entity Transparency Election for Regulated Mutual Insurance Companies.

The Rules were substantively enacted at the end of 2024 to implement the domestic framework for a multinational top-up tax, by providing the computations of top-up tax as detailed under the OECD GloBE Model Rules (as modified by the Commentary, Agreed Administrative Guidance and Safe Harbours Rules) (GloBE Rules). The Amending Rules aim to ensure that administrative guidance released by the OECD is incorporated appropriately. It is imperative that the Rules reflect OECD approved documents so that Australia's implementation of the GloBE Rules achieves qualified status, which can only be achieved if the Rules are implemented in a manner consistent with the GloBE Rules. All OECD documents are publicly available from the OECD website and could be, in 2025 accessed freely from <https://oecd.org>.

The Act does not specify any conditions that need to be satisfied before the power to make the Amending Rules may be exercised.

The Amending Rules are a legislative instrument for the purposes of the *Legislation Act 2003*. The Amending Rules are subject to disallowance and sunseting in accordance with sections 42 and 50, respectively, of the *Legislation Act 2003*.

The Amending Rules commence on the day after registration.

The Amending Rules apply to Fiscal Years commencing on or after 1 January 2024. The retrospective application is consistent with the policy provided in the OECD's Two Pillar Solution and is expected as part of the coordinated international approach for jurisdictions implementing the GloBE Rules. The application to Fiscal Years commencing on or after 1 January 2024 is appropriate due to section 32 of the Assessment Act, which allows legislative instruments to apply retrospectively, effectively overriding subsection 12(2) of the *Legislation Act 2003*.

Details of the Amending Rules are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact (OIA) Analysis has been consulted. A list of reports certified as equivalent to a Policy Impact Analysis can be found at <https://oia.pmc.gov.au/published-impact-analyses-and-reports/two-pillar-solution-addressing-tax-challenges-arising>. The full list of reports and executive summaries of those reports are also available in the Explanatory Memorandum for the Act as these reports have been certified for both the Act and the Rules.

Details of the Taxation (Multinational—Global and Domestic Minimum Tax) Amendment (2025 Measures No.1) Rules

Section 1 – Name

This section provides that the name of the regulations is the *Taxation (Multinational—Global and Domestic Minimum Tax) Amendment (2025 Measures No.1) Rules* (Amending Rules)

Section 2 – Commencement

Schedule 1 to the Amending Rules commences the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Amending Rules are made under section 29 of *Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024* (the Assessment Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument is amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Adjustments for Excluded Equity Gain or Loss Election

The Amending Rules include further adjustments to GloBE Income or Loss by including an Equity Investment Inclusion Election. Broadly, a Constituent Entity owner that is subject to an Equity Investment Inclusion Election includes in its GloBE Income or Loss certain accounting gains, profits, and losses on its Ownership Interest.

Equity Investment Inclusion Election (General)

Item 9, section 3-31 of the Amending Rules provides that a Filing Constituent Entity may make a Five Year- Equity Investment Inclusion Election that applies on a jurisdictional basis to all Ownership Interests (excluding Portfolio Shareholding) owned by Constituent Entities located in the jurisdiction. This amendment is consistent with paragraph 57.5 on page 68 of the OECD's Consolidated Commentary (2025).

The election cannot be revoked with respect to an Ownership Interest where a loss with respect to that Ownership Interest has been taken in account in the computation of the GloBE Income or Loss during the time the Equity Investment Inclusion Election was in effect.

The effect of the election is that a Constituent Entity owner of an Ownership Interest:

- includes the accounting gain, profit, or loss as an adjustment to Financial Accounting Net Income or Loss (FANIL) (adjusted as required by Part 3-2 excluding section 3-30 of the Rules) with respect to any:
 - fair value gains and losses and impairments on that Ownership Interest where the owner is taxable:
 - on a mark-to-market basis; or
 - on impairment; or
 - on a realisation basis, and
 - the income tax expense reflects the tax consequences of the mark-to-market movements or impairments on Ownership Interest;
 - profit and loss attributable to that Ownership Interest where the interest is in a Tax Transparent Entity that the owner accounts for using the equity method; and
 - dispositions of the Ownership Interest that give rise to gains or losses that are included in the owner's domestic taxable income, excluding any gain fully offset, and the proportionate share of any gain partially offset, by any deduction or other similar relief particular to the type of gain; and
- notwithstanding paragraph 4-20(1)(a) and section 4-85(2)(a) includes all current and deferred tax expense or benefits associated with these income items in the computation of its Adjusted Covered Taxes subject to the relevant provisions of the GloBE Rules.

This treatment does not apply in respect of an Ownership Interest that is a qualified flow-through ownership interest as defined in section 4-37. In this scenario, the modified treatment under section 4-36 or 4-38 of the Amending Rules would apply instead.

Modified treatment for an owner of a qualified flow-through ownership interest

A Constituent Entity that is subject to an Equity Investment Inclusion Election for a Fiscal Year must apply a different treatment in respect of qualified flow-through ownership interests.

Pursuant to section 4-36 of the Amending Rules, where income flows through a qualified flow-through ownership interest, the owner's GloBE Income or Loss is not increased to reflect such income and the owner's Covered Taxes are reduced by the amount of any tax expense with respect to such income. Similarly, where losses flow through a qualified flow-through ownership interest the owner's GloBE Income or Loss is not reduced to reflect such loss and, to the extent provided in paragraph 57.8 on page 69 of the Consolidated Commentary (2025), the amount of any tax benefit of the owner with respect to such loss (a qualified flow-through tax benefit as described below) is effectively excluded from the owner's Adjusted Covered Taxes by being treated as a positive amount in the Adjusted Covered Taxes of the owner.

A qualified flow-through ownership interest is defined in section 4-37 of the Amending Rules as:

- an investment in a Tax Transparent Entity:
 - that is treated as an equity interest for local tax purposes; and
 - that would be treated as equity interest under an Authorised Financial Accounting Standard in the Tax Transparent Entity’s jurisdiction where the Tax Transparent Entity is not consolidated on a line-by-line basis in the Consolidated Financial Statement (CFS); and
- the total return with respect to that Ownership Interest (including distributions and benefits of tax losses and Qualified Refundable Tax Credits derived through the Tax Transparent Entity, but excluding tax credits other than Qualified Refundable Tax Credits) is expected to be less than the total amount invested by the owner such that the portion of the investment will be returned in the form of tax credits that are not Qualified Refundable Tax Credits. This applies regardless of whether such tax credits are expected to be transferred or used to reduce the investor’s Covered Tax liability.

The determination of the expected total return is made at the time the investment is entered into and is based on facts and circumstances, including the terms of the investment. An interest will not be considered a Qualified Ownership Interest unless the investor has a bona fide economic interest in the Flow-Through Entity and is not protected from loss of its investment. In addition, an interest will not be considered a Qualified Ownership Interest where a jurisdiction only permits the benefits of tax credits to be transferred through such interests when the developer or investor is subject to the GloBE Rules.

The amounts described in subsection 4-36(3) of the Amending Rules are a qualified flow-through tax benefit and covers the following amounts that are not a Qualified Refundable Tax Credit and that flows through a qualified flow-through ownership interest to the extent it reduces the owner’s investment in the qualified flow-through ownership interest (but not below zero):

- tax credits that have flowed through to the owner; or
- tax-deductible losses that have flowed through to the owner multiplied by the domestic tax rate applicable to the owner.

Qualified flow-through tax benefits are a positive adjustment to Adjusted Covered Taxes of the direct owner of a Qualified Ownership Interest or an indirect owner of such an interest through a chain of Tax Transparent Entities, that are not Constituent Entities of an MNE Group, to the extent the qualified flow-through tax benefit was treated for financial accounting purposes as reducing tax expense.

If, after the owner’s investment has been reduced to nil, an amount of qualified flow-through tax benefit flows through or is received in respect of the qualified flow-through tax benefit, then a negative adjustment to Adjusted Covered Taxes is required, to the extent that excess is not already included as a negative amount in Adjusted Covered Taxes.

However, if after the owner’s investment has been reduced to nil, any of the following items flowed through or are received in respect of the qualified flow-through tax benefit:

- any distributions (including a return of capital) to the owner;

- proceeds from a sale of all or part of the Qualified Ownership Interest; or
- Qualified Refundable Tax Credit,

then, a negative adjustment to adjusted covered taxes is only made to the extent of any addition to the Constituent Entity's Adjusted Covered Taxes under subsection 4-36(2) of the Amending Rules.

Subsection 4-36(6) of the Amending Rules operates so that there is no double counting of the tax expense in Adjusted Covered Taxes and a reduction can only be made if there is a positive amount of a qualified refundable tax credit, distribution or proceeds from sale. To the extent the excess relates to an item already included Adjusted Covered Taxes, such as a non-refundable tax credit, or a tax deductible loss, a separate subtraction under subsection 4-36(4) cannot also be made.

An owner's investment in a qualified flow-through ownership interest is treated as reduced by receipts with respect to the following items:

- tax credits that have flowed through to the owner;
- tax-deductible losses that have flowed through to the owner multiplied by the domestic tax rate applicable to the owner;
- any distributions (including a return of capital) to the owner; or
- any proceeds from a sale of all or part of the qualified flow-through ownership interest.

Modified treatment for proportional amortisation method accounting

Section 4-38 of the Amending Rules outlines the mandatory tax treatment where an investor with a qualified flow-through ownership interest uses the proportional amortization method of accounting to determine the amount of the investment that is recovered each year. Subsection 3-32(3) of the Amending Rules outlines that the rule only applies where the investor is subject to an Equity Investment Inclusion Election for the Fiscal Year.

It is optional for an investor in a qualified flow-through ownership interest that does *not* use the proportional amortization method of accounting for the interest for financial accounting purposes to make an irrevocable election to use the following methodology. The election is to be made by the Filing Constituent Entity for a qualified flow-through ownership interest for the first Fiscal Year in which the investor acquires the interest or is subject to the GloBE Rules.

Under the proportional amortization method, any amount of Qualified Flow Through Tax Benefits that flow through or are received in respect of the qualified flow-through ownership interest is a reduction to the investment in proportion to the Expected Tax Benefits Ratio.

The Expected Tax Benefits Ratio is the ratio of only:

- tax credits that have flowed through to the owner; and

- tax-deductible losses that have flowed through to the owner multiplied by the domestic tax rate applicable to the owner,

that flowed through or were received in the Fiscal Year to the total of such items that are expected to flow through or be received in respect of the qualified flow-through ownership interest over the term of the investment.

An investor cannot include a positive adjustment to Adjusted Covered Taxes if the items that flow through or are received in respect of the qualified flow-through tax benefit are in excess of the reduction to the investment. For example, an amount of tax credits that is in excess of a reduction to the investment determined by the proportional amortisation method would be treated as a negative amount in calculating total Adjusted Covered Tax. Adjustments made under the proportional amortisation method would contribute to the total Adjusted Covered Tax amount alongside other positive and negative adjustments that would have been calculated using a different method due the scenario where the proportional amortisation method election was yet to be made.

The MNE Group will need to both maintain records supporting the above to verify the disclosures required by the GloBE Information Return. This is a requirement of Subdivision 382-C of the *Taxation Administration Act 1953*.

Top-up Tax clarifications

Various technical amendments are made to the DMT provisions in the Amending Rules:

- narrow the Fiscal Year referred to when computing the Domestic Top-up Tax Amount [items 1 and 2, subsections 2-35(3) and (5)];
- updates the reference to ‘Australian final withholding tax’ term to ‘withholding tax’, as defined in the *Income Tax Assessment Act 1997* [item 3, paragraph 2-35(6)(d)]; and
- to ensure that subsidiaries in a tax consolidated group (TCG) do not allocate their top-up-tax to a head entity that is also an excluded entity [item 5, subsection 2-50(1)].

The intention of not allowing subsidiaries to allocate their top-up tax to an excluded head entity is to preserve the tax neutral status of Excluded Entities by precluding them from having a tax liability.

UTPR Top-up Tax for Securitisation Entities

Subsection 2-50(1) of the Amending Rules is amended to ensure that there is no reduction of a Constituent Entity’s UTPR Top-up Tax Amount under subsection 2-50(2) of the Rules where the head company of the consolidated group, or MEC group, is an Excluded Entity. This is consistent with the corresponding rule in subsection 2-50(4) of the Rules only applying to head companies that are Constituent Entities.

An amendment is made to subsection 2-85(3) of the Rules to clarify the circumstances in which a Securitisation Entity can be liable to pay a UTPR Top-up Tax Amount. Under the existing drafting, this could occur if an amount of Total UTPR Top-up Tax Amount is distributed to Australia and either a Securitisation Entity is the only Constituent Entity

located in Australia, or the only Constituent Entities located in Australia are Securitisation Entities. However, this does not deal with scenarios where the only Constituent Entities located in Australia are a combination of Constituent Entities that would otherwise be covered by subsection 2-85(2) of the Rules.

The amendment to subsection 2-85(3) of the Rules ensures that a Securitisation Entity's employees and the Net Book Value of Tangible Assets for a Fiscal Year are not disregarded under paragraph 2-85(2)(c) of the Rules, where either the Securitisation Entity is the only Constituent Entity located in Australia, or, where each Constituent Entity located in Australia is either a Securitisation Entity, Investment Entity or an Insurance Investment Entity.

UTPR Percentage taken to be zero in certain circumstances

A technical amendment is made to limit the time period that an amount of UTPR allocated to a jurisdiction for a prior year must result in the Constituent Entities of the MNE Group located in the jurisdiction having an additional cash tax expense equal to the allocated amount. That time limit is 12 months after the end of the current Fiscal Year. If the 12 month time limit is not met the MNE Group's UTPR Percentage for the jurisdiction for the current Fiscal Year is taken to be zero.

Mutual Insurance Company

Part 7-5 of the Rules allow for a Filing Constituent Entity to make an election to treat a Constituent Entity that is an Investment Entity or an Insurance Investment Entity as a Tax Transparent Entity, if certain conditions are met. The conditions include that the relevant Constituent Entity-owner is subject to tax in the jurisdiction in which it is located under a mark-to-market or similar regime in respect of the Ownership Interest and at a rate equal to or more than the Minimum Rate. Item 12 of the Amending Rules clarifies that these conditions can be taken to be met in respect of Regulated Mutual Insurance Companies, consistent with paragraph 91 on page 235 of the Consolidated Commentary (2025). Registered Mutual insurance companies are insurance companies owned exclusively by their policyholders and regulated in the jurisdiction in which they are located.